UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CENTER FOR INDIVIDUAL FREEDOM, Plaintiff, v. LISA M. MADIGAN, Attorney General of the State of Illinois; BRYAN SCHNEIDER, Chairman and Member of the Illinois State Board of Elections; WANDA L. REDNOUR, Vice Chair and Member of the Illinois State Board of Elections; ALBERT PORTER, Member of the Illinois State Board of Elections; JESSE R. SMART, Member of the Illinois State Board of Elections; ROBERT J. WALTERS, Member of the Illinois State Board of Elections; PATRICK A. BRADY, Member of the Illinois State Board of Elections; WILLIAM M. McGUFFAGE, Member of the Illinois State Board of Elections; and JOHN R. KEITH, Member of the Illinois State Board of Elections, Defendants.	)	Case No. 10 CV 4383 Judge William T. Hart Magistrate Judge Michael T. Mason

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
<u>MOTION FOR A PRELIMINARY AND PERMANENT INJUNCTION</u>

Plaintiff Center for Individual Freedom (the "Center") seeks preliminary and permanent injunctive relief against enforcement of provisions of the Illinois Election Code that impose discriminatory and vague registration and disclosure requirements on certain "nonprofit organizations" and "political committees." The challenged statutes violate the fundamental First and Fourteenth Amendment rights of organizations such as the Center to speak freely and without discrimination on important public policy issues.

The Center seeks a preliminary injunction to enable it to engage in public communications about judicial matters, legal reform, and other justice-related public policy issues as the upcoming November 2, 2010, Illinois general election approaches. The Center has

begun planning those communications and intends to disseminate them by broadcast, print, telephone, and other means before the election. Although the Center's communications will not expressly advocate the election or defeat of any candidates for office, the pre-election period is the most critical time for the Center to reach its intended audience because that is when the public is most attentive to public policy discussion, candidates provide useful illustrations of the Center's concerns, and candidates are most likely to commit to the Center's policy positions.

Established Supreme Court precedent allows the government to impose statutory registration and reporting burdens on campaign-related speech only if those burdens are carefully drawn to avoid discrimination among speakers and to provide precise and objective standards. The Illinois statutory provisions challenged here flout both of those bedrock requirements. The burdens those provisions impose on the Center's speech thereby violate the Center's rights under the First and Fourteenth Amendments and 42 U.S.C. § 1983.

Two Illinois laws threaten to require the Center to register and publicly disclose its donors if it proceeds with its planned public communications. The first is a discriminatory statute that applies to all nonprofit organizations *except for labor unions* that engage in certain kinds of public communications. 10 ILCS 5/9-7.5. The second is a vague statute that applies to nebulously described communications by "political committees." 10 ILCS 5/9-1.5, 1.7, 1.8, 1.9, 3, 10.

The discrimination by the first Illinois statute is express and blatant. "Labor unions" are explicitly singled out and exempted from burdensome and expensive registration and reporting requirements that are imposed on all other nonprofit organizations that engage in core First Amendment speech. 10 ILCS 5/9-7.5. That discrimination serves no rational purpose, much less the substantial state interest that would be required to burden fundamental First Amendment

rights. The statute continues Illinois' unfortunate, decades-long history of unconstitutional favoritism toward labor union speech. *See Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 94 (1972); *Grayned v. City of Rockford*, 408 U.S. 104, 107 (1972); *Carey v. Brown*, 447 U.S. 455, 471 (1980).

The vagueness of the challenged statutory provisions also is readily apparent. Only speech "in connection with [an] election" triggers the burdensome registration and reporting requirements. 10 ILCS 5/9-1.5. The United States Supreme Court has held that the "in connection with" standard does not provide the high degree of precision required to regulate core First Amendment activity. *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 248-49 (1986) ("*MCFL*"); *see also Buckley v. Valeo*, 424 U.S. 1, 78-82 (1976) ("'for the purpose . . . of... influencing' an election" is impermissibly vague when applied to disclosure obligations). Vague regulation of speech on public issues inflicts severe First Amendment harm because it "blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim." *Thomas v. Collins*, 323 U.S. 516, 535 (1945), *quoted in Buckley*, 424 U.S. at 43.

