No. 26- 10312

United States Court of Appeals for the Eleventh Circuit

SAFE AFFORDABLE GEORGIA, INC,

Plaintiff-Appellant,

v.

JAMES KREYENBUHL, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia,

Hon. Elenor L. Ross

(Dist. Ct. No. 1:25-cv-06985)

REPLY IN SUPPORT OF MOTION FOR INJUNCTION PENDING APPEAL

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INTRODUCTION

Defendants argue that Plaintiffs have not established a likelihood of success on the merits. However, every court to consider the issue has determined the regulatory regime here is likely unconstitutional as applied to gubernatorial primaries, including the court below. *See* Motion (Doc 7) at 14-15. That is what "success in the merits" means. The campaign finance regime challenged here favors the candidate with a leadership committee over the candidate without one. The asymmetry is unconstitutional.

According to the Defendants, their First Amendment violation cannot be enjoined because 1) it would alter the status quo; 2) the injunction would not stop the State from violating the rights of others; and, 3) an injunction protecting the rights of others cannot be obtained. Thus, according to this cynical argument, Defendants are free to suppress Plaintiff's core political speech and unfairly advantage the lieutenant governor in the gubernatorial primary.

Fortunately, this isn't the law. "The First Amendment, in particular, serves significant societal interests." *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1128 (2022) The First Amendment has teeth. *Id*. ("an

ongoing violation of the First Amendment constitutes an irreparable injury.") *Id*. Maintaining the status quo is not the purpose of a preliminary injunction. Preventing irreparable harm is. *Id*. Maintaining the status quo might be wise in a corporate governance matter or a property boundary dispute. However, maintaining a constitutional violation does not prevent irreparable harm. It causes more.

Defendants' contradictory arguments that Plaintiff cannot obtain an injunction benefitting only itself nor obtain one also benefiting others cannot both be right. The reality is that a Plaintiff is generally limited to obtaining an injunction that narrowly addresses its own harm. *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). The injunction pending appeal Plaintiff requests would do precisely this.

ARGUMENT

"[J]eopardizing a movant's First Amendment rights, for even minimal periods of time, creates a threat of irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). *Elrod* affirmed the Seventh Circuit's issuing a preliminary injunction after reversing a district court's dismissal of a case alleging government action to repress political

speech. *Id*. at 374. The Court noted, "The timeliness of political speech is particularly important." *Id*. at n29.

The political speech at issue here is at the core of the First Amendment—speech addressed to voters to impact an election. *Citizens United*, 558 U.S. 310, 339 (The First Amendment "has its fullest and most urgent application to speech uttered during a campaign for political office.") A representative democracy depends on the symmetrically free ability to engage in election related speech. Plaintiff's speech rights are curtailed while its opponent committee's rights are unrestrained.

The Georgia law is unconstitutional as applied to this gubernatorial primary because it grants *only* Burt Jones the ability to raise and spend unlimited funds during a critical time before the primary election. This isn't a close call. Defendants, who have the duty in a First Amendment suit to establish the constitutionality of the application of the challenged law, are unable to do so here. *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022) ("the defendant who seeks to uphold a restriction on protected speech bears the burden of justifying it").

To save the law, Defendants try to spin Jones's leadership committee as "more closely resemble[ing] traditional party organizations than candidate specific campaign committees." Op. at 5. This is laughable. First, unlike a leadership committee, a party committee is limited to the standard contribution amount of $8,400 per candidate. *Id*. at 2 *citing* O.C.G.A. § 21-5-41(a). Second, during a primary election, a leadership committee can be chaired only by the governor and lieutenant governor, who are in the same political party. Laws intended to benefit political parties would be written to benefit at least both major parties. Third, political parties are often reluctant to favor a candidate in a contested primary for an open seat, such as this year's gubernatorial primary. A leadership committee will always favor its chair. Fourth, if the Georgia legislature intended to strengthen political parties, it would have done so by granting parties additional abilities. The leadership committee statute benefits two *individuals*. And even if Defendants are correct about the *intent* behind the law. The *application* of the law here is nefarious.

Defendants argue that Plaintiff is free to support Raffensperger so long as it does so without coordinating with him. Op. at 24. This is both

wrong and misses the point. Raffensperger chairs Plaintiff. Any spending Plaintiff makes will, by definition, be coordinated, and thus prohibited. Second, it is exactly the coordinated spending a leadership committee is permitted that Plaintiff wants to be equally free to do and is necessary to remedy the asymmetrical rights.

