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Colorado Court of Appeals: Court of Appeals Case Nos. 08CA2689, 09CA0384	
Petitioner: COLORADO ETHICS WATCH, **v.** **Respondents:** SENATE MAJORITY FUND, LLC; COLORADO LEADERSHIP FUND, LLC; and OFFICE OF ADMINISTRATIVE COURTS.	**▲ COURT USE ONLY ▲**
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AMICUS CURIAE BRIEF OF THE CENTER FOR COMPETITIVE POLITICS

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g). It contains 4,448 words.

C.A.R. 28(k) does not apply to this brief.

Kathryn E. Biber

INTRODUCTION

The arguments made by Colorado Ethics Watch ("CEW") in this case are fundamentally flawed. In essence, CEW contends that the *less* a communication resembles express advocacy through the absence of words advocating electoral action, the *more* effective and dangerous the communication is, and the *more* it should be regulated. Under this unwise paradigm, so-called "express advocacy" can be mined from virtually all speech involving political or public issues. This is not only unworkable; it is unconstitutional. Accordingly, we urge this Court to uphold the decision of the Court of Appeals.

ARGUMENT

The United States Supreme Court has established a clear principle that "political speech must prevail against laws that would suppress it, whether by design or inadvertence." *Citizens United v. FEC*, -- U.S. --, --, 130 S. Ct. 876, 898 (2010). "The First Amendment protects speech and speaker, and the ideas that flow from each." *Id.* at 899; *FEC v. Wisconsin Right To Life, Inc. ("WRTL")*, 551 U.S. 449, 467 (2007). This approach reflects our national commitment to providing broad protections for the discussion and criticism of government policies, the government officials who formulate such policies, and public figures seeking elected office. Indeed, "[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United*, 130 S. Ct. at 898.

As a result, any analysis of a communication regarding public affairs must begin with the baseline assumption that the communication contains protected speech and is therefore *not* subject to regulation. In this case and all others, the *government agencies*, not the protected speakers, must bear the burden of proving that there is no other reasonable interpretation of a communication other than "express advocacy." *WRTL*, 551 U.S. at 474. Shifting the burden of proof – essentially creating a "guilty until proven innocent" standard for political and issue speech – violates the First Amendment.

When these basic principles are applied to the current matter, the flaws in CEW's proposed interpretation of Colorado law become apparent. First, CEW fails to address the fact that *Buckley v. Valeo's* vagueness test remains a constitutional touchstone, especially in cases involving state statutory interpretation, and neither *McConnell* nor *Wisconsin Right to Life* disturbed this standard. Second, CEW inappropriately encourages this Court to establish contextual standards that look beyond the four corners of a communication, an approach repeatedly condemned by the Supreme Court. Third, CEW misunderstands, and therefore inaptly invokes, the Federal Election Commission's ("FEC") alternate definition of "expressly advocating." As discussed herein, in similar cases, courts across the country have rejected the same arguments CEW puts forth here.

I. *Buckley*'s Vagueness Test Remains a Constitutional Touchstone and Neither *McConnell* nor *Wisconsin Right to Life* Disturbed this Standard.

In *Buckley v. Valeo*, the Supreme Court minced no words in setting forth the basic parameters of "express advocacy": express advocacy encompasses only those communications that in "express terms advocate the election or defeat of a clearly identified candidate for federal office[.]" *Buckley v. Valeo*, 424 U.S. 1, 43-44 & n.52 (1976).[1] This straightforward definition – a guard against unconstitutional vagueness – was not rewritten by *McConnell v. FEC*, 540 U.S. 93 (2003), the first Supreme Court case to challenge the federal Bipartisan Campaign Reform Act of 2002 ("BCRA"). Nor was it changed by *Wisconsin Right to Life*, an as-applied challenge in which the Supreme Court drastically narrowed the scope of the federal "electioneering communications" statute established in BCRA.

With respect to *McConnell*, the Fifth Circuit has succinctly described why the case has no impact on the *Buckley* vagueness test:

> We are aware of the *McConnell* Court's assertions . . . that "the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad," that "*Buckley's* magic-words requirement is functionally meaningless,"

[1] As the Supreme Court made clear, the purpose of such a brightline rule was to avoid unconstitutional vagueness. Thus, the Court's construction of the federal statute restricted "the application of [the statute] to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Buckley v. Valeo*, 424 U.S. 1, 43-44 n.52 (1976).

