

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMERICANS FOR PROSPERITY))	
FOUNDATION, et al.,)	
)	
Plaintiffs,)	C.A. No. 26-445-JLH
)	
v.)	
)	
ALBENCE, et al.,)	
)	
Defendants.)	

Monday, June 8, 2026
4:00 p.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States District Court Judge

APPEARANCES:

BAKER & HOSTETLER, LLP
BY: JEREMY DOUGLAS ANDERSON, ESQ.
BY: ALLEN DICKERSON, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

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DELAWARE DEPARTMENT OF JUSTICE
3 BY: EMILY V. BURTON, ESQ.

4

-and-

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CAMPAIGN LEGAL CENTER
6 BY: TARA MALLOY, ESQ.
BY: MEGAN McALLEN, ESQ.

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Counsel for the Defendant

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16:03:35 11 THE COURT: Good afternoon, everyone. This is
16:03:36 12 Jen Hall. We're here to reconvene the hearing on the
16:03:42 13 preliminary injunction motion in Americans for Prosperity
16:03:44 14 Foundation v. Albence, civil action number 26-445.

16:03:48 15 Do we have someone from Plaintiffs' side here?

16:03:52 16 MR. ANDERSON: Yes, Your Honor. Jeremy Anderson
16:03:55 17 and Allen Dickerson are both on the line.

16:03:58 18 THE COURT: Very good.

16:03:59 19 And do we have someone from Defendants here?

16:04:03 20 MS. BURTON: Indeed, Your Honor. Emily Burton,
16:04:08 21 Tara Malloy, and Megan McAllen are all here.

16:04:11 22 THE COURT: Great.

16:04:12 23 Pending before the Court is Plaintiffs' motion
16:04:14 24 for a preliminary injunction. That's at docket number 4.

16:04:18 25 The motion has been fully briefed and the parties submitted

16:04:23 1 declarations and other evidence in support of their papers,
16:04:26 2 all of which has been considered. That's at D.I. 5, 21, and
16:04:32 3 25. The parties were given the opportunity to request an
16:04:35 4 evidentiary hearing, but they assured the Court that neither
16:04:40 5 side wanted an evidentiary hearing. That's at docket 26.
16:04:43 6 That said the parties submitted some declarations and
16:04:46 7 exhibits in connection with their papers as D.I. 5, 22, and
16:04:50 8 25, and both sides agreed during the hearing today that the
16:04:55 9 Court may consider and rely upon those materials. The
16:04:57 10 record of evidence before the Court, is, however, very slim.

16:05:02 11 We've heard oral argument from the parties
16:05:05 12 today. Given that the challenge implicates conduct in the
16:05:10 13 upcoming election, the Court's prepared to render a prompt
16:05:15 14 decision by ruling on the motion from the bench.

16:05:18 15 Plaintiffs' one-count complaint challenges the
16:05:23 16 constitutionality of certain provisions of the Delaware
16:05:26 17 Elections Disclosure Act. Specifically, Plaintiff argues
16:05:30 18 that "Delaware's disclosure requirements set forth in 15
16:05:34 19 Delaware Code §8031" violate the First Amendment because
16:05:40 20 they "are not substantially related to a sufficiently
16:05:43 21 important government interest, nor are they narrowly
16:05:47 22 tailored to any interest they allegedly promote."

16:05:50 23 As relevant here, §8031(a) provides that

16:05:57 24 Any person other than a candidate committee or a
16:06:02 25 political party who makes an expenditure for any third-party

16:06:06 1 advertisement that causes the aggregate amount of
16:06:09 2 expenditures for the third-party advertisements made by such
16:06:13 3 person to exceed \$500 during an election period shall file a
16:06:17 4 third-party advertisement report with the Commissioner.

16:06:21 5 15 Delaware Code §8002 paragraph 21 defines
16:06:27 6 "third-party advertisement" to mean "an independent
16:06:31 7 expenditure or an electioneering communication."

16:06:39 8 An "electioneering communication" is "a
16:06:42 9 communication by any individual or other person (other than
16:06:45 10 a candidate committee or political party) that:

16:06:49 11 (1) Refers to a clearly identified candidate; and
16:06:53 12 (2) Is publicly distributed within 30 days before a primary
16:06:57 13 election or special election, or 60 days before a general
16:07:01 14 election to an audience that includes members of the
16:07:05 15 electorate for the office sought by such candidate."

