

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

LOUISIANA DEMOCRATS, ET AL.

NO. 2011 CW 2187

VERSUS

THE LOUISIANA BOARD
ETHICS, ET AL.

JANUARY 19, 2012

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In Re: Caroline Fayard, applying for expedited
supervisory writs, 19th Judicial District Court,
Parish of East Baton Rouge, No. 603,810. 23

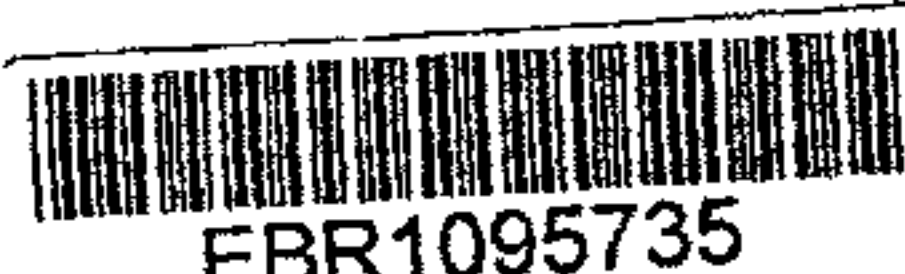
BEFORE: PARRO, GUIDRY AND WELCH, JJ.

WRIT DENIED. Although it may appear the subpoenas issued in this matter were "open-ended" by seeking returns to "present," given that there was a return date for those subpoenas, it is implicit that to "present" contemplated through the date the subpoenas issued. In this context, we find the trial court did not err. Moreover, we find the Board of Ethics, acting in its capacity as the Supervisory Committee, acted within its authority. Accordingly, the stay previously ordered by this Court is hereby lifted; the trial court's judgment, granting the motion to compel is hereby affirmed, with a new return date on all subpoenas at issue hereby set at thirty (30) days following the date of this action.

RHP
JMG

WELCH, J. dissents. I believe that the trial court erred in granting the motion to compel as I find that the Board of Ethics exceeded the authority granted to it by the Louisiana Campaign Finance Disclosure Act (CFDA) in issuing the *subpoenas duces tecum*.

The CFDA gives the Louisiana Board of Ethics, serving as the Supervisory Committee on Campaign Finance Disclosure, the authority to investigate any apparent or alleged violation of any of the provisions of the CFDA. Specifically, the CFDA gives the supervisory committee the authority to initiate such an investigation when "there is reason to believe a violation" of the CFDA has occurred. La. R.S. 18:1511.4. The instant investigation was spurred by an unsworn complaint alleging that the Louisiana Democratic Party (DEMOPAC) violated state law by accepting contributions from the parents of Carolyn Fayard and contributing the money back to the Caroline Fayard Campaign in the name of DEMOPAC (i.e.- giving in the name of another), enabling the Fayards to circumvent the contribution limits of \$5,000.00 per person or legal entity. Louisiana Revised Statute 18:1505.2(A)(1) prohibits persons from contributing to or in support of a candidate or to a political committee "through the name of another." Presumably, DEMOPAC is the "other" in whose name contributions were made by the parents of Caroline Fayard to the Fayard campaign. In response to the complaint, the



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Board of Ethics undertook to investigate contributions made to DEMOPAC by numerous members of the Fayard family, their businesses, and business associates (the "Fayard Entities") to determine whether a particular donation by DEMOPAC to the Committee to Elect Carolyn Fayard was a "de facto" donation by the identified Fayard Entity contributors to the Committee to Elect Carolyn Fayard in the "name of" DEMOPAC. The Board of Ethics also undertook to investigate the funding source for the contributions made by the identified Fayard Entity contributors to DEMOPAC.

I do not believe the CFDA gives the Board of Ethics authority to investigate the "funding source" of contributions made by a political committee such as DEMOPAC to a candidate for public office. The CFDA requires that political committees maintain records of campaign contributions and expenses and sets forth regulations regarding what must be reported, how donations should be valued, the content of the reports, and the time of making the reports. La. R.S. 18:1483; La. R.S. 18:1491.1 through La. R.S. 18:1491.8. Louisiana Revised Statute 18:1505.2(H)(2)(d) plainly provides that the contribution limitations set forth in the CFDA do not apply to contributions made to a candidate by a recognized political party or any committee thereof. The CFDA simply does not regulate the method by which political organizations make donations to candidates for public office or the amount thereof, and it does not give the Board of Ethics authority to investigate whether a particular contribution by a political organization is a "de facto donation" by that organizations' contributors. Therefore, I find that because the Board of Ethics does not have the authority to investigate the actual contributions made by DEMOPAC to the Caroline Fayard Campaign, its investigation into and demand that the Fayard Entities produce documents, invoices, or communications regarding a "media-buy" as referenced in DEMOPAC's campaign finance report, sought in Paragraph D of the *subpoenas duces tecum*, is outside the scope of the CFDA and is unsupported by law.

