

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

THE BROWARD COALITION OF CONDOMINIUMS,
HOMEOWNERS ASSOCIATIONS AND COMMUNITY
ORGANIZATIONS, INC.; CHARLOTTE GREENBARG;
UNIVERSITY OF FLORIDA COLLEGE
LIBERTARIANS; NEAL CONNER; NATIONAL
TAXPAYERS UNION; NATIONAL TAXPAYERS
UNION FOUNDATION; and DUANE PARDE,

Plaintiffs,

Civil Action No.

4:08cv445-SPM/WCS

v.

KURT S. BROWNING, in his official capacity as
Florida Secretary of State; JORGE L. CRUZ-
BUSTILLO, in his official capacity as Chair of the
Florida Elections Commission; and
DONALD W. RHODES, KAREN H. UNGER,
JOSE LUIS RODRIGUEZ, THOMAS E. ROSSIN,
GREGORY KING, JULIE B. KANE,
BELERIA F. FLOYD, and WILLIAM H. HOLLIMON,
in their official capacities as members of the
Florida Elections Commission,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case is a constitutional challenge to the most expansive regulation of political speech in the country. In Florida, campaign "finance" laws have gone way beyond regulating the financing of campaigns and now ensnare virtually every group or individual that publicly comments on a candidate or pending ballot issue.

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2. The Plaintiffs are four groups and their leaders who wish to exercise what most Americans would consider their birthright—the right to speak out about political matters. In short, the Plaintiffs wish to mention various candidates or ballot issues in their newsletters, on flyers, or on their websites before the November election.

3. Before exercising their First Amendment rights, however, the Plaintiffs are required to register as “electioneering communications organizations”—the special designation Florida gives to those who spend even one dollar to communicate with the public about political matters, but who do not engage in express advocacy supporting or opposing a candidate or ballot issue.

4. Under these laws, any group who wishes to mention a specific candidate or ballot issue must register with the state, designate a bank account, and track and report all of their contributions and expenditures, including the full name, address, and occupation (or principal business) of their contributors. Those who mention a specific candidate or ballot issue without registering and complying with these requirements are subject to complaints and possible civil and criminal sanctions.

5. Individual speakers must also file reports and track their expenditures.

6. This action challenges the provisions of Florida’s “campaign financing” laws that require groups and individuals to comply with onerous reporting and disclosure requirements in order to exercise their rights to basic free speech and association. It challenges the various restrictions that make speaking and associating more difficult, including restrictions on collecting contributions and receiving anonymous contributions. And it challenges forced speech in the form of disclaimers on all paid communications

that mention a candidate or ballot issue. In short, this action seeks to vindicate the Plaintiffs' and others' rights to speak freely and associate for political purposes under the First and Fourteenth Amendments to the United States Constitution.

JURISDICTION

7. Plaintiffs bring this civil rights lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871; 42 U.S.C. § 1983; and the Declaratory Judgments Act, 28 U.S.C. § 2201. Plaintiffs seek injunctive and declaratory relief against the enforcement of the State's electioneering communications laws, Fla. Stat. § 106.011 *et seq.*; their implementing rules and regulations; and the practices and policies of the Florida Secretary of State and the Florida Elections Commission, which facially and as applied burden Plaintiffs' protected political speech and prevent them from engaging in public discourse about statewide and local political matters.

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

VENUE

9. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

10. Plaintiff the Broward Coalition of Condominiums, Homeowners Associations, and Community Organizations, Inc., is a not-for-profit 501(c)(4) corporation operating out of Hollywood, Florida.

11. Charlotte Greenberg is the Coalition's current president; she resides in Hollywood, Florida.

12. The University of Florida College Libertarians is a student-run campus club at the University of Florida, located in Gainesville, Florida.

13. Neal Conner serves as the club's president; he resides in Gainesville, Florida.

14. Both the National Taxpayers Union (NTU) and the National Taxpayers Union Foundation (NTUF) are based in Alexandria, Virginia. NTU is a 501(c)(4) nonprofit that advocates for, among other things, tax reform, and checks on congressional spending. NTUF is NTU's 501(c)(3) affiliate, which provides information on public policy issues.

