

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

JUL 13 2010

Jan M. Martinez

STATE OF NEW MEXICO,

ORIGINAL

Plaintiff-Appellant,

vs.

No. 30,285

JEROME D. BLOCK, a.k.a. JEROME D. BLOCK II and
JEROME D. BLOCK JR., and
JEROME D. BLOCK, a.k.a. JEROME D. BLOCK SR.,

Defendants-Appellees.

**BRIEF OF AMICUS CURIAE
COMMON CAUSE**

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
MICHAEL E. VIGIL, District Judge

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TABLE OF CONTENTS

I. Introduction	1
II. The District Court Viewed Public Campaign Financing as a Form of Financial Aid for Needy Candidates Rather Than as a Remedy for a Perceived Public Harm. This View of the Purpose of the Voter Action Act Dictated the Court's Conclusion That the Civil Fines Authorized by That Act Were Necessarily of the Non-remedial "Punitive" Sort That Are Deemed to Bar Subsequent Criminal Prosecution Under the Double Jeopardy Clause.	2
III. The District Court Was Wrong in Its View of the Purposes of the Voter Action Act and the Act's Provisions for Administrative Fines. In Fact, the Principal Objective of the Act Is to Provide an Effective Remedy for the Very Serious Problem of Actual or Perceived Official Corruption That Can Arise from the Reliance of Elected Officials on Private Campaign Contributions. The Act's Penalty Provisions Are Essential to the Achievement of This Overall Remedial Purpose Because Without Such Penalties, Any Public Financing System Is Liable to Produce More Rather Than Less Corruption.	5
IV. Under the Standards Enunciated in This Court's Controlling Decision in <i>State v. Kirby</i> , 2003-NMCA-074 (N.M.App. 2003), the Quintessentially Remedial Purposes of Both the Voter Action Act and Its Provisions for Civil Fines Compel the Conclusion That the Imposition of Such Fines Does Not Bar a Subsequent Criminal Prosecution on the Ground of Double Jeopardy.	9
V. Conclusion	15

TABLE OF AUTHORITIES

New Mexico Cases

City of Albuquerque v. One White Chevy, 2002-NMSC-014, 132 N.M.187, 46 P.3d 94 (N.M. 2002)	2-3,4,9-10
State v. Kirby, 2003-NMCA-074, 133 N.M. 782, 70 P.3d 772 (N.M. App. 2003)	passim

Cases from Other Jurisdictions

Buckley v. Valeo, 424 U.S. 1 (1976)	6
Citizens United v. FEC, ___ U.S. ___, 130 S.Ct. 876 (2010)	5,6
Davis v. FEC, ___ U.S. ___, 128 S.Ct. 2759 (2008)	5,6
FEC v. National Conservative PAC, 470 U.S. 480 (1985)	6
Kennedy v. Mendoza-Martinez, 522 U.S. 144 (1963)	12
McComish v. Bennett, ___ F.3d ___ (9th Cir., May 21, 2010) (mandate stayed, Order dated 6/8/10 in USSC Docket No. 09A1163)	5,6
North Carolina Right to Life v. Leake, 524 F.3d 427 (4th Cir. 2008)	6
Rosenstiel v. Rodriguez, 101 F.3d 1544 (8th Cir. 1996)	6
SEC v. Zandford, 535 U.S. 813 (2002)	10
United States v. Hudson, 522 U.S. 93 (1997)	13

Trial Court and Administrative Decisions

In re 2004 Campaign of Julia St. James, Maine Comm. on Govt. Ethics and Election Practices, Findings and Order 1/19/06	7
In re 2004 Campaign of Sarah Trundy, Maine Comm. on Govt. Ethics and Election Practices, Findings and Order 1/19/06	7

In re Downing, No. 03F-020059-AAG, Arizona Clean Elections Comm., Final Decision 12/16/03	7
In re Quelland, No. 08-0035-CCE, Arizona Clean Elections Comm., Findings, Conclusions and Order 11/19/09	7
State v. Downing, No. CR2004-018522-DT, Maricopa County (AZ) Superior Court, indictment 7/14/04, judgment and sentence 2/2/09	7
State v. Ladd, No. CR-08-1756, York County (ME) Superior Court, indictment 7/8/08, judgment and commitment 4/29/09	7
State v. Reagan, No. CR-0801757, York County (ME) Superior Court, indictment 7/8/08, judgment and commitment 2/6/09	7
State v. Throumoulos, No. CR-06-1636, York County (ME) Superior Court, indictment 6/6/06, judgment and commitment 9/20/07	7
State v. Walcott, No. CR-07-1238, Androscoggin County (ME) Superior Court, information 5/28/08; judgment and sentence 6/3/08	7

