

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PUBLIC CITIZEN, INC.,)
GRAY PANTHERS PROJECT FUND,)
LARRY DAVES, LARRY J. DOHERTY,)
MIKE MARTIN, D.J. POWERS, and)
VIRGINIA SCHRAMM,)
)
Plaintiffs,) No.
)
v.)
)
ELTON BOMER, Secretary of State,)
)
Defendant.)
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action challenges the constitutionality of the system by which judges of the Texas state courts are elected. Under that system, any person—including lawyers who regularly appear before the judges, individuals who are frequent parties to judicial proceedings, or special interest political action committees—can contribute thousands of dollars to the campaigns of judicial candidates. No judge is precluded from sitting on a case in which a contributor has an interest, regardless of the amount that contributor gave to the judge's campaign. As a result, recent surveys conducted by the Texas Supreme Court showed that 83 percent of the Texas public, 79 percent of Texas lawyers, and 48 percent of Texas state judges believe that campaign contributions have a significant influence on judicial decisions. Only one percent of lawyers and 14 percent of judges believe that campaign contributions have *no* influence. As more fully described below, each of the plaintiffs has been and will continue to be injured by the current system of financing judicial

elections in Texas, in violation of their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

JURISDICTION

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343(3).

PARTIES

Plaintiffs

3. Plaintiff Public Citizen, Inc., a nonprofit corporation incorporated and headquartered in the District of Columbia, has approximately 150,000 members, of whom approximately 4,700 reside in Texas. Public Citizen also maintains an office in Austin, Texas. Public Citizen has been and will continue to be a party to and appear as an *amicus curiae* in litigation in Texas state courts. As a corporation, it is forbidden by Texas law from contributing to political campaigns. Even if it were not prohibited from making contributions, it could not afford to make substantial contributions and, in any event, would not do so because it opposes the "purchasing of justice" in this manner.

4. Public Citizen brings this case on its own behalf and on behalf of its members in Texas and elsewhere. Some of its members are financially unable to contribute to judicial elections in significant amounts, some can afford to contribute but choose not to do so because they oppose the current system of financing of judicial elections, and some contribute only because they believe that they have no realistic choice as lawyers who regularly practice in the Texas courts.

5. Plaintiff Gray Panthers Project Fund is a non-profit advocacy organization established in 1970. The Gray Panthers has more than 50 local chapters, or "networks," in 35 states, including networks in Austin, Houston, and San Antonio, Texas. The Gray Panthers has a national

membership of 40,000, an active local network membership of more than 8,000, and a Texas membership of approximately 655. Approximately 75 percent of its members are over age 60. As a corporation, the Gray Panthers is forbidden by Texas law from contributing to political campaigns. Even if not prohibited from making contributions, the Gray Panthers could not afford to make substantial contributions and, in any event, would not do so because it opposes the "purchasing of justice" in this manner. The Gray Panthers brings this case on behalf of its members in Texas and elsewhere who have appeared or will appear as parties in Texas state courts.

6. Plaintiff Larry Daves is a lawyer who practices in San Antonio and appears before Texas state courts. He has received solicitations for judicial campaign contributions, including from judges before whom he had pending cases. He has also contributed to the campaigns of judges, including judges before whom he had pending cases. Plaintiff Daves primarily represents poor and working individuals who are contesting employment decisions of their current or former employers. He brings this case on his own behalf and on behalf of his clients, most of whom are appearing in the state courts for the first time. He believes that the current system of financing judicial elections creates the appearance, if not the reality, of partiality and impropriety of Texas state judges, to the detriment of the legal profession and his clients' interests.

