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.	:	

Joint Memorandum of Defendants Ohio Elections Commission and Its Members and Secretary Of State Jennifer Brunner In Opposition To Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction

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INTRODUCTION

Plaintiff Ohio Right to Life Society, Inc. ("ORTL") seeks from this Court a temporary restraining order and preliminary injunction enjoining Defendants Ohio Elections Commission ("OEC" or "Commission"), its individual members in their official capacity ("OEC Members"), and Ohio Secretary of State Jennifer Brunner from enforcing certain provisions of Ohio campaign finance law regarding "electioneering communications." Plaintiff's motion should be denied at the outset because Plaintiff cannot assert a particularized and concrete injury that satisfies threshold jurisdictional requirements for Article III standing. The First Amendment injury alleged by Plaintiff – based on draft radio advertisements that have not been produced and are subject to future modification – is far too illusory and conjectural to establish standing.

Furthermore, Plaintiff's motion should be denied in the face of clear precedent from the United States Supreme Court upholding the constitutionality of statutes like Ohio's and recognizing the important state interests in combating the corrosive influence of the unregulated

expenditure of money on the electoral process. Like the federal scheme upheld by the U.S. Supreme Court, Ohio has adopted a narrow and clearly defined category of "electioneering communications" that are proper subject of disclosure requirements and regulation because of their demonstrated effect on election outcomes. Ohio's electioneering communication statute survives constitutional scrutiny because it is substantially related to the State's interests in providing the electorate with information, deterring actual and perceived corruption, and gathering data necessary to enforce more substantive electioneering restrictions. *McConnell v. FEC*, 540 U.S. 93, 196 (2003). Therefore, Plaintiff cannot succeed on the merits of its claim for injunctive relief. Furthermore, in light of these important State interests, granting the injunction would cause substantial harm to the public interest.

Defendants therefore ask the Court to deny Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, filed June 20, 2008 (Doc. 19) and June 23, 2008 (Doc. 20).

STATEMENT OF FACTS

Ohio's Statutory Scheme for "Electioneering Communications"

The provisions of Ohio law challenged by Plaintiff were part of the campaign finance reforms enacted in Amended Substitute House Bill Number 1 ("Am. Sub. H.B.1") in December 2004 during a special session of the 125th Ohio General Assembly. As a result of Am. Sub. H.B. 1, Ohio law now requires that any person who makes a disbursement in excess of $10,000 during any calendar year for the costs of producing and airing an "electioneering communication" must file a disclosure statement containing the following:

(a) the full name and address of the person making the disbursement;

(b) the principal place of business of the person making the disbursement, if not an individual;

(c) the amount of each disbursement of more than one dollar during the period covered by the statement and the identity of the person to whom the disbursement was made;
(d) the nominations or elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified,

(e) For each contributor who contributed an aggregate amount of $200 or more to the person making the disbursement and whose contributions were used for making the disbursement, the following must be disclosed:

(i) the full name and address of the contributor, and, if the contributor is a political action committee, the registration number assigned to the political action committee;

(ii) if the contributor is an individual, the name of the individual's current employer, if any, or, if the individual is self-employed, the individual's occupation and the name of the individual's business, if any;

(iii) if the contribution is transmitted pursuant to section 3599.031 of the Revised Code from amounts deducted from the wages and salaries of two or more employees that exceed in the aggregate one hundred dollars during the period specified in division (D)(1)(e) or (f) of this section, as applicable, the full name of the employees' employer and the full name of the labor organization of which the employees are members, if any.

R.C. 3517.1011(D)(1)(a)-(f).

The statute defines "electioneering communication" as (1) any broadcast, cable, or satellite communication that (2) refers to a clearly identified candidate, and (3) that is made starting from the time the identified candidate actually becomes a candidate through the thirtieth day preceding the primary election and between the date of the primary through the thirtieth day prior to the general election at which the candidate will be elected to that office. R.C. 3517.1011(A)(7)(a). The definition expressly excludes communication via any other medium, communication in news stories or editorials, or candidate debate or forums. R.C. 3517.1011(A)(7)(b). For the purposes of the disclosure requirement, "a person shall be considered to have made a disbursement if the person has entered into a contract to make the disbursement." R.C. 3517.1011(B).

Additionally, Ohio law also prohibits the broadcasting of an electioneering communication during the thirty days preceding a general or primary election that is funded by contributions from a corporation or labor organization. See R.C. 3517.1011(H) ("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.").[1]

Statement of the Case

On May 20, 2008, Plaintiff ORTL filed a complaint for a temporary restraining order and preliminary and permanent injunction alleging that Ohio's statutory scheme for electioneering communications violates its First Amendment rights of freedom of speech and association. Attached to the complaint were two draft advertisements that ORTL "plans to run…beginning in June 2008 through December 2008" purporting to meet the definition of an electioneering communication in R.C. 3517.1011. Complaint, ¶ 9. The advertisements are draft radio broadcast scripts exhorting listeners to contact certain state senators and to voice their support for Senate Bill 174, which would ban human cloning in Ohio. See Exhs. A and B of Complaint. Both ads list the names of nine state senators who currently sit on the Judicial Civil Justice Committee of the Ohio Senate – the committee reviewing Senate Bill 174. Dep. of Matthew Gonidakis, Executive Director of ORTL, at 55.

[1] Interestingly enough, the General Assembly seems to have provided that a holding that either R.C. 3517.01(B)(6) or 3517.1011(H) is unconstitutional as applied to any person or circumstance will render all provisions pertaining to that subject matter invalid and severable. See H.B. 1, uncodified, Section 7(A). Should the interpretation of this section become relevant to this case, however, this Court should abstain from deciding this unclear issue of state law pursuant to *Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941). See also *Reetz v. Bozanich*, 397 U.S. 82 (1970); *Tyler v. Collins*, 709 F.2d 1106, 1108 (6th Cir. 1983).

According to Matthew Gonidakis, Executive Director of ORTL, who signed the verified complaint and attested to the facts therein, the draft scripts were created by Wilson Grand Communications ("Wilson Grand") pursuant to a written agreement with OTRL. Gonidakis Dep., 56. The scope of that agreement included both the drafting of the ads and services related to production – i.e. the process of transforming a draft script into an actual broadcast. *Id*., 56-57. However, to date, there has been no recording or production work on the ads aside from the draft scripts. *Id.*, 57. Neither ORTL nor Mr. Gonidakis has reached any type of understanding with Wilson Grand as to timing of any further production efforts. *Id.* Neither ORTL nor Wilson Grand has purchased any air time for radio or television broadcast of the ads. *Id*., 60. Nor has ORTL or Wilson Grand made any decisions as to target market, number of radio stations, or broadcast frequency. *Id*., 60-61. The draft scripts attached to Plaintiff's complaint therefore do not represent the final version of the ads and are subject to modifications during the production process. *Id*. 54, 58.

Plaintiff's complaint was not accompanied by a motion for temporary restraining order or preliminary injunction. Plaintiff filed its motion for injunctive relief on June 20, 2008, followed by an amended motion on June 23, 2008. Therefore, one full month passed between the filing of Plaintiff's complaint and the filing of its motion for injunctive relief.

LAW AND ARGUMENT

I. This Court Lacks Subject Matter Jurisdiction Over Plaintiff's Claims.

Plaintiff lacks standing because there is no justiciable controversy or injury and as such this Court lacks subject matter jurisdiction over Plaintiff's claims. It has long been held that "a litigant must establish standing," which is a "fundamental element in determining federal jurisdiction over a 'case' or 'controversy' as set forth in Article III of the Constitution."

Morrison v. Bd. of Educ., 521 F.3d 602, 608 (6th Cir. 2008), citing *Raines v. Byrd*, 521 U.S. 811, 818 (1997). In order to establish Article III standing, a Plaintiff must show that: (1) it has suffered "a concrete and particularized injury," whether actual or imminent, (2) the injury is traceable to the defendant, and (3) and a favorable judgment would provide redress. *Morrison*, 521 F.3d at 608 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130 (1992)). The Supreme Court has "emphasized repeatedly" that the "alleged harm must be actual or imminent, not 'conjectural' or 'hypothetical.'" *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990).

In the context of a First Amendment challenge, the Supreme Court has found that "constitutional violations may arise from the deterrent, or 'chilling,' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights." *Laird v. Tatum*, 408 U.S. 1, 11 (1972) (citing *Baird* v. *State Bar of Arizona*, 401 U.S. 1 (1971); *Keyishian* v. *Board of Regents*, 385 U.S. 589 (1967); *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965); *Baggett* v. *Bullitt*, 377 U.S. 360 (1964)). Nevertheless, "[w]ith respect to the standing of First Amendment litigants, the Supreme Court is emphatic: '[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.'" *Morrison*, 521 F.3d at 608 (quoting *Laird*, 408 U.S. at 13-14). Accordingly, for purposes of standing, "subjective chill requires some specific action on the part of the defendant in order for the litigant to demonstrate an injury-in-fact." *Morrison*, 521 F.3d at 609. Federal courts have routinely held that no standing exists where a First Amendment plaintiff fails to prove such a concrete harm, but instead merely alleges an inhibition of speech. *Morrison*, 521 F.3d at 609 (citing *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 834 (6th Cir. 2001); *Adult Video Ass'n v. U.S. Dep't of Justice*, 71 F.3d 563, 566 (6th Cir. 1995); *United*

Presbyterian Church in the U.S.A. v. Reagan, 738 F.2d 1375, 1380 (D.C. Cir. 1984)). Quite simply, this is because First Amendment chill is generally the "'*reason* why the governmental imposition is invalid rather than as the *harm* which entitles [a party] to challenge it.'" *Adult Video Association*, 71 F.3d at 566 (quoting *United Presbyterian Church*, 738 F.2d at 1378); *Morrison*, 521 F.3d at 609-610.

In *Morrison*, a case before the Sixth Circuit, a high school student filed a law suit on the basis of his school's written policy "prohibiting students from making stigmatizing or insulting comments regarding another student's sexual orientation." *Morrison*, 521 F.3d at 605. The student alleged that the policy stifled his freedom of speech. *Id.* In response, the school board changed the policy, yet plaintiff pressed on with his litigation. *Id.* The Sixth Circuit held that the plaintiff lacked standing because, other than plaintiff's own subjective perception that he would have been disciplined for speaking, there was nothing beyond speculation that would establish a justiciable injury. *Morrison*, 521 F.3d at 610.

In this case, Plaintiff has failed to provide any indication of a specific objective chilling effect establishing the type of injury needed for Article III standing. The injury alleged by Plaintiff is far too illusory and conjectural to establish standing. The draft scripts attached to Plaintiff's complaint are just that – drafts. No steps have been taken toward producing the ads for radio or television broadcast. Gonidakis Dep., 57. Neither ORTL nor Wilson Grand has reached any understanding as to when these advertisements will be produced. *Id*. Furthermore, there is no indication that ORTL has entered into any negotiations, let alone contracts, to secure air time. *Id*., 60. In fact, ORTL has yet to even identify a targeted market, establish a budget, or determine the number of times to broadcast the advertisements. *Id*. at 60- 61. Finally, Plaintiff has not filed anything with the Secretary of State indicating an intention to broadcast these

advertisements. *Id.*, 71. This contrasts sharply with the facts of *FEC v. Wisconsin Right to Life*, 551 U.S. ___, 127 S. Ct. 2652, 2659 (2007) ("*WRTL*"), the main case relied upon by Plaintiff. In that case, WRTL had begun airing its advertisements prior to the blackout period and sought injunctive relief in order to continue airing its already-produced advertisements. *WRTL*, 127 S. Ct. at 2660-2661.

Therefore, under the present circumstances there is no way of knowing that this is anything but a speculative lawsuit, which is precisely what the standing doctrine is designed to prevent. Much like the *Morrison* case, this case turns on the mere conjecture that Plaintiff would not be permitted to broadcast its advertisements free of punishment. In other words, this lawsuit is based on Plaintiff's subjective perception that it would have been disciplined for broadcasting its advertisements as they are currently designed. It is merely a subjective speculation that the government *may* in the future take some action detrimental to the Plaintiff. However, Plaintiff conceded that the advertisements are not even completed, let alone contracted to be broadcast on any fixed medium. Plaintiff has not paid any money to any radio or television station or entered into any contracts that would constitute a "disbursement" triggering the disclosure requirement. See R.C. 3517.1011(B). Plaintiff's nascent and amorphous plans to broadcast the draft scripts do not constitute an adequate or specific objective harm to create a case or controversy. Nearly identical to the *Morrison* case, Plaintiff's argument is based on a subjective speculation that it would have been disciplined for broadcasting the advertisements. Therefore, Plaintiff has failed to establish Article III standing and has failed to invoke the subject matter jurisdiction of this Court.

II. Plaintiff ORTL Is Not Entitled To Injunctive Relief.

A. ORTL Cannot Show A Likelihood Of Success On The Merits Of Their Facial Challenge To The "Blackout" Provision In R.C. 3517.1011(H).

Plaintiff's motion includes a request for an order from this court enjoining the enforcement of what Plaintiff calls the "blackout" provision in R.C. 3517.1011(H). That provision 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." R.C. 3517.1011(H). All the Defendants have conceded that the U.S. Supreme Court's ruling in *WRTL* precludes the enforcement of R.C. 3517.1011(H) and R.C. 3517.01(B)(6) with regard to the two ads attached to Plaintiff's Complaint during the thirty-day period preceding the November 4, 2008 general election. See Answer of OEC and Its Members, ¶ 38 (Doc. 21); Answer of Secretary of State Brunner, ¶¶ 39-40 (Doc. 18). As such, Plaintiff cannot demonstrate the need for injunctive relief regarding this provision.

To the extent that Plaintiff attempts to mount a facial challenge to Ohio's blackout provision on the basis of *WRTL*, that argument must fail. In *WRTL*, the Supreme Court limited its examination of the blackout provision in Section 203 of the Bipartisan Campaign Reform Act of 2002 ("BCRA") to an "as-applied" challenge and expressly precluded any facial challenge. *WRTL*, 127 S. Ct. at 2259. The Supreme Court did so on the basis of the Court's earlier ruling in *McConnell v FEC*, 540 U.S. 93 (2003) upholding the facial validity of Section 203 of BCRA. The *WRTL* Court adopted the conclusion from *McConnell* that, even if Section 203 arguably inhibited "some constitutionally protected corporate and union speech," the plaintiff failed to meet their "heavy burden" on a facial challenge that "*all* enforcement of the law should therefore be prohibited." *WRTL*, 127 S.Ct. at 2659 (citing *McConnell*, 540 U.S. at 207). In deciding its as-applied challenge to the blackout provision in Section 203, the *WRTL* Court found "no occasion to revisit *McConnell's* conclusion that the statute is not facially overbroad." *WRTL*,

127 S. Ct. at 2670, n. 8. In fact, Plaintiff even recognizes that *WRTL* extended no further than an as-applied challenge. *See* Plaintiff's Amended Motion for Temporary Restraining Order and Preliminary Injunction pp. 8-9. *WRTL* and *McConnell* together establish that Plaintiff cannot succeed on a facial challenge to Ohio's blackout provision.

ORTL attempts to distinguish *McConnell* from the case at bar by arguing that the *McConnell* decision relied on an extensive factual record to establish a compelling state interest and least restrictive alternative. *See* Plaintiff's Amended Motion for Temporary Restraining Order and Preliminary Injunction, p. 9. Plaintiff specifically argues that "there is no factual record in support of the provisions of Ohio H.B. 1 that became O.R.C. § 3517.01(B)(6) & O.R.C. § 3517.1011." *Id.*. However, Plaintiff fails to acknowledge that this is chiefly due to the fact that Ohio does not retain records of legislative history. Instead, Plaintiff relies on sweeping accusations that "there was no analysis and, frankly, no common sense applied to these complex and important issues by the General Assembly." *Id.* Moreover, Plaintiff overlooks the simple fact that the same concerns of corruption and the appearance of impropriety expressed in the *McConnell* decision are applicable to elections in the state of Ohio. Indeed, Ohio spent four years defending its own attempts to regulate television advertisements masquerading as "issue ads" although they advocated the defeat of a judicial candidate for the Ohio Supreme Court. *See, e.g., Citizens for a Strong Ohio v. Marsh*, 123 Fed. Appx. 630, 2005 U.S. App. LEXIS 67 (6th Cir. 2005); *U.S. Chamber of Commerce v. Ohio Elections Comm'n.*, 123 F. Supp. 2d 857 (S.D. Ohio 2001); *Ohio Elections Comm'n. v. Ohio Chamber of Commerce*, 158 Ohio App. 3d 557 (10th Dist. 2004) (all concerning the Ohio Elections Commission's attempt to regulate ads that aired in 2000 regarding Justice Alice Robie Resnick).

Despite the controlling precedent from *WRTL* and *McConnell*, Plaintiff cites a memorandum opinion from *Center for Individual Freedom, Inc. v. Ireland*, (S.D.W.Va., Apr. 22, 2008, Case No. 1:08-00190), attached to Plaintiff's Amended Motion as Exh. B (Doc. 20-3). However, in *Ireland*, the District Court for the Southern District of West Virginia openly acknowledged that the West Virginia statute at issue was significantly broader than the federal counterpart found in BCRA. *Ireland*, at p. 6. Plaintiff also relies on a stipulated judgment in *Center for Individual Freedom v. Corbett* (E.D. Pa., Aug. 8, 2008, Case No. 07-2792), attached to Plaintiff's Amended Motion as Exh. A (Doc. 20-2). That court also examined a facial challenge to a provision of Pennsylvania's campaign finance law that prohibits corporations and unions from making an expenditure "in connection with the election of any candidate or for any political purpose whatever." *Corbett*, ¶ 5. However, in tacit recognition of *WRTL* and *McConnell*, the *Corbett* court stated that the provision is "facially consistent with the First Amendment if construed as prohibiting expenditures by corporations and unions only for ads that 'expressly advocate' the election or defeat of clearly identified candidates." *Id*., ¶ 8. Furthermore, the *Corbett* court acknowledged that "Pennsylvania and United States precedent requires statutes to be construed to preserve their constitutionality where that is reasonably possible." *Id*., ¶ 8.

Finally, the U.S. Supreme Court has expressed strong disapproval of facial challenges where, as here, a plaintiff asks the court to "speculate about hypothetical or imaginary cases." *Washington State Grange v. Washington State Republican Party*, 128 S. Ct. 1184, 1190 (2008). Because a facial challenge "often rest on speculation," courts have a duty to exercise judicial restraint in order to avoid the "premature interpretation of statutes." *Id*. at 1191 (internal citations omitted). In light of this judicial disfavor of facial challenges, Plaintiff ORTL can only succeed

by "establish[ing] that no set of circumstances exists under which the [statute] would be valid, i.e. that the law is unconstitutional in all of its applications." *Id.* at 1190 (internal citations omitted). Here, ORTL is asking the court to strike down a statute on the basis of a draft advertisement that may never be broadcast. And while the Defendants concede that *WRTL* precludes the enforcement of R.C. 3517.1011(H) and R.C. 3517.01(B)(6) with regard to the ads attached to Plaintiff's Complaint during the thirty-day period preceding the November 4, 2008 general election, the law may be applied constitutionally in other circumstances. Because this court need not decide "a question of constitutional law in advance of the necessity of deciding it," *Wash. State Grange*, 128 S. Ct. at 1191, the court should decline from entertaining Plaintiff's facial challenge here.

Plaintiff has thus cited no authority supporting its facial challenge to the blackout provision in R.C. 3517.1011(H). Accordingly, Plaintiff's request for relief with regard to that provision should be denied.

B. ORTL Cannot Demonstrate A Likelihood Of Success On The Merits Of Its Facial Challenge to Disclosure Requirements Because the United States Supreme Court Has Upheld Similar Federal Statutes.

Plaintiff also seeks an order enjoining the enforcement of the disclosure scheme in R.C. 3517.1011. As a preliminary matter, ORTL errs to the extent it asserts that strict scrutiny should apply when reviewing the challenge to the disclosure requirements set forth in Ohio law. Plaintiff's Memo, p. 3. The Court's standard of review regarding campaign finance disclosures is well-settled. So long as the State has important interests and there is a "relevant correlation or substantial relation between the governmental interests and the information required to be disclosed," then the statutes are constitutional. *Buckley v. Valeo*, 424 U.S. 1, 64, 66 (1976); see also *McConnell*, 540 U.S. at 196, following *Buckley*.

In *Buckley v. Valeo*, the Court first set forth the standard of review that still governs challenges to campaign finance regulations. In that case, the Court evaluated campaign finance regulations under different standards depending upon whether the regulations concerned disclosures, contribution limits, or set limits on independent expenditures. The Court treated disclosure requirements as the least constitutionally suspect category of regulation. This approach makes sense. After all, disclosure requirements do not ban speech; rather they increase the information available to voters and foster a more informed electorate, thereby furthering one of the essential concerns of the First Amendment. *See, e.g.*, Stephen Breyer, *Our Democratic Constitution*, 77 N.Y.U.L. Rev. 245 (2002).

