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**United States District Court
Western District of Washington
Seattle Division**

Human Life of Washington, Inc.,
Plaintiff,

v.
**Chair Bill Brumsickle, Vice Chair Ken
Schellberg, Secretary Dave Seabrook, Jane
Noland, and Jim Clements,** in Their Official
Capacities as Officers and Members of the
Washington State Public Disclosure Commis-
sion, **Rob McKenna,** in His Official Capacity
as Washington Attorney General, and **Dan
Satterberg,** in His Official Capacity as King
County Prosecuting Attorney,
Defendants.

No. C08-_____

**Verified Complaint for
Declaratory & Injunctive Relief**

Human Life of Washington, Inc. (“HLW”) complains as follows:

Introduction

1. HLW wants to engage in constitutionally-protected “issue advocacy” on the subject of physician-assisted suicide, as it has in the past.

2. “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.” *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652, 2667 (2007) (“*WRTL II*”) (controlling opinion of Roberts, C.J., joined by Alito, J.).

3. “Issue advocacy” is distinguishable from “campaign speech, or ‘express advocacy,’” because it is “speech about public issues more generally.” *Id.* at 2659. This protected “issue

1 advocacy” is also known as “political speech.” *Id.* at 2659-60, 2664-66, 2669 n.7, 2671, 2673.

2 “Campaign speech” or “express advocacy” is also known as “electioneering.” *Id.* at 2667.

3 4. Because an effort is under way in 2008 to qualify and pass Washington Initiative Measure
4 No. 1000 (“I-1000”), which would legalize physician-assisted suicide, HLW must either endure
5 unconstitutional burdens under Washington law or be chilled from its protected issue advocacy.

6 5. This is a challenge to the constitutionality of provisions of Washington’s election laws
7 and regulations, focusing especially on Washington’s unconstitutional replacement of the United
8 States Supreme Court’s **(a)** “express advocacy” test (to determine which expenditures for
9 communications may be regulated) and **(b)** “*the* major purpose” test (to determine whether
10 “political committee” (“PAC”) burdens may be imposed on an organization) with Washington’s
11 vague and overbroad **(a)** “support . . . or . . . oppos[e]” test and **(b)** “*a* primary purpose” test.

12 6. The U.S. Supreme Court imposed its express-advocacy and *the*-major-purpose tests both
13 to cure vagueness and to assure that a law’s “relation . . . to the purposes of [the election law]”
14 (i.e., to regulate elections), is not “too remote,” making the law “*impermissibly broad.*” *Buckley*,
15 424 U.S. at 80 (emphasis added).

16 7. The Court articulated the cure for this “too remote” problem in the disclosure of expendi-
17 tures context as the requirement that any restriction be “unambiguously related to the campaign
18 of a particular . . . candidate.” *Id.* It implemented this “unambiguously campaign related,” *id.* at
19 81, requirement with the express-advocacy test: “we construe ‘expenditure’ . . . to reach only
20 funds used for communications that expressly advocate the election or defeat of a clearly
21 identified candidate.” In binding precedent, the Ninth Circuit has reaffirmed that the express-
22 advocacy test is required for vague and overbroad provisions, such as those at issue here. *See*
23 *American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979, 985-87(9th Cir. 2004).

24 8. The Court implemented the unambiguously-campaign-related requirement as to which
25 organizations may be subjected to “political committee” (“PAC”) status with its requirement that
26 PAC status may only be imposed on organizations “that are under the control of a candidate or

1 the major purpose of which is the nomination or election of a candidate.” *Id.* at 79.

2 9. As applied to ballot initiative campaigns, this unambiguously-campaign-related, express-
3 advocacy requirement would limit Washington’s regulation to communications that expressly
4 advocate the passage or defeat of a clearly identified ballot initiative, and the unambiguously-
5 campaign-related, *the-major-purpose* requirement would limit regulation to organizations with
6 the major purpose of qualifying or passing (or defeating) ballot initiatives. Moreover, in binding
7 precedent, the Ninth Circuit recently decided that PAC-style burdens could not be imposed in
8 this ballot-initiative context. *See California Pro-Life Council v. Randolph*, 507 F.3d 1172 (2007).

