

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, ss.

CIVIL ACTION
No.

)
KELLY BATES, RON BELL, DEREK BOK,)
BRIAN CORR, MARC D. DRAISEN, RICHARD)
ELRICK, ROBERT A. FEUER, KATHLEEN E.)
GRADY, ARNOLD S. HIATT, FRANK N. JONES,)
SUMNER Z. KAPLAN, GIOVANNA NEGRETTI,)
GALEN NELSON, WILLIAM O'CONNELL,)
GIBRAN X. RIVERA, DAVID C. ROBBINS, JOHN)
W. SEARS, JOHN J. TEMPLETON, NANCY)
TURNER, ERNEST WINSOR, SARAH CANNON)
HOLDEN, JAMES O'KEEFE, DOUGLAS)
PETERSEN, EVAN SLAVITT, STEPHEN SPAIN,)
JILL STEIN, WARREN TOLMAN, COMMON)
CAUSE MASSACHUSETTS, MASSACHUSETTS)
VOTERS FOR CLEAN ELECTIONS,)
MASSACHUSETTS REPUBLICAN STATE)
COMMITTEE, and MASSACHUSETTS GREEN)
PARTY,)
)
Plaintiffs,)
)
v.)
)
MICHAEL J. SULLIVAN, in his official capacity as)
the Director of the Office of Campaign and Political)
Finance, and WILLIAM FRANCIS GALVIN, in his)
official capacity as the Secretary of the)
Commonwealth of Massachusetts,)
)
Defendants.)
)

Complaint

Introduction

1. This action challenges the defendants' failure to implement fully the Massachusetts Clean Elections Law, G.L. c. 55A, § 1 et seq., which mandates that candidates for state office who collect a specified number of qualifying contributions and submit to voluntary contribution and spending limits shall be entitled to public campaign financing.

2. The defendants' conduct of elections without the public campaign funding mandated by the Clean Elections Law violates the Clean Elections Law and Article 48 of the Amendments to the Massachusetts Constitution, which requires that laws passed through voter initiative be given full effect. "Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection...." Art. 48, Initiative and Referendum Pt. 1, § 1.

3. Article 48 requires that the Commonwealth "appropriate such money as may be necessary to carry such law [passed by initiative] into effect" unless the legislature has repealed the law. Article 48, Init Pt. 2, § 2. The Massachusetts Clean Elections Law has not been repealed.

4. The defendants' administration of an electoral process contrary to the mandates of the Clean Elections Law and the Massachusetts Constitution is causing immediate and continuing harm to candidates seeking to qualify for public funding under the Clean Elections Law and the voters who support them, as well

as those organizations and individuals who promoted and supported the law through the ballot initiative process.

5. The failure to fund the Clean Election Law also threatens the integrity of the ballot initiative process, and thus harms all citizens and organizations seeking to exercise their rights through ballot initiative.

Jurisdiction and Venue

6. Jurisdiction is proper under G.L. c. 214, § 1. The relief requested is authorized by G.L. c. 231A, §§1 *et seq.* and G.L. c. 249, § 5.

7. Venue is proper under G.L. c. 214, § 5 and G.L. c. 223, § 1.

Parties

8. The following plaintiffs are voters in the state of Massachusetts who were among the first ten signers of the initiative petition to place the Clean Elections Law on the ballot, supported enactment of the Law, and wish to support publicly funded candidates for elected office: Brian Corr, 50 Shepard Street #5, Brighton, MA 02135; Marc Draisen, 95 Ardale Street, Roslindale, MA 02131; Arnold Hiatt, 45 Autumn Road, Weston, MA 02493; John W. Sears, 7 Acorn Street, Boston, MA 02108.

9. The following plaintiffs are voters in the state of Massachusetts who supported enactment of the Clean Elections Law and wish to support publicly funded candidates for elected office: Kelly Bates, 15 Grew Hill Road, Roslindale, MA 02131; Ron Bell, 265 Eliot Street, Milton, MA 02186; Derek Bok, 75 Cambridge Parkway # E-610, Cambridge, MA 02142; Richard D. Elrick, 15

Yacht Club Road, Centerville, MA 02632; Robert A. Feuer, 3 Elm Street, Stockbridge, MA 01262; Kathleen E. Grady, 35 Roseland Terrace, Longmeadow, MA 01106; Frank N. Jones, 21 Lockstead Avenue, Boston, MA 02130; Sumner Z. Kaplan, 241 Parkins Street, C403, Jamaica Plain, MA 02130; Giovanna Negretti, 5 Forbes Street Apt. 3, Jamaica Plain, MA 02130; Galen Nelson, 33 Long Avenue, Boston, MA 02134; William O'Connell, 21 St. James Avenue, Norwood, MA 02062; Gibran X. Rivera, c/o Aseel Al-Shasei, 199 Coolidge Avenue Apt. 315, Watertown, MA 02472; David C. Robbins, 92 George Hill Road, Grafton, MA 01519; Alice C. Swift, 36 Pondview Drive, Amherst, MA 01002; John J. Templeton, 20 Tamarack Drive, Amherst, MA 01002; Nancy Turner, 76 Boston Avenue, Medford, MA 02155; Ernest Winsor, 393 Hammond Street, Chestnut Hill, MA 02467.

