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appeared that DuPont Merck silently withdrew, the court found it was not free from the ramifications of the alleged conspiracy. Therefore, the court reversed the district court and held that DuPont Merck had been improperly dismissed.

In conclusion, the Seventh

Circuit reversed the four rulings of the district court, which Plaintiffs appealed from by holding that: (1) indirect purchasers were barred from filing suit against manufacturers under federal law; (2) the class action suit filed pursuant to Alabama antitrust law

should have been remanded to state court; (3) the wholesalers were improperly dropped as defendants; and (4) DuPont Merck was improperly dismissed as a defendant.

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California Judicial Candidate Requirements Did Not Violate the U.S. Constitution

By Sara Marzullo

In *NAACP v. Jones*, 131 F.3d 1317 (9th Cir. 1997), the United States Court of Appeals for the Ninth Circuit held that Los Angeles County's (the "County") reimbursement system (the "system"), which requires judicial candidates to reimburse the County for printing their candidate statements in the Official Sample Ballot and Voter Information Booklet and which does not provide public funding for campaigns, does not violate the Equal Protection Clause of the Fourteenth Amendment or any fundamental right under the First Amendment.

Each judicial candidate may print a 200-word statement in the Official Sample Ballot which is circulated to every voter in the County that describes his or her background and position on the issues. Under a practice known as the "cost-reimbursement requirement," however, all judicial candidates may be required to reimburse the County for the printing costs of their statements in the Official Sample Ballot and Voter

Information Booklet. By statute, the County Board of Supervisors can decide each campaign year whether judicial candidates will have to reimburse the County for the costs of printing. See CAL. ELEC. CODE § 13307 (West 1997). When the Supervisors require these cost-reimbursement payments, these payments do not fund elections, and the County may not retain them.

In response to the cost-reimbursement requirement, the NAACP, Charles Lindner (a former candidate), and voters of the County ("Plaintiffs") brought suit against the Secretary of State of California, Bill Jones, and other County officials ("Defendants"). Plaintiffs alleged that the County's campaign rules created a "wealth primary" forcing candidates to spend a significant amount of money to run a meaningful campaign.

Plaintiffs argued that the "wealth primary" violated the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, and they sought declaratory and injunctive relief.

Plaintiffs contended that the County should print every candidate's statement free of charge and create a public fund for potential candidates that would allow them to run meaningful campaigns.

The district court dismissed Plaintiffs' claims against Secretary of State Jones pursuant to Fed. R. Civ. P. 12(b)(6) for failure to plead with specificity. In particular, Plaintiffs failed to plead specific incidents showing Jones violated their rights. In addition, the district court dismissed Plaintiffs' claims against the other Defendants for lack of standing because they failed to allege an "injury in fact." Plaintiffs also brought state law claims but did not appeal them.

No "Heightened Scrutiny" Applied

On appeal, the Ninth Circuit first determined whether it should analyze Plaintiff's equal protection claim by using a "heightened scrutiny analysis." Courts apply a

“heightened scrutiny analysis” only when a practice burdens a suspect class or a fundamental right. If heightened scrutiny does not apply, the County’s actions need only be “rationally related” to a state purpose. Wealth is not a suspect category that receives heightened scrutiny. Race is a suspect category, but the Ninth Circuit stated that if Plaintiffs wished to bring an equal protection claim alleging a disparate effect on racial categories, they would have had to allege discriminatory intent. Plaintiffs in this case did not allege such intent. The court, therefore, decided the case based solely on the issue of wealth, rather than race, and held that the County judicial election process did not restrict a suspect class. The court then proceeded to determine whether the County election process restricted fundamental rights.

Fundamental First Amendment Rights Not Restricted

Plaintiffs claimed that the system violated their fundamental First Amendment rights by restricting their access to candidates’ viewpoints. The court referred to its prior decision in *Kaplan v. Los Angeles*, 894 F.2d 1076 (9th Cir. 1990), which held that “[a] forum created by the government to allow a limited class of speakers to address a particular class of topics. . . is a limited public forum . . . [and] content neutral restrictions [should] serve a significant state interest, in a narrowly tailored fashion and leave open ample alternative channels of communication.” *Id.* at 1080.

In *Kaplan*, the Ninth Circuit

held that as long as a reimbursement process did not inhibit a candidate’s ability to get on the ballot, or adversely affect his or her ability to communicate views by other means, it did not violate the First Amendment for a county to require reimbursement of the charges that the County would incur for costs relating to the distribution information. *See id.* at 1081. Because the County’s system did not violate any of the provisions set forth in *Kaplan*, the court held that Plaintiff Lindner did not have a First Amendment right to have his statement printed free of charge.