Immediate judicial relief is needed to prevent the irreparable injury to the First and Fourteenth Amendment rights of the Center, its contributors, and the people of Illinois who wish to hear the Center's speech. As a matter of principle, the Center resists registration and disclosure burdens. Absent injunctive relief, it would be constrained to hedge, trim, or entirely refrain from its planned communications so as to avoid the risk of being subjected to the discriminatory and vague statutory requirements. Once the November election occurs, public interest in and attention to the issues the Center wishes to address will fade. <u>Accordingly, the Center respectfully, but urgently, requests that the Court hear this matter on an expedited basis and rule no later than August 16, 2010.</u>

FACTS

I. NATURE OF THE CENTER AND ITS PLANNED PUBLIC SPEECH

The facts are detailed in the Complaint and supporting Declaration of Jeffrey L. Mazzella. The Center is a nonprofit, non-partisan, incorporated organization, existing under the laws of Virginia and operating as tax exempt under Section 501(c)(4) of the Internal Revenue Code. An important aspect of the Center's activities is public education on judicial matters, legal reform, and other justice-related public policy issues. Because public speech is expensive and the Center's resources are limited, the Center must carefully target its speech to places and times when the public and candidates are primed to pay attention. The impending election in Illinois creates such a window of opportunity.

The Center's planning for its public communications has already begun. It has identified vendors and initiated work to create and disseminate its communications and has identified its intended themes. Money has been budgeted for the project. Though the communications will refer to candidates to help illustrate the Center's points, the Center's communications will not contain "express advocacy" of the election or defeat of any candidate, as that term is explicitly and objectively defined in *Buckley, supra,* 424 U.S. at 43-44 & n.52. Nor will the Center coordinate its communications with any candidate or political party. The Center cannot be confident, however, that its speech will avoid being seen as "an expenditure" "in connection with" an election under Illinois law and, therefore, subject to the nonprofit organization and political committee registration and reporting requirements.

II. CHALLENGED PROVISIONS OF THE ILLINOIS ELECTION CODE

Illinois law requires "[e]ach nonprofit organization, *except for a labor union,*" to register and disclose its donors if the organization "accepts contributions, makes contributions, or makes

expenditures during any 12-month period in an aggregate exceeding $5,000 … on behalf of or in opposition to… candidates for public office." 10 ILCS 5/9-7.5 (emphasis added). As a nonprofit organization under Section 501(c)(4) of the Internal Revenue Code, the Center is a "nonprofit organization" under 10 ILCS 5/9-7.5. *See* 26 Ill. Admin. Code § 100.10(j); Mazzella Decl., ¶ 2. Thus, this provision threatens to subject the Center's speech to burdens not imposed on labor unions.[1]

Separately, Illinois law defines a political committee as "any individual, trust, partnership, committee, association, corporation, or any other organization or group of persons" that "accepts contributions or grants or makes expenditures during any 12-month period in an aggregate amount exceeding $3,000 on behalf of or in opposition to a candidate or candidates for public office." 10 ILCS 5/9-1.8. Political committees are required to register with the State Board of Elections and to file regular reports disclosing donors. 10 ILCS 5/9-3, 10. Under Illinois law, an "expenditure" is vaguely defined as "a payment, distribution, purchase, loan, advance, deposit, or gift of money or anything of value, *in connection with* the nomination for election, or election, of any person to public office." 10 ILCS 5/9-1.5 (emphasis added). This same vague standard for "expenditure" also applies to the registration and disclosure requirements applicable to "nonprofit organizations." *See* 10 ILCS 5/9-7.5. Because this standard does not provide clear and precise guidance, the Center is constrained to refrain from its

[1] The nonprofit organization registration and reporting requirements will discontinue on January 1, 2011, when comprehensive amendments to the Illinois campaign finance law take effect. *See* Public Act 96-832, § 10 (repealing 10 ILCS 5/9-7.5). The future elimination of this law is of no current benefit to the Center since the Center wishes to speak this summer and fall—long before the discriminatory registration and reporting requirements are eliminated.

desired speech, lest it potentially trigger the Election Code's registration and disclosure requirements.[2]

III. IDENTITY OF THE DEFENDANTS AND PRIOR ENFORCEMENT OF THE CHALLENGED PROVISIONS

The Center has a well-founded fear of enforcement action by Illinois authorities absent injunctive relief against the discriminatory and vague registration and disclosure requirements of the challenged statutes. The Illinois State Board of Elections ("Board") has previously considered complaints alleging that organizations must register and file disclosure reports when engaged in speech that, like the Center's planned communications, refrained from expressly advocating for or against a candidate.