10. The following plaintiffs are candidates for public office in the current election cycle who are in the process of qualifying for public campaign financing: Warren Tolman, who is seeking the Democratic nomination for Governor, resides at 30 Stoneleigh Circle, Watertown Massachusetts 02471; Jill Stein, who is seeking the Green Party nomination for Governor, resides at 17 Trotting Horse Drive, Lexington Massachusetts 02421; Sarah Cannon Holden, who is seeking the Democratic Party nomination for Lieutenant Governor, resides at 60 Weston Road, Lincoln, MA 01773; Evan Slavitt, who is seeking the Republican Party nomination for Attorney General, resides at 46 Sprague Street, Malden, MA 02148; James O'Keefe, who is seeking the Green Party nomination for State

Treasurer, resides at 25 Moore Street, Somerville, Massachusetts 02144; Stephen Spain, who is seeking the Democratic nomination for State Senate in the Third Middlesex District, resides at 3 Bartlett Street, Melrose, MA 02176; and Douglas Petersen, who is seeking the Democratic nomination for State Representative in the Eighth Essex district, resides at 29 Rose Avenue, Marblehead, MA 02133.

11. Plaintiff Massachusetts Voters for Clean Elections (“Mass Voters”) is a nonpartisan, nonprofit citizen effort to reduce the influence of private money in the electoral process and encourage greater competition in statewide and legislative elections. It was the principal proponent of the ballot initiative, and had over 6,000 volunteers working to enact the law by gathering signatures and conducting public education. Its place of business is 37 Temple Place, Boston, Massachusetts 02111.

12. Plaintiff Common Cause Massachusetts is an affiliate of a thirty-year-old nonprofit, nonpartisan citizen's lobbying organization promoting open, honest and accountable government. With over 10,000 members, Common Cause Massachusetts was a major proponent of the Clean Elections Law; its members worked to secure the law's passage by gathering signatures and through public advocacy. Its place of business is 59 Temple Place, Suite 600, Boston, Massachusetts 02111.

13. Plaintiffs Massachusetts Republican State Committee, 27 Winter Street, Suite 309, Wakefield, Massachusetts 01880, and Massachusetts Green Party, c/o The Bernstein Book Store, 468 Essex Street Lawrence, MA 01840, are recognized

political parties in Massachusetts, which intend to field candidates for statewide and legislative office. Numerous candidates from both of these parties are in the process of qualifying for public campaign financing.

14. Defendant Michael J. Sullivan is the Director of the Office of Campaign and Political Finance (OCPF). His usual place of business is at One Ashburton Place, Boston, Massachusetts. He is sued in his official capacity only. His statutory duties include the certification of candidates as eligible to draw money from the Massachusetts Clean Election Fund (“Fund”) and the distribution of money from the Fund to certified candidates. G.L. c. 55A, §§ 5 (d) and 8 (a). He is also charged with issuing rules and regulations governing campaign expenditures and contributions. G.L. c. 55, § 3.

15. Defendant William Francis Galvin is the Secretary of the Commonwealth of Massachusetts. His usual place of business is at One Ashburton Place, Boston, Massachusetts. He is sued in his official capacity only. His statutory duties include the administration of Massachusetts election laws and the oversight of elections in the state.

Factual Allegations

Clean Elections Law

16. In November 1998, Massachusetts voters overwhelmingly approved the Massachusetts Clean Elections Law pursuant to the provisions of Article 48 of the Amendments to the Massachusetts Constitution. Nearly two-thirds voted for it, and it passed in every legislative district of the state. The law, enacted as Chapter 395 of the Acts of 1998 and codified as Chapter 55A of the General Laws, mandates public funding for qualified candidates who choose to participate.

17. In approving this initiative, the voters expressed their dissatisfaction with the system of exclusively private campaign funding, and their belief that voluntary public funding of campaigns for state office would benefit the public interest. The “Findings and Declarations” set forth in Chapter 395 enumerate the ways that public funding will improve the electoral process, including reducing the disproportionate influence of large contributors; halting the escalating costs of elections; enabling voters to hear and be heard in the political process; increasing the accountability of elected officials; encouraging more competitive elections; and freeing candidates from the rigors of fundraising, allowing more time for them to carry out official duties. St. 1998, c. 395 (b) (1)-(7).

