UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5-99-CV-798-BO(3)

NORTH CAROLINA RIGHT TO LIFE, INC., et. al.,	)	
Plaintiffs,	)	**STATEMENT OF ROBERT H. HALL PURSUANT TO 28 U.S.C. § 1746 IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
v.	)	
LARRY LEAKE, et. al.,	)	
Defendants.	)	

Pursuant to 28 U.S.C. § 1746, I, Robert H. Hall, hereby state the following:

1. Since my earlier Rule 26 Report and testimony, the North Carolina project of Democracy South has become a separate nonpartisan, nonprofit organization called Democracy North Carolina. I am the co-director for research and programs at Democracy North Carolina. I have continued to write reports and articles about campaign finances and elections, including a forthcoming article (Spring 2005) in the *First Amendment Law Review* of the University of North Carolina School of Law, entitled "When Free Speech and Free Elections Collide: A North Carolina Case Study."

2. I have continued to monitor the flow of political money in North Carolina and investigate cases that appear suspicious or cause public concern about the integrity of the election process. In this statement, I will describe a few of those cases. All of these

examples are meant to address the core question, "Is the State of North Carolina justified in restricting how much a contributor can give to an independent expenditure political action committee (IEPAC) like the North Carolina Right to Life Committee Fund for Independent Political Expenditures (NCRL-FIPE)?" The State's interest is not simply in preventing *quid pro quo* corruption, but in minimizing an appearance of corruption – because the U.S. Supreme Court has determined that such an appearance damages public trust in fair elections and threatens the integrity of the democratic process.

3. An IEPAC can make unlimited expenditures in support of, or in opposition to, an identified candidate as long as it does not coordinate its spending decisions with any of the candidates in the race or their agents. NCRL-FIPE does not actually exist as an entity that has received contributions and made expenditures; it has no track record of behavior for a researcher to examine. It can be defined in almost any way its creators desire, although to claim that it is independent from, or in no way coordinated with, other NCRL entities with which it is affiliated defies logic and common sense. It doesn't exist in a vacuum, even in theory; it is tied to an organization with an advocacy agenda on a specific issue that also sponsors a committee making direct political donations in coordination with candidates.

4. To help address the question of whether or not contribution limits to an IEPAC are justified, this statement reviews the behavior of a variety of committees and donors in North Carolina's recent past. I begin by describing in more detail two examples from my previous testimony.

LOCAL GROUP

5. North Carolina has experience with a committee that claimed to make independent expenditures as well as direct contributions in the same election. The sponsors for the committee claimed the direct contributions were not coordinated with the candidates, and therefore the independent expenditures were truly independent and should not count

toward the $4,000 limit for direct contributions to a candidate. A number of aspects of the operations of this independent expenditure committee, Citizens for Truth in Elections, raised concerns. In fact, NCRL's local attorney in this case, Paul Stam, filed a complaint with the State Board of Elections about (a) the lack of Citizens' true independence from candidate coordination and (b) the excessive contributions it received from "partners in a development on the west side of Cary for which they were seeking approvals from the Cary City Council, . . . the very council whose election this PAC was seeking to influence" (quoting Stam's complaint to the State Board, dated May 12, 2000, on behalf of client Gregory Bret Batdorff, at page 3). I supported Mr. Stam's complaint at the time in a statement before the Board, and believe that the information he brought forward illustrates why so-called independent expenditure committees should be subject to limits on the size and source of contributions they receive.

6. Citizens for Truth in Elections asserted its independence from candidates, but the public had ample reason to "infer coordination," Stam noted, because the committee used the same postal mail permit as candidates it supported and hired as its consultant a person who was also a consultant for its favored mayoral candidate. Another candidate admitted he furnished the committee with a photo for it to use in an advertisement. The Citizens case illustrates the practical reality that even when the regulatory agency finds a committee to be independent, as happened here, the appearance of coordination and corruption will remain. Mr. Stam appealed the Board's decision all the way to the North Carolina Supreme Court, convinced that the evidence "demonstrates a reasonable probability that Citizens for Truth in Elections expended (but did not so report) funds as a coordinated campaign expenditure with [Mayor] Glen D. Lang in apparent violation of G.S. 163-278.11(b)" (quoting Complaint to the Wake County Superior Court, dated August 17, 2000, at page 1).