> and that "*Buckley's* express advocacy line . . . has not aided the legislative effort to combat real or apparent corruption." *Those statements, however, were made in the context of the Court's determination that a distinction between express advocacy and issue advocacy is not constitutionally mandated. The Court said nothing about the continuing relevance of the magic words requirement as a tool of statutory construction where a court is dealing with a vague campaign finance regulation.*

Ctr. for Individual Freedom v. Carmouche, 449 F.3d 655, 666 n.7 (5th Cir. 2006).[2] The same logic squarely applies to the issues before the Court in this matter.

Likewise, nothing in *Wisconsin Right to Life* amended the *Buckley* standard. Instead, *Wisconsin Right to Life* dealt exclusively with BCRA's electioneering communications statute. The provision prohibited corporations and unions from using their general treasury funds to make expenditures for "any broadcast, cable, or satellite communication that refers to a candidate for federal office and that is aired within 30 days of a federal primary election or 60 days of a federal general election in the jurisdiction in which that candidate is running for office." *WRTL*, 551 U.S. at

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[2] Several other circuit courts have agreed that the "express advocacy" requirement survived *McConnell* intact in cases such as this one involving state statutes. *See, e.g., Anderson v. Spear*, 356 F.3d 651, 664 (6th Cir. 2004) (noting *McConnell* "left intact the ability of courts to make distinctions between express advocacy and issue advocacy, where such distinctions are necessary to cure vagueness and overbreadth in statutes which regulate more speech than that for which the legislature has established a significant governmental interest.").

457-58 (citing 2 U.S.C. § 434(f)(3)(A)).[3]

The plaintiff in *WRTL* argued that its broadcast advertisements could not constitutionally be proscribed under BCRA, despite its status as an incorporated entity. Although the group's advertisements ran during the thirty/sixty day period set forth in the statute, and although they indeed referenced a candidate for federal office, the ads were purely grassroots communications urging citizens of Wisconsin to contact legislators in Washington. In other words, the ads were issue advocacy, and they did not advocate for the election or defeat of a particular candidate.

Even in the narrow realm of electioneering communications (as defined by federal statute), the Court refused "to adopt a test for as-applied challenges turning on the speaker's intent to affect an election. The test to distinguish constitutionally protected political speech from speech that BCRA may proscribe should provide a safe harbor for those who wish to exercise First Amendment rights. . . . A test turning on the intent of the speaker does not remotely fit the bill." *Id.* at 467-68. Further constricting the scope of communications that could be regulated, the Court also explained that "an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or

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[3] Notably, there is nothing about this definition that is vague – communicators that named a candidate during the thirty/sixty day period were covered by the definition. However, as the *WRTL* Court made clear, the statute failed for overbreadth reasons.

against a specific candidate," and, that under this standard, the particular advertisements in question were "plainly not the functional equivalent of express advocacy." *Id.* at 469-70.[4]

CEW is wrong to claim that this language, when properly interpreted, supports its argument. The *context* of the Court's *WRTL* analysis is of paramount importance. First, even within the small category of communications falling within the federal definition of "electioneering communications," a subjective intent test was and remains constitutionally unacceptable. It is thus clear that CEW's attempt to apply such a subjective standard to an even wider array of communications – all "express advocacy" generally – is unconstitutional. To the extent the "functional equivalent" of express advocacy is something broader than express advocacy itself, unless regulators pair CEW's desired restriction with temporal and reference limitations, governmental bodies cannot constitutionally regulate so broadly. Second, as the Supreme Court has made clear, only objective, not subjective, considerations may determine when the government can regulate political speech. Neither the speaker's subjective intent to influence an election, nor the speaker's identity, is valid criteria in

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[4] Later, in *Citizens United v. FEC*, the Court overturned BCRA's corporate ban on electioneering communications altogether, holding "that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." 130 S. Ct. 876, 913 (2010).

this regard.

