

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

FREE SPEECH,

Plaintiff,

CASE NO. 12-CV-127-SWS

VS.

OCTOBER 3, 2012
8:28 A.M. - 9:05 A.M.

FEDERAL ELECTION COMMISSION,

CASPER, WYOMING

Defendant.

TRANSCRIPT OF TELEPHONIC ORAL RULING
ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE SCOTT W. SKAVDAHL
UNITED STATES DISTRICT JUDGE

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1 **APPEARANCES: (Page 2 of 2)**

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1 **THE COURT:** Good morning, counsel.

2 **MR. BARR:** Good morning, Your Honor.

3 **MS. CHLOPAK:** Good morning.

4 **THE COURT:** Court is in session in the matter of Free
5 Speech versus the Federal Election Commission, Case Number
6 12-CV-127. I note the presence of Mr. Speight, Mr. Klein and
7 Mr. Barr on behalf of plaintiffs -- plaintiff and the presence
8 of Mr. Kolker, Ms. Chlopak and Mr. Noti on behalf of the
9 defendant, Federal Election Commission.

10 This matter comes before the Court on plaintiff's
11 motion for preliminary injunctive relief pursuant to Rule 65 of
12 the Federal Rules of Civil Procedure. Plaintiff, based upon
13 alleged infringement of its constitutional rights, seeks to
14 have this Court enjoin defendant, the Federal Election
15 Commission, from enforcement of various regulatory provisions
16 and policies. The Court finds and orders as follows:

17 As to the background in this matter, Plaintiff Free
18 Speech is an unincorporated, nonprofit association formed on
19 February 21, 2012, and is comprised of three Wyoming residents.
20 Free Speech's stated mission is to promote and protect free
21 speech, limited government and constitutionally --
22 constitutional accountability and to advocate positions on
23 various political issues, including free speech, environmental
24 policy, gun rights, land rights and control over personal
25 healthcare. Its bylaws require that it operate independently

1 of political candidates, committees and political parties. See
2 the *Complaint*, Paragraphs 1 and 10, and Exhibit A to Exhibit 1.
3 Free Speech seeks to run various advertisements addressing
4 political issues and seeks to engage in fundraising from other
5 like-minded individuals to support its positions through public
6 media.

7 On July 26, 2012, plaintiff filed this action,
8 challenging certain FEC regulations that plaintiff alleges
9 abridge its First Amendment freedoms. Specifically, plaintiff
10 brings facial and "as applied" challenges against 11 C.F.R.,
11 Section 100.22(b), alleging its definition of "express
12 advocacy" is unconstitutionally vague and overly broad and
13 triggers burdensome registration and reporting requirements
14 which act as the functional equivalent of a prior restraint of
15 political speech.

16 Plaintiff further challenges the constitutionality of
17 the FEC's interpretation and enforcement process regarding
18 political committee status, solicitation tests, the "major
19 purpose" test and express advocacy determinations. See
20 *Complaint*, Paragraph 2.

21 In order to understand and analyze the issues raised,
22 it is helpful to lay out the applicable statutory and
23 regulatory framework and evolution of law affecting political
24 campaigns and elections. It is also helpful to identify, to
25 the extent able, the perceived evils sought to be curtailed by

1 this set of campaign laws. The primary purpose of the Federal
2 Election Campaign Act of 1971, hereinafter "The Act" or "FECA,"
3 was to limit the actuality and appearance of corruption
4 resulting from the giving of large sums of money and the
5 spending of money in political campaigns for federal office.

6 Thus, under Title 2, United States Code, Section 441a,
7 limitations are imposed upon the amount of contributions that
8 can be made directly to candidates for federal office and the
9 expenditures that a candidate may make in running for office.
10 There were also concerns regarding independent expenditures
11 which were not made by a candidate for federal office but
12 nonetheless a person advocating for the election or defeat of a
13 clearly identified candidate. These independent expenditures,
14 in part, give rise to the issues before the Court in this case.

