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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LONG BEACH AREA
CHAMBER OF COMMERCE, et
al.

Plaintiff(s),

vs.

CITY OF LONG BEACH,
CALIFORNIA,

Defendant.

CASE NO. CV 06-1497 PSG(RCx)

ORDER ON PLAINTIFFS' AND
DEFENDANT'S MOTIONS FOR
SUMMARY JUDGMENT

I. INTRODUCTION

The Long Beach Area Chamber of Commerce ("Chamber") and its political action committees (collectively with Chamber, "Plaintiffs") are suing the City of Long Beach, California ("Defendant") for violation of their federal constitutional rights. Specifically, the Plaintiffs bring suit under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202 alleging that the Defendant is violating the Plaintiffs' First Amendment rights, as made applicable to California by the Fourteenth Amendment, by enforcing an ordinance affecting independent expenditure committees (IECs). The Plaintiffs have already sought and received a preliminary injunction restraining the Defendant

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1 from enforcing the ordinance. The Plaintiffs have now brought a summary judgment
2 motion asking the Court to rule that Long Beach's ordinance is unconstitutional on its
3 face and as applied to the Plaintiffs and others similarly situated. The Defendant has
4 also brought a summary judgment motion asking for a ruling that the ordinance is
5 constitutional.

6 The Court rules that Long Beach's ordinance is unconstitutional as applied to
7 the Plaintiffs and others similarly situated.

8 **II. STATEMENT OF FACTS**

9 The Chamber is a non-profit mutual benefit corporation that participates in the
10 Long Beach municipal electoral process through its affiliated political action
11 committees ("PACs"). (Stipulation of Facts ("Stip."), ¶ 1.) The Chamber receives
12 dues from its approximately 1400 members, and the dues are structured based upon
13 the number of employees working for a particular member. (Stip., ¶¶ 2- 3.)
14 Approximately 90% of the Chamber's members are small businesses that employ
15 fewer than 10 employees. (Stip., ¶ 2.)

16 **A. The LBCRA**

17 On June 7, 1994, the City of Long Beach adopted, by voter initiative, the Long
18 Beach Campaign Reform Act, now codified at Title 2, Chapter 1 of the Long Beach
19 Municipal Code ("LBCRA"). (Stip., ¶ 5.) Section 2.01.610 of the LBCRA states:

20 Any person who makes independent expenditures supporting or opposing a
21 candidate shall not accept any contribution in excess of the amounts set forth
22 in Section 2.01.310.

23 The Long Beach Campaign Reform Act, Ord. C-7283 § 1.160 (emphasis added).
24 Currently, the contribution limits imposed by Section 2.01.310(b) ("Section 310(b)")
25 and Section 2.01.610 ("Section 610") are \$350 for committees making independent
26 expenditures in city council races, \$450 in city-wide non-mayoral races (city attorney,
27 city auditor, and city prosecutor), and \$650 in mayoral races. (Stip., ¶ 7.) These
28 contribution limits are adjusted to reflect inflationary changes based upon the

1 Consumer Price Index. (Stip., ¶ 8.) Section 2.01.310(B), before inflationary change
2 adjustment, states:

3 For primary and general elections, no person shall make to any committee
4 which supports or opposes a candidate and no such committee shall accept
5 from each such person a contribution or contributions totaling more than two
6 hundred fifty dollars (\$250.00) for the primary election and two hundred fifty
7 dollars (\$250.00) for the runoff election for city council members, three hundred
8 fifty dollars (\$350.00) for the primary election and three hundred fifty dollars
9 (\$350.00) for the runoff election for city attorney, city auditor or city prosecutor,
10 or five hundred dollars (\$500.00) for the primary election and five hundred
11 dollars (\$500.00) for the runoff election for mayor.

12 The Long Beach Campaign Reform Act, Ord. C-7283 § 1.130(B).

13 When Long Beach passed the LBCRA, the city codified several findings and
14 purposes for the ordinance. Section 2.01.120 declared:

15 A. Monetary contributions to political campaigns are a legitimate form of
16 participation in the political process, but the financial strength of certain
17 individuals or organizations should not permit the exercise of a disproportionate
18 or controlling influence on the election of candidates.

