

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MERCER, FRASER CO. *et al.*,

No. C 08-4098 SI

Plaintiffs,

v.

**ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION AND
PRELIMINARILY ENJOINING
ENFORCEMENT OF MEASURE T**

COUNTY OF HUMBOLDT, CALIFORNIA,

Defendant.

On September 22, 2008, this Court heard argument on plaintiffs' motion for a preliminary injunction enjoining Humboldt County from enforcing Measure T, an initiative ordinance adopted by Humboldt County voters in 2006. Measure T prohibits non-local corporations, labor organizations, and non-profit groups from making campaign contributions and expenditures in Humboldt County local elections. After carefully reviewing the parties' briefs and the record, the Court hereby GRANTS plaintiffs' motion.

LEGAL STANDARD

Requests for preliminary injunctive relief require the movant to demonstrate either (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of hardships tips sharply in his favor. *See Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir.2003). The irreparable harm requirement can be met by demonstrating the existence of a colorable First Amendment claim. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *see also Sammartano v. First Judicial District Court*, 303 F.3d 959, 973 (9th Cir. 2002).

United States District Court
For the Northern District of California

1 DISCUSSION

2 The Court finds that plaintiffs have demonstrated a colorable claim that Measure T violates the
3 First and Fourteenth Amendments.

4 Plaintiffs have demonstrated that Measure T likely violates the First Amendment because it
5 burdens corporations' First Amendment right to make political expenditures and campaign
6 contributions, yet it is neither narrowly tailored nor closely drawn as the case law requires. The
7 ordinance is not narrowly tailored because, unlike the Michigan law at issue in *Austin v. Michigan State*
8 *Chamber of Commerce*, 494 U.S. 652 (1990), it does not allow for corporate expenditures through
9 segregated funds. Even if Measure T did allow corporations to form segregated funds, it may also be
10 unconstitutionally underinclusive: Measure T regulates non-local corporations more stringently than
11 non-local incorporated unions. *See* § 11. At the same time, Measure T is likely overinclusive: it
12 regulates corporations based on their status as "local," incorporating its own peculiar definition of
13 "local," *see* § 5, but this distinction does not further the compelling goal of "preventing corruption,
14 avoiding the appearance of corruption, and averting the circumvention of provisions intended to combat
15 corruption." *See Jacobus v. Alaska*, 338 F.3d 1095, 1110 (9th Cir. 2003). Finally, Measure T allows
16 no exemption for political corporations or for corporate speech on ballot initiatives. *See* § 5. Nor is
17 Measure T likely to be found closely drawn, in accordance with the case law, because unlike the federal
18 law at issue in *F.E.C. v. Beaumont*, 539 U.S. 146, 157 (2003), it does not allow corporations to form
19 political action committees.

20 At oral argument, defendant urged that the Ninth Circuit's decision in *Jacobus* would save at
21 least the ban on contributions, if not the ban on expenditures. This Court is not persuaded. The court
22 in *Jacobus* examined the constitutionality of an Alaska statute restricting various types of campaign
23 spending by corporations, unions, other business associations and individuals. The portion of *Jacobus*
24 on which defendant relies is its discussion of "soft money contributions" to political parties by
25 individuals, corporations, business associations, and unions. *Jacobus*, 338 F.3d at 1100. The court
26 labored to define "soft money contributions," as opposed to other "hard money" contributions,
27 ultimately settling on "all money contributed to a political party not expressly earmarked to influence
28 the nomination or election of a candidate." *Id.*, at 1098. In this context, the court in *Jacobus* approved

1 Alaska's ban on "soft money contributions" by corporations. However, the provisions of Measure T
2 are not limited to such "soft money contributions," but rather apply across the board to all contributions,
3 including contributions going directly to candidates. *Jacobus* neither discussed nor approved such a
4 sweeping ban.¹

5 Measure T is also likely to violate the Equal Protection Clause of the Fourteenth Amendment
6 because it burdens corporations' right to engage in political expression but, as described above, it is not
7 narrowly tailored.

8 Measure T contains a severability clause (§ 14), but this Court finds no way to render the
9 challenged prohibitions (§§ 5, 5(a), 5(b)) constitutional.

10

11 Accordingly, pursuant to Fed. R. Civ. P. 52 and 65 and Local Civil Rule 65.1, the Court hereby
12 ORDERS as follows:

13 Defendant, and its agents, officer, representatives and employees, are ENJOINED from
14 enforcing or giving legal effect to Measure T, until further order of the Court. The Court finds that the
15 preliminary injunction will require defendant to incur little or no monetary costs and that the injunction
16 is sought to vindicate constitutional rights and the public interest, so no bond or security will be imposed
17 under Fed. R. Civ. Pro. 65(c).

18

19 **IT IS SO ORDERED.**

20

21 Dated: September 22, 2008



SUSAN ILLSTON
United States District Judge

22

23

24

25

26

27 ¹Nor did the Alaska statute distinguish "local" from "non-local" corporations, labor
28 organizations and non-profits, as does Measure T. As already noted, these idiosyncratic distinctions
may independently cause constitutional infirmity.

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28