Statutes

2 U.S.Code §441a-1(a)	5
New Mexico Securities Act of 1986, §§58-13B-1 et seq. NMSA 1978	9,10
New Mexico Voter Action Act, §§1-19A-1 et seq. NMSA 1978	passim
Securities Exchange Act of 1934, 15 U.S.Code §§78a et seq.	10

Other

Arizona Attorney General 2009 Annual Report (2009)	7
Center for Competitive Politics, "Fairly Flawed: Analysis of the 2009 Fair Elections Now Act" (2009)	8
Fenske, "The Dirty Truth About 'Clean' Elections,"	

Phoenix New Times 4/2/09	8
Goldwater Institute, <i>Campaign Promises: Arizona's Experiment with Taxpayer-Financed Campaigns</i> , Policy Report 3/28/06 (2006)	8
Maine Comm. on Govt. Ethics and Election Practices, 2007 Study Report (2007)	7
Samples, ed., <i>Welfare for Politicians? Taxpayer Financing of Campaigns</i> (Cato Inst. 2005)	8

ARGUMENT

I. Introduction

The district court viewed public campaign financing as a sort of public assistance program for needy candidates rather than as a remedy for the potentially corrupting influence of private campaign contributions. This view of public financing compelled the district court's conclusions that neither the Voter Action Act nor its provision for civil fines had a "remedial" purpose within the meaning of State v. Kirby, 2003-NMCA-074, 133 N.M. 782, 70 P.3d 772 (N.M. App. 2003), and that the civil fines imposed on defendant Block Jr. for his violations of the Act were therefore necessarily of the purely "punitive" variety which, under Kirby, will bar a subsequent criminal prosecution for the same conduct.

Common Cause will demonstrate in this brief that the district court's view of the objectives of public financing in general and the Voter Action Act in particular was wrong. The actual and only constitutionally permissible purpose of any public financing statute such as the Voter Action Act is to remedy the potential corruption and public disillusionment that are engendered by the reliance of elected officials on large private contributions to finance their campaigns. In the context of that remedial objective, the strict civil penalties that are universally authorized for violations of such laws must be seen as likewise having a primarily remedial purpose, because only the availability of such penalties can effectively insure that public financing will not in fact aggravate the very sort of corruption it purports to cure.

Common Cause will further show that, when "the Act's and the penalty's primarily remedial purposes" are thus properly understood (Kirby, supra at ¶34, 133 N.M. at 791, 70 P.3d at 781), the administrative fines levied under the Voter Action Act in this case must necessarily be viewed as primarily "remedial" rather than "punitive" in nature and therefore, under Kirby, as presenting no obstacle to a subsequent criminal prosecution for the same offenses. Indeed, this correct conception of the objectives of the Voter Action Act and its scheme of administrative remedies places this case on all fours with the holding in Kirby, where this court rejected a double jeopardy claim based on the previous imposition of an administrative fine for violation of the securities laws. The virtual factual identity between Kirby and this case dictates the same result here. Id.

II. The District Court Viewed Public Campaign Financing as a Form of Financial Aid for Needy Candidates Rather Than a Remedy for a Perceived Public Harm. This View of the Purpose of the Voter Action Act Dictated the Court's Conclusion That the Civil Fines Authorized by That Act Were Necessarily of the Non-remedial "Punitive" Sort That Are Deemed to Bar Subsequent Criminal Prosecution Under the Double Jeopardy Clause.

In the following passages from its opinion, the district court expresses its understanding of the purposes of the Voter Action Act and the penalties that the Act authorizes for violations of its provisions (RP 942-43¹):

"[N]o legitimate purpose has been articulated for a maximum \$10,000 penalty, nor is there any correlation between the harm presented by violations of the Voter Action Act and imposition of a \$10,000 fine. *Cf. id.* [*City of Albu-*

¹ Citations to the record proper ("RP") refer to the record proper in District Court Case No. D-101-CR-2009-00138.

querque v. One White Chevy, 2002-NMSC-014] at ¶¶12-13, 132 N.M. at 190-91, 46 P.3d at 97-98.

