



1998

Political Association, Supreme Court, Appellate Division, Third Department: Kalkstein v. DiNapoli

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Civil Law Commons](#), [Constitutional Law Commons](#), [First Amendment Commons](#), [Legislation Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

(1998) "Political Association, Supreme Court, Appellate Division, Third Department: Kalkstein v. DiNapoli," *Touro Law Review*: Vol. 14 : No. 3 , Article 51.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol14/iss3/51>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

U.S. CONST. amend. I:

Congress shall make no law . . . abridging . . . the right of the people to peaceably assemble

N.Y. CONST. art. I, § 9:

No law shall be passed abridging the rights of the people to peaceably assemble

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

Kalkstein v. DiNapoli¹
(decided January 23, 1997)

Petitioners, Lawrence Kalkstein and Charles Gargano, representatives of two political corporations formed to manage Governor George Pataki's inauguration, were issued subpoenas by respondents, committees of the New York State Assembly.² The document issued to petitioner Gargano, directed him to appear at a joint hearing and the one issued to petitioner Kalkstein, directed him to appear at the hearing and also produce specific documents and materials.³

Pursuant to CPLR Section 2304,⁴ petitioners promptly moved to quash the subpoenas, claiming, inter alia, that they were overbroad.⁵ They contended that the subpoenas implicated a right

¹ 228 A.D.2d 28, 653 N.Y.S.2d 710 (3d Dep't), *appeal dismissed*, 89 N.Y.2d 1008, 679 N.E.2d 640, 657 N.Y.S.2d 401 (1997).

² *Id.* at 29-30, 653 N.Y.S.2d at 711. The reviewing committees were "three standing committees of the State Assembly." *Id.* at 29, 653 N.Y.S.2d at 711.

³ *Id.* at 30, 653 N.Y.S.2d at 711.

⁴ N.Y. C.P.L.R. 2304 (McKinney 1997). Section 2304 provides in pertinent part: "A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable." *Id.*

⁵ *Kalkstein*, 228 A.D.2d at 30, 653 N.Y.S.2d at 711.

which is protected under the First Amendment to the United States Constitution; the right of political association.⁶

The Appellate Division, Third Department reversed in part and affirmed in part the lower court's partial grant of the motion to quash subpoenas.⁷ The court here held that (1) the subpoena to Kalkstein was overbroad in that it requested extraneous information, beyond the names of contributors to corporations, amounts of contributions, and purposes of the contributions; (2) the subpoena's request for documents "implicated the right of political association;" (3) The subpoenas were not too broad to the "extent they sought to compel testimony of witnesses" at the legislative proceeding.⁸

The two corporations involved were for profit corporations formed following Governor George Pataki's election in November, 1994, New York Inaugural 95 Inc. and New York Transition 95 Inc.⁹ They were formed, respectively, for the management of Governor Pataki's inauguration events and the transition of the State government at the close of the previous term of Governor Mario Cuomo.¹⁰ After the corporations were created, they became involved in fund-raising activities and allocated funds to meet their purposes.¹¹ However, the corporations were not deemed "political committees" according

⁶ U.S. CONST. amend I. The First Amendment provides in pertinent part: "Congress shall make no law . . . abridging . . . the right of the people to peaceably assemble . . ." *Id.* See also, N.Y. CONST. art. I, § 9. This section provides in pertinent part: "No law shall be passed abridging the rights of the people peaceably to assemble..." *Id.*

⁷ *Kalkstein*, 228 A.D.2d at 28, 653 N.Y.S.2d at 710.

⁸ *Id.* at 30-31, 653 N.Y.S.2d at 712. The court also stated that it would not consider the respondents' arguments under the Speech and Debate Clause because the issue was not brought up before the Albany Supreme Court. *Id.* at 31, 653 N.Y.S.2d at 712. In addition, the court did say that the trial court "erred in failing to sustain the subpoenas insofar as they sought petitioners' testimony." *Id.*

⁹ *Id.* at 29, 653 N.Y.S.2d at 711.

¹⁰ *Id.*

¹¹ *Id.*

to Election Law section 14-100(1)¹² and therefore were not required to comply with certain requirements outlined in the campaign financing law.¹³ The standing committees were investigating whether present election ethics and regulations applicable to the activities of corporations like those mentioned above, are sufficient to safeguard the public interest and whether there is a need for additional laws.¹⁴ As part of the inquiry, respondents jointly issued the subpoenas to the petitioners.¹⁵ The petitioners moved to quash and the Supreme Court granted the motion “except as to the requests set forth in the subpoena served on Kalkstein for the names of the contributors to the corporations, the amounts of their contributions and where, to whom and for what purposes such moneys were spent.”¹⁶ Respondents appealed.¹⁷

As for the subpoena issued to petitioner Kalkstein, which asked for names of contributors and the purposes of the contributions. The Standing Committee on Governmental Operations justified scrutiny of the pertinent documents as necessary to “understand the facts of who gave, [and] how much was expended....”¹⁸ The Appellate Division, however, agreed with the lower court in that “precluded documents and materials will yield information that is extraneous to the central purposes of the committee’s inquiry.”¹⁹ Furthermore, the court held that the subpoena should be limited to prevent the Legislature from “treading on the right of political association which is protected by the [First] Amendment.”²⁰ The

¹² N.Y. ELEC. LAW §14-100(1). Section 100(1) defines a political committee as “any corporation aiding or promoting and any committee, political club or combination of one or more persons operating or co-operating to aid or to promote the success or defeat of a political party. . . .” *Id.*

¹³ *Kalkstein*, 228 A.D.2d at 29, 653 N.Y.S.2d at 711.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 30, 653 N.Y.S.2d at 711-12.

