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02CV110774  
ATTACHMENT 4

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
02 CVS \_\_\_\_\_

JACK SMITH, JULIE ROBISON  
and TOWN OF CARY,  
Petitioners,

vs.

STATE BOARD OF ELECTIONS,  
Respondent.

PETITION FOR JUDICIAL REVIEW

Pursuant to North Carolina General Statutes § 150B-45, Cary Town Council candidates Jack Smith and Julie Robison, and the Town of Cary, petition the court for judicial review of the Order of the State Board of Elections dated 13 July 2002, a copy of which is attached as Exhibit A.

In support of this petition, the petitioners show:

1. The State Board of Elections proceeding and order concerns Cary town ordinance 00-028 which provides for public financing of campaigns for town office.
2. Jack Smith and Julie Robison were among the candidates who voluntarily chose public funding in their 2001 campaigns for seats on the Town Council. As a condition of the public funding, they agreed to and abided by limits on the amounts they would spend on their campaigns.
3. The public financing ordinance was enacted by the Town of Cary in response to extraordinarily expensive campaigns for town office and is similar in concept and operation to the public funding of presidential campaigns, state law on public funding of gubernatorial campaigns, and other public funding laws around the country.

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4. In adopting the public funding ordinance the Cary Town Council found that "[h]igh campaign costs for Town office tend to discourage motivated and qualified individuals from running for office;" that "[l]arge contributions to a candidate may cause the appearance of corruption in the election process;" that "[v]oluntary limits on campaign fundraising and expenditures and the public financing of campaigns that voluntarily agree to such limits is a reasonable method of addressing citizen concerns about campaign fundraising;" and that "partial public funding of campaigns for local office inures to the benefit of the public generally and not that of special interests or persons." The public financing ordinance is "intended to provide a means of assuring the public that qualified individuals who do not have access to large sums of money are afforded the opportunity to run for local office" and "assuring the appearance of corruption is not part of the local election process."

5. The Cary Town Council consists of four members elected from districts, two from the town at large, and the mayor who also is elected at large. The town uses the nonpartisan election and runoff method of election, which means that there is a nonpartisan election to reduce the number of candidates for each seat to two, if more candidates than that file to run, and a runoff between those two.

6. The Cary public financing ordinance does not provide money to candidates in advance of or during the election but instead provides reimbursement for actual expenditures of candidates who have chosen to participate, who have voluntarily limited their campaign expenditures, who have raised certain threshold amounts on their own, and who are successful in at least reaching the runoff.

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7. Other than being a qualified candidate and agreeing to voluntary limits on campaign expenditures, there is no other requirement for a candidate to participate in the public financing. Public financing is available without regard to whether the candidate is an incumbent or challenger, the candidate's party affiliation, or the candidate's views.

8. The public financing ordinance allows payments of up to \$8,000 to candidates for district seats and up to \$20,000 to candidates for mayor or an at-large seat.

9. Following the 2001 town election, Jack Smith, a candidate for a district seat, received \$6,981.09 from the town as reimbursement for his expenditures and Julie Robison, a candidate for an at-large seat in both a primary and runoff, received \$16,910.40.

10. As required by the town ordinance and state law, Jack Smith and Julie Robison duly and accurately reported all expenditures and receipts for their campaigns and timely filed such reports with the Wake County Board of Elections. No question has been raised as to the accuracy or completeness of those reports.

11. Cary town ordinance 00-028 was first adopted by the Cary Town Council on 14 December 2000 and was subsequently amended in 2001. To date, no one has brought a legal challenge to the validity of the ordinance.

12. The town's campaign financing ordinance served its purpose well in 2001, assisting in the reduction of spending on town campaigns, making public office more accessible, allowing candidates to run who otherwise would not have been able to do so, allowing candidates to focus on issues rather than fundraising, and helping avoid the perception that a few wealthy contributors can control local elections.