15. Duane Parde serves as NTU/NTUF's president; he resides in Virginia.

16. Defendant Kurt S. Browning is the Florida Secretary of State. Pursuant to sections 106.22 and 106.23 of the Florida Statutes, the Secretary—through the Division of Elections of the Department of State—is responsible for prescribing rules and regulations to carry out the provisions of Florida's campaign financing laws, which includes the laws regarding electioneering communications. At all times relevant to this complaint, the Secretary was acting under color of state law. Plaintiffs sue the Secretary in his official capacity and seek only prospective declaratory and injunctive relief against him.

17. Defendants Jorge L. Cruz-Bustillo, Donald W. Rhodes, Karen H. Unger, Jose Luis Rodriguez, Thomas E. Rossin, Gregory King, Julie B. Kane, Beleria F. Floyd,

and William H. Hollimon, are members of the Florida Elections Commission. Pursuant to sections 106.24 and 106.25 of the Florida Statutes, the Commission is responsible for enforcing Florida's campaign financing laws, including the electioneering communications laws. At all times relevant to this complaint, the Commissioners were acting under color of state law. Plaintiffs sue the Commissioners in their official capacities and seek only prospective declaratory and injunctive relief against them.

STATEMENT OF FACTS

18. Plaintiff Broward Coalition is an all-volunteer, not-for-profit 501(c)(4) corporation that has been serving the Broward County, Florida, community for over 25 years. A coalition of condominiums, homeowners associations, planned-use developments, co-ops, community organizations, and individuals, the Coalition is dedicated to helping its members as well as the larger community make decisions about issues that affect them—locally, statewide, and nationally. The Coalition normally presents information of interest in its monthly newsletter, on its website—www.browardcoalition.org—or through other forums. As the November election draws near, the Coalition wants to inform its community about the various issues on the ballot.

19. The Coalition wants to discuss these ballot issues in terms that are not express advocacy—that is, advocacy that uses terms such as “vote for” or “vote against” that support or oppose candidates. However, engaging in that discussion would require compliance with Florida's burdensome electioneering communications laws and the penalties that exist for their violation. For example, the Coalition wants to discuss and state an opinion about specific ballot issues in its newsletter, which is available to

members and non-members of the group, both in physical copies and on the Internet. However, it cannot do so without either submitting to the onerous regulations and restrictions that apply to electioneering communications organizations or facing penalties for lack of compliance. The Coalition has already lost the opportunity to host a meeting in which it could have discussed specific ballot issues, because the advertisements for such a meeting would have triggered the electioneering communications law. Moreover, the Coalition does not engage in express advocacy for candidates, but it often references politicians in its discussion of policy issues in its communications. Doing so before the election, however, will also trigger the law, so the Coalition is now attempting to avoid speech that mentions candidates.

20. The University of Florida College Libertarians (The UF College Libertarians) is a student-run campus club that seeks to spread the ideals of liberty and self-ownership. Founded in the 1980s, the club aims to work with other libertarian groups throughout the county, the state, and the nation in order to bring a comprehensive pro-freedom message to the University of Florida campus.

21. The UF College Libertarians want, in terms that are not express advocacy, to get the word out about pro-liberty local and state candidates in a manner that is targeted to reach 1,000 or more persons in the geographic area the candidate would represent. Specifically, the club wants to host events featuring those candidates and to advertise those events so that the university's students have the opportunity to attend. However, it can only do so if it first registers as an electioneering communications organization. The UF College Libertarians would also like to produce and distribute a

publication about one or more of the pending ballot issues but, again, cannot do so without first registering with the State. The UF College Libertarians do not want to register their political speech with the State and to comply with the burdensome regulations and restrictions imposed by Florida's electioneering communications laws.

