

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA

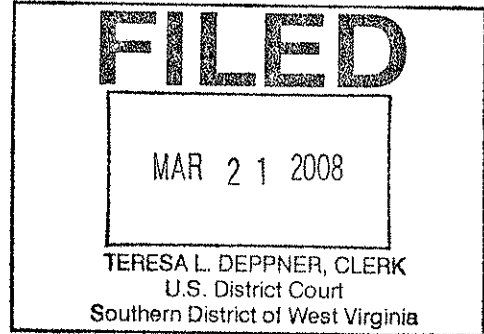
CENTER FOR INDIVIDUAL
FREEDOM, INC.,
Plaintiff,

v.

BETTY IRELAND, Secretary of the State
of West Virginia; and

TIMOTHY D. BOGCESS, Prosecuting
Attorney for Mercer County, as a
representative of the class of Prosecuting
Attorneys in the State of West Virginia;
Defendants.

Civil Action No. 1:08-0190



COMPLAINT

Nature of the Action

1. This is an action to vindicate core First Amendment rights of free speech, association, and petition that are being infringed by facially vague and untailed provisions of West Virginia law. Plaintiff wishes to engage in public discussion of issues of public policy while West Virginians are focused on such matters by the impending state elections, while candidates in those elections usefully illustrate Plaintiff's points, and while grassroots activity is most effective. Plaintiff is being deterred from speaking, however, by threatened civil and criminal penalties. Accordingly, Plaintiff seeks a preliminary and permanent injunction, expedited declaratory judgment, and other relief that will invalidate the challenged laws or, alternatively, limit them to a narrowly tailored

and objective bright line construction that Plaintiff confidently can apply in real time to assure that its speech will not subject it to punishment.

Jurisdiction and Venue

2. This action is brought pursuant to 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the Constitution of the United States of America. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and § 1343 (civil rights). Venue is proper under 28 U.S.C. § 1391 because a defendant resides in this district and a substantial part of the events or omissions giving rise to the claim occurred here.

Parties

3. Plaintiff Center for Individual Freedom (“Center”) 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 imperatives of the U.S. Constitution as it relates to contemporary conflicts. Its goals, principles, and activities are more fully described at its Internet website at <www.cfif.org>.

(b) The Center is a corporation organized under the laws of the Commonwealth of Virginia and operates under §501(c)(4) of the Internal Revenue Code. Its headquarters address is 113 South Columbus Street, Suite 310, Alexandria, VA 22314.

(c) The Center has a history of speaking out on justice and other public issues and vigorously defending its right to do so. *See, e.g., Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 658 (5th Cir. 2006).

(d) The Center wishes to speak about justice issues in West Virginia during the period prior to the upcoming primary and general elections when the public is most attentive to such issues, using candidates to illustrate its points, and during similar periods in the future. Among other things, the Center believes that public opinion is most likely to affect candidate and incumbent positions during pre-election periods.

4. Defendants are West Virginia officials who are legally responsible for enforcing the laws of West Virginia that are challenged in this action. Each of them has sworn to enforce the laws of West Virginia within their field of responsibility, and each stands ready, willing, and able to do so. They are sued pursuant to the doctrine of *ex parte Young* and are proper persons to defend the interest of the State in this action.

(a) Defendant Betty Ireland is the West Virginia Secretary of State. She has the power to “investigate the administration of election laws, frauds and irregularities in any registration or election” and “report violations of election laws to the appropriate prosecuting officials.” W. Va. Code § 3-1A-6. She has the power to assess civil penalties for failure to file required disclosure forms. *Id.* § 3-8-7(b). She also is a member of the State Election Commission, which has the power to investigate and report violations, specifically of the state’s general corporate expenditure prohibition. *Id.* §§ 3-1A-1; 3-8-8(e). She resides in Kanawha County, West Virginia.

(b) Defendant Timothy D. Boggess is the Prosecuting Attorney of Mercer County. He is given the power to prosecute violations of the challenged laws in his county. *Id.* §§ 3-8-7(a), 3-8-8(e). He resides in Mercer County, West Virginia. He also is named as representative of the class of prosecuting attorneys for the state of West Virginia, a class (i) that is so numerous that joinder is impracticable, (ii) as to which there are common issues of law and fact, (iii) as to which his defenses are typical, and (iv) that he will adequately represent. Class litigation will avoid inconsistent or varying adjudications.¹

First Amendment Considerations

5. The First Amendment, as made applicable to the states by the Fourteenth Amendment, mandates that the government “shall make no law . . . abridging the freedom of speech, or . . . to petition the Government for a redress of grievances.” A core purpose of this provision is to protect free, open, and robust public discourse concerning issues and candidates at the time of elections. Because effective public speech and petitioning cost money, spending for such purposes is as fully protected as speech itself.

