CURRENT DEVELOPMENTS IN THE LAW

A Survey of Federal Cases which Involve Campaign Financing

This section presents a broad selection of cases recently decided in the federal court system, but it is not intended to be a comprehensive collection.

Russell v. Burris, 978 F.Supp. 1211 (E.D. Ark. 1997). THE DISTRICT COURT, HEARING A CHALLENGE TO THE ARKANSAS INITIATED ACT OF 1996, HELD THAT CERTAIN UNCONSTITUTIONAL LIMITS ON CAMPAIGN CONTRIBUTIONS ARE SEVERABLE, AND THAT THE VALID PORTIONS OF THE ACT STAND ON THEIR OWN AND ARE ENFORCEABLE.

I. INTRODUCTION

The plaintiffs, three individuals and a registered Arkansas political action committee ("PAC"), wanted to make campaign contributions in amounts that would exceed the limits established by the Arkansas Initiated Act of 1996 ("Act I").[1] They sought a declaratory judgment stating that Act I violates their First Amendment rights to freedom of political speech and association and their Fourteenth Amendment right of equal protection of the laws. The plaintiffs also petitioned the court to enjoin Act I's enforcement.[2] The defendants were individual members of the Arkansas Ethics Commission, which administers Arkansas campaign finance and disclosure laws.[3]

II. BACKGROUND

Prior to the enactment of Act I, Arkansas candidates could receive up to $1,000 in contributions for each election from individuals, corporations, PACs, and other groups.[4] Act I limits the amount candidates may receive from any person.[5] The plaintiffs claimed that the Act violated their rights to freedom of

---

[1] *See* Russell v. Burris, 978 F. Supp. 1211, 1216 (E.D. Ark. 1997).

[2] *See id.* at 1214.

[3] *See id.* at 1216.

[4] *See id.* at 1214.

[5] *See id.* Act I states in part:

(a)(2) It shall be unlawful for any candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate's behalf, to accept campaign contributions in excess of three hundred dollars ($300) per election from any person. . . .

speech and freedom of association under the First Amendment.[6] They also argued that by allowing small donor PACs to contribute more money per election to a candidate than approved PACs, Arkansas denies equal protection of the laws to approved PACs.[7]

III. ANALYSIS

A. *Standing*

The court first evaluated whether the plaintiffs had standing to bring their action in federal court.[8] To establish standing, a plaintiff must show: (1) injury in fact; (2) a causal connection between the injury and the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.[9] The court found that because the plaintiffs expressed a desire to contribute more money to candidates than permitted under Act I, they faced a credible threat of present or future prosecution, and therefore they had standing.[10] However, they did not have standing to challenge the $500 limit on annual contributions to independent expenditure committees because they failed to show that any of them had contributed in the past or planned to contribute in the future to any such committee.[11]

B. *Ripeness*

The plaintiffs alleged that the Act's authorization for local jurisdictions to set lower contribution limits than the state imposes constituted a violation of their First Amendment rights.[12] However, the court held that the issue is not ripe for consideration because no jurisdiction yet has set a lower level.[13]

(b)(2) It shall be unlawful for any person to make a contribution to a candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or to any person acting on the candidate's behalf, which, in the aggregate, exceeds three hundred dollars ($300) per election.

ARK. CODE 7-6-203(b)(2).

[6] *See id.* at 1216. Specifically, the plaintiffs alleged that the following provisions are unconstitutional:

(1) the $100 and $300 limits on campaign contributions . . . ; (2) Act I's authorization for local jurisdictions to set even lower contribution limits [than the state limits]; and (3) the $500 limit to annual contributions . . . to an independent expenditure committee.

See id. Furthermore, the plaintiffs challenged the $200 per person limit on annual contributions to an approved PAC, which was approved prior to the Act. *See id.*

[7] *See id.* at 1217.

[8] *See id.*

[9] *See id.* (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)).

[10] *See id.*

[11] *See id.*

[12] *See id.* at 1218.

[13] *See id.*

C. *Limits on Contributions*

1. Contributions to Candidates

The court began their analysis by considering the application of *Buckley v. Valeo*[14] to the present case.[15] In *Buckley*, the Supreme Court upheld provisions of the Federal Election Campaign Act ("FECA") which restricted campaign contributions to $1000 per election for individuals and $5000 per election for political committees.[16] The *Buckley* court held that an individual's rights to association and participation in political activities may be limited if the state demonstrates a "sufficiently important interest" and the limit is "closely drawn to avoid unnecessary abridgment of associational freedoms."[17]

The court followed an Eighth Circuit decision, *Carver v. Nixon*,[18] which held that *Buckley* limits only large campaign contributions, because the state interest justifying contribution limits is "preventing corruption and the appearance of corruption spawned by . . . *large financial contributions* . . . ."[19] The court therefore defined its task as "determining what a 'large' contribution is in the context of Arkansas elections."[20]

A crucial factor in this determination is the size of the contribution relative to total campaign expenses.[21] This will be a case-specific determination.[22] If the amount supports the appearance of a "political quid pro quo,"[23] then it is "large" under *Carver*.

In Arkansas, a single $1000 contribution equals over four percent of the average total amount raised for a Senate candidate, and over thirteen percent of the average amount for a House of Representatives candidate.[24] The court held that in these non-statewide races, a $1000 contribution is sufficiently large to support an inference of undue influence.[25]

Next, the court considered whether the $100 limit imposed by Act I was so

---

[14] 424 U.S. 1 (1976).

[15] *See* Russell, 978 F. Supp. at 1218.

[16] *See id.*

[17] *See id.* (quoting Buckley v. Valeo, 424 U.S. 1, 25 (1976)).

[18] 72 F.3d 633 (8th Cir. 1995).

[19] *See id.* at 1219 (citing Carver v. Nixon, 72 F.3d 633, 638 (8th Cir. 1995), quoting Buckley, 424 U.S. at 25) (emphasis in original).

[20] *Id.*

[21] *See id.* at 1221.

[22] *See id.*

[23] *See id.* (citing Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, 454 U.S. 290 (1981), which stated that it undermines the integrity of our representative government when "large contributions are given to secure a political quid pro quo from current and potential office holders . . . .")

[24] *See id.* According to one study, in 1992, 1994, and 1996, Senate candidates raised an average of $22,500, including the candidates' own money and loans. *Id.* In the same years, House candidates raised an average of $7,550. *Id.*

[25] *See id.*

small as to be unconstitutional.[26] Under *Buckley*, once a court has determined that some limit on contributions is necessary, it may not go so far as to fix the proper amount unless there is a "difference in kind" between two possible limits, rather than a mere "distinction in degree."[27]

Considering the factors relied upon in *Carver* to determine whether a contribution limit constituted a "difference in kind," the court determined that Act I's $100 limit for candidates in non-statewide races was not different in kind from the previous $1000 limit.[28] Additionally, the court considered the cost of running Senate and House campaigns, and found no evidence that the contribution limits would leave candidates with insufficient funds to run successful campaigns.[29] Therefore the contribution limit for non-statewide races does not impermissibly burden the potential for "effective political dialogue."[30]

The court did, however, cite two exceptions to the finding that the $100 limit is constitutional for non-statewide races.[31] State Supreme Court Justices and Court of Appeals Judges may not personally solicit contributions, nor may committees acting on their behalf solicit earlier than 180 days before a primary election.[32] Due to these restrictions, the $100 limit prevents those candidates from raising sufficient funds, and the limit is unconstitutionally low as applied to them.

In contrast, in statewide elections, a $1000 contribution is not sufficiently large to support a reasonable perception of undue influence.[33] Therefore, the State lacks a compelling interest to impose a further limit on contributions to candidates in statewide races, and Act I's $300 limit is unconstitutional.[34]

2. Contributions to PACs

The plaintiffs also claimed that the $200 limit on contributions to approved PACs was so low as to infringe upon their First Amendment rights to free

---

[26] *See id.* at 1222.