18. The Clean Elections Law sets forth procedures and criteria for participating candidates for state office in Massachusetts to become eligible for public campaign funding, by raising a minimum number of qualifying contributions

during a “qualifying period.” G.L. c. 55A, §§ 1 and 4. Candidates for statewide office in 2002 who wish to qualify for public campaign funding must collect qualifying contributions between August 1, 2001 and August 27, 2002; candidates for other offices must do so between January 1, 2002 and May 28, 2002. G.L. c. 55A, § 1; G.L. c. 53, § 10.

19. During the election cycle, all participating candidates must refuse any monetary contributions over \$100, and may not accept aggregate contributions in the primaries over limits ranging from \$3,300 for State Representative candidates to \$322,000 for candidates for Governor, G.L. c. 55A, § 9.¹ The aggregate contributions permitted in the general election range from \$3,200 (State Representative) to \$164,600 (Governor). G.L. c. 55A, § 9.²

20. Participating candidates must also abide by expenditure limits in the primary campaign ranging from \$19,500 (State Representative) to \$1,944,100 (Governor), and limits in the general election campaign ranging from \$12,900 (State Representative) to \$1,300,100 (Governor). G.L. c. 55A, § 6.

21. Candidates who raise sufficient qualifying contributions and abide by the contribution and spending limits must be certified by the Director of the OCPF

¹ All contribution and spending limits, and public financing amounts, are as adjusted for inflation on February 1, 2001, pursuant to G.L. c. 55A § 13.

² Participating candidates must also limit in-kind contributions from each individual or political committee. G.L. c. 55A, § 10.

and are then entitled to receive distributions from the Massachusetts Clean Elections Fund (“Fund”). G.L. c. 55A, §§ 5 and 7.

22. In addition to the base level of funds allocated to certified candidates, each candidate is also entitled to matching funds when a non-participating opponent exceeds the primary or general election expenditure limits, until total public financing reaches twice the relevant expenditure limit. G.L. c. 55A, § 11.

23. During the 2001-2002 primary election , certified candidates are entitled to the following amounts: Governor, \$1,622,100 in base funds, up to \$2,266,100 matching funds, totaling up to \$3,888,200 per candidate; Lieutenant Governor, \$414, 200 base, up to \$559,200 matching, \$973,400 total; Attorney General or Treasurer, \$389,300 base, up to \$583,900 matching, \$973,200 total; Auditor or Secretary of the Commonwealth, \$129,800 base, up to \$194,800 matching, \$324,600 total; Governor’s Councilor, \$20,500 base, up to \$31,300 matching, \$51,800 total; State Senator, \$46,500 base, up to \$70,300 matching, \$116,800 total; State Representative, \$16,200 base, up to \$22,800 matching, \$39,00 total.

24. During the 2001-2002 general election, certified candidates are entitled to the following amounts: Governor, \$1,135,500 base, up to \$1,464,700 matching, \$2,600,200 total; Lieutenant Governor, \$275,800 base, up to \$373,000 matching, \$648,800 total; Attorney General or Treasurer, \$259,500 base, up to \$389,300 matching, \$648,800 total; Auditor or Secretary of the Commonwealth, \$86,500 base, up to \$129,700 matching, \$216,200 total; Governor’s Councilor, \$14,100 base, up to \$20,700 matching, \$34,800 total; State Senator, \$31,400 base, up to

\$46,600 matching, \$78,000 total; State Representative, \$9,700 base, up to \$16,100 matching, \$25,800 total.

Lack of Funding

25. No money has been appropriated for disbursement by the Clean Election Fund (“Fund”).

26. Defendant Sullivan, as Director of OCPF, has estimated that from \$31.2 million to \$37.6 million will be needed for the 2002 election alone.

Effects on Candidates

27. Relying on the promise of public campaign funding, the plaintiff candidates have abstained from accepting contributions over \$100 and abided by the Clean Elections Law’s spending limits. The statewide candidates are also actively seeking qualifying contributions, although others may not do so before January 1, 2002.

28. If money is not made available for disbursement by the Clean Election Fund, candidates who are unable or unwilling to seek large private contributions, and lacking personal wealth, will not have sufficient funds to run an effective campaign. Such candidates will withdraw their candidacies.

29. Other candidates will opt-out of participation in the Clean Elections system and seek large private contributions, despite their desire to campaign without soliciting or accepting such contributions and despite having represented themselves to voters as Clean Elections candidates.

30. Other candidates currently considering running with public financing will be deterred from electoral participation by the lack of funding.

