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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARC STUDENTS FOR LIBERTY
CAMPAIGN, an unincorporated
association,

NO. CIV. S-09-2446 LKK/GGH

Plaintiff,

v.

O R D E R

LOS RIOS COMMUNITY COLLEGE
DISTRICT, BRICE W. HARRIS,
Chancellor, in his official
capacity; WILLIAM V. KARNS,
Vice Chancellor in his
capacity, and DOES 1-10,

Defendants.

_____ /

This case concerns an election for a Student Trustee at Los Rios Community College. Due to perceived voting irregularities the community college district invalidated the election and ordered the student trustee to be selected by several student representatives. Here, the court confirms that federal jurisdiction is proper.

I. BACKGROUND

On August 31, 2009, defendants removed this case to federal court. Dkt. No. 1. The caption of the notice of removal indicated

1 that defendants removed the case "under 28 U.S.C. § 1441 (Federal
2 Question)." Id. In the notice of removal, defendant stated,

3 This Court has original jurisdiction over this action
4 and plaintiff's Complaint is removable to this Court by
5 defendants on federal question grounds. Plaintiff's
6 claims are based upon, and necessarily involve,
7 construction and application of federal law in that both
8 of Plaintiff's causes of action are based on federal law
- namely in that Plaintiff seeks declaratory relief that
Defendant violated its Constitutional due process rights
(Compl. ¶ 16) and injunctive relief pursuant to federal
law, including without limitation, 42 U.S.C. § 1983
(Compl. ¶ 18).

9 Id. Defendants also argued that this court has supplemental
10 jurisdiction over plaintiff's state law claims.¹ Id. Defendants
11 continue to state that the notice was "signed by counsel for
12 removing defendants pursuant to Rule 11 of the Federal Rules of
13 Civil Procedure."

14 Plaintiff's complaint enumerates two causes of action: the

15
16 ¹ Throughout the briefing on this motion, both parties state
17 that plaintiff brings state law claims in addition to its Section
18 1983 claim. Upon review of plaintiff's complaint, this court does
19 not find any state law causes of action. Specifically, plaintiff
20 does allege that defendants violated California law. However,
21 plaintiff does not allege that the violation of California law
22 entitles it to relief under any state law. Rather, plaintiff
23 alleges that the California law creates an interest protected by
24 the Due Process Clause of the federal Constitution and,
25 accordingly, violation of this state law offends the Due Process
26 Clause. Throughout the numerous substantive motions heard before
this court in this case, no party has discussed any California
causes of action. Nonetheless, it may be the case that plaintiff's
claim for declaratory relief seeks both an order that defendants
violated California law and that defendants' actions violated the
Due Process Clause. The parties, however, have never argued that
plaintiff's claim concerns anything but a violation of the federal
Due Process Clause. For this reason, the court does not find that
it has supplemental jurisdiction over any claims brought by
plaintiff.

1 first for declaratory relief and the second for injunctive relief.
2 Plaintiff alleges that, *inter alia*, defendants violated state law
3 when they invalidated an election for a student trustee at American
4 River College. Within its claim for declaratory relief, plaintiff
5 states, “[I]n voiding the election, the District officials made
6 illegal, ad hoc, post-election regulations to alter the outcome of
7 the election in violation of due process of law. Constitutional due
8 process of law requires that the results of elections be obeyed and
9 enforced by public officials.” Compl. ¶ 16.² Further, in
10 plaintiff’s cause of action for injunctive relief, it alleges, that
11 it “seeks this injunctive relief on the grounds of all applicable
12 state and federal law, including without limitation, 42 U.S.C. §
13 1983.”

14 On October 9, 2009, plaintiff filed a motion for a preliminary
15 injunction. Dkt. No. 8. In their discussion of the likelihood of
16 plaintiff’s success on the merits, plaintiff’s motion and
17 defendants’ opposition to that motion solely addressed the question
18 of whether the federal Constitution prohibited the actions
19 allegedly taken by defendants. On November 19, 2009, this court
20 denied plaintiff’s motion. Dkt. No. 9. The majority of this order
21 concerned whether plaintiff had sufficiently demonstrated a
22 likelihood of success on the merits to issue a mandatory
23 preliminary injunction. The only question addressed in the order
24

25 ² The court notes that there are two paragraphs numbered
26 sixteen in plaintiff’s complaint. This citation refers to the first
paragraph number sixteen.

1 and the parties' briefs as to plaintiff's likelihood of success on
2 the merits was whether defendants' actions violated the federal Due
3 Process Clause.

4 On December 15, 2009, defendants filed a motion in which they
5 stated, "The District defendants have consistently disputed the
6 court's subject matter jurisdiction." Dkt. No. 24.

7 On December 23, 2009, plaintiff filed its first motion for
8 summary judgment. This motion argued that defendants violated
9 California law and due process of law. It continued to base its
10 entitlement to relief on Section 1983. Presumptively, plaintiff
11 argued that by violating state law, defendants infringed upon the
12 federal due process rights of its members. In opposition to this
13 motion, defendant argued that the Fourteenth Amendment does not
14 apply to the case at bar because plaintiff has not demonstrated a
15 federally protected interest. Defendants did not, however,
16 challenge whether jurisdiction was proper, but rather argued that
17 plaintiff's claim is without merit.

