IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CENTER FOR INDIVIDUAL FREEDOM,	)	
Plaintiff,	)	NO: 04-1785
v.	)	
PAUL J. CARMOUCHE, District Attorney, 1st Judicial District, et al.,	)	Judge S. Maurice Hicks, Jr.
	)	Magistrate Judge Payne
Defendants.	)	

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR EXPEDITED FINAL JUDGMENT

This case turns on an issue of law: are the challenged provisions facially vague, untailored, and overbroad, such that they violate the First and Fourteenth Amendments to the United States Constitution?[1] The preliminary injunction submissions and the September 2 hearing established that the material facts necessary to resolve that legal issue are not in dispute. Rather than forcing the Fifth Circuit to consider two piecemeal appeals, one from the preliminary injunction denial and one from a final judgment, it would be far preferable for this Court to issue a prompt final decision, so that all aspects of the case could be heard at once.

This Court has ample authority to grant such an expedited ruling. Fed. R. Civ. P. 57 provides that "[t]he court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar." Fed. R. Civ. P. 56 allows summary judgment when the

[1] Although the Center strongly desires, now and in the future, to speak to Louisianans on issues brought to the public consciousness by impending elections, it remains unwilling to speak out in a way that would expose it to enforcement proceedings. Thus, the Court has held that the Center cannot present an as applied challenge.

material facts are not in dispute and the case can be disposed of as a matter of law. And Fed. R. Civ. P. 65(a)(2) allows preliminary injunction proceedings to be considered in granting final relief where, as here, there is no impairment of jury rights. Moreover, Fed. R. Civ. P. 1 directs that all of the rules "be construed and administered to secure the just, speedy, and inexpensive determination of every action."

The parties have agreed, and simple inspection confirms, that the challenged provisions here are facially comparable in terms of vagueness, tailoring, and overbreadth, to those at issue in *Buckley v. Valeo,* 424 U.S. 1 (1976), and *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"). As Defendants observe, *Buckley* and *MCFL* upheld those provisions, but only after imposing a precise, objective, and tailored "express advocacy" narrowing construction. Defendants here have rejected *Buckley*'s express advocacy standard as meaningless and ineffective, and they have not proposed any alternative bright line standard. Instead, they claim that *Buckley* and related cases hold such provisions facially valid, and that any issues of construction must await an "as applied" challenge not presented here.

The Center's position is that, in the absence of an adequate and justified narrowing construction, the challenged provisions are unconstitutional and should be declared invalid. Such a final declaratory judgment would dispose of this case.[2] On the other hand, if the Center were wrong on that legal point and the statutory standards facially satisfy the Constitution, then it would appear proper to enter final judgment dismissing the complaint. Either ruling would allow the Court of Appeals to dispose of the entire case in a single appeal.

[2] Because there is no provision for a preliminary declaratory ruling, the Center's initial motions sought injunctive relief. For purposes of final relief, however, a declaratory judgment likely will prove adequate. If an unexpected future difficulty arose, however, further relief would be available under 28 U.S.C. § 2202.

The issues of this case were fully briefed in connection with the motion for preliminary relief, and that briefing was supplemented by discussion with the Court during the September 2, 2004 hearing. The Court already is familiar with those materials. In the interest of judicial efficiency, the Center respectfully requests that it be allowed to incorporate by reference its earlier written filings and the September 2 colloquy as the basis for this motion. Of course, similar consideration should be extended to the Defendants as well.

On the basis of those materials, final judgment should be entered declaring the challenged provisions to be facially invalid.

Respectfully Submitted,

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