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13. The 2001 Cary town election was held on 6 November 2001. Julie Robison received payment from the town public financing fund on 22 December 2001, and Jack Smith received payment on 18 January 2002.

14. On 17 April 2002, nearly a year and a half after the town ordinance was first enacted, over five months after the 2001 town election, and almost four months after the first payments were received from the town, Gary Bartlett, Executive Director of the State Board of Elections, wrote to Jack Smith and Julie Robison requesting that they return to the town any amounts received in excess of \$4,000. Jack Smith, Julie Robison and the Town of Cary then requested that this matter be heard by the State Board of Elections.

15. The issue before the State Board of Elections was whether North Carolina General Statutes § 163-278.13(b), which prohibits campaign contributions of more than \$4,000 per election, applies to public funding provided by the Town of Cary pursuant to its ordinance 00-028.

16. Following a hearing on 25 June 2002, the State Board decided the Town of Cary could not provide funds to candidates in excess of \$4,000 per election, and that Jack Smith and Julie Robison could not receive funds in excess of that amount from the town. The board also concluded and ordered that Jack Smith and Julie Robison return to the town the amounts they received in excess of \$4,000, i.e., that Jack Smith return \$2,981.09 and that Julie Robison return \$12,910.40.

17. The Order of the State Board of Elections was signed by the chairman, Larry Leake, on 13 July 2002, and is a final decision of the agency.

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18. Counsel for the Town of Cary was handed a copy of the Order on 17 July 2002, and copies were mailed to counsel for Jack Smith and Julie Robison on or about the same day.

19. Jack Smith and Julie Robison are aggrieved parties entitled to judicial review of the decision of the State Board of Elections in that they are substantially affected in their legal rights and in their property by having been ordered to return to the Town of Cary moneys that they received lawfully, in reasonable reliance upon an ordinance whose validity has never been challenged.

20. The Town of Cary is an aggrieved party entitled to judicial review of the decision of the State Board of Elections in that it has been affected substantially in its legal rights by a decision which is wrong as a matter of law and makes the town's public financing ordinance ineffective and unable to accomplish the purposes for which it was enacted.

21. The decision of the State Board of Elections is incorrect as a matter of law in that it is contrary to the language, history and purpose of the state campaign finance law and fails to recognize the validity of the town ordinance.

22. In deciding as it did, the State Board of Elections acted improperly and without authority and arbitrarily and capriciously in that the board's decision was affected and partly determined by questions concerning the town's authority to enact the campaign financing ordinance although the validity of the ordinance has not been challenged, such questions are beyond the jurisdiction of the board, and these questions should not have been allowed to influence its decision.

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23. In ordering Julie Robison to repay the sum of \$12,910.40 the State Board of Elections erred as a matter of law in that, even if the \$4,000 limit applies to payments from the town, Julie Robison participated in two separate elections, the primary and runoff, and thus could have received a total of \$8,000 rather than \$4,000.

Pursuant to General Statutes § 150B-47, petitioners request that the court direct respondent State Board of Elections to transmit to the court within 30 days the official record of its proceeding in this matter.

As relief, petitioners Jack Smith, Julie Robison and the Town of Cary ask that the court:

1. Reverse the decision of the State Board of Elections and declare that the provisions of General Statutes § 163-278.13(b) restricting campaign contributions to \$4,000 per election are not applicable to funds provided by the Town of Cary pursuant to ordinance 00-028 and that Jack Smith and Julie Robison are not required to return any funds received from the town as reimbursement for their expenditures in the 2001 town election.
2. In the alternative, modify the Order of the State Board of Elections to state that the amount to be repaid by Julie Robison is \$8,910.40 rather than \$12,910.40.
3. Charge the costs of this action, including petitioners' reasonable attorneys fees, to the respondent State Board of Elections.
4. Order such other relief as may be appropriate.

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This the 12<sup>th</sup> day of August 2002.

THARRINGTON SMITH, L.L.P.

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