[27] *See id.* (citing Buckley, 424 U.S. at 30).

[28] *See id.* at 1223. The factors used in *Carver* were: (1) whether the limits were per election cycle, or per election; (2) whether the limits, after adjusting for inflation, were a small fraction of the $1000 FECA limit upheld in *Buckley*; (3) the evidence of corruption in the state, as compared to the limits imposed by the challenged statute; (4) the state's evidence that the limits were narrowly tailored to address corruption; (5) the percentage of contributors that would be affected by the limits at issue as opposed to those affected by the FECA limits in *Buckley*. *See id.* at 1222 (citing Carver, 72 F.3d at 641-44).

[29] *See id.* at 1223-24.

[30] *See id.* at 1223.

[31] *See id.* at 1224.

[32] *See id.*

[33] *See id.* at 1222. In Arkansas' 1994 gubernatorial election, each candidate spent over $900,000. *Id.* Since a $1000 contribution is only one-tenth of one percent in these races, it cannot be considered large. *Id.*

[34] *See id.*

speech and association, and their Fourteenth Amendment rights.[35] However, since there was evidence that PACs continued to contribute significantly after 1990, when the $200 limit was enacted, the court found that this limit had not prevented "political committees from amassing the resources necessary for effective advocacy."[36] Therefore the plaintiffs failed to prove sufficient infringement of their rights, and the limit is constitutional.[37]

D. *Deference to Initiated Acts*

The defendants urged the court to accord substantial deference to Act I and the judgment of voters in approving it.[38] While recognizing that federal courts should carefully deliberate before invalidating state laws, the court refused to accord special deference to the Act, since neither the Supreme Court nor the Eighth Circuit has declared that state laws should be given such deference.[39]

E. *Equal Protection Claim*

Plaintiff Associated Industries of Arkansas Political Action Committee ("AIAPAC"), an approved PAC, asserted the right to contribute up to $2500 per election, which is the limit for small donor PACs.[40] AIAPAC argued that limiting approved PAC contributions to $100 or $300 per election, while allowing small donor PACs to contribute $2500, constitutes a Fourteenth Amendment equal protection violation.[41]

The court found that the disparity in the permitted contribution amount is balanced out by the fact that small donor PACs receive donations only from individuals. Approved PACs, however, may receive donations from other PACs or corporations and are limited only in the amount they can contribute to a single candidate, not the total overall amount they can contribute.[42] Additionally, even if the limitation burdened approved PACs to a greater degree than small donor

---

[35] *See id.* at 1224.

[36] *See id.* at 1225 (quoting Buckley, 424 U.S. at 21.).

[37] *See id.*

[38] *See id.*

[39] *See id.* at 1226.

[40] *See id.* at 1216. The relevant language of Act I provides: "However, an organized political party . . . and a small donor political action committee may contribute up to two thousand five hundred dollars ($2500) to each candidate per election." ARK. CODE 7-6-203.

A small donor PAC is defined as:

> any person who: (A) Receives contributions from one or more individuals in order to make contributions to candidates; (B) Does not accept any contribution or cumulative contribution in excess of twenty-five dollars ($25) from any individual in any calendar year; and (C) Is registered pursuant to Arkansas Code 7-6-215 prior to making contributions to candidates.

ARK. CODE 7-6-201.

[41] *See id.* at 1226.

[42] *See id.* at 1227.

PACs, the disparity would be justified by the state's interest in avoiding actual or apparent corruption.[43] Because small donor PACs are restricted to donations of $25 from individuals only, there is less potential for actual or perceived corruption.[44] This difference between small donor and approved PACs justifies disparate treatment.[45]

F. *State Interest in Leveling the Playing Field*

The plaintiffs claimed that Act I's limits would increase the advantage of wealthy candidates over less wealthy opponents, because they are not restricted from spending their own money on campaigns.[46] However, *Buckley* held that the state cannot limit a candidate's campaign contribution of his or her own money, because it would violate the "freedom of a candidate to speak without legislative limit on behalf of his own candidacy."[47] The court recognizes that this principle favors wealthy candidates, but states that the result is unavoidable, and the discrepancy does not create grounds to overturn otherwise valid limits.[48]

G. *Severability*

The court first recognizes that severability is determined by state law.[49] The Arkansas Supreme Court has declared that it looks to (1) whether the act seeks to accomplish a single purpose; and (2) whether the sections of the act are dependent upon each other.[50] The court found that it would not be invalidating any single purpose of Act I by invalidating its unconstitutional portions while allowing the valid portions to stand on their own, therefore Act I is severable.[51]

IV. CONCLUSION

The district court held that: (1) because the plaintiffs failed to identify an independent expenditure committee to which they planned to contribute, they lack standing to challenge the limit on contributions to such committees; (2) because no local jurisdiction has enacted more restrictive contribution limits than those under state law, the challenge to this provision is not ripe for review; (3) because the state lacks a compelling interest to further limit contributions to statewide candidates, the $300 per election limit is unconstitutional; (4) the $100 per election limit for contributions to non-statewide candidates does not burden the potential for effective political dialogue, and is therefore constitutional, except as applied to candidates for Supreme Court Justice and Court of Appeals judge; (5)

---

[43] *See id.*
[44] *See id.*
[45] *See id.*
[46] *See id.* at 1228.
[47] *See id.* (quoting Buckley, 424 U.S. at 54).
[48] *See id.*
[49] *See id.* (citing Leavitt v. Jane L., 116 S. Ct. 2068, 2069).
[50] *See id.* (quoting U.S. Term Limits, Inc. v. Hill, 316 Ark. 251 (1994)).
[51] *See id.*

because the $200 per year limit on contributions to PACs does not prevent them from amassing necessary resources, the limit is constitutional; (6) the provision limiting approved PAC contributions to $100 and $300 per election, but allowing small donor PACs to contribute $2500 does not violate equal protection; and (7) the unconstitutional provisions of Act I are severable.

Kristen Byrnes

Arkansas Right to Life State Political Action Committee v. Butler, 983 F.Supp. 1209 (W.D. Ark. 1997). THE DISTRICT COURT FOUND SUFFICIENT QUESTIONS OF FACT REGARDING THE CONSTITUTIONALITY OF ARKANSAS' CAMPAIGN CONTRIBUTION LIMITS AND DISCLOSURE ACT UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO DENY PLAINTIFFS SUMMARY JUDGMENT.

I. INTRODUCTION

The Arkansas Right to Life State Political Action Committee, a duly registered political action committee,[1] and Marianne Linane, a citizen and voter of the state of Arkansas,[2] challenged the constitutionality of Arkansas' Campaign Contribution Limits and Disclosure Act ("Act").[3] The plaintiffs brought this action against Brad Butler, a local prosecuting attorney in Arkansas, and the members of the Arkansas Ethics Commission, claiming that the campaign finance law violated First and Fourteenth Amendment guarantees.[4] Additionally, members of other state political action committees[5] as well as state officials[6] petitioned the court to join the case as defendant-intervenors. The plaintiffs sought summary judgment on all of their claims.[7] The district court granted the plaintiffs' summary judgment motion in part and denied it in part.[8]

II. BACKGROUND

The plaintiffs claimed that five provisions of the Act violated First Amendment guarantees of free speech and association.[9] Plaintiffs attacked the Act's (1) limitations on campaign contributions, (2) disclaimer requirements for specific

---

[1] Arkansas Right to Life State Political Action Comm. v. Butler, 983 F. Supp. 1209, 1213 (W.D. Ark. 1997).

[2] *See id.* at 1214.