19 B. The rapidly increasing costs of political campaigns have forced many
20 candidates to raise larger and larger amounts of money from individuals and
21 interest groups with a specific financial stake in matters before the City Council.
22 This has caused a public perception that votes are being improperly influenced
23 by monetary contributions. This perception is undermining the credibility and
24 integrity of the governmental process.

25 (The Long Beach Campaign Reform Act, Ord. C-7283 § 1.120.)

26 B. The Effect of the LBCRA on the Chamber

27 Under the LBCRA, the Chamber's dues constitute "contributions" to it. (Stip., ¶
28 10.) Because some of the Chamber's members pay annual dues greater than the

1 contribution limits imposed by Sections 310(b) and 610, the Chamber itself is barred
2 from making any independent expenditures in Long Beach municipal elections. (Stip.,
3 ¶ 11.) Similarly, the Chamber's three PACs are prohibited from making any
4 independent expenditures in Long Beach municipal elections if the PACs accept
5 contributions in excess of the limits specified in Section 310. (Stip., ¶ 15.) For
6 example, if a PAC accepted a \$1000 donation that it used to support a ballot initiative,
7 the PAC would be barred from making any independent expenditures in the mayoral,
8 non-mayoral city-wide, and city council races. (Stip., ¶ 16.) Also, if a PAC accepted a
9 \$650 contribution, it could make independent expenditures in mayoral races, but it
10 would be barred from making any independent expenditures in non-mayoral city-wide
11 races or in city council races. (Stip., ¶ 17.)

12 As construed by the Defendant, the LBCRA forces the Chamber to change its
13 dues or organizational structure if it wishes to make any independent expenditures in
14 Long Beach municipal elections. Currently, the annual dues for businesses with less
15 than 10 employees is between \$350 and \$535 per year. (Stip., ¶ 4.) The dues for
16 businesses with between 10 and 100 employees are currently between \$560 and
17 \$1,330. (Id.) Some larger employers pay dues in excess of \$10,000 based on the
18 number of employees. (Id.) Under the LBCRA, the Chamber is not allowed to have
19 members with more than 10 employees if the Chamber wishes to make any
20 independent expenditures in city-wide non-mayoral elections because those
21 members' dues exceed the contribution limit of \$450 for city-wide non-mayoral
22 contributions. Therefore, the Chamber is forced to alter its dues or organizational
23 structure if it wishes to participate in city-wide elections and also wishes to continue to
24 welcome members with more than 10 employees.

25 LBCRA Sections 310 and 610 do not place restrictions against individuals,
26 acting alone, and who have not made contributions to independent expenditure
27 committees, from personally making independent expenditures in any Long Beach
28 election. (Stip., ¶ 19.)

1 If the Defendant is not enjoined from enforcing Sections 310(b) and 610, the
2 Chamber will be subject to civil and criminal prosecution for violation of the
3 contribution limits set forth in those sections should the Chamber accept in any given
4 election cycle a contribution or contributions from any person that in the aggregate
5 exceed the limits for that election cycle and in the same election cycle makes
6 independent expenditures in a Long Beach municipal election. (Stip., ¶ 29.)

7 III. LEGAL STANDARD FOR SUMMARY JUDGMENT

8 Federal Rule of Civil Procedure 56(c) establishes that summary judgment is
9 proper only when "the pleadings, depositions, answers to interrogatories, and
10 admissions on file, together with the affidavits, if any, show that there is no genuine
11 issue as to any material fact and that the moving party is entitled to a judgment as a
12 matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of
13 demonstrating the absence of a genuine issue of fact for trial. See Anderson v.
14 Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). If
15 the moving party satisfies the burden, the party opposing the motion must set forth
16 specific facts showing that there remains a genuine issue for trial. See id. at 257.

17 As set forth in the parties' motions for summary judgment and the
18 accompanying stipulation of facts, the sole question presented to the Court is a legal
19 one, namely whether the LBCRA unconstitutionally infringes the Chamber's First
20 Amendment rights.