22. The National Taxpayers Union is a 501(c)(4) nonprofit, nonpartisan organization founded almost forty years ago to promote lower taxes and smaller government, at all political levels. NTU advocates for comprehensive tax reform, a Balanced Budget Amendment, a Tax Limitation Amendment, and to keep congressional spending in check. NTU's guiding principle is, "This is your money and the government should return it to you." NTU usually publishes an analysis of state ballot issues each election cycle. NTU collected information about several of Florida's ballot issues and drafted a discussion about them that was not express advocacy. However, it did not include that discussion in this year's publication because of concerns that the State's electioneering communications laws will be applied to its speech. Until those concerns are eliminated, it will not be able to update the publication to include information on Florida's ballot issues.

23. NTUF is NTU's 501(c)(3) affiliate that provides timely and original information on public policy issues, including tax reform, economic growth, congressional budget tracking, interest group analysis, and entitlement reform. NTUF is also well known on the international scene as an advisor to numerous citizen groups and think tanks across the globe. It would like to provide information regarding Florida

ballot issues, but will not do so if it has to register as an electioneering communications organization.

24. In sum, all Plaintiffs want to engage in core political speech that, because it will either refer to a clearly identified candidate or contain a clear reference that a ballot issue is to be voted on at an election, will constitute electioneering communications that are regulated and restricted by the State. In order to do so, the Broward Coalition, the UF College Libertarians, NTU, and NTUF will have to become regulated electioneering communications organizations and undertake all the legal obligations imposed on those organizations if they want to speak. All of the Plaintiffs fear punishment for speaking without complying with the electioneering communications laws. Because of those laws, they will remain silent.

25. The Broward Coalition, the UF College Libertarians, NTU, and NTUF are not, nor are they required to be because of their activities, registered as political parties, political committees, or committees of continuous existence under Florida law.

Florida's Electioneering Communications Laws

26. Florida's electioneering communications laws are the most expansive regulation of political speech in the country. Indeed, those laws regulate and restrict more speech than the Bipartisan Campaign Reform Act of 2002, commonly known as McCain-Feingold.

27. Under Florida law, any group that merely mentions a candidate or pending ballot issue in a communication to the public that costs money to produce or disseminate has to register with the State before engaging in that speech.

Definitions

28. Under Florida law, an “electioneering communication” includes “a paid expression in any communications media” other than the spoken word in direct conversation that “[r]efers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue.” Fla. Stat. § 106.011(18)(a). Electioneering communications are not limited to communications made in a particular medium or a particular time before an election. As long as an issue or candidate is on the ballot, a communication mentioning either is an electioneering communication.

29. “Communications media” means “broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies.” Fla. Stat. § 106.011(13).

30. Certain exceptions to the definition of electioneering communication exist, including statements or depictions in a pre-existing organization’s newsletter that is distributed only to members of that organization; statements in various news media; and communications that constitute a public debate or forum that include at least two opposing candidates or one advocate and one opponent of an issue. Fla. Stat. § 106.011(18)(b).

31. For communications referring to or depicting a clearly identified candidate, the communication must be targeted to the relevant electorate, that is, be

received by 1,000 or more persons in the geographic area the candidate would represent if elected. Fla. Stat. § 106.011(18)(a)2.

32. For communications containing a clear reference indicating that an issue is to be voted on at an election, the communication must be published after the issue is designated a ballot position or 120 days before the election, whichever occurs first. Fla. Stat. § 106.011(18)(a)3.

33. An “electioneering communications organization” is any group not otherwise registered under Florida’s campaign financing laws “whose activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications.” Fla. Stat. § 106.011(19).

34. The Secretary of State—through the Division of Elections—interprets this provision to include any group whose election-related activities are limited to electioneering communications. *Electioneering Communications Organizations; Political Committees*, DE 08-08, Op. Dept. of State, Div. of Elections (June 18, 2008).

35. Individuals who make an expenditure of \$100 or more for an electioneering communication that is not otherwise reported must also file periodic reports of those expenditures in the same manner, at the same time, and subject to the same penalties as a political committee. Fla. Stat. § 106.071.

