

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BEVERLY C. DAGGETT, et al.,)	
)	
<i>Plaintiffs</i>)	
)	
v.)	Docket No. 98-223-B-H
)	
PETER B. WEBSTER, et al.,)	
)	
<i>Defendants</i>)	

**MEMORANDUM DECISION ON DISCOVERY DISPUTE
INVOLVING NON-PARTY SUBPOENAS DUCES TECUM**

Before the court is the issue of the discoverability of documents that fall within the scope of Document Requests 1-6 contained in subpoenas *duces tecum* served on non-parties Maine Citizen Leadership Fund, Maine People’s Alliance, Common Cause/Maine, Maine Citizens for Clean Elections a/k/a Money Out of Politics Coalition, Maine Voters for Clean Elections, Dirigo Alliance and George A. Christie.

The plaintiffs seek production of non-public documents (excluding any systematic studies of the efficacy of campaigning at any given contribution limits, which counsel for the non-party subpoenaees have represented do not exist) prepared and/or exchanged by proponents of Ballot Question 3, which included the provisions of Maine’s campaign financing law under constitutional challenge in this lawsuit.

I held a telephone conference with counsel regarding this issue on May 10, 1999 in which I acceded to their requests for an opportunity to file brief position papers on this matter. *See* Report

of Hearing and Order Re: Discovery Dispute (Docket No. 39). Having carefully considered the resultant papers, I now conclude that the non-public documents at issue are non-discoverable on relevancy grounds.

The plaintiffs suggest that the documents are relevant for the following reasons: (i) that the motives of drafters of legislation come into play in cases in which a fundamental right is infringed, (ii) that the defendants may argue that the drafters' findings and predictions should be accorded legislative deference and (iii) that evidence from the drafting process may be used to impeach inasmuch as the plaintiffs anticipate that the defendants may call to testify at trial one or more of the individuals involved in the drafting process concerning the appearance of corruption and the need for lower contribution limits. Letter from Robert J. Newmeyer to Hon. David M. Cohen dated May 12, 1999 ("Newmeyer Letter") at 2-4. None of these grounds is persuasive.

First, the motives of individual drafters play no role in the relevant analytical framework. The question, rather, is whether the campaign financing law severely burdens the plaintiffs' free-speech and free-association rights and, if so, whether the defendants can demonstrate a sufficiently weighty interest and have employed means sufficiently closely drawn to avoid unnecessary abridgement of constitutional freedoms. *See, e.g., National Black Police Ass'n v. District of Columbia Bd. of Elections & Ethics*, 924 F. Supp. 270, 274 (D.D.C. 1996), *vacated on other grounds*, 108 F.3d 346 (D.C. Cir. 1997).

Second, as the plaintiffs themselves concede, no court has accorded legislative deference to ballot drafters. Newmeyer Letter at 3. Inasmuch as appears, courts have declined to do so primarily because (regardless of evidence, or lack thereof, in any particular case as to the drafting process undertaken) the initiative process inherently lacks the indicia of careful debate that would counsel

deference. *See, e.g., Carver v. Nixon*, 72 F.3d 633, 645 (8th Cir. 1995) (process of legislative enactment includes deliberation, opportunity for compromise and amendment, providing substantial reasons for deference that do not exist with respect to proposals adopted by initiative); *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 945 (9th Cir. 1995), *vacated on other grounds*, 520 U.S. 43 (1997) (deference normally accorded legislative findings does not apply with same force when First Amendment rights at stake; in addition, because measure was ballot initiative, it was not subjected to extensive hearings or considered legislative analysis before passage); *California Prolife Council Political Action Comm. v. Scully*, 989 F. Supp. 1282, 1299 & n. 42 (E.D. Cal. 1998), *aff'd*, 164 F.3d 1189 (9th Cir. 1999) (noting, in declining to accord legislative deference, that inasmuch as statutes at bar were product of initiative process, their adoption did not enjoy fact gathering and evaluation process that in part justifies deference, and, in any event, no systematic study was undertaken in conjunction with measure); *Russell v. Burris*, 978 F. Supp. 1211, 1226 (E.D. Ark. 1997), *aff'd in part, rev'd in part on other grounds*, 146 F.3d 563 (8th Cir. 1998) (declining, on strength of *Carver*, to accord legislative deference to initiative measure despite evidence as to draftsmanship and campaign processes).

Finally, the plaintiffs fall short of demonstrating a need for the non-public documents for impeachment purposes. The plaintiffs cite a potential need to impeach witnesses testifying about the motives and necessity for changes in the law. Newmeyer Letter at 4. There is no need to impeach any witness regarding his or her motives; such motives are irrelevant. Nor is any individual witness's perception regarding the necessity for change in the law (in the absence of empirical evidence such as a systematic study) probative.

For these reasons, the plaintiffs are not entitled to the production of documents covered in

Document Requests 1-6, served upon the non-party subpoenaees, to the extent that they seek to discover non-public documents prepared and/or exchanged by proponents of Ballot Question 3.

Dated this 18th day of May, 1999.

David M. Cohen
United States Magistrate Judge