21 IV. DISCUSSION

22 A. The First Amendment Implications

23 We begin our analysis of Long Beach's campaign finance ordinance by turning
24 to the U.S. Supreme Court for guidance. In its seminal decision on campaign finance
25 laws, Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L. Ed. 2d 659 (1976), the
26 Supreme Court discussed the ability of Congress to restrict both campaign
27 contributions and campaign expenditures in view of the First Amendment.

28 In deciding a constitutional challenge to the Federal Election Campaign Act of

1 1971 ("FECA") based on First Amendment grounds, the Court said that FECA's
2 "contribution and expenditure limitations operate in an area of the most fundamental
3 First Amendment activities. Discussion of public issues and debate on the
4 qualifications of candidates are integral to the operation of the system of government
5 established by our Constitution. The First Amendment affords the broadest protection
6 to such political expression in order "to assure (the) unfettered interchange of ideas for
7 the bringing about of political and social changes desired by the people." Buckley,
8 424 U.S. at 14 (citing Roth v. United States, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.
9 Ed. 2d 1498 (1957)).

10 Regarding limits on expenditures, the Court explained that "[a] restriction on the
11 amount of money a person or group can spend on political communication during a
12 campaign necessarily reduces the quantity of expression by restricting the number of
13 issues discussed, the depth of exploration, and the size of the audience reached.
14 This is because virtually every means of communicating ideas in today's mass society
15 requires the expenditure of money. ... The electorate's increasing dependence on
16 television, radio, and other mass media for news and information has made these
17 expensive modes of communication indispensable instruments of effective political
18 speech." Buckley, 424 U.S. at 19.

19 "By contrast with a limitation upon expenditures for political expression, a
20 limitation upon the amount that any one person or group may contribute to a
21 candidate or political committee entails only a marginal restriction upon the
22 contributor's ability to engage in free communication. A contribution serves as a
23 general expression of support for the candidate and his views, but does not
24 communicate the underlying basis for the support. The quantity of communication by
25 the contributor does not increase perceptibly with the size of his contribution, since
26 the expression rests solely on the undifferentiated, symbolic act of contributing. At
27 most, the size of the contribution provides a very rough index of the intensity of the
28 contributor's support for the candidate. A limitation on the amount of money a person

1 may give to a candidate or campaign organization thus involves very little direct
2 restraint on his political communication, for it permits the symbolic expression of
3 support evidenced by a contribution but does not in any way infringe the contributor's
4 freedom to discuss candidates and issues." Id. at 20-21.

5 Furthermore, "[t]he First Amendment protects political association as well as
6 political expression. The constitutional right of association explicated in NAACP v.
7 Alabama, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L. Ed. 2d 1488 (1958) stemmed from
8 the Court's recognition that '(e)ffective advocacy of both public and private points of
9 view, particularly controversial ones, is undeniably enhanced by group association.'" Buckley, 424 U.S. at 15.

11 B. Level of Scrutiny Applied to Campaign Finance Laws

12 In McConnell v. Federal Elections Commission, 540 U.S. 93, 124 S. Ct. 619,
13 157 L. Ed. 2d 491 (2003), the Supreme Court reviewed the progression of its
14 campaign finance jurisprudence from its Buckley decision. "In Buckley and
15 subsequent cases, we have subjected restrictions on campaign expenditures to closer
16 scrutiny than limits on campaign contributions. [Citation] In these cases we have
17 recognized that contribution limits, unlike limits on expenditures, 'entai[] only a
18 marginal restriction upon the contributor's ability to engage in free communication.'" McConnell, 540 U.S. at 134-35.

