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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NORTH CAROLINA RIGHT TO LIFE COMMITTEE FUND FOR INDEPENDENT POLITICAL EXPENDITURES; NORTH CAROLINA STATE POLITICAL ACTION COMMITTEE; W. RUSSELL DUKE, JR., *Plaintiff-Appellant*, *v.* LARRY LEAKE, IN HIS OFFICIAL CAPACITY AS THE CHAIRPERSON OF THE NORTH CAROLINA BOARD OF ELECTIONS; ET AL., *Defendants-Appellees.* [a complete list of Defendants is furnished in the Petition's Parties to Proceedings Section]	No. 07-1454 D.C. No. 5:06-CV-00324-BR OPINION

Appeal from the United States District Court
for the Eastern District of North Carolina,
at Raleigh.
W. Earl Britt, Senior District Judge

Argued: December 7, 2007

Decided: May 1, 2008

Before MICHAEL and TRAXLER, Circuit Judges, and James P. JONES, Chief United States District Judge for the Western District of Virginia, sitting by

designation.

Affirmed by published opinion. Judge Michael wrote the opinion, in which Judge Traxler and Judge Jones joined.

[Counsel statements omitted]

OPINION

MICHAEL, Circuit Judge:

The plaintiffs, a former candidate for the North Carolina Supreme Court and two political action committees, challenge the constitutionality of three provisions of North Carolina's Judicial Campaign Reform Act, N.C. Sess. Laws 2002-158, codified at N.C. Gen.Stat. § 163-278.61 et seq. (the Act). The Act, which became law in 2002, creates a system of voluntary public financing for judicial candidates at the appellate level. The district court denied the plaintiffs' request for a preliminary injunction prior to the 2006 general election and ultimately dismissed the complaint for failure to state a claim. Because we conclude that the challenged provisions are permissible campaign finance regulations and are consistent with the First Amendment, as interpreted by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), and *McConnell v. FEC*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003), we affirm.

I.

North Carolina's Judicial Campaign Reform Act creates a system of optional public funding for candidates seeking election to the state's supreme court and

court of appeals. The Act's stated purposes are to "ensure the fairness of democratic elections" and "to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of [judicial] elections." N.C. Gen.Stat. § 163-278.61. To further these purposes, the Act creates the North Carolina Public Campaign Fund (the Fund), which distributes public funds to eligible candidates who choose to participate in the system (participating candidates). *Id.* In exchange for the public funds, participating candidates must agree to abide by restrictions on the amount of contributions they accept and the amount of campaign expenditures they make. Those candidates who decline participation (nonparticipating candidates) do not receive public funding and are not bound by the additional restrictions accepted by participating candidates.

In August 2005 the plaintiffs filed an action in U.S. District Court in North Carolina against several state officials connected with the administration and enforcement of the Act (collectively, the state). The complaint asserted that several provisions of the Act were unconstitutional. On October 26, 2006, shortly before the November 2006 general election, the district court denied the plaintiffs' request for a preliminary injunction, reasoning that the plaintiffs were not likely to succeed on any of their constitutional claims. In March 2007 the court dismissed the plaintiffs' claims for failure to state a claim. The plaintiffs appeal the dismissal order, and our review is de novo, *Smith v. Frye*, 488 F.3d 263, 266 (4th Cir.2007).

II.

We begin our review by setting forth the particulars of North Carolina's public financing system for judicial campaigns at the appellate level.

As a threshold matter any candidate seeking to participate in the public funding system must meet two statutory conditions. First, the candidate must satisfy the Act's eligibility requirements, which are designed to measure whether the candidate has a base of support in the electorate. *See* N.C. Gen.Stat. § 163-278.64(b). Specifically, a candidate must collect "qualifying contributions" from at least 350 registered voters, and those contributions must total at least thirty but no more than sixty times the filing fee for the office. *Id.* In 2006 a supreme court candidate needed to raise between $37,140 and $74,280.[1] Second, each participating candidate must agree to certain restrictions on campaign fundraising and expenditures, including a limitation of spending to the total of the amounts disbursed from the Fund plus the amounts raised as qualifying contributions. *Id.* § 163-278.64(d).

After satisfying these two conditions, a participating candidate becomes certified to receive public funds. A certified candidate receives an automatic (base)

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[1]These numbers, as well as others throughout the opinion, are calculated based on record information suggesting that the filing fee for a supreme court race in 2006 was $1,238. Our numbers differ slightly from those offered by the plaintiffs, but the difference does not affect the outcome of the case.

disbursement of public funds if the candidate is opposed in the general election. *Id.* § 163-278.65(b). In 2006 the base amount of funding for a contested state supreme court campaign was $216,650, which equaled 175 times the filing fee for that office. A certified candidate does not receive an automatic disbursement of funds for a primary election, but the candidate may spend in a primary the amounts raised to satisfy the statute's eligibility requirements.

Participating candidates are also eligible to receive "matching funds" in specified circumstances.[2] *Id.* § 163-278.67. Eligibility for these funds is triggered when a participating candidate is opposed by a nonparticipating candidate whose "funds in opposition" total more than the trigger amounts specified in the statute. "Funds in opposition" is defined to include the amount any one nonparticipating candidate has raised or spent (whichever is greater) plus the amount that independent entities have spent to support the nonparticipating candidate or to oppose the participating candidate. Id. § 163-278.67(a).

The Act provides separate trigger amounts for a primary and general election. In a primary election the trigger amount is defined as sixty times the filing fee

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[2]A recent amendment substituted the term "matching funds" for "rescue funds," which was used in the original version of the Act. *Act to Strengthen the Matching Funds Provision of the Judicial Public Campaign Act*, N.C. Sess. Laws 2007-510, § 1(a)-(c). This substitution has no effect on the substance of the Act.

for the office sought, id. §§ 163-278.62(9), (18); in 2006 the trigger equaled $74,280 for a supreme court campaign. In a general election the trigger amount is equal to the initial disbursement, § 163.278.62(18), which in 2006 was $216,650 for a supreme court campaign. The amount of matching funds disbursed equals the amount by which the nonparticipating candidate's "funds in opposition" exceed the trigger amount, though in both the primary and the general the total amount of matching funds available is capped at two times the trigger amount. *Id.* § 163-278.67(a)-(c).

The Act contains several additional provisions designed to promote the effective administration of the matching funds scheme. For example, a nonparticipating candidate must make an initial report within twenty-four hours after the "total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for matching funds." *Id.* § 163-278.66(a). The report must include the campaign's "total income, expenses, and obligations." *Id.* In addition, entities that make independent expenditures supporting a nonparticipating candidate (or supporting or opposing a participating candidate) must file a similar report within twenty-four hours of making total expenditures in excess of $5,000. Id. After these initial reports, the candidates and independent entities must "comply with an expedited reporting schedule by filing additional reports" after receiving (or spending) each additional amount in excess of $1,000. *Id.* § 163-278.66(a).

Finally, in certain defined circumstances the Act bars a nonparticipating candidate from accepting contributions from third parties during the twenty-one days prior to a general election. *Id.* § 163-278.13(e2)(3). The purpose of this ban is "to make meaningful the provisions" of the Act by ensuring the timely distribution of matching funds. *See id.* § 163-278.13(e2). For this reason, the ban applies only if a nonparticipating candidate is opposing a participating candidate, and it applies only to contributions that would cause the nonparticipating candidate to exceed the trigger amounts. *Id.* § 163-278.13(e2)(3). The ban does not prevent nonparticipating candidates from personally contributing or loaning money to their own campaigns. *Id.* § 163-278.13(e2).

III.

Before reaching the merits, we must consider the state's arguments that the plaintiffs' claims are not justiciable.

A.

The state argues that two of the plaintiffs-North Carolina Right to Life Committee Fund for Independent Political Expenditures (NCRL-IEPAC or the Independent Expenditure PAC) and North Carolina Right to Life State Political Action Committee (NCRL-SPAC or the Contribution PAC)-lack standing because neither has been injured by the statutory provisions they challenge. Three elements are necessary for standing: (1) the plaintiffs must allege that they have suffered an injury in fact, that is, "an actual or threatened injury that is not conjectural or hypothet-

ical"; (2) the injury must be "fairly traceable to the challenged conduct"; and (3) it must be likely that the injury will be redressed by a favorable decision. *Miller v. Brown*, 462 F.3d 312, 316 (4th Cir.2006) (*citing Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). The state contends that the plaintiffs have not satisfied the first (injury in fact) requirement.

According to the complaint, NCRL-IEPAC is a political action committee organized for the purpose of making independent expenditures on behalf of political candidates it supports. NCRL-IEPAC alleges that it chose not to make expenditures on behalf of nonparticipating candidates due to a fear that such expenditures might result in the disbursement of matching funds to a participating candidate that the organization opposed. NCRL-SPAC, by contrast, is a political action committee organized for the purpose of contributing money to political candidates it supports. NCRL-SPAC alleges that it would have made contributions to a nonparticipating candidate during the twenty-one days prior to the 2006 general election, but refrained from doing so because of the Act.

The state argues, in essence, that the two organizations' alleged injuries are hypothetical or conjectural rather than actual or imminent. According to the state, the organizations failed to show that they would have actually carried out their plans to make contributions and expenditures. Specifically, the state contends that the Independent Expenditure PAC (NCRL-IEPAC) did not show that it had sufficient funds available to make independent expenditures in amounts that would have

triggered the statutory reporting requirements. Similarly, the state questions the Contribution PAC's (NCRL-SPAC's) intent to make contributions during the twenty-one days prior to the 2006 election. In particular, the state points out that the Contribution PAC has not made any contributions to candidates during previous election cycles, including 2006.

