United States District Court
Eastern District of North Carolina
Northern Division

Holly Lynn Koerber and **Committee for Truth in Politics, Inc.**, *Plaintiffs*, *v.* **Federal Election Commission**, *Defendant*.	**Case No.** _____

Motion to Expedite

Plaintiffs, Holly Lynn Koerber and Committee for Truth in Politics, Inc. ("CTP"), respectfully move to expedite this action. With this motion, Plaintiffs have filed their verified complaint, preliminary-injunction motion, memorandum in support of preliminary-injunction motion, and motion to consolidate the preliminary-injunction hearing with a trial on the merits.

Plaintiffs' complaint, preliminary-injunction motion, and memorandum in support of preliminary-injunction motion set forth how Defendant has violated Plaintiffs' rights to political speech. These violations of the First Amendment will continue to occur unless Defendant is enjoined.

The United States Supreme Court has held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634, 637 (4th Cir. 1999) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The Court has also recognized the need for rapid resolution of litigation in the First Amendment issue-advocay context by requiring special consideration for protecting free speech and speakers, for example, by requiring that standards of review "be objective, focusing on the

substance of the communication rather than amorphous considerations of intent and effect," and that there must be "minimal if any discovery, to allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation." *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652, 2655 (2007) ("*WRTL II*"); *see also North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274, 282 (4th Cir. 2008). In *WRTL II*, the Court spoke disapprovingly of the burdensome, time-consuming litigation that the plaintiff in that case had to endure. The Court rejected the defendant's contention that it could consider an orgainization's intent in evaluating the meaning of political speech. *See WRTL II*, 127 S. Ct. at 2666 n.5. The Supreme Court has thus come down on the side of expedition in cases, such as the present one, where issue advocacy is being restricted.

As set forth in Plaintiffs' verified complaint and preliminary-injunction motion and memorandum, the Federal Election Code threatens Plaintiffs' First Amendment rights. Certain questions of law, such as those affecting political speech, demand rapid resolution, because "timing is of the essence in politics. It is almost impossible to predict the political future; and when an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969) (Harlan, J., concurring). Based on the communications broadcast by CTP and its refusal to comply with the disclosure and reporting requirements, it is likely to be subject to investigations and fines by the Federal Election Commission. Absent appropriate judicial relief, Plaintiffs will be subject to the harms of investigations and severe penalties, and may be required to assume the severe burdens of complying with restrictions that Plaintiff has good reason to believe are unconstitutional as applied to it and its activities. These enforcement measures are imminent.

Plaintiff has not engaged in what *WRTL II* referred to as "campaign speech, or 'express

advocacy,' that mentions a candidate for federal office." *WRTL II*, 127 S. Ct. at 2659. *WRTL II* also called issue advocacy "political speech," *id.* at 2659, and held that in drawing lines in the First Amendment area courts must "err on the side of protecting political speech rather than suppressing it." *Id.* "Issue advocacy conveys information and educates. An issue ad's impact on an election, if it exists at all, will come only after the voters hear the information and choose — uninvited by the ad — to factor it into their voting decisions." *Id.* at 2667. *WRTL II* reaffirmed strong constitutional protection for issue advocacy, or political speech, and the sppech-protective analysis that it had articulated in *Buckley v. Valeo*, 424 U.S. 1 (1976). CTP wants to educate the general public on the public policy positions of Barack Obama. CTP has engaged in precisely the kind of political speech protected by the Supreme Court in *WRTL II*. The *Buckley-WRTL II* analysis controls here.

Each day the requested judicial relief is delayed further infringes upon Plaintiff's First Amendment rights. It is only a matter of time before they will be subject to investigations, fines, and other penalties. CTP has the right to "discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment." *WRTL II*, 127 S. Ct. at 2666 (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978)). Further, as set out in the motion to consolidate, this case turns on primarily legal issues, so there is no need for burdensome discovery, which results in a "severe burden on political speech." *Id.* at 2666 n.5. Time is of the essence.

For the foregoing reasons, Plaintiff respectfully requests that this case be expedited.

A proposed order is attached.

Dated: October 2, 2008

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion to Expedite was served by certified mail on the persons identified below on October 3, 2008. In addition, a courtesy copy was sent by email to the FEC at tduncan@fec.gov, dkolker@fec.gov, and kdeeley@fec.gov, and a courtesy copy was sent by FedEx overnight service to General Mukasey.

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