

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

MODERATE PARTY OF RHODE ISLAND,	:	
	:	
Plaintiff	:	
	:	
v.	:	C.A. No. 10-
	:	
PATRICK C. LYNCH, in his official capacity as	:	
Attorney General for the State of Rhode Island,	:	
and FRANK CAPRIO, in his official capacity as	:	
General Treasurer for the State of Rhode Island,	:	
	:	
Defendants	:	

**COMPLAINT**

Plaintiff Moderate Party of Rhode Island ("MPRI") hereby states as follows by and for its Complaint against Defendants Patrick C. Lynch, in his official capacity as Attorney General for the State of Rhode Island (the "Attorney General"), and Frank Caprio, in his official capacity as General Treasurer for the State of Rhode Island (the "General Treasurer") (sometimes collectively, the "Defendants").

**Parties and Jurisdiction**

1. The MPRI is a political party recognized by the State of Rhode Island. The MPRI was officially recognized as a political party and permitted to participate in the 2010 general election by the State of Rhode Island on or about August 18, 2009, following a prior decision of this Court and following compliance with all other applicable legal requirements.

2. The Attorney General is the principal legal officer for the State of Rhode Island, and is named in this action pursuant to Rhode Island General Laws §9-30-11 because the constitutionality of a Rhode Island statute is at issue in this action.

3. The General Treasurer is the chief fiscal officer for the State of Rhode Island, and is named in this action because the office of General Treasurer is responsible for the subject distribution of public funds to political parties pursuant to Rhode Island General Laws §44-30-2(d)(2).

4. This Court has jurisdiction over this action because it presents a Federal question pursuant to 28 U.S.C. §1331. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b).

**Facts Common to All Counts**

5. MPRI restates the allegations of Paragraphs 1 through 4 as if fully set forth herein.

6. Chapter 30 of Title 44 of the Rhode Island General Laws, among other things, establishes a statutory process whereby Rhode Island taxpayers are permitted to make a “contribution” during each tax year in the amount of Five Dollars (\$5.00), or Ten Dollars (\$10.00) for married couples filing jointly, toward the public financing of the electoral process. In such cases, Rhode Island taxpayers receive a credit against their personal income tax liability in the amount of any such contribution. See Rhode Island General Laws §44-30-2(d)(1).

7. The first Two Dollars (\$2.00) of any such contribution, or the first Four Dollars (\$4.00) for married couples filing a joint return, can be designated by the taxpayer to be contributed to a political party of their choice, as such political parties are defined in the Rhode Island General Laws at §17-12.1-12. If such funds are not designated by the taxpayer for contribution to a specific political party, then those funds are instead allocated to a "nonpartisan account" (the "Nonpartisan Account"). The maximum total that all taxpayers may collectively contribute is Two Hundred Thousand Dollars (\$200,000.00) per year, including funds specifically designated for particular parties and funds allocated to the Nonpartisan Account.

Any contributions exceeding the \$200,000 limit remain with the State as general revenue. See Rhode Island General Laws §44-30-2(d)(1).

8. By August 1 of each year, the Tax Administrator for the State must forward all such contributions made by Rhode Island taxpayers on their state tax return forms to the General Treasurer for distribution. See Rhode Island General Laws §44-30-2(d)(2).

9. By September 1 of each year, the General Treasurer must distribute and pay to each political party any such funds designated by taxpayers on their tax return forms as contributions to those political parties by name. The remainder of any such funds held in the Nonpartisan Account must be distributed and paid out by the General Treasurer in accordance with a statutory formula set forth in Rhode Island General Laws §44-30-2(d)(2).

10. Under that statutory formula, the General Treasurer must first pay five percent (5%) of any funds in the Nonpartisan Account to the political party then holding each of the four statewide general offices other than Governor (i.e., Lieutenant Governor, Attorney General, Treasurer and Secretary of State). Following the payment of that total of twenty percent (20%) of the funds in the Nonpartisan Account, the General Treasurer distributes the remaining funds "to each political party in proportion to the combined number of votes its candidates for [G]overnor received in the previous election." See Rhode Island General Laws §44-30-2(d)(2).

11. Any such funds distributed to political parties by the General Treasurer may be used by those parties for any purposes permitted by law, except that they may not be utilized directly to support or seek the defeat of any specific candidates. Accordingly, such funds are to be used for so-called "party-building" purposes, and to support general overhead and other expenses incurred by the political parties.

12. The foregoing statutory formula for distribution of funds contributed to the electoral process by Rhode Island taxpayers is unfair, inequitable and constitutionally infirm for the following reasons:

(a) The statutory formula relies upon the results of an election for Governor and other statewide offices that is only held once every four (4) years. Therefore, with each passing year following such a statewide election, those funds are distributed in accordance with increasingly dated and historic results that do not reflect current political realities. For instance, in 2010, those funds will be distributed in accordance with electoral results that are nearly four (4) years old.

(b) The aforementioned statutory formula makes no provision for the recognition of, or inclusion of, new political parties and/or independent candidates, either in or subsequent to an election to which the formula is applied in connection with a distribution. Yet, a new political party and an independent candidacy are both significant factors in the 2010 gubernatorial election.

(c) The aforementioned statutory formula is clearly premised on the assumption that the distribution of funds will be limited to the two historic and traditional political parties (i.e., the Democratic and Republican parties) and makes no provision for the recognition between election cycles of new political parties such as the MPRI.