The state's arguments lack merit. We have held that a plaintiff may establish the injury necessary to challenge campaign finance regulations by alleging "an intention to engage in a course of conduct arguably affected with a constitutional interest." *Va. Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 386 (4th Cir. 2001) (*quoting Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979)). Similarly, the Supreme Court has held that "conditional statements" of intent, which allege that a plaintiff would engage in a course of conduct but for the defendants' allegedly illegal action, may be sufficient to demonstrate the required "injury in fact." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 184, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). The Court explicitly rejected the argument (comparable to the state's argument here) that such conditional statements of intent are too speculative to confer standing. Id. In this case NCRL-IEPAC and NCRL-SPAC have sufficiently stated their intentions by alleging that they would have made contributions and expenditures but for the challenged provisions. Thus, we conclude that the plaintiffs' allegations are sufficient to establish standing.

B.

The state also argues that the plaintiffs' claims are moot. The third plaintiff, W. Russell Duke, Jr., was a candidate for the state supreme court when this action was filed, and he opted not to receive public funds. Duke ultimately lost the election to the incumbent chief justice, Sarah Parker, who chose to participate in the public financing system. The state argues that Duke's claims are moot because he has not alleged that he will become a candidate for judicial office again in the future. Likewise, according to the state, the claims raised by NCRL-IEPAC and NCRL-SPAC are moot because neither organization has alleged an intent to participate in future election cycles.

We disagree. Duke's claims, as well as those raised by NCRL-IEPAC and NCRL-SPAC, "fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." *FEC v. Wis. Right to Life, Inc. (WRTL)*, --- U.S. ----, 127 S.Ct. 2652, 2662, 168 L.Ed.2d 329 (2007). In WRTL the Supreme Court held that the "capable of repetition, yet evading review" doctrine applied to save a challenge to the constitutionality of the Bipartisan Campaign Reform Act (BCRA) made during the 2004 election cycle. *Id.* at 2662-63. Although the election was over when the case reached the Supreme Court, the Court held that there was a reasonable expectation that the BCRA provisions applied against the plaintiff during the 2004 cycle would be applied against it again in future elections. *Id.* Likewise, in this case, there is a reasonable expectation that the challenged provisions will be applied against the plaintiffs again during

future election cycles. In making this determination, we reject, as other circuits have, the argument that an ex-candidate's claims may be "capable of repetition, yet evading review" only if the ex-candidate specifically alleges an intent to run again in a future election. *See Schaefer v. Townsend*, 215 F.3d 1031, 1033 (9th Cir.2000); Merle v. United States, 351 F.3d 92, 95 (3d Cir.2003); *see also Int'l Org. of Masters, Mates & Pilots v. Brown*, 498 U.S. 466, 473, 111 S.Ct. 880, 112 L.Ed.2d 991 ("[E]ven though [the respondent]*436 lost the election [for a labor union office] by a small margin, the case is not moot. Respondent has run for office before and may well do so again."). Thus, we conclude that the plaintiffs' claims are not moot.

IV.

We turn now to the central issue: whether providing public matching funds to participating candidates violates the First Amendment.

A.

Our analysis must begin with the Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The Court made clear in *Buckley* that public financing of political campaigns does not, in itself, violate the First Amendment. 424 U.S. at 57 n. 65, 96 S.Ct. 612. In fact, the Court observed that the Federal Election Campaign Act's (FECA's) public financing scheme "furthers, not abridges, pertinent First Amendment values" because it "facilitate[s] and enlarge[s] public discussion and participation in the electoral process, goals vital to a self-governing people." Id. at 92-93, 96 S.Ct. 612.

Since *Buckley* the circuit courts have generally held that public financing schemes are permissible if they do not effectively coerce candidates to participate in the scheme. *See Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445, 466-72 (1st Cir.2000); *Gable v. Patton*, 142 F.3d 940, 947-49 (6th Cir.1998); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1549-52 (8th Cir.1996); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 38-39 (1st Cir.1993). A public financing system that effectively mandates participation (and thus effectively prohibits candidates from spending their own funds) would violate Buckley's holding that mandatory limits on the amount a candidate can spend on his own campaign are unconstitutional. *Gable*, 142 F.3d at 948; *see also Buckley*, 424 U.S. at 57 n. 65, 96 S.Ct. 612 ("Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding." (emphasis added)). Nonetheless, courts recognize that a public financing system may provide significant incentives for participation without crossing the line into impermissible coercion. *E.g., Gable*, 142 F.3d at 949.

The plaintiffs do not make coercion a central aspect of their arguments, and, indeed, we conclude that North Carolina's public financing system is not unconstitutionally coercive. The incentives to choose public funding, while not insubstantial, are rather modest in comparison to those in similar systems that have been upheld against First Amendment challenges. For instance, the Sixth Circuit upheld a Kentucky campaign finance system that provides a substantially greater advantage to participating candidates than

does the North Carolina system. *See Gable*, 142 F.3d at 948-49. Under Kentucky's system a participating candidate can raise up to $600,000 in contributions, which are then matched two-to-one with public dollars for a total cap on campaign expenditures of $1.8 million. *Id.* at 944. If, however, a nonparticipating candidate raises more than $1.8 million, the cap is removed and every dollar in contributions received by the participating candidate is again matched with two additional public dollars. *Id.* The Sixth Circuit reasoned that a candidate could make a "financially rational decision not to participate" in the system only if the candidate "intends to exceed the $1.8 million threshold and believes he will raise more than three times the funds his participating opponents can raise." *Id.* at 948. Nonetheless, the court held that the significant "incentives for participation" did not "step over the line of unconstitutional coercion." *Id.* at 949.

Unlike the Kentucky system at issue in *Gable*, the matching funds provided by North Carolina are given in a one-to-one ratio and are subject to a cap equal to twice the initial trigger amount, which for a 2006 supreme court campaign was $216,650. The incentive to opt for this limited level of public funding (a maximum of $649,950 for a 2006 supreme court general election campaign) is far from unconstitutional coercion, especially in light of the fact that judicial campaigns in several other states have raised and spent multiple millions of dollars. *See* Br. Amici Curiae of Ten Organizations Concerned About the Influence of Money on Judicial Integrity, Impartiality, and Independence, at 5-9; *see also Daggett*, 205 F.3d at 466-472 (upholding public financing system as non-coercive);

Vote Choice, 4 F.3d at 38-39 (same).

B.

The thrust of the plaintiffs' First Amendment argument against the matching funds provision is that it "chill[s] and penalize[s] contributions and independent expenditures made on behalf of [nonparticipating] candidates." Appellants' Br. at 32. The plaintiffs argue that their political speech is chilled because spending in excess of the specified trigger results in public funds being disbursed to a participating candidate whom the plaintiffs do not support. Therefore, according to the plaintiffs, they choose to spend less money (and thus engage in less political speech) in order to prevent candidates they oppose from receiving public funds.

There is some conflict in the circuits as to whether the provision of matching funds burdens or chills speech in a way that implicates the First Amendment. The Eighth Circuit struck down a matching funds provision, reasoning that the potential "self-censorship" created by the scheme "is no less a burden on speech ... than is direct government censorship." *Day v. Holahan*, 34 F.3d 1356, 1360 (8th Cir.1994). The First Circuit, on the other hand, explicitly rejected the "logic of *Day*" by holding that the provision of matching funds "does not create a burden" on the First Amendment rights of nonparticipating candidates or independent entities. *Daggett*, 205 F.3d at 464-65; *see also Gable*, 142 F.3d at 947-49 (Sixth Circuit upholding a matching funds scheme against a constitutional challenge without addressing the *Day* analysis).

We conclude that the state's provision of matching funds does not burden the First Amendment rights of nonparticipating candidates (like plaintiff Duke) or independent entities (like plaintiff NCRL-IEPAC) that seek to make expenditures on behalf of nonparticipating candidates. The plaintiffs remain free to raise and spend as much money, and engage in as much political speech, as they desire. They will not be jailed, fined, or censured if they exceed the trigger amounts. The only (arguably) adverse consequence that will occur is the distribution of matching funds to any candidates participating in the public financing system. But this does not impinge on the plaintiffs' First Amendment rights. To the contrary, the distribution of these funds "furthers, not abridges, pertinent First Amendment values" by ensuring that the participating candidate will have an opportunity to engage in responsive speech. *See Buckley*, 424 U.S. at 92-93, 96 S.Ct. 612.

In reaching this conclusion, we reject as unpersuasive the Eighth Circuit's decision in *Day*, which concluded that a matching funds scheme created an impermissible chilling effect on speech. *Day*'s key flaw is that it equates the potential for self-censorship created by a matching funds scheme with "direct government censorship." *See Day*, 34 F.3d at 1360. *Day* attempts to support this flawed proposition with a citation to a Supreme Court case that addresses the danger of self-censorship that occurs when a licensing statute gives government officials unbridled discretion to permit or deny expressive activity. *Id.* (*citing City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757-58, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988)).

The principle underlying the Lakewood case, however, has no application in the context of a matching funds provision. In *Lakewood* the Supreme Court was concerned that speakers would be chilled from expressing criticism of a mayor because a city ordinance gave the mayor broad discretion in granting or denying permits to place news racks on city sidewalks. This danger, according to the Court, justified striking down the licensing scheme, which lacked clear standards. 486 U.S. at 759-60, 108 S.Ct. 2138. In the case before us, however, the chilling effect alleged by the plaintiffs is different in kind because it stems not from any fear of direct government censorship but rather from the realization that one group's speech will enable another to speak in response. In stark contrast to the licensing scheme challenged in Lakewood, North Carolina's provision of matching funds is likely to result in more, not less, speech.