In 2002, the Board entertained a complaint alleging that a nonprofit organization must register and report as a political committee because it sponsored an advertisement that "clearly support[ed]" one candidate while casting the opposing candidate "in a negative light." *Lavelle v. Law Enforcement Alliance of America (LEAA)*, 02 CD 65, Report of Hearing Examiner (Oct. 31, 2002). Even though the advertisement did not expressly advocate the election or defeat of a candidate, the complaint alleged that the advertisements met the statutory definition of an

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[2] The registration and reporting requirements also apply if an organization makes "electioneering communications" that exceed the $5,000 and $3,000 thresholds applicable to nonprofit organizations and political committees, respectively. "Electioneering communication[s]" are broadcast, cable or satellite communications that refer to a clearly identified candidate, party or question of public policy appearing on the ballot, are made within 60 days before a general election or 30 days before a primary election, are targeted to the relevant electorate, and *"susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate for nomination for election, election, retention, a political party, or a question of public policy."* 10 ILCS 5/9-1.14. The Center is confident that it can avoid making "electioneering communications" by relying on the italicized language above, which mirrors language from *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007), that has been implemented by the Federal Election Commission at 11 C.F.R. § 114.15.

"expenditure" and, thus, the organization was a regulated political committee. *Id.* (A copy of the hearing officer's report is attached to the Center's Complaint.)

On at least one other occasion, a hearing examiner for the Board ruled that a complaint alleging that a nonprofit organization must register and report as a political committee could proceed. *See Ill. Campaign for Political Reform v. Ill. State Bd. of Elections*, 382 Ill. App. 3d 51, 886 N.E.2d 1220 (2008). The nonprofit organization was accused of making public communications that did not contain express candidate advocacy, but that referred to the positions of candidates on economic issues. *Id.* at 54-55, 886 N.E.2d at 1223-24.

The Board has the power to impose civil penalties and other relief for failing to register or to file reports required by the challenged provisions of the Election Code. 10 ILCS 5/9-3, 10, 23. Accordingly, pursuant to the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), the Center has sued the Board by naming its board members as defendants in their official capacities.

The Attorney General also has authority to bring actions for the "[w]illful failure to file or willful filing of false or incomplete information" required by the challenged Election Code provisions. 10 ILCS 5/9-26. Defendant Lisa Madigan is therefore sued in her official capacity as the Illinois Attorney General.

ARGUMENT

I. THE DETERMINATIVE ROLE OF LIKELIHOOD OF SUCCESS ON THE MERITS—AND DEFENDANTS' BURDEN OF ESTABLISHING THE VALIDITY OF THE CHALLENGED STATUTES—HIGHLIGHT THE APPLICABLE STANDARD FOR PRELIMINARY INJUNCTIVE RELIEF

The foregoing facts entitle the Center to a preliminary injunction that will enable it to engage in its planned communications in the months leading up to the November election. Under the familiar standard for preliminary injunctive relief:

> "[A] party must show that it is reasonably likely to succeed on the merits, it is suffering irreparable harm that outweighs any harm the nonmoving party will suffer if the injunction is granted, there is no adequate remedy at law, and an injunction would not harm the public interest." *Christian Legal Soc'y v. Walker,* 453 F.3d 853, 859 (7th Cir. 2006).

In a case such as this, likelihood of success on the merits is the dispositive consideration. *See Joelner v. Vill. of Wash. Park,* 378 F.3d 613, 620 (7th Cir. 2004). "When a party seeks a preliminary injunction on the basis of a potential First Amendment violation, the likelihood of success on the merits will often be the determinative factor." *Id.* This is because interference with First Amendment freedoms, "for even minimal periods of time, unquestionably constitutes irreparable injury" for which money damages are inadequate. *Id.* (quoting *Elrod v. Burns,* 427 U.S. 347, 373 (1976)). Moreover, the government cannot suffer any harm from being prevented from enforcing an unconstitutional statute because "it is always in the public interest to protect First Amendment liberties." *Id.* (quoting *Connection Distrib. Co. v. Reno,* 154 F.3d 281, 288 (6th Cir. 1998)).

