

## Public Campaign Funds Triggered by an Opponent's Expenditures

*Scott v. Roberts*

*(Robert L. Hinkle, N.D. Fla. 4:10-cv-283)*

Rick Scott, a self-funded primary election candidate for governor, filed a federal complaint in the Northern District of Florida on July 7, 2010, against Florida's secretary of state challenging the Florida Election Campaign Financing Act's provision of matching public funding for an opposing candidate's campaign once a candidate's expenditures reached \$2 per registered voter, or \$24,901,170, which was also the expenditure limit for a candidate who opted into public campaign subsidies.<sup>1</sup> With his complaint, the plaintiff filed a motion for a preliminary injunction.<sup>2</sup>

On July 9, Judge Robert L. Hinkle set a telephonic status conference for July 12<sup>3</sup> and ordered service on Florida's attorney general.<sup>4</sup> On the day of the conference, Judge Hinkle allowed Bill McCollum, the attorney general, to intervene as a defendant on his own behalf, because he was the opposing candidate who benefitted from the challenged statute.<sup>5</sup> Judge Hinkle set the case for hearing on July 14.<sup>6</sup>

In its 2008 case *Davis v. FEC*, the Supreme Court invalidated a "Millionaire Amendment," which increased contribution limits for candidates opposing candidates who spend large amounts of their own wealth on a campaign.<sup>7</sup> On July 14, 2010, Judge Hinkle denied Scott a preliminary injunction, concluding, "Promoting participation in public financing, and, thus, decreasing potential corruption at least indirectly through public financing, was not involved in *Davis*."<sup>8</sup>

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1. Complaint, *Scott v. Roberts*, No. 4:10-cv-283 (N.D. Fla. July 7, 2010), D.E. 1; *Scott v. Roberts*, 612 F.3d 1279, 1281, 1283, 1286 (11th Cir. 2010); Hearing Transcript at 86, *Scott*, No. 4:10-cv-283 (N.D. Fla. July 14, 2010, filed July 15, 2010), D.E. 28.

2. Preliminary Injunction Motion, *Scott*, No. 4:10-cv-283 (N.D. Fla. July 7, 2010), D.E. 3; *Scott*, 612 F.3d at 1287.

3. Order, *Scott*, No. 4:10-cv-283 (N.D. Fla. July 9, 2010), D.E. 8.

4. Order, *id.* (July 9, 2010), D.E. 10.

5. Intervention Order, *id.* (July 12, 2010), D.E. 18; *see* Intervention Motion, *id.* (July 12, 2010), D.E. 13.

6. Conference Transcript at 9, 16–17, *id.* (July 12, 2010, filed July 16, 2010), D.E. 32; Minutes, *id.* (July 12, 2010), D.E. 14; *see Scott*, 612 F.3d at 1281.

7. 554 U.S. 724 (2008); *see* Daniel P. Tokaji, *Election Law in a Nutshell* 308 (2013).

8. Hearing Transcript, *supra* note 1, at 93; Order, *Scott*, No. 4:10-cv-283 (N.D. Fla. July 14, 2010), D.E. 27; Minutes, *id.* (July 14, 2010), D.E. 25; *Scott*, 612 F.3d at 1289; *see* Mary Ellen Klas, *Bill McCollum Wins Round Over Matching Campaign Funds*, Miami Herald, July 15, 2010, at 1A.

On July 30, the court of appeals reversed Judge Hinkle's ruling and issued its own preliminary injunction against the matching funds that would be triggered by Scott's expenditures.<sup>9</sup> "The parties have not sufficiently explained how the Florida public financing system furthers the anticorruption interest."<sup>10</sup> The court of appeals concluded that the provision was not the least restrictive way to curtail corruption.<sup>11</sup>

On December 1, following Scott's November election as governor, Judge Hinkle granted McCollum's motion to withdraw from the case.<sup>12</sup> Judge Hinkle denied the remaining parties' joint motion for a permanent injunction, noting that the court of appeals had only decided the case on a preliminary injunction standard and the plaintiff was about to become the defendant's boss.<sup>13</sup> On June 28, 2011, however, Judge Hinkle did issue a permanent injunction in the plaintiff's favor in line with the Supreme Court's June 27 decision in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*.<sup>14</sup>

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9. *Scott*, 612 F.3d at 1281–82; see Mary Ellen Klas, *Court Deals Blow to Public Money Match for Bill McCollum Campaign*, Miami Herald, July 31, 2010, at 1A.

10. *Scott*, 612 F.3d at 1292.

11. *Id.* at 1281, 1290, 1294.

12. Order, *Scott*, No. 4:10-cv-283 (N.D. Fla. Dec. 1, 2010), D.E. 39.

13. *Id.*

14. Order, *id.* (June 28, 2011), D.E. 43; see *Ariz. Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. \_\_\_, 131 S. Ct. 2806 (2011).