

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CHRISTIAN CIVIC LEAGUE OF)	
MAINE, INC.,)	
)	No. 1:06CV00614
Plaintiff,)	
)	EXHIBIT B
v.)	
)	
FEDERAL ELECTION COMMISSION)	
)	
Defendant.)	
)	

**DEFENDANT FEDERAL ELECTION COMMISSION'S
EXHIBIT B SUBMITTED IN SUPPORT OF ITS OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Michael Heath

From: Paulton, John [john.paulton@fottf.org]
Sent: Friday, March 24, 2006 1:26 PM
To: Gary Palmer; Jerry Cox; Ron Prentice; Curt Smith; Iowa Family Policy Center; Kentucky - The Family Foundation; Michael Heath; fthigpen@msfamily.org; repjeff@hotmail.com; Dave Bydalek; Len Deo; Bill Brooks; Phil Burreas; Michael Howden; Michael Geer; kelly@freemarket.org; Victoria Cobb
Cc: Brendt, Peter; Miller, Brad; Pfaff, Jim; Hupke, Chris; Blad, Erin; JBoppjr@aol.com
Subject: Possible legal action needed

Dear Executive Directors:

You are receiving this because you are in a state that could be affected by McCain-Feingold restrictions on Marriage Amendment lobbying ads that target U.S. senators who are on the ballot.

See the note below from our attorney, Jim Bopp, and respond to him (copying us) if you are willing to assist in this matter.

Thank you.

John Paulton

FROM JIM BOPP:

In the federal McCain-Feingold law passed in 2002 and reviewed by the U.S. Supreme Court in 2003, Congress prohibited corporations from running "electioneering communications," that is broadcast ads naming federal candidates within 30 days of a primary and 60 days of a general election in which the named candidate is on the ballot. This January in *Wisconsin Right to Life v. FEC*, the U.S. Supreme Court held that certain broadcast ads might be exempt from this prohibition, such as grass roots lobbying about upcoming votes in Congress, and directed the lower court to consider such exemption. I represent Wisconsin Right to Life and we are attempting to establish this exemption before the District Court in DC.

It is very unlikely that the *Wisconsin Right to Life* case, however, will be resolved before next fall and the Senate has scheduled a vote on the federal Marriage Amendment in June. Thus, any FPC or other group, which is planning to run broadcast ads within 30 days of a scheduled primary naming a federal candidate on the ballot, will likely be prohibited from doing so by this law. The states where broadcast ads would be effected are: AL, Ark, Calif, Idaho, Ind, Iowa, Ky, Maine, Miss, Mont, Neb, NJ, NM, NC, ND, Ohio, Ore, PA, Texas, Utah, WV, VA. The blackout periods are set out, by the FEC, at [Click here: FEC Electioneering Communications Periods](#).

We are willing to represent, at no charge to the group, any group whose planned broadcast ad falls within the blackout period. We would bring federal suit prior to the blackout period and seek an injunction to allow the ads to go forward. This may even involve an appeal to the U.S. Supreme Court (which would result in a landmark ruling). It would be very helpful to all groups which want to run such ads for some group to step up and do this. It could potentially clear the way for everyone to do such grass roots lobbying.

Anyone interested in this possibility should contact me or Richard Coleson at my law firm.

James Bopp, Jr.
BOPP, COLESON & BOSTROM
1 South 6th Street
Terre Haute, IN 47807
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DISTRICT OF COLUMBIA

CHRISTIAN CIVIC LEAGUE OF)	
MAINE, INC.,)	
)	No. 1:06CV00614
Plaintiff,)	
)	EXHIBIT C
v.)	
)	
FEDERAL ELECTION COMMISSION)	
)	
Defendant.)	
)	

**DEFENDANT FEDERAL ELECTION COMMISSION'S
EXHIBIT C SUBMITTED IN SUPPORT OF ITS OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Michael Heath

From: Michael Heath [msheath@pivot.net]
Sent: Friday, March 24, 2006 2:27 PM
To: 'jboppjr@aol.com'
Subject: Interested

I will run an ad in that period of time mentioning Olympia Snowe.