19 The Supreme Court "recognized that contribution limits may bear 'more heavily
20 on the association right than on freedom to speak,' [Citation] since contributions serve
21 to 'affiliate a person with a candidate' and 'enabl[e] like-minded persons to pool their
22 resources.' [Citation] Unlike expenditure limits, however, which 'preclud[e] most
23 associations from effectively amplifying the voice of their adherents,' contribution
24 limits both 'leave the contributor free to become a member of any political association
25 and to assist personally in the association's efforts on behalf of candidates,' and allow
26 associations 'to aggregate large sums of money to promote effective advocacy.'
27 [Citation] The 'overall effect' of dollar limits on contributions is 'merely to require
28

1 candidates and political committees to raise funds from a greater number of persons.
2 [Citation] Thus, a contribution limit involving even 'significant interference' with
3 associational rights is nevertheless valid if it satisfies the 'lesser demand' of being
4 'closely drawn' to match a 'sufficiently important interest.'" McConnell, 540 U.S. at
5 135-36, 124 S.Ct. at 656.

6 The Ninth Circuit has also expressed its views on the level of scrutiny to apply
7 to laws that limit campaign expenditures and contributions. The Ninth Circuit has
8 stated that "[s]ubsequent Supreme Court decisions have construed Buckley as
9 requiring strict scrutiny of limitations on independent expenditures and lesser
10 constitutional scrutiny of limitations on contributions." Lincoln Club of Orange County
11 v. City of Irvine, California, 292 F.3d 934, 938 (9th Cir. 2002). In its own
12 pronouncement, the Ninth Circuit stated that "restrictions on contributions ... are
13 subjected to less exacting scrutiny than restrictions on independent expenditures."
14 VanNatta v. Keisling, 151 F.3d 1215, 1220 (9th Cir. 1998).

15 C. Level of Scrutiny to Apply to the LBCRA

16 Following Supreme Court and Ninth Circuit precedent, the Court should decide
17 the level of scrutiny to apply to the LBCRA based on whether it is a restriction on
18 campaign expenditures or a restriction on campaign contributions. A complication
19 arises because the LBCRA can be, and in this case is, characterized as both. This
20 issue lies at the heart of this case.

21 1. Ninth Circuit Precedent Under Lincoln Club

22 The Chamber argues that the Ninth Circuit decision in Lincoln Club is directly
23 on point and should clearly guide the Court's decision in this case. In Lincoln Club,
24 the Ninth Circuit considered an Irvine ordinance similar to the LBCRA, and the Ninth
25 Circuit noted that "neither the Supreme Court nor this Court has squarely confronted a
26 campaign finance law that limits contributions to independent expenditure
27 committees, as does Irvine's Ordinance. Although it is clear expenditure limitations
28 are subject to strict scrutiny and contribution limitations are subject to less than strict

1 scrutiny, our case law has not described the level of scrutiny appropriate for an
2 Ordinance that acts as both an expenditure and a contribution limitation.” Lincoln
3 Club, 292 F.3d at 937. Independent expenditures, by statutory definition, are
4 expenditures that expressly advocate a clearly identified result in an election but that
5 are not made to or at the behest of the affected candidate or committee. Cal. Govt.
6 Code § 82031. Irvine’s ordinance provided that:

7 Any person, including any committee, that makes any independent expenditure
8 during an election cycle in support of or opposition to any City candidate, shall
9 not accept any contribution(s) from any person which exceeds in the aggregate
10 the amount set forth in this section for that election cycle.

11 See Lincoln Club, 292 F.3d at 936. “The contribution limit in place for the two-year
12 [Irvine] election cycle ending with the November 2000 election was \$320. A person or
13 committee [was] subject to civil and criminal prosecution for violation of the Ordinance
14 if it accept[ed] during an election cycle contributions from any person that in the
15 aggregate exceed[ed] \$320, and in the same election cycle [made] independent
16 expenditures in support of or in opposition to candidates for office in an Irvine
17 municipal election.” Id. at 936.

18 The Ninth Circuit’s analysis of the Irvine Ordinance is significant to analyzing
19 the LBCRA. The Ninth Circuit stated:

20 “Irvine’s Ordinance clearly places a limit on contributions to independent
21 expenditure committees. Although such a restriction burdens speech and
22 associational freedoms, under Buckley and its progeny such a restriction does
23 not place a severe burden on protected speech and associational freedoms.
24 This is because Buckley does not consider political contributions to be fully
25 protected political speech. Under Buckley, political contributions are merely
26 speech by proxy because ‘the transformation of contributions into political
27 debate involves speech by someone other than the contributor.’ Buckley, 424
28 U.S. at 21, 96 S.Ct. 612. Viewed in light of the speech by proxy rationale, The

1 Lincoln Club's contributors (i.e., its dues-paying members) are merely engaging
2 in speech by proxy because it is the Lincoln Club, and not the contributors
3 themselves, that transforms the members' contributions into political debate.
4 Since the contributions themselves are not fully-protected political speech
5 under Buckley and its progeny, the Ordinance's contribution limit, standing
6 alone, does not warrant strict scrutiny.