7. Plaintiff Larry J. Doherty is a lawyer who practices in Houston and appears before Texas state courts. He has received solicitations for judicial campaign contributions, including from judges before whom he had pending cases. Although he has contributed to the campaigns of judges, he decided in or about 1992 to stop doing so because of his belief that contributions taint judicial decisionmaking. Plaintiff Doherty primarily represents plaintiffs in legal malpractice cases. Aside from the case in which he is representing them, his clients generally are not active in the state courts

and are unlikely to have contributed to judicial election campaigns. He brings this case on his own behalf and on behalf of his clients. He believes that the current system of financing judicial elections creates the appearance, if not the reality, of partiality and impropriety of Texas state judges, to the detriment of the legal profession and his clients' interests.

8. Plaintiff Mike Martin is a lawyer who practices in Houston and appears before Texas state courts. He has received solicitations for judicial campaign contributions, including from judges before whom he had pending cases. He has also contributed to the campaigns of judges, including judges before whom he had pending cases. Plaintiff Martin primarily represents victims of toxic torts and occupational disease. His clients generally have no prior experience with the courts and are unlikely to have contributed to, or to have the resources to make significant contributions to, judicial election campaigns. He brings this case on his own behalf and on behalf of his clients. He believes that the current system of financing judicial elections creates the appearance, if not the reality, of partiality and impropriety of Texas state judges, to the detriment of the legal profession and his clients' interests.

9. Plaintiff D.J. Powers is a lawyer who practices in Austin and appears before Texas state courts. He receives solicitations for campaign contributions from judges but does not contribute to judicial campaigns. He brings this case on his own behalf and on behalf of his clients, which at present consist primarily of a non-profit organization, prohibited by law from contributing to judicial elections, and an individual who has not contributed to judicial election campaigns. He believes that the current system of financing judicial elections creates the appearance, if not the reality, of partiality and impropriety of Texas state judges, to the detriment of his law practice and his clients' interests.

10. Plaintiff Virginia Schramm is a legal aid lawyer who practices in San Antonio and appears before Texas state courts. She receives solicitations for campaign contributions from judges and has made small contributions to judicial campaigns on a few occasions. She brings this case on her own behalf and on behalf of her clients, who are poor people and lack the resources to contribute to judicial campaigns, whether or not they would like to do so. She believes that the current system of financing judicial elections creates the appearance, if not the reality, of partiality and impropriety of Texas state judges, to the detriment of her law practice and her clients' interests.

Defendant

11. Defendant Elton Bomer, the Secretary of State of Texas, is the chief election officer of the State of Texas. Tex. Elec. Code Ann. § 31.001 (Vernon 1986). He is also charged with delivering the county returns to the governor and for tabulating the votes received in each county so that the governor can certify the results for the offices of supreme court justice, court of appeals justice, and district court judge. *Id.* at § 67.013(a) & (b).

FACTS

12. Under the Constitution of the State of Texas, all state judges are elected. The terms of office of members of the supreme court and the courts of appeals are six years, and the terms of office of judges of the district courts and county courts are four years.

13. Elections for judicial offices in Texas are financed in significant part by lawyers and other people with direct interests in the outcome of litigation in the Texas courts.

14. Financial contributions for the election of judges in Texas may be made by any person other than a corporation or labor union, which are forbidden by statute from contributing to any election campaign. Prior to June 16, 1995, Texas law placed no limit on the amount a

contributor—including lawyers and other people who have direct interests in matters pending before the courts—could give to any candidate for judicial election. The Judicial Campaign Fairness Act, which became effective June 16, 1995, prohibits judicial candidates accepting contributions from an individual in excess of \$5,000 per election to a campaign for a statewide judicial office or a judicial office in a district whose population exceeds one million people. If the district population is between 250,000 and one million, a judicial candidate may accept an individual's contribution of up to \$2,500. If the population of the judicial district is less than 250,000, a judicial candidate may accept an individual's contribution of up to \$1,000 per person. 15 Tex. Elec. Code Ann. § 253.155 *et seq.* (Supp. 1999). These limits may be suspended in certain circumstances. *Id.* § 253.164(b).