Moreover, I find the Board of Ethics' attempt to investigate the funding source of the contributions made by the identified Fayard Entity contributors to DEMOPAC and its affiliates to be unsupported by law. The complaint alleging that La. R.S. 18:1505.2(A)(1) had been violated did not allege that any contributions by the Fayards to DEMOPAC had been funded by a source other than the identified contributors. Thus, the complaint did not give the Board of Ethics reason to suspect that contributions to DEMOPAC by the identified contributors had been made in the name of another in violation of La. R.S. 18:1505.2(A)(1). Therefore, I find that the remainder of the information sought by the Board of Ethics, including evidence of contributions, correspondence surrounding the contributions and bank records from all bank accounts from which the contributions had been drawn, set forth in Paragraphs A, B, and C of the *subpoenas duces tecum* and Paragraphs E and F

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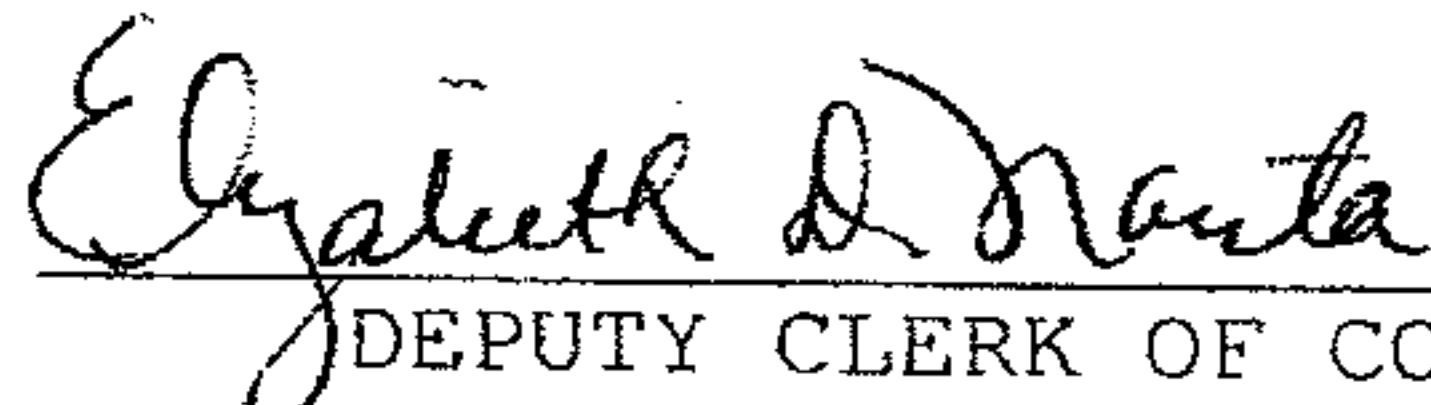
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of the interrogatories, is not based on a lawfully authorized purpose as required by **Mary Moe, L.L.C. v. Louisiana Board of Ethics**, 2003-2220 (La. 4/14/04), 875 So.2d 22.

Finding that the requests for documents and information contained in the motion to compel which seek to investigate the "funding source" of DEMOPAC's contribution to the Fayard campaign are not supported by a lawfully authorized purpose, I would grant the writ, reverse the judgment of the trial court granting the motion to compel, and enter judgment denying the Board of Ethic's motion to compel.

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT

**STATE OF LOUISIANA
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LOUISIANA DEMOCRATS F/K/A
DEMOPAC; GALEFORCE, LLC;
IMPERIAL PROPERTIES, LLC;
SKI FOREVER, LLC; WILISTON
OIL & GAS PROPERTIES, LLC;
ROBERT A. MAURIN, III; FRANK
DUDENHEFER, JR.; FRANCES E.
GRAY; BLAYNE HONEYCUTT; VALERIE
HONEYCUTT; FAYARD & HONEYCUTT, APC;
CYNTHIA FAYARD; CHAYLN FAYARD;
CALVIN C. FAYARD, III; COMMITTEE
TO ELECT CAROLINE FAYARD, LLC;
CAROLINE FAYARD; AND CALVIN C.
FAYARD, JR.

