

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2015 MAR 20 PM 2:46

DEAN CORREN,
Plaintiff

CASE NO.

BY

DEPUTY CLERK

v.

WILLIAM SORRELL,
Vermont Attorney General,
in his official capacity,
Defendant

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2:15-CV-58

**COMPLAINT FOR VIOLATIONS OF THE
FEDERAL CIVIL RIGHTS ACT**

PARTIES

- 1) Dean Corren is a resident of Burlington, Vermont. In 2014 he unsuccessfully ran for the office of Vermont Lieutenant Governor as the candidate of both the Progressive and Democratic parties.
- 2) Defendant William Sorrell is Vermont Attorney General, charged with administration and enforcement of Vermont's election campaign finance laws.

JURISDICTION

- 3) This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). Supplemental jurisdiction over questions of state law is provided by 28 U.S.C. § 1367.

FACTS

- 4) Pursuant to Vermont's public financing option 17 V.S.A. Chapter 61, subchapter 5, called the *Vermont Campaign Finance Option*, a candidate for the office of Lieutenant Governor who raises at least \$17,500 from not fewer than 750 individuals who each make a contribution that does not exceed \$50.00 will qualify to receive campaign finance

grants in amounts up to \$32,500 for the primary election period, and \$150,000 during the general election period, for a total of \$200,000.

5) Mr. Corren qualified for and received public campaign financing under the *Option* for both the primary and general election periods.

6) During the course of the campaign, on or about October 27, 2014, Mr. Sorrell's office received a complaint of a violation of 17 V.S.A. § 2983(b)(1) which prohibits candidates which accept Vermont campaign finance grants from soliciting, accepting, or expending any contributions except qualifying contributions.

7) Specifically it was alleged that an email disseminated by the Vermont Democratic Party (VDP) on or about October 24, 2014 (attached) constituted an uncompensated in-kind "related campaign expenditure" under 28 V.S.A. §2944 (a)-(b), and therefore was a prohibited campaign contribution under 17 V.S.A. § 2983(b)(1).

8) This was communicated by Mr. Sorrell's office to Mr. Corren's campaign on or about October 30, 2014.

The \$72,000 Penalty for the \$255 Email.

9) Mr. Corren's campaign disputed and disputes that the email was a campaign contribution under the statute.

10) Mr. Corren alternatively offered that if the email was a contribution, he would pay for it and offered to put funds into escrow for that purpose. Mr. Sorrell contends that the value of the email itself was worth approximately \$255.

11) This option was rejected by Mr. Sorrell.

12) Mr. Sorrell nevertheless has since threatened Mr. Corren with an enforcement action under 17 V.S.A. § 2903 if he did not, among other things, agree to pay the State of

Vermont some \$72,000: \$52,000 under the provisions of 17 V.S.A. § 2903(b), plus \$20,000 in civil fines, for violation of the cap set by §2983(b)(1), and for failing to report a contribution required by 17 V.S.A. § 2963(a)(1).

13) Mr. Sorrell has also threatened that other activities are under investigation and might also be the subject of prosecution for violation of §§ 2963(a)(1), 2983(b)(1) and 2944 if these payments were not made.

**COUNT I-
DECLARATORY JUDGMENT THAT THE VDP
EMAIL WAS NOT A “CONTRIBUTION”**

14) The prior paragraphs are restated.

15) The October 24, 2014 VDP email included the following message:

Come to a Rally! This weekend we are joining Senator Bernie Sanders, Governor Peter Shumlin, Dean, and local candidates for GOTV rallies across the state. Come to the one nearest you. (Bold in original).

It listed rallies to be held in Bristol and Proctor on Saturday, October 25th, and in Hinesburg and St. Albans on Sunday, October 26th.

16) Mr. Corren attended the Bristol rally also attended by Senator Sanders, Governor Shumlin, Addison County State Senator Claire Ayer, and candidates for Vermont House of representatives Michael Fisher, David Sharpe, and Diane Lanpher.

17) Mr. Corren therefore asks the Court pursuant to its supplemental jurisdiction and 28 U.S.C. § 2201(a) to issue a declaratory judgment that the VDP email was a “cost paid for by a political party in connection with a campaign event at which three or more candidates are present” under 17 V.S.A. §§ 2901(4)(L) and/or “the use of a political party’s...computers and similar equipment” under 2901(4)(F), therefore not a “contribution,” and not a violation of 17 V.S.A. § 2983(b)(1) or a reporting violation

under 17 V.S.A. § 2963(a)(1).