Moreover, the *Day* decision appears to be an anomaly even within the Eighth Circuit, as demonstrated by that court's later decision in *Rosenstiel v. Rodriguez*, 101 F.3d 1544 (8th Cir.1996), which upheld a Minnesota campaign finance regulation. A candidate who opts to participate in Minnesota's public financing system must agree to a specified cap on the amount the campaign can spend. However, the cap amount is waved if the participating candidate faces a nonparticipating opponent who raises (or spends) amounts exceeding specified thresholds. 101 F.3d at 1546-48. Had the Eighth Circuit employed the Day analysis in the manner the plaintiffs seek to apply it here, the court would have concluded that the provision created a danger of self-censorship because a nonparticipating

candidate might choose to limit expenditures in order to ensure that the participating candidate is not released from the expenditure limitations. But, despite a dissent that expressly invoked Day' s "chilling effect" proposition, the court majority upheld the Minnesota provision and reasoned that the provision did not burden a nonparticipating candidate's First Amendment rights. 101 F.3d at 1549-53; *id.* at 1561-62 (Lay, J., dissenting). This outcome, which demonstrates the Eighth Circuit's inconsistent application of the *Day* analysis, provides additional support for our determination that *Day* is simply unpersuasive.

C.

In sum, we conclude that North Carolina's provision of matching funds under § 163-278.67 does not violate the First Amendment because the Act does not coerce candidates into opting into the public financing system. We reject the plaintiffs' argument that the chilling effect allegedly caused by § 163-278.67 makes the statute unconstitutional. To the extent that the plaintiffs (or those similarly situated) are in fact deterred by § 163-278.67 from spending in excess of the trigger amounts, the deterrence results from a strategic, political choice, not from a threat of government censure or prosecution. As the First Circuit observed in *Daggett*, the First Amendment gives the plaintiffs neither a "right to outraise and outspend an *439 opponent" nor a "right to speak free from response." 205 F.3d at 464.

V.

The plaintiffs next argue that § 163-278.66(a)'s report-

ing requirements are unconstitutional. The section contains two basic requirements. First, nonparticipating candidates are required to file a report within twenty-four hours of raising or spending funds in excess of eighty percent of the trigger amount; independent entities must file a similar report after spending more than $5,000 in opposition to a participating candidate. Second, after this initial report is filed, the candidates and independent entities must disclose each additional amount received (or spent) in excess of $1,000 through additional reports filed under "an expedited reporting schedule."

Reporting and disclosure requirements in the campaign finance realm "must survive exacting scrutiny." *Buckley*, 424 U.S. at 64, 96 S.Ct. 612. The plaintiffs argue that "exacting scrutiny" in this context is equivalent to strict scrutiny (requiring narrow tailoring to a compelling state interest), but this argument is inconsistent with Buckley and subsequent cases. In *Buckley* the Supreme Court held that there must be "a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed." 424 U.S. at 64, 96 S.Ct. 612. In applying this test, the Court upheld a FECA disclosure requirement that bore a "sufficient relationship to a substantial governmental interest." 424 U.S. at 80, 96 S.Ct. 612. Likewise, the Court recently upheld BCRA's disclosure requirements based on its determination that the requirements advanced "important state interests." *McConnell v. FEC*, 540 U.S. 93, 196, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). In doing so, the Court did not engage in the type of narrow tailoring analysis that the plaintiffs ask us to

apply to the disclosure requirements at issue in this case. *See id.* at 194-202, 124 S.Ct. 619.

The plaintiffs also miss the mark with their argument that the state could advance its interests in a less burdensome manner. Because narrow tailoring is not required, the state need not show that the Act achieves its purposes in the least restrictive manner possible. In *Buckley*, for example, the Supreme Court rejected an argument that FECA's $10 and $100 thresholds for disclosure of contributions were unconstitutionally low. 424 U.S. at 82-84, 96 S.Ct. 612. The Court reasoned that it could not "require Congress to establish that it has chosen the highest reasonable threshold" that would still achieve the government's interests. *Id.* at 83, 96 S.Ct. 612. Likewise, our task here is to determine whether North Carolina's disclosure requirements have a "substantial relation" to the state's purposes, not to determine whether they are the least restrictive means of advancing those interests.

Moreover, the plaintiffs' arguments regarding the burdensome nature of § 163-278.66(a) are unfounded. For instance, the plaintiffs complain that § 163-278.66(a) is too burdensome because an initial report must be filed within twenty-four hours after certain threshold spending limits are exceeded. But in *McConnell* the Supreme Court upheld a nearly identical provision that required a report to be filed within twenty-four hours of the date on which expenditures exceeded a trigger amount. 540 U.S. at 195-96, 124 S.Ct. 619. The plaintiffs fare no better with their argument that § 163-278.66(a) is too burdensome because it requires nonparticipating candidates to file an excessive number of reports. The provision autho-

rizes the state board of elections to develop a schedule for the filing of reports. § 163-278.66(a). In 2006, for example, the board set a schedule that required eight reports to be filed during the two-and-a-half-month period preceding the election. Compliance with this schedule is not particularly burdensome. And, while the plaintiffs are correct that the board could impose a more burdensome schedule in future elections, that possibility alone is not a sufficient basis to strike down the statute at this time.

In sum, the plaintiffs' arguments against the reporting requirements lack merit. As in *Buckley* and *McConnell* the requirements advance three important state interests: "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions." *McConnell*, 540 U.S. at 196, 124 S.Ct. 619. By ensuring the release of campaign funding information to the public and enabling the effective administration of matching funds, the reporting requirements clearly demonstrate a "substantial relation" to these interests. Because having a substantial relation to an important state interest is all that is required by *Buckley* and *McConnell*, § 163-278.66(a) passes constitutional muster.[3]

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[3]The plaintiffs also argue that § 163-278.66(a) is overbroad because it requires the reporting of "obligations made" for future expenditures. Because the reporting of a campaign's future obligations does not encroach on protected speech any more than the reporting of past expenditures, this argument fails as

VI.

Finally, the plaintiffs challenge § 163-278.13(e2)(3)'s ban on contributions during the twenty-one days prior to an election. Their central argument is that the twenty-one-day ban cannot withstand strict scrutiny because it is not narrowly tailored to a compelling state interest. The plaintiffs contend first that the stated purpose of the ban, which is to promote the effective administration of the matching funds provisions, is not a compelling interest. Alternatively, they argue that the ban is not narrowly tailored to its stated purpose because it does not bar a nonparticipating candidate from contributing to his own campaign, nor does it bar an independent entity from making expenditures supporting the candidate.

Once again the plaintiffs err in asserting that strict scrutiny applies. In *McConnell* the Supreme Court clearly reiterated that its past cases had subjected restrictions on campaign contributions to less intense scrutiny than restrictions on campaign expenditures. 540 U.S. at 134, 124 S.Ct. 619. Rather than applying strict scrutiny, the Court clarified that "a contribution limit involving even significant interference with associational rights is nevertheless valid if it satisfies the lesser demand of being closely drawn to match a sufficiently important interest." 540 U.S. at 136, 124 S.Ct. 619 (internal quotation marks omitted). Because the contribution ban interferes with associational rights by restricting the time frame during which contributions may be made and received, it must

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well.

satisfy McConnell's lesser standard of being "closely drawn to match a sufficiently important interest." *See id.*

The Act's twenty-one-day contribution ban survives scrutiny under *McConnell.* The ban advances the state's interest in avoiding the danger of corruption (or the appearance thereof) in judicial elections. The ban advances this interest because it is a key component of the state's public funding system, which is itself designed to promote the state's anti-corruption goals. The Sixth Circuit has upheld a similar ban that covered the twenty-eight days before an election. Noting that the ban forced candidates to "rearrange their fundraising by concentrating it in the period before the 28-Day Window begins," the court reasoned that this restriction was justified under *Buckley* by the state's interest in combating corruption through the use of a public funding scheme. *Gable*, 142 F.3d at 951.

The plaintiffs' alternative argument-that the ban is not sufficiently tailored to its stated goals because it does not cover either a candidate's own contributions or an independent entity's expenditures-also fails. As explained above, perfect tailoring is not required; rather, the ban need only be "closely drawn" to the asserted interest. *See McConnell*, 540 U.S. at 136, 124 S.Ct. 619. This standard is satisfied. A ban on contributions in the period immediately prior to the election helps to minimize a nonparticipating candidate's ability to unfairly take advantage of a participating candidate by delaying contributions until the last minute, when it would be too late for additional matching funds to be disbursed to the participating candidate. Moreover, the ban does not apply in all cases.

Instead, it applies only in elections in which a nonparticipating candidate faces a participating candidate. Even then, it applies only against contributions that would cause the nonparticipating candidate to exceed the trigger for matching funds. § 163-278.13(e2)(3). The narrowness of its application confirms that the ban is closely drawn to the asserted state interests.

In sum, we hold that § 163-278.13(e2)(3) survives constitutional scrutiny. Its ban on contributions from third parties during the twenty-one days prior to an election is a closely drawn means of advancing the state's interest in operating a public funding system to minimize the danger of corruption (or the appearance thereof) in judicial elections.

VII.

