

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIBERTARIAN NATIONAL COMMITTEE, INC.,)	Case No. 11-CV-562 (RLW-MG-RBW)
2600 Virginia Avenue, N.W., Suite 200)	
Washington, DC 20037)	FIRST AMENDED COMPLAINT
)	
Plaintiff,)	
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	
999 E Street, N.W.)	
Washington, DC 20463)	
)	

FIRST AMENDED COMPLAINT

Comes now the Plaintiff, Libertarian National Committee, Inc., by and through undersigned counsel, and complains of Defendant as follows:

INTRODUCTION

1. Individuals occasionally remember political parties whose ideologies they wish to advance when planning their future estate’s disbursement. Much of a recent bequest to the Libertarian Party, exceeding seven times the annual federal contribution limits on individual donations to political parties, 2 U.S.C. §§ 441a, 441i (“the Party Limit”), rests beyond the Libertarian Party’s immediate reach because the Federal Election Commission applies individual contribution limits to decedents’ estates.

2. Moreover, the Party Limit forbids a political party from soliciting bequests that exceed annual contribution limits, even if that party would not draw funds from such bequests exceeding the contribution limits in any given year.

3. This lawsuit seeks to enjoin application of the Party Limit to the contribution, solicitation, acceptance, and spending of decedents' bequests, as said application violates the LNC's First Amendment speech and associational rights and those of its supporters.

THE PARTIES

4. Plaintiff Libertarian National Committee, Inc. ("LNC") is the national committee of the Libertarian Party of the United States. The LNC is a not-for-profit organization incorporated under the laws of the District of Columbia, which maintains its headquarters in Washington, D.C. The LNC has approximately 14,500 current dues paying members, in all 50 states and the District of Columbia. Approximately 278,446 registered voters identify with the Libertarian Party in the 25 states in which voters can register as Libertarians. Throughout the Nation, 154 officeholders (including holders of non-partisan offices), are affiliated with the Libertarian Party. The LNC's purpose is to field national Presidential tickets, to support its state party affiliates in running candidates for public office, and to conduct other political activities in furtherance of a libertarian public policy agenda in United States.

5. Defendant Federal Election Commission ("FEC") is the federal government agency charged with administering and enforcing the federal campaign finance laws, including the laws challenged in this action.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the matter pursuant to 28 U.S.C. §§ 1331 and 2201, and 2 U.S.C. § 437h, pursuant to which the matter should be immediately certified to the United States Court of Appeals for the District of Columbia Circuit for consideration en banc.

7. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e), subject to the operation of 2 U.S.C. § 437h as described above.

STATEMENT OF FACTS

Legislative and Regulatory Background

8. Title 2 U.S.C. § 441a(a)(1) provides, in pertinent part, that “no person shall make contributions— (B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed \$ 25,000.”

9. Pursuant to 2 U.S.C. § 441i, enacted as part of the “Bipartisan Campaign Reform Act of 2002,” no political committee can “solicit, receive or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements” of 2 U.S.C. § 441a(a)(1). The Libertarian Party is not one of the two parties referenced in the “Bipartisan” Act’s title.

10. Pursuant to 2 U.S.C. § 441a(c), the contribution limits set forth in 2 U.S.C. § 441a(a)(1) are indexed for inflation. The current annual limit on contributions to political parties is \$30,800.00.

11. Although the term “person,” as used in 2 U.S.C. § 441a(a)(1), is not specifically defined to include an individual’s testamentary estate, Defendant FEC has determined that the definition should be so extended as to include testamentary estates. *See, e.g.* FEC Advisory Opinions 2004-02, 1999-14.

12. Accordingly, the national committees of political parties may not receive or solicit bequests exceeding the federal contribution limits applicable to individuals. In the event such bequests are nonetheless made, defendant FEC does not permit national party committees to receive such bequests into escrow funds over which they exercise control, including control by the direction of the funds' investment strategies or choice as to whether or in what amount withdrawals might be made in any particular year.

The Libertarian National Committee

13. The Libertarian Party may be the largest "third" party in the United States, but it is generally unable to effectively recruit and advocate for its candidates. Founded in 1972, the party has yet to elect a federal office holder. Unlike its two major competitors, the Libertarian Party's national committee is forced to spend the bulk of its resources securing access to the ballot, leaving comparatively little for actual campaigning—an expensive activity in and of itself. The situation is self-perpetuating, as a party's ability to solicit donations depends in part on having adequate financial resources on hand. Donors, voters, and prospective political candidates who might be attracted to the party's ideology are nonetheless dissuaded from supporting the party by its lack of resources.

14. On April 26, 2007, Raymond Groves Burrington of Knox County, Tennessee, passed away, leaving a Last Will and Testament in which the Libertarian Party was named as a legatee. Burrington's bequest to the Libertarian Party totaled \$217,734.00. The Libertarian Party had no knowledge of this bequest prior to Mr. Burrington's passing.

