

FILED

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

2021 DEC 16 AM 11:55

TENNESSEANS FOR SENSIBLE ELECTION LAWS,

Plaintiff,

vs.

) CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

) LN D.C.&M.
No. 18-0821-III

TENNESSEE BUREAU OF ETHICS and CAMPAIGN

FINANCE, REGISTRY OF ELECTION FINANCE, and

DAVIDSON COUNTY DISTRICT ATTORNEY GENERAL,

Defendants.

ORDER ON DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT

This action is before the Court for a ruling on the Defendant's Motion for Relief from Judgment, which has been submitted to the court upon the previously filed documents, as noted in this Court's Order filed November 15, 2021. Having reviewed and carefully considered the filed documents designated by the parties, the Court makes the following findings of fact and reaches the following conclusions of law:

1. Following a bench trial on September 26, 2018 this Court entered a Memorandum and Order holding that the defendant failed to meet its burden of proving the constitutionality of the restrictions on political speech present in Tenn. Code. Ann. Sections 2-10-117 & 121. As a result, this Court held that the Code Sections violated both the State and Federal Constitutions. *See, Memorandum and Order, etc. E-filed October 11, 2018.*

2. Based upon the holding that these code sections were unconstitutional, this Court went on to permanently enjoin defendant "from enforcing Tenn. Code Ann. Section 2-10-117 & Tenn. Code Ann. Section 2-10-121." *id* at 2.

3. This Court's ruling was upheld by the Court of Appeals. *Tennesseans for Sensible*

Election Laws v. Tennessee Bureau of Ethics and Campaign Finance, etc., 2019 WL 6770481

(Tenn. App. 12/12/2019).

4. Following the 2018 decision by this Court, but preceding the consideration of this Court's decision by the Court of Appeals, the Tennessee Legislature amended Tenn. Code Ann. Section 2-10-121, effective April 1, 2019. *id*, slip op. at p. 11.

5. Defendant argued on appeal that the subsequent amendment of Tenn. Code Ann. Section 2-10-121 rendered this Court's holding and injunction regarding that code section moot. The Court of Appeals rejected the mootness argument, finding that the allegations in plaintiff's complaint "were broad enough to challenge not only the differential treatment of political parties, but also the differential treatment of individuals. . ." *id* slip op at p. 12. Thus, the Court of Appeals ruled that the issue was not rendered moot by the statutory amendment that only removed the exemption for political parties.

6. At the time of trial, Tenn. Code Ann. Section 2-10-121 read as follows:

"No later than January 31 of each year, each multicandidate political campaign committee registered with the Registry of Election Finance shall pay a registration fee to be determined by rule promulgated pursuant to Section 4-55-103(1) . . . This Section shall not apply to any statewide political party as defined in Section 2-1-104 or subsidiaries of the political party."

7. After the amendment in 2019, Tenn. Code Ann. Section 2-10-121 reads as follows:

"No later than January 31 of each year, each multicandidate political campaign committee registered with the Registry of Election Finance shall pay a registration fee to be determined by rule promulgated pursuant to Section 4-55-103(1). Payment of the registration fee by one (1) affiliated political campaign committee includes any disclosed affiliated committees registering separately; payment of the registration fee by a statewide political party, as defined in Section 2-1-104, includes any disclosed subsidiaries of the political party registering separately. . ."

8. The Statute was amended to remove the political party exemption however, the Statute does not apply to individuals, nor to political campaign committees other than “multicandidate political campaign committees.”

9. In finding that the amendment did not render plaintiff’s constitutional challenge moot, the Court of Appeals noted that plaintiff “specifically alleged that the statute was unconstitutional, because it discriminated on the basis of political association by exempting *both* political parties *and* ‘individual political speakers’ from paying the fee.” *Tennesseans for Sensible Election Laws, supra*, 2019 WL 6770481, slip op. at 12(italics in original).

10. Defendant argues that it is entitled to relief from this Court’s 2018 Judgment because the amended Statute now applies to all PACs and “not just those unaffiliated with a political party.” Defendants Memorandum in support of the Motion for Relief from Judgment at p. 2.

11. As amended in 2019 Tenn. Code Ann. Section 2-10-121 applies only to multicandidate political campaign committees. It does not apply to single candidate political campaign committees, single measure political campaign committees, nor to individuals.