A. The Campaign Finance Scheme Fails *Davis*.

Defendant's defense of the laws as being "closely drawn" ignores the facts on the ground. Defendant's attempted factual distinction of *Davis v. FEC* falls flat. 554 U.S. 724 (2008). Op at 21. *Davis* held that "the unprecedented step of imposing different contribution and coordinated [ ] expenditure limits on candidates vying for the same seat is antithetical to the First Amendment." *Id*. at 743-44. *Davis's* holding squarely applies to the differing contribution and coordinated expenditure limits here even if the method of imposing divergent limits differs factually. As *Davis* stated, any law imposing different limits for the same office is "antithetical to the First Amendment" and fails all levels of scrutiny. Because WBJ is allowed to operate in coordination with, and essentially in place of, a campaign committee, an asymmetrical campaign finance structure exists. All of Defendants'

cited cases upholding disparate limits to committees that do different things are inapplicable here because WBJ effectively operates as a campaign committee and isn't bashful about admitting it. *See infra* 9.

Similarly, Defendants' weak effort to distinguish *Riddle* because the plaintiffs there were donors falls flat. The constitutional analysis is the same here as there—competitors in the same race, must have the same limits. *Riddle* corrected lifted the limits on independent candidates there. *Riddle v. Hickenlooper*, 742 F.3d 922 (10th Cir. 2014). This court should lift the limits here.

Defendants also claim a right to prevent corruption. Yet, Georgia chose to afford its lieutenant governor with unlimited fundraising. Georgia is not alone in recognizing these so-called safeguards are unwarranted. Twelve states have no limits on direct contributions to gubernatorial candidates.[1] Because the legislature has made the

[1] The National Conference of State Legislatures maintains a database of state contribution limits, indicating that for the 2026 cycle Alabama, Alaska, Indiana, Iowa, Mississippi, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virgina have no contribution limits for gubernatorial races. *See* https://documents.ncsl.org/wwwncsl/Elections/State-Limits-on-Contributions-to-Candidates-2025-2026.pdf (last accessed December 31, 2025)

determination to not limit the lieutenant governor's ability to raise and spend funds in connection with his own campaign, Defendants cannot point to the prevention of quid pro quo corruption to justify the dichotomy that now exists.[2] There is no legitimate justification for subjecting a committee supporting one candidate to contribution and coordination limits while allowing unfettered campaigning by an opposing committee.

B. Traceability

Defendants argue that Plaintiff's injury is really caused by the leadership committee statute, so Plaintiff should seek an injunction prohibiting WBJ from participating in the election. Op. at 11. Both aspects of this statement are wrong. The fundraising and spending/coordination limits Plaintiff faces in comparison to WBJ's

[2] Defendants also point to a few narrow professions that are licensed by the Secretary of State. Yet, they make no serious argument that immigration assistance providers, trauma scene waste management practitioners, athlete agents, or the others they reference are more likely to be the source of bribes than the major corporate entities that they allow to donate to WBJ. Moreover, once Raffensperger wins the primary, Georgia law affords him a leadership committee for the general election, meaning the legislature likely isn't concerned with these regulated individuals contributing to Raffensperger's leadership committee. There is no reason to believe they would have additional concerns for the primary election that don't exist for the general.

freedoms is the problem. And an injunction cannot undo WBJ's past spending—even past spending for future ads. *See Davis*, 544 U.S. at 743–44 (noting that the remedy for government-imposed limits on speech is not to impose additional limitations).

After SAGA filed its FRAP 8 motion, a new self-funded gubernatorial candidate entered the race and filed suit seeking to enjoin the leadership committee statute as Defendants suggest here. In responding to his motion for TRO, WBJ admitted "WBJ has engaged in various ad-buys advocating for the election of Burt Jones after he announced his candidacy for Governor." *Jackson v. Jones*, N.D. Ga.1:26-cv-00782, Doc. 34-2 at 4. Moreover, WBJ "has reserved 9.2 million in advertising placements through May 19, 2026." *Id.* WBJ explained at length the constitutional, legal, equitable and practical problems with an injunction to unwind any of that. *Id.*, Doc. 34 at 12-16. WBJ also correctly argued the new candidate should have "challenged Georgia's campaign contribution limits, which is the real basis of their alleged injury." *Id.* at 9. Even WBJ recognizes that Plaintiff's claim is focused on the proper statutes and seeks the correct relief.[3]

[3] The TRO motion in *Jackson v. Jones* will be heard on February 20.

C. Remedy

Defendants puzzling argue that freeing Safe Affordable Georgia, Inc., ("SAGA") of the constraints that WBJ Leadership, Inc., ("WBJ") does not have "would not remedy any alleged underlying harm." Op. at 11. At least, that's the heading for the argument. However, Defendants argue the opposite. They repeat the district court's observation that a narrow injunction benefitting Plaintiff "would 'privilege Raffensperger over the remaining primary candidates still subject to those limits.'" *Id.* quoting Doc. 20 at 15. It would, as Defendants implicitly concede, place Plaintiff and Raffensperger on level with WBJ and Jones. Defendants don't argue that the remedy wouldn't address Plaintiff's injuries. They argue that the remedy addresses *only* Plaintiff's injuries.

