

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

August 1, 2011

Before

DANIEL A. MANION, Circuit Judge

ILANA DIAMOND ROVNER, Circuit Judge

DAVID F. HAMILTON, Circuit Judge

WISCONSIN RIGHT TO LIFE STATE	]	Appeal from the United	
POLITICAL ACTION COMMITTEE,	]	States District Court for	
Plaintiff-Appellant,	]	the Eastern District of	
	]	Wisconsin.	
No. 11-2623	v.	]	
		]	No. 2:10-cv-00669-CNC
TIMOTHY VOCKE, in his official	]		
capacity as chair and member of the	]	Charles N. Clevert, Jr.,	
Wisconsin Government Accountability	]	Chief Judge.	
Board, et al.,	]		
Defendants-Appellees.	]		

The following are before the court:

1. **PLAINTIFF-APPELLANT WRTL-SPAC'S MOTION FOR INJUNCTION PENDING APPEAL OR TO EXPEDITE THE FULL HEARING**, filed on July 27, 2011, by counsel for the appellant.
2. **DEFENDANTS-APPELLEES' OPPOSITION TO PLAINTIFF-APPELLANT'S MOTION FOR INJUNCTION PENDING APPEAL OR TO EXPEDITE THE FULL HEARING**, filed on July 29, 2011, by counsel for the appellees.
3. **PLAINTIFF-APPELLANT WRTL-SPAC'S REPLY TO DEFENDANTS' RESPONSE TO WRTL-SPAC'S MOTION FOR INJUNCTION PENDING APPEAL OR TO EXPEDITE THE FULL HEARING**, filed on July 30, 2011, by counsel for the appellant.

Wisconsin Right to Life State Political Action Committee (WRTL-SPAC) alleges that the \$10,000 aggregate contribution limit imposed by Wis. Stat. § 11.26(4) is unconstitutional as applied to political committees, such as itself, that engage in independent spending for political speech. It asks us to enjoin the members of the Wisconsin Government Accountability Board (GAB) and the Milwaukee County district attorney from enforcing and prosecuting violations of the statute pending resolution of this appeal. WRTL-SPAC and the Wisconsin Right to Life Committee brought the underlying action last year, alleging violations of their First and Fourteenth Amendment rights with respect to various provisions of Wisconsin statutes and GAB regulations contained in the Wisconsin Administrative Code which regulate campaign finance in the state. The district court abstained from proceeding until the Wisconsin Supreme Court resolves an original action pending before it that challenges the constitutionality of Wis. Admin. Code GAB § 1.28 and other statutes and regulations. GAB § 1.28 applies the Campaign Financing statutes set forth in Wisconsin Statute Chapter 11 when “[i]ndividuals other than candidates and persons other than political committees” make certain political contributions or certain communications for a political purpose. In light of Wisconsin’s upcoming special elections to be held on August 9 and 16, 2011, WRTL-SPAC asked the district court to lift the stay only with respect to its claim that the \$10,000 aggregate contribution limit is unconstitutional as applied to it, arguing that this claim is not affected by the pending Wisconsin Supreme Court case. The district court denied the request and WRTL-SPAC appeals.

We have jurisdiction over the appeal from the order denying the motion to lift the stay because the decision had the effect of preventing WRTL-SPAC from seeking and obtaining an injunction. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 714-15 (1996); *Medical Assur. Co. v. Hellman*, 610 F.3d 371, 376-77 (7th Cir. 2010); *Industrial Material Corp. v. City of Chicago*, 847 F.2d 1285, 1286-87 (7th Cir. 1988). Despite the appellees’ protests, we also are confident that WRTL-SPAC has standing to challenge § 11.26(4). Section 11.26(4) provides that “[n]o individual may make any contribution or contributions to all candidates for state and local offices and to any individuals who or committees which are subject to a registration requirement under § 11.05 . . . to the extent of more than a total of \$10,000 in any calendar year.” Although it does not make contributions, WRTL-SPAC receives contributions and has standing based on the rights of individuals who contribute to it. By limiting the amount individuals can contribute to WRTL-SPAC, the statute limits the contributions WRTL-SPAC receives. A third party has standing to act as an advocate of the rights of third parties who seek access to its services. *See Emily’s List v. Fed. Election Comm’n*, 581 F.3d 1, 5 (D.C. Cir. 2009). *See also U.S. Dept. of Labor v. Triplett*, 494 U.S. 715, 720-21 (1990) (allowing lawyer to challenge fee provisions of the Black Lung Benefit Act on behalf of the claimants who hired him); *Craig v. Boren*, 429 U.S. 190, 195 (1976) (allowing liquor dealer to challenge alcohol regulation based on its patrons’ equal-protection rights); *Pierce v.*