6. Current precedent of the United States Supreme Court allows some limited regulation of core speech and petitioning despite the First Amendment’s facially absolute

¹ In an earlier case brought in this district raising similar issues regarding a former version of a statute at issue here, the trial court determined that certification of the defendant class was unnecessary at the preliminary injunction stage because “injunctive relief directed at the named defendants [the Secretary of State and one West Virginia prosecuting attorney] will adequately protect the interests of the plaintiffs at this juncture of the case.” *West Virginians for Life, Inc. v. Smith*, 919 F. Supp. 954, 955-56 (S.D. W.Va. 1996). Before issuing a permanent injunction, however, the trial court did certify the defendant class of prosecuting attorneys. *See West Virginians for Life, Inc. v. Smith*, 960 F. Supp. 1036, 1042 (S.D. W.Va. 1996). This complaint names the prosecuting attorney from the same county that was named in the *West Virginians for Life, Inc.* case.

prohibition, but only if the restrictions, on their face, satisfy extremely stringent and demanding conditions.

(a) Extreme precision and clarity is required, particularly where, as here, core speech may lead to punishment. An objective bright line standard must be employed so speakers can know with certainty in advance exactly what is permitted. Because of the high constitutional value of all core speech, the standard must eliminate any need to hedge, trim, or steer clear to avoid areas of legal risk. This standard is much more demanding than the fair notice that, as a matter of due process, must be provided by ordinary economic and social legislation.

(b) Narrow tailoring to serve a compelling interest is essential. Where burdens on core First Amendment activity are challenged, the defendants must prove the regulations are necessary to achieve a compelling government interest and are narrowly tailored to restrict no more than that interest requires. Such strict judicial scrutiny is far more demanding than the rational basis analysis applicable to most legislation.

The Challenged Provisions

7. West Virginia Code section 3-8-8 penalizes certain speech and petitioning activities by corporations.

(a) Subsection (a) forbids any “person acting on behalf of any corporation” to transfer any corporate assets “to any candidate, financial agent, political committee or other person for the payment of any primary or other election expenses.” This prohibition is prefaced by the following: “Notwithstanding any provision of section two-b [the electioneering communication statute] of this article[.]” Thus, any actions

implicitly authorized by the electioneering statute (and subject to its reporting requirements) are authorized to corporations only if permitted by subsection (a). Subsection (a) is unconstitutionally vague, overbroad, and untailed, *inter alia*, in prohibiting any payment to any person for any primary or election expenses. The phrase might include expenses made to address public issues during an election, for example.

(b) Subsection (b)(2)(H) provides that “[n]o corporation may use its property, real or personal, . . . for the purpose of influencing any voter or voters: (i) To vote for a particular candidate or in any particular manner; or (ii) to influence the result of any election.” This subsection unconstitutionally chills the right of free speech, *inter alia*, by the broad and undefined phrase “influencing voters . . . to vote for a particular candidate” or the phrase “influence the result of any election.” These phrases encompasses essentially any speech made in connection with an election.

(c) Subsection (c) provides that any person or corporation violating any provision of the section, including the quoted provisions, is guilty of a misdemeanor and forbids any corporation to reimburse any person for any resulting fine.

(d) Subsection (d) seeks to ensure that section 3-8-8 is given uniform application with comparable provisions of the Federal Election Campaign Act.

8. West Virginia Code section 3-9-14 provides that “any corporation which shall . . . give or use . . . directly or indirectly, money or other thing of value, for the purpose of influencing any voter or voters to vote for a particular candidate, or in any particular manner, or upon any particular side of any question to be decided at any such election, or to influence the result of said election” is guilty of a misdemeanor, punishable by fine of

between \$5,000 and \$20,000 “for every such offense.” The subsection unconstitutionally restricts the free speech rights of the Center and other citizens, *inter alia*, by the vague, overbroad, and untailed prohibitions on “influencing any voter on any particular manner” and the prohibition on “influencing the result” of an election. All speech on matters of public importance may influence voters or influence the outcome of an election.