7. Because Citizens also made direct contributions to candidates, it was organized as a political committee subject to the normal contribution and expenditure limits of a PAC in North Carolina. However, under the scenario proposed by NCRL-FIPE, Citizens could have easily created a separate IEPAC with the identical problems of questionable independence and the added privilege of making unlimited expenditures for its favored candidates with money received in unlimited amounts from donors who, as Mr. Stam noted, had a substantial financial interest in the election's outcome. Mr. Stam's complaint demonstrates that wealthy individuals in North Carolina are readily willing to give a political committee well above the normal $4,000 per election if given an opportunity and may do so even when it violates the law. In fact, because of Mr. Stam's complaint, one of the developers admitted he funneled $7,000 into Citizens in the names of his young children, which is illegal in North Carolina. Mr. Stam was able to identify the suspicious pattern of the developer's donations because of North Carolina's campaign finance disclosure laws.

8. This example illustrates that a committee involved in independent expenditures presents problems of corruption and the appearance of corruption that are similar to other political committees making direct, coordinated contributions to candidates. The nexus of corruption may be more complex, but it is apparent enough to cause alarm even among avid protectors of free speech. Given the green light envisioned by NCRL-FIPE, two real estate developers with a major economic interest in a city election could easily use an IEPAC to funnel huge amounts of money accumulated in the economic marketplace to influence the outcome of an election, edging toward coordination with the candidates through common consultants. The Citizens case suggests that just as the State of North Carolina limits the size of direct contributions from donor to candidate, so too should it set a limit on contributions to IEPACs if it intends to protect the integrity of the election process from the appearance and reality of corruption.

STATEWIDE GROUP

9. The scope of Citizens pales in comparison to another committee that engaged in electioneering in North Carolina, allegedly independent of coordination with the candidates it targeted. Courts have ruled that this committee, Farmers For Fairness, did not engage in express advocacy, based on the evidence presented and the courts' interpretations of the Supreme Court's rulings in *Buckley v. Valeo* and its progeny. However, additional evidence of the committee's behavior and the recent Supreme Court ruling in *McConnell v. FEC* would justify a different decision today – or at least support analogizing Farmers to the type of committee NCRL wishes to operate in North Carolina.

10. In the pre-*McConnell* environment, Mr. James Bopp, who was an attorney for Farmers For Fairness, felt secure enough to tell a federal judge the purpose of his client's advertising spending was to defeat an identified state legislative candidate, but its activities were protected from regulation because the advertisements eschewed the "magic words" of express advocacy. Farmers was organized as a 501(c)(6) agricultural association by about a dozen hog producers and suppliers who each contributed substantial funds to support its annual advertising budget of more than $2 million. In April 1998, a political consultant for the group told the State Board of Elections that Farmers For Fairness was spending approximately $10,000 a week on "issue" advertisements against state Rep. Cindy Watson (R-Duplin County) because she had helped lead an effort, backed by Republican leaders in the N.C. House of Representatives, to increase regulation of the hog industry. Rep. Watson narrowly lost the primary election in May 1998 by a vote count of 787 to 768. Two of the three other legislators (all Republicans) targeted by Farmers for Fairness were defeated in the general election. As a result, Republican leaders then feuding with the hog industry lost their thin majority in the state House and Democrats regained control.

