

2. As a political committee, COPE is required to, and does, file reports listing all “expenditures” with the Commonwealth under the Pennsylvania Election Code, 25 P.S. § 3241, *et seq.* (“Pennsylvania Code”), and with the Philadelphia Board of Ethics under the Philadelphia City Code (“City Code”), § 20-1006.

3. Both the Pennsylvania Code and City Code define “expenditure” in broad, vague terms as the payment of any thing of monetary value “for the purpose of influencing an election.” 25 P.S. § 3241(d)(1); Phila. Code § 20-1001(10).

4. Under the Pennsylvania Code, COPE is required to maintain “vouchers for all sums expended amounting to more than twenty-five dollars (\$25).” All such vouchers are subject to mandatory disclosure and public inspection by any person filing a written request. 25 P.S. § 3246(c).

5. As a political committee, COPE makes a variety of expenditures, some of which are direct expenditures expressly advocating a particular candidate, while others are of a more general, issue-oriented nature. The more general expenditures are not made to expressly advocate the election of a specific candidate. Rather, COPE’s general expenditures are directed toward advocating non-candidate specific issues during the election season.

6. All of COPE’s expenditures, including expenditures advocating non-candidate specific issues, are made “for the purpose of influencing elections.” Thus, according to the broad and vague definitions in the Pennsylvania Code and City Code, all of COPE’s “expenditures” are subject to mandatory public reporting and disclosure.

7. Such broad mandatory reporting and disclosure requirements are unconstitutional and violate COPE’s fundamental rights under the First Amendment to free speech and free

association. The United States Supreme Court has made it clear that regulations on expenditures advocating non-candidate specific issues (*i.e.*, “issue advocacy”) are an unconstitutional abridgement on First Amendment rights, even if done so as to political committees that may also engage in candidate-specific advocacy.

8. Specifically, the Court in *Buckley v. Valeo* held that statutory provisions such as those at issue here, which seek to regulate all “expenditures” made for the “purpose of influencing elections,” are overly broad and unconstitutionally vague to the extent they seek to regulate expenditures for “issue advocacy,” which may “influence the outcome of an election,” but do not “expressly advocate” for a particular candidate.

9. Recently, the Philadelphia Board of Ethics, by and through its Chairman, J. Shane Creamer, Jr., Esquire, has submitted a written request under Section 3246(c) of the Pennsylvania Code, demanding COPE produce all of its “vouchers” evidencing its “expenditures” for the 2007 election cycle.

10. While COPE has sought clarification from Mr. Creamer and the Commonwealth as to the scope of the request and whether COPE is required to disclose its “issue advocacy” type expenditures, COPE has been told that the request calls for each and every single expenditure made “for the purpose of influencing an election,” including those expenditures advocating only general, non-candidate specific issues.

11. In a good faith effort to comply with so much of the statute that may be constitutional under *Buckley* and its progeny, COPE has agreed to turn over vouchers relating to all candidate specific expenditures.

12. Given the broad nature of the Board's request, and the vague statutory provisions under which it is made, any effort to force COPE to comply with the balance of such request would be an unconstitutional exercise of the government's power in violation of COPE's fundamental rights to speak freely about important public issues.

13. Accordingly, proceeding under the Civil Rights Act, 42 U.S.C. § 1983, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the U.S. Constitution itself, COPE seeks injunctive, declaratory, and other appropriate relief which prohibits the Defendants from enforcing the overly broad, vague and unconstitutional provisions of the Pennsylvania Code and City Code which seek to regulate COPE's "issue advocacy" political expenditures.

JURISDICTION AND VENUE

14. Because this action arises under the Constitution and laws of the United States, this Court has federal question jurisdiction under 28 U.S.C. § 1331. Because this action seeks to redress the deprivation of civil rights, this Court also has jurisdiction under 28 U.S.C. § 1343(a)(3). Because certain Defendants reside in this District, a substantial part of the events or omissions underlying the claim occurred here, and COPE's political expenditures occurred here, venue is proper under 28 U.S.C. § 1391(b).

PARTIES

15. Plaintiff COPE is an organization made up of citizens who are sympathetic to the cause of the American worker, and in that regard, COPE seeks to focus public, legislative and judicial attention on issues which impact the American labor force.

