



## **COMPLAINT**

### **Nature of the Action**

1. This action seeks to vindicate free speech, free association, and due process rights guaranteed by the First and Fourteenth Amendments to the United States Constitution, and Article I, § 7 of the Louisiana Constitution. Plaintiff Center for Individual Freedom (“Center”) wants to address citizens of Louisiana on matters of public importance, and many in Louisiana want to hear what the Center has to say. Yet, at the very time when the public is most interested in and attuned to such discussion because of the impending September 18 primary election, Louisiana’s campaign finance statutes make it impossible for the Center to speak, threatening civil and criminal penalties for violation of untailed, unduly burdensome, overbroad, and impermissibly vague provisions. Proceeding under the Civil Rights Act, 42 U.S.C. § 1983, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the Constitution itself, the Center seeks injunctive, declaratory, and other appropriate relief that will protect the rights to speak and to receive speech. And because irreparable injury is being inflicted on the Center, its supporters, and its would-be listeners at this very moment, the Complaint seeks emergency temporary as well as permanent injunctive relief.

### **Jurisdiction and Venue**

2. Because this action arises under the Constitution and laws of the United States, this Court has federal question jurisdiction under 28 U.S.C. § 1331. Because this action seeks to redress the deprivation of civil rights, this Court also has jurisdiction under 28 U.S.C. § 1343(a)(3). Because a defendant resides in this District and a substantial part of the events or omissions underlying the claim occurred here, venue is proper under 28 U.S.C. § 1391(b).

## Parties

3. Plaintiff Center for Individual Freedom is a non-partisan, non-profit organization whose mission is to protect and defend individual freedoms and individual rights guaranteed by the U.S. Constitution.

(a) The Center seeks to focus public, legislative, and judicial attention on the rule of law as embodied in the federal and state constitutions and structural protections that constrain and disperse governmental authority. It also seeks to foster intellectual discourse and to promote education that reaffirms the imperatives of the U.S. Constitution as they relate to contemporary conflicts. Its goals, principles, and activities are more fully described at its Internet website at <<http://www.cfif.org>>.

(b) The Center has spoken out on public issues in Louisiana in the past and plans to do so in the future. For example, in 2003 the Center broadcast advertisements in Louisiana concerning the need to provide a prompt confirmation vote for nominees to the federal bench. In addition, since 2000 the Center has spoken out on identical, related, and similar issues of public importance in other states and nationwide. For example, the Center has run broadcast and print advertisements in the District of Columbia and the States of Illinois, Maryland, North Dakota, and Virginia, as well as nationally, on matters of public importance ranging from the dire need to confirm federal judges to taxation issues to concerns about public corruption to the right of citizens not to be compelled to fund speech with which they disagree.

(c) Voluntary contributions support the work of the Center. Consistent with its commitment to individual freedom, the Center staunchly and zealously guards the privacy of its contributors. Similarly, due to the sometimes controversial nature of the issues in which the

Center engages, many of its contributors require assurances that their identities will not be disclosed. If the Center were to begin disclosing its contributors, its revenues would fall and its ability to speak would be impaired.

(d) The Center is a corporation organized under the laws of the Commonwealth of Virginia and operates as tax exempt under § 501(c)(4) of the Internal Revenue Code. Its headquarters address is 901 N. Washington St., Suite 402, Alexandria, VA 22314.

4. Defendants are legally responsible for enforcing the laws of the State of Louisiana that are challenged in this action. Each of them has sworn to enforce the laws of the State of Louisiana within their field of responsibility, and each stands ready, willing, and able to do so. They are proper persons to defend the interest of the State.

(a) Paul J. Carmouche is the District Attorney for the 1<sup>st</sup> Judicial District. He is charged with criminal enforcement of the challenged laws by R.S. 18:1511.6. He resides in Shreveport, Louisiana.

(b) Defendant Robert Roland is Chairman of the Louisiana Board of Ethics (“Board”) and the Supervisory Committee for Campaign Finance (“Committee”), which are charged with civil enforcement of the challenged laws by R.S. 18:1511.5. He resides in Baton Rouge, Louisiana. The Committee is comprised of the Board. R.S. 18:1511.1. The Committee has special statutory authority to clarify provisions of the challenged laws, define the terms used in those laws, apply a general term to specific circumstances, and render advisory opinions, all without compliance with the Administrative Procedures Act. R.S. 18:1511.2.

(c) Defendant T.O. Perry, Jr., is Vice-Chairman of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. He resides in Baton Rouge, Louisiana.

