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NEWSLETTER

Federal Judge Finds IL Campaign Finance Law Likely Violates First Amendment

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Less than a month before Election Day 2022, the United States District Court for the Northern District of Illinois found that two Illinois state campaign finance provisions imposing limits on judicial candidates likely violate the First Amendment and, therefore, granted a preliminary injunction.

In 2021, the Illinois legislature enacted Senate Bill 536 (Public Act 102-0668), which amended the state's Election Code in many ways, two of which impose greater burdens on fundraising for judicial elections than for executive and legislative elections. The first provision prohibits judicial candidate committees from receiving any contributions from out-of-state persons. The second provision limits the amount that any independent expenditure committee (IEC) established to support or oppose a judicial candidate can receive from any single source during an election cycle to $500,000.

Plaintiffs argued that the two provisions impose undue burdens on political participation in judicial races that violate First Amendment protections articulated by the Supreme Court (*see Citizens United v. FEC*, 558 U.S. 310 (2019); *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001); *Buckley v. Valeo*, 424 U.S. 1 (1976)).

Defendants, members of the Illinois State Board of Elections, and the Attorney General, asserted that the laws serve a compelling government interest to preserve public confidence in a fair and disinterested judiciary that justifies the added First Amendment burdens.

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Practice Areas

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The Court applied a "closely drawn" analysis to both disputed provisions, declining to determine whether that standard or the more rigorous "strict scrutiny" standard should control. Acknowledging that the state does have a compelling interest in preserving public confidence in judicial elections, the Court nevertheless observed that "[t]he asymmetry between how the Election Code treats the injection of foreign money into judicial campaigns verus in-state money . . . belies the notion that this provision is closely drawn to serve the stated goal of preserving public confidence in the integrity of the judiciary." The Court further concluded that the IEC contribution limit is "so flawed that it is impossible to credit the effort as a genuine attempt to address the problem" of protecting judicial integrity. Just as the Court was unpersuaded that out-of-state money is more corrupting than in-state money, the Court was unmoved by the notion that IEC activity is more corrupting than that of other committees or individuals and thus should be treated differently.

Finding that the plaintiffs demonstrated a likelihood of success on the merits of their claims and that irreparable injury would result absent preliminary relief, on October 14, the Court granted a preliminary injunction preventing the enforcement of the out-of-state contribution ban to judicial candidate committees and the $500,000 contribution limit to IECs supporting or opposing judicial candidates.

Wiley's Election Law and Government Ethics practice routinely advises clients on federal, state, and local campaign finance laws.