The State of North Carolina has created a system that provides optional public funding for candidates seeking election to the state's appellate courts. The purpose of the system is to protect North Carolina's citizens from "the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of [judicial] elections." N.C. Gen.Stat. § 163-278.61. The Act's public funding system is necessary, the state concluded, because the "effects [of money have been] especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts." *Id.* The concern for promoting and protecting the impartiality and independence of the judiciary is not a new one; it dates back at least to our nation's founding, when Alexander Hamilton wrote that "the complete independence of the courts of justice is peculiarly essential" to our form of government. The Federalist

No. 78, at 426 (E.H. Scott ed., 1898). We conclude that the provisions challenged today, which embody North Carolina's effort to protect this vital interest in an independent judiciary, are within the limits placed on the state by the First Amendment. Accordingly, the district court's judgment dismissing the plaintiffs' claims is

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
E.D. NORTH CAROLINA, WESTERN DIVISION

BARBARA JACKSON, *et al.*, Plaintiffs, vs. LARRY LEAKE, *et al.*, Defendants.	Case No. 5:06-CV-324-BR October 26, 2006 **ORDER**

BRITT, SENIOR DISTRICT JUDGE.

This matter is before the court on plaintiffs' motion for a preliminary injunction. Defendants and intervenors filed revised briefs in opposition to the motion. Plaintiffs filed a revised reply. The issues have been fully briefed and are ripe for disposition.

I. BACKGROUND

As U.S. District Judge N. Carlton Tilley, Jr. recited when this case was before him:

> The facts in the light most favorable to the nonmoving party are as follows: In 2002, the North Carolina General Assembly created the North Carolina Public Campaign Financing Fund (the "Fund"). N.C. Gen.Stat. §§ 163-278.61 et seq. The Fund provides for a voluntary system of full public financing for campaigns for judicial positions on the North

Carolina Supreme Court and the North Carolina Court of Appeals. Id. § 163-278.61. In creating the Fund, the General Assembly sought to "ensure the fairness of democratic elections" and "protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of [judicial] elections, ... since impartiality is uniquely important to the integrity and credibility of the courts." *Id.* Candidates for judicial office may choose whether to participate in the Fund ("participating candidates") or to conduct privately financed campaigns ("nonparticipating candidates"). The North Carolina State Board of Elections (the "Board") is responsible for the administration of the Fund. *See id.* § 163-278.68(a) ("Enforcement by the Board.-The Board, with the advice of the Advisory Council for the Public Campaign Fund, shall administer the provisions of this Article.").

On August 8, 2005, Plaintiffs Barbara Jackson, W. Russell Duke, Jr., [North Carolina Right to Life Committee Fund for Independent Political Expenditures ("IEPAC")], and [North Carolina Right to Life State Political Action Committee ("SPAC")] filed suit challenging the constitutionality of certain provisions of the Fund and seeking both declaratory and injunctive relief. Specifically, Plaintiffs allege that the challenged provisions "violate the First and Fourteenth Amendments to the United States Constitution by unduly imping-

ing on protected speech and association...." (Am.Compl.¶ 1.) Plaintiffs challenge the constitutionality of N.C. Gen.Stat. §§ 163-278.66, 163-278.67, 163-278.13(e2)(3), and N.C. Gen.Stat. § 84-34. Briefly, these sections provide for the following: (1) Section 163-278.66 requires nonparticipating candidates to report campaign contributions or expenditures that exceed certain specified trigger amounts to the Board within 24 hours and any independent entities making expenditures in support of a nonparticipating candidate to make similar reports to the Board (the "reporting provision"); (2) Section 163-278.67 provides for "rescue funds" for participating candidates in the event the expenditures of a nonparticipating candidate (or of an independent entity in support of a nonparticipating candidate) exceed certain specified trigger amounts (the "rescue funds provision"); (3) Section 163-278.13(e2)(3) prohibits contributions to the campaign of any candidate during the period beginning 21 days before the general election and ending the day after the general election (the "21 day provision"); and (4) Section 84-34 requires every active member of the North Carolina State Bar to pay a $50 fee for the support of the North Carolina Public Financing Fund.

* * *

The Plaintiffs have named the following parties as Defendants in this case: (1) members of the North Carolina State Board of

> Elections, including Larry Leake, Chairperson of the North Carolina Board of Elections; (2) the Attorney General for the State of North Carolina; (3) the District Attorney for Wake County; (4) the District Attorney for Guilford County; and (5) members of the North Carolina Bar Administrative Committee, including M. Keith Kapp, Chairperson of the North Carolina Bar Administrative Committee.

Jackson v. Leake, No. 1:05-CV-691, 2006 WL 2264027, *1, 3 (M.D.N.C. Aug. 7, 2006) (footnotes omitted) (some alterations and omissions in original).

On 7 August 2006, Judge Tilley found that plaintiffs lack standing to assert their claims against the District Attorney for Guilford County and dismissed that district attorney as a defendant. *Id.* at *5-8. By virtue of that dismissal, no defendant is a resident of Guilford County, and accordingly, Judge Tilley found venue improper in the Middle District of North Carolina. *Id.* at *9-10. He ordered the transfer of the case to this district. *Id.* at *10. On 11 August 2006, the clerk for this district received notice of the transfer.

The undersigned noticed a status conference for its next term of court, 5 September 2006. During the status conference the court ruled on a number of motions and set a further, expedited briefing schedule on the remaining motions. Most significantly, the court allowed (1) Ronnie Ansley and Common Cause North Carolina's motion to intervene; (2) the North Carolina State Bar Administrative Committee members' motion pursuant to Fed. R. Civ. P. 20(b); and (3) plaintiffs to file a second amended complaint, if they desired. Plaintiffs filed an amended complaint on 12 September

2006. This complaint largely mirrors the first amended complaint before Judge Tilley. It does, however, make some changes to account for an amendment to the 21 day provision, § 163-278.13(e2)(3), which is discussed further below. The parties also filed additional briefs regarding plaintiffs' motion for preliminary injunction, plaintiffs' motion for class certification, and defendants' and intervenors' motions to dismiss.

II. DISCUSSION

At the outset, the courts notes, despite plaintiffs' request, a hearing on the instant motion is unnecessary given the additional briefing, the commencement of the 21-day period before the general election, and the fact that plaintiff Duke is a candidate in that election for Chief Justice of the North Carolina Supreme Court. Plaintiffs' motion to consolidate the hearing on their motion for preliminary injunction with a trial on the merits is therefore DENIED.

A. Standing

Because defendants have raised the issue of plaintiffs' standing as to all claims except the claim challenging § 84-34, (see Defs.' Revised Mem. Supp. Mot. to Dismiss at 5-7 & n. 2), and that issue is jurisdictional, *Emery v. Roanoke City School Bd.*, 432 F.3d 294, 298 (4th Cir.2005), the court addresses it first.

The doctrine of standing is an integral component of the case or controversy requirement. There are three components of constitutional standing: (1) the plaintiff must allege that he or she suffered an actual or threatened injury that is not conjectural or hypothetical; (2) the injury must be fairly traceable to the challenged conduct; and (3) a favorable decision must be likely to

redress the injury. The party attempting to invoke federal jurisdiction bears the burden of establishing standing. *Miller v. Brown*, 462 F.3d 312, 316 (4th Cir.2006) (citations omitted).

Turning first to plaintiff Duke, as noted, he is currently a candidate for a North Carolina appellate court. He is a nonparticipating candidate opposing a participating candidate in this race. (Second Supp. Duke Aff. ¶ 3.)[1] Pursuant to § 163-278.67, rescue funds have been paid to his opponent's campaign, being "triggered by the fund raising conducted by [Duke] and reported by his political committee...." (Defs.' Revised Mem. Opp'n Mot. Prelim. Inj., Strach Decl. ¶ 7.) The Board has informed him that he is subject to the expedited reporting requirements of § 163-278.66. (Second Supp. Duke Aff. ¶ 3.) The 21-day period before the general election recently commenced. Under § 163-278.13(e2)(3), because rescue funds have been triggered and it does not appear that Duke's opponent has received the maximum rescue funds available, (*see* Defs.' Revised Mem. Opp'n Mot. Prelim. Inj., Strach Decl. ¶ 7), Duke cannot accept a contribution now and most likely until two days after the general election. Thus, Duke is currently being affected by and subjected to the statutory provisions he attacks, thereby, he claims, violating his First Amendment rights. Duke

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[1]Although defendants raise the standing issue in their motion to dismiss and the court refers to matters outside the pleadings, it is not necessary to convert the proceeding to one for summary judgment. See White Tail Park, Inc. v. Stroube, 413 F.3d 451, 458 (4th Cir.2005).

has sufficiently alleged an actual injury fairly traceable to the law he challenges. Duke seeks to have the challenged statutes declared unconstitutional and to permanently enjoin their enforcement. A favorable ruling would redress Duke's alleged injuries. Accordingly, Duke meets all the requirements for standing.

With respect to her claims challenging all statutes except § 84-34, plaintiff Jackson lacks standing. Although Jackson was a nonparticipating candidate in the 2004 election for the North Carolina Court of Appeals, (Second Am. Compl. ¶¶ 18, 24), she does not claim she suffered any injuries as a result of her prior campaign;[2] rather, her allegations rest on the fact "that [she] intends to run in 2012 to maintain her position in the North Carolina Court of Appeals," (*id.* ¶ 18), and "that in 2012, she may not participate in the public financing program," (*id.* ¶ 24). Jackson does not contend her decision to run in 2012, presumably as a nonparticipating candidate, impacts her now, such as in terms of campaign planning. *Cf.* Miller, 462 F.3d at 317-18 (finding plaintiffs, a Republican committee and its chairman, had standing to challenge open primary law although primary was nearly two years away-"Because campaign planning decisions have to be

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[2]In their revised brief in opposition to the motions to dismiss, plaintiffs state in 2004 Jackson "was subject to the challenged public financing provisions during her campaign as a nonparticipating candidate." (Br. at 3.) But, that fact does not necessarily mean she suffered an injury. Did she face a participating candidate? Were rescue funds even triggered? Was she required to make expedited reports?

made months, or even years, in advance of the election to be effective, the plaintiffs' alleged injuries are actual and threatened." (citation omitted)). Jackson has failed to meet the first requirement of standing as to her claims regarding §§ 163-278.12(e2)(3), 163-278.66, and 163-278.67, and the entire financing scheme, and those claims will be dismissed.