13. Accordingly, if funds contributed to the electoral process by Rhode Island taxpayers on their 2009 tax return forms (or on tax return forms for 2008 or prior years filed after the last distribution of funds on September 1, 2009) are distributed on September 1, 2010, in accordance with the aforementioned statutory formula, no such funds from the Nonpartisan Account would be allocated to or paid to the MPRI even though the MPRI has been fully

recognized by the State and is participating in the 2010 general election as a recognized political party along with the Democratic and Republican parties.

14. If funds from the nonpartisan account are allocated and distributed on or about September 1, 2010, by the General Treasurer in accordance with the foregoing statutory formula, the State would be providing a tangible economic benefit to the pre-existing and established political parties (i.e., the Democratic and Republican parties) to the exclusion of the MPRI, despite the fact that the State recognized the MPRI in August of 2009 and permitted it to participate in the 2010 statewide election process on terms otherwise equivalent to any and all other participating political parties. Hence, the MPRI would suffer a distinct economic disadvantage by being excluded from the receipt of such state-sponsored support for the political process, despite the fact that it took any and all steps necessary as a matter of Rhode Island law, and in accordance with a prior decision of this Court, to achieve recognition and to participate in the political process along with any and all other recognized political parties.

15. The exclusion of state-sponsored economic support for one political party lawfully participating in the 2010 general election process, while according such state-sponsored economic benefits and support to other, pre-existing political parties, is inequitable, unfair and violative of the First and Fourteen Amendments to the United States Constitution in that it limits the access of Rhode Island taxpayers to the electoral process and to the statewide ballot, and reflects State support for some political parties to the exclusion of others.

**Count I**  
**(Declaratory Judgment – Constitutionality of Statutory Formula)**

16. The MPRI restates the allegations of Paragraphs 1 through 15 as if fully set forth herein.

17. The statutory formula for the distribution of funds from the Nonpartisan Account, as set forth in Rhode Island General Laws §44-30-2(d)(2), is unconstitutional in that it provides state-sponsored economic support to some political parties participating in the statewide electoral process, while excluding other political parties otherwise lawfully participating in the same electoral process.

18. In the event that funds designated for the electoral process by Rhode Island taxpayers are distributed by the General Treasurer on or about September 1, 2010, in accordance with the aforementioned statutory formula, to the exclusion of the MPRI, the MPRI will be harmed and will be placed at a distinct political and economic disadvantage relative to other, pre-existing political parties that will receive the benefit of state-sponsored economic support at a time when they are participating with and competing against the MPRI in a statewide election.

19. In accordance with Rhode Island law, and a prior decision of this Court, the MPRI has taken all steps necessary to secure full recognition for its participation in the 2010 statewide general election, and has been recognized for such purposes by the State. Accordingly, the MPRI is entitled to equal treatment in that process along with any and all other participating parties, and funds designated for the support of the statewide political process by Rhode Island taxpayers should be allocated equitably and equally among any and all lawfully recognized political parties participating in that process. Taxpayers are likewise entitled to have their Nonpartisan Account contributions allocated equitably and equally among the lawfully recognized political parties.

20. Accordingly, a real and judiciable controversy exists as to whether or not the General Treasurer should distribute funds contributed by Rhode Island taxpayers to the Nonpartisan Account in accordance with the statutory formula set forth at §44-30-2(d)(2), based

upon the historic results of the 2006 gubernatorial election, to the exclusion of the MPRI, or whether such distribution and allocation of funds in accordance with that statutory formula would be unconstitutional and impermissible in light of the current political landscape in the 2010 statewide election process.

**Count II**  
**(Injunctive Relief)**

21. The MPRI restates the allegations of Paragraphs 1 through 20 as if fully set forth herein.

22. If funds contributed by Rhode Island taxpayers to the Nonpartisan Account are distributed by the General Treasurer on or about September 1, 2010, in accordance with the aforementioned statutory formula, based upon the historical results of the 2006 statewide election, and to the exclusion of the MPRI, the MPRI will be irreparably harmed in its ability to compete fairly and equally in the 2010 statewide general election with other, pre-existing political parties.

23. The MPRI enjoys a reasonable likelihood of success on the merits of its claims in this action, in demonstrating that the aforementioned statutory formula for the distribution and allocation of public funds from Rhode Island taxpayers to political parties is unfair, inequitable and constitutionally infirm.

24. Public policy and the balance of the equities favor an injunction against the application of the current statutory formula to the distribution of any such funds by the General Treasurer in a way that would provide state-sponsored economic support to only some political parties competing in a statewide general election process to the exclusion of other political parties that are otherwise lawfully participating in that same electoral process, with the full recognition of the State.

WHEREFORE, Plaintiff MPRI seeks a Judgment in its favor, and against the Defendants, and seeks the following relief:

(i) A declaration that the statutory formula for distribution of funds contributed to the electoral process by Rhode Island taxpayers, and held in the Nonpartisan Account pursuant to Rhode Island General Laws §44-30-2(d)(2), is unconstitutional to the extent that it provides public economic support to only some political parties participating in a statewide general election process, to the exclusion of other political parties otherwise recognized by the State and lawfully participating in the same statewide election process;

(ii) Temporary, preliminary and permanent injunctive relief, restraining and enjoining the General Treasurer and the State from distributing any funds on or before September 1, 2010, to political parties in accordance with Rhode Island General Laws §44-30-2(d)(2) until or unless any such distribution can be accomplished in a manner that fairly and equitably includes all political parties lawfully participating in the 2010 statewide general election;

(iii) The MPRI's reasonable attorneys' fees and costs of suit; and

(iv) Such other relief as this Court may deem just and proper in the circumstances.



MODERATE PARTY OF RHODE ISLAND

By its Attorneys,

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