15 Prior to the United States Supreme Court's decision in
16 *Citizens United versus Federal Election Commission*, 130 Supreme
17 Court 876, 2010, the federal law prohibited corporations and
18 unions from using treasury funds, money, to make independent
19 expenditures for speech that was either defined as
20 electioneering communication or for speech expressly advocating
21 the election or defeat of a candidate. This preclusion on
22 corporate expenditures for electioneering communications was
23 upheld in *McConnell versus Federal Election Commission*, 540
24 U.S. 93, 2003. However, in doing so, the Supreme Court relied
25 upon its prior holding in *Austin versus Michigan Chamber of*

1 *Commerce*, 494 U.S. 652, 1990 Supreme Court decision which
2 upheld the State of Michigan's direct restriction on the
3 independent expenditures of funds by a corporation that
4 supported or opposed any candidate for state office.

5 In *Citizens United*, the Supreme Court overruled its
6 decision in *Austin* and held unconstitutional Title 2, United
7 States Code, Section 441b's restrictions on corporate
8 independent expenditures. In addition, the Court in *Citizens*
9 *United* overruled that portion of *McConnell* which had upheld
10 amendments to Section 316(b) of FECA, precluding corporations
11 and unions from using their general treasury funds, money, to
12 finance electioneering communications. See *Citizens United* at
13 913; *McConnell* at 203 through 205.

14 Despite this conclusion on the preclusion of
15 expenditures, it is equally if not more significant to the
16 claims in this case to note what the Court in *Citizens United*
17 found was constitutionally permissible. In *Citizens United*,
18 there was also a challenge made to the disclaimer and
19 disclosure requirements under Title 2, United States Code,
20 Section 441d. In analyzing these disclaimer and disclosure
21 requirements, the Court in *Citizens United* noted: "Disclaimer
22 and disclosure requirements may burden the ability to speak,
23 but they impose no ceiling on campaign-related activities,"
24 citing *Buckley*, 424 U.S. at 64, and "do not prevent anyone from
25 speaking," citing *McConnell*, *supra*, at 201. The Court has

1 subjected these requirements to "exacting scrutiny" which
2 requires a "substantial relation" between the disclosure
3 required and a "sufficiently important" governmental interest.
4 *Buckley, supra*, at 64. The Court went on, in *Citizens United*,
5 to conclude that the disclosure and disclaimer requirements
6 were constitutional, reaffirming its analysis in *McConnell* as
7 it pertained to the disclosure provisions. *Id.* at 915.

8 The case law has also drawn distinctions between
9 campaign advocacy and issue advocacy. To that extent, in
10 *Federal Election Commission versus Wisconsin Right to Life*,
11 551 U.S. 449, the Supreme Court, in 2007, held that statutory
12 restrictions on the use of corporate funds to advertisements
13 that were "issue advocacy" advertisements as opposed to
14 "express advocacy" were unconstitutional.

15 In reaching that conclusion, the Court noted that the
16 speech at issue was not the "functional equivalent of express
17 campaign speech." Thus, the interests held to justify
18 restricting corporate campaign speech or its functional
19 equivalent did not justify restricting the "issue advocacy"
20 speech involved in *Wisconsin Right to Life*. In making this
21 distinction, the Court noted that the dangers associated with
22 advocacy or campaign speech or its functional equivalent does
23 not exist with respect to issue advocacy. See *Wisconsin Right*
24 *to Life*, at 470. It is behind this wall of precedent that the
25 merit of plaintiff's claims must be measured. The definition

1 of these terms is important to the analysis of the issues
2 presented.

3 Under the Federal Election Campaign Act of 1971,
4 "independent expenditure" is defined as "an expenditure
5 expressly advocating the election or defeat of a clearly
6 identified candidate" and not made by or in coordination with a
7 candidate or political party or committee. See Title 2, United
8 States Code, Section 431(17).