Plaintiff SPAC only challenges the 21 day provision. Its President testifies:

> [SPAC] intends to make contributions to a 2006 judicial campaign during the final 21 days before each respective election.... However, because of G.S. § 163-278.13(e2)(3), which makes it unlawful to make such a contribution, [SPAC] will not do so.

(Pls.' 12/22/05 Reply to Mot. Prelim. Inj., Holt Aff. ¶ 2.) At the time of this testimony, the former version of § 163-278.13(e2)(3) was in effect and prohibited contributions during the 21 days before the general election to a nonparticipating candidate opposed by a participating candidate who has not received the maximum rescue funds available. Despite the recent amendment to the statute, discussed below, the court finds this testimony is sufficient to show SPAC possesses standing to challenge the 21 day provision.

The other plaintiff political committee, IEPAC, challenges §§ 163-278.66(a) and 163-278.67. According to its President,

> [IEPAC] intends to make an independent expenditure of over $3000 during the 2006 judicial election cycle supporting a nonparticipating candidate or opposing a participating a

> candidate.... However, such an expenditure may provide the nonparticipating candidate's opponent with rescue funds and in effect finance that opponent's speech. G.S. § 163-278.67. Additionally, [IEPAC] will need to report within 24 hours their independent expenditure if it puts the nonparticipating candidate over 50% of the rescue fund trigger. G.S. § 163-278.66(a). Consequently, [IEPAC] will not make its independent expenditure.

(Id. ¶ 3.) Like the 21 day provision, the North Carolina legislature has recently *521 amended the reporting provision to which IEPAC's President refers, § 163-278.66(a). As discussed below, the threshold amount has increased to $5000 and the reference to 50% of the rescue fund trigger removed. The expedited reporting requirement remains. The alleged injury to IEPAC is still present even though the reporting provision has been amended, and IEPAC has standing to challenge the reporting provision and the rescue fund provision.[3]

B. Tax Injunction Act

Defendants assert another jurisdictional challenge.

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[3]Defendants further argue that plaintiffs lack standing as to claims against defendants the District Attorney for Wake County and the Attorney General. This issue is left for resolution on defendants' motion for failure to state a claim as to these defendants, particularly because plaintiffs do not seek preliminary injunctive relief against these defendants, (see Prelim. Inj. Mot. at 2).

They contend that the Tax Injunction Act, 28 U.S.C. § 1341,[4] bars this court from considering Jackson's and Duke's claim regarding N.C. Gen.Stat. § 84-34. To implement the Fund, that statute requires every active member of the North Carolina State Bar is required to pay annually a $50 "surcharge." N.C. Gen.Stat. § 84-34. According to plaintiffs, "the $50 surcharge unconstitutionally compels speech from Plaintiffs Jackson and Duke in support of the views of candidates they oppose, and even their opponents in future elections." (Pls.' Revised Resp. to Mot. to Dismiss at 9.) Because Jackson and Duke do not assert that the North Carolina state courts would not provide "a plain, speedy, and efficient remedy," 28 U.S.C. § 1341, resolution of the applicability of the Tax Injunction Act turns on whether the $50 surcharge under § 84-34 is a "tax" or a "fee."

According to the Fourth Circuit:

> To determine whether a particular charge is a "fee" or a "tax," the general inquiry is to assess whether the charge is for revenue raising purposes, making it a "tax," or for regulatory or punitive purposes, making it a "fee." *See Collins Holding Corp. v. Jasper County*, 123 F.3d 797, 800 (4th Cir.1997). To aid this analysis, courts have developed a

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[4] "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341.

three-part test that looks to different factors: (1) what entity imposes the charge; (2) what population is subject to the charge; and (3) what purposes are served by the use of the monies obtained by the charge. *See San Juan Cellular Telephone Co. v. Public Service Comm'n*, 967 F.2d 683, 685 (1 st Cir.1992); *see also Bidart Bros. v. California Apple Comm'n*, 73 F.3d 925, 931 (9th Cir.1996).

In *San Juan Cellular*, the court set out the precise confines of a "classic tax" versus a "classic fee." The "classic tax" is imposed by the legislature upon a large segment of society, and is spent to benefit the community at large. *See San Juan Cellular*, 967 F.2d at 685. The "classic fee" is imposed by an administrative agency upon only those persons, or entities, subject to its regulation for regulatory purposes, or to raise "money placed in a special fund to defray the agency's regulation-related expenses." *Id.* The San Juan Cellular court noted that most charges will not fall neatly into either extremity and the characteristics of the charge will tend to place it somewhere in the middle. *See id.*

When the three-part inquiry yields a result that places the charge somewhere in the middle of the *San Juan Cellular* descriptions, the most important factor becomes the purpose behind the statute, or regulation, which imposes the charge. *See South Carolina v. Block*, 717 F.2d 874, 887 (4th Cir.1983). In those circumstances if the ultimate use of the reve-

> nue benefits the general public then the charge will qualify as a "tax," while if the benefits are more narrowly circumscribed then the charge will more likely qualify as a "fee." *See San Juan Cellular*, 967 F.2d at 685.

Valero Terrestrial Corp. v. Caffrey, 205 F.3d 130, 134 (4th Cir.2000).

In this case the North Carolina legislature has imposed the surcharge. This factor thus indicates the surcharge is a "tax." *See id.* However, a relatively discrete segment of society-active members of the North Carolina State Bar-must pay the surcharge. The surcharges collected pursuant to § 84-34 are placed in the Fund. N.C. Gen.Stat. § 163-278.63(b)(7). These features favor a finding that the surcharge is a "fee." *See Valero*, 205 F.3d at 134. The Fund is used "to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article [22D]" as well as "[a]ll expenses of administering this Article, including production and distribution of the Voter Guide ... and personnel and other costs incurred by the Board, including public education about the fund...." N.C. Gen.Stat. § 163-278.63(a). The purpose of the Fund thus has aspects which benefit the public at large (e.g., campaign finance, the Voter Guide (which is distributed "to as many voting-age individuals in the State as practical, through a mailing to all residences," N.C. Gen.Stat. § 163-278.69(a)), public education) and which characterize a "tax." So too it serves to defray expenses associated with administering the Fund, which tend to place the surcharge as a "fee." Considering all these features, the court concludes the surcharge falls in the

middle of the tax/fee spectrum. As such, the court must examine the purpose behind § 84-34. *See Valero*, 205 F.3d at 134.

The express purpose of imposing a surcharge on active attorneys in this State is "for the implementation of the Fund." In turn, the Fund's express purpose ... is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, those effects being especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts.

N.C. Gen.Stat. § 163-278.61. Such purpose benefits a large segment of North Carolina's general population not only in terms of fair judicial elections but also in terms of the much broader purpose of promoting impartiality of the court system. Because the use of the surcharge collected benefits the public at large, the $50 surcharge qualifies as a "tax," and, pursuant to the Tax Injunction Act, this court lacks jurisdiction to enjoin the collection of the surcharge or enter a declaratory judgment as to its constitutionality.[5] This claim will be dismissed.

C. Motion for Preliminary Injunction

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[5]"It is settled that the broad prophylactic terms of the Tax Injunction Act apply to declaratory as well as injunctive relief...." *Folio v. City of Clarksburg*, 134 F.3d 1211, 1214 (4th Cir.1998) (citation omitted).

Plaintiffs request that the court preliminarily "enjoin the Board and the Bar from enforcing North Carolina's public financing scheme and the $50 surcharge, respectively, against Plaintiffs and those similarly situated." (Prelim. Inj. Mot. at 2.)

A sister court has stated well the principles pertaining to the issuance of temporary and preliminary injunctive relief:

> Either a temporary restraining order or a preliminary injunction "... is an extraordinary remedy, to be granted only if the moving party clearly establishes entitlement to the relief sought." A motion for a TRO or for a preliminary injunction is governed by the "balance of hardships" test set forth in *Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189, 195-96 (4th Cir.1977). Under *Blackwelder*, the court must make a determination that the plaintiff (1) will suffer irreparable harm if he does not receive the requested injunctive relief. Once this finding has been made, the court must assess (2) the likelihood of harm to the defendants if the court issues a TRO or preliminary injunction against them. The court then must balance these harms to be suffered by the parties if the court denies or grants, respectively, the motion for injunctive relief. Thereafter, the court must conclude (3) that the plaintiff is likely to succeed on the merits, or if the balancing test in the previous steps (i.e., steps "(1) and (2)") clearly favors the plaintiff, the court need only satisfy itself that the plaintiff has raised substantial and serious questions

> on the merits. Finally, the court should consider (4) whether public interest favors injunctive relief.
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> The four *Blackwelder* factors "... are not, however, all weighted equally." "The 'balance of hardships' reached by comparing the relevant harms to the plaintiff and defendant[s] is the most important determination, dictating, for example, how strong a likelihood of success showing the plaintiff must make." Thus, while the four factors must figure into the court's analysis, the weight given to each depends on the strength of the other factors.

Krichbaum v. United States Forest Serv., 991 F.Supp. 501, 502-503 (W.D.Va.1998) (citations and footnote omitted).