With respect to the likelihood of success on the merits, the government bears the burden of proving the constitutionality of speech restrictions. *Ashcroft v. ACLU*, 542 U.S. 656, 660 (2004). If the government fails to meet its burden, then the party challenging the restriction "must be deemed likely to prevail." *Id.* at 666. The following discussion demonstrates that the defendants will be unable to meet their burden of proving the constitutionality of the challenged statutes' interference with the Center's constitutional rights.

II. THE NONPROFIT REGISTRATION AND REPORTING LAW VIOLATES THE EQUAL PROTECTION CLAUSE BY DISCRIMINATING IN FAVOR OF LABOR UNIONS AND AGAINST OTHER NONPROFIT ORGANIZATIONS

Illinois' exemption of labor unions from the registration and disclosure obligations applicable to other nonprofit organizations blatantly violates the Equal Protection Clause. The

Supreme Court has held in three different cases that Illinois and its localities may not exempt labor unions from legislation restricting the speech and association rights of other speakers.

In the first case, the Supreme Court examined a Chicago ordinance exempting labor unions from a picketing prohibition near schools. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 94 (1972). The Court stated that it has "frequently condemned such discrimination among different users of the same medium for expression." *Id.* at 96. Finding that the government failed to prove the exemption for labor unions was "tailored to serve a substantial government interest," the Court held that the ordinance violated the Equal Protection Clause. *Id.* at 99-101. *See also Grayned v. City of Rockford,* 408 U.S. 104, 107 (1972) (striking down a similar Rockford, Illinois ordinance for the same reasons as in *Mosley*).

In another Supreme Court case, an Illinois statute exempted labor unions from a prohibition on picketing at residences and dwellings. *Carey v. Brown*, 447 U.S. 455, 457 (1980). Citing *Mosley*, the Court held that discrimination "among speech-related activities in a public forum . . . mandates that the legislation be finely tailored to serve substantial state interests, and the justification for any distinctions it draws must be carefully scrutinized." *Id.* at 461-62. The challenged statute could not be saved by justifying it as an attempt to protect labor picketing, in that such an objective would involve an impermissible regulation based on the content of the picketing (*i.e.,* picketing related to a labor dispute). Nor could the labor exemption be justified as an attempt to allow peaceful picketing, because that exemption would be both underinclusive and overinclusive by permitting disruptive labor picketing and prohibiting peaceful non-labor picketing. *Id.* at 465, 467-68. *See also Special Programs, Inc. v. Courter,* 923 F. Supp. 851, 853, 857 (E.D. Va. 1996) (statute's exemption of labor unions and trade associations from disclosure obligations required of other professional solicitors was unconstitutional).

Statutes that discriminate against labor unions are just as dubious as those that favor labor unions. This principle was illustrated in the context of regulation of political speech by *Dallman v. Ritter*, 225 P.3d 610, 634 (Colo. 2010). An amendment to the Colorado Constitution purported to forbid labor unions and their political action committees, but not corporations, from making political contributions. Because there was no compelling government interest justifying the disparate treatment of labor union and corporate First Amendment activity, the Colorado Supreme Court held that the distinction violated the Equal Protection Clause. *Id.* at 634-35.

Illinois cannot justify the discrimination in favor of labor unions challenged here. There is no rational basis, much less the requisite substantial state interest, justifying the exemption of labor unions from the burdens imposed on other nonprofit organizations. Indeed, when asked during the legislative debate about this discrimination in favor of labor unions, State Senator Terry Link, a supporter of the bill, could only claim "[t]hat's existing legislation as we see it today and that's why it stayed in there." Ill. Sen. Tr. at 74 (49th Legislative Day, May 26, 2005) (statement of Sen. Link).[3] Of course, the historical exercise of discrimination cannot justify it. Thus, the Center has established an overwhelming likelihood of succeeding on the merits of its Equal Protection challenge to the provision discriminating in favor of labor union speech.