16:07:09 16 That's §8002 paragraph 10(a).

16:07:12 17 And the "third-party advertisement report" must
16:07:18 18 include the "full name and mailing address of each person
16:07:21 19 who has made contributions during the election period in an
16:07:27 20 aggregate amount or value in excess of \$100. And that's
16:07:34 21 §8031(a)(3). §8032 provides that the report shall be
16:07:43 22 publicly available.

16:07:45 23 The gist of all this--and the focus of the
16:07:48 24 parties--is that organizations that pay for ads that run
16:07:52 25 shortly before an election that refer to a clearly

16:07:55 1 identified candidate must file a report with the Delaware
16:07:58 2 Commission of elections that contains the names of those who
16:08:03 3 have donated \$100 or more during the election period.

16:08:06 4 Plaintiffs allege that they want to run ads in
16:08:10 5 the pre-election window that will mention candidates for
16:08:13 6 election, but that Plaintiffs have refrained from doing so
16:08:18 7 because essentially they don't want to disclose their donors
16:08:21 8 and they don't want to violate the Delaware Elections
16:08:24 9 Disclosure Act.

16:08:26 10 Plaintiffs contend that the Act is
16:08:29 11 unconstitutional because it violates the right to private
16:08:32 12 association and free speech, in violation of the First
16:08:35 13 Amendment. Plaintiffs ask the Court to grant a preliminary
16:08:42 14 injunction to prevent the enforcement of the Act.

16:08:44 15 "A preliminary injunction is an extraordinary
16:08:46 16 remedy that should be granted only in limited
16:08:50 17 circumstances." And that's a quote from the Third Circuit
16:08:52 18 in *Delaware State Sportsmen's Association v. Delaware Dep't*
16:08:57 19 *of Safety*. It's at 108 F.4th 194, page 200 in 2024. The
16:09:07 20 case also explains that district courts have discretion to
16:09:11 21 grant or deny preliminary injunctions, but "[f]our canonical
16:09:16 22 guideposts are (1)the likelihood of success on the merits;
16:09:21 23 (2)the risk of irreparable injury absent preliminary relief;
16:09:26 24 (3)the balance of the equities; and (4)the public interest."
16:09:29 25 And "the first two factors are the most critical."

16:09:32 1 The parties agree that the "exacting scrutiny"
16:09:36 2 standard applies here. According to the Supreme Court,
16:09:40 3 exacting scrutiny requires that there be a substantial
16:09:44 4 relation between the disclosure requirement and a
16:09:47 5 sufficiently important governmental interest, meaning that
16:09:52 6 the strength of the governmental interest must reflect the
16:09:55 7 seriousness of the actual burden on First Amendment rights.
16:10:00 8 And that's from a case called *Americans for Prosperity*
16:10:05 9 *Foundation v. Bonta*, 594 U.S. 595 at page 607 from 2021.
16:10:10 10 That case also explains that exacting scrutiny also requires
16:10:16 11 that the disclosure requirement be narrowly tailored to the
16:10:20 12 interest it promotes. And that's on pages 608 to 611.
16:10:26 13 However, "exacting scrutiny does not require that disclosure
16:10:34 14 regimes be the least restrictive means of achieving their
16:10:38 15 ends."

16:10:39 16 The Third Circuit has previously addressed the
16:10:41 17 constitutionality of the Delaware Elections Disclosure Act.
16:10:45 18 In 2015, the Third Circuit held in a case called *Delaware*
16:10:49 19 *Strong Families v. Attorney General of Delaware* that
16:10:53 20 application of the act to the Plaintiffs in that case
16:10:56 21 survived exacting scrutiny. And the case cite for that is
16:11:03 22 793 F.3d 304 at pages 309 to 312.