Michael S. Heath, Executive Director
Christian Civic League of Maine
70 Sewall Street
Augusta, ME 04330
v - 207-622-7634 X4
f - 207-621-0035
mike@cclmaine.org
www.cclmaine.org

On appeal, the Supreme Court held that McConnell did not purport to foreclose courts from considering all future as-applied challenges to BCRA's primary definition of "electioneering communication." WRTL, 2006 WL 152676, at *1. The Supreme Court found it unclear whether the district court's statement that WRTL's advertisements were the type of activity that was properly regulated under McConnell was intended to be an alternative ground for the dismissal of the case, so it vacated the judgment and remanded for the district court "to consider the merits of WRTL's as-applied challenge in the first instance." WRTL, 2006 WL 152676, at *1. The question of whether, under the rationale of McConnell, the "electioneering communication" provisions of BCRA are constitutional as applied to the advertisements WRTL wanted to run in 2004, is now pending on remand before the district court.

C. The Christian Civic League of Maine, Inc.

In its complaint, CCL describes itself as a nonprofit, nonstock Maine corporation interested in "laws protecting traditional marriage" and other public issues. Complaint ¶¶ 16, 20. Michael Heath has served as executive director of CCL since 1994. See Deposition of Michael Heath ("Heath Depo."), Exh. A at 8-9. Mr. Heath testified that one of CCL's main purposes is "to elect honest and competent public officials," and that CCL is "becoming more active in [its] efforts related to candidates." Id. at 14-15. See Exh. A-1 at 1 (CCL By-Laws).

1. How This Lawsuit Arose

CCL filed this lawsuit on March 31, 2006, one week after John Paulton, an official of the Colorado group Focus on the Family, sent an email to leaders of a number of organizations, including CCL's Michael Heath. See Exh. B; Heath Depo., Exh. A at 45-49, 55. There is no evidence that, before receiving this email, CCL had any plans to run broadcast advertising this year. See Heath Depo., Exh. A at 45-46.

The subject line in Paulton's email on March 24, 2006, was: "Possible legal action needed." Exh. B. The email explained that it was sent to these recipients "because [they were] in [states] that could be affected by McCain-Feingold restrictions on Marriage Amendment lobbying ads that target U.S. senators who are on the ballot." Id. Mr. Paulton referred to and attached a longer message from "our attorney, Jim Bopp," and asked that any interested persons respond to Mr. Bopp, copying Focus on the Family. Mr. Bopp's message first explained that WRTL would probably not be resolved before the fall, but that the Senate had scheduled a vote on the marriage amendment in June. Id. Mr. Bopp offered to seek a federal court injunction at no charge on behalf of "any group" that planned a "grass roots lobbying" ad during the electioneering communication periods, adding that "[t]his may even involve an appeal to the U.S. Supreme Court (which would result in a landmark ruling)." Id. He concluded that "[i]t would be very helpful ... for some group to step up and do this," and asked "[a]nyone interested in this possibility" to "contact me or Rich Coleson at my law firm." Id.

One hour later, Heath responded by email with a subject line entitled, "Interested"; the full text of the message stated, "I will run an ad in that period of time mentioning Olympia Snowe." See Exh. C; Heath Depo., Exh. A. at 56.² Soon after this email was sent, interactions occurred among CCL staff, counsel, and Focus on the Family. See Heath Depo., Exh. A at 56-60. Focus on the Family then sent CCL "hypothetical" information on advertising rates in Maine radio markets, and also provided CCL with the text of the "Crossroads" ad that was attached to plaintiff's complaint filed a few days later. See Heath Depo., Exh. A at 46, 51, 59; Exh. D. Prior

² Senator Snowe is running for re-election in 2006. The 2006 primary election in Maine is scheduled to occur on June 13, and the general election is scheduled for November 7, 2006. See <http://www.maine.gov/sos/cec/elec/2006elec.html>. Thus, the "electioneering communication" restrictions are in effect in Maine during the period May 14 to June 13, and during the period September 8 to November 7. See 2 U.S.C. 434(f)(3)(A)(i).

to this, CCL ads had been created by CCL's own personnel and consultants, including a Florida marketing firm. See Heath Depo., Exh. A at 32-33.