[3] *See id.*

[4] *See id.* at 1213.

[5] *See id.* at 1214. The Association of Community Organizations for Reform Now Political Action Committee and the Local 100 of the Service Employees International Union, AFL-CIO Political Action Committee joined the case as defendant-intervenors on September 30, 1997. *See id.*

[6] *See id.* Paul Kelly, a member of the Little Rock City Board of Directors, joined the lawsuit as a defendant-intervenor. Genevieve Stewart, who lost a seat for the Little Rock City Board of Directors, also joined. *See id.*

[7] *See id.* at 1213.

[8] *See id.* at 1236.

[9] *See id.* at 1213.

political advertisements, (3) provision to grant tax credits for campaign contributions, (4) ban on contributions during sessions of the General Assembly, and (5) provision permitting localities to set lower contribution limits.[10] The plaintiffs further claimed that the Act violated the Fourteenth Amendment's Equal Protection clause by imposing different campaign contribution limits on similarly situated persons.[11] The plaintiffs also claimed that the Act was *per se* unconstitutional.[12]

III. ANALYSIS

A. *The Standard for Summary Judgment*

The court began its analysis of the case by stating that the plaintiffs had to show that there was no genuine issue of material fact in order to succeed on their motion for summary judgment.[13] The court noted that cases involving alleged violations of personal constitutional rights may not be appropriate for the granting of summary judgment.[14] The court further warned that the defendants would receive the benefit of any reasonable inference drawn from the facts of the case.[15]

B. *First Amendment Violations*

1. Limitations on Campaign Contributions

The court noted that in considering the arguments against the limitations on campaign contributions, it needed to determine if the particular requirement "burdens the exercise of political speech and, if it does, whether it is narrowly tailored to serve a compelling state interest."[16] First, the court considered whether the limitation infringed on the plaintiffs' First Amendment rights.[17] The court looked to precedent to determine if the campaign contribution limitations "affect[ed] not only free political speech but also free expression. . . ."[18] The state could only justify these restrictions on free speech if they aided "the compelling state interest of avoiding corruption or the appearance of corruption in

---

[10] *See id.*

[11] *See id.*

[12] *See id.* at 1214.

[13] *See id.* at 1215 (citing Holloway v. Lockhart, 813 F.2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56).

[14] *See id.*

[15] *See id.* (citing Fisher v. NWA, Inc., 883 F.2d 594, 598-99 (8th Cir. 1989) (citing Trnka v. Elanco Products Co., 709 F.2d 1223, 1225 (8th Cir. 1983)).

[16] *See id.* at 1220 (citing Shrink Missouri Government PAC v. Maupin, 71 F.3d 1422, 1424 (8th Cir. 1995) (quoting Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 657 (1976) (citing Buckley v. Valeo, 424 U.S. 1 (1976)).

[17] *See id.*

[18] *See id.* (citing Day v. Holahan, 34 F.3d 1356, 1365 (8th Cir. 1994)).

the political process. . . ."[19] The court then considered the information under the summary judgment standard.[20]

The court analyzed four types of campaign contribution limitations:[21] (1) a prohibition on personal contributions of more than $200 per year to a single PAC ("$200 limit"); (2) a requirement that independent expenditure committees not accept more than $500 from any person in a calendar year ("$500 limit"); (3) a restriction on candidates from accepting, and donors from giving, more than $100 per election ("$100 limit"); and (4) a restriction on candidates for the state's highest offices from accepting, and donors from giving, more than $300 per election ("$300 limit").[22]

The court found a compelling state interest in "preventing corruption or the appearance of corruption" by limiting contributions to PACs.[23] However, both precedent[24] and evidence presented to the court[25] suggested that a question of fact remained as to whether the $200 limitation was sufficiently narrowly tailored. Therefore, the court rejected the plaintiffs' motion for summary judgment on issues concerning the $200 limit.[26]

The court focused on independent expenditure committees, which are defined as arrangements where "any person. . .receives contributions from one or more persons"[27] in order to "expressly advocate the election or defeat of a clearly identified candidate for office."[28] The court found that independent expenditure committees affected by the $500 limit were capable of eliciting quid pro quo arrangements from current and potential state officers.[29] Independent expenditure committees can still abuse the system even when no money is passed directly to candidates, because the state permitted a person or group to register as both an independent expenditure committee and a PAC.[30] The court concluded that there existed a genuine issue of material fact and would not grant summary judgment

---

[19] *Id.*

[20] *See id.*

[21] *See id.* at 1221-1223.

[22] *See id.*

[23] *See id.* at 1224 (citing Day v. Holahan, 34 F.3d 1356, 1365 (8th Cir. 1994)).

[24] *See id.* at 1221. The Day court held that a similar contribution limitation was "too low to allow a meaningful participation in protected political speech and association, and thus [was] not narrowly tailored to serve the state's legitimate interest in protecting the integrity of the political system." *Id.* at 1222 (citing Day, *supra* note 20, at 1366).

[25] *See id.* at 1222. The court noted that, although Arkansas voters chose to impose this limit on campaign contributions, this fact has no bearing on whether the limit addressed the compelling state interest of combating actual or apparent corruption in politics. *See id.* (discussing Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981)).

[26] *See id.*

[27] *See id.* at 1223 (citing Campaign Contribution Limits and Disclosure Act, sec. 1, § 7-6-201(14)).

[28] *See id.* (citing Campaign Contribution Limits and Disclosure Act, sec. 3, § 7-6-203(k)).

[29] *See id.* at 1223 (citing Buckley v. Valeo, 424 U.S. 1, 26-27 (1976)).

[30] *See id.*

concerning the $500 limit.[31]

With regard to the $100 and $300 contribution limits, the court considered whether the limitations were too low to permit Arkansas citizens to meaningfully participate in the political process.[32] The plaintiffs and defendants presented statistical information regarding the costs involved in financing a campaign in Arkansas.[33] The court found that the limitations did not adversely effect candidates for the office of state representative or senator.[34] The limitation presented an insurmountable burden, however, to gubernatorial candidates.[35] Therefore, the court held that the limitations as applied to candidates for the office of governor were unconstitutional.[36] The court did not address the constitutionality of contribution limitations to candidates for other state offices because plaintiffs did not produce any evidence on this point.[37]

2. Disclosure Requirement

The Act required that a disclaimer accompany any political advertisement resulting from an independent expenditure.[38] Unlike the disclosure provision upheld by the Supreme Court in *Buckley v. Valeo*,[39] the Arkansas requirement imposed a high burden on a citizen's right to free speech.[40] The court concluded that there remained a genuine issue of material fact as to whether the disclosure requirement's stated purpose of providing the electorate with information about political alliances, and combating actual or perceived corruption in the political system, was sufficiently narrowly tailored. Therefore, summary judgment was not granted on this issue.[41]

3. Tax Credits

The court considered a provision of the Act granting contributors a tax credit for campaign contributions.[42] The plaintiffs argued that citizens who contributed to independent expenditure committees were denied the benefit of the tax credit provided for contributors to individual candidates, small donor PACs, and organized political parties.[43] The court specified that the state interest in allowing this credit was to encourage individuals to contribute to candidates or PACs and to

---

[31] *See id.*
[32] *See id.* at 1223.
[33] *See id.* at 1223-1224.
[34] *See id.* at 1225.
[35] *See id.*
[36] *See id.*
[37] *See id.*
[38] *See id.* at 1226.
[39] 424 U.S. 1 (1976).
[40] *See id.* at 1228.
[41] *See id.* at 1230.
[42] *See id.*
[43] *See id.* at 1231.