Accordingly, while the *Buckley* Court recognized that disclosure can indeed infringe upon the exercise of First Amendment rights, the Court also held that "there are governmental interests sufficiently important to outweigh the possibility of infringement." *Id.* at 66. The Court found that the following governmental interests were sufficient to support a disclosure requirement:

> The electorate's interest in information "as to where political campaign money comes from and how it is spent by the candidate;"
>
> The government's interest in deterring "actual corruption and avoid[ing] the appearance of corruption by exposing large contributions and expenditures to the light of publicity;" and
>
> The government's interest in "gathering the data necessary to detect violations of the contribution limitations" through recordkeeping, reporting and disclosure requirements.

Id. at 66-68. In fact, the Court held that disclosure requirements are the government's least restrictive means of curbing the evils of campaign ignorance and corruption. *Id.* at 68.

In *McConnell*, the Court continued to adhere to the analytical framework set forth in *Buckley v. Valeo* regarding the level of scrutiny that applies to disclosure requirements. The

Court, yet again, recognized the important state interests that are fostered by disclosure – "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions." *McConnell*, 540 U.S. at 196. And, the Court applied the *Buckley* standard of review yet again to uphold disclosure requirements because "they do not prevent anyone from speaking" and at the same time, they "perform an important function in informing the public about various candidates' supporters *before* election day." *McConnell*, 540 U.S. at 201. For the same reason, the *Buckley* Court upheld disclosure requirements regarding campaign expenditures even though it also found that direct limitations on those expenditures violated the First Amendment. While recognizing that "compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights…there are governmental interests sufficiently important to outweigh the possibility of infringement." *Buckley*, 424 U.S. at 66. The same logic applies here. Even if the blackout provision here is unconstitutional as applied to ORTL's draft ads, the disclosure requirements with respect to those ads are still permissible.

McConnell is determinative of ORTL's facial challenge to Ohio's disclosure provisions because the federal statute at issue in *McConnell* and Ohio's disclosure requirements regarding electioneering communications are similar. The federal statute upheld in *McConnell* defined electioneering communication as "any broadcast, cable, or satellite communication that refers to a clearly identified candidate for Federal office" that is made within 60 days of a general election for the office sought by the candidate or 30 days before a primary election for the office sought by the candidate. 2 U.S.C.A. 434(f)(3)(A)(i) (Supp. 2003) (set forth in *McConnell*, 540 U.S. at 189-190). The Court upheld the disclosure requirements set forth in the federal statute, including the requirement that any entity expending over $10,000 during any calendar year for the direct

costs of producing and airing electioneering communications must identify its contributors. *McConnell*, 540 U.S. at 193-198. The Court expressly rejected the same facial challenges made by ORTL here. See also *Citizens United v. FEC*, 530 F. Supp. 2d 274, 281 (D.C.C. 2008) (denying motion for preliminary injunction on the grounds that *McConnell* upheld disclosure requirements "for the entire range of electioneering communications").

In fact, ORTL is attempting to merge its as-applied challenge to Ohio's disclosure requirements with a facial challenge. If, in fact, ORTL could establish that, (1) it never airs advertisements that are the functional equivalent of express advocacy and, (2) it always limited its advertisements to advertisements that are not the functional equivalent of express advocacy, those facts would be relevant, although not determinative, to an as-applied challenge. However, ORTL has merely drafted one set of hypothetical advertisements that appear not to be the functional equivalent of express advocacy. That fact does not establish that ORTL has not in the past, or will not in the future, air other advertisements that are the functional equivalent of express advocacy. Accordingly, ORTL has not established (and cannot establish) that the specifics of its situation, whatever they turn out to be, justify the extraordinary remedy of asking this Court to enjoin Ohio's disclosure statutes on their face.

1. Plaintiff ORTL cannot evade existing precedent upholding the important state interests in requiring disclosure of electioneering communications.

As its first argument regarding disclosure, ORTL asserts that these provisions violate its freedom of association by requiring the disclosure of its membership and its internal financial information. Specifically, ORTL asserts that disclosure violates its rights "even if the group has no intention of engaging in 'express advocacy.'" Plaintiff's Memo at 12. However, as set forth

above, this Court should reject ORTL's attempt to convert unsupported assertions regarding its circumstances into a basis for a facial challenge.

As the record in *McConnell* and in this case demonstrates, the vast majority of advertisements using the name of a candidate in the time period surrounding an election do in fact constitute the functional equivalent of express advocacy. There is a wealth of political science research substantiating that the timing and nature of broadcast advertisements depicting candidates are most often designed to impact candidate elections and are perceived as such by the general public. Holman Aff., Section I, D, attached as Exh. A.[2] And in *McConnell*, the Court noted that although there was a dispute regarding the precise percentage of ads aired shortly before an election that clearly identified a candidate but had no electioneering purpose, "the vast majority of ads clearly had such a purpose." *McConnell*, 540 U.S. at 206.

These same studies support Ohio's decision to use a definition of electioneering communications as the basis of its regulations. Advertisements rarely use words of express advocacy, such as "vote for" or "vote against," whether they are sponsored by candidates, political parties, or independent groups. Affidavit of Craig Byron Holman, Ph.D., Section II, F, ¶ 2; *Id.*, Section IV, E; *McConnell*, 540 U.S. at 127 n.18. At the same time, a study of advertisements in 2000 found that more than 99% of ads that mention a candidate's name and aired shortly before an election were viewed as campaign ads supporting or opposing candidates. Holman Aff., Section II, F., ¶ 4. Further, this same study concluded that almost all group sponsored ads perceived as electioneering focused on a candidate, either by mentioning a candidate's name or depicting a candidate's image, or both. Holman Aff., Section III, A. Very

[2] The credentials of Dr. Holman are attached as Exhibit B.

few ads (3%) perceived as genuine issue ads **at any time over the course of the year** depicted a candidate; those that did referred to a candidate indirectly, usually as a sponsor of a bill. *Id.*

Indeed, studies demonstrate the need to regulate sham issue advertisements. Prior to the enactment of BCRA at the federal level and R.C. 3517.1011 and related regulations, large amounts of money were being used to run these advertisements because of their unregulated nature. In the 2000 elections, independent groups spent about $98 million for political television advertisements related to the 2000 federal elections – roughly a six-fold increase from 1998, just two years before. Holman Aff., Section II, F, ¶1. In the 2000 judicial elections in Ohio, independent groups ran more ads and spent more on those ads (5,315 ads costing over $2.6 million) than candidates and political parties combined. (Candidates aired 4,897 ads costing over $1.8 million and parties aired 1,695 ads costing over $469,000). Holman Aff. Section III, F; *Id.* Figure 3. Thus, the evidence more than supports the facial constitutionality of Ohio's regulations.

Accordingly, even in the case of ads that are outside *WRTL*'s definition of the functional equivalent of express advocacy**,** the State may require disclosure to further its interest in providing information to voters because the State has an interest in the disclosure of the funding sources of advertisements that clearly identify candidates. See generally Holman Aff., Section I, D; *id.* Section II, *McConnell*, 540 U.S. at 206. Moreover and alternatively, even if an ad is aimed only at influencing the passage or defeat of legislation, the state can still require disclosure in furtherance of interest in informing citizens about the legislative process. *United States v. Harriss*, 347 U.S. 612 (1954) (upholding federal lobbying disclosure requirements).

ORTL also asserts that Ohio's disclosure provisions must fail because they are triggered by any advertisements that clearly identify a candidate after an individual becomes a candidate,

and thus apply at an earlier point in time than the federal provisions. This departure from the federal statute, however, makes perfect sense. The goal of the statute is to require the disclosure of the identity of those airing broadcast advertisements that are the functional equivalent of express advocacy or that will affect the election regardless of whether those advertisements are aired 120 days, 90 days, 60 days, or 30 days before an election. And, in the modern era of absentee voting, those advertisements have begun to air earlier than ever. In Ohio, absentee voting generally begins thirty-five days before the election, R.C. 3509.01. In these circumstances, a 30 day, or even a 60 day, trigger for disclosure may not be sufficient to meet the State's interest. So long as an advertisement is the functional equivalent of express advocacy or will have an effect on an election, there is no reason why disclosure requirements should not begin once a candidate has been identified.

Furthermore, *McConnell* and *Buckley* never held that disclosure is appropriate only in the most narrow and compelling of circumstances, as ORTL alleges. Motion for Preliminary Injunction, at 14. Instead, both cases support the proposition that the State must demonstrate an important interest and that the statute be "substantially related" or evidence a "relevant correlation" to the goal. Ohio's interests in preventing corruption or the appearance of corruption and informing the voters regarding the sources of funds used to air broadcast communications that contain the name of a candidate apply at the moment that an individual becomes a candidate, and not simply within the 30 or 60 days before an election. Thus, the longer period of disclosure in Ohio law better serves Ohio's interests than a shorter disclosure period. An artificially short disclosure period simply encourages advertisements to be timed so as to evade the requirements of the law. Thus, the longer disclosure period serves the States'

interests in informing the electorate, preventing corruption and the appearance of corruption, and in enforcing contribution limits.

Nor is Ohio required to provide elaborate empirical evidence to support its interests in campaign finance disclosure. ORTL suggests as much, however, by arguing that Ohio's statute must fail because the evidence in *McConnell* focused on advertisements aired within the time periods set forth in federal law, and Ohio has not presented similar evidence regarding advertisements aired in the period between the declaration of candidacy and the 30 days prior to an election. However, Ohio is not required to present "elaborate, empirical verification of the weightiness of the State's asserted justifications." See *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997). In the absence of evidence that the character of advertisements that meet the definition of electioneering communications markedly changes just because an advertisement is aired before the deadlines included in the federal law, Ohio's statute should be upheld on its face because a reasonable assumption is that the vast majority of advertisements that clearly identify a candidate affect an election even if they are aired more than 60 days before a general election or 30 days before a primary.

2. Ohio's disclosure requirements do not infringe upon Plaintiff's First Amendment right to anonymity.

ORTL also asserts that Ohio's disclosure requirements intrude upon its members' rights of anonymity. Plaintiff's Memo. at 14-15. This argument also fails, because the United States Supreme Court has routinely rejected similar facial challenges to campaign finance disclosure provisions, first in *Buckley* and then again in *McConnell*. In addition, cases like *McIntyre* v. *Ohio Elections Comm'n*., 514 U.S. 334 (1995) and *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 526 U.S. 150 (2002) are distinguishable because the right to

anonymously leaflet or proselytize does not equate with a right to anonymously air broadcast advertisements that clearly identify a candidate for an upcoming election.

In both *Buckley* and *McConnell,* the Court expressly rejected overbreadth challenges to disclosure requirements that alleged that the application of disclosure requirements would unduly burden minor parties and independents. In both cases, the Court upheld the disclosure regulations, and indicated the inappropriateness of facial challenges of this type. *Buckley*, 424 U.S. at 64; *McConnell*, 540 U.S. at 197-98**.** The Court found that claims that persons would not contribute if they could not be anonymous were insufficient to support a facial challenge to the statute, and distinguished this type of generalized assertion from the facts of cases like *NAACP v. Alabama*, 357 U.S. 449 (1958), where the record demonstrated a very real threat of violence or harassment. *Buckley v. Valeo*, 424 U.S. at 72; *McConnell*, 540 U.S. at 198-199.