9 An "expenditure" is defined as "any purchase, payment,
10 distribution, loan, advance, deposit or gift of money or
11 anything of value made by any person for the purposes of
12 influencing any election for federal office." See Section
13 431(9)(A)(i), Title 2.

14 Under 11 C.F.R., Section 100.22, "expressly advocating"
15 is defined as any communication that (a) uses phrases such as
16 "vote for the president," "reelect your congressman," "support
17 the Democratic nominee," "cast your ballot for the Republican
18 challenger for U.S. Senate in Georgia," "Smith for Congress,"
19 "Bill McKay in '94," "vote pro-life" or "vote pro-choice"
20 accompanied by a listing of clearly identified candidates
21 described as pro-life or pro-choice, "vote against Old
22 Hickory;" "defeat" accompanied by a picture of one or more
23 candidates; "reject the incumbent" or communications of
24 campaign slogans or individual words which in context can have
25 no other reasonable meaning than to urge the election or defeat

1 of one or more clearly identified candidates such as posters,
2 bumper stickers, advertisements, et cetera, which say, "Nixon's
3 the one"; "Carter '76"; "Reagan/Bush" or "Mondale!"; or
4 Subsection (b) of Section 100.22 which provides: "When taken
5 as a whole and with limited reference to external events, such
6 as the proximity to the election, could only be interpreted by
7 a reasonable person as containing advocacy of the election or
8 defeat of one or more clearly identified candidates because,
9 one, the electoral portion of the communication is
10 unmistakable, unambiguous and suggestive of only one meaning;
11 and, two, reasonable minds could not differ as to whether it
12 encourages actions to elect or defeat one or more clearly
13 identified candidates or encourages some other kind of action.

14 A person or organization, other than a political
15 committee, that finances independent expenditures aggregating
16 more than \$250 a calendar year is required to file with the FEC
17 a disclosure report that identifies, *inter alia*, the date and
18 amount of each expenditure and anyone who contributed over \$200
19 to further it. See United States Code, Section 434(c) of
20 Title 2; and 11 C.F.R., Section 109.10(e).

21 The Act further defines a "political committee,"
22 commonly known as a "PAC," as "any committee, club, association
23 or other group of persons which receives contributions
24 aggregating in excess of \$1,000 during a calendar year or which
25 makes expenditures aggregating in excess of \$1,000 during a

1 calendar year." Title 2, United States Code, Section
2 431(4)(A). The terms "expenditures" and "contributions" are,
3 in turn, defined to encompass any spending or fundraising "for
4 the purpose of influencing any election for federal office."
5 See Sections 431(8)(A)(i) and 431(9)(A)(i).

6 In *Buckley versus Valeo*, 424 U.S. 1, 1976, the Supreme
7 Court narrowed the statutory definition of a PAC, limiting its
8 reach to "only encompass organizations that are under the
9 control of a candidate or the 'major purpose' of which is the
10 nomination or election of a candidate. An organization that is
11 not controlled by a candidate must therefore register as a PAC
12 if its contributions or expenditures exceed \$1,000 and its
13 'major purpose' is the nomination or election of a federal
14 candidate." See *The Real Truth About Abortion, Inc. versus*
15 *Federal Election Commission*, 681 F.3d 544, 555, Fourth Circuit
16 2012 decision, hereinafter "RTAA."

17 Political committees must comply with certain
18 organizational and disclosure requirements. They must register
19 with the FEC and file periodic reports for disclosure to the
20 public of their total operating expenses and cash on hand as
21 well as their receipts and disbursements with limited
22 exceptions for most transactions below a 200-dollar threshold.
23 See Title 2, United States Code, Sections 433 and 434. Each
24 PAC must have a treasurer who maintains its records and a
25 separately designated bank account. PACs also must disclose,

1 in their regularly scheduled reports, additional information
2 about their independent expenditures, including the date,
3 amount and candidates supported or opposed for each independent
4 expenditure over \$200, Sections 434(b)(4)(H)(iii), (6)(B)(iii).
5 Additionally, PACs must identify themselves through disclaimers
6 on all of their public political advertising, on their website
7 and in mass emails. 11 C.F.R, Section 110.11(a)(1).