31. The candidates cannot wait to see if the money is made available at a future date, since each day of their continued participation places them at a greater disadvantage relative to non-participating opponents. While participating candidates continue to forgo contributions over \$100, their non-participating opponents are free to accept contributions in increments of up to \$500 per calendar year, or \$1,000 in the 2001-02 cycle. G.L. c. 55 § 7A.

32. Those candidates who are unable or unwilling to seek large private campaign contributions fear that their efforts to campaign and obtain qualifying contributions will be futile. These candidates must immediately decide whether to continue to invest time and resources in their campaigns while the public financing that would make their candidacies viable is not available.

33. The lack of funding has made it more difficult to collect qualifying contributions, because it has caused many citizens to believe that the effort to qualify will be futile.

34. The candidate plaintiffs face immediate and continuing harm until the Clean Election Fund has financing adequate to ensure that all eligible candidates will receive the entire amounts promised by G.L. c. 55A, §§ 7 and 11.

Effects on Voters

35. The voter plaintiffs wish to support publicly funded candidates and do not wish to support candidates dependent on large private contributions.

36. The voter plaintiffs are harmed by the disproportionate political influence enjoyed by large contributors. Candidate reliance on large private contributions will diminish these voters' ability to hear and be heard in the political process.

37. The high cost of privately funded campaigns will continue to deprive voters of meaningful electoral choices and a robust debate until public financing is made available. The failure to fund the Clean Elections Law deters the participation of candidates unwilling or unable to raise large amounts of private funding.

Injury to Proponents of the Clean Elections Law and other Ballot Initiatives

38. Those plaintiffs who actively supported passage of the Clean Elections Law, including the organizational proponents of the Clean Election Law, Common Cause Massachusetts and Mass Voters, share an interest in protecting the integrity of the ballot initiative process as well as enjoying the benefits of the Clean Elections Law passed through that process.

39. As reflected in the "Findings and Declarations" of the Law, the measure was designed to reduce the disproportionate influence of large contributors; halt the escalating costs of elections; enable voters to hear and be heard in the political process; increase the accountability of elected officials; encourage more competitive elections; and free candidates from the rigors of fundraising. St. 1998, c. 395 (b) (1)-(7).

40. Although the Clean Elections Law was approved by approximately 66 percent of voters, including a majority of every legislative district in the state, the citizens of Massachusetts are unable to enjoy the intended benefits of the Law.

41. The individual and organizational plaintiffs share an interest in achieving policy changes through the ballot initiative process. The citizenry of the Commonwealth has reserved for itself, under the Massachusetts constitution, the power and the right to enact laws by voter referendum. Art. 48, Initiative and Referendum Pt. 1, § 1.

42. This right will be rendered meaningless if a law passed by initiative can be destroyed through the budget process. The legislature will effectively be given veto power over laws passed by ballot initiative, without having to enact a repeal of the law as required by Art. 48, Init. Pt. 2, § 2.

Count I

43. By failing to implement fully the Massachusetts Clean Elections Law and to distribute the required funding to all eligible candidates, the Director of the Office of Campaign and Political Finance is acting in violation of Article 48 of the Amendments to the Massachusetts Constitution and the Massachusetts Clean Elections Law, G.L. c. 55A, § 1 et seq.

Count II

44. By administering an electoral process contrary to the mandate of the Massachusetts Clean Elections Law, the Secretary of the Commonwealth is acting in violation of the Article 48 of the Amendments to the Massachusetts Constitution and the Massachusetts Clean Elections Law G.L. c. 55A, § 1 et seq.

Prayers for Relief

WHEREFORE, the plaintiffs respectfully request that this Court:

A. Declare that the Director of the Office of Campaign and Political Finance is acting in violation of Article 48 of the Amendments to the Massachusetts Constitution and the Massachusetts Clean Elections Law, G.L. c. 55A, § 1 et seq., by failing to implement fully the Massachusetts Clean Elections Law and to distribute the required funding to all eligible candidates;

B. Declare that the Secretary of the Commonwealth is acting in violation of Article 48 of the Amendments to the Massachusetts Constitution and the Massachusetts Clean Elections Law, G.L. c. 55A, § 1 et seq., by administering an electoral process contrary to the mandate of the Massachusetts Clean Elections Law;

C. Enter an injunction compelling the Director of the OCPF to implement fully the Massachusetts Clean Elections Law, G.L. c. 55A, § 7, and ordering that the OCPF shall make available to any and all candidates who qualify for public campaign financing the full amounts to which they are entitled;

D. Enter an injunction prohibiting the Secretary of the Commonwealth from holding any future elections for Massachusetts statewide or legislative offices until such time as sufficient funding is available to ensure that all eligible candidates will receive the entire amounts to which they are entitled under the Massachusetts Clean Elections Law, G.L. c. 55A, § 7;

E. Provide such other and further relief as justice and equity require.

By their attorneys,

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