provide public financing for campaigns.[44] The court found no evidence that the Act prevented citizens from contributing in ways other than through independent expenditure committees.[45] Since the government did not create an obstacle to the exercise of free speech by denying the tax credit to contributors to independent expenditure committees, the government is not required to dismantle the limitation.[46] The plaintiffs did not meet their summary judgment burden on this point and their motion was denied.[47]

4. Thirty-Day Black-Out Period

The plaintiffs also challenged the Act's ban on campaign contributions proffered between thirty days before sessions of the General Assembly and thirty days afterward.[48] The court noted that this requirement applied only to incumbents.[49] Although the plaintiffs did not have standing to challenge the black-out period on behalf of candidates for public office, they claimed a violation of their First Amendment rights.[50] The court found a valid state interest in preventing the exchange of campaign contributions for favors from candidate-members.[51] However, no evidence was presented to suggest that such arrangements were reasonably likely. The plaintiffs also failed to demonstrate that these conspiracies would be discouraged by the black-out requirement.[52] Therefore, the plaintiffs' motion for summary judgment was denied.[53]

5. Extension to Localities

The plaintiffs challenged the validity of the Act's provision allowing localities to set campaign contribution limits lower than the established state standard.[54] The court noted that the plaintiffs failed to present any information showing how local jurisdictions used this provision to further limit campaign contributions.[55] The issue was not ripe and the court rejected the plaintiffs' motion for summary judgment on the question of whether the Act infringed on First Amendment guarantees of freedom of speech.[56]

---

[44] *See id.*

[45] *See id.*

[46] *See id.* at 1232 (citing Harris v. McRae, 448 U.S. 297, 316 (1980)).

[47] *See id.* at 1233.

[48] *See id.*

[49] *See id.* at 1234.

[50] *See id.*

[51] *See id.*

[52] *See id.* (citing Shrink Missouri Government PAC v. Maupin, 922 F. Supp. 1413, 1420 (E.D. Mo. 1996)).

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See id.*

C. *Fourteenth Amendment Equal Protection Claim*

The plaintiffs claimed that the $100 and $300 limitations affected individual contributors but did not place a restraint on small donor PACs.[57] The defendants countered by claiming that small donor PACs were limited to $25 annual contributions and could not pose a real threat to the integrity of the political process.[58] A material issue of fact existed as to whether the $100 and $300 limitations on personal contributions diminished the potential for corruption of the political process.[59]

D. *Per Se Challenge*

The court then considered the plaintiffs' challenge to the facial constitutionality of the Arkansas Act.[60] Plaintiffs relied on the view that "[b]road prophylactic bans on campaign expenditures and contributions are not designed with the precision required by the First Amendment because they sweep protected speech within their prohibitions."[61] The court rejected this approach in favor of the *Buckley* standard, requiring the *fact-finder* to determine if the restriction is narrowly tailored to meet a compelling state interest.[62] Plaintiffs motion for summary judgment was denied.[63]

IV. CONCLUSION

The district court granted in part and denied in part the plaintiffs' motion for summary judgment regarding the unconstitutionality of Arkansas' Campaign Contribution Limits and Disclosure Act under the First and Fourteenth Amendments. With the exception of gubernatorial campaign contributions, the court held that there were sufficient questions of fact as to whether the challenged provisions of the Act were narrowly tailored to address a compelling state interest. The court offered support for the validity of campaign contribution limitations against free speech and equal protection claims.

Lisa K. Loftin

---

[57] *See id.* at 1234-1235.

[58] *See id.*

[59] *See id.*

[60] *See id.* at 1235.

[61] *See id.* (citing Justice Thomas' concurrence in Colorado Republicans Federal Campaign Committee v. FEC, 116 S. Ct. 2309, 2329 (1996)).

[62] *See id.* (discussing Buckley v. Valeo, 424 U.S. 1 (1976)).

[63] *See id.*

NAACP v. Jones, 131 F.3d 1317 (9th Cir. 1997). THE NINTH CIRCUIT FOUND THAT CALIFORNIA ELECTION CODE §13307, WHICH REQUIRES THAT PARTICIPATING CANDIDATES REIMBURSE THE COUNTY FOR PRINTING COSTS OF CANDIDATES' STATEMENTS IN SAMPLE BALLOTS, DOES NOT VIOLATE THE FIRST OR FOURTEENTH AMENDMENT RIGHTS OF VOTERS AND CANDIDATES FOR JUDICIAL ELECTIONS.

I. INTRODUCTION

The plaintiffs in this case were Charles Lindner, a former judicial candidate, joined with individual and associated voters who claimed that they lacked wealth and access to wealth.[1] The plaintiffs brought an action seeking declaratory and injunctive relief against the defendants, the Secretary of State of California, the Los Angeles County Registrar of Voters, and the County's board supervisors and board members.[2] The plaintiffs contended that the California campaign finance system for judicial elections violated their rights under the Fourteenth Amendment's Equal Protection Clause and the First Amendment.[3] The District Court for the Central District of California dismissed the claims against the defendants.[4] The Ninth Circuit affirmed the District Court for the Central District of California's judgment. The Ninth Circuit held that the lack of public campaign financing and the cost reimbursement system as required by the California Election Code §13307 did not violate the First or Fourteenth Amendment rights of voters or judicial candidates.

II. BACKGROUND

Plaintiffs contended that California's statutory scheme, section 13307, for running judicial elections violated voters' and candidates' fundamental First Amendment rights by requiring that participating candidates reimburse the County for the costs of printing candidates' statements on a sample ballot.[5] The plaintiffs claimed that sectioni 13307 excluded non-wealthy and non-indigent candidates from running a "meaningful" election, and violated voters' First Amendment right to hear publicly-funded campaign speeches so that they are not excluded from "hearing candidates' messages and from contributing effectively to a can-

---

[1] *See* NAACP v. Jones, 131 F.3d 1317, 1320 (9th Cir 1997)

[2] *See id.* at 1320.

[3] *See id.*

[4] *See id.*

[5] *See id.* at 1320-21 (citing CAL. ELEC. CODE §13307). Cal. Elec. Code §13307 requires the Registrar to distribute a Sample Ballot to each registered voter. Each candidate is permitted to submit for publication in the Sample Ballot a 200-word statement describing his or her qualifications and education. The Board has the discretion each election cycle to determine whether the candidate who chooses to include statements must reimburse the County for the actual costs of including their statements. The statute authorizes advance payment by the candidates of the estimated costs of printing the statements. The amount the candidates paid will be adjusted after the election if necessary and the funds do not finance the costs of the election. *See id.*

didates 'meaningful' campaign."[6] The plaintiffs also contended that this "wealth primary" process violated the candidates' and the voters' Equal Protection rights.[7]

The District Court for the Central District of California dismissed the claims against Jones because the plaintiffs had not alleged specific facts that Jones had violated their rights.[8] The court also dismissed claims against the remaining defendants because the plaintiffs failed to state an injury in fact and therefore lacked standing.[9] The plaintiffs appealed the District Court for the Central District of California's dismissal.[10] The Ninth Circuit affirmed the District Court for the Central District of California's dismissal on the grounds that the plaintiffs failed to state a claim upon which relief can be granted. The Ninth Circuit held that the lack of public campaign financing and the cost reimbursement system did not violate the First or Fourteenth Amendment rights of voters or judicial candidates.

III. ANALYSIS

A. *The Plaintiffs did not Constitute a Suspect Class*

The plaintiffs contended that the "wealth primary" system classified candidates based on financial resources because meaningful campaigns require large expenditures. They also claimed that it classified voters based on financial resources because voters with fewer resources are unable financially to support a candidate.[11] The court began its discussion by stating that under Equal Protection analysis, heightened scrutiny applied when a classification burdened a suspect class or a fundamental right.[12] This court found that economic status is not a suspect class and that plaintiffs were not entitled to heightened scrutiny review on their Equal Protection claim that section 13307 discriminated based on wealth.[13]

The plaintiffs also contended that the cost recovery system[14] has a disparate impact on racial minority groups.[15] The Court found that although race is a sus-

---

[6] *See id.* at 1317, 1320.