8 In 2007, after considering and receiving public
9 comments, the FEC decided not to promulgate a new definition of
10 "political committee" but instead to continue its longstanding
11 practice of determining each organization's major purpose
12 through a case-by-case analysis of an organization's conduct.
13 The published notice of this decision explained that while the
14 "major purpose" test can be satisfied "through sufficiently
15 extensive spending on federal campaign activity," 72 Federal
16 Register 5595, 5601, a fact-intensive analysis of each
17 organization's conduct, including public statements,
18 fundraising appeals and spending on other activity, can be
19 instructive in evaluating the organization's campaign
20 activities compared to its activities unrelated to campaigns.
21 *Id.* at 5601 through 602.

22 The Act defines "contribution" to include "any gift,
23 subscription, loan, advance or deposit of money or anything of
24 value made by any person for the purposes of influencing any
25 election for federal office." 2 United States Code, Section

1 431(8)(A)(i). The Act requires "any person" who "solicits any
2 contribution through any broadcasting station, newspaper,
3 magazine, outdoor advertising facility, mailing or any other
4 type of general public political advertising" to include a
5 specified disclaimer in the solicitation. *Id.*, Section
6 441d(a); and see also 11 C.F.R., Section 110.11(a)(3).

7 Plaintiff wishes to pay for advertisements in various
8 media outlets that will bring to light a variety of public
9 issues such as gun rights, land rights, environmental policy,
10 healthcare and free speech, including their connection with
11 public servants and candidates for public office. Free Speech
12 plans to run these advertisements from the present to November
13 and further speak about related issues as they arise between
14 November as well. See the *Complaint*, at Paragraph 13.

15 Plaintiff seeks to finance and distribute these
16 communications without registering as a political committee or
17 complying with the disclaimer and disclosure obligations
18 required for certain types of campaign-related communications.
19 Free Speech also intends to solicit donations of funds to
20 finance additional unidentified advertisements well beyond the
21 2012 electoral cycle. Plaintiff represents it is not under the
22 control of any federal candidate nor does it have, as its major
23 purpose, the election or defeat of clearly identified
24 candidates for federal office -- see *Complaint*, Paragraph 14 --
25 and plaintiff insists it intends to engage solely in "issue

1 advocacy." Plaintiff's first cause of action alleges Section
2 100.22(b) is unconstitutional on its face because it goes
3 "beyond any proper construction of express advocacy and offers
4 no clear guidance -- or guidelines for speakers to tailor their
5 constitutionally protected conduct and speech, and it fails "to
6 limit its application to expenditures for communications that
7 in express terms advocate the election or defeat of a clearly
8 identified candidate for federal office" in accordance with
9 *Buckley*. See *Complaint*, Paragraphs 74 and 75.

10 Plaintiff alleges that Section 100.22(b) is
11 unconstitutional as applied because the FEC "maintains a
12 practice of applying a variety of *ad hoc*, case-by-case factors
13 in each enforcement matter, advisory opinion and consideration
14 of the regulation in question." See *Complaint* at Paragraph 76;
15 and the FEC applies it to cover protected "issue advocacy"
16 communications. *Complaint*, at Paragraph 77.

17 Plaintiff's second cause of action alleges that
18 Section 100.22(b) is unconstitutional because the "heavy
19 regulations and compliance requirements" associated with the
20 FEC's arbitrary classification of some speech as express
21 advocacy acts as the functional equivalent of a prior
22 restraint. See *Complaint*, Paragraphs 81 and 82. Plaintiff's
23 third cause of action alleges it cannot realistically raise
24 funds or seek donations due to the cumbersome application of
25 the FEC's unconstitutionally vague solicitation standards,

1 inhibiting it from "associating with like-minded individuals
2 and speaking out to raise awareness of issues." *Complaint*, at
3 Paragraph 87.

4 Finally, plaintiff's fourth cause of action alleges
5 that the FEC's application of the "major purpose" test to
6 determine political committee status is unconstitutional
7 because it evaluates more than an organization's independent
8 expenditures and founding documents. See *Complaint*, at
9 Paragraph 103. By the present motion, plaintiff seeks a
10 preliminary injunction enjoining the FEC from enforcing the
11 challenged provisions and policies facially and as applied
12 until a final hearing on the merits may be held.

13 The standard of review applicable to this matter
14 requires that to obtain an extraordinary remedy of a
15 preliminary injunction, plaintiff must show that four factors
16 weigh in its favor: One, it is substantially likely to succeed
17 on the merits; two, it will suffer irreparable injury if the
18 injunction is denied; three, its threatened injury outweighs
19 the injury the opposing party will suffer under the injunction;
20 and, four, the injunction would not be adverse to the public
21 interest. See *Awad, A-W-A-D, versus Ziriaux, Z-I-R-I-A-X*,
22 670 F.3d 1111, at 1125, Tenth Circuit 2012, citing *Winter*
23 *versus Natural Resource Defense Council*, 555 U.S. 7 at 20,
24 2008. Preliminary injunctions that alter the status quo or
25 afford the movant all the relief that it will recover at the

1 conclusion of a full trial on the merits are disfavored and
2 must be more closely scrutinized. *Id.* In such instances, the
3 moving party must make "a strong showing both with regard to
4 the likelihood of success on the merits and with regard to the
5 balance of harms." *Id.*

6 Plaintiff argues that because the FEC's regulatory
7 structure acts as the functional equivalent of a prior
8 restraint, it asserts that strict scrutiny is warranted to
9 review of its claims. At the core of plaintiff's challenges,
10 however, are rules and policies which implement only the
11 disclosure requirements. The question before the Court is not
12 whether plaintiff can make expenditures for the speech it
13 proposes nor raise money without limitation but simply whether
14 it must provide disclosure of it's electoral advocacy.

15 Controlling precedent does not support an argument
16 that strict scrutiny is applicable. As noted, "disclaimer and
17 disclosure requirements may burden the ability to speak, but
18 they impose no ceiling on campaign-related activities and do
19 not prevent anyone from speaking. The Court has subjected
20 these requirements to 'exacting scrutiny', which requires a
21 'substantial relation' between the disclosure requirement and a
22 'sufficiently important' governmental interest. See *Citizens*
23 *United versus FEC*, 558 U.S. 310. See also *RTAA versus FEC*, 681
24 F.3d 544. Similarly, the Tenth Circuit has noted that
25 regulations requiring disclosure, as distinguished from

1 regulations that limit the amount of speech a group may
2 undertake, are subject to the "exacting scrutiny." See
3 *New Mexico Youth Organized versus Herrera*, 611 F.3d 669, 676,
4 2010 Tenth Circuit decision.

5 The disclosure and organizational requirements for
6 independent expenditures and political committees "are not as
7 burdensome on speech as are limits imposed on campaign
8 activities or limits imposed on contributions to the
9 expenditures by campaigns." *RTAA*, 681 F.3d, at 548.
10 Accordingly, an intermediate level of scrutiny known as
11 "exacting scrutiny" is the appropriate standard to apply in
12 reviewing provisions that impose disclosure requirements such
13 as the regulation and policy at issue here. See *RTAA*, at 549.

14 In terms of the issue as to the constitutionality of
15 11 C.F.R., Section 1000 -- or 100.22(b), "*Citizens United*
16 supports the FEC's use of a functional equivalent test in
17 defining 'express advocacy.' If mandatory disclosure
18 requirements are permissible when applied to ads that merely
19 mention a federal candidate, then applying the same burden to
20 ads that go further and are the functional equivalent of
21 express advocacy cannot automatically be impermissible." See
22 *RTAA*, 681 F.3d 551-52.

23 "The language of Section 100.22(b) is consistent with
24 the test for the functional equivalent of express advocacy that
25 was adopted in *Wisconsin Right to Life*, a test that the

1 controlling opinion specifically stated was not impermissibly
2 vague." *Id.*, at 552, citing *FEC versus Wisconsin Right to*
3 *Life*, at 474, Footnote 7.

4 "Although it is true that the language of Section
5 100.22(b) does not exactly mirror the functional equivalent
6 definition in *Wisconsin Right to Life*, the difference between
7 the two tests are not meaningful. Indeed, the test under
8 Section 100.22(b) is likely narrower than the one articulated
9 in *Wisconsin Right to Life* since it requires a communication to
10 have an 'electoral portion' that is unmistakable and
11 unambiguous." *RTAA*, at 552.

12 The fact that the FEC could not conclusively agree as
13 to whether certain of plaintiff's proposed ads constituted
14 express advocacy under its regulations and policies does not
15 make Section 100.22(b) unconstitutionally vague. This fact
16 proves little because cases that fall close to the line will
17 inevitably arise when applying Section 100.22(b). This kind of
18 difficulty is simply inherent in any kind of standards-based
19 test. See *RTAA*, at 554. It also may reflect the inherent
20 problem in an equal number of commissioners and the unfortunate
21 political divide; but, in any event, that does not invalidate
22 the process.

23 Turning to whether the disclosure requirements
24 triggered by 100.22(b) act as a prior restraint. "In *Buckley*,
25 the Supreme Court explained that disclosure could be justified

1 based on a governmental interest in providing the electorate
2 with information about the sources of election-related
3 spending." See *Citizens United* at 914. It "upheld a
4 disclosure requirement for independent expenditures even though
5 it invalidated a provision that imposed a ceiling on those
6 expenditures." See *Citizens United* at 915.

7 In this case, plaintiff fails to demonstrate how any
8 of the challenged provisions, none of which impose any
9 restrictions or limitations on its speech, function as a prior
10 restraint. The plaintiff appears to seek to expand the
11 discussion in *Citizens United* as to the formation of a PAC and
12 the burdens imposed upon going through that process, but this
13 Court does not find that those same burdens are analogous in
14 this case and thus do not act as a prior restraint or the
15 equivalent of the same.

16 As to the constitutionality of the solicitation
17 standard, in evaluating whether plaintiff's donation requests
18 would constitute "solicitations" of contributions, the FEC
19 employed the Second Circuit's test: Disclosure is required "if
20 a communication contains solicitations clearly indicating that
21 the contributions will be targeted to the election or defeat of
22 a clearly identified candidate for federal office." *FEC versus*
23 *Survival Education Fund, Incorporated*, 65 F.3d 285, at 295;
24 Second Circuit 1995, "*SEF*" hereinafter. Draft B found two of
25 plaintiff's proposed donation requests will solicit

1 contributions and two will not. *Complaint*, Exhibit C, at page
2 17. Draft B of the opinion of the FEC reasonably applies -- of
3 the advisory opinion, I should state, reasonably applies the
4 SEF standard for solicitations in reaching this conclusion.

5 The Second Circuit, in *SEF*, recognized that the
6 disclosure requirements for solicitations "serve important
7 First Amendment values. Potential contributors are entitled to
8 know that they are supporting independent critics of a
9 candidate and not a group that may be in league with that
10 candidate's opponent. Section 441d(a)(3) is thus 'a reasonable
11 and minimally restrictive method,' *Buckley*, 424 U.S., at 82, of
12 ensuring open electoral competition that does not unduly trench
13 upon an individual's First Amendment rights." *SEF*, 65 F.3d at
14 296.