¹⁷ *Id.*

¹⁸ *Id.* at 30, 653 N.Y.S.2d at 712.

¹⁹ *Id.* at 30, 653 N.Y.S.2d at 712.

²⁰ *Id.* (citing *In Re Citizens Helping Achieve New Growth & Employment v. New York State Bd. of Elections* [hereinafter *CHANGE-NY*], 201 A.D.2d 245, 248, 615 N.Y.S.2d 481, 483-84 (3d Dep’t 1994) (holding that one has

court further indicated that “[w]hen such right is implicated, the government’s quest for information is precluded unless it shows ‘that there are governmental interests sufficiently important to outweigh the possibility of infringement.’²¹ Here, the court did not find such a showing by the Legislature.²²

In *Buckley v. Valeo*,²³ the United States Supreme Court held that legislative disclosure of a similar nature,²⁴ “sufficiently important to outweigh the possibility of infringement”²⁵ The Supreme Court held that such disclosure, for instance, enables voters to identify the stance of political candidates more accurately.²⁶ In addition, the Court asserted that the interest is of great importance in that disclosure helps to prevent corruption and serves as an efficient way to discover violations of contribution regulations.²⁷

In *Federal Election Commission v. Larouche Campaign*,²⁸ a legislative subpoena required the production of campaign contribution and loan records solicited and received, including the names and phone records of those solicited as well as phone records.²⁹ The inquiry’s purpose centered around an investigation into fraudulent records that claimed donations came from credit

“complied with the need to protect basic constitutional rights by specifically excluding from the subpoena any document identifying contributions to or members of petitioner.”)).

²¹ *Id.* at 31, 653 N.Y.S.2d at 712. (citing *Buckley v. Valeo*, 424 U.S. 1, 66 (1976)).

²² *Id.*

²³ 424 U.S. 1 (1975).

²⁴ *Buckley*, 424 U.S. at 66. The Federal Election Campaign Act required detailed financial records of certain political committees to be available for “public inspection and copying.” *Id.*

²⁵ *Buckley*, 424 U.S. at 66.

²⁶ *Id.* at 67.

²⁷ *Id.*

²⁸ 817 F.2d 233 (2d Cir. 1987). This case involved a “subpoena issued by the FEC as part of an FEC investigation of the Larouche Campaign Inc.” on the basis of allegations that Larouche “falsified its records and obtained matching funds from the government.” *Id.* at 233-34. The court held that the government did not show that there was a need to identify solicitors that would override constitutional rights. *Id.* at 235.

²⁹ *Id.* at 234.

card donations.³⁰ The Second Circuit held that the administrative agency failed to establish that the need for a list of contributors outweighed the solicitors' First Amendment right of association.³¹

In contrast, the court in *CHANGE-N.Y. v. New York State Board of Elections*,³² upheld comparable subpoenas,³³ because they did not ask for the identification of contributions or members of those petitioning.³⁴

Citing these precedents, the court in *Kalkstein v. DiNapoli* determined that the two subpoenas violated petitioners First Amendment right to association.³⁵ In examining the state and federal cases referred to by the *Kalkstein* court, it is apparent that the same "compelling government interest" standard is applied by both the federal and state courts.³⁶ To determine whether the government's interests are sufficiently compelling, the courts "must look to the extent of the burden they place on individual rights."³⁷ In *Kalkstein*, the court determined the two subpoenas placed too great a burden, in part, on petitioners First Amendment right of Association.³⁸

³⁰ *Id.*

³¹ *Id.* at 235.

³² 201 A.D.2d 245, 615 N.Y.S.2d 481.

³³ *Id.*

³⁴ *Id.* at 248, 615 N.Y.S.2d at 483-84.

³⁵ 228 A.D. 30, 653 N.Y.S.2d 712 (3d Dep't 1997).

³⁶ See *Federal Election Commission v. Larouche Campaign*, 817 F.2d 233, 235 (2d Cir. 1987); *CHANGE-NY*, 201 A.D.2d at 248, 615 N.Y.S.2d at 483-84; *Kalkstein*, 228 A.D. at 28, 615 N.Y.S.2d at 710.

³⁷ *Buckley v. Valeo*, 424 U.S. 1, 68 (1975).

³⁸ *Kalkstein*, 228 A.D.2d at 30, 653 N.Y.S.2d at 710.