9 10. HLW intends to solicit funds for issue-advocacy radio advertisements that it intends to
10 broadcast concerning the physician-assisted suicide issue. These “genuine issue ads,” *WRTL II*,
11 127 S. Ct. at 2659, 2662, 2668-70 & n.8, 2673, will not be “unambiguously campaign related,”
12 *id.*, because they will not expressly advocate for or against I-1000, but they will be about
13 Physician-assisted suicide. However, as set out below, Washington’s vague and overbroad laws,
14 *see infra*, burden HLW’s planned issue advocacy and put it at risk of being deemed a political
15 committee. Becoming a “required filer” would expose HLW to random “audits and field
16 investigations” under Wash. Rev. Code § 42.17.365 and various costs, fees, and penalties,
17 including, but not limited to: a civil penalty of up to \$10,000 per violation, Wash. Rev. Code
18 § 42.17.390(3) (with treble damages for a contribution limit violation); a civil penalty of \$10 per
19 day for failure to file required reports, Wash. Rev. Code § 42.17.390(4); a civil penalty equiva-
20 lent to the amount not reported, where reporting was required, Wash. Rev. Code § 42.17.390(5);
21 the states’s costs of investigation and trial, including attorney’s fees, Wash. Rev. Code
22 § 42.17.400(5); and judgement, including the state’s costs and fees, that may be trebled as
23 punitive damages where there is a civil action and the violation is found intentional. Wash. Rev.
24 Code § 42.17.400(5). On information and belief, the PDC has claimed a penalty multiplier where
25 an entity objected to an order to disclose and sought prompt judicial review. HLW believes that
26 the burdens imposed by Washington’s statutes and regulations are unconstitutional and so does

1 not intend to comply with them, but HLW is chilled from doing its planned activity because it
2 reasonably fears enforcement by Defendants.

3 **Jurisdiction and Venue**

4 11. This Court has jurisdiction over this civil action arising under 42 U.S.C. § 1983 and the
5 First and Fourteenth Amendments of the Constitution of the United States of America and
6 involving challenged laws, enforcement policies, and enforcement responsibilities established
7 and maintained under color of law of the State of Washington. 28 U.S.C. § 1331. The challenged
8 provisions and complaint establish an “actual controversy” within the meaning of 28 U.S.C.
9 § 2201, entitling HLW to a declaratory judgment and supplemental relief under 28 U.S.C.
10 § 2202.

11 12. Venue is proper because jurisdiction is not founded solely on diversity of citizenship, all
12 defendants reside in this district, and a substantial part of the events giving rise to the claim
13 occurred in this district. 28 U.S.C. § 1391(b). The Seattle Division is proper because all
14 defendants do not reside in the counties listed in CR 5(e) (one criterion for assignment to the
15 Tacoma Division) and the claim arose in King County (where HLW resides) and not the counties
16 listed in CR 5(e) (a second criterion for assignment to the Tacoma Division), so that the Seattle
17 Division is proper. CR 5(e).

18 **Parties**

19 13. Plaintiff HLW is a nonstock, ideological, Washington corporation, recognized by the
20 Internal Revenue Service as a nonprofit organization under 26 U.S.C. § 501(c)(4). HLW is the
21 state affiliate of the National Right to Life Committee, headquartered in Washington, D.C.
22 HLW’s office is at 14400 Bel-Red Road, #207, Bellevue, Washington 98007. Its website is at
23 www.humanlife.net. As stated in HLW’s Mission Statement, its “mission is to reestablish
24 throughout our culture, the recognition that all beings of human origin are persons endowed with
25 intrinsic dignity and the inalienable right to life from conception to natural death. To accomplish
26 this restoration, [HLW] use[s] peaceful and lawful means of educating and motivating the human

1 heart.” A true and correct copy of the full HLW Mission Statement is attached. *See Exhibit 1.*
2 HLW is neither “under the control of a candidate [n]or [is its] major purpose . . . nominati[ng] or
3 electi[ng] . . . candidate[s],” *Buckley*, 424 U.S. at 79 (major purpose test). HLW is neither under
4 the control of any ballot initiative committee nor is its major purpose qualifying or passing (or
5 defeating) ballot initiatives. HLW is fully independent of any candidate, political party, or
6 political committee in its planned First Amendment activities.

7 14. Defendant officers and commissioners (and successors in office) of the Washington State
8 Public Disclosure Commission (“PDC”), are Chair Bill Brumsickle, Vice-Chair Ken Schellberg,
9 Secretary Dave Seabrook, Jane Noland, and Jim Clements. *See* [http://www.pdc.wa.gov/home/](http://www.pdc.wa.gov/home/About/bio_comm.aspx)
10 [About/bio_comm.aspx](http://www.pdc.wa.gov/home/About/bio_comm.aspx) (“Biographies of Commission Members”; names as listed on PDC’s
11 official website)). The PDC commissioners have enforcement authority over violations of
12 Washington’s election law scheme. Wash. Rev. Code § 42.17.395 (2007).

13 15. Defendant Rob McKenna (and any successor in office) is the Washington Attorney
14 General, who has enforcement authority over violations of Washington’s election law scheme.
15 Wash. Rev. Code § 42.17.400. *See also* <http://www.atg.wa.gov/page.aspx?id=1732> (“Biography
16 of Attorney General Rob McKenna”; name as listed on Attorney General’s official website).