CCL has spent no money on the "Crossroads" ad, it currently lacks the \$5,000 to \$10,000 Focus on the Family estimates will be required to broadcast the ad, and CCL has no firm commitments from donors to pay for the campaign. See Heath Depo., Exh. A at 52, 54, 65-68, 121. On April 13, 2006 — 13 days after this lawsuit commenced and hours before Heath's deposition began — Heath and his counsel met with a potential funder who Heath testified "may" finance the ad. See id. at 54, 65-66. Heath testified that CCL has been experiencing a shortage of funds serious enough to force it to "cut the hours of some staff members and make changes in benefit plans." See id. at 73-74. Heath also testified that nothing had been done to record or produce the radio spot, that he did not know how much that would cost, that CCL has not contacted any radio stations, and that he could not say where or how often the ads would run. See id. at 51-52, 70.

The complaint alleges that CCL plans to run the radio ad attached as Exhibit A "and/or materially similar ads between May 10 and early June." Complaint ¶¶ 11, 13. The ad stresses the importance of "safeguard[ing] the traditional definition of marriage" through a federal constitutional amendment, and states in part:

Unfortunately, your senators voted against the Marriage Protection Amendment two years ago. Please call Sens. Snowe and Collins immediately and urge them to support the Marriage Protection Amendment when it comes to a vote in early June. Call the Capitol switchboard at 202-224-3121 and ask for your senators. Again, that's 202-224-3121.

The complaint also alleges that CCL "intends" to run "materially similar grass-roots lobbying ads" falling within the electioneering communications definition "on a range of issues in addition to laws protecting traditional marriage" in the electioneering communication periods prior to the November 7 general election and prior to later elections. Complaint ¶16. However, CCL's

executive director testified that CCL currently has no specific plans to run any other broadcast ads about the marriage amendment or any other issue. See Heath Depo., Exh. A at 74-75, 82-83. CCL does plan to communicate about the marriage amendment through the non-broadcast media it has used in the past. See id. at 75-76; infra pp. 11-13.

2. CCL's Finances and Related Organizations

CCL asserts in its Complaint that it is tax-exempt under Section 501(c)(4) of the Internal Revenue Code. Complaint at ¶ 20. CCL alleges no other facts about its finances, including the sources of its funds, and includes no affidavits or evidence of any kind to support its factual allegations. The Internal Revenue Service Form 990 that CCL filed in July 2005 for the 2004 fiscal year lists total revenue of \$238,464, and indicates that CCL is affiliated with a Section 501(c)(3) organization called the Christian Education League, Inc. ("CEL"). See Heath Depo., Exh. A-14 at 1, 5-6.

Although CCL alleges (Complaint ¶ 16) that it has no federal separate segregated fund (i.e., no federal political action committee, or "PAC"), CCL administers two state level PACs: the Christian Action League ("CAL") and the Coalition for Marriage ("CFM"), which operate from CCL's offices and whose activities are directed by Heath. See Heath Depo., Exh. A at 6-7, 86, 91-92, 95-96; Exh. A-9, A-11. CFM was formed on April 6, 2005, with the purpose to oppose same sex marriage. See Exh. A-11. CFM was created to support a 2005 Maine state ballot initiative to overturn Maine's gay rights law. See Heath Depo., Exh. A at 86, 96-97. Although state records indicate that CAL's PAC registration was filed on March 28, 2006 — three days before this lawsuit was filed — CAL was apparently founded in 1999 and has been politically active for some time. See Heath Depo., Exh. A at 90-95; Exh. A-9. CAL's stated purpose is to support "[c]andidates who support principles of the Christian Civic League of Maine." See Exh. A-9. The CFM website (www.coalitionformarriage.net) informs potential