Additionally, the Ninth Circuit held that voters did not have a First Amendment right to receive the candidate information as it would be included in the candidate’s statement in the Official Ballot. Although the First Amendment protects the rights of both speakers and listeners, no authority exists for the proposition that the listener’s rights outweigh the speaker’s. Therefore, although *Kaplan* did not specifically address the question of listener’s rights, the court found the case applicable because if Plaintiff Lindner did not have a fundamental right to publish his statement for free, the voters did not subsequently have a derivative right to receive it.

The court also held that the voters did not have a fundamental right to receive a state-funded campaign speech. The First Amendment rights of voters extend only to the right to assemble and associate “for the advancement of political beliefs,” and “to cast their votes effectively.” By asserting that they had a right to publicly funded campaigns, Plaintiffs requested that the court extend First Amendment rights beyond boundaries supported by any precedent, and the court

refused to do so.

Finally, the court held that the voter Plaintiffs’ claim that the system caused “viewpoint discrimination” because the County required all or none of the candidates to pay for publishing their statements was without merit. Additionally, Plaintiffs failed to allege discriminatory intent. Therefore, the court found that the “wealth primary” did not violate a fundamental right under the First Amendment.

No Fundamental Right Exists in Electing Candidates of Choice

Relying on *Smith v. Allwright*, 321 U.S. 649 (1944), Plaintiffs also claimed that “voters have a fundamental right to contribute effectively to a candidate’s campaign.” In *Smith*, the Court held that excluding African-Americans from a Democratic primary was unconstitutional on two separate grounds. First, the Court found that a Texas law excluding African-Americans from the primary effectively excluded them from voting in the general election, a right to which they were entitled.

In the present case, the court found such facts distinguishable. Plaintiffs argued that because candidates bear the cost of having their statements printed, which Plaintiffs claimed was a “necessary part of the election process,” they were thereby excluded from contributing to the success of campaigns because of their lack of wealth. However, the court explained that in *Smith*, African-Americans were excluded from a portion of the electoral process, while in the present case there was

“no state action putting wealthy voters in a better position to contribute to campaigns than non-wealthy voters.” Additionally, in *Smith*, African-Americans were denied the right to vote, and the Plaintiffs in this case made no such claim. The court refused to recognize the right to run a financially successful campaign, which it concluded was not comparable to the right vote. Additionally, the court noted that no voters’ rights cases supported Plaintiffs’ argument because Plaintiffs did not allege that they had lost their right to vote. Instead, Plaintiffs merely alleged that their ability to influence others prior to voting was diminished by their lack of wealth. The court held that there is no fundamental right for every voter to have the “same access to the campaigning process.”

No Fundamental Right to Run for Office

The court next held that the system did not violate Plaintiff Lindner’s fundamental rights as a

candidate. The system neither violated his right to be on the ballot, nor his right to have information distributed to the public. The court stated that just as in *Kaplan*, the Sample Ballot and Voter Information Booklet provided only one way for candidates to communicate their qualifications to the public and candidates are only required to pay printing costs if they choose to use that method. Based on this reasoning, the court held that the County’s “wealth primary” did not violate any fundamental rights and, therefore, did not qualify for a “heightened scrutiny analysis.”

County Reimbursement System Passed the Rational Basis Test

Because the court found that the County’s “wealth primary” did not burden a suspect class or a fundamental right, the court analyzed the County’s judicial election process using the “rational basis” test. Under the “rational basis” test, a state action is valid when it is “rationally related to a

legitimate purpose.” Here, the court found that requiring candidates to pay the costs of printing their statements was rationally related to the legitimate goals of having candidates finance their own campaigns and keeping down the costs to the County. The court again emphasized that printing statements in the Ballot merely was one of many methods of running a campaign.

Without applying a “heightened scrutiny analysis,” the court found that the County’s judicial election process was valid because neither candidates nor voters have a fundamental right to judicial elections that are of equal access with regard to wealth. The court followed the Supreme Court, which has refused to recognize that every candidate has a right to an equal chance of success in election campaigns.

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Annuity Investors Held to Obligations Under Their Group Contracts

By Bonnie Katubig

In *Otto v. Variable Annuity Life Ins. Co.*, 134 F.3d 841 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit affirmed the United States District Court for the Northern District of Illinois by holding that retirement annuity companies are held strictly and

singly to the contractual obligations they set forth in their group contracts with their investors. Furthermore, the court found that challenges for breaches of contracts to those obligations must be supported fully in the contracts.

Retirement Investment Program Detailed Through Contracts

Beverly Otto and several teachers (“Plaintiffs”) invested in retirement accounts with Variable Annuity Life