Registration, Reporting and Disclosure Requirements

36. Except as otherwise specifically provided, an electioneering communications organization is “required to register with and report expenditures and

contributions ... to the Division of Elections in the same manner, at the same time, and subject to the same penalties as a political committee.” Fla. Stat. § 106.011(1)(b)3.

37. An electioneering communications organization must file a statement of organization with the Division of Elections or, for countywide or municipal candidates or issues, with the county supervisor of elections or the officer before whom candidates qualify “within 24 hours after its organization or, if later, within 24 hours after the date on which it has information that causes the organization to anticipate that it will receive contributions or make expenditures for an electioneering communication.” Fla. Stat. § 106.03(1)(b) & (3).

38. The statement of organization must include the name and address of the committee; the names, address, and relationships of all affiliated or connected organizations; the area, scope, or jurisdiction of the committee; the identity and address of the custodian of the books and accounts (presumably the campaign treasurer); the identity and address of all principal officers; a listing of all depositories; and a statement of all reports required to be filed with federal officials. Fla. Stat. § 106.03(2).

39. The statement of organization also must list the candidates or issues supported or opposed, or in this case, presumably those candidates or issues that will be mentioned. Fla. Stat. § 106.03(2)(f) & (g).

40. The campaign treasurer must keep “detailed accounts, current within not more than 2 days after the date of receiving a contribution or making an expenditure.” Fla. Stat. § 106.06. Contributions must be deposited within 5 business days. Fla. Stat. § 106.05.

41. Once registered as an “electioneering communications organization,” an organization must file regular reports of all contributions received and expenditures made. Reports shall be filed on the 10th day following the end of each calendar quarter. Reports shall also be filed on the 32nd, 18th, and 4th days immediately preceding the primary election and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. If there are no candidates and only issues on the ballot, reports shall be filed on the 18th and 4th days prior to the election. Fla. Stat. § 106.07(1).

42. The required reports must include “[t]he full name, address, and occupation, if any[,] of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is \$100 or less or is from a relative ..., the occupation of the contributor or the principal type of business need not be listed.” Fla. Stat. § 106.07(4)(a)1.

43. Late reports are subject to a \$50 per day fine for the first three days late; thereafter \$500 per day, not to exceed 25% of total receipts or expenditures, whichever is greater, for the period covered by the late report. For reports immediately preceding the primary or general election, the fine shall be \$500 per day for each day late, not to exceed 25% of total receipts or expenditures, whichever is greater, for the period covered by the late report. Fla. Stat. § 106.07(8)(b).

44. Not reporting a contribution or engaging in a prohibited expenditure is also subject to a civil penalty equal to three times the amount involved in the illegal act. Fla. Stat. § 106.19(1)(b) & (2).

45. Upon information and belief, all reports filed with the Secretary are considered public records and information from filed reports is made available on the Secretary's website. *See* Fla. Stat. § 106.0706.

46. Under Florida law, a "contribution" means, in part, "[a] gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication." Fla. Stat. § 106.011(3)(a).

47. "Expenditure" is defined, in part, as "a purchase, payment, distribution, loan, advance, transfer of funds . . . , or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication." Fla. Stat. § 106.011(4)(a).

Funding and Expenditure Restrictions

48. Electioneering communications organizations may not accept cash contributions over \$50. Fla. Stat. § 106.09(1). Any person who makes or accepts a cash contribution in excess of \$50 commits a first-degree misdemeanor. Knowingly and willfully making or accepting a cash contribution in excess of \$5,000 is a third-degree felony. Fla. Stat. § 106.09(2).

49. Nor may electioneering communications organizations accept contributions from 501(c)(4) or 527 organizations that are not separately registered as electioneering communications organizations themselves. Fla. Stat. § 106.08(5)(d). Knowingly and willfully accepting one contribution from a 527 or 501(c)(4) that is not independently registered as an electioneering communications organization can result in a fine between \$1,000 and \$10,000, and the organization may be ordered not to do business in Florida or may even be dissolved. Accepting two such contributions may result in a fine between \$10,000 and \$50,000. Fla. Stat. § 106.08(7).

50. Electioneering communications organizations are prohibited from spending contributions received less than five days prior to the date of the election. Penalties for knowingly and willfully violating this provision are equal to twice the amount contributed in violation. Fla. Stat. § 106.08(4)(b) & (8).

Disclaimer Requirements

51. All electioneering communications—whether paid for by an individual or a group—are required to prominently state: “Paid electioneering communication paid for by (Name and address of person paying for communication).” Fla. Stat. § 106.1439. The Florida Elections Commission is authorized to impose a fine of up to \$1,000 for any violation of this section. Fla. Stat. § 106.265(1). *See also* Fla. Admin. Code 2B-1.003(2)(r) (limiting fine to \$250 for minor violations of the disclaimer requirement). Failure to include this statement is also a first-degree misdemeanor. Fla. Stat. § 106.1439.

Enforcement Provisions

52. The Division of Elections is required to conduct random audits with respect to the reports and statements filed under this chapter and to report to the Florida Elections Commission any failures to file a report or the information required. Fla. Stat. § 106.22(10) & (7).

53. Florida law allows any person to file a sworn complaint with the Florida Elections Commission based upon personal information or information other than hearsay regarding a potential violation of the campaign finance laws. Fla. Stat. § 106.25(2). Actions for violations of this chapter must be commenced before two years have elapsed from the date of the violation. Fla. Stat. § 106.28.

54. The Florida Elections Commission shall “consider all sworn complaints filed with it and all matters reported to it by the Division of Elections.” Fla. Stat. § 106.26(1). The Commission has the authority to issue subpoenas and conduct a hearing. Fla. Stat. § 106.26(1). At the conclusion of the hearing, “the commission shall immediately begin deliberations on the evidence presented at such hearings and shall proceed to determine by affirmative vote of a majority of the members present whether a violation of this chapter or chapter 104 [the Election Code] occurred.” Fla. Stat. § 106.26(11).

55. Upon the finding of a violation, the Commission is authorized to impose a civil penalty not to exceed \$1,000 per count, unless a different penalty is specified. Fla. Stat. § 106.265(1).

56. Criminal actions may also be brought in the appropriate court of competent jurisdiction for many violations. Fla. Stat. § 106.27(1).

Injury to Plaintiffs

57. Plaintiffs Broward Coalition, UF College Libertarians, NTU/NTUF, and their respective leaders are engaged, plan to engage, or would like to engage in discussion about important political matters facing Floridians, that is, mentioning specific candidates or ballot issues that are on the ballot this November. Plaintiffs would also like, without using express advocacy, to discuss candidates and ballot issues in the future.

58. To engage in such discussion fully and effectively, Plaintiffs must be permitted to speak out and to associate with others, to communicate information and opinions.

59. Florida's electioneering communications laws contained in Florida Statutes § 106.011 *et seq.*, as well as the actions of the Secretary in implementing and interpreting those provisions and the Commission in enforcing those provisions, substantially burden and chill Plaintiffs' and others' rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution.

60. Florida requires groups like the Broward Coalition, The UF College Libertarians, NTU, and NTUF that engage in speech about candidates and/or ballot issues that is not express advocacy to register as electioneering communications organizations and to comply with reporting and disclosure requirements. Thus, Florida's campaign financing laws impose onerous and time consuming regulations as a condition of speaking and associating about candidates or ballot issues.

61. Florida requires individuals that make an expenditure of \$100 or more in non-express advocacy to register and comply with reporting and disclosure requirements.

Thus, Florida's campaign financing laws impose onerous and time-consuming regulations as a condition of speaking about candidates or ballot issues.

62. Some or all of the Plaintiffs would like to speak and associate about various candidates or issues on the November ballot without having to comply with the registration, reporting, and disclosure requirements for those who distribute electioneering communications.

63. Some or all of the Plaintiffs would like to speak and associate about various candidates or issues on the November ballot without having to restrict their contributions to exclude cash contributions over \$50 or contributions from 501(c)(4) or 527 organizations that are not themselves separately registered.

64. Some or all of the Plaintiffs would like to speak and associate about various candidates or issues on the November ballot using funds collected during the last five days before an election.

65. Some or all of the Plaintiffs would like to speak and associate about various candidates or issues on the ballot without having to include a disclaimer on their speech indicating that their speech is a paid electioneering communication.

66. Some or all of the Plaintiffs would like to speak and associate about various candidates or issues on the ballot without having to report all expenditures they make.

67. Some or all of the Plaintiffs would like to speak and associate about various candidates or issues on the ballot without being forcibly compelled to collect and disclose information about their contributors, including the full name, address, and

amount of contribution, plus the occupation or principal type of business for those who contribute over \$100.

68. Some or all of the Plaintiffs are concerned that various individuals or groups will refuse to associate with them out of fear of having their information disclosed if the group chooses to engage in electioneering communications.

69. By requiring electioneering communications organizations to report to the Secretary of State the identities and addresses of anyone who contributes any amount of money to the electioneering communications organization, and occupation (or principal business) of anyone who contributes \$100 or more, the disclosure requirements for electioneering communications organizations require Plaintiffs and others to choose between their privacy and their rights to free speech and association.

70. While Plaintiffs want to speak and associate about candidates or issues in the future, the burden and cost of complying with these requirements will make some or all of them avoid doing so.

71. Plaintiffs want to speak and associate about various candidates or issues on the ballot without fear or threat of being prosecuted or investigated for violating the electioneering communications laws.

72. While Plaintiffs want to speak and associate about other candidates or ballot issues in the future, some or all of them will not do so because they fear being investigated or prosecuted for violations of the electioneering communications laws.

73. The registration, reporting, and disclosure requirements are complicated and take time and effort to comply with. Plaintiffs and many others who wish to speak or

associate about candidates or ballot issues are not experienced campaign organizers or politicians. For such individuals, complying with the registration, reporting, and disclosure provisions for electioneering communications is prohibitively difficult and time consuming, and the threat of having a complaint—or even criminal charges—filed against them for failing to comply properly with any of these requirements makes mistakes very expensive.

74. In sum, and as described above, Florida’s electioneering communications laws create a significant chilling effect that has and continues to prevent the Plaintiffs from exercising their constitutional rights of free speech and association.

CONSTITUTIONAL VIOLATIONS

First Claim for Relief

(First Amendment—Vagueness and Overbreadth: Electioneering Communications)

75. Plaintiffs reallege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 74 above.

76. The definition of an “electioneering communication” includes—and thus regulates—speech that goes beyond express advocacy, including any “paid expression in any communications media” other than the spoken word in direct conversation that “[r]efers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue.” Fla. Stat. § 106.011(18)(a).

77. This definition is substantially overbroad, capturing all types of core political speech and resulting in a significant chill on political expression.

78. This definition is also overly vague because it does not provide sufficient notice of its application before a speaker engages in speech.

79. Both on its face and as applied to Plaintiffs, the definition of electioneering communication unconstitutionally burdens and chills rights to free speech and association in violation of the First and Fourteenth Amendments to the United States Constitution.

80. As a direct and proximate result of the definition of electioneering communication, Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and enforcing the electioneering communications provisions of § 106.011 *et seq.*, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Second Claim for Relief

(First Amendment—Vagueness and Overbreadth: Electioneering Communications Organizations)

81. Plaintiffs reallege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 74 above.

82. The definition of an “electioneering communications organization” is “any group, other than a political party, political committee, or committee of continuous existence, whose activities are limited to making expenditures for electioneering

communications or accepting contributions for the purpose of making electioneering communications.” Fla. Stat. § 106.011(19).

83. This definition is substantially overbroad so as to capture virtually all organizations or vague as to what organizations it is intended to capture, resulting in a significant chill on political expression.

84. Both on its face and as applied to Plaintiffs, the definition of electioneering communications organization unconstitutionally burdens and chills rights to free speech and association in violation of the First and Fourteenth Amendments to the United States Constitution.

85. As a direct and proximate result of the definition of electioneering communications organizations, Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and enforcing the electioneering communications provisions of § 106.011 *et seq.*, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Third Claim for Relief

(First Amendment—Prior Restraint)

86. Plaintiffs reallege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 74 above.

87. Chapter 106 of the Florida Statutes, and the rules and regulations promulgated thereunder, require groups and individuals who plan or intend to engage in

electioneering communications to register within 24 hours after its organization, or if later, within 24 hours after the date on which it has information that causes the organization to anticipate that it will receive contributions or make expenditures for an electioneering communication.

88. Plaintiffs wish to make electioneering communications to their fellow citizens, but fear that if they choose to speak without first registering, they will be subject both to possible civil and criminal sanctions.

89. Due to the language of chapter 106 and its interpretation by the Secretary of State, who states that any group whose election-related activities are limited to electioneering communications must comply with the registration requirements of the Act, Plaintiffs believe that prosecution would be likely should they choose to speak without registering beforehand with the state.

90. This registration requirement serves as a content-based prior restraint on political speech, requiring government registration before allowing groups or individuals to speak.

91. Both on their face and as applied to Plaintiffs, the requirement that groups or individuals must first register with the state before making any electioneering communications unconstitutionally burdens and chill rights to free speech in violation of the First and Fourteenth Amendments to the United States Constitution.

92. As a direct and proximate result of the registration requirement, Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy

by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and enforcing the electioneering communications provisions of § 106.011 *et seq.*, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Fourth Claim for Relief

(First Amendment—Burdening Protected Speech: Registration, Reporting and Disclosure)

93. Plaintiffs reallege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 74 above.

94. Chapter 106 of the Florida Statutes, and the rules and regulations promulgated thereunder, impose onerous registration, reporting, and disclosure requirements on those groups and individuals who engage in electioneering communications.

95. The registration, reporting, and disclosure requirements for electioneering communications impose substantial compliance costs that are excessive in relation to any alleged state interest in disclosure for groups or individuals who merely mention a specific candidate or ballot issue.

96. Both on their face and as applied to Plaintiffs, the registration, reporting, and disclosure requirements for electioneering communications organizations and individuals who distribute electioneering communications unconstitutionally burden and chill rights to free speech and association in violation of the First and Fourteenth Amendments to the United States Constitution.

97. As a direct and proximate result of the registration, reporting, and disclosure requirements for electioneering communications organizations, Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and enforcing the electioneering communications provisions of § 106.011 *et seq.*, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Fifth Claim for Relief

**(First Amendment—Burdening Protected Speech:
Funding and Expenditure Restrictions)**

98. Plaintiffs reallege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 74 above.

99. Electioneering communications organizations are prohibited from obligating or expending contributions received within 5 days of the election. Penalties for knowingly and willfully violating this provision are equal to twice the amount contributed in violation. § 106.08(4)(b) & (8).

100. Electioneering communications organizations are also prohibited from accepting cash contributions over \$50 and from accepting contributions from 501(c)(4) or 527 organizations that are, themselves, not separately registered as electioneering communications organizations. Fla. Stat. §§ 106.09, 106.08(5)(d) & (7).

101. Both on their face and as applied to Plaintiffs, the restrictions on when, how, and from whom electioneering communications organizations can accept

contributions or make expenditures unconstitutionally burden and chill rights to free speech and association in violation of the First and Fourteenth Amendments to the United States Constitution.

102. As a direct and proximate result of the restrictions on when, how, and from whom electioneering communications organizations can accept contributions or make expenditures, Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and enforcing the electioneering communications provisions of § 106.011 *et seq.*, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Sixth Claim for Relief

(First Amendment—Compelled & Anonymous Speech: Disclaimers)

103. Plaintiffs reallege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 74 above.

104. All electioneering communications—whether paid for by an individual or a group—are also required to prominently state: “Paid electioneering communication paid for by (Name and address of person paying for communication).” Fla. Stat. § 106.1439. The Florida Elections Commission is authorized to impose a fine of up to \$1,000 for any violation. Fla. Stat. § 106.265(1). *See also* Fla. Admin. Code 2B-1.003(2)(r) (limiting fine to \$250 for minor violations of the disclaimer requirement). In

addition, failure to include this statement is a first-degree misdemeanor. Fla. Stat. § 106.1439.