17 16. Defendant Dan Satterberg (and any successor in office) is the Prosecuting Attorney for
18 King County (the County in which HLW is located), with enforcement authority over violations
19 of Washington’s election law scheme. Wash. Rev. Code § 42.17.400.

20 **Facts**

21 17. Physician-assisted suicide is a long-time ideological issue for prolife HLW, which has
22 over the years expended considerable time and resources to educate the public on the issue. HLW
23 intends to continue its public education in 2008 by employing “[i]ssue advocacy,” which
24 “conveys information and educates.” *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652, 2667
25 (2007) (“*WRTL II*”) (Roberts, C.J., joined by Alito, J.; controlling opinion).

26 18. Physican-assisted suicide has been a long-time public issue in Washington and was

1 especially in public awareness and debate in 1991, when the People considered and defeated a
2 ballot initiative to enact a state constitutional amendment legalizing Physician-assisted suicide.
3 HLW made special efforts to educate the public with Physician-assisted suicide issue advocacy in
4 1991, while people were unusually focused on, and attentive to arguments about, this perennial
5 public issue.

6 19. The year 2008 is an especially vital time for HLW to address the physician-assisted
7 suicide issue because people again will be unusually attentive as it swirls to the forefront of
8 public attention. The high-profile nature of physician assisted suicide also helps to give greater
9 visibility to the broad range of prolife issues that HLW advances by speaking about the ethic of
10 life in general, which includes the issues of abortion, infanticide, and euthanasia. By being unable
11 to speak on assisted suicide, HLW is affected not just by the loss of its ability to speak on that
12 issue but also by the loss of ability to speak effectively on other non-ballot issues that are part of
13 the ethic of life that recognizes, and seeks protection for, the inherent value of all human life
14 from fertilization to natural death. The physician-assisted suicide issue is in people's focus
15 because former Governor Booth Gardner filed the proposed I-1000 with the Secretary of State on
16 January 9, 2008, with qualifying signatures due by July 3, 2008. *See*
17 <http://www.secstate.wa.gov/elections/initiatives/people.aspx?y=2008>. The full text of I-1000 is
18 available at <http://www.secstate.wa.gov/elections/initiatives/text/i1000.pdf>. The It's My Decision
19 Committee is pushing the initiative. *See* www.itsmydecision.org (promoting "Washington Death
20 With Dignity Initiative"). *See also* <http://www.pdc.wa.gov/servlet/CommitteesServlet> (PDC
21 website showing committee's activity). If the initiative proceeds successfully to qualification, it
22 will be on the November 4, 2008 ballot.

23 20. There has been litigation over the official ballot title and the ballot measure summary,
24 and on February 29, 2008, the Thurston County Superior Court, in *Coalition Against Assisted*
25 *Suicide v. State of Washington* (No. 08-00265-6) (Order Granting Petition), revised these to read
26 as follows:

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BALLOT TITLE

Statement of Subject: Initiative Measure No. 1000 concerns allowing certain terminally ill competent adults to obtain lethal prescriptions.

Concise Description: This measure would permit terminally ill, competent, adult Washington residents, who are medically predicted to have six months or less to live, to request and self-administer lethal medication prescribed by a physician.

Should this measure be enacted into law? Yes No

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BALLOT MEASURE SUMMARY

This measure would permit terminally ill, competent, adult Washington residents medically predicted to die within six months, to request and self-administer lethal medication prescribed by a physician. The measure requires two oral and one written request, two physicians to diagnose the patient and determine the patient is competent, a waiting period, and physician verification of an informed patient decision. Physicians, patients and others acting in good faith compliance would have criminal and civil immunity.

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21. Because Physican-assisted suicide is now especially in the public awareness and debate, people will be particularly receptive to arguments about the physican-assisted suicide issue, making 2008 an important time for HLW to advocate concerning prolife issues. Therefore, HLW intends to solicit funds as soon as possible for issue-advocacy radio advertisements that it intends to broadcast as soon as possible concerning the physican-assisted suicide issue.

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22. A true and correct copy of an issue-advocacy fundraising letter (“Letter”) that HLW intends to mail, email, and post on its website as soon as possible in an effort to solicit a large number of donors who support HLW’s issue advocacy is attached. *See Exhibit 2.*

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23. A true and correct copy of a telephone fundraising script (“Phone Script”) that HLW intends to have a vendor employ in an effort to solicit a large number of donors who support HLW’s issue advocacy is attached. *See Exhibit 3.*

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24. True and correct copies of the scripts of issue-advocacy radio ads (“Ads”) that HLW intends to broadcast as soon as possible are attached. *See Exhibit 4.*

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25. HLW intends to do these and substantially-similar fundraising and public communications in support of its Physican-assisted suicide issue advocacy in 2008, although these substantially-similar communications have not been created and so cannot be made a part of the

1 present exhibits. Moreover, it is in the nature of issue advocacy that the need to “convey[]
2 information and educate[,],” *WRTL II*, 127 S. Ct. at 2667, varies as public debate on an issue
3 varies, so that it is impossible to predict what future issue-advocacy might be required on
4 Physican-assisted suicide—although it is possible to predict the controllable factor that future
5 issue advocacy will be substantially similar.