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[3] Senator Link was likely referring to an earlier proposed version of 10 ILCS 5/9-7.5 that required nonprofit registration and reporting of all nonprofit organizations, except for labor unions, that registered as state lobbyists. *See* Public Act 90-0737 (Aug. 12, 1998). When that bill was under consideration, Senator Dillard, a supporter of the bill, explained that labor unions were excluded because "[w]e pick them up in other ways throughout our campaign finance disclosure." Ill. Sen. Tr. at 78 (111th Legislative Day, May 22, 1998) (statement by Sen. Dillard). Labor unions are not "picked up" in other ways, however, with respect to the regulation of nonprofit organizations in 10 ILCS 5/9-7.5.

III. THE DEFINITION OF "EXPENDITURE" WHICH TRIGGERS POLITICAL COMMITTEE REGISTRATION AND REPORTING REQUIREMENTS IS UNCONSTITUTIONALLY VAGUE, SUBJECTIVE, AND UNTAILORED

The Center also is likely to prevail on its vagueness challenge. As discussed above, Illinois law defines the type of "expenditure" that triggers the registration and reporting requirements for political committees on the content of the speech being funded—*i.e.,* whether that speech is "in connection with" an election. 10 ILCS 5/9-1.5. The Supreme Court repeatedly has held that virtually identical language in federal campaign finance law fails to give the precise guidance required by the First Amendment. *MCFL*, 479 U.S. at 248-49 ("in connection with" an election); *Buckley*, 424 U.S. at 78-82 ("'for the purpose ... of influencing' an election"); *see also Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 665-66 (5th Cir. 2006) ("*CFIF*") (state law requiring disclosure when activity is "for the purpose of supporting, opposing, or influencing" an election). The courts have insisted that definitions in this field be clear, precise, and objective. *Buckley*, 424 U.S. at 41-44, 79-82; *CFIF,* 449 F.3d at 665-66. Among other things, such a definition must not turn on what the speaker intends or what an audience understands, because a subjective test "offers no security for free discussion" and leaves the speaker "wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning." *Buckley*, 424 U.S. at 43 (internal quotations and citations omitted).

Regulation of core First Amendment activity, such as the political speech regulated by the Illinois legislation, must provide an extremely high level of precision, far more than the "fair notice" that due process requires for ordinary legislation. *Buckley*, 424 U.S. at 41, 77. This is because when a vague statute causes cautious speakers to "steer far wider" to avoid risk, the statute effectively suppresses more of our "precious freedoms" than is strictly necessary. *Id.* at 41 & n.48 (internal citations and quotations omitted); *see also MCFL*, 479 U.S. at 264

(government must "curtail speech only to the degree necessary to meet the particular problem … and avoid infringing on speech that does not pose the danger.") Moreover, such a vague statute invites undue governmental discretion in burdening speech. *See Buckley*, 424 U.S. at 42; *United States v. Stevens*, 130 S.Ct. 1577, 1591 (2010) (promise to limit enforcement to extreme cases cannot save statute that left speakers "at the mercy of *noblesse oblige*" of prosecutors.)

To preserve the statutory standards before them from being struck down as void for vagueness, the Courts in *Buckley*, *MCFL*, and *CFIF* each applied the same precise, objective, and tailored narrowing construction to the offending phrases so that they only regulated speech that employed "explicit" language that "expressly advocated" the "election or defeat" of a "clearly identified candidate." *Buckley*, 424 U.S. at 43-44; *MCFL*, 479 U.S. at 248-50 (relying on *Buckley*), *CFIF*, 449 F.3d at 664 (same). *Buckley* explained that the phrase "express advocacy of election or defeat" includes words "such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Buckley*, 424 U.S. at 44 & n.52. So construed, *Buckley* noted that the statutory disclosure obligations it was reviewing will "not reach all partisan discussion," but only that which "expressly advocate[s] a particular election result," and thereby ensured that the disclosure obligations did not apply in an "impermissibly broad" manner. *Id.* at 79-80.[4]

