

**EXHIBIT A**

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

OHIO RIGHT TO LIFE SOCIETY, INC. :  
665 E. Dublin Granville Road, Suite 200 :  
Columbus, Ohio 43229 :

Plaintiff, :

v. :

Case No. 2:08-cv-00492

OHIO ELECTIONS COMMISSION :  
21 W. Broad Street :  
Columbus, Ohio 43215 :

JUDGE GEORGE C. SMITH

Magistrate Judge Elizabeth Preston Deavers

and :

MARTIN O. PARKS, WILLIAM L. :  
OGG, CHARLES E. CALVERT, :  
JOHN R. MROCZKOWSKI, AND :  
HARVEY H. SHAPIRO, :

In their Official Capacity as Members of :  
The Ohio Elections Commission :  
21 W. Broad Street :  
Columbus, Ohio 43215 :

and :

JENNIFER BRUNNER :  
Ohio Secretary of State :  
100 E. Broad Street :  
Columbus, Ohio 43215 :

Defendants. :

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**AMENDED VERIFIED COMPLAINT FOR PRELIMINARY  
AND PERMANENT INJUNCTION**

1. Plaintiff Ohio Right to Life Society, Inc. (“ORTL”) files this Amended Verified  
Complaint for a Preliminary and Permanent Injunction to protect its rights to freedom of speech,

and freedom of association, guaranteed by the First and Fourteenth Amendments of the United States Constitution.

### **NATURE OF ACTION**

2. This is an action to protect and vindicate the critical First Amendment rights of freedom of speech and freedom of association, that are infringed by facially vague and untailed provisions of Ohio law.

3. Plaintiff, Ohio Right to Life Society, Inc. (“ORTL”) desires to engage in the public discussion of important political issues when Ohioans will be focused upon political issues, *i.e.*, the critical time periods before the general election in 2010, and primary and general elections in the future.

4. However, as a result of provisions of Ohio law in Revised Code Chapters 3517 and 3599, ORTL is unable to fully and freely articulate its position on important public issues, insofar as they involve the election of candidates for public office without fear of threatened civil and criminal penalties.

5. Therefore, ORTL seeks a preliminary and permanent injunction, expedited declaratory relief, and other necessary and proper relief to invalidate the laws challenged in this action.

### **PARTIES AND BACKGROUND**

6. Plaintiff, Ohio Right to Life Society, Inc. (“ORTL”) is a non-profit, membership, Ohio corporation, that is tax exempt under Section 501(c)(4) of the Internal Revenue Code. ORTL has been active in Ohio in articulating pro-life positions in the public sphere for over 40 years. The mission of ORTL is to advance pro-life positions in Ohio legislation and, otherwise, in Ohio.

7. In the past, ORTL has extensively engaged in activity that constitutes independent advocacy. ORTL desires, and intends, to continue its advocacy of pro-life issues, during 2010 and into the future, throughout the State of Ohio. ORTL does not “coordinate” (as that term is variously defined in the Ohio Revised Code) its activities with any candidate. In fact, ORTL always conducts its public advocacy activities independently of candidates, campaign committees and political parties.

8. During 2010, ORTL desires to run ads on broadcast media relating to issues and various candidates’ positions on issues. Those ads may include exhortations to vote for or vote against a candidate for a state public office in Ohio. The issues are likely to include the impact of the recent federal health reform legislation on the payment for abortions utilizing taxpayer funds at either the state or federal levels.

9. ORTL plans to run independent “broadcast” ads beginning in June 2010 through December 2010 – that would address pro-life concerns, and, potentially advise potential voters to either “vote for” or “vote against” particular candidates.

10. To the extent ORTL’s proposed broadcast ads mention qualified candidates for political offices in Ohio at the general election in November, 2010, or in the future, Ohio law imposes an unwarranted and unconstitutional regulatory burden upon ORTL hampering its ability to raise money for any proposed ad, under O.R.C. § 3517.1011, during the period ending 30 days prior to the general election. These provisions completely prevent ORTL from running this ad during the “blackout” period set forth in O.R.C. § 3517.01(B)(6), during the 30 days immediately preceding the general election. In addition, to the extent that any proposed ad specifically contains an exhortation to vote for or against a candidate, O.R.C. § 3599.03 prohibits such an ad at any time.

11. According to the provisions of Title 35 of the Ohio Revised Code, the same restrictions upon ORTL's ability to raise money without onerous disclosure obligations, or to run this ad, would also apply to the use of any candidate running for a federal office in November 2010 or the future, because Title 35 of the Ohio Revised Code does not expressly exempt "candidates" for federal office from its scope, insofar as those provisions relate to ads that are labeled "electioneering" ads.