7 However, the Ordinance does not merely restrict contributions. It also
8 restricts expenditures by barring an independent expenditure committee from
9 making any independent expenditures whatsoever if the source of the
10 committee's money is membership dues that exceed the Ordinance's
11 prescribed maximum. This feature of the Ordinance burdens protected speech
12 and associational interests in two important ways. First, if The Lincoln Club
13 maintains its present organizational structure, it will continue to be precluded
14 from making any political expenditures whatsoever in Irvine municipal
15 elections. Second, if The Lincoln Club chooses to comply with the Ordinance,
16 it will have to make dramatic changes to its organizational structure. In order to
17 comply with the Ordinance, The Lincoln Club would need to reduce its annual
18 dues from \$2,000 to \$160 (1/2 of the \$320 currently permitted under the
19 Ordinance per 2 year election cycle). If the Lincoln Club were to reduce its
20 annual dues from \$2,000 to \$160 in order to accommodate the Ordinance's
21 \$320 limit, The Lincoln Club would also need to expand its membership from
22 the current level of approximately 300 members to approximately 3,750
23 members in order to maintain the same funding level that it currently enjoys.
24 The Ordinance's expenditure limitation is a double-edged sword, placing a
25 substantial burden on protected speech (i.e., barring expenditures) while
26 simultaneously threatening to burden associational freedoms (i.e., by requiring
27 a restructuring of The Lincoln Club). We conclude that such substantial
28 burdens on protected speech and associational freedoms necessitate

1 application of strict scrutiny to the Ordinance."

2 Lincoln Club, 292 F.3d at 938-39 (emphasis added).

3 As is clear from a comparison of Irvine's Ordinance to the LBCRA, the
4 ordinances are very similar. The Defendant also acknowledged this by stating that
5 "the Lincoln Club Court considered a very similar statute ..." (Opposition to the
6 Plaintiffs' Motion for Summary Judgment ("Def.'s Opp."), p. 1). Because of the
7 similarities between the statutes, the Chamber argues that Lincoln Club should control
8 the level of scrutiny to apply in this case.

9 The Defendant presents two primary arguments to refute the Plaintiffs' reliance
10 on Lincoln Club. First, the Defendant argues that Lincoln Club is factually
11 distinguishable. Second, the Defendant argues that the Supreme Court's McConnell
12 decision has changed the landscape of campaign finance law after Lincoln Club, and
13 therefore, Lincoln Club has questionable precedential value now.

14 The Defendant first points out that, in Lincoln Club, Irvine's Ordinance was not
15 ruled unconstitutional on its face. Instead, the Ninth Circuit considered the "purpose
16 and effect" of Irvine's Ordinance when deciding that strict scrutiny should be applied.
17 When the district court on remand ruled Irvine's Ordinance unconstitutional, it ruled
18 that the statute was unconstitutional as applied to the plaintiff in that case and to
19 others similarly situated.¹ (Plaintiffs' Motion for Summary Judgment ("P.s' MSJ"), Exh.
20 A.)

21 Here, the Defendant argues that the ordinance is facially valid and that, as
22 applied to the Plaintiff, the ordinance does not affect the Chamber's ability to make
23 expenditures on political campaigns. By its express terms, the ordinance does not
24 limit expenditures the Chamber can make on political campaigns. Instead, the
25 ordinance limits the size of contributions the Chamber may receive if it wishes to

26 _____
27 ¹ Both Plaintiffs and Defendant attach copies of ordinances and district court
28 decisions as exhibits to their papers. Although the exhibits lack authentication, the Court
takes judicial notice that they are authentic.