Against these principles, the court is mindful of the fact that plaintiffs seek mandatory injunctive relief. "Mandatory preliminary injunctions [generally] do not preserve the status quo and normally should be granted only in those circumstances when the exigencies of the situation demand such relief." *In re Microsoft Corp. Antitrust Lit.*, 333 F.3d 517, 526 (citation and quotation omitted); *see also Taylor v. Freeman*, 34 F.3d 266, 270 n. 2 (4th Cir.1994) ("Mandatory preliminary injunctive relief in any circumstance is disfavored, and warranted only in the most extraordinary circumstances." (citations omitted)).

1. Irreparable Harm to Plaintiffs/Likelihood of Success

Because the harm plaintiffs contend they will suffer is "inseparably linked to [their] claim of violation

of First Amendment rights," the court considers these factors together. *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 511 (4th Cir.2002); see also Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) ("[L]oss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury." (citation omitted)).

a. The Reporting Provision

The reporting provision, N.C. Gen.Stat. § 163-278.66(a), provides:

> Reporting by Noncertified Candidates and Independent Expenditure Entities.-Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds five thousand dollars ($5,000). After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply

> with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.

Duke and IEPAC challenge the provision on several grounds: (1) its expedited reporting requirement is vague, not justified by a compelling state interest, not narrowly tailored, and is unreasonably burdensome; (2) the "obligations" reporting requirement is vague and overbroad; and, (3) the 24-hour reporting time frame is patently unreasonable and not narrowly tailored. (Mem. Supp. Mot. Prelim. Inj. at 16-23.)

There are problems with plaintiffs' allegations regarding the reporting provision. First, as defendants and intervenors point out, plaintiffs' second amended complaint does not assert a vagueness challenge to the expedited reporting requirement or the "obligations" reporting requirement. (See Second Am. Compl. ¶¶ 57-61, 63-67, 80-82.) Without such challenge, it is unnecessary for the court to examine plaintiffs' argument pertaining to the likelihood of success on the merits of that challenge, (see Mem. Supp. Mot. Prelim. Inj. at 17.)

Second, in their amended complaint, plaintiffs do not complain about the amended version of the provision applicable to entities making independent expenditures, such as IEPAC. Effective 3 August 2006, prior

to plaintiffs' filing of the second amended complaint, the North Carolina legislature amended the reporting provision by deleting the requirement that such entities making expenditures in excess of $3000 make a report after total expenditures or obligations made exceeds 50% of the trigger for rescue funds and inserting the requirement that such entities make a report after total expenditures or obligations made exceeds $5000. 2006 N.C. Sess. Laws 192 §§ 12, 19. Plaintiffs' challenge to the former provision is moot except as to the 24-hour reporting requirement and the reporting in $1000 increments because those portions of the law did not change. *See Naturist Soc., Inc. v. Fillyaw*, 958 F.2d 1515, 1520 (11th Cir.1992) ("Where a superseding statute leaves objectionable features of the prior law substantially undisturbed, the case is not moot. This court so held in *Ciudadanos Unidos De San Juan v. Hidalgo County Grand Jury Commissioners*, 622 F.2d 807, 824 (5th Cir.1980) (amendment of Texas grand jury selection system to make challenged method optional did not moot plaintiffs' challenge). The court noted that statutory amendment moots a claim only where the amendment 'completely eliminate[s] the harm of which plaintiffs complained.' 622 F.2d at 824.").

Turning to the aspects of the reporting provision which plaintiffs properly challenge, plaintiffs have not shown they are likely to succeed on the merits. Campaign disclosure requirements are subject to "exacting scrutiny." *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). "[T]here [must] be a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed." *Id.* (footnotes and citation omitted).

Governmental interests sufficient to survive this level of scrutiny are: (1) "provid[ing] the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' "; (2) deterring actual and apparent corruption; and, (3) gathering data to enforce more substantive campaign restrictions. *Id.* at 66-68, 96 S.Ct. 612; *see also McConnell v. Federal Election Comm'n*, 540 U.S. 93, 196, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003).

Here, the reporting provision serves nearly identical interests. Voters are permitted to access to reports submitted pursuant to this provision. *See* N.C. Gen.Stat. § 163-278.66(c). As recognized above, the purpose of the Fund itself is to ensure fair judicial elections and "protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of" such elections. The reporting provision furthers this purpose as well as enables the Board to gather data to effectively implement the trigger and rescue funds provisions of the Fund. These interests are sufficiently compelling to support the reporting provision. See *Daggett v. Commission of Governmental Ethics and Election Practices*, 205 F.3d 445, 466 (1st Cir.2000) (finding Maine statute which requires independent expenditures totaling more than $50 in an election to be reported was supported by interests defined in Buckley: "allows voters access to information about who supports a candidate financially[,] ... allows the Commission to effectively administer the matching funds provision of the [Maine Clean Election] Act [and] deters corruption and its appearance.").

On the other hand, Duke testifies as to the harm the reporting provision imposes:

> [B]ecause of N.C.G.S. Sec. 163-278.66, the 48 hour and expedited reporting requirement requiring information on receipt of campaign contributions and the expedited reporting requirement of campaign expenditures, I am effectively required to disclose my campaign strategy on a potentially 48 hour cycle.[6]FN6 My opponent is not required to expose her campaign strategy through campaign reports. Another burden on my campaign is the extensive time that has to be dedicated to complying with the reporting requirements. Instead of spending time on campaigning, my volunteer is required to spend extensive time filling out forms. Pursuant to N.C.G.S. Sec. 163-278.66 which says that "the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports," my opponent has a distinct advantage by not being required to fill out as many reports as are required of me.

(Second Supp. Duke Aff. ¶ 6.) Yet, participating candidates are also subject to reporting requirements. They "must report any money received, including all previously*526 unreported qualifying contributions, all

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[6]It is not clear how Duke cites a 48-hour period. Perhaps, he relies on § 163-278.66(a) for the proposition that he is required to report contributions within 24 hours and then turn around report expenditures 24 hours later, resulting in a "48 hour cycle."

campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board." N.C. Gen.Stat. § 163-278.66(b). Members of the public are permitted to access these reports, just as they may access Duke's reports. See id. § 163-278.66(c). Even if Duke is required to report more than his participating opponent, that burden does not make the provision unconstitutional per se. *See Association of American Physicians and Surgeons v. Brewer*, 363 F.Supp. 2d 1197, 1201-03 (D. Ariz.2005) (applying the reasoning of Daggett to a challenge to the Arizona Citizens Clean Elections Act's disclosure requirements, among others, of, which mandate nonparticipating candidates' filing more reports than participating candidates and provide information needed for the Act's fund to distribute matching funds to participating candidates). The reporting provision does not come into play for Duke and other nonparticipating candidates until 80% of trigger for rescue funds is reached. *See* N.C. Gen.Stat. § 163-278.66(a). Thereafter, reporting is required after each additional amount exceeding $1000.[7] Id. These requirements are not unduly burdensome. Plaintiffs take issue with the $1000 threshold, complaining it is both underinclusive and overinclusive. (Mem. Supp. Mot. Prelim. Inj. at 18.) Like the courts in *Buckley*, 424 U.S. at 83, 96 S.Ct. 612, and *Daggett*, 205 F.3d at 466, this court cannot say, nor do plaintiffs contend, that threshold is "wholly without rationality."

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[7]Independent expenditure entities are also required to make reports after each $1000, once the $5000 threshold is met. N.C. Gen.Stat. § 163-278.66(a).

The Board needs the information required to be disclosed to determine when it may issue rescue funds. See N.C. Gen.Stat. § 163-273.67(a). The rescue funds, i.e., public financing, promote the State's anti-corruption interest. Disclosure promotes a fully informed electorate. Thus, there is a "substantial relation" between these interests and the information Duke and other nonparticipating candidates must disclose.

Plaintiffs contend that § 163-278.66(a)'s requirement to report "obligations" is overbroad. The court agrees with defendants and intervenors that *McConnell* forecloses this line of attack. *See* 540 U.S. at 200-01, 124 S.Ct. 619 (upholding requirement in Federal Election Campaign Act of disclosure of executory contracts for electioneering communications; "[t]he District Court speculated that disclosing information about contracts 'that have not been performed, may lead to confusion and an unclear record upon which the public will evaluate the forces operating in the political marketplace.' Without evidence relating to the frequency of nonperformance of executed contracts, such speculation cannot outweigh the public interest in ensuring full disclosure before an election actually takes place." (citation omitted)). In addition, the court notes that participating candidates must likewise disclose "obligations." N.C. Gen.Stat. § 163-278.66(b). Thus, there is no greater burden on nonparticipating candidates and independent expenditure entities than on participating candidates.

Plaintiffs also take issue with the time within which nonparticipating candidates and independent expenditure entities are required to make reports,

within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, exceeds the designated threshold amount. They argue this requirement is overbroad and falls to survive strict scrutiny. The court is hesitant to apply *McConnell* in analyzing this challenge, as defendants and intervenors suggest. It is true that the Court upheld a disclosure provision in *McConnell* which contained a 24-hour reporting requirement. However, as defendants and intervenors acknowledge, it did so without any significant discussion.

Plaintiffs rely on *Citizens for Responsible Gov. State Political Action Comm't v. Davidson*, 236 F.3d 1174 (10th Cir.2000). There, the Tenth Circuit struck down a state statute "impos[ing] disclosure requirements on independent expenditures exceeding $1000" "within twenty-four hours after 'obligating funds' for the expenditure." *Id.* at 1196. The court found the requirement "patently unreasonable" and not narrowly tailored to advance "the State's compelling interests in informing the electorate, preventing corruption and the appearance of corruption, or gathering data." Id. at 1197.