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VERSUS

THE LOUISIANA BOARD OF ETHICS, THE
SUPERVISORY COMMITTEE ON CAMPAIGN
FINANCE DISCLOSURE, FRANK P. SIMONEAUX,
TERRY BACKHAUS, JULIE E. BLEWER,
REV. GAIL BOWMAN, GARY G. HYMEL,
JEAN INGRASSIA, DR. LOUIS LEGGIO,
DR. CEDRIC LOWREY, M. BLAKE MONROSE,
SCOTT SCHNEIDER, AND GROVE STAFFORD

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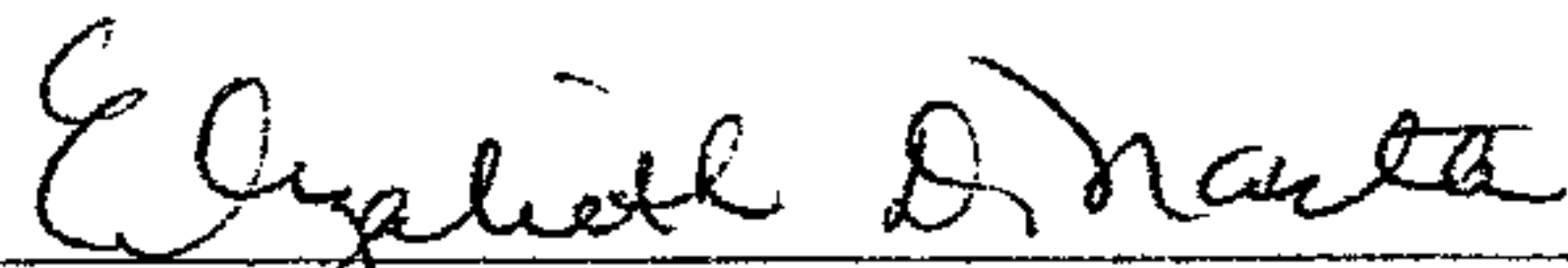
In Re: On motion of Caroline Fayard to supplement writ
application, 19th Judicial District Court, Parish of
East Baton Rouge, No. 603,810.

BEFORE: PARRO, GUIDRY AND WELCH, JJ.

MOTION TO SUPPLEMENT WRIT APPLICATION GRANTED.

JEW
RHP
JMG

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT

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LOUISIANA DEMOCRATS F/K/A
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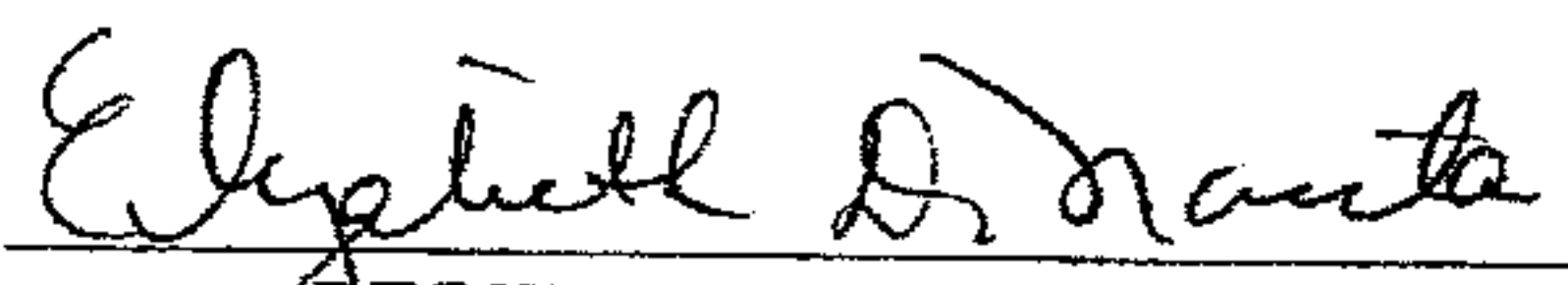
In Re: On motion of Louisiana Board of Ethics for expedited
consideration and to lift stay, 19th Judicial District
Court, Parish of East Baton Rouge, No. 603,810.

BEFORE: PARRO, GUIDRY AND WELCH, JJ.

MOTION FOR EXPEDITED CONSIDERATION AND TO LIFT STAY DENIED
AS MOOT.

JEW
RHP
JMG

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT