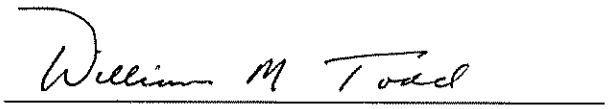
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OHIO RIGHT TO LIFE SOCIETY, INC.	:	
	:	
Plaintiff,	:	
	:	**Case No. 2:08 CV 492**
v.	:	
	:	**Judge Smith**
OHIO ELECTIONS COMMISSION, et al.	:	
	:	**Magistrate Judge King**
Defendants.	:	

PLAINTIFF'S AMENDED MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff Ohio Right to Life Society, Inc. ("ORTL") hereby moves for issuance of a temporary restraining order and preliminary injunction enjoining Defendants Ohio Elections Commission, (the "OEC"), the individual Members of the OEC ("OEC Members"), and Ohio Secretary of State, Jennifer Brunner ("Secretary of State") from enforcing O.R.C. § 3517.01(B)(6), O.R.C. § 3517.1011 and O.R.C. § 3517.992 pending further Order of this Court.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. INTRODUCTION

Plaintiff, Ohio Right to Life Society, Inc. ("ORTL") has filed this action to vindicate its rights, and the rights of its members, to freedom of speech, freedom of association, and the freedom to petition government that are protected under the First and Fourteenth Amendment to the United States Constitution and secured under 42 U.S.C. § 1983.

ORTL seeks declaratory and injunctive relief from this Court restraining and enjoining Defendants from enforcing or seeking to enforce provisions of Ohio campaign finance law, set forth in R.C. Chapter 3517 and 3599, that unconstitutionally restrict the ability of ORTL, and its members, to fully engage in the robust debate of important public issues during an election year.

II. FACTS

In December 2004, Ohio adopted Am. Sub. H.B. 1 ("H.B. 1") a comprehensive reform and update of Ohio's campaign finance laws. H.B. 1 became effective on March 30, 2005.

In addition to altering the campaign finance rules and regulations applicable to traditional political actors such as candidates, political parties, and political action committees, the provisions of H.B. 1 also attempt to extend an intrusive state regulatory and disclosure scheme to core political speech uttered by anyone.

Critical to this case are the provisions of H.B. 1 that have a direct impact upon the form of political speech that is typically referred to as "issue advocacy." The term "issue advocacy" is generally applied to public advertising of political issues or concepts that do not expressly advocate the election or defeat of a candidate.

The concept of "issue advocacy" stems from the seminal case on campaign finance regulation, Buckley v. Valeo, 424 U.S. 1 (1976). In Buckley, the U.S. Supreme Court held that any regulation of political speech must be "narrowly tailored" because of the broad protection of political speech that is guaranteed by the First Amendment. To ensure that government regulation is narrowly tailored, the U.S. Supreme Court developed the well-known rule that political communications cannot be regulated unless they contain "express" language advocating the election or defeat of a candidate.

The analytical framework adopted in Buckley remains the legal test applied in this area to determine whether a government regulation of political speech is so overbroad and vague as to be violative of the First Amendment. FEC v. Wisconsin Right to Life, 551 U.S. _____, 127 S.Ct. 2652 (2007); McConnell v. FEC, 540 U.S. 93 (2003); Anderson v. Spear, 356 F.3d 651 (6th Cir. 2004).

Currently, there are only two types of political communications that can be regulated without violating the First Amendment guarantee of freedom of speech: (i) a political communication that contains words that expressly advocate the election or defeat of a candidate; and, (ii) a narrowly defined category of communications that are the functional equivalent of express advocacy, insofar as the expression is susceptible of "... no reasonable interpretation other than as an appeal to vote for or against a specific candidate." WRTL, 127 S.Ct. at 2667; McConnell, 540 U.S. 93.

As described in the Complaint in this case, Plaintiff ORTL plans to run independent broadcast ads that address the issue of human cloning. That important public policy issue is currently being considered in the debate over Ohio Senate Bill 174 that would ban this procedure in Ohio.

However, the ability of ORTL to participate in the debate on these issues is unconstitutionally impacted by the O.R.C. § 3517.01(B)(6) that would prohibit ORTL from running any broadcast ads that mention the names of various Ohio Senators who are candidates for election. The ability of ORTL to participate in this debate is also unconstitutionally impacted by the extensive regulatory and disclosure scheme in O.R.C. § 3517.1011, that imposes burdensome and intrusive obligations on any group that seeks to engage in issue advocacy.

The provisions of Ohio law that adversely impact upon the ability of a non-profit advocacy group, such as ORTL, to address important public policy issues are clearly unconstitutional because they limit the freedom of speech, freedom of association, and freedom to petition government guaranteed by the First Amendment. Further, these provisions are facially unconstitutional for want of a legislative record, and in any event, unconstitutional as applied to ORTL. For the reasons set forth in this Memorandum, this Court should find all of these provisions are facially unconstitutional, and prevent them from being enforced.

II. LAW AND ARGUMENT

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, a court can grant a temporary restraining order in order to prevent immediate and irreparable injury, loss, or damage to a plaintiff. The order may be issued without prior notice to the adverse party or his attorney. Rule 65(a) further authorizes the granting of a preliminary injunction after notice to other parties in the action.

In determining whether a temporary restraining order or preliminary injunction should be issued, this Court must consider the following factors: (i) the likelihood of movant's success on the merits; (ii) whether the requested injunctive relief will save movant from irreparable harm; (iii) whether the injunction will harm others; and, (iv) whether the public interest would be

served by the requested injunctive relief. See Six Clinics Holding Corp. II v. Cafcomp Sys., Inc., 119 F.3d 393, 403 (6th Cir. 1997); In Re DeLorean Motor Co., 755 F.2d 1223, 1228 (6th Cir. 1985); De Boer Structures (U.S.A.), Inc. v. Shaffer Tent and Awning Co., 187 F.Supp.2d 910, 919 (S.D. Ohio 2001). Significantly, the four factors are "not prerequisites which must be met." In Re DeLorean, 755 F.2d at 1229.

Thus, these four factors "do not establish a rigid and comprehensive test for determining the appropriateness of preliminary injunctive relief." Frisch's Restaurant, Inc. v. Shoney, Inc., 759 F.2d 1261, 1263 (6th Cir. 1985). Rather, "[t]hese factors are meant to be balanced as they guide the Court in exercising its discretion ...." In Re Eagle-Picher Indus., Inc., 963 F.2d 855, 859 (6th Cir. 1995). Significantly, the Sixth Circuit has stated: "[w]hile the Court need not consider any single factor as either indispensable or dispositive, neither is it required to conclude that all four support its decision. The Court's discretion is directed at the weight to be given each factor, and the effect to be accorded their mix." In Re Eagle-Picher, 963 F.2d at 859.

A. The Court Should Issue A Temporary Restraining Order And Preliminary Injunction Because There Is A Substantial Likelihood That ORTL Will Succeed On The Merits Of Its Claims Against Defendants.

As demonstrated in the Complaint, there are two fundamental aspects of Ohio's scheme to regulate protected political speech that are particularly egregious. The first clearly unconstitutional component of Ohio's scheme is the "blackout" period set forth in O.R.C. § 3517.01(B)(6). This provision prohibits ORTL from planning any broadcast ad, meeting the statutory definition of "electioneering," during the 30 day time period before an Ohio election.

On its face, the 30 day blackout period provision is unconstitutional under the standards established in FEC v. Wisconsin Right to Life, 551 U.S. _____, 127 S. Ct. 2652 (2007). Accordingly, this Court should restrain and enjoin the Defendants' from enforcing this statute

under any circumstances.

The second plainly unconstitutional aspect of Ohio's scheme to destroy independent political speech are the overbroad and intrusive regulatory provisions of O.R.C. § 3517.1011. The provisions of O.R.C. § 3517.1011 are unconstitutional, inter alia, because: (i) the over-breadth of the definition of "electioneering" that captures protected political speech, both linguistically and temporally, (ii) the overbreadth of the reporting and disclosure scheme, that is only imposed upon organizations that plan to engage in "issue advocacy,"; and, (iii) the Ohio law captures speech which is not the "functional equivalent of express advocacy."

There are numerous other serious constitutional defects in the structure and language of O.R.C. § 3517.1011, that render the statute unconstitutional on its face as well as applied to ORTL in this case. Accordingly, this Court should restrain and enjoin Defendants from enforcing this statute under any circumstances.

1. The Blackout Period in O.R.C. § 3517.01(B)(6) Is Facially Unconstitutional.

On it's face, the language of O.R.C. § 3517.01(B)(6) provides that any disbursement for a "broadcast" ad that " ... refers to a clearly identified candidate shall be considered to be made for the purpose of influencing the results of that election ..."

The phrase "clearly identified candidate," as defined in O.R.C. § 3517.1011(A)(13) means essentially any mention of an individual, or of an individual's political office, once the individual is a declared candidate under O.R.C. § 3501.01. The phrase "influencing the results of that election" is a deliberate sleight of hand that purports to convert any broadcast ad that merely refers to a candidate into "express" political advocacy.

In addition, O.R.C. § 3517.1011(H) states that:

> No person shall make, during the thirty days preceding a primary election

> or during the thirty days preceding a general election, any broadcast, cable or satellite communication that refers to a clearly identified candidate using any contributions received from a corporation or labor organization.

In other words, the Ohio scheme absolutely precludes anyone from running a broadcast ad during 30 days prior to an election, if : (i) the broadcast ad is paid for with funds that are corporate (for profit or non-profit) or from a labor organization; and, (ii) the broadcast ad simply "refers to" a candidate, even if nothing is said about the impending election in the broadcast ad.

In FEC v. Wisconsin Right to Life ("WRTL"), 551 U.S. _____, 127 S. Ct. 2652 (2007) the U.S. Supreme Court addressed provisions of the Bipartisan Campaign Reform Act ("BCRA") that incorporated similar restrictions on the use of corporate and labor organization funds, for broadcast ads designed to be aired immediately before elections. 2 U.S.C. §§ 434(f)(3)(A) and 4416(b)(2). As in the case of the Ohio laws involved herein, the federal campaign finance laws addressed in WRTL had the clear purpose of limiting the ability of third parties from even mentioning the name of a candidate during the crucial temporal periods before elections.

Importantly, Chief Justice Roberts delivered the opinion of the Supreme Court, in which he first reiterated the basic legal rule that in drawing lines in this area " ... the First Amendment requires us to err on the side of protecting political speech rather than suppressing it." 127 S. Ct. at 2659.

In addition, Chief Justice Roberts reaffirmed that when confronted with a challenge to a statute regulating First Amendment protected speech, that the statute is subject to "strict scrutiny." Accordingly, the Supreme Court opinion observes: "Under strict scrutiny, the Government must prove that applying BCRA to WRTL's ads furthers a compelling interest and is narrowly tailored to achieve that interest. 127 S. Ct. at 2664. For that proposition, Chief Justice Roberts specifically cited the decision in First National Bank of Boston v. Bellotti, 435

U.S. 765 (1978) that expressly protects the First Amendment rights of corporations to engage in the discussion of political issues, and to use corporate dollars to finance these messages.

In WRTL, the U.S. Supreme Court was required to squarely address the issue of the constitutionally permissible breadth of regulation of core political speech, through the artifice of converting it into "electioneering." In addressing this critical issue, Chief Justice Roberts' opinion rejects any standards based upon the purported "intent" of the speaker, in favor of a strict content-based analysis. 127 S. Ct. at 2666.

In WRTL, the Supreme Court concludes that regulation of core political speech in this type of scheme is only permissible when speech sought to be regulated is either "express advocacy" or the "functional equivalent" of express advocacy.

Moreover, the Supreme Court narrowly defined the "functional equivalent of express advocacy," as follows:

> In light of these considerations, a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

127 S. Ct. at 2667.

In short, the Supreme Court has drawn a bright line in WRTL, drastically limiting the ability of government to censor political speech. Indeed, Chief Justice Roberts concludes the Supreme Court's Opinion with the trenchant observation:

> Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election. Where the First Amendment is implicated, the tie goes to the speaker, not the censor.

127 S. Ct. at 2669.

Significantly, the WRTL adoption of limits to the scope of regulation occurred in an "applied" challenge to the relevant provisions of BCRA. In fact, the ads to which the BCRA

statutes were deemed to be applicable by the Federal Election Commission were nearly identical to the ads that ORTL plans to run in Ohio.

The reason that the Supreme Court was addressing the issues in WRTL in an as applied context, was that the Court had earlier sustained the BCRA provisions when facially attacked by Senator Mitch McConnell and others. McConnell v. Federal Elections Commission, 540 U.S. 93 (2003). An important basis for the McConnell decision was the extensive factual record that the Congress had assembled in support of the changes to the federal campaign finance laws in BCRA, that satisfied the burdens of "compelling state interest" and "least restrictive alternative." See generally 127 S. Ct. at 2665-2666.

In sharp contrast, the Defendants in this case can offer no factual record in support of the provisions of Ohio H.B. 1 that became O.R.C. § 3517.01(B)(6) and O.R.C. § 3517.1011. They cannot offer that information to the Court to satisfy the government's burden in this strict scrutiny case, because there was no analysis and, frankly, no common sense applied to these complex and important issues by the General Assembly.

Thus, not only are these provisions of Ohio law unconstitutional as applied to the broadcast ads that ORTL plans to run in 2008, but they are unconstitutional on their face because the Defendants cannot summon a scintilla of evidence to meet their burden that there was a "compelling governmental interest" supporting the need for this legislation.

In an essentially identical case in the U.S. District Court for the Eastern District of Pennsylvania, the Commonwealth of Pennsylvania conceded that it could not defend statutes similar to the Ohio statutes involved in this case. Indeed, the Commonwealth of Pennsylvania entered into a Stipulated Judgment in Center for Individual Freedom v. Corbett, Case No. 07-2792, E.D. Pa., August 18, 2007, agreeing that its parallel statutory scheme violated the First

Amendment. See Exhibit A, attached hereto.

Similarly, in Center for Individual Freedom v. Ireland, Case No. 1:08-00190, S.D. W. Va., April 22, 2008, the District Court entered a preliminary injunction preventing the State of West Virginia from enforcing a statutory scheme nearly identical, in all important respects, to the Ohio statutes involved in this case. See Exhibit B, attached hereto.

In Ireland, the U.S. District Court for the Southern District of West Virginia, made short shrift of the State's arguments that its censorship scheme could survive constitutional challenges under the First Amendment to the U.S. Constitution, and granted Plaintiff's request for a preliminary injunction.

At the outset, the District Court recognized that the appropriate standard of review for a state law regulating campaign finance is strict scrutiny. Memorandum Opinion at 6. The District Court expressly noted that: "Even where an opposing party moves for a preliminary injunction, and must therefore prove its likelihood of success on the merits, the ultimate burden of establishing the constitutionally of the challenged law remains with the government. Ashcroft v. ACLU, 542 U.S. 656, 666 (2004)." Memorandum Opinion at 6-7. See also Kruse v. Cincinnati, 142 F.3d 907, 912 (6th Cir. 1998).

The District Court further reasoned that any statute regulating campaign finance matters ("core political speech") must be tailored and precise, because the applicable holding in Buckley v. Valeo, 424 U.S. 1 (1976) requires that any law that does not "clearly mark the boundary" between permissible and impermissible speech must be held to be vague. Memorandum Opinion at 8.

In the Ireland case, the District Court was addressing West Virginia's censorship scheme that was designed to choke off "issue advocacy" by converting this protected core political

speech into "electioneering communications" that the State sought to restrict. The District Court expressly noted that the language used in West Virginia's law, particularly its definition of "electioneering," was overbroad and vague. Memorandum Opinion at 8-10.

Consequently, the District Court found that Plaintiff was likely to be successful on the merits, and that no other factor precluded the issuance of a preliminary injunction.

In this case, ORTL respectfully submits that the State of Ohio has acted so egregiously in violation of the constitutionally protected rights of Ohioans in enacting R.C. § 3517.01(B)(6) and R.C. § 3517.1011(H) (that create the "blackout" periods in Ohio) that the State of Ohio should emulate the Commonwealth of Pennsylvania and stipulate to judgment barring enforcement of these statutes.

2. The Intrusive Regulatory and Disclosure Scheme in O.R.C. § 3517.1011 Is Unconstitutional On Its Face.

In addition to the fatally flawed "blackout" periods that the State of Ohio enacted in O.R.C. § 3517.01(B)(6), the regulatory scheme created in H.B. 1 also contained another key component, O.R.C. § 3517.1011, that is facially unconstitutional. In O.R.C. § 3517.1011, core political speech, generally known as "issue advocacy" is regulated in an unconstitutionally vague and overbroad manner.

The artifice chosen by the State of Ohio to chill and disrupt constitutionally protected political speech is the linguistic trick of labeling "issue advocacy" as "electioneering."

The provisions of O.R.C. § 3517.1011 broadly define the scope of the regulated "electioneering communications" as essentially: (i) any mention of an individual who is a candidate for public office in Ohio (state or federal); (ii) the message is in any "...broadcast, cable, or satellite communication"; and, (iii) that occurs at any time after the individual becomes a qualified candidate. These provisions of O.R.C. § 3517.1011 are vague, overbroad and,

accordingly, unconstitutional on their face because they violate the rights of ORTL, and its members, to freedom of association, freedom of speech, and freedom to petition government, all of which rights are protected by the First Amendment to the U.S. Constitution.

a. The provisions of O.R.C. § 3517.1011 violate the constitutional right of freedom of association.

The standard set forth in Buckley simply echoes a long line of case law recognizing the independent importance of the First Amendment guaranteed right of freedom of association. E.g., NAACP v. Button, 371 U.S. 415 (1963); NAACP v. Alabama, 357 U.S. 449 (1958). The intrusive and burdensome regulatory and disclosure scheme set forth in O.R.C. § 3517.1011 substantially burdens that right in two significant ways.

First, the disclosure regime set forth in O.R.C. § 3517.1011, requires a group dedicated to advocating public policy issues, such as ORTL, to reveal extraordinary details of its membership and its internal financial information, even if the group has no intention of engaging in "express advocacy."

Moreover, it is important to note that a group like ORTL is subject to extraordinary civil penalties pursuant to O.R.C. § 3517.155 and 3517.993, and a potential referral for criminal prosecution pursuant to O.R.C. § 3517.155.

Accordingly, in Ohio's scheme a private third party group is stripped bare of its privacy, the privacy of its members and supporters, and is subjected to draconian penalties for non-compliance.

b. The provisions of O.R.C. § 3517.1011 breach the constitutionally protected right to anonymity of ORTL and its members.

Inherent in the constitutionally protected rights of freedom of association and freedom of speech is the concept that the issue advocate may always wear the cloak of anonymity. In an

unbroken chain of cases, the U.S. Supreme Court has held that the ability to associate and speak anonymously is embedded in the protection of the First Amendment.

The right to associate anonymously is plainly protected under the First Amendment. For example, in NAACP v. Alabama, 357 U.S. 449 (1958) the Supreme Court stated: "...it is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action. NAACP, 357 U.S. at 462. Accord Thomas v. Collins, 323 U.S. 516, 540 (1945).

Clearly, the disclosure scheme that is set forth in O.R.C. § 3517.1011 would shred the anonymity of a membership group already entitled to it such as ORTL. Under Ohio's regulatory scheme, no supporter of ORTL could contribute to the payment for a broadcast ad, mentioning a candidate for election, that ORTL planned to air at any time after the candidate was certified to the ballot (O.R.C. § 3501.01) without giving up his or her anonymity. This disclosure must be made under Ohio law, even if the broadcast ad did not address the election at all, and the ad was not scheduled to be run within the immediate period before an election.

Buckley v. Valeo, 424 U.S. 1 (1976), established a narrow exception to the prohibition on compelled disclosure, applicable only to ads expressly advocating the election or defeat of a candidate. McConnell v. FEC, 540 U.S. 93 (2003), extended that exception to the 'functional equivalent' of express advocacy. But as demonstrated above, ORTL's ads, under the standard of WRTL II are not express advocacy nor the 'functional equivalent of express advocacy.' Therefore, ORC 3517.1011 is unconstitutional as applied to ORTL.