At the same time, ORTL has not established a record that would permit this Court to conclude that its contributors, like the members of the entities at issue in *NAACP v. Alabama* and *Brown v. Socialist Workers' Party*, 459 U.S. 87 (1982), face a real threat of retaliation if their names are disclosed. Those cases, which involved the NAACP in Alabama in 1958 and a widely unpopular minor party that established that its members had been subjected to threats of physical harm in the past, are distinguishable.

In order to successfully prove an as-applied challenge to a disclosure provision, ORTL would need to offer evidence that shows "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials, or private parties." *Buckley v. Valeo*, 424 U.S. at 74. Here, ORTL presents no evidence of past harassment of its members or contributors or itself, but relies upon general assertions by counsel. In this case, although ORTL's contributors may not wish to be

disclosed, any burden imposed on them by disclosure is not sufficient to override the State's interest in maintaining the integrity of its electoral system. Further, ORTL can protect any of its contributors who insist upon anonymity by segregating their contributions from the account used to finance electioneering communications.

ORTL's attempts to rely on *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), and similar cases also miss the mark. *McIntyre* did not involve limitations on the disclosure of contributors to a non-profit corporation that airs a broadcast advertisement that clearly identifies a candidate, but instead vindicated an individual's right to post anonymous leaflets. There is a marked difference between cases like *McIntyre* and *Stratton*, which involve an individual's personal right to speak anonymously, and this case, which involves an alleged right to make an anonymous contribution to a non-profit corporation so that corporation can engage in broadcast advertisements. Making a contribution is not the direct equivalent of speech. See *Buckley* and *McConnell*, *supra*. It is ORTL, not the contributor, that will decide the content of the advertisements that it airs. Further, Ohio's disclosure requirements apply only to advertisements on broadcast media. They do not restrict the classic First Amendment paradigm of the anonymous writer recognized in *McIntyre*. *See McIntyre*, 514 U.S. at 341 (citing *Talley v. California*, 363 U.S. 60, 64 (1960)). Indeed, the *McIntyre* Court itself expressly approved the *Buckley* Court's upholding of disclosure requirements and also expressly distinguished corporate speech from the anonymous author. *McIntyre*, 514 U.S. at 353.

C. ORTL has not demonstrated that the Ohio's disclosure requirements are unconstitutional as applied.

ORTL focuses its arguments on how the disclosure requirements are unconstitutional on their face. As demonstrated above, ORTL cannot succeed on this argument. Then, almost in passing, ORTL states that the Court should determine that the statute is unconstitutional as

applied to ORTL. This claim, however, must fail for lack of proof. Other than the hypothetical advertisements attached to the Complaint, there is no evidence in this record that would allow this Court to determine the extent and nature of ORTL's previous and future broadcast advertisements. If any of these advertisements are, or will be, the functional equivalent of express advocacy, then ORTL has provided no argument as to why Ohio's disclosure requirements should not apply to it. Further, even if ORTL should not be prohibited from airing its hypothetical advertisement during the upcoming election, that conclusion does not mean that it should be excused from disclosing the names of the contributors to that advertisement or future advertisements, which may or may not be the functional equivalent of express advocacy. As noted earlier, the government may legitimately require disclosure of contributions funding an advertisement, even when it cannot restrict the broadcasting of the advertisement. See *Buckley*, *McConnell*, *supra*. Indeed, even the *McConnell* dissenters, while arguing that corporate and labor expenditures could not be barred, nevertheless affirmed that the government could require disclosure of information related to those expenditures. See *McConnell*, 540 U.S. at 276 (providing voters with information is a "plausible interest" justifying disclosure provisions for corporate expenditures) (Rehnquist, C.J., Scalia, J., and Kennedy, J., dissenting).

Therefore, because Plaintiff cannot establish a facial or as-applied challenge to the disclosure requirements at issue, Plaintiff's request for injunctive relief should be denied.

D. Plaintiff has failed to establish that it will suffer any immediate and irreparable harm that outweighs the great harm to the public interest if injunctive relief is granted.

Finally, Plaintiff is not entitled to a temporary restraining order or preliminary injunction because Plaintiff has not made any showing that ORTL or its members will suffer immediate and

irreparable harm in the absence of such relief. Furthermore, any purported injury to Plaintiff's First Amendment interests is outweighed by the state interests at issue.

Injunctive relief in the form of a temporary restraining order or preliminary injunction is considered extraordinary relief. *Vision Center v. Opticks, Inc.*, 596 F.2d 111, 114 (5th Cir. 1979). As such, a motion for temporary restraining order and preliminary injunction must also establish that the moving party would suffer *immediate* irreparable harm. *Abney v. Amgen, Inc.*, 443 F.3d 540, 551 (6th Cir. 2006) (stating "[t]he second factor under the preliminary injunction test is whether the plaintiffs will suffer immediate and irreparable harm absent injunctive relief"). *See also* Fed. Civ. R. 65(b).

Here, Plaintiff has not demonstrated irreparable harm. Plaintiff points to *Elrod v. Burns*, which specifically states "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." 427 U.S. 347, 373 (1976). In fact, "[d]eprivations of speech rights presumptively constitute irreparable harm for purposes of a preliminary injunction." *Friends Social Club v. Secy. of Labor*, 763 F.Supp. 1386, 1393 (E.D.Mich.1991). However, Plaintiff has not demonstrated that it in fact intends to air the hypothetical advertisements attached to the Complaint. Further, Defendants concede *WRTL* provides that an advertisement identical to that posited in Plaintiff's Complaint can be aired during the upcoming election**.** As a result, Plaintiff cannot demonstrate a deprivation of its right to speak. Further, the subjective chill alleged by the disclosure of the names of contributors to a broadcast advertisement that refers to a clearly identified candidate is not irreparable harm where, as here, Plaintiffs have not adduced evidence sufficient to support an as applied challenge to the disclosure provisions. See *Friends Social Club v. Secy. of Labor*, 763 F.Supp. 1386, 1394

(E.D.Mich.1991) ("a *subjective* fear of reprisal is insufficient to invoke First Amendment protection against a disclosure requirement") (citing *Buckley*, 424 U.S. at 71-72).

Not only would denying the motion cause Plaintiff, at most, limited injury to their First Amendment rights, but granting the motion would cause substantial harm to the public interest. Plaintiff is not prohibited from relaying its message to the voters; rather, Plaintiff must merely disclose who is funding the advertisements. The United States Supreme Court has recognized multiple important concepts supported by disclosure requirements including providing the electorate with information, deterring actual and perceived corruption, and gathering data necessary to enforce more substantive electioneering restrictions. *McConnell*, 540 U.S. at 196. If this Court were to enjoin Ohio's statutes regulating electioneering communications now, immediately before a Presidential election, millions of dollars would flow into this State to air the exact type of advertisements that the Court found that the State has the right to regulate in *McConnell*. Ohio voters would be deprived of their right to information regarding the sources of funding for these advertisements, and Ohio would be unable to effectively enforce her contribution and expenditure limits. Accordingly, the public interest does not favor the issuance of an injunction in this case.

CONCLUSION

For the reasons set forth above, Plaintiff's motion for a temporary restraining and/or preliminary injunction should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2008, a copy of the foregoing *Joint Memorandum of Defendants Ohio Elections Commission and Its Members and Secretary Of State Jennifer Brunner In Opposition To Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Pearl M. Chin
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Assistant Attorney General

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.	§	

Affidavit and Expert Report of Craig Holman, Ph.D.

I. Introduction: Ohio's "Electioneering Communications" Provision

A. The right of all persons to advocate controversial political issues and to press for the furtherance of these issues in Congress, legislatures or among the public is a cherished and constitutionally-necessary principle of democracy. So is the right of the American public to have reasonable access to information about candidates when casting ballots, including an opportunity to know who are the key players financing advertisements for or against candidates. These principles work hand-in-hand in providing robust political speech and an informed electorate.

B. In recent years, party committees and independent groups have increasingly sought to blur the distinction between issue advocacy and candidate electioneering, thereby evading the responsibilities associated with campaigning—such as informing the public who is paying for campaign ads—all the while casting a pall over the intent and purposes of issue advocacy in general. The distinction has become blurred through the dramatic rise of electioneering ads disguised as issue advocacy, widely known as "sham issue ads."

C. The state of Ohio has developed a narrow and appropriate response to cloaked electioneering activity by establishing a category of "electioneering communications" and by defining clearly what constitutes an "expenditure" for electioneering purposes.

1. Ohio defines an "electioneering communication" as a broadcast, cable, or satellite communication that refers to a clearly identified candidate and

that is made: (1) for a primary election, during the period between the date the candidate is certified for placement on the ballot and the thirtieth day prior to the primary election; and, (2) for a general election, during the period between the primary election and the thirtieth day before the general election. Within 24 hours of spending more than $10,000 on electioneering communications within a calendar year, the expenditures and funding sources of $200 or more for these electioneering communications are subject to disclosure, and the ads must include a disclaimer clearly saying that the ads are not authorized by the candidate or candidates depicted in them.

2. Broadcast advertisements run in the last 30 days before a general or primary election that refer to a clearly identified candidate are considered electioneering "expenditures" in Ohio, subject to the source prohibition on corporate and union treasury funds as well as the disclosure requirements for electioneering expenditures. The definition of expenditures under Ohio law, as applied to group-sponsored broadcast advertisements, is similar in nature to the electioneering communications provision contained in the Bipartisan Campaign Reform Act of 2002 (BCRA) for federal elections.

D. Neither the category of electioneering communications affecting ads beyond 30 days of an election, nor the definition of expenditure within the 30-day window before an election, imposes a "blackout period" on political advertising. For electioneering communications, the expenditures and funders merely must be disclosed. For broadcast ads that depict a candidate 30 days before an election, the electioneering ad must be paid for by funds from individuals, political committees or political parties, and the sources and amount of those funds disclosed to the public.

E. There is a wealth of political science research substantiating that the timing and nature of broadcast advertisements depicting candidates are most often designed to impact candidate elections and are perceived as such by the general public. Additionally, research shows that disclosure of the sources and amount of funds to pay for such electioneering activity provides useful information to voters, helps combat actual or apparent corruption, and facilitates the enforcement of other campaign finance and lobbying disclosure laws.

II. Buying Time Reports and Related Studies

A. A database of real-time political ads aired on broadcast television in nearly all of the nation's top media markets developed in 2000, provides insights into electioneering versus genuine issue ads that was previously unavailable. The database was developed from records provided by the Campaign Media Analysis Group (CMAG), a for-profit company that monitors and records television advertising. CMAG offers customized media research services to

national trade associations, foundations, Fortune 100 companies, national media organizations, academia and hundreds of national, state and local political campaigns.