12. Defendant, Ohio Elections Commission (the "OEC") is an administrative body created under O.R.C. Chapter 3517 and charged with the enforcement of various Ohio election laws, including O.R.C. § 3517.1011, that expressly regulate core political speech, labeled as "electioneering communications." In addition, the OEC has regulatory authority in connection with the enforcement of O.R.C. §3599.03, governing "express advocacy" by corporations and labor unions.

13. Defendants, Charles E. Calvert, John R. Mroczkowski, and Harvey H. Shapiro are currently serving as Members of the Ohio Elections Commission (collectively, the "OEC Members"). In their official capacity, the OEC Members regularly receive, review and determine cases arising under Title 35 of the Ohio Revised Code that address a myriad of situations that constitute core political speech, protected under the U.S. Constitution. The OEC Members are empowered to assess extraordinary civil fines for what they determine to be violations of Ohio laws restricting various aspects of core political speech, and are further empowered to recommend that certain cases be prosecuted by county prosecutors under Ohio criminal law. In fact, pursuant to O.R.C. § 3517.153, the OEC Members have express and exclusive jurisdiction to impose extraordinary civil penalties and recommend criminal prosecution against individuals

and/or organizations who engage in the types of political speech described in O.R.C. § 3517.1011 and O.R.C. § 3517.01(B)(6).

14. Defendant, Jennifer Brunner, Ohio Secretary of State (hereinafter “Ohio Secretary of State”), has the responsibility to “report” alleged failures to comply with O.R.C. Chapter 3517 to the Ohio Elections Commission. O.R.C. § 3501.50. In addition, the Ohio Secretary of State has the authority to interpret the statutes in O.R.C. Title 35 and issue rules to supplement their meaning, pursuant to O.R.C. § 3517.23. For example, the Ohio Secretary of State is required under O.R.C. § 3517.23 to provide “... written instructions and explanations ...” regarding the provisions of O.R.C. § 3517.1011.

#### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. § 1983, as this is an action to redress the deprivation, under color of state law, of rights secured by the First and Fourteenth Amendments to the United States Constitution.

16. ORTL seeks declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. An actual controversy exists between the parties, as is more fully set forth below.

17. This Court has personal jurisdiction over the Defendants. The Ohio Secretary of State is an executive official of the State of Ohio, whose position is created in Article III, Section I of the Ohio Constitution, and is further described, insofar as it is pertinent herein, in Title 35 of the Ohio Revised Code. The Ohio Election Commission is a statutory creation of the State of Ohio, whose duties and responsibilities are described in Chapter 3517 of the Ohio Revised Code.

18. Venue is proper for this action in this district and division, pursuant to 28 U.S.C. § 1391(b), in that the events giving rise to this claim occurred, and/or will occur in this judicial district and division.

**THE UNCONSTITUTIONAL OHIO LAWS**

19. In Title 35 of the Ohio Revised Code, the State of Ohio has adopted a facially unconstitutional regime to regulate core political speech by corporations and labor unions, both in the form of “electioneering communication,” and all types of “express” advocacy by these categories of speakers. The relevant provisions are located at O.R.C. § 3517.01(B)(6), O.R.C. § 3517.1011, O.R.C. § 3599.03, and the penalty sections in O.R.C. § 3517.992 (CC) and O.R.C. § 3599.03. These laws place unconstitutional funding “source” restrictions upon groups that desire to engage in “issue advocacy,” (O.R.C. § 3517.1011(H); O.R.C. § 3599.03) as well as onerous disclosure burdens that unconstitutionally infringe upon their freedom of association protected by the First Amendment (O.R.C. § 3517.1011(C)-(F)).

20. In addition, the Ohio Secretary of State has adopted regulations at Ohio Administrative Code 111-4-10, that exacerbate the unconstitutional definition of “electioneering communication,” and Ohio Administrative Code 111-3-05 that attempts to unconstitutionally restrict the funds that ORTL is permitted to utilize for political speech.

21. The provisions of O.R.C. § 3517.01(B)(6) state, in pertinent part, that:

During the thirty days preceding a primary or general election, any disbursement to pay the direct costs of producing or airing a broadcast, cable, or satellite communication that refers to a clearly identified candidate shall be considered to be made for the purpose of influencing the results of that election and shall be reported as an expenditure or as an independent expenditure under Section 3517.10 or 3517.105 of the Revised Code, as applicable, except that the information required to be reported regarding contributions for those expenditures or independent expenditures shall be the same as the information required to be reported under Divisions (D)(1) and (2) of Section 3517.1011 of the Revised Code.