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[4] The statutory definition of "political committee" also incorporates the following additional vague modifier: "on behalf of or in opposition to a candidate." 10 ILCS 5/9-1.9. This phrase does not save the definition of "political committee" from unconstitutional vagueness because it is not explicit language of express advocacy required by *Buckley*. 424 U.S. at 43-44 & n.52. Rather, *Buckley* understood the phrase "on behalf of a candidate" to apply to spending in coordination with a candidate, not as a narrowing construction to regulate the type of independent spending at issue here. *Id.* at 46 & n.53. Furthermore, *Buckley* concluded that the similar phrase "advocating the election or defeat of such candidate" does not provide the precision necessary to "eliminate[] the problem of unconstitutional vagueness." *Id.* at 42. The advocacy must be in "express terms." *Id.* at 44. Furthermore, *CFIF* held that the phrase

(footnote continued…)

The Illinois definition of expenditure uses language that *Buckley*, *MCFL,* and *CFIF* hold to be unconstitutionally vague and that has not been narrowed to apply only to express candidate advocacy. That language has forced the Center to refrain from core First Amendment speech—communications about public policy issues that do not involve explicit language expressly advocating the election or defeat of a clearly identified candidate—in order to avoid any risk of being alleged to violate Illinois' regulation of political committees. Under these circumstances, Defendants will fall far short of carrying their burden of establishing that Illinois' regulation of political committees is constitutional. *See Ashcroft v. ACLU*, 542 U.S. 656, 660 (2004) (government bears the burden, both at preliminary injunction stage and at trial, of proving the constitutionality of speech restrictions).

IV. THE VAGUE REGULATION OF "EXPENDITURES" ALSO INVALIDATES ILLINOIS' REGULATION OF NONPROFIT ORGANIZATIONS

As explained Section II *supra*, the Illinois nonprofit registration and reporting requirements at 10 ILCS 5/9-7.5 violate the Equal Protection Clause because they discriminate in favor of labor unions. That statute also violates the First Amendment by being tied to the same vague "expenditures" definition that doomed the political committee registration and reporting requirements discussed in Section III *supra.*

A nonprofit organization, other than a labor union, must register and report once it makes $5,000 of "*expenditures* ... on behalf of or in opposition to... candidates for public office." 10 ILCS 5/9-7.5 (emphasis added). The definition of expenditures is exactly the same for

(...footnote continued)
"supporting, opposing, or otherwise influencing" an election is unconstitutionally vague for the same reasons. 449 F.3d at 663, 665. The language that was at issue in *CFIF* is equivalent to the phraseology used in the Illinois definition of "political committee."

nonprofit organizations as it is for political committees. In both instances, an "expenditure" is "a payment, distribution, purchase, loan, advance, deposit, or gift of money or anything of value, in connection with the nomination for election, or election, of any person to public office." 10 ILCS 5/9-1.5 (emphasis added). Accordingly, Defendants' inability to carry their burden of proving that the statutes' regulation of "expenditures" comports with the precise, objective standards required by the First Amendment is also fatal to the statutes' regulation of nonprofit organizations.[5]

CONCLUSION

For the foregoing reasons, the Center has satisfied all the requirements for preliminary relief. In particular, with respect to the determinative factor in these cases, the Center has demonstrated an overwhelming likelihood of prevailing on its constitutional challenges to the statutes' provisions regarding nonprofit organizations and political committees. *See Joelner, supra,* 378 F.3d at 620.

Given the purely legal issues presented by the Center's claims, this case is an ideal candidate for consideration of declaratory relief and *permanent* injunctive relief at this stage. Rule 65(a)(2) permits the Court to advance the trial on the merits and consolidate it with the preliminary injunction hearing. Similarly, Rule 57 permits the Court to "order a speedy hearing of an action for declaratory judgment." Such an approach would facilitate the interest of all parties and the public in obtaining a prompt and final adjudication of the issues raised in this

[5] The implementing regulations appear to further define spending that triggers the nonprofit registration and reporting requirements as that which is "supporting or opposing candidates." 26 Ill. Adm. Code § 100.130(a)(3)(A). As explained in note 4 *supra*, the words "supporting" and "opposing" are not express words of advocacy that can be used to impose disclosure requirements like those at issue here. *See CFIF*, 449 F.3d at 663, 665.

litigation well in advance of both the election and the requested August 16, 2010, date for decision of the Center's motion.

Dated: July 14, 2010

Respectfully submitted,

CENTER FOR INDIVIDUAL FREEDOM

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