II. Regulatory Agencies and Courts May Examine *Only* the Four Corners of a Communication.

Campaign finance reform groups have repeatedly proposed that regulatory agencies and courts consider factors outside the four corners of a communication, including factors completely beyond the control of a First Amendment speaker. Indeed, in *WRTL*, the FEC and intervenors attempted to argue that the most effective campaign ads, and thus the ads most worthy of regulation, are the ones that avoid *Buckley's* "magic words." *Id.* at 471. They even used the testimony of an expert who opined that WRTL's ads were especially effective campaign ads "because they are 'subtl[e],' focusing on issues rather than simply exhorting the electorate to vote against Senator Feingold." *Id.* (citations omitted). The Court emphatically closed the door on this type of flawed analysis, noting that it would "effectively eliminate First Amendment protections for genuine issue ads[.]" *Id.* Instead, regulators must begin and end with an examination of the four corners of a communication. *See FEC v. Christian Action Network*, 894 F. Supp. 946 (W.D. Va. 1995) (declining to examine contextual factors outside the actual words of a communication).

A. Contextual Factors May Not Be the Basis for Regulation.

As the Supreme Court has made clear, "[d]iscussion of issues cannot be suppressed simply because the issues may also be pertinent in an election[,]" and,

consequently, contextual factors may not be the basis for regulation of First Amendment speech. *WRTL*, 551 U.S. at 474. Specifically, the Court rebuffed three external factors proposed by the FEC in *WRTL*. First, the Court concluded that a group does not forfeit its right to speak out on issues by engaging in other political activities. Such behavior only indicates a group's subjective intent, which is irrelevant. *Id.* at 471. Second, the Court reasoned that the timing of a communication cannot be considered when determining whether the communication constitutes express advocacy, *id.* at 472, and "WRTL's decision not to continue running its ads after the blackout period does not support an inference that the ads were the functional equivalent of electioneering[,]" *id.* at 473. Third, the Court concluded that even where a communication references a website that contains express advocacy, that fact has no bearing on analyzing the communication itself: "Any express advocacy on the website, already one step removed from the text of the ads themselves, certainly does not render an interpretation of the ads as genuine issue ads unreasonable." *Id.* at 473. Indeed, the only relevant factor in an inquiry concerning express advocacy or its functional equivalent is an objective review of the communication at issue, and "there generally should be no discovery or inquiry into . . . 'contextual' factors[.]" *Id.* at 474 n.7.

B. Intent and Effect May Not Be the Basis for Regulation.

Contrary to CEW's arguments, the Supreme Court in *WRTL* specifically rejected any test that takes into consideration the intent of the speaker or the effect of the communication for purposes of distinguishing between the discussion of issues and candidates. *WRTL*, 551 U.S. at 467 ("More importantly, this Court in *Buckley* had already rejected an intent-and-effect test for distinguishing between discussions of issues and candidates.") (citations omitted). Inquiries focused on a speaker's intent could create the "bizarre result that identical ads aired at the same time could be protected speech for one speaker, while leading to criminal penalties for another." *Id.* at 468. Tests based on a communication's effect on an election or on a particular segment of the target audience "puts the speaker . . . wholly at the mercy of the varied understanding of his hearers." *Id.* at 469 (citations omitted). Such tests would also lead to "expert-driven" litigation that will "unquestionably chill a substantial amount of political speech." *Id.* In short, the intent of the speaker and the effect of the communications are not permissible factors in determining whether a communication constitutes express advocacy. *Buckley*, 424 U.S. at 43; *WRTL*, 551 U.S. at 467-70.

III. CEW's Reliance on the FEC's Alternate Definition of "Expressly Advocating" Is Misplaced.

The FEC's "alternate" definition of "expressly advocating" located at 11 C.F.R. § 100.22(b) suggests, notwithstanding the commands of *Buckley*, that in the absence of

explicit words advocating the election or defeat of a clearly identified federal candidate, a communication may still be "expressly advocating." But the communication must meet a very high burden: taken as a whole and with limited reference to external events, (1) the communication must be unmistakable, unambiguous, and suggestive of only one meaning; and (2) "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s)[.]"[5] 11 C.F.R. § 100.22(b).