9. West Virginia Code of State Rules section 146-1-3 prohibits any officer or other person acting on behalf of a corporation from making expenditures “in connection with election to any local or state office, on in connection with any primary election or political convention or caucus held to select candidates for any local or state office.”

10. Notwithstanding the above corporate prohibitions, West Virginia Code section 3-8-5 provides that corporations undertaking certain speech and petitioning activities are bound by burdensome accounting and reporting requirements.

(a) Subsection (a) mandates that “[e]very candidate, treasurer, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee . . . or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, advocating or opposing the nomination, election or defeat of any candidate . . . shall keep detailed accounts of every sum of money or other thing of value received by him or her . . . and of all expenditures and disbursements made . . . for political purposes.” West Virginia Code section 3-8-1a(23) defines “[p]olitical purposes” to include, *inter alia*, “supporting or opposing the nomination, election or defeat of one or

more candidates.” These provisions are unconstitutionally vague, overbroad, and untailed for the reason, *inter alia*, that the statute would impose reporting requirements on “any corporation . . . engaging in activity permitted” by the statute. All corporate speech not prohibited is thus subject to the reporting requirements of the statute.

(b) Subsection (b) requires reporting of “financial transactions” annually and at various times before and after primary and general elections.

(c) Subsection (d) defines “financial transactions” to include “all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on.”

(d) The information that must be reported and disclosed is provided in West Virginia Code section 3-8-5a. Among other things that must be reported are “[t]he name of any person making a contribution and the amount of the contribution;” “the residence and mailing address of the contributor and, if the contributor is an individual, his or her major business affiliation and occupation” if the contributions of the contributor in the aggregate exceed \$250 in any one election cycle; “[t]he total amount of contributions received;” “[t]he name, residence and mailing address of any person to whom an expenditure was made . . . together with the amount and purpose of each expenditure;” “[t]he total expenditure for the nomination, election or defeat of a candidate or any person supporting, aiding or opposing the nomination, election or defeat of any candidate in whose behalf an expenditure was made or a contribution was given for the primary or

other election;” and “[t]he total amount of expenditures made during the period covered by the financial statement.”

11. West Virginia Code section 3-8-2b imposes burdensome and intrusive reporting, disclosure, and content requirements on those who fund speech and petitioning activities classified as “electioneering communications.”

(a) Subsection (a)(1) requires reporting and disclosure by any person, corporate or individual, who spends a “total of five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year.”

(b) Subsection (a)(2) requires the same reporting and disclosure by any person who spends a “total of one thousand dollars or more on or after the fifteenth day but more than twelve hours before the day of any election for . . . electioneering communications during any calendar year.”

(c) The information that must be reported and disclosed is specified in subsections (b), (c), and (d). Among other things that must be reported are “the name of the person making the expenditure, the name of any person sharing or exercising direction or control over the activities of the person making the expenditure,” the custodian of books and accounts, and the names, addresses, and businesses of persons contributing over one thousand dollars “used to pay for the electioneering communication,” along with the dates and amounts of their contributions.

(d) Subsection (b)(4) compels the speaker to publicly characterize the electioneering communications, stating “the elections to which the electioneering communications pertain, . . . whether the electioneering communication is intended to support or oppose the identified candidates, and the amount . . . spent to support or oppose each of the identified candidates.”

(e) Subsection (e) requires each electioneering communication to both identify the person making the expenditure for it and state that no candidate or candidate committee authorized it.

(f) Subsection (f) requires the Secretary of State to “make [the] information in the statement available to the public through the internet.”

(g) Subsection (h) requires the Secretary of State “to propose legislative rules and emergency rules implementing this section for legislative approval,” but no such rules are in effect. There are, therefore, no regulations narrowing or clarifying the provisions of the statute.

12. Section 3-8-7 authorizes both criminal and civil penalties for any “person . . . who fails to file a sworn, itemized, statement required by this article.” The provisions of Section 3-8-2b are within “this article” and the Secretary of State construes section 3-8-7 to apply to such reports, which the forms issued by the Secretary require to be sworn.