15. Of Texas' 14 court of appeals districts, seven have populations in excess of one million people, and seven have populations of between 250,000 and one million people. *See* <http://www.sos.state.tx.us/function/elec1/laws/JudgePopulation97.htm> (visited Nov. 15, 1999). The populations of Texas' approximately 400 district court districts range from as small as 11,723 to as large as 2,818,199. *Id.*

16. Texas law treats a law firm as an individual for purposes of contributions in the name of the law firm itself. Once the combined contributions of a law firm and the members of that firm to a single candidate for a single election reach six times the limit imposed on individual contributions—that is, in the case of a statewide judicial office, \$30,000—a judicial candidate may not accept contributions of more than \$50 from any other member of that firm for that election. 15 Tex. Elec. Code Ann. § 253.157.

17. A judicial candidate may accept from political action committees ("PACs") a combined total of up to 15 percent of the applicable voluntary expenditure limit. Thus, in the case of an

election for a statewide judicial office, a candidate may accept a total of \$300,000 from PACs. *Id.* § 253.160. The law does not limit an individual's contributions to any given PAC or to PACs in the aggregate.

18. The limits on contributions are calculated separately for each election, not for each election cycle. Thus, a judicial candidate for a seat on the supreme court may accept \$5,000 from one individual for the primary election, another \$5,000 for any runoff election, and another \$5,000 for the general election. *See id.* § 253.155; Tex. Ethics Adv. Op. 302 (1996). The total amount of contributions an individual may make to all candidates and PACs combined is not limited.

19. Contributions by litigants or lawyers to the judicial candidacy of a judge before whom they have a matter pending are not subject to any additional prohibitions or limitations.

20. Canon 4 D(1) of the Texas Code of Judicial Conduct specifically authorizes judges and candidates for judicial office personally to solicit funds for their judicial campaigns. This Canon places no prohibition or limitation on soliciting from people who have business before that judge or who would come before that candidate if he or she became a judge. This authorization is unique among states with partisan judicial elections.

21. Under Texas law, a judge need not disqualify himself or herself from a case even if one party or its lawyer has been a contributor to the judge's election campaign, no matter how large the contribution of that person and others aligned with that person may have been.

22. The inevitable result of this system of financing judicial elections is that, in some cases, judicial decisions are influenced by, or based on the fact of, one lawyer's or one party's financial contributions to the judge's election. Even when a judicial decision is not affected by a contribution to the judge's campaign, there is an appearance that such contributions were a factor in the decisional

process. The appearance of impropriety is particularly pernicious in regard to decisions as to which judges have significant discretion, such as whether to grant petitions for supreme court review or for rehearing in the supreme court or the court of appeals, since judges do not have to explain those decisions and they are, therefore, not susceptible to objective public assessment.

CLAIM FOR RELIEF

23. The system of financing judicial elections described above injures each of the plaintiffs in that it deprives them of their rights to have their cases and those of their members and clients, where applicable, decided by courts that are impartial in fact and in a system that appears impartial, and not to have their cases influenced by campaign contributions. For this reason, the present system of judicial elections, including the method of financing them and the absence of any requirement that a judge not participate in a case in which a significant contributor has an interest, violates the rights of plaintiffs under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

24. As required by law, defendant has delivered county returns to the governor and tabulated for each candidate for judicial office the number of votes received under the present system, so that the governor can certify the results of elections for the offices of supreme court justice, court of appeals judge, and district court judge. Unless enjoined by this Court from doing so, defendant will continue to perform these tasks, thereby enabling the current unconstitutional system to operate.

WHEREFORE plaintiffs pray that this Court (1) declare that the system of financing judicial elections for state-court judgeships in Texas violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983; (2) enjoin defendant from delivering the county returns to the governor and from tabulating for each candidate for judicial office the number of votes received, for any election for judicial office held after January 1, 2001, unless a constitutional system for the selection of judges is in effect; (3) award plaintiffs their costs

and disbursements in this action, including reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988; and (4) grant plaintiffs such other and further relief as may be just and proper.

Dated: April 3, 2000

Respectfully submitted,

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