15. Owing to Defendant FEC's application of federal contribution limits, Plaintiff LNC could not accept this entire bequest at once, as it would use at least some if not all of the

money on federal election efforts. Rather, the LNC accepted annual distributions from the Burrington Estate in the amounts of \$28,500.00 in 2007 and 2008, with the balance of \$160,734.00 being deposited in an escrow account that complies with Defendant FEC's restrictions.

16. The escrow account is established pursuant to an agreement among the Estate, the LNC, and the escrow agent, the Mercantile Bank of Michigan. The agreement provides, *inter alia*, that the Estate remains an escrowee, that the deposited funds may be invested only in the Bank's money market or certificate of deposit products, and that the LNC must annually withdraw the maximum amount permitted by the individual contribution limits. The agreement explicitly provides, however, that the LNC may challenge the legal validity of the contribution limit in federal court, and demand payment of the full amount remaining in the account should its challenge succeed.

17. The LNC refrains from soliciting bequests exceeding the annual contribution limit, and generally refrains from implementing a planned giving program, to fund federal election efforts, owing to the prohibitions of the Party Limit.

CLAIMS

18. Paragraphs 1 through 17 are incorporated as though fully re-stated herein.

19. A unilateral, revocable promise to donate money to a political party at some indeterminate future time upon one's death does not create the appearance or possibility of *quid pro quo* corruption justifying restrictions upon the size of bequests to political parties. Such bequests, by their nature, cannot effectively circumvent contribution limits to political candidates because the donor often has no idea which candidates might benefit from the contribution, no

candidate can predictably rely on receiving the money from a bequest, and neither candidates nor political parties risk offending the donors of bequests once the money is received.

20. Although the Libertarian Party is the nation's third-largest political party in terms of elected officeholders, ballot access, and participation in federal, state, and local elections, the Libertarian Party has never seen one of its candidates elected to federal office. No current federal office holder is affiliated with the Libertarian Party. The Libertarian Party is thus not in any position to deliver political favors in exchange for promises of future bequests.

21. The Supreme Court has previously upheld the Party Limit against a facial challenge, applying a relaxed standard of review on the theory that individuals contributing to political parties are typically engaged in associational, rather than expressive conduct. However, individuals acting in a testamentary capacity not apparently considered by the Supreme Court are not exercising their associational rights, but their right of free speech in desiring to leave a political legacy. Laws restricting the solicitation and acceptance of testamentary contributions must therefore be strictly scrutinized under the First Amendment.

22. Even if the testamentary donation could be viewed as an associational rather than primarily expressive act, the Party Limit's application to testamentary bequests does not "leav[e] persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Buckley v. Valeo*, 424 U.S. 1, 28 (1976) (per curiam).

23. The Party Limit's application to decedents' bequests violates the First Amendment speech and associational rights of the LNC and its supporters. Such application

significantly hampers the LNC in its ability to attract and advocate for its candidates and does not serve any valid governmental interest that could justify this restriction, especially considering the Libertarian Party's need for meaningful seed capital to attain viability, and its lack of unity of interest with any elected federal official.

24. In the absence of the Party Limit's application to decedents' bequests, the LNC would substantially improve its ability to advocate and achieve electoral success by taking immediate control over the balance of the Burrington Estate funds, and generating additional moneys that are otherwise not available to it by soliciting and accepting bequests exceeding federal contribution limits.

25. Even were the federal contribution limits constitutionally valid as applied to bequests, the ban on the solicitation of bequests exceeding federal contribution limits violates the First Amendment free speech rights of the LNC and its supporters, as such bequests would be parsed out to the LNC on an annual basis subject to the federal contribution limits. Barring such solicitation "burdens speech in a way that a direct restriction on the contribution itself would not." *McConnell v. FEC*, 540 U.S. 93, 139 (2003). The government lacks any interest, much less one that satisfies First Amendment standards for the protection of political speech, in forbidding the solicitation of contributions that would eventually be subject to federal contribution limits before they could be spent by a political party.

26. The LNC would thus implement a planned giving program, whereby it would solicit bequests exceeding the Party Limit, even if its solicited bequests could only be accessed on an annual basis in an amount not exceeding the contribution limits. Although such bequests

would lack their full present value, they would nonetheless allow the LNC to access a significant resource that it currently cannot access.

27. As applied to LNC's solicitation, acceptance, and spending of money from bequests, 2 U.S.C. §§ 441a and 441i violate the First Amendment rights of free speech and association.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Libertarian National Committee, Inc. requests that judgment be entered in its favor and against Defendant as follows:

1. An order permanently enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with it who receives actual notice of the injunction, from enforcing 2 U.S.C. §§ 441a and 441i in relation to the contribution, solicitation, acceptance, and spending of money from decedents' bequests;
2. Declaratory relief consistent with the injunction;
3. Costs and attorneys' fees pursuant to any applicable statute or authority; and
4. Any other further relief as the Court deems just and appropriate.

Dated: May 27, 2011

Respectfully submitted,

Alan Gura (D.C. Bar No. 453449)
Gura & Possessky, PLLC
101 N. Columbus Street, Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

By: /s/ Alan Gura
Alan Gura

Attorney for Plaintiff