B. In an effort to bring the debate over issue advocacy out of the realm of hunches and speculation, the Brennan Center for Justice at New York University has worked in cooperation with Professor Ken Goldstein at the University of Wisconsin/Madison in developing a national database of political television advertising in the 2000 election. Using CMAG data of political advertising in the nation's top 75 media markets, researchers at the Brennan Center and the University of Wisconsin have documented the frequency, content and costs of television ads in the 2000 election, duplicating a similar study conducted in 1998.

C. I co-authored, along with Luke McLoughlin, BUYING TIME 2000: TELEVISION ADVERTISING IN THE 2000 FEDERAL ELECTIONS (2001). Jonathan Krasno and Daniel Seltz co-authored BUYING TIME: TELEVISION ADVERTISING IN THE 1998 CONGRESSIONAL ELECTIONS (2000). Comparable studies have been conducted by David Magleby,[1] Dean of Social Sciences, Brigham Young University; Kenneth Goldstein,[2] Professor of Political Science, University of Wisconsin/Madison; Richard Hasen,[3] Professor of Law, Loyola University; and others.

D. The studies have reached generally similar findings. Generally, each of the studies found that a definition of electioneering communications, as broadcast ads that depict candidates and air shortly before an election, is a narrow and appropriate measure of electioneering ads that should be subject to the source prohibitions and disclosure requirements of election law. Very few ads captured by this standard appear to qualify as "genuine issue ads." As noted by Justices Stevens and O'Connor in McConnell v. Federal Election Commission, 540 U.S. 93 (2003):

> "The precise percentage of issue ads that clearly identified a candidate and were aired during those relatively brief preelection time spans but had no electioneering purpose is a matter of dispute between the parties and among the judges on the District Court. Nevertheless, the vast majority of ads clearly had such a purpose."[4]

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[1] *See*, for example, David Magleby and J. Quin Monson, eds. THE LAST HURRAH? SOFT MONEY AND ISSUE ADVOCACY IN THE 2002 CONGRESSIONAL ELECTIONS (2004); and David Magleby, ed. ELECTION ADVOCACY: SOFT MONEY AND ISSUE ADVOCACY IN THE 2000 CONGRESSIONAL ELECTIONS (2001).

[2] Jonathan Krasno and Kenneth Goldstein, "The Facts About Television Advertising and the McCain-Feingold Bill," *PS* (June 2002), pp. 207-211.

[3] Richard Hasen, "Measuring Overbreadth: Using Empirical Evidence to *Determine the Constitutionality of Campaign Finance Laws Targeting Sham Issue Advocacy," Minnesota Law Review* (June 2001), pp. 1773-1804.

[4] McConnell v. FEC, 540 U.S. at 100 (2003).

E. For BUYING TIME 2000, students at the University of Wisconsin/Madison under the direction of Prof. Ken Goldstein viewed each of the 3,327 unique political ads that aired a total of 940,755 times in various markets across the nation in 2000 and coded each of the ads for content. Most of the content codes were objective in nature: Did the ad use any of the "magic words" of express advocacy such as "vote for (candidate X)," "reject (candidate X)," or "(candidate X) for Congress"? Was a candidate identified or pictured in the ad? What action, if any, did the ad encourage viewers to take? Some of the content codes were subjective in nature, the most important of which being: In your opinion, is the primary purpose of this ad to provide information about or urge action on a bill or issue, or is it to generate support or opposition for a particular candidate?

F. Among the key findings of BUYING TIME 2000 are:

1. Independent groups have spent, conservatively estimated, about $98 million on just the cost of buying media time for political television commercials in the 2000 federal elections—roughly a six-fold increase since 1998. Even when comparing political advertising affecting just House elections, political advertising by independent groups has sharply risen over 1998 levels.

2. The "magic words" test of whether an advertisement constitutes express advocacy as opposed to issue advocacy has little, if any, basis in the reality of political advertising. Political ads sponsored by political parties as well as outside groups employed the "magic words" of express advocacy only 2% of the time. In 2000, even candidates used terms such as "vote for" or "elect" in only about 10% of their ads; in 1998, only 4% of all candidate ads used such magic words.

3. Over the course of the year, a majority of television ads (59%) sponsored by independent groups were perceived by viewers as electioneering ads. Within 60 days of the election, the proportion of group-sponsored ads viewed as electioneering (86%) overwhelm those perceived as genuine issue ads.

4. Among those ads that would be "captured" by the bright-line test and classified as electioneering communications subject to the source prohibitions and financial disclosure laws, only a fraction of a percent were perceived as genuine issue ads. More than 99% of electioneering communications that aired shortly before the election were viewed as campaign ads supporting or opposing candidates.

5. Issue advocacy not only becomes overwhelmingly electioneering in nature as Election Day approaches, but also increasingly negative in

tone. Issue ads by independent groups are far more likely than candidate or even party ads to attack candidates.

III. Timing and Content of Political Ads

A. Electioneering issue ads, of course, avoid using the "magic words" that would immediately classify them as campaign ads for or against candidates, but they do not shy away from talking about the candidates. Almost all group sponsored ads perceived as electioneering in the 2000 study focused on a candidate, either by mentioning a candidate's name or depicting a candidate's image, or both. Very few ads (3%) perceived as genuine issue ads at any time over the course of the year depicted a candidate; those that did referred to a candidate indirectly, usually as a sponsor of a bill.

B. Special interest groups sponsored both genuine issue ads (urging action on a public policy or legislative bill) and electioneering ads (promoting the election or defeat of a federal candidate). In the 2000 election, genuine issue ads are rather evenly distributed throughout the year, while group-sponsored electioneering ads make a sudden and overwhelming appearance immediately before elections (*see* Figure 1).

C. Defining ads that depict candidates shortly before an election as electioneering ads produced very reasonable results. Of all group sponsored issue ads that depict a candidate shortly before the election, 99.4% were viewed as electioneering ads in reality. Only 0.6% of ads that the bright-line test would capture were viewed as genuine issue ads (*see* Figure 2). In absolute numbers, three genuine issue ads (which aired a total of 331 times) would have been captured by a 60-day bright-line test. Unlike the magic words test, a definition of electioneering ads based on whether the ad depicts a candidate and airs shortly before an election offers a far more accurate standard that reflects the realities of modern day campaign advertising.

D. Other studies reached similar conclusions. Krasno found that during the 1998 congressional elections, only two group-sponsored ads that were perceived by coders as genuine issue ads depicted a candidate shortly before the election.[5] Magleby found that in the 2002 congressional elections most group sponsored electioneering ads aired within the final three weeks of an election, rising to a crescendo the days before Election Day. In 2002, 60% of interest group electioneering activity occurred in the last two weeks before the election.[6]

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[5] Jonathan Krasno and Kenneth Goldstein, "The Facts About Television Advertising and the McCain-Feingold Bill," *PS* (June 2002) at 207.

[6] David Magleby and Jonathan Tanner, "Interest Group Electioneering in the 2002 Congressional Elections," in David Magleby and J. Quin Monson (eds.) THE LAST HURRAH? (Brookings, 2004) at 75.

E. The same pattern of interest groups broadcasting so-called issue ads immediately before an election in order to affect candidate races is evident in judicial elections as well. Candidates, parties, and groups sponsored at least 73 unique ads promoting or condemning judicial candidates in the nation's major media markets in 2000. Nearly all of these ads were 30-seconds in length; only a handful of the ads aired at 15 seconds in length. While this number may not seem remarkable by itself, these ads aired 22,646 times in the year 2000 – marking a record-breaking year for television advertising in judicial campaigns.[7]

F. The saturation effect of television advertising in the 2000 judicial elections becomes even more severe when looking at the placement of these advertising campaigns. These ads promoted or attacked judicial candidates in only four states – Alabama, Michigan, Mississippi and Ohio – and all 22,646 of the ads aired within the final weeks before the election (*see* Figure 3).

G. About 11% of candidate-sponsored ads in judicial elections used the magic words; a surprisingly higher proportion of party-sponsored ads recited the magic words. But only 1.2% of group-sponsored ads concerning judicial elections employed magic words—meaning that these ads were defined as issue advocacy in most jurisdictions. Consequently, nearly all group-sponsored ads affecting judicial elections fell outside campaign finance contribution and disclosure laws.

H. While most group-sponsored ads fell outside campaign finance laws and regulations, these ads were clearly intended to influence the outcome of judicial elections. All candidate ads, all party ads, and all group ads in judicial elections were coded by the students at the University of Wisconsin as in fact electioneering in nature, supporting or opposing specifically-identifiable judicial candidates. It is no coincidence that these ads aired close to Election Day.

I. Similar findings have been confirmed for judicial elections in 2002 and 2004 as well.[8]

IV. Significance of Electioneering Issue Advocacy for Elections

A. Electioneering issue ads have a dramatic affect on voters and elections. One simply need look at the Swift Boat Veterans ads of the 2004 presidential election to witness the impact of such television advertising. In judicial elections, Chamber of Commerce President Thomas Donahue once boasted of

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[7] Deborah Goldberg, Craig Holman and Samantha Sanchez, THE NEW POLITICS OF JUDICIAL ELECTIONS (2001).

[8] *See*, for example, Deborah Goldberg and Samantha Sanchez, THE NEW POLITICS OF JUDICIAL ELECTIONS 2002 (2002); and Deborah Goldberg and Samantha Sanchez, THE NEW POLITICS OF JUDICIAL ELECTIONS 2004 (2004).

winning 15 of 17 judicial races in which the Chamber aired electioneering issue ads.[9]

B. But the most significant impact of electioneering issue advocacy is the fact that it allows corporations, unions and special interest groups to circumvent contribution limits, source prohibitions and disclosure requirements. Through high-financed televised "issue ads"—advertisements that avoid using the magic words of "vote for" or "vote against"—many of the rules and regulations governing campaign activity may be evaded. Contribution and source limitations may be sidestepped; even disclosing to the public who is paying for the ad can be avoided using this campaign advertising strategy.

C. Prior to passage of the electioneering communications provision of the Bipartisan Campaign Reform Act, that is precisely what was occurring in federal elections. Despite the fact that federal law has prohibited corporations and unions to use their treasury funds ("soft money") to pay for campaign ads since the Tillman and Taft-Hartley Acts, corporate and union soft money flowed freely into election campaigns through so-called issue advocacy. Frequently, these ads were bought directly by corporations or union, or corporations or union money was used to finance these ads through outside groups. Frequently, corporate and union funds for so-called issue advocacy were coordinated by political parties with an explicit and exclusive stake in affecting election outcomes.