16. COPE is a corporation organized under the laws of the Commonwealth of Pennsylvania with its headquarters at 1015 Chestnut Street, Philadelphia, Pennsylvania 19107.

17. Defendants are legally responsible for enforcing the laws of the Commonwealth of Pennsylvania and/or the City of Philadelphia.

18. The Philadelphia Board of Ethics and J. Shane Creamer, Jr., its Chairman, are responsible for enforcing the provisions of the Philadelphia City Code related to ethics in the electoral process, including the provisions mandating the public reporting and disclosure of “expenditures” made “for the purpose of influencing elections” under the Philadelphia City Code, § 20-1000, *et seq.* and § 20-600, *et seq.*

19. Defendant The Philadelphia Board of Ethics has its principal office at 1441 Sansom Street, 2nd Floor, Philadelphia, Pennsylvania 19102.

20. Defendant J. Shane Creamer, Jr. as Chairman of the Board, conducts his duties at the Board’s offices located on 1441 Sansom Street, 2nd Floor, Philadelphia, Pennsylvania 19102.

21. Lynne Abraham is the District Attorney for the City of Philadelphia. She is given concurrent power to prosecute violations of the Pennsylvania Election Code, 25 P.S. § 3260b(c). She resides in Philadelphia, Pennsylvania.

22. Defendant Thomas Corbett is the Attorney General of the Commonwealth of Pennsylvania. He is given the power to prosecute violations of the Pennsylvania Election Code, 25 P.S. § 3260b(c). He resides in Glenshaw, Pennsylvania.

23. Defendant Pedro A. Cortes is the Secretary of the Commonwealth of Pennsylvania. He is charged with investigating reports filed pursuant to Pennsylvania’s Election Code, as well as alleged failures to so file by 25 P.S. § 3259(6). He also has the power to report violations “to the appropriate law enforcement authorities,” 25 P.S. § 3259(7). He resides in Harrisburg, Pennsylvania.

24. The Commonwealth of Pennsylvania cannot be named as a defendant without its consent due to the Eleventh Amendment to the United States Constitution. The individual Defendants District Attorney Abraham, Attorney General Corbett, and Secretary Cortes are named pursuant to the doctrine *Ex parte Young*. Plaintiff would consent to the substitution of the Commonwealth if it wishes to subject itself to suit directly, waiving the Eleventh Amendment, sovereign immunity and related defenses.

THE CHALLENGED LAWS

25. Pennsylvania has adopted a complex statute regulating various aspects of the election process. This statute is referred to generally as the Pennsylvania Election Code, 25 P.S. § 3241, *et seq.*

26. One of the ways in which the Pennsylvania Election Code regulates the election process is by requiring candidates and political committees to report certain “expenditures.” In this regard, Section 3246(a) requires “political committees” to file “reports of receipts and *expenditures* on forms, designed by the Secretary of the Commonwealth, if the amount received or expended or liabilities incurred shall exceed the sum of two hundred fifty dollars.” 25 P.S. § 3246(a)(emphasis added).

27. Section 3246(b) provides the type of specific information to be included in such “reports,” which must include “each and every *expenditure*, the date made, the full name and address of the person to whom made and the purpose for which such expenditure was made.” 25 P.S. § 3246(b)(4)(emphasis added).

28. The Election Code defines “political committee” as “any committee, club, association or other group of persons which receives contributions or makes *expenditures*.” 25

P.S. §3241(h). The definition of “expenditure” includes:

(1) the payment, distribution, loan or advancement of money or any valuable thing by a candidate, *political committee* or other person *for the purpose of influencing the outcome of an election*;

25 P.S. § 3241(d)(emphasis added).

29. Section 3246(c) of the Election Code requires “political committees” to retain “vouchers or copies of vouchers for all sums expended amounting to more than twenty-five dollars (\$25) [which] shall be available for public inspection and copying as herein provided.”

25 P.S. § 3246(c).

30. The Election Code further provides a specific process by which any person can request a political committee to produce its expenditure vouchers:

Any person may inspect or copy such vouchers or copies thereof by filing a written request with the appropriate supervisory office which shall notify the candidate or *political committee* of such request. The candidate or political committee shall have the option of either forwarding such vouchers or copy of the same to the supervisor for such purpose or making the vouchers or copy of the same available to the requesting person.