13. Section 3-8-1a defines the term “electioneering communication” and related concepts.

(a) Subsection (11)(A) provides that an “[e]lectioneering communication” means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, leaflet, pamphlet, flyer or outdoor advertising or published in any newspaper, magazine or other periodical” that has the following characteristics:

(i) “Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature.”

(ii) “Is publicly disseminated within: (I) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or (II) Sixty days before a general or special election at which the office sought by the candidate is to be filled.”

(iii) “Is targeted to the relevant electorate.”

(b) The definition of “electioneering communication” does not include any requirement or limitation that the communication expressly advocate the election or defeat of a candidate or be the functional equivalent thereof.

(c) Subsection (24) provides that “[t]argeted to the relevant electorate” means a communication which refers to a clearly identified candidate . . . which can be received by ten thousand or more individuals in the state in the case of a candidacy for statewide office and five hundred or more individuals in the district in the case of a candidacy for the Legislature.”

(d) Subsection (15) defines “mass mailing” as any “mailing by United States mail, facsimile or electronic mail of more than five hundred pieces of mail matter of an identical or substantially similar nature within any thirty-day period.”

(e) Subsection (11)(B) creates various exclusions from the definition of electioneering communication, including “bona fide news account[s]” and editorials; communications by certain charitable organizations or membership organizations; certain communications during the legislative session; and certain “non-partisan public education” efforts. There is, however, no general exclusion relating to public speech by corporations that gives a more narrowly tailored and specific set of restraints on speech.

14. West Virginia Code section 3-8-2 imposes the same burdensome reporting requirements required for “electioneering communications” upon any entity making an “independent expenditure” of \$1,000 or more in the fifteen days prior to an election. West Virginia Code section 3-8-1a(14) defines “[i]ndependent expenditure” as “an expenditure made by a person other than a candidate or candidate’s committee in support of or opposition to the nomination or election of one or more clearly identified candidates and without consultation or coordination with or at the request or suggestion of the candidate whose nomination or election the expenditure supports or opposes or the candidate’s agent.” The provisions of section 3-8-2 constitute an unconstitutional burden on speech because, *inter alia*, they are vague, overbroad, and untailored, capturing speech that might be deemed to be “in support of or opposition to” a candidate even if the speech includes no words of express advocacy.

Facial First Amendment Violations

15. The challenged laws identified above facially violate the First Amendment in that they are vague and untailed and, thus, tend to chill speech or promote self-censorship.

For example:

(a) In West Virginia Code sections 3-8-1a, 3-8-5, 3-8-8, and 3-9-14, and West Virginia Code of State Rules section 146-1-3, the phrases “supporting or opposing,” “in support of or opposition to,” “advocating or opposing,” “for the purpose of influencing any voter or voters,” “the payment of any primary or other election expenses,” and “in connection with election to any local or state office” are vague. These vague and subjective phrases do not provide the objective bright line standards mandated by the First Amendment and force speakers to hedge and trim to avoid legal uncertainty. Moreover, because of their vagueness, they cannot be shown to be narrowly tailored to demonstrated compelling interests.

(i) A judge of this court has already previously enjoined the enforcement of a former version of sections 3-8-5(a) and (b) “except as to contributions and expenditures which directly relate to express advocacy [as defined in *Buckley v. Valeo*, 424 U.S. 1, 41-44 (1976)] of the election or defeat of a specific candidate.” *West Virginians for Life, Inc. v. Smith*, 960 F. Supp. 1036, 1040-41 (S.D. W.Va. 1996).

(ii) The other phrases just identified are equally vague and are facially invalid unless they also are declared to apply only to speech that satisfies the “magic words” test of *Buckley*, i.e. explicit words such as “vote for” or “elect” that expressly advocate the election or defeat of a clearly identified candidate.

(b) In subsections 3-8-1a and 2b, the restrictions and burdens imposed on “electioneering communications” are similarly vague and untailed:

(i) The definition of “electioneering communication” applies to essentially all means of addressing the public, while the corresponding term used in federal legislation applied only to certain media. The U.S. Supreme Court noted the limited media coverage of the federal statute in declining to hold it facially overbroad. *McConnell v. FEC*, 540 U.S. 93, 207-08 (2003). There is no evidence that West Virginia has a compelling need to restrict all channels of public communication, and its provision thus is facially invalid.