D. The Democratic and Republican parties enjoyed the largess of nearly $500 million in soft money in the 2000 and 2002 election cycles.[10] Much of this money was used to buy television time for party "issue ads."

E. Television ads sponsored by the political parties, like most campaign ads by candidates or special interest groups, tend to avoid using the "magic words" of express advocacy. Only about 2.3% of party ads in 2000 concluded with such express advocacy terms as "vote for" or "elect." Despite the absence of magic words, coders at the University of Wisconsin viewed all 231,000 party ads as electioneering in nature—that is, designed to campaign for or against candidates. Not a single genuine issue ad was to be found among party-sponsored advertisements.

F. More so, party ads in the 2000 election also were not concerned about party-building activities. Almost 92% of party ads never even identified the name of a political party, let alone encouraged voters to register with the party, volunteer with the local party organization or support the party. The idea that

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[9] News Release: "U.S. Chamber of Commerce Failed to Report Electioneering Spending and Grants, Public Citizen Asks IRS to Investigate. Chamber Spent Millions to Influence State and Federal Races," *Public Citizen*, October 31, 2006.

[10] David Magleby, Anthony Corrado and Kelly Patterson, eds. FINANCING THE 2004 ELECTION (Brookings, 2006) at 32.

soft money should be awarded to political parties as an important means to strengthen the party as an organization has little, if any, relevance to the reality of party politics.[11]

G. Special interest groups also made extensive use of the issue advocacy loophole to funnel vast sums of money into television ads intended to affect candidate elections. Independent groups spent, conservatively estimated, about $98 million just on media buys for political television commercials in the 2000 federal elections. The amount of estimated expenditures for electioneering by outside groups increases substantially when including such costs as production of the television advertisements and the cost of radio advertising. About 59% of group-sponsored ads were deemed by coders as electioneering in nature, rather than genuine issue ads. Since there were no disclosure requirements for issue advocacy in 2000, it is not possible to determine how much of that money came from corporate or union sources or how much was in excess of the individual contribution limits. But it is reasonable to assume that much of this money was indeed soft money that should not have been used for electioneering purposes.

H. The vast majority (71.6%) of issue ads in the 2000 election perceived as electioneering in nature nevertheless also addressed some public policies along with the candidates they depicted. These ads typically attack a candidate by association with an unpopular issue or promote a candidate for valiant support of a popular cause. Even though these ads discuss issues, they are clearly seen as affecting candidate elections.

1. In one electioneering issue ad, for example, voters were told: "Maryellen O'Shaughnessy supports a big government prescription drug plan that could be costly to seniors. This plan requires seniors to pay up to $600 plus a 50/50 copayment. In this big government plan, seniors have a one time chance to sign up, otherwise they face penalties to join up later. And who would decide which medicines are covered and which aren't? Tell Maryellen O'Shaughnessy to stop scaring seniors. Tell her to stop supporting a big government prescription drug plan."[12]

2. In another electioneering issue ad affecting the Ohio Supreme Court race of Justice Alice Resnick, sponsored by Citizens for a Stronger Ohio, voters were told: "It was a simple law. A common sense measure to insure college professors at public universities in Ohio spend more time in the classroom teaching. But Justice Alice Resnick wrote a majority opinion saying this education accountability law violated the Constitution. Resnick's decision stopped the legislature's effort to have instructors

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[11] Craig Holman, "The End of Limits on Money in Politics: Soft Money Now Comprises the Largest Share of Party Spending on Television Ads in Federal Elections," (Brennan Center, 2001).

[12] Television advertisement sponsored by the U.S. Chamber of Commerce, "O'Shaughnessy Big Govt Rx Plan" (2000), available in the Buying Time 2000 database.

spend more time in the classroom. United States Supreme Court stood up for common sense and overturned Resnick's holding in an 8-1 decision, so today in Ohio instructors teach and students learn in spite of Alice Resnick."[13]

I. It is worth noting the comparative tone of issue ads. Candidate ads and, less so, party ads are much more inclined than group-sponsored ads to promote candidates or to compare and contrast candidates on issues. Conversely, electioneering "issue" ads sponsored by groups tend to attack candidates and attempt to denigrate their character. These ads are frequently negative in tone and tend to focus on the personal histories of candidates. As Election Day nears, electioneering issue ads become increasingly negative and personal (*see* Figure 4).

V. Disclosure Requirements Support Important State Interests

A. In addition to preserving the integrity of contribution limits and source prohibitions under campaign finance law, a second key pillar of Ohio's electioneering communications provision is disclosure of the funding sources behind broadcast electioneering ads as well as electioneering expenditures.

B. Disclosure is the cornerstone of any campaign finance regime. It provides useful election information to voters upon which to judge the merits of electioneering messages. It helps combat apparent or actual corruption in politics. And it is instrumental in facilitating the enforcement of campaign finance laws.

C. The value of disclosure of money in politics was perhaps first advocated by the National Publicity Law Organization (NPLO) in the early 1900s. Encouraged by NPLO, the Republican majority in Congress passed the first disclosure law of money in candidate elections, known as the Publicity Act of 1910.[14] Acceptance of disclosure of money raised and spent *lobbying* the federal government came a few decades later, with the Foreign Agents Registration Act of 1938 and the Federal Regulation of Lobbying Act of 1946. Nearly all states have since adopted their own versions of disclosure of money in candidate elections and lobbying state government.[15]

D. Political scientists have well documented the value of disclosure in providing valuable information to voters. Since most voters have limited time, interest in

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[13] Television advertisement sponsored by Citizens for a Strong Ohio, "OH/CFSOH Resnick College Law" (2000), available in the Buying Time 2000 database.

[14] Anthony Corrado, Thomas Mann, Daniel Ortiz, Trevor Potter, and Frank Sorauf, eds. CAMPAIGN FINANCE REFORM: A SOURCEBOOK (Brookings, 1997) at 27-28.

[15] *See*, for example, Center for Governmental Studies, Campaign Finance Disclosure Project [http://www.campaigndisclosure.org/]; and Center for Public Integrity, Hired Guns [http://www.publicintegrity.org/projects/entry/300/]

politics, and the complexity of electoral decisions, voter competence "depends on their being able to use particular pieces of available information as shortcuts to decisionmaking."[16] These shortcuts are called "voting cues." Voting cues include such factors as party identification, elite endorsements, and group support. Group support is usually indicated by endorsements and financing of campaigns and advertisements.

E. Though the significance of any voting cue varies according to electoral and environmental conditions, group support is one of the more significant voting cues.[17] For group support to serve as a useful source of voter information, it must meet at least three conditions. First, voters must correctly associate the group behind a candidate or issue with a particular ideology or interest that allows the voter to draw inferences. Second, the information conveyed by the group must be credible. Third, voters must learn of the group's support at a reasonable time when it will affect voters' decisions.[18]

1. Appropriately tailored disclosure requirements are important to the goal of enhancing voter competence. Disclosure of the finances behind electioneering issue ads is one very significant means for achieving this goal.

2. While some groups clearly want to signal their support or opposition to candidates or issues and voluntarily disclose such to the public, many groups decide not to do so. Occasionally, information about the backing of certain economic groups, such as the insurance industry, may increase voter competence, but not in ways that the economic groups might like, so they sometimes attempt to avoid disclosure.[19] The Buying Time studies indicate that about 98% of all group-sponsored "electioneering issue ads" avoided the magic words test of express advocacy, and thus could evade disclosure if not required for such electioneering communications.

3. Without mandatory disclosure of electioneering communications, some economic groups may wage an electioneering issue ad campaign behind an innocuous name that disguises the groups' interests. In 2002, for example, the pharmaceutical industry appears to have financed another group, called the United Seniors Association (USA), to pay for undisclosed electioneering issue ads affecting congressional elections. Although USA claimed to be a membership organization representing 1.5

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[16] Elizabeth Garrett, "Voting with Cues," Working Paper No. 8, Center for the Study of Law and Politics (2003) at 2.

[17] Michael X. Delli Carpini and Scott Keeter, WHAT AMERICANS KNOW ABOUT POLITICS AND WHY IT MATTERS (1996) at 51.

[18] Garrett, op.cit. at 15.

[19] Elizabeth Garrett and Daniel Smith, "Veiled Political Actors: The Real Threat to Campaign Disclosure Statutes," Working Paper No. 13, Center for the Study of Law and Politics (2004).

million senior citizens, its IRS filing revealed that a single source actually provided the preponderance of its 2002 income: $20.1 million, or 79.1%, of its total $25.4 million in revenue. Public Citizen estimates that in 2002 USA spent $13.6 million to bolster six U.S. Senate and 19 House candidates, mostly with electioneering issue ads that aired immediately before the election.[20] In a separate survey, 58% of respondents across the nation had an unfavorable view of the pharmaceutical industry, while only 5% had a negative view of the United Seniors Association.[21]

4. Additionally, voters perceive little difference between group-sponsored electioneering issue ads, party ads and candidate ads.[22] Voters tend to associate all such ads with the candidates themselves. Voters often assume the candidates are responsible for the group-sponsored electioneering ads and party ads, leaving candidates in the position of having to disavow the electioneering messages of otherwise supportive groups or even their own party. Disclosure of the funding sources of these ads can help candidates distinguish to the public and the news media their own messages from those of others. Furthermore, Ohio's requirement that group-sponsored electioneering communications clearly state that the ads are not authorized by any candidate goes a long way toward clarifying for the public the true sponsors of the ads.

5. Mandatory disclosure of the true sources of funds paying for an electioneering issue ad is the best means of providing voters and the public with reliable and accurate cues of group support. This applies equally to advertisements that affect candidate elections as well as lobbying on legislative issues.

F. The courts have long recognized that disclosure of money in politics is an invaluable tool in combating corruption and the appearance of corruption. With respect to candidate elections, the Court in *Buckley v. FEC*, 424 U.S. at 67, held: "Disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributors and expenditures to the light of publicity." With respect to lobbying the legislative and executive branches of government, the Court in *United States v. Harriss*, 347 U.S. 625-626, noted that Congress "merely provided for a modicum of information from those who for hire attempt to influence legislation or collect and spend funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much. It acted in the same spirit as for a

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[20] Public Citizen, Big PhRMA's Stealth PACs: How the Drug Industry Uses 501(c) Non-profit Groups to Influence Elections (2004).

[21] David Magleby and J. Quin Monson, "Campaign 2002: 'The Perfect Storm'", (Brigham Young University, 2002).

[22] Magleby, ELECTION ADVOCACY: SOFT MONEY AND ISSUE ADVOCACY IN THE 2000 CONGRESSIONAL ELECTIONS (2001) at 48.

similar purpose in passing the Federal Corrupt Practices Act – to maintain the integrity of a basic governmental process."