COUNT II-
UNCONSTITUTIONALITY OF 17 V.S.A. § 2983(b)(1).

18) The previous paragraphs are restated.

19) Mr. Corren alternatively and also seeks a judgment under the federal Civil Rights Act, 42 U.S.C. § 1942 declaring 17 V.S.A. § 2983(b)(1), enforcement for violation of which he has been threatened, to be unconstitutional.

Disproportionate Restriction of the Right to Engage in Collective Activities and to Associate with Political Parties

20) The blanket prohibition at 17 V.S.A. § 2983(b)(1) makes it unlawful to thereafter (i) solicit, accept, or expend any campaign contributions or (ii) to make any expenditures not covered by the grant and the front-end qualifying private fundraising.

21) This prohibition includes “related campaign expenditures” by political parties, which is in turn defined as a “contribution” to a candidate under 17 V.S.A. § 2944.

22) The campaign finance act and the threat of prosecution under it unnecessarily, unfairly and disproportionately restricts, and impermissibly chills, the right of *Option* participants to associate with their political parties, to receive party assistance, to participate in party sponsored advertising, engage in coordinated activities, to engage in collective political activity, and it reduces the voice of political parties.

23) Starting in 2015, privately funded candidates for Lt. Governor can accept unlimited contributions from political parties under 17 V.S.A. §2941(a)(3)(B).

24) These restrictions violate the First Amendment because they are not supported by any compelling and/or significant state interest, and/or are not necessarily tailored, and violate equal protection under the 14th Amendment.

Lack of Any Rescue, Trigger, or Waiver Provisions in §2983(b)(1).

- 25) The *Vermont Campaign Finance Option* is a “lump-sum grant” system which distributes a public financing grant at the beginning of the primary and then another at the beginning of the general election cycle.
- 26) The dynamic nature of the electoral system makes *ex ante* predictions about campaign expenditures for the purposes of setting competitive lump-sum grant levels almost impossible.
- 27) When the lump-sum grant is pegged too low, it puts *Option* participating candidates at a disadvantage because they lack the means to respond if their privately funded opponents spend more.
- 28) Although the Vermont *Option* not only allows, but requires, a certain level of contributions to qualify, once a candidate has qualified for and accepts the lump-sum Vermont campaign funds, Vermont’s system lacks any corrective mechanisms adopted in other jurisdictions, such as “trigger,” “rescue,” or waiver provisions which adjust the campaign contribution and expenditure limits of § 2983(b)(1) to achieve a “Goldilocks solution” allowing an *Option* participant to have the additional funds needed when confronted by fundraising or expenditure by a non-participating opponent which exceeds his or her own.
- 29) This withholds the expenditure resources necessary to compete and creates a State-enforced second class status for such *Option*-participating candidates.
- 30) Mr. Corren’s incumbent Republican opponent Mr. Phil Scott raised \$295,246 compared to Mr. Corren’s total resources allotment of \$200,000.
- 31) This furthers no sufficiently important governmental interest, is not narrowly

tailored and/or closely drawn, and unfairly and unnecessarily burdens the political opportunity of *Option*-participating candidates by limiting their ability to make competitive levels of expenditure.

32) It consequently also violates the unconstitutional condition doctrine. That doctrine provides that the state may not condition the grant of a benefit, even though a person otherwise has no “right” to it, on conditions that impermissibly infringe on his or her constitutionally protected interest, especially freedom of speech.

33) The blanket prohibition in turn defeats the recognized “sufficiently important governmental interests” behind public campaign financing -- which are to reduce the existence or appearance of *quid quo pro* corruption -- by chilling candidate participation in public financing.

34) Public financing can serve those governmental interests only if a meaningful number of candidates participate in the *Option*.

35) Candidates will choose to participate in the *Option* only if the funding provided and allowed enables them to run competitive races.

36) Without it, even fewer candidates will chose to participate in public financing, defeating these interests.

**COUNT III –
UNCONSTITUTIONALITY OF 17 V.S.A. § 2093(b).**

37) The previous paragraphs are restated.

38) Mr. Corren also seeks a declaratory judgment under the federal Civil Rights Act 42 U.S.C. §1983 that the purported “refund” required by 17 V.S.A. § 2903(b) with which he has been threatened is unconstitutional for several reasons.

Violation of the 8th Amendment Prohibition Against Excessive Fines.