(ii) The definition of a “targeted” communication encompasses a broad range of speech because the necessary number of individuals who can receive the communication is so small, much smaller than the corresponding federal definition. Also, the definition is vague with respect to many covered media. It is impossible to determine, for example, the number of individuals by whom a single pamphlet, flyer, billboard, or the like “can be received?”

(iii) Similarly, with respect to many covered media, the time at which a communication is “publicly disseminated” is vague. For example, uncertainties include:

(1) When is an ad in a monthly periodical disseminated: When the ad is placed? When the magazine is mailed? When it is received? When copies first reach the shelves? As long as any copy remains on the shelf? As long as copies remain in public libraries?

(2) When is a flyer disseminated: When the first copy is handed out? When the last copy is handed out? When first posted on a bulletin board? As long as any copies are available on the counter of any public establishment?

(3) When is a “mass mailing” disseminated: When the first of a series of “substantially similar” pieces is mailed? When the last is mailed? When the last piece is scheduled for delivery? When the last piece is actually delivered? If 500 pieces are disseminated 89 days before a general election and 1 substantially similar piece is disseminated 59 days before the election, so that over 500 were disseminated in a 30 day period, has there been an electioneering communication?

(iv) The vagueness and lack of tailoring is further exacerbated by the exceptions to the definition of electioneering communication established by section 3-8-1a(11)(B). For example, uncertainties include:

(1) What is a “bona fide news account?” How does it differ from a news account that is not bona fide? What is a “general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates?”

(2) What compelling governmental interests are served by exempting all communications by a 501(c)(3) organization?

(3) What compelling governmental interests are served by exempting certain communications “while the Legislature is in session” but not otherwise identical communications made weeks or months earlier? And when is a communication “incidental to promoting or opposing a specific piece of legislation?”

(4) When does a voter's guide have "no appearance of endorsement for or opposition to" a candidate? What establishes whether a voter's guide "is intended as nonpartisan public education focused on issues and voting history?"

(c) In section 3-8-2b, the burdensome and intrusive reporting obligations imposed on those who fund electioneering communications are not tailored to compelling interests. Moreover, many aspects of the provision are vague. For example:

(i) It is impossible to understand with confidence the obligation imposed by subsection (b)(1) to identify "any person sharing or exercising direction or control over the activities of the person making the expenditure."

(ii) Equally vague is the requirement in subsection (b)(5) to disclose certain "contributors . . . whose contributions were used" in specified ways. Section 3-8-1a(6) defines "contribution" to mean a transfer of value "made for the purpose of influencing the nomination, election or defeat of a candidate." That standard fails to provide an objective bright line standard.

16. In addition to the foregoing, the electioneering communication restrictions apply to speech that is not express advocacy or its functionally equivalent, which is forbidden by *FEC v. Wisconsin Right To Life, Inc.*, 127 S.Ct. 2652 (2007). Taken with the other respects in which the restrictions are not tailored, the resulting overbreadth is substantial, resulting in facial invalidity.

Injury

17. The Center has been planning and desires to speak to the public in the Southern District of West Virginia on matters of litigation reform and related justice issues, including criminal law enforcement and sentencing, legal reform, and judicial decision-making. It plans to use various media, including broadcast, print, and telephone banks. The speech would occur during the months of April to mid-May and October to early November because, during weeks leading up to the May 13 primary and November 4 general elections, members of the public are most attuned to such policy issues and candidates are susceptible to grass roots lobbying. The Center's planned speech will refer to West Virginia candidates to illustrate its points and ask members of the public to contact the candidates and petition them to take or maintain certain positions. The necessary funds are available. The Center has identified and initiated work with vendors to create and disseminate the ads. 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.

18. Because the Center's planned speech would refer to candidates immediately before an election and will address issues related to the candidates in ways that may be perceived to favor or disfavor them, its speech may be deemed to be a prohibited corporate attempt to "influence any voter" under sections 3-8-8 or 3-9-14, make an expenditure "in connection with election to local or state office" under West Virginia Code of State Rules section 146-1-3, or make a "payment of any primary or other election expenses" under section 3-8-8, exposing the Center and its personnel to the

criminal penalties that section authorizes, not to mention incurring the burdens of litigation.

19. If the speech were not prohibited, the Center could be required to report contributions and expenditures related to its political activities if they are deemed to be “advocating,” “supporting,” or “opposing” a candidate under section 3-8-5 and the definition of “political purposes” in section 3-8-1a(23). As a matter of policy, and because its supporters are not willing to be identified, the Center must either refrain from speaking or accept the risk of punishment if its speech is determined to be subject to regulation.