105. Both on its face and as applied to Plaintiffs, the disclaimer requirement for electioneering communications compels speech in violation of the First and Fourteenth Amendments to the Constitution of the United States by requiring Plaintiffs and others similarly situated to state that they are engaging in “paid electioneering communications.”

106. Both on its face and as applied to Plaintiffs, the disclaimer requirement for electioneering communications burdens and chills rights to anonymous speech and association under the First and Fourteenth Amendments to the Constitution of the United States by requiring Plaintiffs and others similarly situated to disclose their identities and their personal information as a condition of speaking and associating with others.

107. As a direct and proximate result of § 106.011 *et seq.*, Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendant is enjoined from implementing and enforcing the electioneering communications provisions of § 106.011 *et seq.*, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Seventh Claim for Relief

(First Amendment—Anonymous Speech: Reporting Requirement)

108. Plaintiffs reallege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 74 above.

109. Under § 106.011 *et seq.* and the rules and regulations promulgated thereunder, electioneering communications organizations must disclose all contributions they receive, including the full name, address, and occupation of each person who has made one or more contributions within the reporting period, together with the amount and date of the contribution. For corporations, the report must provide a clear description of the principal type of business conducted by the corporation. For contributions of \$100 or less, the occupation or principal type of business need not be listed. Fla. Stat. § 106.07(4)(a).

110. The definition of “contribution” includes in-kind contributions of goods in addition to cash contributions. Fla. Stat. § 106.011(3).

111. Individuals who make aggregate expenditures of \$100 or more on electioneering communications are also required to file periodic reports of those expenditures, and to disclose their name and identity. Fla. Stat. § 106.071(1).

112. Upon information and belief, all reports filed with the Secretary are considered public records and the contents of those reports are made available on the Secretary’s website.

113. Both on their face and as applied to Plaintiffs, the disclosure requirements for electioneering communications burden and chill rights to anonymous speech and association under the First and Fourteenth Amendments to the Constitution of the United States by requiring Plaintiffs, their contributors, and others similarly situated to disclose their identities and their personal information as a condition of speaking and associating with others.

114. As a direct and proximate result of § 106.011 *et seq.*, Plaintiffs and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendant is enjoined from implementing and enforcing the electioneering communications provisions of § 106.011 *et seq.*, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

1. For entry of judgment declaring that Florida Statute § 106.011 *et seq.* and the rules and regulations promulgated thereunder are unconstitutional on their face and as applied to the extent that they impose registration, reporting, and disclosure obligations for electioneering communications; constitute a prior restraint of political speech; impose funding or expenditure restrictions on when, how, and from whom contributions can be accepted or used; and impose disclaimer requirements on those who publish and distribute communications.
2. For entry of preliminary and permanent injunctions against the Defendants prohibiting the enforcement of these regulations, laws, rules, and policies;
3. For an award of attorney's fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and
4. For such further legal and equitable relief as the Court may deem just and proper.

Dated: October 8, 2008

Respectfully submitted,

INSTITUTE FOR JUSTICE

William H. Mellor*

Robert Gall*

Valerie J. Bayham*

901 N. Glebe Road, Suite 900

Arlington, VA 22203

Tel: (703) 682-9320

Fax: (703) 682-9321

Email: wmellor@ij.org, bgall@ij.org,
vbayham@ij.org

*Application for admission pending

Attorneys for Plaintiffs

By: 

Darren A. Schwartz

Florida Bar No. 0853747

RUMBERGER, KIRK & CALDWELL, P.A.

215 South Monroe Street

Suite 130 (32301)

Post Office Box 10507

Tallahassee, FL 32302

Tel: (850) 222-6550

Fax: (850) 222-8783

Email: dschwartz@rumberger.com

Local counsel for Plaintiffs