39) Section 2903(b) requires that “A person who violates any provision of this chapter...shall refund the unspent balance of the Vermont campaign finance grant received under subchapter 5 of this chapter which existed as of the date of the violation,” which Mr. Sorrell claims here was some \$52,000 as of October 24, 2014.

40) The use of the term “refund” is a fiction because any such grant “balance” existing at the time of an alleged violation has long since either (i) already been spent on the campaign, or (ii) returned to the State at the end of the election cycle as required by 17 V.S.A. § 2983(b)(3).

41) This is the case for Mr. Corren who expended all of his campaign grant except for \$73.60 which was returned to the State on December 12, 2014.

42) Therefore any amount paid to the State under §2903(b) by a candidate such as Mr. Corren must in fact be paid out of his/her own personal funds.

43) For purposes of the Excessive Fines Clause, the form of a fine is irrelevant and may be a payment in kind, a forfeiture, or a payment in cash. A forfeiture or payment which is in part punitive is a fine.

44) A payment under §2903(b) is therefore a fine, and a payment such as of \$52,000 for unintended or minimal violations of the Vermont campaign finance act is grossly disproportional to the gravity of any offense and violates the Eighth Amendment.

The Statute Violates the Due Process Clause of the 14th Amendment As A Form of Excessive Punitive Damages.

45) Alternatively, §2903(b) is an excessive form of punitive damages against the candidate personally which violates Due Process under the 14th Amendment.

The Amount of Forfeiture To Be Paid Is Not Rationally Related.

46) On one hand, a candidate who makes an innocent or minimal violation of §2983(b)(1) in the election cycle before a large portion of his/her grant has been expended must forfeit all such unexpended portion, while on the other hand a candidate who commits a violation of §2983(b)(1) -- even a willful one -- after s/he has expended all of the grant is required to forfeit nothing at all.

47) Because of the timing of the October 24th VDP email, Mr. Sorrell is demanding that Mr. Corren forfeit the equivalent of over a third of his \$150,000 general election period grant.

48) The statute is not rationally related and violates the 14th Amendment.

The Statute Violates the Narrow Tailoring Requirement of the First Amendment.

49) The possibility of such a large forfeiture applicable only to publicly financed candidates is also an impermissible restriction on access to the electoral process.

50) It does not serve a compelling and/or sufficiently important state interest given the recognized legitimate governmental interests behind public election financing, and/or does not do so by means that are narrowly tailored and/or closely drawn by not unfairly or unnecessarily burdening those candidates.

51) It is not narrowly tailored/and or closely drawn because there are less restrictive alternatives that are as effective in advancing the State's interests while impinging less on First Amendment Rights such as are present in the Federal Presidential Campaign public finance system and those of some states. For example

- it is mandatory;
- it does not provide for any good faith defense to liability,

- it lacks or any provisions for opportunity to cure after a determination of violation;
- it makes no distinction in the amount owed between intentional and good faith violations;
- it makes no provision for simple restitution of the amount of offending contribution or expenditure in cases of unintended violations; and
- the amount owed is not apportioned to any multiple of the amount of offending contribution or expenditure at issue.

52) It is not narrowly tailored and/or closely drawn because this operation of the provision, applicable only to those who are publicly financed, is so radical in effect and the financial consequence is so grossly disproportionate that it chills the exercise of protected First Amendment rights by those candidates who might otherwise want to use the *Option*, further defeating the governmental purposes of the statute.

Even If Viewed As A “Refund” It Still Is An Unfair and Unnecessary Burden.

53) Even if viewed as a “refund,” because it is a sanction applicable only to those who are publicly financed, it prevents the effective advocacy of the publicly financed candidate by withholding substantial campaign expenditure resources from them, and unnecessarily burdens the political opportunity of candidates to reach the voters compared to those who are not public financed.

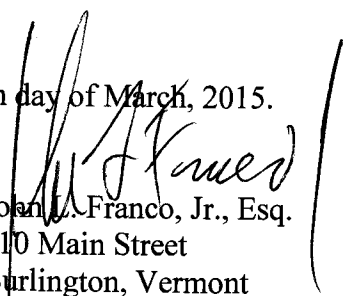
IN JUNCTIVE RELIEF REQUESTED

54) The previous paragraphs are restated.

55) Mr. Corren also seeks preliminary and permanent injunctive relief under 42 U.S.C. §1983 against any enforcement or threatened enforcement of 17 V.S.A. §2944(b)(1) and §2903(b), plus an award of reasonable attorneys’ fees and litigation

expenses under 42 U.S.C. §1988.

Dated at Burlington, Vermont this 20th day of March, 2015.



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