18 On March 8, 2010, this court held a scheduling conference
19 pursuant to Fed. R. Civ. P. 16. At this conference, defendants'
20 counsel stated that her clients opposed subject matter
21 jurisdiction. Based on this statement and on the fact that
22 defendants removed this case, the court ordered plaintiff to file
23 a motion to confirm jurisdiction to determine whether this case
24 should be remanded. See Dkt. No. 53.

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1 Carolina Environmental Study Group, Inc., 438 U.S. 59, 70, 98 S.
2 Ct. 2620, 2629, 57 L. Ed. 2d 595 (1978) (emphasis original). "In
3 a given case, perhaps the Constitution does not give the
4 plaintiff the remedy he is seeking, but so long as his claim
5 that it does is substantial, jurisdiction attaches." 5A C.
6 Wright & A. Miller, Federal Practice and Procedure: Civil 2d §
7 3563. Where a defendant challenges the applicability of the
8 federal constitution, it should move for "dismissal . . . for
9 failure to state a claim on which relief can be granted rather
10 than for lack of subject matter jurisdiction."

11 **III. ANALYSIS**

12 Defendants maintain the absurd contention that plaintiff's
13 claim under Section 1983 concerning the alleged violation of its
14 members' federal due process rights is not a federal question.
15 Defendants make the unheard of argument that, "[W]hile the
16 Complaint makes one reference to Section 1983 and speaks to due
17 process, and therefore the Complaint was subject to removal,
18 this does not equate with the Fourteenth Amendment and the power
19 of the federal judiciary reaching the subject matter at issue."
20 Opp. at 2. This asserted legal principle lacks any support under
21 federal law. Federal courts retain jurisdiction to determine
22 whether the federal Constitution provides relief to plaintiff.
23 It is hard to imagine how this case could not raise a federal
24 question.

25 Under defendants' standard for federal question
26 jurisdiction, federal courts would lack jurisdiction over

1 questions of federal constitutional law in any situation where a
2 party argues, reasonably or not, that the federal Constitution
3 does not apply. For example, in Bowers v. Hardwick, the Supreme
4 Court held that the Due Process Clause does not confer a
5 fundamental right upon homosexuals to engage in certain sexual
6 conduct. Bowers v. Hardwick, 478 U.S. 186, 194 (1986), overruled
7 by Lawrence v. Texas, 539 U.S. 558 (2003). Under defendants'
8 proposed standard for federal jurisdiction, the Supreme Court in
9 Lawrence v. Texas should have declined to hear the case for lack
10 of jurisdiction. Specifically, petitioners in Lawrence,
11 challenged a state law prohibiting two persons of the same sex
12 to engage in certain sexual conduct. 539 U.S. at 564. According
13 to defendants in the case at bar, the Supreme Court lacked
14 jurisdiction to determine whether the statute violated the
15 federal Due Process Clause in 2003 because Lawrence raised the
16 identical issue under which the Court had previously held the
17 Due Process Clause does not apply in Bowers. Fortunately for
18 constitutional jurisprudence, the Supreme Court instead decided
19 the case on the merits.³

20 The case at bar is not as theoretically clear cut as
21 Lawrence. In Lawrence, there was direct precedent on point
22 holding that the Due Process Clause did not apply. Here, as this
23 court has previously reasoned, "the court cannot determine with

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25 ³ In essence, defendants simply do not recognize the
26 difference between a lack of jurisdiction and failure to state a
claim. If they did, they would not have made the claim they did
and the court would get on with resolving the case.

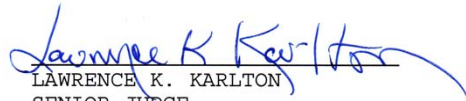
1 certainty whether the Due Process Clause of the Constitution
2 applies to the election of the student trustee." Order Denying
3 Preliminary Injunction, Dkt. No. 19, at 16. Accordingly, in this
4 case, the question of whether the Due Process Clause applies is
5 open. Nonetheless, defendants, despite their removal of this
6 case to federal court, argue that the court should remand this
7 case to state court because they contend that the Due Process
8 Clause does not apply. The court declines to adopt this
9 position.⁴ Thus, federal jurisdiction is proper in this case.⁵

10 **IV. CONCLUSION**

11 For the foregoing reasons, plaintiff's motion to confirm
12 jurisdiction, Dkt. No. 54, is GRANTED.

13 IT IS SO ORDERED.

14 DATED: May 7, 2010.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

16 ⁴ Defendants' position in this matter may very well be
17 sanctionable under Federal Rule of Civil Procedure 11.
18 Specifically, a party violates Rule 11 when it raises "legal
19 contentions [that] are [not] warranted by existing law or by a
20 nonfrivolous argument for extending, modifying, or reversing
21 existing law or for establishing new law . . ." even where a party
22 did not intend to mislead the court or harass a party. Fed. R. Civ.
P. 11(b)(2). Out of generosity to defendants, the court declines
to order defendants to show cause why they should not be sanctioned
under Rule 11. Nonetheless, the court strongly cautions defendants
to avoid bringing such baseless arguments to this court in the
future.

23 ⁵ The court notes that the Federal Rules of Civil Procedure
24 provide defendants with numerous opportunities to challenge the
25 merits of plaintiff's claims. Prior to filing an answer, they could
26 have filed a motion to dismiss for failure to state a claim upon
which relief might be granted. Fed. R. Civ. P. 12(b)(6). After
filing an answer, they may file a motion for judgment on the
pleadings on the same grounds, Fed. R. Civ. P. 12(c), or a motion
for summary judgment, Fed. R. Civ. P. 56.