1. As the Buying Time studies document, broadcast electioneering communications that depict candidates are widely perceived as advertisements that have a direct impact on candidate elections. As such, the funding sources behind large electioneering communication expenditures are likely to impact campaigns and, potentially, the choices made by the candidates or lawmakers waging the campaigns. The potential for affecting decisions by a candidate and lawmaker is particularly troublesome when such expenditures for electioneering communications are routed through a group or party closely associated with the candidate or lawmaker. The potential for corruption by such large expenditures exists, and the appearance of corruption is even greater, especially if the funding sources remain undisclosed to the public.

G. Disclosure of who is paying for electioneering issue ads facilitates implementation and enforcement of other campaign finance and lobbying disclosure laws.

1. At least 22 states, including Ohio, prohibit corporations from using corporate treasury money to pay for candidate campaigns, and 15 states, including Ohio, have a similar prohibition on union treasury funds in candidate elections.[23] Disclosure of funds collected and spent on electioneering issue ads that promote the election or defeat of candidates is an essential tool in monitoring compliance to the source prohibition law.

2. Furthermore, the federal government and nearly all states, including Ohio, have financial disclosure requirements for those lobbying the legislature and/or executive branch of government. At least 36 states even require disclosure of "grassroots lobbying activities" in which a group or lobbyist sponsors an advertising campaign to encourage the general public to contact their legislators regarding pending legislative matters.[24] These lobbying disclosure laws could be jeopardized by a ruling that invalidates Ohio's mandatory disclosure requirement for electioneering communications, regardless of whether these communications are deemed electioneering ads or genuine issue ads.[25]

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[23] National Conference of State Legislatures, "State Limits on Contributions to Candidates" (June 3, 2008). In Ohio, corporations may contribute directly to political party committees.

[24] Skadden, Arps, Slate, Meagher & Flom, "Survey of State Lobby Laws" (March 1, 2006); and Practicing Law Institute, "State Lobby and Gift Laws" (Sept. 14-15, 2004).

[25] Invalidating disclosure of electioneering communications in Ohio could also have adverse affects on public financing programs in other states. The most effective public financing programs for candidate elections contain a "trigger" provision, in which candidates who agree to abide by voluntary spending ceilings and participate in the public financing program are eligible for additional public funds if their opponent opts out and is supported by spending in excess of the recommended ceilings. Arizona,

VI. Conclusion: Ohio's Electioneering Communications Provision is a Narrow and Appropriate Response to Cast Light on Stealth Election Activity

A. The empirical evidence confirms much of what is already known by common sense. Issue advocacy has become an avenue for special interest groups to evade federal and state campaign finance laws and affect election outcomes. Disguised as issue ads by avoiding the magic words of express advocacy, corporations, unions and ideological groups learned that campaign contribution limits, source prohibitions and disclosure requirements can often be ignored through "sham" issue ads.

B. Broadcast advertisements that depict candidates at any time during the year are usually perceived as electioneering in nature. Whether or not these ads also address legislative or political issues, they almost always are seen as affecting candidate elections.

C. Ohio's category of electioneering communications, which are subject only to disclosure of the sponsors and funding sources of the ads and a disclaimer that the ads are not authorized by candidates, provides voters and the public with useful information from which to judge the merits of the campaign commercials and lobbying ads that inundate the airwaves.

D. Ohio's 30-day bright-line test for electioneering "expenditures" offers a sensible standard for defining what constitutes electioneering activity, far more sensible than the "magic words" test, subject to the source prohibitions and disclosure requirements of campaign finance law. Evidence indicates that it is narrowly tailored so as not to impinge unduly on genuine issue advocacy.

VII. Figures

A. Figure 1. Distribution of Genuine Issue Ads vs. Electioneering Issue Ads Through Calendar Year 2000.

Connecticut and Maine have such trigger mechanisms for their state public financing programs, as does North Carolina for its judicial public financing program.

The trigger provision is a strong encouragement for candidates to opt into the public financing programs and abide by the voluntary spending ceilings. In fact, the absence of such a mechanism is largely blamed for the collapse of the current presidential public financing system.[25] Such triggers cannot work if expenditures by outside groups in support or opposition to candidates can be sidestepped merely by avoiding the magic words in their advertising campaigns. The electioneering communications disclosure provision makes it possible to monitor expenditures that support or oppose candidates by outside groups and to implement a key component of an effective public financing program.

B. Figure 2. Ads by Groups Aired Within 60 Days of the Election that Depict a Candidate.

C. Figure 3. Scope of Television Advertising in Supreme Court Elections, by State and Sponsor.

D. Figure 4. Electioneering Ads by Candidates, Parties and Groups that Attack, Contrast and Promote Candidates.

Figure 1.

Distribution of Genuine Issue Ads vs. Electioneering Issue Ads Through Calendar Year 2000

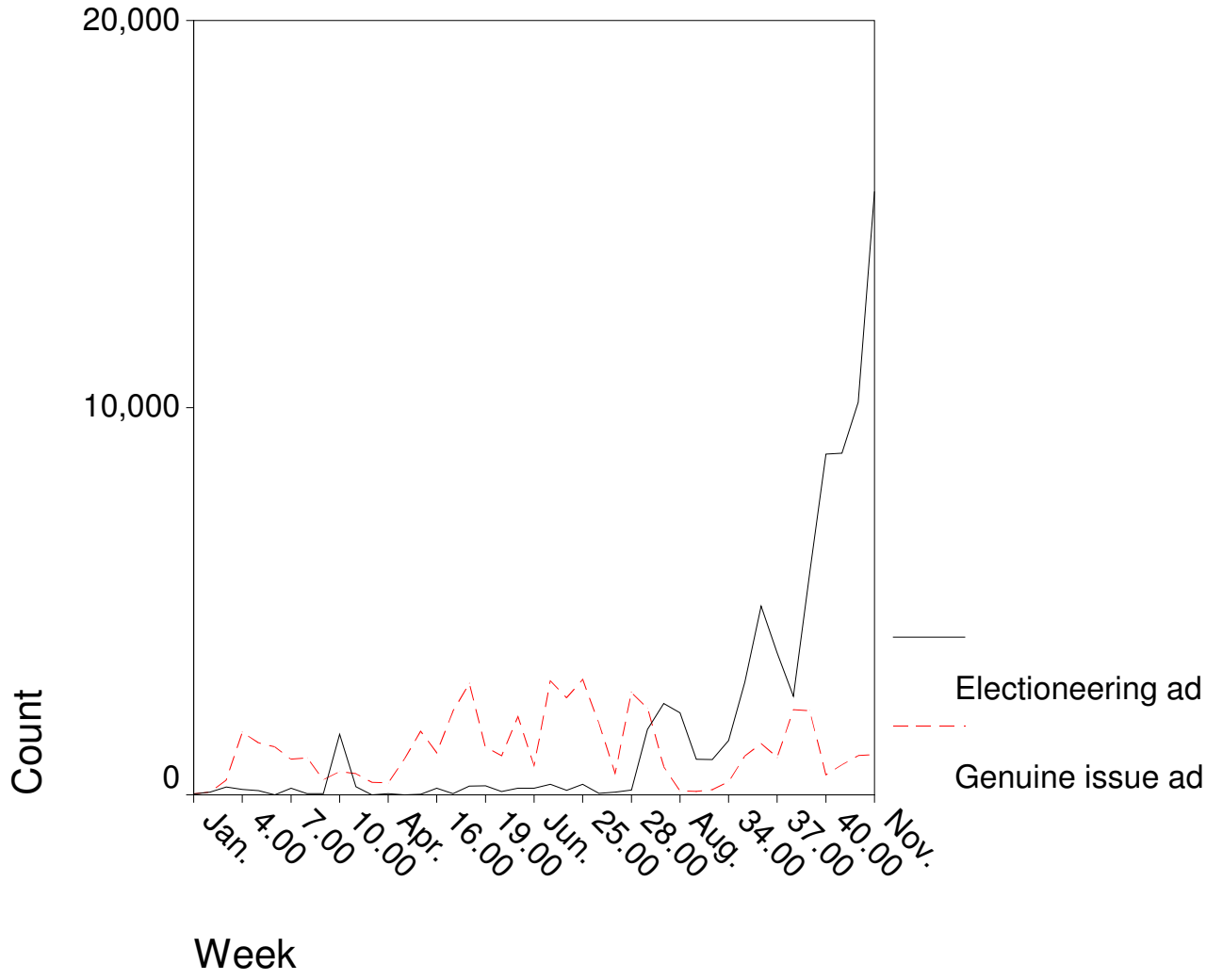


Figure 2

Ads by Groups Aired Within 60 Days of the Election that Depict a Candidate

	Generate support		Provide information		Table Total	
					.00	
	Count	Row %	Count	Row %	Count	Row %
Magic words	2376	97.8%	54	2.2%	2430	100.0%
No magic words	55102	99.4%	331	.6%	55433	100.0%
Table Total	57478	99.3%	385	.7%	57863	100.0%

Genuine Issue Ads Aired Within 60 Days of the Election that Depict a Candidate, and Thus Would Be Caught by the Bright-Line Test, as a Proportion of All Group Ads that Depict a Candidate in the Same Time Period.

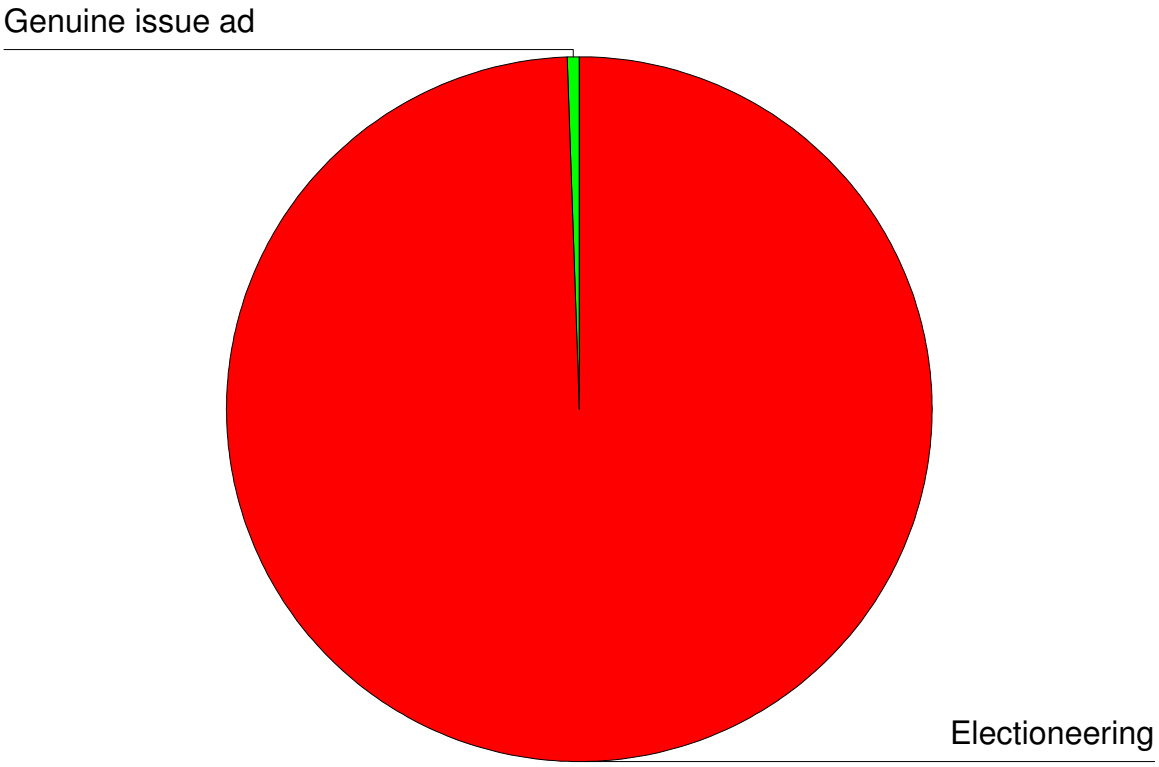


Figure 3.