"In the context of a campaign finance provision, a maximum \$10,000 fine carries a significant implications [sic] for a candidate who is running for elected office, who may not have substantial personal wealth, and who has a constitutional right to run for elected office. *Cf. Kirby*, 2003-NMCA-074, at ¶30, 133 N.M. at 789-90, 70 P.3d at 779-80.

...

"Unlike the penalty imposed pursuant to the Securities Act in *Kirby*, imposition of the \$10,000 fine appears disproportionate in relation to any asserted remedial purpose. *Cf. id.* at ¶37, 133 N.M. at 791, 70 P.3d at 781. There, the remedial purpose of the Securities Act was to 'regulate[] lawful and often complex transactions in which New Mexico citizens engage for their financial security.' *Id.* In contrast, the Voter Action Act sets up an opportunity for candidates who have the right to run for office to participate in a system in which their campaigns receive public financing. Any remedial goal is accomplished by reimbursement provisions of the Voter Action Act."

A fair summary of these passages is that, in the district court's view, the Voter Action Act, unlike the Securities Act at issue in *Kirby*, was not intended to remedy any sort of perceived public harm, but instead had the purely beneficent goal of providing an "opportunity for candidates who have the right to run for office" and "who may not have substantial personal wealth" to "participate in a system in which their campaigns receive public financing" (RP 943). Within the context of this kind of non-remedial assistance program, the only harm that could be done by misappropriation of the public's money would be a negative impact on the public fisc. An adequate remedy for this sort of harm is afforded, says the court, by the statutory provision allowing the Secretary of State to require wrongdoing candidates to refund the money they have received (RP 943). The additional fines

authorized by the Act are therefore, like the Act itself, bereft of any remedial purpose and are instead purely "punitive" in both their intent and their effect (RP 942-43).

Having adopted this view of the purposes of the Voter Action Act and its provision for civil fines, the district court needed to go no further in order to justify its holding that the imposition of such fines should be deemed to foreclose a subsequent criminal prosecution under the Double Jeopardy Clause. As the court recognized, the controlling authority in this state on the question whether a criminal prosecution is barred by a previous assessment of administrative fines is the decision of this court in State v. Kirby, *supra*, where the court allowed a prosecution to go forward despite the previous imposition by the state's Securities Division of \$75,000 in civil fines. Under that decision, the preclusive effect of an administrative penalty on a subsequent prosecution depends on whether or not "the penalty constitute[s] an integral part of an overall remedial ... scheme to protect the public," and whether "the punitive effects [of the fine] outweigh the remedial effect." Kirby, *supra* at ¶¶26-27, 133 N.M. at 788, 70 P.3d at 778, quoting White Chevy, *supra* at ¶11, 132 N.M. at 190, 46 P.3d at 97. Having found that neither the Voter Action Act nor the civil fines it authorizes had any remedial purpose at all, the district court in this case was logically compelled to rule that a criminal prosecution following the imposition of such fines was constitutionally barred. In this way, the

court's ruling on the double jeopardy issue was entirely dictated by its conception of the non-remedial purpose of the Act and its penalty provisions.

III. The District Court Was Wrong in Its View of the Purposes of the Voter Action Act and the Act's Provisions for Administrative Fines. In Fact, the Principal Objective of the Act Is to Provide an Effective Remedy for the Very Serious Problem of Actual or Perceived Official Corruption That Can Arise from the Reliance of Elected Officials on Private Campaign Contributions. The Act's Penalty Provisions Are Essential to the Achievement of This Overall Remedial Purpose Because Without Such Penalties, Any Public Financing System Is Liable to Produce More Rather Than Less Corruption.

The district court's view of the objectives of the Voter Action Act and its provision for civil fines is incorrect on every count. First, the notion that the primary purpose of public financing is to level the playing field by giving impecunious candidates an "opportunity" to run for public office - which was never an accurate notion in any event - has recently been put completely to rest by the United States Supreme Court. That court recently ruled in emphatic terms, in striking down the so-called "Millionaire's Amendment" to the Bipartisan Campaign Reform Act of 2002, 2 U.S.Code §441a-1(a), that the goal of "level[ing] electoral opportunities for candidates of different personal wealth" can never be a proper justification for the intrusion on First Amendment freedoms that is entailed by any form of campaign finance regulation. Davis v. FEC, ___ U.S. ___, 128 S.Ct. 2759, 2773-74 (2008). Accord Citizens United v. FEC, ___ U.S. ___, 130 S.Ct. 876, 904-5 (2010); McComish v. Bennett, ___ F.3d ___ (9th Cir., May 21, 2010) (slip op. at 7328n.3) (mandate stayed, Order dated 6/8/10 in USSC Docket No. 09A1163). It