Defendants then argue that such an injunction would lead others similarly situated to also want their First Amendment rights vindicated. Op. at 12. Plaintiff fails to see how this is a problem. All similarly situated candidates and committees should have the same freedoms as the candidate and committee that is the freest.

Again, once this injunction is issued, Defendants ought to quickly put out new regulatory guidance explaining that they will allow those

similarly situated to receive the same treatment as Plaintiff has earned. Absent that, Defendants deserve the handful of litigation they may receive from other candidates in the republican gubernatorial primary—the limited group directly affected.

In connection with this argument, Defendants called Plaintiff's reliance on the Chief Justice's concurrence in Citizens United "cherry-picking." Op. at 14. Let's examine that cherry. Roberts wrote, "Even if considered in as-applied terms, a holding in this case that the Act may not be applied to Citizens United . . . would mean that any other corporation raising the same challenge would also win." *Citizens United v. FEC*, 558 U.S. 310, 376 (2010) (Roberts, C.J., concurring). Replace 'Citizens United' with 'Safe Affordable Georgia,' and 'corporation' with 'gubernatorial-candidate chaired hybrid-PAC", and Plaintiff's argument is made. "Regardless whether we label [the] claim a 'facial' or 'as-applied' challenge, the consequences of the Court's decision are the same." *Id*. This is precisely Plaintiff's argument as to why the injunction Plaintiff requests is appropriately understood to benefit all. It is also why the court can fashion a broader injunction to expressly protect all.

"[T]he consequences of the Court's decision are the same." The cherry is a good one.

Defendants argue that if the court concludes a different remedy is required—such as expressly ordering an injunction that benefits others, that the court cannot issue such relief because Plaintiff did not seek broader relief at the trial court. Op at 13. First, Plaintiff did request such relief in its motion for injunction pending appeal filed below. *See* Doc. 7-8. Moreover, the crafting of the appropriate injunction is the role of the court. *Sessions v. Morales*-Santana, 582 U.S. 47, 72 (2017) (granting different equitable remedy than what was requested). This court should afford the relief it finds appropriate.

D. Balancing Equities

When a plaintiff is likely to prevail on the merits of a First Amendment claim, the other prerequisites to a preliminary injunction, like balancing the equities, are usually met. *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020). Defendants' policy arguments behind the law are no obstacle to an injunction. "[A]n ongoing violation of the First Amendment constitutes an irreparable injury." *FF Cosms. FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017).

"[N]either the government nor the public has any legitimate interest in enforcing an unconstitutional [law]." *LaCroix v. Town of Fort Myers Beach*, 38 F.4th 941, 955 (11th Cir. 2022).

The court filing by WBJ claiming over $9 million in support for Jones's candidacy thus far, *supra*, makes a mockery of Defendants' argument that there have been no practical consequences of the violation of Plaintiffs' First Amendment rights. Op. at 23-26. Moreover, Defendants completely missed the point that the existing statutory scheme advantaging WBJ and Jones *is* the injury. WBJ's use of the advantage is not the triggering event.

Nor can Defendants call the speech limits here "incidental". *Id*. at 24. The regulations are expressly designed to control Plaintiff's election related speech. That is the entire focus of a campaign finance regime. It is hardly incidental. Safe Affordable Georgia would unquestionably be injured if it violated the existing laws and faced the civil and criminal penalties that would follow. That is not incidental. It is concrete and has caused Plaintiff to curtail its speech.

Defendants cite to the *Purcell* principle in their government interest section. Op. at 26. The *Purcell* principle is an important doctrine that

courts should not cause last minute changes to the mechanism of the election process (maps, voting days, registration deadlines, etc.) *Purcell v. Gonzalaz*, 549 U.S. 1 (2006). It has no application to laws that burden speech. Rather, core speech rights always trump governmental interests. *LaCroix v. Town of Fort Myers Beach*, 38 F.4th 941, 955 (11th Cir. 2022) ("neither the government nor the public has any legitimate interest in enforcing an unconstitutional [law].")

In First Amendment cases, the liberty to speak freely is the constitutional status quo that is to be maintained during litigation over a statute that limits speech. The balancing of the equities will always favor enjoining a constitutionally void application of a statute. Accordingly, all factors point towards the need to enjoin the laws restricting Safe Affordable Georgia's ability to contribute and coordinate on par with a leadership committee.

CONCLUSION

The Court should issue the injunction requested in Plaintiff's motion.

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Respectfully submitted,

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WORD COUNT AND TYPEFACE CERTIFICATE

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/s/ Charles Miller
Charles M. Miller