

IN THE TENNESSEE COURT OF APPEALS
MIDDLE SECTION AT NASHVILLE

JOHN JAY HOOKER,)	
)	
Plaintiff/Appellant,)	
)	
vs.)	NO. M2003-01141-6OA-53-CV
)	
LAMAR ALEXANDER, et al,)	On Appeal from the Davidson
)	County Chancery Court
Defendant/Appellee.)	Case No. 02-3754-III

BRIEF OF PLAINTIFF/APPELLANT

JOHN JAY HOOKER, pro se (BPR 5118)
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ORAL ARGUMENT REQUESTED

(May, 2004)

ISSUES PRESENTED FOR REVIEW

1. Are campaign contributions by a voter or non-voter constitutional under the Federal and State Constitutions?

2. Is there a natural right to give a candidate campaign contributions under the First Amendment?

3. Are campaign contributions permissible under the Federal Constitution or the Tennessee Constitution?

4. Is there any First Amendment Right for the candidate to receive campaign contributions, even if the giving of them is permissible under the First Amendment?

5. Do the states have a Tenth Amendment right to control the election process for Congress, except as to time, place and manner provisions, under Article I, Section 4?

INTRODUCTION

The questions presented in this lawsuit are of seminal importance as the American political system today functions as a consequence of campaign contributions. However, it is submitted that these contributions are unconstitutional for several reasons.

A. The First Amendment was not designed as a vehicle to finance the election process and does not protect campaign contributions, notwithstanding the conventional wisdom to the contrary (see *Buckley v. Valeo*, 424 US 1 [1976]).

B. Campaign contributions violate the qualifications clauses, whether they be personal contributions by the candidate to his own campaign or contributions by a voter or non-voter to a candidate. The regulation of the election process is left by the Federal Constitution entirely to the states with the exception of Congress as to supervision of time, place and manner (Article I, Section 4) as it regards the House of Representatives, and time and manner as it regards the United States Senate under the Seventeenth Amendment. The election of the President of the United States is directed entirely by the states under the direction of the State Legislature. Congressional jurisdiction is limited to authority over electoral votes cast by the electors, elected by the State Legislature for their designee.

C. The powers not delegated to Congress under Article I, Section 4 B time, place and manner B are reserved to the States under the Tenth Amendment. Consequently, the states= constitutional provisions relating to the election process are protected by the Tenth Amendment.

STATEMENT OF THE CASE

Appellant John Jay Hooker appeals from the Chancellor=s Order (T.R. ____)
dismissing Appellant=s lawsuit under Rule 12 (see Rules of Civil Procedure). The lawsuit
claimed that by accepting campaign contributions from both voters and non-voters, Sen.
Alexander has violated both the Federal and State Constitutions.

STATEMENT OF FACTS

The facts in this case are not in dispute. The Appellant claims that Senator Alexander solicited and accepted campaign contributions in his 2002 campaign for the United States Senate and this conduct violated both the Federal and State Constitutions.

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ARGUMENT

The Founders set the qualifications for members of Congress which are inviolate. (see *U.S. Term Limits, Inc., v Thornton*, 514 US 779 [1995]). The Founders delegated to the States the inviolate power to set the qualifications for the electors. Congress has no power; therefore, to legislate with respect to the election process except as it relates to time, place and manner (Article I, Section 4). The exclusive power in the states does not permit Congress to authorize campaign contributions and, therefore, FECA 2 U.S.C. 431, et seq., does not authorize them and does not in any way limit the states in their right under Article I, Section 2, and the Seventeenth Amendment to conduct the election free from Congressional interference if not involving time, place and manner.

It is a legal fiction B said in blunt terms, **AA BIG LIE@** -- that the First Amendment has anything to do with campaign contributions as the First Amendment relates only to natural rights and not to political rights, i.e., the right to vote is not protected by the First Amendment and is a political right. The election process is a political matter and natural rights have nothing to do with the election process.

Moreover, the First Amendment is a restriction on the power of Congress, not on the power of the states. Therefore, the Fourteenth Amendment does not alter the First Amendment which, as aforesaid, does not relate to campaign contributions.

Accordingly, Sen. Alexander=s campaign contributions are not protected by the First Amendment, whether they be his personal contributions to his own campaign, contributions from his constituency or contributions from non-voters. This case is brought to challenge the conventional wisdom that emanates from the decision in *Buckley v. Valeo, supra*, and its progeny.

The State of Tennessee gives the people the right to a free and equal election under Article I, Section 5, outlaws any political qualification under Article I, Section 4 and limits the qualifications of the electors to age, residency and citizenship. The Constitution provides for the freedom of the election and the purity of the ballot box and does not delegate to the Legislature the power to alter the inviolate, unalienable rights reserved to the people by the Declaration of Rights.

The Founders, in defining the republican form of government and debating the qualifications of the elected and the electors, concluded not to advantage the wealthy and the well-borne over the ordinary citizen in the election process (see *Federalist Papers 39, 52, 57 & 60*). In *Federalist 60*, the Founders made it obvious so that the ratifiers would understand the Constitution did not favor the few over the many, the rich over the poor and the wealthy and the well-borne over the ordinary citizen by providing:

The truth is that there is no method of securing to the rich the preference apprehended but by prescribing the qualifications of property, either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the times and places and manner of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution and are unalterable by the Legislature.

Campaign contributions are obviously unconstitutional as the Federalists guaranteed there was no method of securing to the rich the apprehended preference. Respectfully said, the notion that campaign contributions are constitutional and protected by the First Amendment has no relationship to the reality of the historical facts, including the *Federalist Papers*, the ratifying conventions and the Constitution itself.

Moreover, the Tenth Amendment reserves to the states the powers not delegated to the federal government and, consequently, campaign contributions prohibited by the states, i.e., Tennessee, Elections shall be free and equal, are unconstitutional under both the Federal and State Constitutions.

CONCLUSION

Campaign contributions are unlawful under both the U.S. Constitution and the Tennessee Constitution. The Tennessee election for the United States Senate in 2002 which elected Sen. Alexander (the Appellate herein was an independent candidate) was unconstitutional in that Sen. Alexander solicited and accepted campaign contributions in direct violation of Article I, Section 5, which requires elections to be free and equal. No election can be free and equal where contributions unlevel the playing field for the various candidates.

The function of this lawsuit is to challenge the holding in *Buckley v. Valeo, supra*, which case predicated the questions presented by this case. The conventional wisdom is that campaign contributions are protected by the First Amendment and are subject to regulation by FECA 2 U.S.C. 431, et seq., whereas the truth is the Founders delegated to the states, as aforesaid, the power and responsibility to provide for an election process that provided for justice at the ballot box as an aspect of the blessings of liberty. Justice Thomas in his dissent in the *Term Limits* case, *supra*, noted that the *Buckley* case should be revisited under the qualifications clauses which could produce a different result.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded by first-class U.S. Mail, postage prepaid, to Janet M. Kleinfelter, Senior Counsel, Financial Division, P. O. Box 20207, Nashville, Tennessee, 37202, on this _____ day of May, 2004.

JOHN JAY HOOKER

ADDENDUM

FEDERAL CONSTITUTION

First Amendment

Tenth Amendment

Fourteenth Amendment

Seventeenth Amendment

TENNESSEE CONSTITUTION

Article I, Section 2

Article I, Section 4

Article I, Section 5