16:11:08 23 Plaintiffs are argue that this Court is not
16:11:11 24 bound by *Delaware Strong Families* because, subsequently, in
16:11:16 25 2021, the Supreme Court clarified in *Bonta* that exacting

16:11:25 1 scrutiny requires that the disclosure requirement be
16:11:29 2 narrowly tailored to the interest it promotes. And
16:11:33 3 Plaintiffs say that requirement was not there when *Delaware*
16:11:36 4 *Strong Families* came out.

16:11:40 5 But this Court is bound by third circuit
16:11:43 6 precedent unless it is obviously in conflict with subsequent
16:11:48 7 precedent from the Supreme Court. I'm unpersuaded that
16:11:54 8 *Delaware Strong Families* is obviously in conflict with the
16:11:58 9 exacting scrutiny standard set forth in *Bonta*. Indeed,
16:12:03 10 Delaware Strong Families expressly concluded that the
16:12:06 11 Delaware Elections Disclosure Act was "narrowly tailored."
16:12:11 12 That case rejected challenges that the Act's monetary
16:12:15 13 thresholds, the types of media covered, the length of the
16:12:20 14 statutory "election period," and the lack of so-called
16:12:24 15 earmarking provisions. And the Third Circuit's observation
16:12:31 16 that exacting scrutiny does not require use of the least
16:12:36 17 restricted means of advancing the state's interest is
16:12:39 18 entirely consistent with *Bonta*.

16:12:41 19 Accordingly, I find that Plaintiff has failed to
16:12:45 20 demonstrate any likelihood of success in winning a facial
16:12:49 21 challenge to the constitutionality of the Act.

16:12:52 22 Plaintiffs spend a lot less time on their
16:12:56 23 as-applied challenge. That said, the parties agree that a
16:13:01 24 plaintiff can succeed with an as-applied challenge in the
16:13:04 25 context of an election communication donor disclosure

16:13:08 1 requirement if the plaintiff can demonstrate a "reasonable
16:13:13 2 probability that disclosure of its contributors names will
16:13:18 3 subject them to threats, harassment, or reprisals from
16:13:21 4 either government officials or private parties." And that's
16:13:24 5 from the *Citizens United* case, 558 U.S. at page 367.

16:13:33 6 Here, Plaintiffs as-applied challenge is based
16:13:38 7 on generic allegations and/or allegations regarding contexts
16:13:43 8 unrelated to disclosure of donors in the election
16:13:46 9 communications context.

16:13:48 10 Plaintiffs submitted evidence via a declaration
16:13:51 11 that they "understand that both current and potential future
16:13:56 12 donors to our organization are fearful of having their names
16:14:00 13 and addresses disclosed as donors to or supporters of AFP
16:14:07 14 and/or AFPF." That's document number five at paragraph 17.
16:14:14 15 And that "AFP, AFPF, their employees, supporters, and donors
16:14:22 16 have been subject to threats and harassment in the past."
16:14:25 17 And that's at paragraph 18.

16:14:26 18 Plaintiffs then provide evidence of generic
16:14:29 19 examples such as that "in Vermont we have experienced
16:14:34 20 consistent harassment and threats from groups that disagreed
16:14:36 21 with us on economic policy initiatives to the point where we
16:14:40 22 had to hire security for our events." That's paragraph 19.
16:14:43 23 An AFP office in North Dakota was vandalized. That's
16:14:49 24 paragraph 20. Legislators in other states have made public
16:14:53 25 comments critical of AFP. That's paragraph 21. And in

16:14:54 1 other litigations AFP has provided other courts with
16:14:59 2 firsthand evidence of threats. That's at paragraph 22.

16:15:02 3 The evidence and argument presented by
16:15:07 4 Plaintiffs for their as-applied challenge is scant. The
16:15:10 5 Court cannot say on this record that Plaintiffs have
16:15:12 6 demonstrated a likelihood of success in showing a reasonable
16:15:15 7 probability that disclosure of Plaintiffs' donors names
16:15:18 8 pursuant to the Delaware law will subject them to threats,
16:15:22 9 harassments, or reprisals from Government officials and
16:15:26 10 private parties. There are no allegations or evidence of
16:15:29 11 threats from Delaware government officials historically nor
16:15:36 12 is there any suggestion that Delaware will target Plaintiffs
16:15:39 13 in the future. Plaintiffs' evidence with respect to threats
16:15:43 14 from private parties is generic, undated, focuses entirely
16:15:46 15 on threats to AFP as an organization as opposed to specific
16:15:50 16 donors, and is not specific to disclosure of donor
16:15:54 17 information, nor is it tied to electioneering
16:15:56 18 communications, Delaware, or electioneering communications
16:16:00 19 in Delaware.