22. In effect, the provisions of O.R.C. § 3517.01(B)(6) unconstitutionally prevent independent corporate and labor union speakers such as ORTL, from expending funds to discuss political issues on radio or television, whenever a candidate for public office in Ohio (as defined

in O.R.C. § 3501.01(H)) is mentioned or referred to, even if the content of the communication: (i) deals solely with a core political issue message; and (ii) does not express an opinion, or position, on the candidate's election. Thus, these provisions prohibit pure independent political speech ads, that are financed by any contributions provided from corporate or a labor organization's treasury funds. O.R.C. § 3517.1011(H).

23. The provisions of O.R.C. § 3517.01(B)(6) are unconstitutionally vague, overbroad, and constitute an unwarranted burden on ORTL's ability to speak freely about public issues because:

- (i) The statute "magically" converts independent speech about public issues into regulated political speech whenever the name of a candidate is mentioned under the circumstances described in the statute;
- (ii) The statute absolutely prohibits all corporations (for profit and non-profit) and labor organizations from making any contributions to finance the described ads, no matter the content of the ads, if a candidate's name is mentioned;
- (iii) The statute is facially overbroad and vague, casting a bitter chill over the ability of ORTL to discuss important public issues during a time period Ohioans are closely attuned to political issues; and,
- (iv) The statute creates a more frequent and intrusive reporting requirement applicable to ORTL's proposed conduct than would be otherwise applicable to similar political speech on issues if it were uttered by a political party, a political action committee, an individual, or a candidate.
- (v) Attempt to regulate core political speech without a foundation that the law and regulations are necessary to achieve a compelling state interest, that they are narrowly tailored, or that this is the least restrictive manner of regulating this speech.

24. Similarly, the provisions of O.R.C. § 3517.1011 broadly address core political speech, in an unconstitutionally vague and overbroad manner. O.R.C. § 3517.1011 defines the scope of regulated "electioneering communication" as:

... any broadcast, cable or satellite communication that refers to a clearly identified candidate and that is made during either of the following periods of time:

- (i) If the person becomes a candidate before the day of the primary election at which candidate will be nominated for election to that office, between the date that the person becomes a candidate and the thirtieth day prior to that primary election, and between the date of the primary election and the thirtieth day prior to the general election at which a candidate will be elected to that office;
- (ii) If the person becomes a candidate after the day of the primary election at which candidate were nominated for election to that office, between the date of the primary election and the thirtieth day prior to the general election at which a candidate will be elected to that office.

O.R.C. § 3517.1011(A)(7)(a)

25. The provisions of O.R.C. § 3517.1011 are unconstitutionally vague and overbroad insofar as they:

- (i) Attempt to regulate core political issue speech that is articulated by independent groups such as ORTL;
- (ii) Attempt to regulate core political speech that merely mentions a candidate's name, through the euphemism of labeling protected political speech as "electioneering communication";
- (iii) Attempt to regulate core political speech for an extraordinary and undefined period of time prior to any election, that has no defined starting date;
- (iv) Impose extraordinary and unnecessarily burdensome reporting and disclosure requirements upon any person seeking to make "electioneering" communications, that amount to a prior restraint upon this form of speech and an unconstitutional infringement upon ORTL's members right to freedom of association;
- (v) Attempt to regulate core political speech without a foundation that the law and regulations are necessary to achieve compelling state interest, that they are narrowly tailored, or that this is the least restrictive manner of regulating this speech.
- (vi) Prohibit all forms of corporations, including non-profit entities that are tax exempt under Section 501(c) of the Internal Revenue Code, from contributing any funds to broadcast ... "any broadcast, cable, or satellite communications that refers to a clearly identified candidate, during two



thirty day “blackout” periods.” O.R.C. § 3517.1011(H); O.R.C. § 3599.03.

26. The provisions O.R.C. §3599.03 broadly prohibit corporations and labor unions from using any treasury funds, in pertinent part: “. . . for or in aid of or opposition to a political party, a candidate for election or nomination to public office, a political action committee including a political action committee of the corporation or labor organization, a legislative campaign fund, or any organization that supports or opposes any such candidate, or for any partisan political purpose . . . .”

27. The provisions of O.R.C. §3599.03 are unconstitutionally vague and overbroad on their face, insofar as they ban essentially any use of corporate or labor union treasury funds for any candidate related advocacy, either directly, or indirectly through any other type of entity.