6 26. Until a new physican-assisted suicide ballot initiative was actually filed, on January 9,
7 2008, it was not possible for HLW to be certain that 2008 would be a special opportunity for
8 issue advocacy due to unusually-focused public attention, and until that date, its physican-
9 assisted suicide issue-advocacy would not have been subject to the challenged state provisions.

10 27. As may be seen at *Exhibit 2*, the Letter contains no express advocacy, i.e., it does not
11 expressly advocate the passage or defeat of a clearly identified ballot initiative. HLW intends to
12 mail more than 1,000 copies (a statutory trigger) of the Letter (identical except for addressee
13 changes) in 2008. HLW intends to spend in excess of \$100 (a statutory trigger) for the 2008
14 distribution of its Letter.

15 28. As may be seen at *Exhibit 3*, the Phone Script contains no express advocacy, i.e., it does
16 not expressly advocate the passage or defeat of a clearly identified ballot initiative. HLW intends
17 to have its telephone fundraising company make numerous phone calls in an effort to raise funds
18 for its issue advocacy. HLW intends to spend in excess of \$100 (a statutory trigger) for the 2008
19 distribution of its Phone Script by paid phone callers.

20 29. As may be seen at *Exhibit 4*, the Ads contain no express advocacy, i.e., they do not
21 expressly advocate the passage or defeat of a clearly identified ballot initiative. HLW intends to
22 run these Ads in 2008, including within 21 days of the November 2008 election, and to run the
23 Ads and materially similar ads repeatedly in 2008 as funds allow. HLW intends to spend in
24 excess of \$1000 (a statutory trigger) to broadcast the Ads in 2008.

25 30. The expenditures for publicly distributing HLW’s issue-advocacy Letter, Phone Script,
26 and Ads will not be “contributions” by reason of coordination as defined by Wash. Rev. Code

1 § 42.17.020(15)(a) and Wash. Admin. Code § 390-05-210.

2 31. HLW's expenditures for 2007 total at or about \$180,000, and HLW expects to have a
3 similar level of expenditures in 2008. HLW's expenditures for distributing its Letter, Phone
4 Script, and Ads will not exceed (nor even be close to) 50% of its expenditures so that expendi-
5 tures for these activities will not be the major purpose of HLW. In fact, HLW anticipates
6 spending less than 20% of its annual budget for these adds.

7 32. While HLW is a membership organization, neither the Letter, the Phone Script, nor the
8 Ads will be "an internal political communication primarily limited to . . . the officers, manage-
9 ment staff, and stockholders of a corporation . . . or the members of a . . . membership organiza-
10 tion," *see* Wash. Rev. Code § 42.17.100, so as to be exempt from regulation as "independent
11 expenditures."

12 33. HLW intends to do materially similar fundraising and issue advocacy in future years as
13 issues of concern to HLW become subjects of public debate, which HLW believes is reasonably
14 likely to recur at many points in the future, just as it has in HLW's past experience.

15 34. HLW reasonably fears that it will be considered a "political committee" by Defen-
16 dants—although passing or defeating ballot measures is not its major purpose—so that HLW will
17 suffer a burdensome investigation, enforcement, and penalties for not complying with Washing-
18 ton's requirements for political committees. *See* Count 1.

19 35. HLW reasonably fears that its Letter, Phone Script, and/or Ads will be considered
20 "independent expenditures" by Defendants—despite the lack of express advocacy—so that HLW
21 will suffer an investigation, enforcement, and penalties for not complying with Washington's
22 burdensome requirements for groups engaging in independent expenditures. *See* Count 2.

23 36. HLW reasonably fears that its Letter, Phone Script, and/or Ads will be considered
24 "political advertising" by Defendants—despite the lack of express advocacy—so that HLW will
25 suffer an investigation, enforcement, and penalties for not complying with Washington's
26 burdensome requirements for groups engaging in political advertising. *See* Count 3.

1 37. HLW reasonably fears that its Letter, Phone Script, and/or Ads will be considered as “a
2 rating, evaluation, endorsement, or recommendation for or against . . . a ballot measure” by
3 Defendants—despite the lack of express advocacy—so that HLW will suffer an investigation,
4 enforcement, and penalties for not complying with Washington’s burdensome requirements for
5 groups engaging in such communications. *See* Count 4.