[7] *See id.* at 1320-21 (defining "wealth primary" as a primary which requires the expenditure of a substantial amount of money to run a "meaningful" campaign.).

[8] *See id.* at 1321.

[9] *See id.*

[10] *See id.* at 1317.

[11] *See id.* at 1321.

[12] *See id.* (citing San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 17 (1973)).

[13] *See id.* (citing Harris v. McRae 448 U.S. 297, 322-23 (1980) and United States v. Barajas-Guillen, 632 F.2d 749, 753 (9th Cir. 1980)).

[14] *See* NAACP v. Jones, 131 F.3d at 1320 (defining cost recovery system when the candidates reimburse the County for the actual costs of including their statements in the sample ballot).

[15] *See id.*

pect class, the Equal Protection Clause is not implicated by a classification that has a disparate racial impact in the absence of discriminatory intent.[16] The court found that plaintiffs did not allege discriminatory intent by defendants.[17]

B. *First Amendment Claims*

Plaintiffs contended that section 13307 violated their fundamental First Amendment rights and their right to access to candidates' viewpoints.[18] The court found that the voters' pamphlet ("Sample Ballot") was a limited public forum,[19] and the government must show that its content neutral restriction "serve[s] a significant state interest in a narrowly tailored fashion and leave open ample alternative channels of communication."[20] This court found that Lindner's claim to a First Amendment right to have his statement published for free was not violated by section 13307.[21]

The voter claimed that their rights as listeners outweighed the rights of the speaker. The court found that, although both speaker and listener have the standing to assert First Amendment rights,[22] no precedent exists to support the argument that voters as recipients of campaign speech have greater rights than candidates.[23] The court also found that voters have no fundamental right to have candidates' campaigns publicly funded because the First Amendment does not "guarantee access to all of the information a voter would like to receive."[24]

Plaintiffs also claimed that the state statute was viewpoint-discriminatory.[25] The court found this argument meritless because there was no viewpoint classification in that all candidates had to fund their campaigns themselves.[26] Therefore, candidates with particular viewpoints were neither benefited nor disadvantaged. The court held that the primary did not burden the plaintiffs' fundamental First Amendment rights.

---

[16] *See id.* at 1322 (citing Washington v. Davis, 426 U.S. 229 (1976)).

[17] *See id.*

[18] *See id.*

[19] *See id.* (quoting Kaplan v. County of Los Angeles, 894 F.2d 1076, 1080 (9th Cir. 1990): "[A] forum is created by the government to allow a limited class of speakers to address a particular class of topics is a limited public forum.").

[20] *See id.* (citing Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983)).

[21] *Id.* (citing Kaplan v. County of Los Angeles, "[I]t does not violate the First Amendment for a public entity to collect charges that fairly reflect costs incurred by the municipality in connection with an activity involving expression.").

[22] *See id.* (citing Virginia Pharmacy Bd. v. Virginia Consumer Council, 425 U.S. 748, 756 (1976)).

[23] *See id.*

[24] *Id.* at 1323.

[25] *See id.*

[26] *See id.*

C. *Fundamental Rights Claims*

The plaintiffs relied on *Smith v. Allwright*[27] and *Terry v. Adams*[28] to argue that voters have a fundamental right to contribute effectively to a candidate's campaign.[29] The court distinguished *Smith* and *Terry* by stating that in those cases African-American voters were denied their right to cast votes in primary elections, which is not "equivalent to the ability to contribute financially to a campaign prior to voting."[30]

The court also found that voters have no fundamental right to contribute to a successful campaign.[31] The court held that "plaintiffs' inability to assist a candidate win an election did not prevent those candidates from appearing on the ballot."[32] The court found that plaintiff voters had not shown any fundamental right that was burdened by California's judicial election process.

The court also found that the election process did not violate any of plaintiff Lindner's fundamental rights to run for public office.[33] The court stated that "[c]andidates do not have a fundamental right to run for public office."[34] Furthermore, the court found that the cost recovery system did not prevent Lindner from appearing on the ballot and he had other methods to express his qualifications to the electorate.[35]

D. *Rational Basis Test*

Since the "wealth primary" did not burden a suspect class nor a fundamental right, the court analyzed the "wealth primary" using the rational basis test.[36] Under this test a classification must be rationally related to a legitimate purpose.[37] The court found that the lack of funding and the required cost reimbursement system were state actions that were rationally related to the state's legitimate purpose, requiring candidates to finance their own campaign.[38] The court held that not publicly funding judicial campaigns is a "rational and permissible choice of state allocation of funds."[39] The court as well as the Supreme Court have "rejected the notion that all candidates are entitled to equal footing in the

---

[27] 321 U.S. 649 (1944).

[28] 345 U.S. 461 (1953).

[29] *See Jones*, 131 F.3d at 1323.

[30] *Id.*

[31] *See id.*

[32] *See id.* (citing Lubin v. Panish, 415 U.S. 709 (1974)).

[33] *See id.* at 1324.

[34] *Id.* (citing Clements, 457 U.S. at 963 (quoting Bullock v. Carter, 405 U.S. 134, 143 (1972))).

[35] *See id.*

[36] *See id.*

[37] *See id.* at 1321.

[38] *See id.*

[39] *Id.* at 1325 (citing Harris v. McRae, 448 U.S. at 316 (finding no state obligation to remove financial barriers that are not of its own creation)).

campaigning process."[40]

IV. CONCLUSION

The Ninth Circuit court held that section 13307, which requires participating candidates to reimburse the County for costs of printing candidates' statements in sample ballots but does not provide public campaign financing, does not violate the First or Fourteenth Amendment rights of voters and candidates for judicial elections. The court held that section 13307 is not viewpoint-discriminatory and does not affect the candidates' ability to get their names on the ballot or affect other means available to candidates to disseminate their views. The court also held that voters do not have a right to receive publicly-funded campaign speeches. Furthermore, the court held that voters do not have a right to contribute to candidates' campaigns and section 13307 was rationally related to the legitimate purpose of having candidates finance their own campaigns.

Marilyn Zuleyka Farquharson

California Profile Council Political action Committee v. Scully, et al., No. CIV. S-96-1965LKKDAD, 1998 U.S. Dist. WL 7173 (E.D.Cal. 1998). THE DISTRICT COURT FOUND PARTICULAR ANCHOR PROVISIONS IN PROPOSITION 208, LIMITING CAMPAIGN SPENDING, TO BE UNCONSTITUTIONAL UNDER THE FIRST AMENDMENT. LEAVING DECISIONS OF SEVERANCE AND REFORMATION TO THE STATE COURT, THE COURT ISSUED A PRELIMINARY INJUNCTION ON CALIFORNIA'S FAIR POLITICAL PRACTICES COMMISSION FROM ENFORCING THE UNCONSTITUTIONAL PROVISIONS OF PROPOSITION 208.

I. INTRODUCTION

The plaintiffs California Prolife Council Political Action Committee ("CPC-PAC") represented those seeking to limit abortions, various labor unions and their political action committees ("PACs"), individual contributors to political campaigns, candidates and prospective candidates, officeholders, the Republican and Democratic parties, and two professional slate mailers.[1] CPC-PAC brought this action against California's Fair Political Practices Commission ("FPPC"),[2] challenging Proposition 208, which regulates who may contribute to political campaigns, how much they may contribute, when they may contribute, for which purposes the contributions may be used, the contents of political advertisements, and the extent of campaign spending.[3] The challenge was based on the First Amendment of the United States Constitution.[4] The district court found that a le-

---

[40] *Id.*

[1] *See* California Profile Council Political action Committee v. Scully, et al., No. CIV. S-96-1965LKKDAD, 1998 U.S. Dist. WL 7173 at *1 (E.D. Cal. 1998).