Scope of Television Advertising in Supreme Court Elections, by State and Sponsor

	Candidate		Party		Group	
	Count	Sum	Count	Sum	Count	Sum
Alabama	4432	$1,212,412	139	$34,448	187	$60,696
Michigan	4161	$3,297,790	1499	$911,217	103	$50,710
Mississippi	130	$71,807		$0	88	$27,539
Ohio	4897	$1,866,383	1695	$469,935	5315	$2,673,974
Group Total	13620	$6,448,392	3333	$1,415,600	5693	$2,812,919

	Group Total	
	Count	Sum
Alabama	4758	$1,307,556
Michigan	5763	$4,259,717
Mississippi	218	$99,346
Ohio	11907	$5,010,292
Group Total	22646	$10,676,911

Distribution of Expenditures

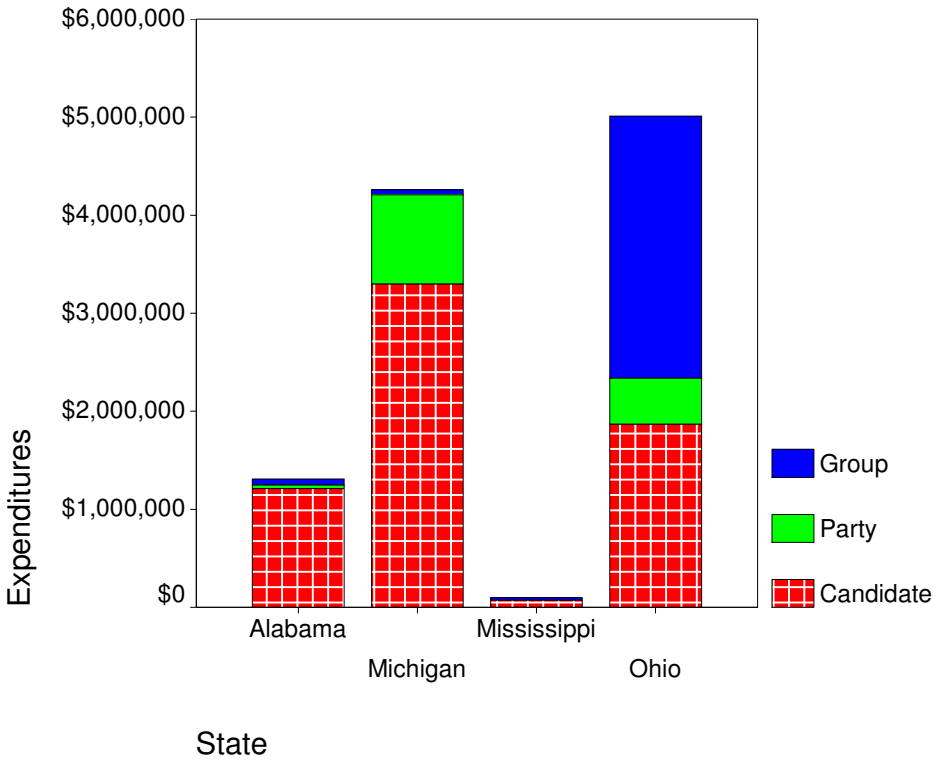
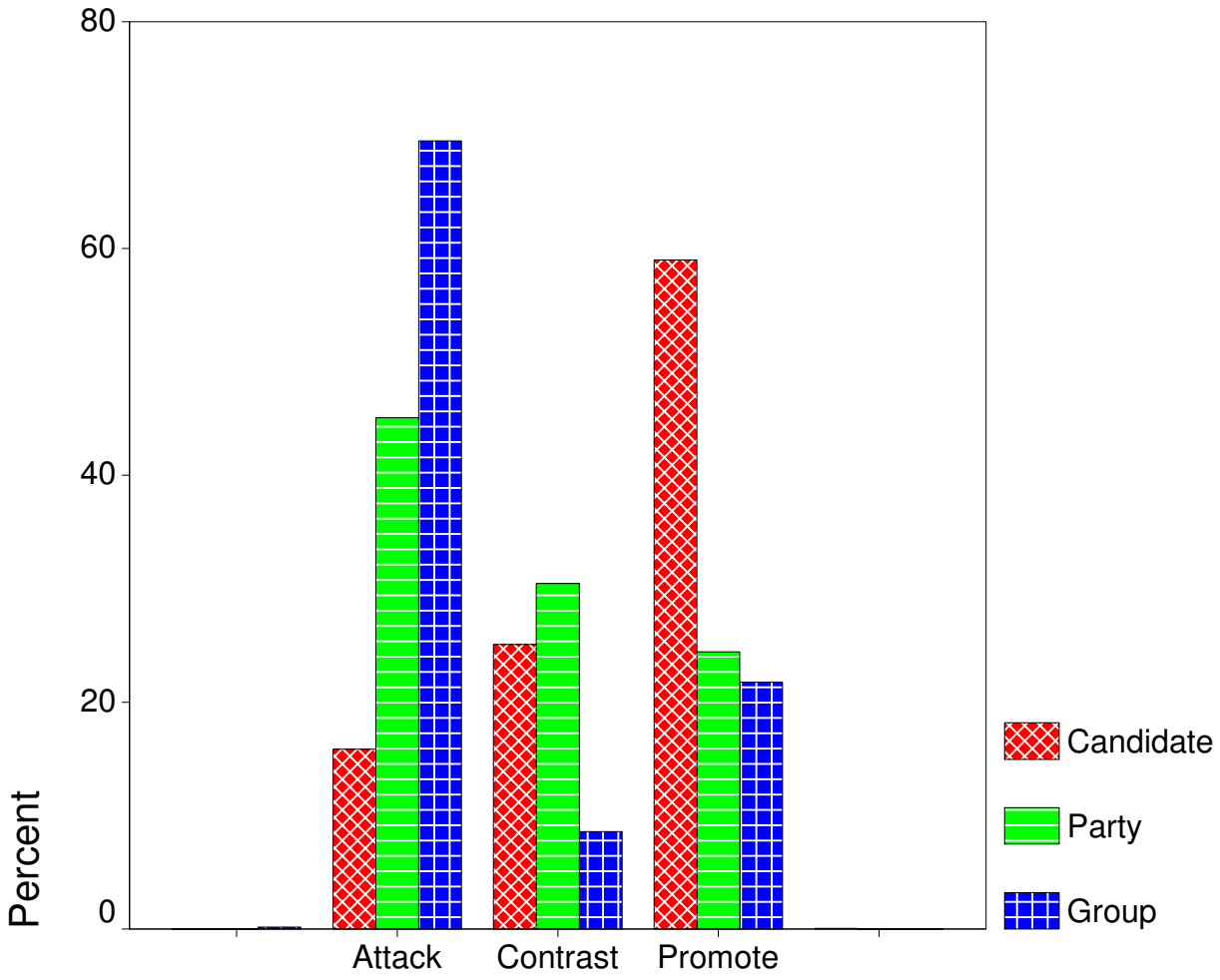


Figure 4.

Electioneering Ads by Candidates, Parties and Groups that Attack, Contrast or Promote Candidates

	Attack		Contrast		Promote	
	Count	Row %	Count	Row %	Count	Row %
Candidate	85729	15.9%	135531	25.1%	318798	59.0%
Party	104133	45.1%	70401	30.5%	56467	24.4%
Group	54671	69.5%	6752	8.6%	17117	21.8%
Table Total	244833	28.8%	212863	25.0%	392992	46.2%

Graph



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Y. National Conference of State Legislatures, "State Limits on Contributions to Candidates" (June 3, 2008).

Z. Skadden, Arps, Slate, Meagher & Flom, "Survey of State Lobby Laws" (March 1, 2006).

II. Qualifications: My curriculum vitae is appended.

III. Cases in which I have been deposed or have testified recently:

A. McConnell v. Federal Election Commission.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on July 17, 2008.

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Spring 1997 to Winter 2000	EXECUTIVE DIRECTOR Californians for Political Reform Foundation Los Angeles and Sacramento, California
Winter 1994 to Winter 2000	PROJECT DIRECTOR Center for Governmental Studies Los Angeles, California
Winter 1989 to Winter 1994	SENIOR RESEARCHER Center for Governmental Studies, Los Angeles, California
Spring 1983 to Winter 1989	RESEARCH ANALYST Jesse Unruh Institute of Politics, USC
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Spring 1980 to Summer 1982	TEACHING ASSISTANT, American Politics, University of Southern California

PUBLICATIONS

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SELECTED PROFESSIONAL PRESENTATIONS

"How to Make Lobbying Transparency Work as Intended: Part II," Testimony before the European Parliament, Brussels (2008).

"The Future of Campaign Finance Reform," Roundtable Panel discussion before the Midwest Political Science Association, Chicago (2008).

"How to Make Lobbying Transparency Work as Intended," Testimony before the European Parliament, Brussels (2007).

"New Developments in Pay-to-Play Restrictions on Government Contracting," Annual meeting of the Council on Governmental Ethics Laws, Victoria, British Columbia (2007)

"Making Government Accountable to the People," ActionAid International Seminar on Public Policy Monitoring and Societal Accountability, Rio de Janeiro (2007).

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"Will the European Transparency Initiative Deliver?" Hearing before the European Parliament, Brussels (2006).

"Nonprofit Interest Groups' Election Activities and Federal Campaign Finance Policy," Forum of the Campaign Finance Institute, National Press Club, Washington D.C. (2006).

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HONORS AND AWARDS

Top Lobbyist Award 2007, *The Hill*, 2007

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