16:16:02 20 And while I'll accept for the purposes of the
16:16:04 21 argument that the proposition that some potential donors
16:16:09 22 would not contribute and current donors would stop
16:16:13 23 contributing if Plaintiffs decided to make electioneering
24 communications and are required to disclose donor
16:16:18 25 information pursuant to the Delaware law, that is not

16:16:21 1 sufficient to show a likelihood of success that this
16:16:26 2 campaign finance law is unconstitutional as applied to
16:16:29 3 Plaintiffs. Disclosure in this context is constitutionally
16:16:33 4 permissible even when it places some burden on first
16:16:37 5 amendment rights because the state has a substantial
16:16:40 6 interest in disclosing to the public the identities of the
16:16:44 7 persons funding electioneering communications.

16:16:47 8 The record before the Court is insufficient to
16:16:49 9 demonstrate a likelihood of success that Plaintiffs' donors
16:16:53 10 will be subjected to threats, harassments, or reprisals due
16:16:56 11 to the Delaware statute.

16:16:57 12 And I footnote this: While certain remarks in
16:17:02 13 Plaintiffs' briefing and by Plaintiffs' counsel during the
16:17:07 14 oral argument today suggests that Plaintiffs may think it is
16:17:12 15 relevant to their challenge that some or all of the ads they
16:17:15 16 intend to run might not be the functional equivalent of
16:17:19 17 express advocacy, the legal implications of that were not
16:17:22 18 fairly presented to the Court in this motion, so the Court
16:17:24 19 has not considered that issue.

16:17:26 20 For all the reasons stated, I conclude that the
16:17:30 21 record does not demonstrate a likelihood of success on
16:17:34 22 Plaintiffs facial or as-applied challenge.

16:17:40 23 I will exercise my discretion to decline to
16:17:42 24 enter the injunction. The Delaware Act under consideration
16:17:47 25 is not a new law. It has been on the books for more than a

16:17:50 1 decade. The status quo is that the law is enforceable.
16:17:54 2 Plaintiffs have not shown a likelihood of success. Even if
16:17:57 3 all of the other factors favored Plaintiffs, the Court is
16:18:02 4 exercised its discretion to deny the injunction.

16:18:04 5 And that completes the Court's ruling on the
16:18:06 6 motion.

16:18:07 7 I'm not sure how the parties intend to proceed
16:18:14 8 given the Court's ruling today. If Plaintiff does file an
16:18:19 9 appeal in denial of the PI to the Third Circuit, it seems to
16:18:26 10 me it would be a good idea to have the parties meet and
16:18:29 11 confer and let us know their positions as to whether the
16:18:33 12 matter should continue forward in the District Court while
16:18:38 13 that appeal is pending.

16:18:41 14 So that's my thinking. Can I hear anybody's
16:18:45 15 comments on that?

16:18:47 16 MR. DICKERSON: Your Honor, this is Allen
16:18:53 17 Dickerson for the Plaintiffs. That seems reasonable to us.
16:18:57 18 We'll plan to meet and confer with opposing counsel in the
16:19:03 19 event that an appeal is taken.

16:19:03 20 THE COURT: All right. Thank you.

16:19:03 21 Can I hear from Defendants?

16:19:06 22 MS. BURTON: From Defendants, Your Honor, we'll
16:19:09 23 meet and confer with Plaintiffs once they have determined
16:19:12 24 whether or not to appeal.

16:19:14 25 THE COURT: All right. Thank you very much.

16:19:17 1 Thanks, everyone. Have a good night. We'll be adjourned.

16:19:22 2 MS. BURTON: Thank you, Your Honor.

16:19:24 3 MR. DICKERSON: Thank you.

16:19:26 4 (Court adjourned at 4:19 p.m.)

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I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceedings.

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/s/ Stacy M. Ingram, RPR
Official Court Reporter
U.S. District Court

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