15 I would add: Based upon *Citizens United's* analysis
16 and the allowance of corporate contributions, the reporting
17 requirements become even more significant because the corporate
18 structure does not allow identification of the individual who
19 is making the speech at issue.

20 The constitutionality -- as to the constitutionality
21 of the "major purpose" test and "political committee status":
22 "Following *Buckley*, the Commission adopted a policy of
23 determining PAC status on a case-by-case basis. See Political
24 Committee Status, 72 Federal Register 5595, 5596-97, this '2007
25 Notice.' Under this approach, the Commission first considers a

1 group's political activities such as spending on a particular
2 'electoral' or 'issue advocacy' campaign -- see *Id.* at 5601 --
3 and then it evaluates an organization's 'major purpose' as
4 revealed by that group's public statements, fundraising
5 appeals, government filings and organizational documents." See
6 *Id.*, *RTAA*, 681 F.3d at 555.

7 In deciding not to adopt a statutory definition of a
8 PAC, the FEC explained that "applying the 'major purpose'
9 doctrine requires the flexibility of a case-by-case analysis of
10 an organization's conduct that is incompatible with a
11 one-size-fits-all rule." 72 Federal Register at 5601. The
12 2007 notice also "explained the framework for establishing
13 political committee status under FECA and discussed several
14 recently resolved administrative matters that provide
15 considerable guidance to all organizations regarding political
16 committee status." 72 Federal Register, at 5595-96.

17 "Although *Buckley* did create the 'major purpose' test,
18 it did not mandate a particular methodology for determining an
19 organization's major purpose, and thus the Commission was free
20 to administer FECA political committee regulations either
21 through categorical rules or through individualized
22 adjudications." See *RTAA*, 681 F.3d, at 556.

23 "The necessity of a contextual inquiry is supported by
24 judicial decisions applying the 'major purpose' test which have
25 used the same fact-intensive analysis that the Commission has

1 adopted." RTAA at 557. The Commission, in its policy, adopted
2 a sensible approach to determining whether an organization
3 qualifies for PAC status; and, more importantly, the
4 Commission's multi-factor 'major purpose' test is consistent
5 with Supreme Court precedent and does not unlawfully deter
6 protected speech. Accordingly, we find the policy
7 constitutional." That's RTAA at 558.

8 This Court similarly finds the policy constitutional
9 in this matter; and because the Court finds the plaintiff has
10 failed to establish a substantial likelihood of success on the
11 merits of its actions, the plaintiff is not entitled to a
12 preliminary injunction in this matter and will therefore deny
13 the requested preliminary injunction.

14 I will direct a minute order be entered, incorporating
15 by reference this Court's oral ruling which has been
16 transcribed or placed on transcript by the court reporter.

17 Are there any questions regarding the matter at this
18 point in time, Mr. Barr?

19 **MR. BARR:** There are no questions on plaintiff's end.

20 **THE COURT:** All right. Mr. Kolker or Ms. Chlopak?

21 **MS. CHLOPAK:** No. No questions here, Your Honor.

22 **THE COURT:** Very well.

23 **MR. VASSALLO:** Your Honor, this is Nick Vassallo. I
24 just wanted to note for the record that I had joined the call a
25 few minutes before you came on the line.

1 **THE COURT:** Very well, Mr. Vassallo. So noted.
2 Thank you all. Have a good day.

3 **MR. BARR:** Thank you.

4 **MS. CHLOPAK:** Thank you.

5 **THE COURT:** Court will stand in recess.

6 **(The proceedings conclude at 9:05 a.m.)**

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REPORTER CERTIFICATE

I, JAMIE L. HENDRICH, Official Federal Court Reporter
in the United States District Court for the District of
Wyoming, certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

10.17.12
Date

/S/
JAMIE L. HENDRICH, CSR-RPR-CRR
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