25 P.S. § 3246(c)(emphasis added).

31. The mechanism for enforcement of the above reporting and disclosure requirements is an audit by way of a petition to the Court of Common Pleas under 25 P.S. § 3256(a). If that audit results in a determination by the court that there has been a violation of any provision of the Election Code, the trial court must certify its decision to the appropriate prosecutorial officer who shall institute criminal proceedings as deemed necessary. *See* 25 P.S. § 3256(b).

32. The City Code contains analogous reporting provisions which parallel the Election Code's. For example, Section 20-1006 of the City Code provides that:

Whenever a candidate, treasurer of a political committee or other person files a required report of receipts and expenditures with the City Commissioners pursuant to Article XVI of the Pennsylvania Election Code (25 P.S. § 3241, *et seq.*) . . . such candidate, treasurer or other person shall at the same time file with the Board of Ethics a copy of all information set forth in such report, in an electronic format mandated by the Board of Ethics.

Phila. City Code § 20-1006.

33. Likewise, the City Code contains a substantially similar definition of "expenditure" as that which is set forth in the Election Code,

The payment, distribution, loan or advancement of money or any valuable thing by a candidate, political committee or other person *for the purpose of influencing the outcome of a covered election.*

Phila. City Code § 20-1001(10)(emphasis added).

34. Under the City Code, in the event a political committee fails to comply with any of the Code's provisions, including the above reporting requirements, the political committee is subject to regulatory civil fines in the amount of \$1,500 for each such violation, and any person found in violation would be forever disqualified from holding any elected or appointed City office or employment. *See* Phila. City Code § 20-1008; § 20-612(1).

35. Thus, under the above statutory framework, all "political committees" such as COPE must disclose all of their "expenditures" for the "purpose of influencing elections" in "reports" which must be filed with the Commonwealth and the Board of Ethics. Further, under Section 3246(c) of the Election Code, all vouchers for such expenditures exceeding twenty-five dollars (\$25) are subject to mandatory public disclosure and inspection. Failure to comply with these statutory provisions would subject a political committee or individual to both civil and

criminal sanctions, as well as the potential disbarment from holding any City office or employment.

UNCONSTITUTIONAL ENFORCEMENT OF THE CHALLENGED LAWS

36. On November 30, 2007, Defendant J. Shane Creamer, Jr., as Chairman and Executive Director of the Philadelphia Board of Ethics, sent a letter to the Pennsylvania Department of State, Bureau of Campaign Finance & Lobbying Disclosure ("Bureau"), "requesting [pursuant to 25 P.S. § 3246(c)] the vouchers or copies of vouchers for all sums expended amounting to more than twenty-five dollars (\$25) from January 1, 2007 through November 26, 2007" from the political committee COPE. A true and correct copy of said November 30, 2007 letter is attached hereto as Exhibit "A."

37. On December 6, 2007, COPE received a letter from the Bureau concerning Mr. Creamer's request pursuant to Section 3246(c), in which COPE was informed that "copies of vouchers must be provided to the requestor, or forwarded to [the Bureau] no later than January 4, 2008." A true and correct copy of said December 6, 2007 letter is attached hereto as Exhibit "B." (The letter was addressed to John Dougherty, who is the former treasurer of COPE. Its current treasurer is Michael Hnatkowsky.)

38. Attempting to fully cooperate with both the Bureau and Mr. Creamer, COPE's counsel spoke and personally met with Mr. Creamer and other members of the Board of Ethics on several occasions in an attempt to further clarify the scope of the request.

39. During such encounters, COPE, through its counsel, explained that COPE makes a variety of expenditures, which could be deemed "for the purpose of influencing elections," but do not "expressly advocate" for a particular candidate.

40. COPE sought an agreement in this regard that any vouchers subject to the requested inspection would only include expenses directed to specific candidates, but not include the broader category of expenses for “issue advocacy,” and based its request on a detailed recitation of the holding in *Buckley v. Valeo*, 424 U.S. 1 (1976)(hereinafter “*Buckley*”).

41. COPE’s requested limitation was refused, and the Board advised that it wanted all vouchers for every single COPE “expenditure” pursuant to the vague, overly broad and unconstitutional definition set forth the Election Code and City Code. The Philadelphia Board of Ethics thus rejected COPE’s efforts to narrow the scope of the request, and again threatened COPE with enforcement penalties. The Board also rejected COPE’s interpretation of *Buckley*.