Additionally, in McConnell, the S.Ct. upheld the disclosure requirements only for a narrow period of time, within 60 days of a general election or 30 days of a primary, and only on the basis of an extensive legislative record finding that ads run within such proximity to an

election were more likely to be the functional equivalent of express advocacy. Here, ORC 3517.1011 requires the disclosure of all ads even mentioning a candidate on virtually a year-round basis. This vastly exceeds the scope of ads that the McConnell court found to be the functional equivalent of express advocacy, and is done with no basis in the legislative history or legislative findings of fact, whatsoever.

Unlike the federal scheme set forth in 2 U.S.C. §§ 434(f)(3)(A), 4416(b)(2), the Ohio scheme, set forth in ORC § 3517.1011, covers essentially the entire calendar year in which an election occurs, except for the time periods immediately before the elections. There appears to be no "rational basis" for this statutory scheme.

ORTL respectfully submits that the State of Ohio can establish no "compelling state interest" for this intrusive regulatory scheme, forcing disclosure for nearly a full year before an election, whenever a group such as ORTL plans to address important public policy issues in a broadcast ad. Indeed, if Ohio's year-round disclosure scheme, for any broadcast ad even mentioning a candidate is permitted to stand, it would completely undermine the holding in McConnell and Buckley that compelled disclosure is appropriate only in the most narrow and compelling of circumstances.

c. The provisions of O.R.C. § 3517.1011 violate the constitutionally protected right of freedom of speech of ORTL and its members.

Through the enactment and enforcement of this scheme to limit political speech, the State of Ohio has ignored its fundamental responsibility to protect and promote First Amendment freedoms. As stated by the U.S. Supreme Court in Stromberg v. California, 283 U.S. 359, 369 (1931):

> The maintenance of the opportunity for free political discussion to the end that government may be responsible to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the

> security of the Republic, is a fundamental principle of our constitutional system.

There is no feature of O.R.C. § 3517.1011 that represents legitimate regulation of third party freedom of speech. It is merely a censorship scheme designed to limit the "robust political debate" that is a fundamental aspect of American life. New York Times v. Sullivan, 376 U.S. 254 (1964).

The method employed by the State of Ohio to limit robust political debates in Ohio is to force disclosure of the identity of any individual who supports an initiative by a public issues group, such as ORTL, to publically address public policy issues and actually mention the name of those members of the political class who are responsible for various public policies. As noted in the previous section of this memorandum, disclosure regulations, such as O.R.C. § 3517.1011, have been found to be an unconstitutional infringement upon the First Amendment protected right of association. E.g. Talley v. California, 362 U.S. 60 (1960); NAACP v. Alabama, 357 U.S. 449 (1958).

In addition, this type of disclosure regime has also been found to violate the First Amendment right of freedom of speech. E.g. McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995). In striking down an earlier Ohio statute that required the disclosure of the identity of a publisher(s) of a political document designed to affect the public debate on a policy issue, the U.S. Supreme Court stated:

> The anonymity of an author is not ordinarily sufficient to exclude his work product from the protection of the First Amendment. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concerns about social ostracism, or merely by a desire to preserve as much of one's privacy as possible... Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment. McIntyre v. Ohio Elections Commission, 514 U.S.

334, 341-342 (1995).

The Court concluded:

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. ...The right to remain anonymous may be abused when it shields fraudulent conduct, But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse, McIntyre, 514 U.S. at 357.

In a significant concurrence, Justice Thomas wrote:

> Instead of asking whether "an honorable tradition" of anonymous speech has existed throughout American history, or what the "value" of anonymous speech might be, we should determine whether the phrase "freedom of speech, or of the press" as originally understood, protected anonymous political speech. I believe that it did.
>
> * * *
>
> After reviewing the weight of the historical evidence, it seems that the framers understood the First Amendment to protect an author's right to express his thoughts on political candidates or issues in an anonymous fashion. (J. Thomas, Concurring Op., 514 U.S. at 460-461)

In the most recent U.S. Supreme Court case addressing the First Amendment protection of anonymous political speech, the Court struck down a local ordinance that prohibited door-to-door canvassing without prior licensing by the mayor's office. Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 526 U.S. 150 (2002).

In reaching its decision, the Supreme Court noted that the compelled surrender of anonymity could preclude individuals from becoming involved in important causes. In fact, the Supreme Court noted that the surrender of anonymity is felt most acutely by: "...citizens holding religious or political views" traditionally esteemed in our society, but which might also lend a speaker to "...prefer silence to speech licensed by a petty official." 526 U.S. 150, 167 (2002).

d. O.R.C. § 3517.1011 has no legitimate rational basis.