Notwithstanding these strictures, at least three federal courts have held Section 100.22(b) invalid and unenforceable. *See, e.g., Maine Right to Life Comm., Inc. v. FEC*, 98 F.3d 1 (1st Cir. 1996); *Virginia Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 392 (4th Cir. 2001); *Right to Life of Dutchess County, Inc. v. FEC*, 6 F. Supp. 2d 248 (S.D.N.Y. 1998). In addition, as made clear in Section I, the express advocacy standard established in *Buckley* continues to limit the reach of vague campaign finance statutes, and the *McConnell* Court neither changed the basic definition of "express advocacy" nor resurrected Section 100.22(b) from constitutional infirmity.

Nonetheless, if this Court elects to use the FEC's alternate definition of "expressly advocating," the Court should note that the FEC's published explanation of the rule makes clear that regulators must begin with the actual *words* of a

[5] Contrary to CEW's argument, Section 100.22(b)(1) and (b)(2) are *two distinct separate requirements* that cannot and should not be melded.

communication, turning to other factors only if the communication lacks a "call to action" such as contacting a legislator. *See* 60 Fed. Reg. 35292 (July 6, 1995). It is true that according to the FEC's interpretation, "[c]ommunications discussing or commenting on a candidate's character, qualifications, or accomplishments are considered express advocacy under new Section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question." *Id.* at 35295. But again, this standard applies only when a communication contains "*no specific call to take action* on any issue or to vote for a candidate[.]" *Id.* (emphasis added). In contrast, communications containing a non-electoral call to action, such as contacting the individual identified in the communication, *must instead be analyzed under a four-corners reading of the communication in question.*

The FEC also noted that "the revised rules in Section 100.22(b) do not affect pure issue advocacy, such as attempts to create support for specific legislation, or purely *educational messages.*" *Id.* (emphasis added). The FEC provided two message examples to illustrate express advocacy versus some other type of message:

> For example, the rules do not preclude a message made in close proximity to a Presidential election that only asked the audience to call the President and urge him to veto a particular bill that has just been passed, if the message did not refer to the upcoming election or encourage election-related actions. In contrast, under these rules, it is express advocacy if the communication described above *urged the audience to vote against the President* if the President does not veto the bill in question.

Id. (emphasis added). Thus, Section 100.22(b) emphasizes that "the electoral portion of the communication must be unmistakable, unambiguous, and suggestive of only one meaning, and reasonable minds could not differ as to whether it encourages election or defeat of candidates or *some other type of non-electoral action.*" *Id.* (emphasis added). It is undeniable that any non-electoral request for action such as calling the government official or public figure referenced in the communication is – at the very least – susceptible to more than one meaning under Section 100.22(b)'s reasonableness standard. Moreover, since the electoral portion must be unmistakable, unambiguous, and suggestive of only one meaning, any doubt concerning the meaning of a phrase or word must be resolved in favor of finding *no* express advocacy. Accordingly, if a communication contains an explicit call to take some type of non-electoral action, this Court cannot import a meaning to the words that is incompatible with the clear meaning of the words. *See FEC v. Furgatch*, 807 F.2d 857, 863-64 (9th Cir. 1987).

Even in *Furgatch*, the very Ninth Circuit case the FEC cites as the legal basis for Section 100.22(b), the court commanded that the analysis of any communication under the case's express advocacy test must focus on the actual action advocated. *See* 807 F.2d at 864-65. As the court reasoned, "[t]he pivotal question is not what the reader should prevent Jimmy Carter from doing, but what the reader should do to

prevent it. The words we focus on are 'don't let him.'" *Id.* In other words, "context cannot supply a meaning that is incompatible with, or simply unrelated to, the clear import of the words," and if "*any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements.*" *Id.* (emphasis added).

IV. Other Courts Align with the Colorado Court of Appeals.

To ensure that campaign finance laws do not sweep so broadly as to restrict constitutionally-protected political speech, courts across the country, like the Colorado Court of Appeals below, have held that "express advocacy" must be narrowly defined to include only those communications that use specific words advocating the election or defeat of a clearly identified candidate for public office. *See, e.g., N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 283 (4th Cir. 2008); *Nat'l Right To Work Legal Def. and Educ. Found., Inc. v. Herbert*, 581 F. Supp. 2d. 1132, 1149 (D. Utah 2008); *Colo. Ethics Watch v. Senate Majority Fund, LLC,* Nos. 08CA2689 & 09CA0384, 2010 Colo. App. LEXIS 368, at *23 (Colo. App. March 18, 2010). Similarly, following the U.S. Supreme Court's rationale in *WRTL*., these courts have reasoned that legislatures may regulate campaign communications that are "the functional equivalent of express advocacy" only when they meet the definition of an "electioneering communication." CEW's attempt to collapse these two distinct categories of political communications finds no support in the case law.

