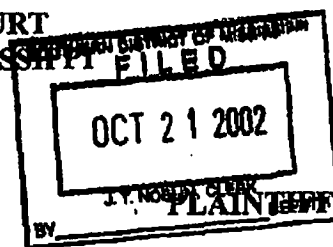


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



MISSISSIPPI REPUBLICAN PARTY
STATE EXECUTIVE COMMITTEE

VS.

CIVIL ACTION NO. 3:02CV1578WS

GOVERNOR RONALD MUSGROVE,
IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE STATE OF MISSISSIPPI

DEFENDANT

FINAL DECLARATORY JUDGMENT

Before the Court is plaintiff's First Amended Complaint for Declaratory Judgment and for Injunctive Relief and Motion for Temporary Restraining Order and for Preliminary Injunction under Title 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.¹ By its motion, plaintiff Mississippi Republican Party State Executive Committee (hereinafter "Republican Party") requests this court to declare that Mississippi's explicit statutory prohibition on political parties endorsing or contributing to the campaigns of judicial candidates violates the freedom of political speech guaranteed by the United States Constitution and the Mississippi Constitution of 1890. Defendant Ronald Musgrove, named in his official capacity as Governor of the State of Mississippi, is represented in this constitutional challenge by the Attorney General of the State of Mississippi pursuant to Mississippi Code Annotated § 7-5-1 and 28 U.S.C.A. § 2403(b).

As campaigns are currently underway through which candidates are seeking election on November 5, 2002, to the Mississippi Supreme Court, the Court of Appeals, and various lower courts, this Court has expedited consideration of this matter. With the consent of the parties and

¹ This court has jurisdiction over this matter pursuant to Title 28 U.S.C. §§ 1331, 1334 and Title 42 U.S.C. § 1983.

pursuant to Fed. R.Civ.P. 65(a)(2), the consideration of the preliminary injunction has been consolidated with consideration of the merits. This Court, having been advised of the premises by the plaintiff and Attorney General, enters this final declaratory judgment pursuant to Fed. R. Civ. P. 57 and 58 and finds for the plaintiff to the extent set forth below.

At issue are sections 23-15-976 and 23-15-1021² of the Mississippi Code Annotated which prohibit political parties and their affiliated committees from endorsing or financially

²Mississippi Code Annotated § 23-15-976, as amended in 1999, provides in part: A judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation. . . . [P]olitical parties and any committee or political committee affiliated with a political party shall not engage in fund-raising on behalf of a candidate or officeholder of a nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party make any contribution to a candidate for nonpartisan judicial office or the political committee of a candidate for nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party publicly endorse any candidate for nonpartisan judicial office. No candidate or candidate's political committee for nonpartisan judicial office shall accept a contribution from a political party or any committee or political committee affiliated with a political party.

Mississippi Code Annotated § 23-15-1021 provides:

It shall be unlawful for any individual or political action committee not affiliated with a political party to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars (\$2,500.00) for the purpose of aiding any candidate or candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars (\$5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, or to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars (\$2,500.00) to any candidate or the candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars (\$5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, as a contribution to the expense of a candidate for judicial office.

contributing to a candidate for judicial office or to that candidate's campaign.³ The plaintiff contends that this prohibition on endorsements and contributions to judicial candidates and campaigns unlawfully abridges the right of free speech found in the First Amendment to the United States Constitution and Sections 11 and 13 of the Mississippi Constitution of 1890.⁴

This is not the first instance in which a federal court has been called upon to review a First Amendment challenge to statutes prohibiting political parties from supporting candidates for judicial election. Indeed, both the plaintiff and the Attorney General recognize the weight of authority from the United States Supreme Court and other federal courts finding similar prohibitions to be unconstitutional restrictions on core political speech. The authority of states to regulate elections "does not extinguish the State's responsibility to observe the limits established by the first amendment rights of the State's citizens." Eu v. San Francisco Democratic Cent. Comm., 489 U.S. 214, 109 S.Ct. 1013, 1019 (1989); see also Republican Party of Minnesota v. White, 536 U.S. ___; 122 S.Ct. 2528, 2533 (2002). If the regulation at issue impairs the First Amendment rights of political parties, "it can survive constitutional scrutiny only if the State shows that it addresses a compelling state interest . . . and is narrowly tailored to serve that

³ Prior to 1999, section 23-15-976 consisted of only the following language: "A judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation." In 1999, the Mississippi Legislature amended Section 23-15-976 retaining the first sentence above and adding the prohibitions at issue. See 1999 General Laws, chpt. 301, § 16. The same legislation created the financial prohibitions at issue in section 23-25-1021. Id. at § 1. The amendments became law over the veto of the Governor.