11. In the course of two separate hearings before the State Board of Elections

involving Farmers For Fairness, the Republican principals and Farmers' principals described a series of meetings in which both sides admitted regulatory relief for the hog industry and substantial political contributions were discussed, but no clear *quid pro quo* could be established by the Board. Further testimony emerged that described how Farmers' consultants developed "issue" advertisements attacking various state legislators facing reelection. Before the advertisements were broadcast, they were used to demonstrate to legislative leaders the group's seriousness about impacting the political process in order to achieve its legislative agenda. One veteran lobbyist testified that he resigned from representing Farmers For Fairness, largely because he objected to challenging legislative leaders in this manner. The message was clear: If you oppose us in legislation, we will oppose your candidates in elections. Indeed, after the Republican leadership supported a bill opposed by Farmers (allegedly in retaliation for not receiving sufficient political donations from hog-industry donors), an unprecedented spending spree began. For example, during the primary campaign season of 1998, Farmers spent more than $100,000 on so-called "issue" advertisements in just one rural legislative district, with many of the advertisements focused on a candidate. The muscular spending of Farmers For Fairness produced an outcry from the public and led legislators to seek ways to regulate electoral advocacy that masqueraded as issue advocacy by avoiding the "magic words" of *Buckley*.

12. In *McConnell*, the Supreme Court upheld the right of Congress to respond to real-world campaign practices by designing reasonable regulations of paid political speech that is electioneering even though it lacks "magic words." The Court noted that although "the distinction between 'issue' and express advocacy seemed neat in theory, the two categories of advertisements proved functionally identical in important respects. Both were used to advocate the election or defeat of clearly identified federal candidates, even though

the so-called issue ads eschewed the use of 'magic words.'" In the same decision, the Court upheld new regulations imposed on "soft money" fundraising practices and "soft money" committees because lawmakers had every right to respond to the overwhelming evidence that such practices and entities damaged the integrity of the election process; *by definition*, "soft money" may not go to the election committee of a federal candidate and should therefore pose no risk of corruption, but *in reality* its solicitation and spending had become a nexus for exactly the kind of corruption that campaign finance regulation was meant to stop.

13. Farmers For Fairness sought protection from regulation under *Buckley,* before the *McConnell* decision, because *by definition at that time* it engaged in issue advocacy with corporate "soft money" donations that did not go directly to candidates. But *in reality* the committee's operations triggered widespread suspicion of corruption and damaged public confidence in the electoral process. "The whole thing smells bad," the Wake County District Attorney said. "It's about buying favorable treatment from politicians," opined the *Wilmington Morning Star* (April 9, 1998). North Carolina legislators, regulators, the media, civic groups, opinion leaders, etc., were witnessing firsthand the awesome power of concentrated wealth when it enters the electoral arena. Simply saying that Farmers largely relied on corporate donations or that the courts decided it did not violate the law does nothing to diminish the weight of its example as a lesson for what happens in real-world politics in North Carolina. If NCRL-FIPE prevails, legislators and regulators recognize that a tiny handful of wealthy hog producers (or another narrow interest group) with an ambitious legislative agenda could easily fund an IEPAC with $150,000-plus donations each, amassing a war chest sufficient to swamp virtually any legislative opponent in a contested district. The group could do everything that Farmers did, plus engage in overt express advocacy. And, like Farmers, it could claim it was technically independent of coordination with the targeted candidate (or

the candidate's opponent), even though it had insinuated it would intervene in that campaign to the legislative leaders of that candidate's party.

14. In North Carolina, legislative leaders are increasingly responsible for recruiting legislative candidates and raising campaign funds for the party caucus. In the 2004 election, the top Democrat in the House (Rep. Jim Black) and in the Senate (Sen. Marc Basnight) raised a combined total of $2.7 million in their personal campaign committees and then funneled $2 million to their respective caucus committees or directly to their chosen candidates. Given this political dynamic, an issue group with an IEPAC can avoid coordinating its spending with a targeted candidate, while effectively using its IEPAC's clout to seek undue influence with the candidate's party leader in the legislature. Combined with the pressures exerted by an outside group such as Farmers for Fairness, this nexus of relationships and transactions would present an appearance of corruption and a substantial risk of actual corruption, exactly the real-world situation that is responsibly addressed through setting limits on the size and source of contributions flowing into an IEPAC.