#### **LEGAL BACKGROUND**

28. The First Amendment to the United States Constitution (“First Amendment”) guarantees the rights of free speech and free association. Those rights are incorporated within and made enforceable against the various States by the Fourteenth Amendment of the United States Constitution (“Fourteenth Amendment”).

29. The protections of the First Amendment require, in pertinent part, that neither the content nor the quantity independent political speech by corporations or labor unions cannot be regulated under Ohio’s campaign finance laws. As interpreted by the United States Supreme Court, the First Amendment prohibits statutes that are designed to limit independent political speech by corporations or labor unions either temporally, or in terms of quantity. *Citizens United v. FEC*, 558 U.S. \_\_\_\_\_ (2010). *Buckley v. Valeo*, 424 U.S. 1 (1976).

30. Any political speech, by corporate speakers such as ORTL, even if it expressly advocates for or against the election of a candidate, cannot be regulated by Ohio as to content, timing or quantity. Accordingly, the scope of permissible regulation under Ohio's campaign finance laws is limited to speech and speakers that are candidates, political parties, and other similar entities.

31. State regulation of political speech and the freedom of association is greatly restricted by the breadth of First Amendment protections. State laws and regulations may not have the effect of chilling conduct that is not actually proscribed or limited. Ohio stands alone in the extraordinary breadth of its efforts to regulate independent core political speech, in derogation of the First Amendment.

32. In *Citizens United v. Federal Elections Commission*, 558 U.S. \_\_\_\_ (2010) ("Citizens United"), the U.S. Supreme Court carefully articulated the outermost limit that government regulation in this area cannot exceed without violating the First Amendment. Justice Kennedy stated for the Court that statutes purporting to restrict "electioneering" by corporations or labor unions utilizing treasury funds are facially unconstitutional, and no "narrowing" constriction can save them.

33. Justice Kennedy further indicated in *Citizens United* that the First Amendment absolutely precludes government from enacting statutes that ban corporations or unions from uttering independent political speech at any time, even if the speaker is directly advocating for or against the election of a candidate.

34. The Ohio statutes and regulations at issue in this case cannot meet the clear constitutional standard articulated in *Citizens United*. These Ohio statutes and regulations are vague, overbroad and, accordingly, attempt to regulate significant quantities of independent core

political speech that cannot be restricted, without violating the First Amendment rights of ORTL, its members and the general public that would be deprived of hearing ORTL's messages.

35. Moreover, the proposed ads that ORTL desires to run before the 2010 general election period, or in the future, as described in paragraph eight through paragraph eleven above, are the type of independent core political speech that cannot be subjected to regulation by the State of Ohio. Applying these statutes and regulations to the proposed ads will violate the First Amendment rights of ORTL.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

36. ORTL fully incorporates herein, paragraphs 1-35, inclusive.

37. The foregoing facts demonstrate that, on its face, Ohio's statutory and regulatory scheme, carried out by and through the individual Defendants, unduly burdening and restraining ORTL's independent core political speech violates ORTL's rights to freedom of speech and freedom of association that are protected under the First Amendment of the U.S. Constitution.

38. These facts further demonstrate that the Defendants' conduct has, and will unless restrained, violate the rights of ORTL, and its members, secured under 42 U.S.C. § 1983.

#### **COUNT II**

39. ORTL fully incorporates herein, paragraphs 1-35, inclusive.

40. The foregoing facts demonstrate that the threat of application of O.R.C. § 3517.01(B)(6), O.R.C. § 3517.1011, O.R.C. § 3599.03, and the penalty sections in O.R.C. § 3517.992(CC) and O.R.C. § 3599.03 to ORTL, violate ORTL's rights to freedom of speech and freedom of association, that are protected under the First Amendment to the U.S. Constitution.

41. These facts further demonstrate that Defendants' conduct will, unless restrained by the Court, violate the rights of ORTL, and its members, secured under 42 U.S.C. § 1983.

### COUNT III

42. ORTL fully incorporates herein, paragraphs 1-35, inclusive.

43. The foregoing facts establish that the provisions of R.C. § 3517.01(B)(6), insofar as they prevent an independent non-profit membership corporation, such as ORTL, from broadcasting any independent core political speech whether it simply mentions the name of a candidate, or contains an express exhortation to "vote for" or "vote against," during the thirty day period prior to an Ohio election is unconstitutional on its face.

44. These facts further demonstrate that the Defendants' conduct has, and will unless restrained, violate the rights of ORTL, and its members protected by the First Amendment of the United States Constitution, and secured under 42 U.S.C. § 1983.