6 38. HLW believes that the challenged provisions herein impose unconstitutional burdens on
7 constitutional rights and so will not comply with them, but because HLW fears investigation,
8 enforcement, and penalties for noncompliance with Washington law, HLW is chilled from doing
9 its intended First Amendment activities and will not do them unless it receives the declaratory
10 and injunctive relief prayed for herein.

11 39. PDC regulations make no provision for issuing advisory opinions, and attorney general
12 advisory opinions are not available to HLW.

13 40. HLW’s chilled speech, the loss of opportunity to advocate concerning the physician-
14 assisted suicide issue, and the loss of the opportunity to effectively advocate the full range of
15 issues included in the life ethic because of the inability to advocate against physician-assisted
16 suicide are irreparable harms for which HLW has no remedy at law.

17 **Count 1—“Political Committee”**

18 41. HLW realleges and incorporates by reference all of the allegations contained in all of the
19 preceding paragraphs.

20 42. HLW challenges Washington’s manner of imposing PAC status and burdens, which
21 challenge involves the “political committee” definition and one or both of the following tests: (a)
22 Washington’s “a primary purpose” test, *see, State v. Dan Evans Campaign Comm.*, 546 P.2d 75,
23 79 (Wash. 1976) (en banc), *Evergreen Freedom Found. v. Washington Educ. Ass’n*, 49 P.3d 894,
24 903 (Wash. App. 2002); and (b) Washington’s “receiver of contributions” test. *See Evergreen*
25 *Freedom Found.*, 49 P.3d at 904; 1973 Wash. Att’y Gen. Op. 114.

26 43. The definition of “political committee,” at Wash. Rev. Code § 42.17.020(39), is as

1 follows:

2 (39) “Political committee” means any person (except a candidate or an
3 individual dealing with his or her own funds or property) having the expecta-
4 tion of receiving contributions or making expenditures in support of, or
5 opposition to, any candidate or any ballot proposition.

6 44. “Political committees” must file a “Statement of Organization” appointing a treasurer,
7 providing detailed information about the organization’s officers, and stating what ballot
8 proposition or candidate the committee supports or opposes. Wash. Rev. Code § 42.17.040.
9 PACs also must file monthly reports of all contributions and expenditures, even those unrelated
10 to any political activity, and during the 5 months leading up to a general election such reports
11 must be made on a weekly basis. Wash. Rev. Code § 42.17.080. All contributions received must
12 be deposited into a designated account, Wash. Rev. Code § 42.17.060, and for every contribution
13 over \$100 PACs must report the contributor’s name, occupation, and employers address. Wash.
14 Admin. Code § 390-16-034. PACs are prohibited from accepting anonymous donations that in
15 the aggregate exceed 1% of their yearly contributions or \$300. Wash. Rev. Code § 42.17.060
16 PACs must keep their accounting books up to date within 5 days of any contribution or expendi-
17 ture and the books must be available for public viewing at specified times. Wash. Rev. Code
18 § 42.17.080(5). For the 8 days preceding an election, books must be current within 1 day and
19 available for viewing by the public from 8:00 a.m. to 8:00 p.m. *Id.* PACs are also subject to
20 random “in depth” audits following elections. Political Committees 2007 Campaign Disclosure
21 Instructions, at [http://www.pdc.wa.gov/](http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/2007/2007.Man.)
22 [archive/filerassistance/manuals/pdf/2007/2007.Man.](http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/2007/2007.Man.)
23 [Comm.pdf](http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/2007/2007.Man.). These PAC burdens are substantial. The PDC’s own manual notes that “[t]reasurers
24 for most political committee[s] . . . will have to devote many hours to keeping exact records and
25 filing accurate, detailed reports of receipts and expenditures.” *Id.*

26 45. Washington’s PAC definition is unconstitutional because (a) “expectation” is undefined,
vague, and overbroad in providing a trigger for when PAC burdens are imposed; (b) there is no
reasonable (or any) monetary contribution or expenditure trigger, *cf.* 2 U.S.C. § 431(4) (federal

1 “political committee” definition with a \$1,000 trigger of either contributions or expenditures),
2 which absence enhances the vagueness and overbreadth; (c) “contributions” is vague and
3 overbroad, as used here, and does not follow the U.S. Supreme Court’s clarifying interpretation
4 of that term in *Buckley*, 424 U.S. at 23 n.24; (d) “expenditures” is vague and overbroad, as used
5 here, and does not follow the U.S. Supreme Court’s narrowing constructions of the related uses
6 of “expenditure” in *Buckley*, *id.* at 44, 80, and *FEC v. Massachusetts Citizens for Life*, 479 U.S.
7 238, 249 (1986) (“*MCFL*”); (e) “in support of, or opposition to” is undefined, vague, and
8 overbroad; and (f) the definition lacks the United States Supreme Court’s required “the major
9 purpose” test. *See Buckley*, 424 U.S. at 79.