As the foregoing sections of this Memorandum have amply demonstrated, a law regulating campaign finance (political speech) constitutes a restriction on the First Amendment protected freedoms of speech, association, and the right to petition government. Moreover, because such a statute must be subjected to "strict scrutiny" the State of Ohio clearly has the burden of demonstrating that O.R.C. § 3517.1011 was enacted to address a "compelling state interest" and that the law was the "least restrictive" means of accomplishing that regulatory objective.

In this situation, ORTL respectfully submits that the State of Ohio cannot demonstrate the elements necessary to survive strict scrutiny. Accordingly, the Court should determine that O.R.C. § 3517.1011 is unconstitutional, on its face, and restrain and enjoin Defendants from enforcing this statute. At a minimum, this Court should determine that the statute is unconstitutional as applied to ORTL.

B. The Court Should Issue A Temporary Restraining Order And Preliminary Injunction Because ORTL, And Its Members, Will Suffer Irreparable Harm If The Court Does Not Grant ORTL Interlocutory Relief to ORTL.

This case involves claims by ORTL that the regulatory scheme adopted by Ohio in H.B. 1 violates its rights to freedom of speech, freedom of association and freedom to petition government. There is no doubt that abridgement of First Amendment rights, even for minimal time periods, constitutes the type of irreparable injury for which interlocutory relief is indicated. Elrod v. Burns, 427 U.S. 347 (1976); Suster v. Marshall, 149 F.3d 523 (6th Cir. 1998); cert. denied, 525 U.S. 1114 (1999); Newson v. Norris, 888 F.2d 371, 378 (6th Cir. 1989).

In this case, ORTL respectfully submits that the infringement upon First Amendment

rights is current, ongoing and its harmful effects can only be avoided through this Court's order restraining and enjoining Defendants from enforcing these unconstitutional Ohio statutes.

C. Court Should Issue A Temporary Restraining Order And Preliminary Injunction Because No Other Parties Will Be Injured By Granting Interlocutory Relief.

No other party will be harmed if this Court grants interlocutory relief by way of a restraining order or preliminary injunction. Frankly, it is virtually impossible for the Defendants to claim that the continuation of a regulatory scheme that impairs First Amendment rights could be justified under any circumstances. See Suster v. Marshall, 149 F.3d 523 (6th Cir. 1998), cert denied 525 U.S. 1114 (1999); Center for Individual Freedom v. Ireland, Case No. 1:08-00190, S.D. W. Va., April 22, 2008 (Exhibit B attached hereto).

D. Court Should Issue A Temporary Restraining Order And Preliminary Injunction Because The Public Interest Will Be Served By Granting Interlocutory Relief.

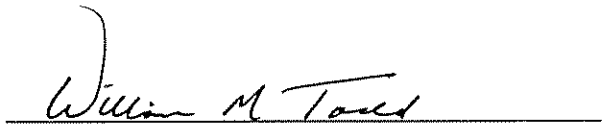
The final factor that should be considered by this Court in determining whether interlocutory relief should be granted, is whether such relief would be in the public interest. The U.S. Supreme Court has held that "...there is no public interest in enforcing a law that 'curtail(s) debate and discussion' regarding issues of political import." Citizens v. Rent Control/Coalition for Fair Housing v. Berkley, 454 U.S. 290, 299 (1981).

Similarly, the Sixth Circuit has held that a preliminary injunction enjoining Ohio campaign finance regulations that violated First Amendment rights was in the public interest, and certainly it was not against the public interest to enjoin the enforcement of an unconstitutional law. Suster v. Marshall, 149 F.3d 523 (6th Cir. 1998), cert. denied, 525 U.S. 1114 (1999).

III. CONCLUSION

Plaintiff Ohio Right to Life Society, Inc. respectfully requests that the Court grant its Motion and that the Court issue an appropriate temporary restraining order and preliminary injunction to prevent irreparable injury to Plaintiff and to maintain the status quo.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction was served upon the following, by regular U.S. mail, postage prepaid, on this 23rd day of June, 2008:

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