Significant differences exist between that statute and the 24-hour reporting requirement at issue here. As noted above, the reporting requirement does not apply until certain thresholds and circumstances are met. For independent expenditure entities reporting is not required until a $5000 threshold is crossed. And, it is not required of all such entities across the board; only entities "making independent expenditures in support of or in opposition to a certified candidate or in support of a candidate opposing a certified candidate."

N.C. Gen.Stat. § 163-278.66(a). Particularly with respect to nonparticipating candidates, the threshold will likely be met, if at all, at a later stage, closer to the election. At this time, it is important for disclosures to be made promptly to fully inform the public before voting. In addition, data must be gathered to timely effectuate the trigger for rescue funds. In the court's opinion, the statute is narrowly drawn to further North Carolina's compelling interests.

b. The 21 Day Provision

Plaintiffs next argue they are likely to succeed on their claim challenging the 21 day provision. This provision prohibits a candidate from accepting, or a contributor from making, a contribution during the 21 days before the general election until the day after that election under certain circumstances. *See* N.C. Gen Stat. § 163-278.13(e2)(3). Plaintiffs argue that this provision operates as an unconstitutional time limitation on contributions. It is significant to note that the statute does not operate as an outright ban on all contributions during the defined period. The statute specifically excludes contributions and loans from a candidate or his or her spouse. N.C. Gen.Stat. § 163-278.13(e2). Also, the only contributions prohibited during the short time before the general election are those that "cause[ ] the candidate to exceed the 'trigger for rescue funds' ....", where an opposing participating candidate has not received the maximum rescue funds available. *Id.* § 163-278.13(e2)(3).

First, plaintiffs claim a sufficiently compelling government interest does not justify the 21-day "ban" on contributions. (Mem. Supp. Mot. Prelim. Inj. at 23-24.) The Supreme Court has recognized that al-

though contribution limits most definitely burden First Amendment rights, "the prevention of corruption or its appearance constitutes a sufficiently important interest to justify" such limits. *McConnell*, 540 U.S. at 143, 124 S.Ct. 619; *see also Buckley*, 424 U.S. at 25-29, 96 S.Ct. 612. The North Carolina legislature had that interest in mind in enacting the Fund. *See* N.C. Gen.Stat. § 163-278.61. It enacted the 21 day provision to "make meaningful the provisions of" the Fund. *Id.* § 163-278.13(e2). Relying on *Gable v. Patton*, 142 F.3d 940 (6th Cir.1998), *cert. denied*, 525 U.S. 1177, 119 S.Ct. 1112, 143 L.Ed.2d 108 (1999), defendants make a persuasive argument that North Carolina's restriction on contributions during the 21 days before the general election is justified by North Carolina's compelling interest in preventing corruption. In *Gable*, the Sixth Circuit upheld a portion of Kentucky's public financing scheme which prohibits any candidate from receiving contributions from outside sources in the 28 days before an election. The court found any burden on nonparticipating candidates First Amendment rights was justified by the state's interest in preventing corruption. Id. at 950-51.

Plaintiffs' reliance on a subsequent Sixth Circuit case, *Anderson v. Spear*, 356 F.3d 651 (6th Cir.), *cert. denied*, 543 U.S. 956, 125 S.Ct. 453, 160 L.Ed.2d 317 (2004), appears misplaced. There, the court analyzed Kentucky's 28-day ban on contributions as applied to write-ins candidates, who are not eligible to participate in the public financing scheme and therefore are not voluntary non-participants, unlike those in *Gable*. Id. at 674. The court stated:

> Under the *ratio decidendi* of *Gable*, the

> 28-day window contributes to Kentucky's scheme to combat corruption, but only insofar as it supports the trigger, which in turn channels individuals into the corruption-reducing public finance scheme. Under KRS § 121A, however, write-in candidates are not eligible to participate in that scheme, and therefore cannot be channeled into the public finance system. Therefore applying the 28-day window to write-in candidates simply cannot be intended to combat corruption by channeling write-in candidates into the public finance scheme.

Id. at 674-75.

Second, plaintiffs contend the 21 day provision is overbroad. (Mem. Supp. Mot. Prelim. Inj. at 24.) Plaintiffs point out that there is already in place a limitation on large contributions, § 163-278.13(a) (contributions to any candidate or political committee limited to $4000 in any election). (*Id.*) While that limitation no doubt furthers North Carolina's anti-corruption interest, that does not necessarily mean North Carolina cannot enact any other contribution restrictions to further that same interest. The 21 day provision does not bar all contributions, applies only to appellate court candidates, and is for a limited time. Like the statute at issue in *Gable*, the provision is necessary to properly effectuate the trigger for rescue funds. See 142 F.3d at 949. Without the provision, if rescue funds are triggered by a contribution to a nonparticipating candidate shortly before the election, the Board may not have sufficient time to issue the funds to a participating candidate. See id. at

949-50. It appears the provision in narrowly tailored to advance North Carolina's interest.

c. Rescue Funds Provision and Public Financing Scheme

Finally, plaintiffs advance several challenges to the rescue funds provision and North Carolina's public financing scheme as a whole. They argue that, because a nonparticipating candidate's own contributions and expenditures count towards the trigger for a participating (opposing) candidate's receipt of rescue funds, nonparticipating candidates are effectively penalized for contributions to and expenditures for their own campaigns which Buckley prohibits. As plaintiffs recognize, and as the court has already noted, no direct restrictions are placed on a candidate or his other spouse for making contributions to the candidate's own campaign. *See* N.C. Gen.Stat. § 163-278.13(e2). In addition, there are no restrictions on nonparticipating candidate expenditures. It is the indirect restriction, plaintiffs argue, that violates the constitution. Similarly, plaintiffs contend independent expenditure entities' First Amendment rights are chilled because counting independent expenditures towards the rescue funds trigger may result in making more money available to an opposing participating candidate. They further argue that the rescue funds provision operates as content-based discrimination and impedes the ability of like-minded persons to pool resources.

The court finds persuasive the First Circuit's rationale in examining an individual and two political action committee's challenge to Maine Clean Election Act's matching funds provision:

Direct limitations on independent expenditures have been found impermissibly to burden constitutional rights of free expression. *See Buckley*, 424 U.S. at 44, 96 S.Ct. 612, 46 L.Ed.2d 659; *New Hampshire Right to Life Political Action Comm. v. Gardner*, 99 F.3d 8, 18-19 (1st Cir.1996) (invalidating New Hampshire statute limiting independent expenditures to $1,000 per election). Such cases are of limited application, however, because they involve direct monetary restrictions on independent expenditures, which inherently burden such speech, while the Maine statute creates no direct restriction.

Moreover, the provision of matching funds does not indirectly burden donors' speech and associational rights. Appellants misconstrue the meaning of the First Amendment's protection of their speech. They have no right to speak free from response-the purpose of the First Amendment is to " 'secure the "widest possible dissemination of information from diverse and antagonistic sources." ' " *Buckley*, 424 U.S. at 49, 96 S.Ct. 612, 46 L.Ed.2d 659 (citations omitted); *see Pacific Gas & Elec. Co. v. Public Utils. Comm'n*, 475 U.S. 1, 14, 106 S.Ct. 903, 89 L.Ed.2d 1 (1986) (there exists no right to speak "free from vigorous debate"). The public funding system in no way limits the quantity of speech one can engage in or the amount of money one can spend engaging in political speech, nor does it threaten censure or penalty for such expenditures. These facts allow us comfortably to conclude that the provision of

> matching funds based on independent expenditures does not create a burden on speakers' First Amendment rights.
>
> Appellants rely heavily on *Day v. Holahan*, 34 F.3d 1356 (8th Cir.1994), in which the Eighth Circuit invalidated Minnesota's campaign finance statute, which increased a participating candidate's expenditure limit based on independent expenditures made against her or for her major party opponent and under some circumstances matched such independent expenditures. *See id.* at 1359-62. The court held that "[t]o the extent that a candidate's campaign is enhanced by the operation of the statute, the political speech of the individual or group who made the independent expenditure 'against' her (or in favor of her opponent) is impaired." *Id.* at 1360. We cannot adopt the logic of *Day*, which equates responsive speech with an impairment to the initial speaker.

Daggett, 205 F.3d at 464 (1st Cir.2000) (footnote omitted, recognizing "the continuing vitality of Day is open to question."); *see also Brewer*, 363 F.Supp. 2d at 1198, 1200-01, 1202-03 (following Daggett in rejecting a similar challenge to the Arizona Citizens Clean Election Act's matching funds provision).

With respect to the public financing scheme as a whole, plaintiffs argue that the scheme places nonparticipating candidates at a distinct disadvantage relative to participating candidates, representing invidious and unconstitutional discrimination. The parties all rely on Buckley to support their respective positions. There, the Court stated, "the Constitution does not

require [the legislative body] to treat all declared candidates the same for public financing purposes." *Buckley*, 424 U.S. at 97, 96 S.Ct. 612. In examining an equal protection challenge to the Presidential Election Campaign Fund, the Court recognized that

> [i]n several situations concerning the electoral process, the principle has been developed that restrictions on access to the electoral process must survive exacting scrutiny. The restriction can be sustained only if it furthers a "vital" governmental interest, that is "achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity."

Id. at 93-94, 96 S.Ct. 612 (citations omitted). The court simply disagrees with plaintiffs' argument that the scheme's reporting provision, trigger, and 21 day provision unfairly or unnecessarily burden nonparticipating candidates' political opportunities, (see Mem. Supp. Mot. Prelim. Inj. at 29-30), given the important interests advanced by the public financing scheme.