10 46. Washington’s “a primary purpose” test, *see, e.g.*, PDC Interpretation 07-02 (“Primary
11 Purpose’ Guidelines”) (available at <http://www.pdc.wa.gov/archive/guide/pdf/Interp0702.pdf>), is
12 vague and overbroad (i.e., it fails the unambiguously-campaign-related and narrow-tailoring
13 requirements) because it does not follow the U.S. Supreme Court’s “the major purpose” test.

14 47. Washington’s “receiver of contributions” test is vague and overbroad (i.e., it fails the
15 unambiguously-campaign-related and narrow-tailoring requirements) because it does not follow
16 the U.S. Supreme Court’s “the major purpose” test.

17 48. Because Washington’s “political committee” definition and the two tests applying it are
18 vague and overbroad (i.e., they fail the unambiguously-campaign-related and narrow-tailoring
19 requirements), it is impossible for HLW to know whether it would be subject to PAC restrictions
20 for its intended activities, and HLW will be subject to the real possibility of a standardless
21 investigation and prosecution for election law violations, all of which chills its First Amendment
22 rights.

23 49. The “political committee” definition and the two tests applying it are unconstitutionally
24 vague and overbroad (i.e., they fail the unambiguously-campaign-related and narrow-tailoring
25 requirements) because, *inter alia*, their failure to employ the U.S. Supreme Court’s express-
26 advocacy and “the major purpose” tests, all in violation of the First and Fourteenth Amendments

1 to the U.S. Constitution.

2 50. The “political committee” definition and the two tests applying it are therefore unconsti-
3 tutional facially and as applied to HLW and HLW’s intended activities.

4 **Count 2—“Independent Expenditure”**

5 51. HLW realleges and incorporates by reference all of the allegations contained in all of the
6 preceding paragraphs.

7 52. HLW challenges the constitutionality of the second of Washington’s two definitions of
8 “independent expenditure,” which is at Wash. Rev. Code § 42.17.100 and has application in the
9 ballot initiative context. It is defined as follows:

10 (1) For the purposes of this section and RCW 42.17.550 the term “independent
11 expenditure” means any expenditure that is made *in support of or in opposition*
12 *to any candidate or ballot proposition* and is not otherwise required to be
13 reported pursuant to RCW 42.17.060, 42.17.080, or 42.17.090. “Independent
14 expenditure” does not include: An internal political communication primarily
15 limited to the contributors to a political party organization or political action
16 committee, or the officers, management staff, and stockholders of a corporation
17 or similar enterprise, or the members of a labor organization or other member-
18 ship organization; or the rendering of personal services of the sort commonly
19 performed by volunteer campaign workers, or incidental expenses personally
20 incurred by volunteer campaign workers not in excess of fifty dollars person-
21 ally paid for by the worker. “Volunteer services,” for the purposes of this
22 section, means services or labor for which the individual is not compensated by
23 any person. [Wash. Rev. Code § 42.17.100 (emphasis added).]

18 53. By statute, this definition applies in three situations: (a) § 42.17.100 itself requires
19 special reporting (entities must file a report of the activity with PDC and a county elections
20 officer within 5 days and at specified subsequent intervals) of independent expenditures by
21 entities that are not required to report as candidate or political committees and that spend \$100 or
22 more for the independent expenditures in an “election campaign”; (b) § 42.17.103 requires that
23 “[a]ll persons required to report under . . . 42.17.100 . . . are subject to the special reporting
24 requirements of [§ 42.17.103]” (which requires that entities who spend \$1,000 or more to do
25 “political advertising” within 21 days of an election must file a special report within 24 hours);
26 and (c) § 42.17.550 requires anyone “other than a party organization” that makes an independent

1 expenditure mailing of 1,000 or more pieces “in a single calendar year” to do special reporting
2 (entities must file a statement of the activity with the designated county election officer within 2
3 days). In addition, § 42.17.510 and Wash. Admin. Code § 390-18-10 require identification of a
4 sponsor’s name and address on printed materials and name on broadcast materials as part of the
5 communication.

6 54. The independent expenditure definition at § 42.17.100 is unconstitutionally vague and
7 overbroad (i.e., it fails the unambiguously-campaign-related and narrow-tailoring requirements)
8 because of its reliance on the support/oppose test instead of the U.S. Supreme Court’s express-
9 advocacy test, in violation of the First and Fourteenth Amendments to the U.S. Constitution.