[2] *See id.* at *1. The FPPC is California's state agency charged with administrating Proposition 208 and is made up of the proponents of the proposition.

[3] *See id.*

[4] *See id.*

gitimate government interest is served by limiting campaign contributions,[5] but lower limits stated in Proposition 208 were not narrowly drawn to achieve the legitimate government and would prevent candidates from conducting a meaningful campaign.[6]

II. BACKGROUND

The plaintiffs contended that particular provisions of Proposition 208 discriminated against candidates who did not have the advantages of wealth or incumbency. The plaintiffs also contended that provisions of Proposition 208 limiting campaign spending violated First Amendment rights because: (1) the record did not sufficiently show that there was corruption justifying campaign limits; (2) the limits were not narrowly drawn to California's interest in preventing campaign corruption; and (3) the limits violated the First Amendment rights of contributors and candidates.[7] The court determined whether the unconstitutional provisions of Proposition 208 were severable, if reformation would be possible, and what relief the plaintiffs merited.[8]

III. ANALYSIS

A. *The Federal Court's Authority to Address the Merits of a Constitutional Challenge to a State Statute*

If a state statute does not have a controlling interpretation of its meaning and effect determined by the state court, a federal court normally will not reach the merits of a challenge to the statute.[9] The district court determined its power to reach the merits of this case because there was no ambiguity in the state statute.[10] Furthermore, when it is alleged that a statute abridges freedom of expression, federal courts are wary of delaying the challenge's resolution in state court.[11] Because the rules of statutory construction under both California and federal law are identical, the district court did not need to resolve the question of how to determine statutory construction.[12]

---

[5] *See id.* at *8.

[6] *See id.* at *12.

[7] *See id.* at *6, *7.

[8] *See id.* at *12.

[9] *See id.* at *2 (citing Arizonans for Official English v. Arizona, —U.S.—, 117 S. Ct. 1055, 1074, (1997)).

[10] *See id.* at *3 (citing Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984)).

[11] *See id.* The court also discussed the interest of efficiency in determining to hear the merits of this case, because proceedings, arguments and the writing of briefs had already occurred.

[12] *See id.* at *4.

B. *Discrimination Claim*

The defendants argued that discrimination in the context of Proposition 208 must be against the class of challengers, and must " 'invariably and invidiously benefit incumbents as a class.' "[13] The court applied the test proposed by the defendants to determine the issue of discrimination against candidates who were not as advantaged as incumbent, wealthy, or famous candidates.[14]

The court noted that Proposition 208 applied similarly to all candidates.[15] The court found no evidence in the record that Proposition 208 established invidious discrimination against the challengers of the class and deferred the issue, wary of invalidating legislation that applied evenly to everyone.[16]

The court reasoned that candidates who were not wealthy, famous or incumbent would be minimally disadvantaged by Proposition 208.[17] Also, the court reasoned that the class defined as disadvantaged would be continually qualified, refined, and changed, and therefore, Proposition 208 did not discriminate against the plaintiffs as a class.[18]

The plaintiffs argued that the California District Court decision in *SEIU v. FPPC*[19] supported their claim that Proposition 208 discriminated against the plaintiffs as a class.[20] However, the court distinguished *SEIU* from this case, stating that the issue in *SEIU* was whether regulations of campaign contributions during fiscal years favored incumbents.[21] The court held in *SEIU* that the challengers as a class were invidiously discriminated against because only incumbents raised money in off-election years.[22] The defendants in *SEIU* also failed to show why limitations on campaign contributions advanced the state's interests.[23]

C. *Unconstitutionality of Contribution Limits*

The court and the parties involved agreed that portions of Proposition 208 limiting campaign contributions were central to the statute, and if unconstitutional, would lead to doubt about the statute in totality.[24]

The pertinent provisions in Proposition 208 limiting campaign contributions established that no person could contribute more than $100 per election in districts with less than 100,000 residents; $250 per election for large local districts,

---

[13] *See id.* at *5 (citing Buckley v. Valeo, 424 U.S. 1, 33 (1976) (discussing discrimination claims against campaign contribution legislation))

[14] *See id.* at *4.

[15] *See id.*

[16] *See id.* (citing Buckley, 424 U.S. at 31).

[17] *See id.* at *5.

[18] *See id.*

[19] *See* 955 F.2d 1312, 1322 (9th Cir.), *cert. denied*, 505 U.S. 1230 (1992)

[20] *See id.*

[21] *See id.*

[22] *See id.*

[23] *See id.*

[24] *See id.*

Senate, Assembly, or Board of Equalization; and $500 per elections for statewide offices.[25] If candidates agreed to specified limits of expenditure, their limits were increased to $250, $500 and $1,000 respectively.[26]

To succeed in their claims, the plaintiffs needed to establish that limitations on contributions and expenditures impinged on rights protected by the First Amendment.[27] The court determined that proponents of Proposition 208 needed to demonstrate a sufficiently important interest and employ a means narrowly drawn to avoid unnecessarily abridging associational freedoms in limiting campaign contributions.[28] The court stated that limitations on large campaign contributions could be justified by the state's interest in deterring corruption.[29] The court stated that preventing corruption is generally a legitimate governmental interest.[30] However, the court stated that the government needs to have a substantial reason to suspect corruption.[31] The court noted that some members of the California government were in fact convicted for bribery.[32] Also, Californians voted in favor of Proposition 208, showing that they suspected corruption in California's government. Finally, because large campaign expenditures called for large campaign contributions in California elections, greater opportunity for corruption could result.[33] Therefore, the court decided that deterring corruption in government was a legitimate government interest.[34]

If a state statute is served by a legitimate state interest, the court normally defers to the legislature. In this case, the court addressed the plaintiffs' claim that Proposition 208 allowed contribution limits to be doubled for those candidates accepting expenditure limits, and that the lower limits did not significantly discourage corruption.[35] The defendants disagreed.[36]

The court applied a reasonability test and determined that voluntary expenditure limits would reduce the number of contributors with a corrupt intent who would otherwise contribute to the campaign by reducing the amount of money candidates would have to raise.[37] The court continued its analysis by determining whether the provisions of Proposition 208 establishing lower limits were closely

---

[25] *See id.* at *5.

[26] *See id.*

[27] *See id.* at *6 (citing Buckley, 424 U.S. at 14).

[28] *See id.* (citing Buckley, 424 U.S. at 25).

[29] *See id.* (citing Buckley, 424 U.S. at 46) (stating also that independent expenditure limitations were not justified under the California's state interest in deterring fraud).

[30] *See id.* at *7.

[31] *See id.* (citing Federal Election Commission v. National Conservative Political Action Committee, 470 U.S. 480, 497, 499).

[32] *See id.* at *8.

[33] *See id.*

[34] *See id.*

[35] *See id.* (arguing that the lower limits should be stricken because they did not address corruption).

[36] *See id.* at *9.