In sum, plaintiffs have not shown a likelihood of success on the merits on any of their claims challenging §§ 163-278.13(e2), 163-278.66(a), 163-278.67 and North Carolina's public financing scheme as a whole. Accordingly, plaintiffs have not made a strong showing of irreparable harm.

2. Harm to Defendants/ Public Interest

Because state officials are the parties against whom the injunction is sought, and they represent the

public interest, consideration of the harm to them should the injunction issue merges with consideration of the public interest. The general election is less than two weeks way. Invalidating any of the statutes at issue, and particularly the Fund as a whole, would likely disrupt the electoral process for appellate judges. Eight of the twelve candidates in the general election are participating in the Fund. (Defs.' Revise Mem. Opp'n Mot. Prelim. Inj., Strach Decl. ¶ 6.) These candidates have relied upon the Fund being in place through the general election, adhering to its limitations and restrictions and making campaign strategy decisions based on those limitations and restrictions.

In balancing the foregoing factors, the court concludes a preliminary injunction is not warranted.

III. CONCLUSION

In sum, plaintiff Jackson's claims challenging N.C. Gen.Stat. §§ 163-278.12(e2)(3), 163-278.66, and 163-278.67 and the public financing scheme as a whole are DISMISSED for lack of standing. Plaintiffs Jackson's and Duke's claim challenging N.C. Gen.Stat. § 84-34 is DISMISSED for lack of jurisdiction. Plaintiffs' motion to consolidate a hearing on their motion for preliminary injunction with trial is DENIED. Plaintiffs' motion for a preliminary injunction is DENIED. Defendants' and intervenors' motions to dismiss remain pending in part. Plaintiffs' motion for class certification also remains for consideration.

U.S. Const. amend. I (in relevant part)

Congress shall make no law . . . abridging the freedom of speech[.]

N.C. Gen. Stat. § 163-278.6

Definitions. When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of 'radio' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the

purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of 'candidate' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of 'print media,' 'radio,' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies,

office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163- 278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation

established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees

and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that

opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity,

insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

Special definitions of "political action committee" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of 'political party organization' that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by S.L. 1999-31, § 4(a), eff. May 4, 1999.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S.

163-278.40A.

N.C. Gen. Stat. § 163-278.13

Limitation on contributions. (a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(d1) Notwithstanding subsections (a) and (b) of this section, a candidate or political committee may accept a contribution knowing that the contribution is to be reimbursed to the entity making the contribution and

knowing the candidate or political committee has funds sufficient to reimburse the entity making the contribution if all of the following conditions are met:

(1) The entity submits sufficient information of the contribution to the candidate or political committee for reimbursement within 45 days of the contribution.

(2) The candidate or political committee makes a reimbursement to the entity making the contribution within seven days of submission of sufficient information.

(3) The candidate or political committee indicates on its report under G.S. 163-278.11 that the good, service, or other item resulting in the reimbursement is an expenditure of the candidate or political committee, and notes if the contribution was by credit card.

(4) The contribution does not exceed one thousand dollars ($1,000.00).

(d2) Any contribution, or portion thereof, made under subsection (d1) of this section that is not submitted for reimbursement in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section. Any contribution, or portion thereof, made under subsection (d1) of this section that is not reimbursed in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section.

(e) Except as provided in subsections (e2), (e3), and (e4) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those

political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) No candidate shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for matching funds" defined in G.S. 163-278.62(18). This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum matching funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision has three days to return the contribution or file a

detailed statement with the State Board of Elections explaining why the contribution does not violate this subdivision.

As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(e4) In order to make meaningful the provisions of the North Carolina Voter-Owned Elections Act, as set forth in Article 22J of this Chapter, no candidate for an office subject to that Article shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for matching funds" defined in G.S. 163-278.96(17). As used in this subsection, the term "candidate" also includes "candidate campaign

committee" as defined in G.S. 163-278.38Z(3). Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee, the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22J of this Chapter.

(2) That certified candidate has not received the maximum matching funds available under G.S. 163-278.99B(c).

The recipient of a contribution that apparently violates this subsection has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor.

N.C. Gen. Stat. § 163-278.61

Purpose of the North Carolina Public Campaign Fund. The purpose of this Article is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, those effects being

especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, this Article establishes the North Carolina Public Campaign Fund as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for justice of the Supreme Court and judge of the Court of Appeals in elections to be held in 2004 and thereafter.

N.C. Gen. Stat. § 163-278.62

Definitions. The following definitions apply in this Article:

(1) Board. The State Board of Elections.

(2) Candidate. An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(3) Certified candidate. A candidate running for office who chooses to receive campaign funds from the Fund and who is certified under G. S. 163-278.64(c).

(4) Contested primary and contested general election. An election in which there are more candidates than the number to be elected. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19.

(5) Contribution. Defined in G.S. 163-278.6. A distribu-

tion from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or 163-278.19.

(5a) Electioneering communication. As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(6) Expenditure. Defined in G.S. 163-278.6.

(7) Fund. The North Carolina Public Campaign Fund established in G.S. 163- 278.63.

(8) Independent expenditure. Defined in G.S. 163-278.6.

(9) Maximum qualifying contributions. An amount of qualifying contributions equal to 60 times the filing fee for candidacy for the office.

(10) Minimum qualifying contributions. An amount of qualifying contributions equal to 30 times the filing fee for candidacy for the office.

(11) Nonparticipating candidate. A candidate running for office who is not seeking to be certified under G.S. 163-278.64(c).

(12) Office. A position on the North Carolina Court of Appeals or North Carolina Supreme Court.

(13) Participating candidate. A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.64.

(14) Political committee. Defined in G.S. 163-278.6.

(15) Qualifying contribution. A contribution of not less

than ten dollars ($10.00) and not more than five hundred dollars ($500.00) in the form of a check or money order to the candidate or the candidate's committee that meets both of the following conditions:

a. Made by any registered voter in this State.

b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. The period beginning September 1 in the year before the election and ending on the day of the primary of the election year.

(17) Referendum committee. Defined in G.S. 163-278.6.

(18) Trigger for matching funds. The dollar amount at which matching funds are released for certified candidates. In the case of a primary, the trigger equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.65(b)(4).

N.C. Gen. Stat. § 163-278.63

North Carolina Public Campaign Fund established; sources of funding. (a) Establishment of Fund. The North Carolina Public Campaign Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163-278.69 and personnel and other costs incurred by the Board, including public

education about the Fund, shall be paid from the Fund and not from the General Fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Public Campaign Fund by individual taxpayers pursuant to G.S. 105-159.2.

(3) Repealed by S.L. 2005-276, § 23A.1(c), eff. Jan. 1, 2006.

(4) Public Campaign Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Public Campaign Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Public Campaign Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(7) Money collected from the fifty-dollar ($50.00) surcharge on attorney membership fees in G.S. 84-34.

(c) Determination of Fund Amount. By October 1, 2003, and every two years thereafter, the Board, in conjunction with the Advisory Council for the Public Campaign Fund, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evalu-

ating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund for the next election.

N.C. Gen. Stat. § 163-278.64

Requirements for participation; certification of candidates. (a) Declaration of Intent to Participate. Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (d) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163-278.62(10) but that does not exceed the amount of maximum qualifying contributions described in G.S. 163- 278.62(9). No

payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a valid notice of candidacy pursuant to Article 25 of this Chapter.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from

sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163- 278.67.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible matching funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent,

child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign- related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules adopted pursuant to it, and similar provisions in other states.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(e) Revocation. A candidate may revoke, in writing to the Board, a decision to participate in the Public

Campaign Fund at any time before the deadline set by the Board for the candidate's submission of information for the Voter Guide described in G.S. 163-278.69. After a timely revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

N.C. Gen. Stat. § 163-278.65

Distribution from the Fund. (a) Timing of Fund Distribution. The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. By August 1, 2003, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. No funds shall be distributed.

(2) Contested primaries. No funds shall be distributed except as provided in G.S. 163-278.67.

(3) Uncontested general elections. No funds shall be distributed.

(4) Contested general elections. Funds shall be distributed to a certified candidate for a position on the Court of Appeals in an amount equal to 125

times the candidate's filing fee as set forth in G.S. 163-107. Funds shall be distributed to a certified candidate for a position on the Supreme Court in an amount equal to 175 times the candidate's filing fee as set forth in G.S. 163-107.

(c) Method of Fund Distribution. The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding.

N.C. Gen. Stat. § 163-278.66

Reporting requirements. (a) Reporting by Noncertified Candidates and Independent Expenditure Entities. Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a

certified candidate, or paying for electioneering communications, referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After this 24-hour filing, the noncertified candidate or other reporting entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) or payment(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.

(b) Reporting by Participating and Certified Candidates. Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. The Board shall ensure prompt public access to the reports received in accor-

dance with this Article. The Board may utilize electronic means of reporting and storing information.

N.C. Gen. Stat. § 163-278.67

Matching funds. (a) When Matching Funds Become Available. When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section, exceed the trigger for matching funds as defined in G.S. 163-278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating candidate who is an opponent of a certified candidate. Where a certified candidate has more than one nonparticipating candidate as an opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.65(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.66(a) of entities making independent expenditures or electioneering communications in

opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds in Contested Primary. Total matching funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought.

(c) Limit on Matching Funds in Contested General Election. Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163- 278.65(b)(4).

(d) Determinations by Board. In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for imple-

menting this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertain to the candidate.