OTHER EXAMPLES

15. My review of campaign finance reports indicates that hog producers are not the only narrow-interest group with a legislative agenda that could make use of the advantages of an IEPAC funded with unlimited donations. In the past five years, billboard owners, beer wholesalers, soft-drink bottlers, anesthesiologists, pharmacists, boutique tobacco manufacturers, and pay-day lenders have each dramatically increased their political donations to North Carolina candidates and political committees in conjunction with an offensive or defensive lobbying agenda. North Carolina's laws regarding campaign disclosure and contribution limits provide the public with important information and effectively limit the inordinate impact that any handful of special-interest donors can legally exert on an election. In my judgment, introducing IEPACs that receive unlimited donations

– essentially a vehicle for a new kind of "soft money" – would change the landscape of political practice in the state. There are already many challenges with existing structures through which money moves, as the following examples illustrate. Political corruption is not a hypothetical or harmless problem in North Carolina.

16. In the 2000 primary election for state Commissioner of Agriculture, one of the candidates (Bobby McLamb) received an illegal $75,000 loan from a New Jersey carnival company, Amusements of America. The New Jersey company was interested in obtaining the contract to run the State Fair, which the agriculture commissioner awards. McLamb lost the Democratic primary to Meg Scott Phipps, but he and the carnival company's North Carolina agent (Norman Chambliss) immediately became active in Phipps' general election campaign and helped her raise tens of thousands of dollars in contributions from carnival-related business owners, much of it in illegal cash and corporate donations. Phipps was finding it difficult to raise money for the obscure agriculture post, even though her father and grandfather served as North Carolina governors; her family eventually loaned the campaign more than $500,000. After her narrow victory in November, Phipps placed McLamb and Chambliss in positions in her administration where they guided the process for choosing the State Fair's chief operator, and she ultimately awarded the contract to Amusements of America. An inquisitive newspaper reporter began probing Phipps' campaign finance records, which led to deeper investigations by the State Board of Elections in 2002 and then by the FBI and U.S. Department of Justice. Phipps claimed ignorance of her campaign's fundraising practices, but a string of plea bargains by McLamb, Chambliss and a half-dozen others revealed her involvement in receiving large, illegal cash contributions in 2000 and 2001. Altogether, Democracy North Carolina identified over $300,000 from carnival interests that went to Phipps and her campaign. Meg Scott Phipps was convicted on federal and state charges and began serving a four-year prison term in 2004.

17. During 2004, North Carolina politicians quickly recognized the benefits and dangers of "527 committees" – the popular new home for "soft money" banned from the national parties by the McCann-Feingold Bipartisan Campaign Reform Act (BCRA). House Speaker Jim Black became finance chair of a national 527 called the Democratic Legislative Campaign Committee, which received over $200,000 from tobacco and pharmaceutical companies within a few months of the businesses successfully lobbying the state House for multi-million-dollar tax breaks. News of the donations from tax-break recipients made the front page of the state's leading newspaper and received extensive media attention and editorial comment. About the same time, Art Pope, a former Republican legislator, put more than $200,000 of his company's money into a 527 committee that sponsored ads attacking moderate Republican legislators in 2004 primary races. A national Republican Party committee that had sent $1.3 million in "soft money" to help North Carolina's Republican gubernatorial candidate in 2000 transformed itself into an "independent" 527 committee and began sponsoring advertisements for the GOP gubernatorial candidate in 2004. As the 2004 election intensified, a bipartisan alliance of moderate state legislators passed a bill to block what they feared might be an avalanche of 527-committee activity financed with union, trade association, or corporate money. The new statute applies provisions of BCRA to state elections and limits when an "electioneering communication" can be made if it is paid for by one of these sources. The ads can still be broadcast, but they must be financed by donations originating from individuals and not corporate or union treasuries.