10 55. The independent expenditure definition at § 42.17.100 is therefore unconstitutional
11 facially and as applied to HLW’s intended activities.

12 **Count 3—“Political Advertising”**

13 56. HLW realleges and incorporates by reference all of the allegations contained in all of the
14 preceding paragraphs.

15 57. HLW challenges the constitutionality of Washington’s definition of “political advertis-
16 ing,” at Wash. Rev. Code § 42.17.020(37) (emphasis added), which is as follows:

17 (37) “Political advertising” includes any advertising displays, newspaper
18 ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or
19 television presentations, or other means of mass communication, used *for the*
purpose of appealing, directly or indirectly, for votes or for financial or other
support or opposition in any election campaign.

20 58. This definition employs the support/oppose test and introduces three subsets of the vague
21 phrase “supporting or opposing,” i.e., (a) direct or indirect appeals “for votes”; (b) direct or
22 indirect appeals for “financial . . . support or opposition”; and (c) direct or indirect appeals for
23 “other support or opposition.” “Directly or indirectly” is unconstitutionally vague and overbroad
24 (i.e., it fails the unambiguously-campaign-related and narrow-tailoring requirements), as is
25 “appealing” and “other support or opposition” (which, whatever else it might mean, cannot mean
26 appeals for votes or contributions). “Mass communication” is undefined, so it is impossible to

1 determine, for example, whether 5, 50, 500, or 5,000 letters would trigger the definition.

2 59. An entity engaged in “political advertising” is subject to various burdens. *See* Wash.
3 Rev. Code § 42.17.103 (special report if it exceeds \$1,000); Wash. Rev. Code § 42.17.510 &
4 Wash. Admin. Code § 390-18-010 (on-communication identification of sponsor).

5 60. The “political advertising” definition is unconstitutionally vague and overbroad (i.e., it
6 fails the unambiguously-campaign-related and narrow-tailoring requirements) because of its
7 reliance on the support/oppose test instead of the U.S. Supreme Court’s express-advocacy test
8 and because it contains other vague and overbroad (i.e., they fail the unambiguously-campaign-
9 related and narrow-tailoring requirements) terms, all in violation of the First and Fourteenth
10 Amendments to the U.S. Constitution.

11 61. The “political advertising” definition is therefore unconstitutional facially and as applied
12 to HLW’s intended activities.

13 **Count 4—“Rating, Evaluation, Endorsement or Recommendation”**

14 62. HLW realleges and incorporates by reference all of the allegations contained in all of the
15 preceding paragraphs.

16 63. HLW challenges the constitutionality of Washington’s reporting requirement, at Wash.
17 Admin. Code § 390-16-206, for communications containing “a rating, evaluation, endorsement,
18 or recommendation for or against a candidate or ballot measure,” which in relevant part is as
19 follows:

20 (1) Any person making a measurable expenditure of funds to communicate
21 a rating, evaluation, endorsement or recommendation for or against a candidate
22 or ballot proposition (other than news, feature, or editorial comment in a
23 regularly scheduled issue of a printed periodical or broadcast media program)
shall report such expenditure including all costs of preparation and distribution
in accordance with RCW 42.17.030 through 42.17.100.

24 64. This requirement relies on a vague for/against test, not Washington’s usual sup-
25 port/oppose test. It is impossible to determine from the terms used whether PDC intends its
26 for/against test to reach more broadly or more narrowly than Washington’s statutory sup-

1 port/oppose test, but the tests cannot be the same because the PDC consciously chose non-
2 statutory terms and because otherwise some communications captured here by the for/against test
3 would be redundant of communications captured by the “political advertising” definition. *See*
4 *supra*. However, given the absence of any requirement that the communication be a “mass
5 communication” (as “political advertising” requires) and the choice of the exceedingly vague,
6 overbroad (i.e., they fail the unambiguously-campaign-related and narrow-tailoring require-
7 ments), and undefined terms “rating,” “evaluation,” “endorsement,” and “recommendation,” it is
8 apparent that PDC is regulating a vast swath of protected issue advocacy. And such ratings,
9 evaluations, endorsements, and recommendations would be subject to compelled disclosure at
10 the “measurable expenditure” level of a single letter to a friend discussing a public official who
11 happens to be a candidate.

12 65. This provision is unconstitutionally vague and overbroad (i.e., it fails the
13 unambiguously-campaign-related and narrow-tailoring requirements) because of its reliance on
14 the for/against test instead of the U.S. Supreme Court’s express-advocacy test and because it
15 contains other vague and overbroad (i.e., they fail the unambiguously-campaign-related and
16 narrow-tailoring requirements) terms, all in violation of the First and Fourteenth Amendments to
17 the U.S. Constitution.

18 66. This regulation is therefore unconstitutional facially and as applied to HLW’s intended
19 activities.