is therefore now clear that the only constitutionally permissible justification for all such laws, including public financing, is the same one that has always been cited as their primary purpose - namely, to "eliminat[e] the improper influence of large private contributions" in political campaigns and thereby to remedy "the corruption and the appearance of corruption spawned by the real or imagined influence of large financial contributions on candidates' positions and on their actions if elected to office." Buckley v. Valeo, 424 U.S. 1, 25, 96 (1976). Accord Davis v. FEC, *supra*; FEC v. National Conservative PAC, 470 U.S. 480, 496-97 (1985); McComish v. Bennett, *supra*, slip op. at 7328n.3, 7345-46; North Carolina Right to Life v. Leake, 524 F.3d 427, 441 (4th Cir. 2008); Rosenstiel v. Rodriguez, 101 F.3d 1544, 1553 (8th Cir. 1996).²

² The U.S. Supreme Court's 1976 opinion in Buckley, *supra*, while describing the prevention of corruption and the appearance of corruption as "the primary purpose" and "the primary interest served by" campaign finance regulations, including public financing laws (*id.* at 25-26, 96), also referred to various possible "ancillary" purposes of such laws, such as "equaliz[ing] the relative ability of all citizens to affect the outcome of elections," limiting "the skyrocketing cost of political campaigns," and, in the case of public financing, "relieving ... candidates from the rigors of soliciting private contributions." and "enlarging public discussion and participation in the electoral process." *Id.* at 25-26, 93, 97. However, beginning with its 1985 decision in National Conservative PAC v. FEC, *supra*, and culminating with its 2008 decision in Davis v. FEC, *supra*, the court has made it increasingly clear that such "ancillary" purposes will not serve as adequate justifications to sustain the constitutional validity of campaign finance laws. Davis, *supra* at 2773; National Conservative PAC, *supra* at 496-97. Only the state's interest in "preventing corruption or the appearance of corruption" will clearly suffice for this purpose. *Id.* Remedying the potentially corrupting influence of private campaign contributions must therefore now be viewed, not only as the "primary" purpose served by campaign finance regulations, but as the *only* purpose that will be viewed as sufficiently consequential to sustain such regulations against First Amendment challenges. *Id.* Meanwhile, some of the supposed purposes that have sometimes been adduced for such laws have been specifically disapproved by the U.S. Supreme Court as being not only of secondary importance but actually illegitimate. The "level-the-playing-field" rationale invoked by the district court in this case, in particular, has been condemned by that court as having "ominous implications" and as "arrogat[ing] the voters' authority" to make "judgments about which strengths [of candidates] should be permitted to contribute to the outcome of an election." Davis, *supra* at 2773-74. Accord Citizens United, *supra* at 904-5. The application of the principles enunciated in these decisions to the specific context of public campaign financing is discussed in the Ninth Circuit's very recent opinion in McComish v. Bennett, *supra*, slip op. at 7328n.3, 7345-46.

In light of the dependence of all such laws on this quintessentially remedial goal for their very validity, the district court's view that New Mexico's Voter Action Act had no remedial purpose is unjustifiable. Indeed, there are those, including Common Cause, who believe that ridding our political system of the potentially corrupting influence of large private campaign contributions is one of the most important remedial purposes that any law could have.

The district court's conclusion that the penalty provisions of the Voter Action Act also lacked any remedial aim is equally unfounded. Far from being the sort of purely punitive 'add-on' portrayed by the district court, these provisions play an integral part in furthering the Act's overall remedial goals. Although this case represents the first example in New Mexico, the phenomenon of publicly financed candidates misappropriating the taxpayers' money or otherwise abusing the system has regrettably occurred on more than one occasion in other states.³ The opponents of public campaign financing have used these unfortunate examples to try to make the case that public financing will actually defeat its own purpose because it will pro-