18. In June 2004, I filed a complaint with the State Board of Elections regarding contributions to House Speaker Jim Black that "came from donors who say they were unaware that a relative or friend in the video-poker business apparently made a political donation in their name . . . [or] came from donors who admit they were paid or reimbursed for making a political donation to help an associate in the video-poker industry." In the past

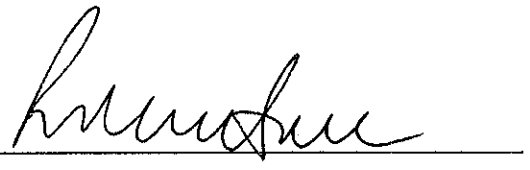
several years, federal and state law enforcement officials have pushed for a complete ban of video-poker machines in North Carolina. The state Senate has repeatedly passed bills to outlaw the games, but each bill dies in the House because of well-publicized opposition from Speaker Black. My research shows that donors tied to the video-poker industry contributed more than $120,000 to Speaker Black during the 2002 election, twice what he got from the industry's donors in the 2000 cycle. The complaint makes it clear that I have no indication Speaker Black knew anything might be improper with the contributions he received. Rather the complaint asks the State Board of Election to investigate "a possible conspiracy by members of the industry to violate campaign-finance statutes." The head of the "legislative committee" for the industry's trade group (the N.C. Amusement Machine Association) in 2003 was Robert E. (Bobby) Huckabee III, owner of Southland Amusements in Wilmington. Mr. Huckabee donated the maximum $4,000 to Speaker Black more than a year before the 2002 primary. After he "maxed out," tens of thousands of dollars from donors related to Mr. Huckabee were donated to Speaker Black, often on the same day. It is not unusual for contributions from an industry group to be "bundled" together and presented to a candidate; however, it is illegal to circumvent North Carolina's contribution limits by reimbursing or otherwise using "straw donors" to funnel substantial sums to a candidate. (See my earlier declaration regarding rest-home owner Stephen A. Pierce.)

19. None of the transactions described in paragraphs 16 to 18 involved an IEPAC, but given the players, it's not hard to imagine how an NCRL-FIPE-type entity could play a central role in similar scenarios. For example, rather than joining Phipps' campaign after the primary, Norman Chambliss (Amusements of America's agent) could have operated a pro-Phipps IEPAC with unlimited contributions from members of the carnival industry and then "cashed in" for his help in her election with a position on the State Fair selection committee with his insider ally, Bobby McLamb. Rather than use a 527 committee with its multiple

restrictions, "soft money" individual donors could put super-sized contributions into an IEPAC and achieve a similar purpose. Rather than risk involving many individuals as "straw donors" in a scheme to circumvent North Carolina's contribution limits, a wealthy businessman concerned about his industry's survival could bankroll an IEPAC with a few associates and boost the clout of his contract lobbyist inside the General Assembly. The point is not to impugn the character of any individual but to recognize that an IEPAC fueled by unlimited contributions will very likely become an attractive vehicle for financial interests with a relatively few, wealthy donors who seek to exercise inordinate influence over an election outcome for their economic benefit – i.e., exactly the formula that corrupts the election process in the public's perception and in practice.

20. In my judgment, liberalizing contribution limits for IEPACs will invite a steady stream of complaints, scandals, public hearings, and commentary about corruption and eroding confidence in fair elections. North Carolina's law allows an IEPAC to thrive based on its ability to attract many like-minded individual donors who each may give up to $4,000 per election or $8,000 per election cycle. Those are not small amounts, even in the context of expensive, competitive campaigns in North Carolina. In my view, the limits do not thwart an interest group such as NCRL, but encourage it to expand its base of donors among the citizenry, to involve many voices in its electoral work. The limits are consistent with the principle that a healthy democracy depends on citizens believing their votes determine the outcome of elections; contribution limits are essential for protecting the integrity of democratic elections from apparent or actual corruption.

Executed on this 28th day of February, 2005.



Robert H. Hall