*Soc'y of Sisters*, 268 U.S. 510, 536 (1925) (allowing private schools to assert parents' rights to direct their children's education); *Ezell v. City of Chicago*, No. 10-3525, 2011 WL 2623511, at \*7 (7th Cir. July 6, 2011) (explaining a supplier of firing-range facilities had standing to challenge the firing-range ban based on its own harm and as an advocate of the rights of third parties who seek access to the firing ranges).

WRTL-SPAC has demonstrated that it is reasonably likely to succeed on the merits of the appeal. WRTL-SPAC argues, and the appellees do not refute in their response, that the action pending before the Wisconsin Supreme Court will not resolve the constitutionality of § 11.26(4) as applied to it and similarly-situated political committees. Regardless of whether the Wisconsin Supreme Court upholds § 1.28, the aggregate contribution limit will apply to contributions WRTL-SPAC receives. The D.C., Fourth, and Ninth Circuits have held that contribution limits are unconstitutional when applied to contributions applied only for independent spending for political speech. *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 694-95 (D.C. Cir. 2010) (en banc), *cert. denied*, 131 S. Ct. 553 (2010); *North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274, 292 (4th Cir. 2008); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 695 (9th Cir. 2010), *cert. denied*, 131 S. Ct. 392 (2010). The appellees respond that we are not bound by the authorities of our sister circuits, but these decisions lend support to WRTL-SPAC's arguments and to its reasonable likelihood of success on appeal. *See also Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011); *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010).

In addition, WRTL-SPAC has shown that it meets the other requirements for injunctive relief pending appeal. "[V]iolations of First Amendment rights are presumed to constitute irreparable injuries." *Christian Legal Society v. Walker*, 453 F.3d 853, 867 (7th Cir. 2006), *citing Elrod v. Burns*, 427 U.S. 347, 373 (1976). There is no adequate remedy at law to address WRTL-SPAC's alleged harm and WRTL-SPAC has demonstrated that it faces irreparable harm if the enforcement of § 11.26(4) is not enjoined. *Ezell*, 2011 WL 2623511 at \*10. Accordingly,

**IT IS ORDERED** that the motion for an injunction is **GRANTED** to the extent the defendants are enjoined from enforcing the \$10,000 limit set forth in Wis. Stat. § 11.26(4) as applied to any non-coordinated expenditures by individuals or committees. By non-coordinated expenditures, we mean any independent expenditures that are not made in concert or cooperation with or at the request or suggestion of a candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

**IT IS FURTHER ORDERED** that briefing in the appeal is **EXPEDITED** and will proceed as follows:

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1. The brief and required short appendix of the appellant is due by August 15, 2011.
2. The brief of the appellees is due by August 29, 2011.
3. The reply brief of the appellant, if any, is due by September 6, 2011.

No extensions of time to file the briefs will be granted absent extraordinary and unforeseen circumstances.

Oral argument in the appeal will be scheduled during the week of September 12th or September 19th, 2011.

**Important Scheduling Notice !**

Notices of hearing for particular appeals are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your particular appeal might be scheduled, please write the clerk advising him of the time period and the reason for such unavailability. Session data is located at <http://www.ca7.uscourts.gov/cal/calendar.pdf>. Once an appeal is formally scheduled for a certain date, it is very difficult to have the setting changed. See Circuit Rule 34(e).