[37] *See id.*

drawn.[38] The test applied by the court was whether the associational rights affected by contribution limits in Proposition 208 were restricted to a degree that went further than necessary to achieve California's interest in deterring corruption.[39]

The court reasoned that while the higher limits were valid as long as they were related to limitations on expenditures, the lower limits were not closely drawn to deter corruption.[40] Because the provisions dealing with the lower limits were not closely drawn, the court decided that those provisions violated the First Amendment.[41]

The court analyzed the plaintiffs' third argument against Proposition 208 which asserted that the statute, on its face, set contribution limits too low for candidates to be able to garner enough assets to campaign effectively.[42] The defendants argued that (1) case precedent held that such campaign limitations were constitutional; (2) other states set campaign limits, some of which are lower than those set by Proposition 208; (3) the plaintiffs challenged the statute on its face and therefore the court should defer to the judgments supporting Proposition 208; and (4) the lower limits were sufficient for candidates to campaign effectively.[43]

Addressing the defendants' first argument, the court distinguished this case from precedents in which the record showed that the limits in question would not have adverse effects on campaigns. In this case, the court found that the contribution limits would prevent candidates from gathering enough assets to campaign meaningfully.[44] The court also disagreed with the defendants' second argument. The court reasoned that contribution limits in other states were not pertinent to this case because determining the effects of contribution limits on campaigns is dependent upon the particular facts of each case.[45]

The defendants relied on *Turner Broadcasting System, Inc. v. Democratic National Committee*[46] to argue that courts should give deference to the judgments by the legislature which led to passing Proposition 208.[47] However, the court distinguished *Turner* from this case.[48] The California courts use more scrutiny when a statute is constitutionally challenged and courts should not give more

---

[38] *See id.* (citing Ward v. Rock Against Racism, 491 U.S. 781, 799 (defining closely drawn as "avoiding unnecessary abridgment of associational freedoms.").

[39] *See id.*

[40] *See id.* (reasoning that because Proposition 208 adopted variable limits, those who voted for the statute thought that the $200 limit was enough to deter corruption).

[41] *See id.*

[42] *See id.* at *10.

[43] *See id.*

[44] *See id.* (citing Buckley, 424 U.S. at 21).

[45] *See id.*

[46] 512 U.S. 622, 665 (1994).

[47] *See id.* at *11 (discussing judgments in the legislature and among voters that corruption in government exists and should be deterred through campaign spending limitations).

[48] *See id.* (stating that the defendants took *Turner* out of context).

deference to a legislature than it would give to a state court.[49] Also, Proposition 208 did not go through the process of gathering and evaluating facts, which normally requires deference.[50]

The court also found that the evidence found in this case was inconsistent with the California legislature's findings.[51] Therefore, the court decided that deference to the legislative finding was unnecessary.[52]

D. *Severance, Reformation and Injunctive Relief Decisions Left to State Court*

Because the central provisions of Proposition 208 limiting campaign contributions were found unconstitutional, the court turned to the issue of whether the provisions should be severed or reformed.[53]

Federal courts must apply state law in determining whether unconstitutional provisions of a state statute can be severed.[54] The court decided that because California state law governs severability in state statutes, the California Supreme Court should decide if the unconstitutional provisions of Proposition 208 should be severed.[55]

The California Supreme Court held that it can reform unconstitutional provisions of a statute if the statute can be reformed in a manner that follows the policy judgment articulated by the California legislature, and if the California legislature would have preferred to reform the unconstitutional provisions of the statute to invalidating the entire statute.[56] Because federal courts do not have the power to rewrite state statutes,[57] the court decided that the issue of reformation should be left to the California Supreme Court.[58]

Finally, analyzing the issue of appropriate relief, the court stated that the loss of First Amendment rights created by Proposition 208 led to irreparable injury. Because no other legal remedies existed for the loss of these rights,[59] the court decided to impose a preliminary injunction on the FPPC from enforcing the unconstitutional provisions of Proposition 208.[60]

---

[49] *See id.* (citing American Academy of Pedriatrics v. Lungren, 16 Cal. 4th 307, 349 (1997) (employing "greater judicial scrutiny . . . [w]hen an enactment intrudes upon a constitutional right").

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *See id.* at *12.

[54] *See id.* (citing Gerken v. FPPC, 6 Cal. 4th 707, 721-22 (1993)).

[55] *See id.* at *13.

[56] *See id.* (citing Kopp v. FPPC, 11 Cal. 4th 607, 660-61).

[57] *See id.*

[58] *See id.*

[59] *See id.*

[60] *See id.* at *14.

IV. CONCLUSION

The court held that central provisions of Proposition 208, limiting campaign contributions, violate the First Amendment and therefore imposed a preliminary injunction on the FPPC from enforcing those provisions of Proposition 208. The court also remanded the issues of reformation and severability to the California Supreme Court.

In determining that the provisions limiting campaign contributions violated the First Amendment, the court reasoned that the provisions establishing lower limits in Proposition 208 were not narrowly tailored to achieve the state interest of deterring corruption. The court also reasoned that the campaign contribution limits established in Proposition 208 did not allow candidates to gain enough assets to campaign effectively.

This case resolves that, in California, campaign contribution limits are unconstitutional if not narrowly tailored to advance a legitimate state interest, and if candidates will be unable to collect enough assets to campaign effectively. The case leaves open the question of how narrowly tailored a statute must be to meet the test of constitutionality and whether other statutes limiting campaign contributions may be constitutional.

Shuba Satyaprasad

Green v. Mortham, No. 96-1143 CIV.T-34A, 1998 U.S. Dist. WL 12666 (M.D. Fla. 1998). THE DISTRICT COURT FOUND THAT PROVISIONS OF FLORIDA'S ELECTION CODE WHICH CONDITION PRIMARY BALLOT ACCESS UPON EITHER PAYING A QUALIFYING FEE OR OBTAINING A REQUISITE NUMBER OF VOTERS' SIGNATURES DO NOT VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION.

I. INTRODUCTION

The plaintiff, Henry Green, the sole candidate for the U.S. House of Representatives in the 1996 Democratic primary for the Tenth Congressional District,[1] brought this action against Florida's Secretary of State challenging the constitutionality of sections 99.092 and 99.095 of the state's election code which condition primary ballot access upon paying a filing fee or obtaining a requisite number of voters' signatures.[2] The district court found that Florida's ballot access requirements do not violate the First and Fourteenth Amendments of the Constitution.[3]

II. BACKGROUND

The plaintiff, Henry Green, was the sole candidate for the U.S. House of Representatives in the 1996 Democratic primary for the Tenth Congressional Dis-

---

[1] *See* Green v. Mortham, No. 96-1143-CIV-T-23A, 1998 WL 12666 at *1 (M.D. Fla. Jan. 12, 1998).

[2] *See id.*

[3] *See id.*

trict.[4] To get on the 1996 Congressional primary ballot, the plaintiff could have paid a statutorily-set filing fee, a percentage of the annual salary for the office he sought,[5] or he could have obtained the signatures of three percent of the total number of registered Democratic voters in the Tenth District.[6] The plaintiff did not meet either of these conditions prior to their respective deadlines.[7]

However, on April 17, 1996, in the case *Johnson v. Mortham*,[8] the District Court invalidated the arrangement of Florida's Third Congressional District.[9] The Florida legislature subsequently extended the deadlines for obtaining access to Congressional primaries by approximately two months.[10] Despite the extension, the plaintiff did not believe that he would be able to meet the requirements to be a candidate in the election.[11] Therefore, the plaintiff filed this action, pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments of the Constitution, challenging the constitutionality of the requirements, and seeking an injunction ordering that he be placed on the Tenth District Democratic primary ballot.[12] On the day before the new deadline for paying the qualifying fee, the Democratic Congressional Campaign Committee and the Florida Democratic Party donated $5,000 to the plaintiff.[13] Under protest, the plaintiff used these funds to pay the fee.[14] He ran unopposed in the primary election, but eventually lost his bid for Congress in the general election.[15]

When he paid the filing fee, the plaintiff withdrew his motion for preliminary injunctive relief.[16] However, the plaintiff sustained his constitutional challenges of the relevant laws.[17] After the parties had each filed motions for summary judgment,[18] the state legislature amended section 95.0921 (1), reducing the qualifying fee from 7.5% to 6% of the salary of an elected member of Congress.[19] The plaintiff subsequently amended his complaint to attack facially the constitutionality of the statute as it was applied to him in 1996, and as amended and applicable to the 1998 primary.[20] The parties then renewed their motions for summary judgment.[21]