(d) Defendant John W. Greene is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. He resides in Covington, Louisiana.

(e) Defendant E.L. Guidry, Jr., is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. He resides in St. Martinville, Louisiana.

(f) Defendant R.L. Hargrove, Jr., is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. He resides in Calhoun, Louisiana.

(g) Defendant Michael J. Kantrow, Sr., is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. He resides in Shreveport, Louisiana.

(h) Defendant Joseph Maselli is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. He resides in New Orleans, Louisiana.

(i) Defendant Henry C. Perret, Jr. is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. He resides in Lafayette, Louisiana.

(j) Defendant Ascension Delgado Smith is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. She resides in Shreveport, Louisiana.

(k) Defendant Dolores Spikes is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. She resides in Baton Rouge, Louisiana.

(l) Defendant Edwin O. Ware, III, is a Member of the Louisiana Board of Ethics and the Supervisory Committee for Campaign Finance. He resides in Alexandria, Louisiana.

(m) The State of Louisiana cannot be named as a defendant due to the Eleventh Amendment to the United States Constitution. However, notice of this action will be given to the Louisiana Attorney General. The individual Defendants are named pursuant to the doctrine of *Ex parte Young*, and Plaintiff would consent to the substitution of the represented State, Board, and Committee if they wished to subject themselves to suit directly, waiving the Eleventh Amendment, sovereign immunity, and related defenses.

### **The Challenged Laws**

5. Louisiana has adopted complex laws that operate to restrict the rights of Americans to discuss issues of public importance during periods when, due to the pendency of an election, citizens are most interested in and attuned to such discussion. Those laws are referred to generally as the Campaign Finance Disclosure Act, R.S. 18:1481, *et seq.* In a nutshell, the challenged laws heavily burden the public speech of any person if the speech costs more than \$500 and falls within a sweeping, overbroad, vague, and subjective standard of relationship with any election, threatening criminal and civil penalties for a violation.

6. As relevant to this action, the challenged laws regulate “expenditures.” An expenditure includes any “purchase, payment, advance, deposit, or gift of money or anything of value made for the purpose of supporting, opposing, or otherwise influencing the nomination or

election of a person to public office.” R.S. 18:1483(9)(a) (emphasis added). (Certain voluntary personal services and internal organizational communications are excluded. R.S. 18:1483(d)). In particular, the spending necessary to engage in television or radio speech is an expenditure if it is determined to have been made with the “purpose” of “supporting, opposing, or otherwise influencing” an election.

7. As construed by the Board and Committee (*e.g.*, in Ethics Board Docket No. 99-580), the subjective “intent” of the speaker is considered to determine whether, in the judgment of enforcement authorities, the only “plausible meaning” of public speech is to express “a preference of one candidate over another candidate.” Even objective identification of the positions of specific candidates that are of importance to the speaker may be deemed an effort to support, oppose, or otherwise influence an impending election.

8. No person (individual, corporate, or otherwise) may engage in public speech that involves an expenditure of more than \$500 during an election period unless that person files detailed, intrusive, and burdensome reports. R.S. 18:1501.1; R.S. 18:1491.7. The required contents of such a report include, in addition to basic organizational and identifying information:

(a) The full name and address of each person who has made any contribution to the reporting entity in any amount for any purpose at any time during the entire reporting period. R.S. 18:1491.7.B.(4)(a).

(b) The aggregate amount of all contributions received during the reporting period. R.S. 18:1491.7.B.(4)(b).

(c) The gross proceeds received and accepted by the reporting entity during the reporting period from “the sale of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials.” R.S. 18:1491.7.B.(5).

(d) The gross proceeds received and accepted by the reporting entity during the reporting period from the sale of tickets to testimonials or similar fundraising events, and each sale must be treated as a contribution with full disclosure of the purchaser’s name and address. R.S. 18:1491.7.B.(6).

(e) The total amount of all expenditures made by the reporting entity during the reporting period. R.S. 18:1491.7.B.(12).

(f) The full name and address of “each person to whom an expenditure has been made” during the reporting period, along with “the amount, purpose, and date of each such expenditure.” R.S. 18:1491.7.B.(13).

(g) “All payments made during the reporting period to repay loans, the amount, date, and source thereof.” R.S. 18:1491.7.B.(15).

(h) The total amount of cash and investments on hand at the end of the prior reporting period, the total of all contributions received during the reporting period, and all cash income from investments during the reporting period. R.S. 18:1491.7.B.(1), (2), (3).

9. Engaging in public speech via an “expenditure” as defined above is a violation of the challenged laws unless the required report is filed that accurately discloses all of the mandated information. R.S. 18:1505.1.