³ E.g., *State v. Downing*, No. CR2004-018522-DT, Maricopa County (AZ) Superior Court, indictment 7/14/04, judgment and sentence 2/2/09; *In re Downing*, No. 03F-020059-AAG, Arizona Clean Elections Comm., Final Decision 12/16/03; *In re Quelland*, No. 08-0035-CCE, Arizona Clean Elections Comm., Findings, Conclusions and Order 11/19/09; Arizona Attorney General 2009 Annual Report, p. 19 (2009); *State v. Throumoulos*, No. CR-06-1636, York County (ME) Superior Court, indictment 6/6/06, judgment and commitment 9/20/07; *State v. Reagan*, No. CR-08-1757, York County (ME) Superior Court, indictment 7/8/08, judgment and commitment 2/6/09; *State v. Ladd*, No. CR-08-1756, York County (ME) Superior Court, indictment 7/8/08, judgment and commitment 4/29/09; *State v. Walcott*, No. CR-07-1238, Androscoggin County (ME) Superior Court, information 5/28/08; judgment and sentence 6/3/08; *In re 2004 Campaign of Julia St. James*, Maine Comm. on Govt. Ethics and Election Practices, Findings and Order 1/19/06; *In re 2004 Campaign of Sarah Trundy*, Maine Comm. on Govt. Ethics and Election Practices, Findings and Order 1/19/06; Maine Comm. on Govt. Ethics and Election Practices, 2007 Study Report, pp. 84-86 (2007).

duce more rather than less public corruption.⁴ The inclusion in the law of strict penalties for such misconduct is obviously the only effective answer to such criticisms. In this sense, such penalties are both essential to the realization of the anti-corruption objectives of public financing laws like the Voter Action Act and politically necessary to getting this sort of legislation enacted.

Nor is the district court correct in its observation that there is no need for such penalties because any remedial goal is adequately served by the additional provisions of the Act authorizing the Secretary of State to order wrongdoing candidates to refund any public money they have received. To tell a candidate contemplating such misbehavior that this is the only consequence she will suffer if she misappropriates the taxpayers' money would be like telling a thief that, if caught, she will merely be required to return the stolen money and will thus be left no worse off than she was before she stole it. Such a toothless "penalty" would be ineffective to prevent the sorts of candidate abuses that must be prevented if the Act's goals of reducing corruption and restoring public confidence in government are to be achieved. Those remedial goals will not be realized unless candidates are made to see that there is a downside to such misbehavior in the form of civil fines that go beyond merely returning the money they have misappropriated.

⁴ E.g., Goldwater Institute, *Campaign Promises: Arizona's Experiment with Taxpayer-Financed Campaigns*, Policy Report dated 3/28/06, p. 17 and notes 75-76 (2006); Fenske, "The Dirty Truth About 'Clean' Elections," *Phoenix New Times* 4/2/09; Center for Competitive Politics, "Fairly Flawed: Analysis of the 2009 Fair Elections Now Act," p. 6 (2009); Samples, ed., *Welfare for Politicians? Taxpayer Financing of Campaigns*, pp. 38, 55 (Cato Inst. 2005).

It has thus been shown that, contrary to the district court's characterization, the Voter Action Act was intended to provide, not a form of welfare for politicians, but rather an effective remedy for what many have perceived to be a very serious public harm. It has also been shown that the Act's provisions for civil fines are an integral part of its overall remedial scheme without which its central purpose of reducing public corruption could not be achieved. It will now be demonstrated that these conclusions regarding the aims of the Act and its provision for civil fines compel reversal of the district court's ruling that the imposition of such fines by the Secretary of State must be deemed to preclude the state from now bringing criminal charges for the same misdeeds.

IV. Under the Standards Enunciated in This Court's Controlling Decision in *State v. Kirby*, 2003-NMCA-074 (N.M.App. 2003), the Quintessentially Remedial Purposes of Both the Voter Action Act and Its Provisions for Civil Fines Compel the Conclusion That the Imposition of Such Fines Does Not Bar a Subsequent Criminal Prosecution on the Ground of Double Jeopardy.