20. Similarly, because its planned speech would refer to candidates and employ covered media, it would fall within the definition of “electioneering communication.”

21. Because the Center cannot and will not make the reports and disclosures that sections 3-8-2b and 3-8-5 demand, the Center and its personnel would face civil and criminal penalties under section 3-8-7, as well as the burdens of litigation.

22. It may also be required to report any “independent expenditures” made “in support of or opposition to” a candidate under sections 3-8-1a(14) and 3-8-2.

23. Unwilling to expose itself and its personnel to potential criminal charges and associated burdensome litigation, the Center has been forced to suspend further activities pending judicial relief. The chill the Center presently is experiencing is actual and existing irreparable constitutional injury. The continuing chill and enforced silence the Center faces in the future is immediately threatened irreparable constitutional injury.

24. Citizens of West Virginia are particularly interested in and attuned to the discussion of litigation reform and justice issues during the period that elections to public office, including the Supreme Court of Appeals, are being contested. The Justices of the Supreme Court of Appeals, for example, often have responsibility for many of the issues that the Center plans to address. In the judgment of the Center, 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 the views of candidates in that election. Also, that is the time when candidates can most readily be persuaded to commit to policies that the Center supports.

25. To be clear, the speech the Center wishes to protect will not “expressly advocate” the election or defeat of any candidate for public office in West Virginia as that term is defined in *Buckley*, 424 U.S. at 43-44 & n.52. None of its contemplated communications will contain explicit words that expressly advocate voting for or against any candidate, i.e. “magic words.” Similarly, the speech the Center seeks to protect will be independent and not coordinated with any candidate, campaign, or political party.

26. There are residents of West Virginia and the Southern District who are interested in the Center’s views on justice issues and who desire to receive the intended speech of the Center. The challenged laws defeat their right to receive such speech from the Center and many similar incorporated entities that are self-censoring because of the vague and untailed provisions described above.

27. But for the threat posed by the challenged laws, the Center would be actively creating – and soon delivering – its planned public speech for this District.

28. The existing and threatened injuries to the rights of the Center, similar incorporated entities, and its willing listeners will become greater and more acute as the election approaches. Thus, prompt judicial relief is essential.

29. The Center also intends to address similar issues during West Virginia's pre-election periods over the coming years. Thus, permanent relief is necessary to prevent ongoing irreparable injury.

30. The injury to the Center, other incorporated entities, and their West Virginia audience is irreparable. Monetary relief is not realistically available and, in any event, could not fully and fairly compensate for the loss of core First Amendment rights.

Claims

31. The challenged laws were enacted and are maintained, and Defendants' enforcement responsibilities were established and are exercised under color of law of the State of West Virginia. 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, and the resulting existing and threatened injuries violate 42 U.S.C. § 1983 and entitle the Center to all appropriate relief.

32. The challenged laws establish an actual controversy concerning the federal law rights and legal relations of the Center with the Defendants, thus entitling the Center to a declaratory judgment under 28 U.S.C. § 2201 and appropriate supplemental relief under section 2202.

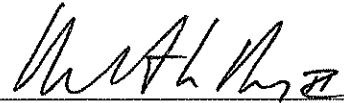
Relief

The Center seeks all remedies that will effectively protect it and others who wish to speak and petition freely in West Virginia in the weeks before West Virginia elections. Among the remedies requested are:

- A. A preliminary and permanent injunction against the enforcement of the challenged provisions.
- B. A declaratory judgment that the challenged provisions are facially invalid and unenforceable, or in the alternative, that they have tailored and objective bright line meanings that conform to the First and Fourteenth Amendments.
- C. An award of attorneys fees and costs.

Respectfully submitted,

STEPTOE & JOHNSON, PLLC



Gordon H. Copland
West Virginia Bar No. 828
STEPTOE & JOHNSON, PLLC
P.O. Box 2190
Clarksburg, WV 26301
(304) 624-8162

Robert L. Bailey
West Virginia Bar No. 8902
STEPTOE & JOHNSON, PLLC
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8131

Jan Witold Baran
Thomas W. Kirby
Kevin J. Plummer
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Attorneys for Plaintiff Center For
Individual Freedom