---

[4] *See id.*
[5] *See* FLA. STAT. ch. 99.092(1) (1995).
[6] *See* FLA. STAT. ch. 99.095(3) (1995).
[7] *See Green*, 1998 WL 12666, at *1.
[8] Johnson v. Mortham, 950 F. Supp. 1117 (M.D.Fla. 1996).
[9] *See id.*
[10] *See id.*
[11] *See id.* at *2.
[12] *See id.*
[13] *See id.*
[14] *See id.*
[15] *See id.*
[16] *See id.*
[17] *See id.*
[18] *See id.*
[19] *See* Fla. Laws ch. 97-13, §11.
[20] *See Green*, 1998 WL 12666, at *2.
[21] *See id.*

III. ANALYSIS

A. *Mootness and Standing*

The court began its analysis by determining whether the plaintiff has standing to advance the claims of his amended complaint for several reasons.[22] First, the fact that an election at issue has already taken place does not render a plaintiff's claims moot,[23] particularly where there is no indication that the defendant will cease collecting a filing fee[24] and where, as here, the plaintiff plans to participate in a subsequent election.[25] Second, the fact that during this action the Florida legislature reduced the filing fee at issue by 1.5% also does not render the plaintiff's claims moot.[26] Third, the plaintiff had standing to challenge the law as currently written because although not yet subject to them, the plaintiff intends to seek the Democratic nomination in 1998, which will subject him to the current ballot access requirements.[27] The court concluded that the plaintiff may advance the claims asserted in his amended complaint.

B. *Florida's Primary Election and Primary Ballot Access Schemes*

The court then discussed Florida's election system and the provisions of the election code in question.[28] To become a party's candidate in the general election, a candidate must receive a majority of the votes in the party's Congressional primary election.[29] A person, otherwise qualified to run for office, may be included on a primary election ballot by either paying a statutorily set qualifying fee,[30] or by gathering the signatures of three percent of the voters registered in the relevant area and in the relevant party.[31] For a candidate seeking access to the Congressional primary ballot in 1998, the election code requires the payment of an $8,016 qualifying fee or the collection of approximately 4,700 signatures.[32]

C. *Threshold Considerations*

In his complaint, the plaintiff challenges the constitutionality of sections

---

[22] *See id.*

[23] *See id.* (citing Norman v. Reed, 502 U.S. 279, 287 (1992) and Brown v. Chote, 411 U.S. 452, 457 n.4 (1973)).

[24] *See Green*, 1998 WL 12666, at *2 (citing Morse v. Republican Party of Virginia, 517 U.S. 186 (1996)).

[25] *See Green*, 1998 WL 12666, at *2 (citing Chandler v. Miller, 117 S.Ct. 1295, 1300 n.2, 137 L.Ed2d 513 (1997)).

[26] *See Green*, 1998 WL 12666, at *3 (citing Northeastern Florida Chapter of the Associated General Contractors of America v. Jacksonville, 508 U.S. 656 (1993) and American Civil Liberties Union v. Florida Bar, 999 F.2d 486, 1496 (11th Cir. 1993)).

[27] *See id.*

[28] *See Green*, 1998 WL 12666, at *3.

[29] *See* FLA. STAT. ANN. §100.061 (West 1997).

[30] *See* FLA. STAT. ch. 99.092(1) (1995).

[31] *See* FLA. STAT. ch. 99.095(1) (1995).

[32] *See Green*, 1998 WL 12666, at *4.

99.092 and 99.095 of the Florida election code.[33] As a threshold matter the court considered whether it would review the two sections separately or in tandem.[34] In his complaint, the plaintiff addressed the sections separately.[35] However, in ballot access opinions, the Supreme Court directs lower courts to analyze ballot schemes as a whole.[36] In particular, when reviewing ballot schemes with qualifying fees, courts must analyze the schemes in their entirety to determine if there is a reasonable alternative means of access.[37] Therefore, Florida's ballot access scheme must be analyzed macroscopically.[38]

D. *Plaintiff's First Amendment Claims*

The plaintiff claimed that sections 99.092 and 99.095 violate his First Amendment right to freely associate with the political party of his choice.[39] To determine whether a ballot access law violates the First Amendment rights of candidates, a court must balance the character and severity of the asserted injury against the state interests put forth as the justification for the law.[40] Using this balancing test, the court first found that conditioning primary ballot access upon either paying a qualifying fee, or obtaining a set number of signatures, has only a moderate detrimental affect on the plaintiff's right to associate with the party of his choice.[41] Specifically, the court found that although the qualifying fee is not an insignificant amount of money, the petitioning alternative offers a reasonable non-monetary option to paying the qualifying fee.[42] Secondly, the court found Florida's justifications for the provision to be compelling.[43] Specifically, the state claimed two interests: to assure ballot integrity and the seriousness of candidates and to defray election costs.[44] The Court concluded that sections 99.092 and 99.095 taken together do not significantly hinder the plaintiff's First Amendment right to associate with the party of his choice, and the minor burdens imposed on the plaintiff, are well justified by the strong interests advanced by the state.[45] Therefore, Florida's ballot access scheme, as read and applied to plaintiff in 1996, and as currently written and applicable to the 1998 primaries, does not violate the First Amendment.[46]

---

[33] *See id.*
[34] *See id.*
[35] *See id.*
[36] *See* id. (citing Williams v. Rhodes, 395 U.S. 23, 34 (1968)).
[37] *See Green*, 1998 WL 12666, at *5 (citing Lubin v. Panish, 415 U.S. 708, 718 (1974)).
[38] *See id.*
[39] *See id.*
[40] *See id.* at *6.
[41] *See id.*
[42] *See id.*
[43] *See id.* at *8.
[44] *See id.*
[45] *See id.* at *9.
[46] *See id.*

E. *Plaintiff's Equal Protection Claims*

The plaintiff also claimed that by discriminating between "affluent" and "non-affluent" candidates, sections 99.092 and 99.095 violate his equal protection rights.[47] However, the court found three significant problems with the plaintiff's equal protection claim.[48] First, the class of disadvantaged non-affluent candidates cannot be defined in customary equal protection terms.[49] Second, the right to associate with a political party by becoming its candidate for office is not a fundamental right.[50] Third, Florida offers a non-monetary alternative to paying the qualifying fee.[51] The court was not convinced by the plaintiff's claim that the petitioning alternative is unreasonable because it is expensive or because the number of signatures required is greater than that required by other states.[52] Therefore, the court concluded that Florida's primary ballot access requirements as written and applied in 1996, or as currently written and applicable to the 1998 primary, did not violate the plaintiff's right to equal protection.[53]

IV. CONCLUSION

The district court held that provisions of Florida's election code, which condition primary ballot access upon paying a qualifying fee or obtaining a requisite number of voters' signatures did not violate the First or Fourteenth Amendments of the Constitution. First, the court found that Florida's ballot access scheme does not significantly burden the plaintiff's First Amendment right to associate with the party of his choice, and the minor burdens imposed are well justified by strong state interests. Second, the court found that the signature alternative is a reasonable non-monetary option to the qualifying fee, and therefore, the ballot scheme does not violate the plaintiff's Fourteenth Amendment right to equal protection. Further, when assessing the constitutionality of ballot access schemes, reviewing courts must consider the schemes in their entirety and determine whether the schemes impose unreasonable conditions upon becoming a candidate.

Lisa M. Kelsey

---

[47] *See id.*
[48] *See id.*
[49] *See id.*
[50] *See id.*
[51] *See id.*
[52] *See id.* at *10-11.
[53] *See id.* at *11.