For example, the U.S. District Court for the District of Utah recently held that a non-profit legal aid organization that aired advertisements informing teachers of their legal right not to sign a petition regarding a ballot initiative was not "expressly advocating" against the ballot initiative, and therefore the organization could not be forced to register as a political committee under Utah's campaign finance laws. *See Herbert*, 581 F. Supp. 2d at 1149. In so holding, the court reasoned that the advertisements did not fall within the two types of campaign communications that are constitutionally regulable: (1) those that utilize the specific words detailed in *Buckley*; and (2) those that are the "functional equivalent of express advocacy." *Id.* Importantly, the court noted that this second category of regulable communications "has been narrowly circumscribed" and must be an "electioneering communication" which refers to a clearly identified candidate within thirty days of a primary or sixty days of a general election. *Id.* at 1144. Because the ads in question ran several months before the election and were thus not electioneering communications, the court refused to apply the "functional equivalent" label to the communications. *Id.* at 1150. Indeed, the court noted that *McConnell* "did not overturn *Buckley's* unambiguously campaign related standard. To the contrary, *McConnell* found that electioneering communications *as defined under BCRA* were the functional equivalent of express

advocacy, and thus were unambiguously campaign related." *Id.* at 1149 n.9 (citing *McConnell,* 540 U.S. at 206) (emphasis added).

Using an identical rationale, the U.S. Court of Appeals for the Fourth Circuit struck down a provision in North Carolina's General Statutes that prescribed a two-pronged, context-based approach to determine whether issue advocacy communications that "support[ ] or oppose[ ] the nomination or election of" a particular candidate could be constitutionally regulated. *Leake*, 525 F.3d at 280. The Court reasoned that the standard "sweeps far more broadly than WRTL's 'functional equivalent of express advocacy' test," *id.* at 297, which is a "narrowly circumscribed" category that "must qualify as an 'electioneering communication,' defined by [BCRA] as a 'broadcast, cable, or satellite communication' that refers to a 'clearly identified candidate' within sixty days of a general election or thirty days of a primary election." *Id.* at 282 (quoting *WRTL*, 551 U.S. 449, 474 n.7).

Because the North Carolina statute "does not identify speech as regulable by delineating election-related words or phrases," the court noted that it "regulates more than 'express advocacy'" and would be constitutional only if the statute fell within the "ambit of the Supreme Court's definition of the 'functional equivalent of express advocacy,'" which is severely circumscribed and must meet both "BCRA's definition of 'electioneering communication'" and have "no reasonable interpretation other than

as an appeal to vote for or against a specific candidate." *Id.* at 283 (internal quotation omitted).

Courts that have sought to regulate the "functional equivalent" of express advocacy have done so only in the context of "electioneering communications." *See, e.g., N.M. Youth Organized v. Herrera ("NMYO")*, 611 F.3d 669 (10th Cir. 2010); *see also Ohio Right to Life Soc'y, Inc. v. Ohio Elections Comm'n, et al.*, No. 2:08-cv-00492, 2008 WL 4186312, at *1 (S.D. Ohio, Sept. 5, 2008). This is a crucial distinction: as the Supreme Court made clear in *McConnell* and *WRTL*, it is the communication's proximity to the upcoming election that provides the government with an interest sufficient to support the regulation of what *Buckley* has held is otherwise constitutionally-protected political speech. *See McConnell*, 540 U.S. 93, 204-206; *WRTL*, 551 U.S. 449, 478. *See also NYMO*, 611 F.3d at 669; *Ohio Right to Life*, 2008 WL 4186312, at *7.