As noted above, the controlling authority in this state on the question whether the imposition of administrative fines will bar a subsequent criminal prosecution for the same conduct is this court's recent decision in *State v. Kirby*, *supra*, 2003-NMCA-074, 133 N.M. 782, 70 P.3d 772. That case involved a criminal indictment under the Securities Act following the imposition of a \$75,000 fine by the Securities Division of the Regulation and Licensing Department for the same misconduct that was the subject of the indictment. *Id.* at ¶¶2-5, 133 N.M. at 784-85, 70 P.3d at 774-75. Quoting from the opinion of the Supreme Court in *City*

of Albuquerque v. One White Chevy, supra at ¶11, 132 N.M. at 190; 46 P.3d at 97, the court in Kirby began its discussion by spelling out the general test for determining whether an administrative penalty is sufficiently "punitive" in character to foreclose later criminal prosecution (Kirby, supra at ¶22, 133 N.M. at 788, 70 P.3d at 777-78):

"To determine whether a sanction is remedial or punitive, a reviewing court begins by evaluating the government's purpose in enacting the legislation, rather than evaluating the effect of the sanction on the defendant. Then the court must determine whether the sanction established by the legislation was sufficiently punitive in its effect that, on balance, the punitive effects outweigh the remedial effect. Although a civil penalty may cause a degree of punishment for the defendant, such a subjective effect cannot override the legislation's primarily remedial purpose."

Applying this test, the Kirby court determined that "[t]he Securities Act, as a whole, has a remedial purpose," because, like the federal Securities Exchange Act, this state legislation was meant to "insure honest securities markets and thereby promote investor confidence ... [and] to achieve a high standard of business ethics in the securities industry." Id., quoting SEC v. Zandford, 535 U.S. 813 (2002). The court went on to hold that the Act's provision for civil fines was likewise remedial in nature, because "the legislative purpose in enacting the civil penalty was that the penalty constitute an integral part of an overall remedial regulatory and administrative scheme to protect the public." Id. at ¶26, 133 N.M. at 788, 70 P.3d at 778.

This depiction by the court in Kirby of the overall remedial goals of the statute at issue there and its provisions for civil penalties could just as well be transposed to describe the statutory scheme under consideration in this case. As was amply demonstrated above, the Voter Action Act "as a whole, has a remedial purpose" quite similar in most ways to that of the Securities Act. Indeed, the following summary of the points made about the Voter Action Act in the preceding section of this brief reads like a paraphrase of the passage just quoted from the Kirby opinion - to wit, the Voter Action Act, by removing the potentially corrupting influence of large private campaign contributions on elected officials, aims to insure honest government, achieve a high standard of ethics among elected officials and thereby to promote public confidence in the integrity of the state's elected leadership. Id. Similarly, the Kirby court's characterization of the purposes of the fines authorized by the Securities Act would also accurately apply to the fines levied here under the Voter Action Act, which, because of their indispensable function in achieving the anti-corruption goals of the Act and preventing it from becoming just another opportunity for the very sorts of misconduct it was meant to correct, are equally revealing of a clear "legislative purpose ... that the penalty constitute an integral part of an overall remedial regulatory and administrative scheme." Id.

Following its description of the general remedial purposes of the Securities Act and the civil fines it authorizes, the court in Kirby proceeded to an analysis of the further question "whether the sanction established by the legislation was suffi-

ciently punitive in its effect that, on balance, the punitive effects outweigh the remedial effect." *Id.* at ¶27, 133 N.M. at 788; 70 P.3d at 778. For this purpose, it invoked the following seven-factor test (*id.* at ¶28, 133 N.M. at 790; 70 P.3d at 780, quoting Kennedy v. Mendoza-Martinez, 522 U.S. 144 (1963); internal quotation marks omitted):

"(1) [w]hether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment - retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned."

Application of these seven factors to the fines at issue here reveals that the remedial effects of these fines outweigh the punitive effects to at least the same degree as they did in the case of the civil fines at issue in Kirby. Thus, with respect to the first three factors, the penalties under the Voter Action Act, like those in Kirby, (1) involve no "affirmative disability or restraint," (2) consist of monetary fines which, according to the Kirby opinion, "are traditionally a form of civil remedy," and (3) do not "come into play only on a finding of scienter." *Id.* at ¶¶30-32, 133 N.M. at 790, 70 P.3d at 780.

With respect to the fourth factor - "whether [the fine] will promote the traditional aims of punishment - retribution and deterrence" - it must be acknowledged here, as it was in Kirby, that a fine will always have a deterrent impact. As the court there noted, however, "the presence of a deterrent purpose or effect is not

dispositive" where the fines also "serve[] other important nonpunitive goals." Id. at ¶33, 133 N.M. at 790-91, 70 P.3d at 780-81. In Kirby the court found that the fines served the nonpunitive goals of "encouraging investor confidence ... [in] the stability of the securities industry," and on this basis concluded that their retributive and deterrent effects were "incidental to and do not override the Act's and the civil penalty's primarily remedial purpose." Id. at ¶34, 133 N.M. at 791, 70 P.3d at 781. As was shown above, the nonpunitive goals served by the fines in this case - namely, to further the Act's central aim of forestalling official corruption and to prevent the Act from being transformed, in the eyes of the public, into a source instead of a cure for such corruption - are at least as compelling as the similar non-punitive goals evoked in the Kirby opinion.