42. Nevertheless, so as to make a good faith effort to comply with its obligations under both Election Code and City Code, on February 1, 2008, COPE’s counsel sent Mr. Creamer a letter, informing him of COPE’s willingness to produce to the Board all vouchers for expenditures which were made directly to candidates, and thus “expressly advocated” for the election of a specific candidate. A true and correct copy of the February 1, 2008 letter from COPE’s counsel is attached hereto as Exhibit “C.”

43. COPE has also opened up negotiations with the Department of State to make the balance of such documents available to it on the condition that such documents not be released to the Philadelphia Board of Ethics until a ruling can be obtained in this action. As of the date of filing this action, such negotiations are on-going.

44. The way in which Defendants are enforcing the subject provisions of the Pennsylvania Election Code and the analogous provisions in the City Code are unconstitutional

in that the definition of “expenditure” which is currently being enforced is overly broad and vague as to what type of expenditures are subject to mandatory reporting and disclosure.

FIRST AMENDMENT VIOLATIONS

45. The core objective of the First Amendment is to protect and encourage free public speech about political and public issues. It protects both COPE’s right to speak out, and also the right of its listeners to receive such speech. Accordingly, COPE may assert not only its own First Amendment rights, but also those of the persons to whom it wishes to speak and who wish to receive its messages.

46. That COPE is a political committee engaged in “express advocacy” does not diminish its constitutional right to also engage in “issue advocacy,” which is not subject to government regulation. *See, e.g., Washington State Republican Party v. Washington State Public Disclosure Commission*, 141 Wash.2d 245, 4 P.3d 808 (2000)(“[T]he fact that a political party is the speaker expending funds for issue advocacy [does not] mean that issue advocacy may be regulated. ‘The independent expression of a political party’s views is ‘core’ First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees.”)(quoting *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 616 (1996)).

47. Money must be spent to address the public effectively. The media, including signs, advertisements, placards, billboards, and leaflets are essential means of public discourse. Thus, the First Amendment protections extend to expenditures for political speech.

48. To the extent that the First Amendment permits any limits on such core speech, those limits must be particularly precise, objective, and narrow. *Buckley v. Valeo*, 424 U.S. 1,

41-44 (1976); *FEC v. Massachusetts Citizens for Life, Inc. ("MCFL")*, 479 U.S. 238, 245-50 (1986); *McConnell v. FEC*, 540 U.S. 93, 194 (2003). This is particularly true where, as here, criminal penalties may be imposed. *Buckley*, 424 U.S. 41-42.

49. The reason such a uniquely demanding standard applies is that imprecise, subjective, or overbroad standards unconstitutionally induce self-censorship as speakers “hedge and trim” and “steer far wider of the [forbidden] zone . . . than if the . . . forbidden areas were clearly marked.” *Id.* at 43, 41 n. 48. This constitutes constitutional injury both to the speakers whose speech is regulated, and to the listeners who may be deprived of the opportunity to hear such speech, thereby defeating the core purpose of the First Amendment.

50. The Court in *Buckley* observed that compelled disclosure of expenditures implicates the First Amendment because it “can seriously infringe on privacy of association and belief” and it can indirectly deter the exercise of First Amendment rights. *Id.* at 64-65, 96 S.Ct. 612. While the Court recognized that the government has an important interest in providing the electorate with information about the sources of money spent during political campaigns and collecting data to enforce campaign laws, the Court nevertheless held that a provision requiring disclosure of campaign expenditures involves a “significant encroachment[] on First Amendment rights” and must therefore be subject to “exacting scrutiny.” *Id.* at 64-67, 96 S.Ct. 612; *see also id.* at 75, 96 S.Ct. 612 (“In considering this provision [requiring disclosure of independent expenditures by individuals or groups], we must apply the same strict standard of scrutiny, for the right of associational privacy developed in *NAACP v. Alabama* [357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958)] derives from the rights of the organization's members to advocate their personal points of view in the most effective way.”).

51. In this regard, the Supreme Court of the United States repeatedly has held that language similar to that which Defendants use to define “expenditure” is impermissibly vague, subjective, and overbroad in violation of the First Amendment. *See Buckley, supra.* at 43-44, n. 52 (definition of “expenditure” using “for the purpose of . . . influencing” is facially vague and overbroad); *see also MCFL*, 479 U.S. at 248-50 (the federal statutory prohibition on corporate expenditures “in connection with any election” is vague and overbroad).