For example, in *Ohio Right to Life*, a plaintiff non-profit organization sought to air television advertisements prior to Ohio's general election regarding pending state legislation that would ban the practice of human cloning. The ads urged concerned individuals to call legislators to request action on the legislation. *Ohio Right to Life*, 2008 WL 4186312, at *1. The non-profit sought to enjoin the Ohio Secretary of State from enforcing Ohio's electioneering communications prohibition, which, like the

federal provision at issue in *WRTL*, would have prohibited the group from using corporate funds for communications mentioning candidates in the weeks before an election. *Id.* at *2. Adopting the rationale of *WRTL*, the district court found that the communications were not "expressly advocating" the election or defeat of a clearly identified candidate. *See id.* at *7. Although the court applied the "functional equivalent" standard, it did so *only with respect to communications meeting the definition of "electioneering communications." See id.*[6]

Any reliance by CEW on the definition of "express advocacy" contained in the campaign finance laws of other western states would also be misplaced. Although Arizona's statute defines "express[ ] advoc[acy]" in a manner that functionally codifies the rule that Colorado Ethics Watch would like this court to adopt, *see* A.R.S. §16-901.01, a recent Arizona court decision expressed concern that the law might be "unconstitutionally vague and over broad." *See Scottsdale Area Chamber of Commerce v. City of Scottsdale*, No. LC2010-000008—001 DT, slip. op. at 3 (Ariz. Jan. 31, 2011). Examining television ads and a direct mailer distributed by an Arizona non-profit corporation that clearly identified four candidates for Scottsdale city office "who

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[6] Unfortunately, the Tenth Circuit recently muddled this distinction, incorrectly merging the "functional equivalent" and "express advocacy" tests in dicta. *See N.M. Youth Organized v. Herrera ("NMYO")*, 611 F.3d 669, 674 (10th Cir. 2010). *NYMO's* dicta does not control here, however, as that case dealt exclusively with whether New Mexico could regulate organizations whose "major purpose" was not the nomination or election of a candidate, and the matter was resolved solely on those grounds.

support Scottsdale's Quality of Life," the court concluded that such communications did not constitute "express advocacy" as defined under Arizona law. *See id.* Further, the court held that even if the advertisements were considered to be "express advocacy," they would fall within the statute's safe harbor provisions.[7] *See id.* If the advertisements did not fall within the safe harbor, the court correctly noted, the state's definition of "express advocacy" was likely constitutionally infirm.[8] *See id.*

CONCLUSION

For the reasons set forth above, we respectfully request that this Court leave intact the decision of the Court of Appeals.

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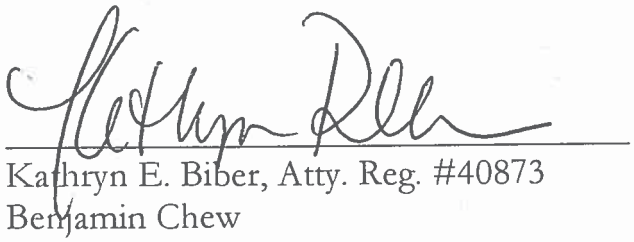
[7] Arizona's safe harbor provisions allow that, in the sixteen-week period preceding a general election, a public communication referring to "one or more clearly identified candidates and targeted to the electorate of that candidate(s)" that "can have no reasonable meaning other than to advocate the election or defeat of the candidate" shall not be construed as "express[ ] advoca[cy]" merely because it presents information about the voting record or position on a campaign issue of three or more candidates." A.R.S. §16-901.01.A(2)(A),(B).

[8] With respect to the regulations of other states, a regulation adopted last year by California's Fair Political Practices Commission expanding the definition of "express advocacy" to reach beyond *Buckley*'s brightline vagueness test to include ads that are the "functional equivalent" of express advocacy is fundamentally flawed and should not be emulated. *See* Interpreting "Express Advocacy" In The Wake Of Citizens United, FPPC Meeting Agenda Notice (July 19, 2010) (to be codified at CAL. CODE REGS. tit. 2, § 18225(b)(2) (2011). In writing the new rule, California regulators were proceeding from a flawed interpretation of *McConnell*, *WRTL*, and ultimately *Citizens United v. FEC*. As discussed in detail above, nothing in this line of cases reconsidered the scope of express advocacy supporting the FPPC's revised interpretation of the term.

Respectfully submitted this 4th day of April 2011.



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CERTIFICATE OF SERVICE

I certify that on the 4th day of April, 2011, a true and correct copy of the foregoing AMICUS CURIAE BRIEF OF CENTER FOR COMPETITIVE POLITICS was filed and deposited into the U.S. mail, first class postage paid, to:

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