As for the fifth factor - "whether the behavior to which [the fine] applies is already a crime" - it is almost invariably present in any case in which a person has been civilly fined and indicted for the same conduct. However, as the court concisely observed in Kirby, this alone "is insufficient to render the money penalties ... criminally punitive ... in the double jeopardy context." Id. at ¶35, 133 N.M. at 791, 70 P.3d at 781, quoting United States v. Hudson, 522 U.S. 93, 105 (1997).

The sixth determinant of whether a fine is primarily remedial or punitive - whether "there exists an alternative, remedial purpose to which the civil penalty may rationally be connected" - cuts the same way in this case as it did in Kirby. There the court noted that the proceeds of all fines assessed under the Securities

Act were earmarked for "public education and training on securities matters." Id. at ¶36, 133 N.M. at 791, 70 P.3d at 781. Likewise here, the Voter Action Act authorizes the Secretary of State to deposit the proceeds of fines collected under the Act into the "public election fund" that is dedicated to the purposes of "financing the election campaigns of certified candidates" and "paying the administrative and enforcement costs of the Voter Action Act." §§1-19A-10(A) and 1-19A-15(B)(5) NMSA 1978.

Finally, in this case, as in Kirby, the fine "does not appear excessive in relation to the ... Act's remedial purpose." Id. at ¶37, 133 N.M. at 791, 70 P.3d at 781. When one considers that the candidate in this case publicly admitted having knowingly falsified his campaign finance reports, and that the amount of the fine assessed for this egregious misconduct was only a small fraction of the amount of public funds he received and vastly smaller than the \$75,000 in fines that were assessed in Kirby, it is hard to avoid the conclusion that this final factor in Kirby's seven-part test militates even more strongly than it did in that case in favor of a finding that the civil fines imposed on this defendant were not so "excessive" as to justify branding them as "punitive."

In sum, every relevant factor in this case points to a conclusion that the administrative fines at issue here do not, under the controlling standards established by this court's decision in Kirby, preclude a subsequent criminal prosecution for the same conduct that was the subject of the fines. First, both the Voter Action Act in

general and its penalty provisions in particular serve the same general remedial purpose of protecting the public from harm as was served by the statutes at issue in Kirby - in that case from the harm of securities fraud, in this case from potential official corruption. Secondly, applying Kirby's detailed seven-factor test for determining whether this primarily remedial purpose is nevertheless overridden by the punitive character of the penalties, the conclusion emerges that the fines in this case, perhaps even more clearly than in Kirby, were "not sufficiently punitive in [their] effect that, on balance, the punitive effects outweighed the remedial effect." Id. at ¶27, 133 N.M. at 791, 70 P.3d at 782. It follows that defendant Block Jr's claim of double jeopardy must be rejected for the same reasons that the defendant's similar claim was rejected in Kirby.

V. Conclusion


Common Cause has shown in this brief that the district court misconceived the purpose of the Voter Action, and that this misconception was the basis of its ruling dismissing the indictment of defendant Block Jr. on double jeopardy grounds. Common Cause has further shown that, when the Act and its provision for civil fines are properly understood as remedial laws aimed at correcting a serious threat to the integrity of the political process, the district court's ruling on this issue cannot stand, because, under this court's controlling decision is State v. Kirby, supra, civil fines imposed under such a primarily remedial statutory scheme do not foreclose a subsequent criminal prosecution on double jeopardy grounds. Com-

mon Cause therefore urges the court to reverse the ruling of the district court on that issue. On the additional issue of statutory interpretation, Common Cause agrees with and adopts the state's position that the statute does not limit the authority of the Attorney General to prosecute the offenses charged here. For all these reasons, Common Cause urges the court to reverse the decision of the district court and reinstate the charges against both defendants.

Dated: June 23, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 23, 2010, I caused true copies of this Brief of Amicus Curiae Common Cause to be served by first-class mail, postage prepaid, on:

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