(a) Any knowing failure to comply risks a civil penalty of up to \$100 per day that the report is not filed, plus \$10,000. R.S. 18:1505.4.

(b) Further civil penalties are provided for “knowing and willful” violations, which include any “conduct which could have been avoided through the exercise of due diligence.” R.S. 18:1505.5.

(c) Criminal penalties of a fine and imprisonment for up to six months may be imposed for violations committed “knowingly, willfully, and fraudulently.” R.S. 18:1505.6.

### **The Injury to Plaintiff**

10. The Center wishes to speak to the public in the Shreveport Division of the Western District of Louisiana on matters of vital public interest, including, among others, criminal law enforcement and sentencing, legal reform, and judicial decision-making. The Center wishes to spend more than \$500 to broadcast such speech on radio and television stations. The Center’s planning and development of the contemplated ads is well advanced, and substantial resources already have been spent, although the precise content and format of its speech will depend on an assessment of circumstances at the moment the speech is to be disseminated.

11. Citizens of Shreveport, Louisiana are particularly interested in and attuned to discussion of such issues of public importance at this time because of the pendency of an election for a seat on the Louisiana Supreme Court. The Louisiana Supreme Court often has responsibility for many of the issues that the Center plans to address. Those issues can be framed clearly, and the views of the Center can be communicated and illustrated most effectively, by reference to the role of the Court and views of candidates in that election.

12. The Center does not wish to expressly advocate the election or defeat of any candidate for public office in Louisiana. None of its contemplated advertisements would contain such express advocacy. However, express advocacy is not the test under the challenged laws.

13. The Center does intend to refer to the position of specific candidates on issues of importance to it. Such references are, in its judgment, essential to illustrate, communicate, and persuade. There is a grave likelihood that Louisiana enforcement authorities, including Defendants, will construe that speech to be subject to and in violation of the challenged laws. This threat is particularly severe since Louisiana authorities base their regulatory actions on their subjective assessment of what the speaker subjectively intends, and the Center cannot be certain what view Defendants will take of its intent.

14. As a result, the Center is gravely and reasonably concerned that money spent for its contemplated public speech would constitute an “expenditure” within the meaning of Louisiana’s campaign finance laws. Such expenditures over \$500 (a trivial amount for television, radio, or similar speech) would thus expose the Center to civil and criminal penalties.

15. As explained above, the Center, an organization committed to individual freedom, cannot and will not disclose the identities of its contributors. The result of such disclosure would be a substantial loss of contributions and a grave inability to speak. Thus, filing reports making such disclosures would effectively suppress the speech of the Center. Simply stated, the Center does not have the choice of both reporting and speaking. Because the Center is not willing to expose itself and its staff to civil and criminal penalties and its confidential contributors to disclosure, the Center has been forced to refrain from speaking while seeking relief by this lawsuit.

16. Many citizens of Louisiana and the Shreveport Division of the Western District would like to receive and would benefit from the intended speech of the Center. The challenged laws defeat their right to receive such speech.

17. But for the threat posed by the challenged laws, the Center already would be engaging in public speech in this District. Within days of obtaining the preliminary relief sought in this action, the Center will commence such speech.

### **Violations of Law**

18. The First Amendment has as its core objective the protection of public speech about political and public issues. It protects the right to receive such speech, as well as the right to speak out. Because money must be spent to permit public speech, First Amendment protections extend to spending for the purpose of speech. To the extent that the First Amendment permits any limits on such speech, those limits must be narrowly tailored to serve compelling governmental interests. Moreover, both the First Amendment and the due process guarantee of the Fourteenth Amendment demand that restrictions on core speech display a high level of precision and clarity to assure that lawful speech is not suppressed as speakers seek to steer clear of the restricted zone.

19. The First Amendment also protects the right to associate for purposes of public speech, including the right to pool resources to speak effectively. This right protects the right of the Center to associate with its contributors, and the right of the contributors to associate with one another and the Center. Any laws that burden such rights must be narrowly tailored.

20. The challenged laws fail to give sufficient advance notice as to what is subject to regulation and punishment in violation of the First and Fourteenth Amendments to the United States Constitution. They are vague. By way of example:

(a) The statutory definition of expenditure, which turns on the presence of a “purpose” of “supporting, opposing, or otherwise influencing” an election has no clear and definite meaning that can be ascertained with confidence before speaking.