### COUNT IV

45. ORTL fully incorporates herein, paragraphs 1-35, inclusive.

46. The foregoing facts establish that the provisions of R.C. § 3517.1011, create an extraordinary regulatory burden upon ORTL in the event that it contemplates articulating any independent core political message as defined in that statute, that mentions the name of a "candidate" during the undefined time period from the time the individual becomes a candidate and through the general election at which the candidate seeks to be elected to office.

47. This extraordinary regulatory burden includes, but is not limited to:

- (i) A prior restraint upon articulating an independent core political message set forth in R.C. § 3517.1011(C);
- (ii) Onerous reporting requirements that set forth the details of each disbursement mentioning a political candidate, on a weekly basis, which is a far more rigorous requirement than is applicable to a candidate campaign

committee, political action committee, or any other political committees under Ohio law. R.C. § 3517.1011(C)-(F).

- (iii) Onerous reporting requirements that would force ORTL to disclose the identity of its members and donors who contribute over \$200 to ORTL, unless the funds could expressly be determined is not supporting the ORTL's efforts to broadcast a political message naming a candidate. R.C. § 3517.1011(C)- (F).

48. The facts further demonstrate that Defendants' conduct has, and will continue, unless restrained, to violate the rights of ORTL and its members, protected by the freedom of speech and freedom of association guaranteed by the First Amendment of the United States Constitution, and secured under 42 U.S.C. § 1983.

#### COUNT V

49. ORTL fully incorporates herein, paragraphs 1-35, inclusive.

50. The foregoing facts establish the provisions of R.C. § 3517.01(B)(6), and R.C. § 3517.1011 are preempted by Section 203 of the Federal Bipartisan Campaign Reform Act of 2002, 2 U.S.C. § 4416(b)(2), and accordingly should be ruled inapplicable to "candidates" for federal offices.

#### COUNT VI

51. ORTL fully incorporates herein, paragraphs 1-35, inclusive.

52. The foregoing facts establish that Ohio's statutory and regulating scheme governing "issue advocacy" core political messages, set forth in O.R.C. § 3517.01(B)(6), O.R.C. § 3517.1011, and O.R.C. § 3517.992 violates the constitutional rights of ORTL and its members. Accordingly, pursuant to 28 U.S.C. §§ 2201 and 2202 this Court should declare that this regulatory scheme violates the First Amendment of the U.S. Constitution and is unenforceable.

**PRAYER FOR RELIEF**

For the reasons set forth above, Plaintiff Ohio Right to Life Society, Inc. respectfully requests relief from this Court, as follows:

1. That this Court preliminary and permanently enjoin the enforcement of O.R.C. § 3517.01(B)(6), because, on its face, it violates the freedom of speech rights of ORTL that are protected under the First Amendment.
2. That this Court preliminarily and permanently enjoin the enforcement of O.R.C. § 3517.1011 because on its face, it violates the freedom of speech and freedom of association rights of ORTL, and its members, that are protected under the First Amendment.
3. That this Court preliminarily and permanently enjoin the enforcement of O.R.C. § 3599.03, to the extent that it precludes corporations and labor unions from utilizing treasury funds to support or oppose the election of candidates in Ohio, because on their face, these provisions violated the freedom of speech and freedom of association rights of ORTL, and its members, that are protected under the First Amendment.
4. That this Court temporarily and permanently enjoin the State of Ohio from attempting to ban or regulate the content of any independent ORTL ads, that discuss candidates for state or federal office, whether or not they contain express exhortation to vote for or against candidates.
5. That this Court enter declaratory relief in favor of ORTL, and its members, determining that the foregoing provisions of Ohio law are an unconstitutional violation of the First Amendment, and accordingly, that ORTL cannot be punished pursuant to the provisions of O.R.C. § 3517.992 and/or O.R.C. § 3599.03 for simply attempting to exercise its First Amendment rights.
6. That ORTL be granted such other and further relief as may appear during this action, including an award of costs and attorney's fees, under 42 U.S.C. § 1988.

Respectfully submitted,

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**VERIFICATION**

STATE OF OHIO

COUNTY OF FRANKLIN SS

Michael Gonidakis, being first duly sworn, deposes and states as follows:

I have read the foregoing Complaint and verify that the facts stated therein are true and accurate based on my own knowledge, information and belief.

\_\_\_\_\_  
Michael Gonidakis  
Executive Director  
Ohio Right to Life Society, Inc.

SUBSCRIBED and SWORN to before me this \_\_\_\_\_ day of May, 2010.

\_\_\_\_\_  
Notary Public