1 make campaign expenditures. This was also the situation in Lincoln Club, but in that
2 case, the Ninth Circuit found that the Lincoln Club's First Amendment associational
3 rights were infringed because its organizational structure had to be drastically
4 changed if the Lincoln Club decided it wished to make any campaign expenditures.
5 See Lincoln Club, 292 F.3d at 938-39. The Lincoln Club would have been required to
6 cut its dues from \$2000 per year to \$160 per year in order to make any campaign
7 expenditures, and this was a substantial burden on the Lincoln Club's First
8 Amendment associational rights. Id.

9 In this case, however, the Defendant argues that no substantial burden on
10 associational rights is placed on the Chamber by the LBCRA. Unlike the Lincoln
11 Club, the Defendant argues that the Chamber is not entirely precluded from making
12 any campaign expenditures. The Defendant states that

13 "to the extent constituent members of the [Chamber] wish to contribute funds
14 for political speech, such members are free to contribute funds to the PACs
15 affiliated with the [Chamber] in amounts that comply with the ordinance, and in
16 turn those PACs are free to make independent expenditures, in furtherance of
17 political speech."

18 (Defendant's Motion for Summary Judgment ("Def.'s MSJ"), p. 19.) The Defendant
19 further states that

20 "Unlike the Lincoln Club, the Chamber's membership dues do not tantamount
21 to contributions to its PACs. Chamber dues are used for a variety of purposes,
22 including promoting business, educational practices, and lobbying. Instead of
23 automatically applying dues to an IEC, the Chamber elicits voluntary
24 contributions from members, distinct and apart from its dues ...

25 Additionally, unlike the massive organizational restructuring that Irvine's
26 ordinances would have required of the Lincoln Club, no similar concerns exist
27 in the instant case. The Chamber's due structure is based on the size of the
28 business applying for membership. This structure is not effected at all by the

1 City's ordinance."
2 (Def.'s Opp. to Plaintiffs' MSJ, p. 6.)

3 The Defendant's attempt to distinguish Lincoln Club fails for two primary
4 reasons. First, the Defendant has stipulated that because some of the Chamber's
5 members pay annual dues greater than the contribution limits imposed by the LBCRA,
6 the Chamber itself is barred from making any independent expenditures in Long
7 Beach municipal elections. (Stip., ¶ 11.) While the Chamber might contain PACs that
8 are organizationally distinct, the Chamber itself is barred from making independent
9 expenditures under the LBCRA. Whether or not the Chamber contains PACs is
10 irrelevant to the question of whether the LBCRA violates the Chamber's own
11 constitutional rights. Second, the Defendant has also stipulated that all dues the
12 Chamber receives qualify as "contributions" under the LBCRA, whether or not those
13 dues are used for political expenditures. (Stip., ¶ 10.) Thus, contrary to the
14 Defendant's contention, the Chamber would have to change its dues and
15 organizational structure if it wished to make independent expenditures.

16 Because the Defendant has failed to convince the Court that Lincoln Club is
17 distinguishable from the present case, the Defendant's argument for lower scrutiny
18 hinges on whether the Supreme Court's McConnell decision supersedes Lincoln Club.

19 2. Campaign Finance Regulation After McConnell v. FEC

20 In its 2003 McConnell decision, the Supreme Court considered constitutional
21 challenges to the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which
22 contained several amendments to FECA. In upholding the BCRA provisions, the
23 Supreme Court considered Congress's regulation of "soft money" donations,
24 donations "made solely for the purpose of influencing state or local elections"
25 (unaffected by FECA's regulation of federal election donations). McConnell, 540 U.S.
26 at 122. In upholding §§ 323(a) and 323(b) of BCRA, the Court noted that

27 "while §323(a) prohibits national parties from receiving or spending nonfederal
28 money, and §323(b) prohibits state party committees from spending nonfederal

1 money on federal election activities, neither provision in any way limits the total
2 amount of money parties can spend. 2 U.S.C. §§ 441(i)(a),(b) (Supp. II).
3 Rather, they simply limit the source and individual amount of donations. That
4 they do so by prohibiting the spending of soft money does not render their
5 expenditure limitations.”

