

Nullifying Campaign Limits Shortly Before an Election

New York Progress and Protection PAC v. Walsh
(Paul A. Crotty, S.D.N.Y. 1:13-cv-6769)

On September 25, 2013, a political action committee filed a federal complaint challenging campaign contribution limits. On October 17, the district judge denied a preliminary injunction against decades-old limits challenged in an emergency case that could have been brought earlier. On October 24, the court of appeals ordered the district judge to issue a preliminary injunction. Six months later, the district judge awarded the political action committee summary judgment, and the parties later agreed to an attorney fee award of \$360,000.

Subject: Campaign activities. *Topics:* Campaign finance; interlocutory appeal; laches; attorney fees.

A political action committee filed a federal complaint in the Southern District of New York on September 25, 2013, challenging campaign finance regulations in light of the committee's desire to advocate for the election of a conservative candidate in the November 5 election for mayor of New York.¹

On the following day, the committee filed a motion for a preliminary injunction.² The committee also submitted a letter supporting urgency with a report that the prohibition on donations exceeding \$150,000 was in conflict with a pending contribution of \$200,000 and a desire to influence the mayoral election.³ The state replied that the urgency resulted from the plaintiff's delay in bringing the action.⁴

Judge Paul A. Crotty heard the case on October 8.⁵ On October 16, the committee filed a mandamus petition with the court of appeals seeking an order that Judge Crotty rule.⁶ Circuit Judge Dennis Jacobs granted the committee's motion for expedited consideration,⁷ but Judge Crotty ruled on Oc-

1. Complaint, *N.Y. Progress & Protection PAC v. Walsh*, No. 1:13-cv-6769 (S.D.N.Y. Sept. 25, 2013), D.E. 1; *N.Y. Progress & Protection PAC v. Walsh*, 733 F.3d 483, 485 (2d Cir. 2013); see Rich Calder & Carl Campanile, *Lhota PACs Punch: Big-\$\$ Donors Suing in Bid to Open Floodgates*, N.Y. Post, Sept. 26, 2013, at 10.

2. Preliminary Injunction Motion, *N.Y. Progress & Protection PAC*, No. 1:13-cv-6769 (S.D.N.Y. Sept. 26, 2013), D.E. 3; *N.Y. Progress & Protection PAC*, 733 F.3d at 485.

3. Plaintiff's Letter, *N.Y. Progress & Protection PAC*, No. 1:13-cv-6769 (S.D.N.Y. Sept. 26, 2013), D.E. 7.

4. State's Letter, *id.* (Sept. 26, 2013), D.E. 8.

5. Transcript, *id.* (Oct. 8, 2013, filed Nov. 19, 2013), D.E. 38; Docket Sheet, *id.* (Sept. 25, 2013) (D.E. 12).

6. Mandamus Petition, *In re N.Y. Progress & Protection PAC*, No. 13-3868 (2d Cir. Oct. 16, 2013), D.E. 1; *N.Y. Progress & Protection PAC*, 733 F.3d at 485.

7. Order, *In re N.Y. Progress & Protection PAC*, No. 13-3868 (2d Cir. Oct. 16, 2013), D.E. 13.

tober 17.⁸ Judge Crotty denied the plaintiff a preliminary injunction, noting the plaintiff's (1) asking the court to rush to dismantle a law, (2) asking the court to disrupt the status quo just days before an election, and (3) creating artificial urgency by challenging a law decades on the books so close to an election.⁹

The court of appeals agreed to hear an appeal of the injunction denial on October 18, the day originally scheduled for a hearing on the mandamus petition.¹⁰ On October 24, the court of appeals ordered Judge Crotty to issue a preliminary injunction against the contribution cap.¹¹ “Although we express no opinion on the ultimate outcome, the plaintiff here has a substantial likelihood of success on the merits.”¹² The delay in bringing the action was forgivable because it was filed only 15 days after the Republican primary election produced the candidate that the committee wished to support.¹³

On April 24, 2014, Judge Crotty granted summary judgment to the committee.¹⁴ On June 25, the parties agreed to an award of \$360,000 in attorney fees.¹⁵

8. Opinion, *N.Y. Progress & Protection PAC*, No. 1:13-cv-6769 (S.D.N.Y. Oct. 17, 2013), D.E. 31 [hereinafter October 17, 2013, Opinion], 2013 WL 5647168; Mandate, *In re N.Y. Progress & Protection PAC*, No. 13-3868 (2d Cir. Oct. 16, 2013), D.E. 33 (granting withdrawal of the mandamus petition); *N.Y. Progress & Protection PAC*, 733 F.3d at 485–86.

9. October 17, 2013, Opinion, *supra* note 8, at 9, 12; *see* Rich Calder, *A “Lhota” Cash Off the Table*, N.Y. Post, Oct. 18, 2013, at 16; Thomas Kaplan, *U.S. Judge Denies Bid by Lhota Supporters to Accept Unlimited Donations*, N.Y. Times, Oct. 18, 2013, at A22.

10. *N.Y. Progress & Protection PAC*, 733 F.3d at 486; Preliminary Injunction, *N.Y. Progress & Protection PAC*, No. 1:13-cv-6769 (S.D.N.Y. Oct. 24, 2013), D.E. 34.

11. *N.Y. Progress & Protection PAC*, 733 F.3d 489; *see* Daniel Beekman & Annie Karni, *Pol Pile of Cash: Ruling KOs Limits on PACs in a Windfall for Lhota*, N.Y. Daily News, Oct. 25, 2013, at 18; Thomas Kaplan, *Court Lifts Limit on Contributing to Pro-Lhota PAC*, N.Y. Times, Oct. 25, 2013, at A1.

12. *N.Y. Progress & Protection PAC*, 733 F.3d at 487.

13. *Id.* at 485.

14. *N.Y. Progress & Protection PAC v. Walsh*, 17 F. Supp. 3d 319 (S.D.N.Y. 2014); *see* Daniel Beekman, *Court: Nix N.Y. Limit on Elex \$*, N.Y. Daily News, Apr. 25, 2014, at 10; Carl Campanile, *Sad Judge Opens NY Pol \$pigots*, N.Y. Post, Apr. 25, 2014, at 4; Thomas Kaplan, *Judge Rejects State Limit on Donations to “Super PACs,”* N.Y. Times, Apr. 25, 2014, at A22.

15. Stipulated Order, *N.Y. Progress & Protection PAC*, No. 1:13-cv-6769 (S.D.N.Y. June 25, 2014), D.E. 79.