12. Defendant’s definition of “*Political Campaign Committee*-includes a multicandidate political campaign committee, single-candidate political campaign committee, and single-measure political campaign committee, unless reference is made to a specific type of political campaign committee.” Tenn. Comp. R. & Regs. 0530-01-01-.01(5) (placed in this Court’s Record by Plaintiff’s Notice of Filing April 16, 2021) (italics in original).

13. Because Tenn. Code Ann. Section 2-10-121, as amended in 2019, still does not apply to **ALL** political campaign committees, nor to individuals, it imposes a burden upon certain persons and associations (political campaign committees) based upon the content of their

speech, i.e., entities wishing to advocate in support of multiple candidates must pay a registration fee while individuals and entities desiring only to advocate on behalf of a single candidate or on behalf of single issues do not have to pay a registration fee. Likewise, those associated for the purpose of supporting/opposing multiple candidates must pay a fee, but those associating to support/oppose a single candidate or a single issue do not have to pay the fee.

14. The registration fee is, in effect, a tax upon speech based upon content and political association. Such a tax imposes a governmental burden on free speech and association. *See generally, Arkansas Writers' Project, Inc. v. Ragland*, 481 U. S. 221 (1987); *accord, Newsweek v. Celauro*, 789 S.W.2d 247 (Tenn. 1990).

15. "When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Entertainment Group, Inc.*, 529 U. S. 803, 816 (2000).

16. The statute at issue, as amended, continues to require proof sufficient to withstand a strict scrutiny analysis in order to be constitutional. Statutes regulating fundamental rights are subject to strict scrutiny analysis. *Planned Parenthood of Middle Tennessee v. Sundquist*, 38 S.W.3d 1 (Tenn. 2000).

17. The record is devoid of any proof to support the constitutionality of the discriminatory statute.

18. Removal of the exemption for political party multicandidate campaign committees was a material change in the statute, but it did not address all content/association-based disparate treatment.

19. Defendant's have moved for relief from the 2018 Judgment under Rule 60.02(4), Tennessee Rules of Civil Procedure, asserting that "it is no longer equitable" that the injunction entered in the 2018 Judgment "should have prospective application." *id.*

20. Federal decisions regarding comparable provisions of the Federal Rules of Civil Procedure are authoritative guides to interpretation of our rules of civil procedure. *Turner v. Turner*, 473 S.W.3d 257, 268 (Tenn. 2015).

21. Federal Rule of Civil Procedure 60(b)(5) provides for relief from a judgment when "applying it prospectively is no longer equitable." This provision is the equivalent of our Rule 60.02(4) language referenced in Paragraph 19, above.

22. Applying the "no longer equitable" provision to an existing injunction requires the movant in Federal Court to establish a "significant change" in facts or law making continued enforcement of the injunction inequitable. *U. S. v. Tennessee*, 615 F.3d 646, 652 (6th Circuit 2010).

23. Neither party has provided the Court with Tennessee authority addressing the standard to apply in a case involving the "no longer equitable" provision of Rule 60.02(4) and the undersigned's research has not revealed any such precedent.

24. The undersigned concludes that Tennessee would/should utilize the "significant change" standard in analyzing Rule 60.02(4) motions for relief based on the "no longer equitable" provision of that Rule.

25. The amendment of Tenn. Code Ann. Sec. 2-10-121 in 2019 was not a "significant change" in the law warranting relief because it did not completely address the discriminatory (unconstitutional) nature of the statute based upon content of speech and association. *See*, Paragraph's 11, 13, and 18, above.

26. Defendant's have failed to allege, or meet, the "significant change in the law" standard for relief from prospective enforcement of a final judgment containing an injunction.

For the reasons set forth above Defendant's Motion for Relief from Judgment is DENIED.

Enter:



Thomas J. Wright
Senior Judge

CERTIFICATE OF SERVICE

A true and exact copy of the foregoing Order has been served upon the following persons via email at the email addresses listed:

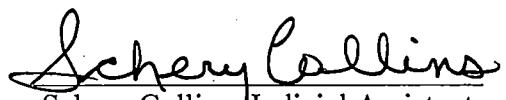
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On this the 14th day of Dec., 2021.


Schery Collins
Schery Collins, Judicial Assistant
to Senior Judge Thomas J. Wright