52. The Pennsylvania Election Code and the City Code – particularly the way in which the definition of “expenditure” is being enforced as set forth above – lack the necessary precision, objectiveness, and narrowness to pass constitutional muster. The provisions in the statutes fail to give sufficient advance notice as to what “expenditures” are subject to regulation, and thus they violate the First and Fourteen Amendments to the U.S. Constitution, as follows:

(a) The challenged laws are vague. The statutory definition of “expenditure,” which turns on the phrase “for the purpose of influencing the outcome of an election” has no clear and definite meaning that can be ascertained with confidence before speaking.

(b) The challenged laws are subjective. The statutory definition of “expenditure” requires subjective assessment by government authorities as to the “purpose” of speakers when making a particular expenditure. Moreover, because organizational speakers such as COPE consist of various persons and entities acting through other persons and entities, deciphering how regulators will construct such an organization’s intent or “purpose” is very difficult, if not impossible.

(c) The challenged laws are overbroad and not narrowly tailored. The vagueness of the phrase “influencing the outcome of an election,” coupled with the subjective

term “for the purpose of” results in regulation of spending for any activity even where it is not connected to a compelling government interest.

53. Thus, the Pennsylvania Election Code and City Code – particularly the way in which they are being enforced – burden the rights of COPE to freely engage in political speech, thereby violating the First and Fourteenth Amendments to the U.S. Constitution.

CLAIMS FOR RELIEF

COUNT I

Declaratory Judgment

54. Plaintiff hereby incorporates all of the allegations in this Complaint as though same were fully set forth herein at length.

55. The provisions of the Pennsylvania Election Code and the Philadelphia City Code imposing mandatory reporting and disclosure of “expenditures” of “political committees” are facially invalid for the reasons set out above. Moreover, the statutory provisions are invalid as they apply to COPE, and as they are being enforced by Defendants.

56. The above statutory provisions were enacted and are maintained, and Defendants’ collective enforcement responsibilities were established and are exercised, under color of law of the Commonwealth of Pennsylvania.

57. The violations of the First and Fourteenth Amendment rights caused by the above statutory provisions, the threat that Defendants will participate in the enforcement of those laws, and the existing and threatened injuries that will result, violate the Civil Rights Act, 42 U.S.C. § 1983.

58. COPE, as set forth above, has a well founded fear that, if it asserts its rights by not producing the “expenditures” for its “issue advocacy,” Defendants will enforce the challenged laws against it. For that reason, an “actual case or controversy” exists which requires a declaratory judgment by this Court.

WHEREFORE, Plaintiff COPE respectfully requests a declaration that the above challenged laws are vague, inadequately tailored, void, facially and/or as applied, and a declaration of COPE’s obligations with respect to the reporting and disclosure requested by Defendants, together with an award of legal fees and expenses pursuant to 42 U.S.C. § 1988, and such other relief as may be just.

COUNT II

Preliminary and Permanent Injunctive Relief

59. Plaintiff hereby incorporates all of the allegations in this Complaint as though same were fully set forth herein at length.

60. As set forth above, the provisions of the Pennsylvania Election Code and the Philadelphia City Code imposing mandatory reporting and disclosure of “expenditures” of “political committees” are facially invalid, and they are invalid as they apply to COPE, and as to how they are being enforced by Defendants against COPE.

61. There is, accordingly, a substantial probability that COPE will succeed on the merits of its claims.

62. Irreparable harm has been and is being imposed on – and continues to threaten – COPE, its members, and the intended audience of its political speech in that its constitutional rights will be violated if Defendants are permitted to apply and enforce the statutory provisions as set forth above.

63. In light of the gravity of the unconstitutional chilling of speech and the irreparable harm that Defendants are causing, substantial greater harm will be caused by the failure to grant the requested relief than would be caused by the granting of such relief.

64. Further, granting the requested relief by enjoining Defendants' unconstitutional conduct is in the public interest.

WHEREFORE, Plaintiff COPE respectfully requests preliminary and/or permanent injunctive relief from the enforcement of the statutory provisions set forth herein, and such other relief as may be just.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.



Dated: 2/08/08

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