⁴ The First Amendment rights to freedom of speech are made applicable to the States by the Due Process Clause of the Fourteenth Amendment. Tashjian v. Republican Party, 479 U.S. 208, 214, 107 S.Ct. 544 (1986). As the issues herein are resolved in favor of plaintiff pursuant to the United States Constitution, it is unnecessary for this court to address the state constitutional law issues presented in the complaint.

interest.” Eu, 489 U.S. at 222; see also Republican Party of Minnesota, 122 S.Ct. at 2534. By prohibiting political parties from endorsing or contributing to candidates for judicial election, the restrictions contained in Sections 23-15-976 and 23-15-1021 unquestionably limit the core political speech of the parties and fundamentally impair their First Amendment rights, without being narrowly tailored to a compelling government interest. See Republican Party of Minnesota, 122 S.Ct. at 2534 (reiterating that first amendment rights of free speech apply to judicial elections); Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976); Geary v. Renne, 911 F.2d 280 (9th Cir. 1990), rev’d on other grounds, 111 S.Ct. 2331 (1991); California Democratic Party v. Lungren, 919 F.Supp. 1397, 1400 (N.D. Cal. 1996).

Applying the rigors of strict scrutiny analysis to statutes prohibiting political parties from supporting or endorsing election candidates, several federal courts have previously held similar prohibitions to the ones at issue to be unconstitutional restrictions on political speech. See Geary, 911 F.2d at 284-85 (declaring unconstitutional prohibition on political parties from supporting judicial candidates); California Democratic Party, 919 F.Supp. at 1404-05 (same); see also Eu, 489 U.S. at 229 (declaring unconstitutional prohibition on political parties from endorsing candidates in primary elections); Abrams v. Reno, 452 F.Supp. 1166, 1171 (S.D.Fla. 1978) (same); cf. Republican Party of Minnesota, 112 S.Ct. at 2538-539 (declining to distinguish political speech in judicial elections from political speech in legislative elections); Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 660, 110 S.Ct. 1391, 1398 (1990) (distinguishing constitutional limits on political expenditures from “absolute ban on all forms” of political expenditures).

This Court finds the analysis of these decisions to be applicable to the statutory prohibitions at issue and that such analysis compels a determination that the prohibitions at issue are unconstitutional. In sum, it is well established, and the Attorney General does not disagree, that a state may not directly suppress core political speech of a political party concerning the merits of judicial candidates by prohibiting the party from endorsing or financially supporting judicial candidates.

Having found the endorsement and contribution prohibitions in sections 23-15-976 and 23-15-1021 to be constitutionally infirm, IT IS HEREBY ORDERED that:

1. Plaintiff's request for a declaratory judgment is GRANTED.
2. Mississippi Code Annotated § 23-15-976, as amended in 1999, with the exception of the first sentence stating "[a] judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation," is hereby declared violative of the First and Fourteenth Amendments to the Constitution of the United States.
3. It is further ORDERED that although the named plaintiff in this litigation is the Mississippi Republican Party State Executive Committee, the fundamental constitutional right to free speech is also equally enjoyed by the Mississippi Democratic Executive Committee, and all similar political parties. Since the prohibitions in question have been declared unconstitutional, the relief afforded to the plaintiff enures to the benefit of all political parties.
4. It is further ORDERED that as a part of the relief set forth in Paragraph 2 above that political parties and any committee or political action committee affiliated

with a political party shall be subject to the same financial limits as apply to individuals and political action committees as set forth in Mississippi Code Annotated § 23-15-1021.

5. By agreement of the parties, any claims for relief other set forth in the First Amended Complaint than those claims addressed above are hereby dismissed without prejudice.
6. By agreement of the parties, plaintiff waives any claim against defendant for attorneys' fees, expenses, and costs.

SO ORDERED AND ADJUDGED this the 21st day of October, 2002.

Henry T. Kingate
UNITED STATES DISTRICT JUDGE

Approved:

Andy Taggart
ANDY TAGGART
Counsel for the Plaintiff

A TRUE COPY, I HEREBY CERTIFY.
J. T. NOBLIN, CLERK
BY: [Signature]
DEPUTY CLERK

T. Hunt Cole, Jr. MSB # 6349
T. HUNT COLE, JR.
SPECIAL ASSISTANT ATTORNEY GENERAL
Counsel for the Defendant

Civil Action No. 3:02-cv-1578WS
Final Declaratory Judgment