(b) The vagueness problem is compounded by defining the coverage of the statute in terms of the subjective views of government authorities as to the purpose of speakers. Intent often is misconstrued. Moreover, because speakers often are organizations that consist of various persons and entities acting through other persons and entities, determining how regulators will construct such an organization’s intent is very difficult.

21. The challenged laws are not narrowly tailored in violation of the First and Fourteenth Amendments to the United States Constitution. By way of example:

(a) The definition of expenditure turns on the purpose of the speaker, rather than on the words used or the likely effect of the words on the hearer. This focus on speaker purpose is far divorced from any compelling statutory purpose. More tailored standards would focus on the words used.

(b) Similarly, Louisiana law attempts a subjective assessment of the challenged speech. A more tailored approach would be to take an objective view of the words used.

(c) The definition of expenditure encompasses speech made for the subjective purposes of “supporting, opposing, or otherwise influencing” an election. But Louisiana has no legitimate interest in a speaker’s purposes. Moreover, the phrase “otherwise influencing” is not tied to effects on any matter of compelling interest to Louisiana.

(d) The laws restrict aggregate expenditures of more than \$500, even for statewide races in which such an expenditure is a *de minimis* amount. A higher amount would be more tailored.

(e) The laws require intrusive and burdensome reports from all types of entities that exceed the expenditure threshold. A more tailored statute would require many types of entities merely to identify themselves as the source of the speech.

(f) The detail that the challenged laws require of all reporting entities is not narrowly tailored to the state interests implicated by particular types of filing entities. For example, the full names and addresses of all contributors must be disclosed, even if the amounts contributed are very small. Disclosure is required of out-of-state activities that have no relationship to Louisiana. Detailed financial disclosures are required. Contributions that have no relationship to Louisiana activities or, indeed, that were specifically earmarked for out-of-state activities must be disclosed, regardless of amount.

22. The challenged laws burden the rights of the Center and its contributors to associate freely for purposes of political speech and to speak anonymously, thus violating the First and Fourteenth Amendments to the United State Constitution. This problem is compounded because the untailed and imprecise statutory standards make it impossible for

contributors to support Center speech without risking a later determination that their identities and contributions must be disclosed.

23. The challenged laws are facially invalid for the reasons set out above. Moreover, they are invalid as applied to the Center and to other similarly situated organizations.

24. The challenged laws were enacted and Defendants' enforcement responsibilities were established under color of law of the State of Louisiana. The violations of First and Fourteenth Amendment rights caused by those laws and the threat that Defendants will participate in the enforcement of those laws violates 42 U.S.C. § 1983.

25. The speech of the Center currently is being and will continue to be suppressed by the threat of civil and criminal penalties under Louisiana law. The fact that penalties have been imposed under those laws within the last month demonstrates that the concerns of the Center are well-founded and genuine. The Center now is in the position of either risking legal penalties or refraining from speech.

26. Article I, § 7 of the Louisiana Constitution guarantees rights at least as strong as those protected by the First Amendment, and those rights also have been violated.

### **Actual Case or Controversy**

27. Defendants have sworn to enforce the laws of the State of Louisiana, including the challenged laws, and will seek to do so if they receive information that those laws have been violated as written and authoritatively construed. They each have special statutory authority to enforce the challenged laws.

## **Irreparable Injury**

28. But for the challenged laws, the Center would be speaking to Louisiana recipients right now. Because of the unconstitutional laws, the Center is muzzled and hearers at this moment are being deprived of its speech. Such constitutional deprivations are irreparable injury as a matter of law.

(a) The injury being inflicted here is particularly severe during the narrow window of time just before the impending election in which the public is most interested in and attuned to discussion of the issues the Center wishes to address.

(b) Persons who wish to receive the speech of the Center are particularly injured because this narrow period before the election is when they may make use of that speech in discourse with others and in assessing the presentations of the candidates.

(c) It is likely that the election for a seat on the Supreme Court of Louisiana will be decided at the open primary on September 18, 2004. Thereafter, the public will experience a period of fatigue related to discourse on issues aired during the campaign. Thus, it is critical that the Center be allowed to engage in public discussion of relevant issues during the few weeks preceding that primary election.

## **Prayer**

WHEREFORE, Plaintiff Center for Individual Freedom requests emergency temporary, preliminary, and permanent injunctive relief from the enforcement of the challenged laws, a declaration that the laws are vague, inadequately tailored, and void, a declaration of the legal

standards that will apply to the Center's conduct, an award of legal fees and expenses pursuant to 42 U.S.C. § 1988, and such other relief as may be just.

Respectfully Submitted,

PHELPS DUNBAR, L.L.P.

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