6 Id. at 139.

7 The facts and reasoning from McConnell can be distinguished from Lincoln
8 Club. In Lincoln Club, the Irvine ordinance could have been viewed as simply limiting
9 the source and individual amounts of donations to independent expenditure
10 committees, just as BCRA's provisions were viewed in McConnell. However, in
11 Lincoln Club, the ordinance prohibited the plaintiff from making any independent
12 expenditures because of its organizational structure. If the plaintiff wished to make
13 independent expenditures, it would have been forced to drastically alter its dues and
14 organizational structure. Therefore, the plaintiff's First Amendment associational
15 rights were severely infringed by the ordinance. These considerations were not
16 issues in McConnell, and therefore, the Court believes Lincoln Club is still good law.

17 For the same reasons, the present case is distinguishable from McConnell.
18 Therefore, the Court determines that, under Lincoln Club, the LBCRA contains a
19 campaign expenditure limitation that substantially infringes the First Amendment right
20 of association, and the Court must apply strict scrutiny to the LBCRA.

21 D. Scrutiny Applied to the LBCRA

22 In Buckley, the Supreme Court ruled that because limits on campaign
23 expenditures represent substantial restraints on the quality and diversity of political
24 speech, they are only valid if they “satisfy the exacting scrutiny applicable to
25 limitations on core First Amendment rights of political expression.” Buckley, 424 U.S.
26 at 45. Exacting scrutiny requires that a law be “narrowly tailored to serve an
27 overriding state interest.” McIntyre v. Ohio Elections Commission, 514 U.S. 334, 347,
28 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995). The Buckley Court found that “the

1 government interest in preventing corruption and the appearance of corruption is
2 inadequate to justify [a] ceiling on independent expenditures." Buckley, 424 U.S. at
3 45-48.

4 In this case, the Defendant does not argue that the LBCRA can pass strict
5 scrutiny. Indeed, the strongest justification for the LBCRA that the Defendant raises is
6 the threat or perceived threat of corruption in the political process. However, Buckley
7 has made clear that the threat or perceived threat of corruption is an inadequate
8 justification for a law that acts as a limitation on campaign expenditures. Because the
9 LBCRA is not narrowly tailored to serve an overriding state interest, it fails strict
10 scrutiny.

11 V. CONCLUSION

12 Under the controlling Ninth Circuit precedent, the Court finds that it must
13 examine the LBRCA under strict scrutiny and that the LBCRA fails this scrutiny
14 because it is not narrowly tailored to serve an overriding state interest. Therefore, the
15 Court holds that the LBCRA is unconstitutional, as applied to the Chamber and others
16 similarly situated. The Court grants the Plaintiffs' motion for summary judgment and
17 denies the Defendant's motion for summary judgement.

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DATE: 4/10/07


PHILIP S. GUTIERREZ
United States District Judge

(PROOF OF SERVICE - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within entitled action; my business address is 333 West Ocean Boulevard, Long Beach, California 90802.

On May 9, 2007, I filled the within

NOTICE OF APPEAL

on all interested parties in said action, by depositing the original and/or a true copy thereof, enclosed in a sealed envelope addressed as follows:

Charles H. Bell Jr.
BELL, McANDREWS &
HILTACHK, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814

John C. Eastman
c/o Chapman University School of Law
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City Attorney of Long Beach
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Long Beach, California 90802-4664
Telephone (562) 570-2200

BY MAIL: I am "readily familiar" with the **firm's practice** of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Long Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

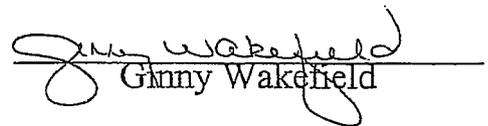
BY PERSONAL SERVICE: I caused to be delivered such document(s) by hand to the person(s) stated above.

BY FACSIMILE: In addition to the above service by mail, hand delivery or Federal Express, I caused said document(s) to be transmitted by telecopier to the addressee(s).

Executed on May 9, 2007 at Long Beach, California.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Ginny Wakefield