20 **Prayer for Relief**

21 Wherefore, HLW prays for the following relief:

22 1. a declaratory judgment declaring the challenged provisions, policies, and tests are
23 unconstitutional facially and as applied to HLW and HLW’s intended activities, or, alternatively,
24 that they have unambiguous, objective, bright-line, narrowly-tailored meanings that conform to
25 the First and Fourteenth Amendments;

26 2. a preliminary and permanent injunction enjoining defendants from enforcing the chal-

1 lenged provisions facially and as applied to HLW and HLW’s intended activities;

2 3. costs and attorneys fees pursuant to any applicable statute or authority and especially 42
3 U.S.C. § 1988; and

4 4. any other relief this Court in its discretion deems just and appropriate.
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1 **Verification**

2 I, Danny Laurence Kennedy, declare as follows:

3 1. I am the chief executive officer of Human Life of Washington, Inc. (“HLW”).

4 2. I have personal knowledge of HLW and its activities, including those set out in the
5 foregoing *Complaint*, and if called upon to testify I would competently testify as to the matters
6 stated herein.

7 3. I verify under penalty of perjury under the laws of the United States of America that the
8 factual statements in this *Complaint* concerning HLW and its intended activities are true and
9 correct. Executed on April ____, 2008.

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12 _____
13 Danny Laurence Kennedy, CEO
14 Human Life of Washington, Inc.
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Respectfully submitted,

/s/ John J. White, Jr.
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*Pro hac vice application to be filed when
docket number is available.

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Exhibits

Exhibit 1 HLW Mission Statement
Exhibit 2 HLW Letter
Exhibit 3 HLW Phone Script
Exhibit 4 HLW Ads

1 *[Exhibit 1—HLW Mission Statement]*

2 **Human Life Of Washington**

3 Our mission is to reestablish throughout our culture, the recognition that all beings of human
4 origin are persons endowed with intrinsic dignity and the inalienable right to life from conception
5 and motivating the human heart.

6 ***GOALS***

7 Through educational, legislative, and judicial efforts, we seek reform in our culture’s understand-
8 ing of:

9 ● ***PERSONHOOD***

10 The recognition of a dignified and comprehensive definition of “human person.”

11 A return to the critical assumption that all beings of human origin should be considered
12 “persons,” and treated as such.

13 ● ***VIEW OF LIFE***

14 Recognition and promotion of the intangible contributory dimensions of happiness, success,
15 and love by family, social, religious, educational, business, and political communities.

16 Response to the spurious belief that some human lives have “quality” while others do not;
17 cultural consensus that all human life has intrinsic value and immeasurable worth.

18 A dignified community response to human suffering; one which views compassion as
19 “suffering with” the other.

20 ● ***FREEDOM AND RIGHTS***

21 A cultural attitude which embraces common responsibility in its pursuit of ethics and freedom.

22 Legal and cultural respect for the inalienability of rights.

23 A restoration of fidelity to the objective priority of inalienable rights.

24 A cultural philosophy which unites individual rights with the common good.

1 *[Exhibit 2—HLW Letter]*

2 [date]

3 Dear [name],

4 The assisted suicide issue just won't go away. But neither will we. We are here to argue
5 the prolife side on your behalf. However, as this grisly issue heats up again in 2008, Human Life
6 of Washington needs your help to pay for some radio ads to educate the public.

6 In 1991, Washington voters rejected a ballot initiative that would have legalized assisted
7 suicide. In fact, that initiative would have approved euthanasia by allowing doctors to actually
8 administer the lethal prescription, not just write it. Despite the defeat at the ballot box, the issue
9 didn't go away. In 2006, Sen. Pat Thibaudeau introduced a bill to legalize assisted suicide. She
10 told a Portland newspaper that she didn't expect success but wanted to spark discussion. The bill
11 failed, but now in 2008 the assisted suicide issue is again on the minds of the people of Washing-
12 ton. Now, while their minds are focused on the issue, is the opportune time to educate them on
13 the dangers of assisted suicide—and on the value of every life.

10 In an 1852 speech before the Massachusetts Anti-Slavery Society, Wendell Phillips
11 warned the gathered abolitionists that “[e]ternal vigilance is the price of liberty.” That same
12 eternal vigilance is required of proliferators. Human Life of Washington is being vigilant. On our
13 website, www.humanlife.net, I published a November 6, 2007 article by Wesley Smith on a new
14 study of assisted suicide care in Portland, Oregon versus palliative care in Seattle, Washington.
15 The study, done by Dr. David Jeffrey, a palliative-care specialist from Scotland, shows that
16 problems with Oregon's assisted suicide scheme are real.

14 For example, Dr. Jeffrey discovered that one Oregon hospice program had 28 assisted
15 suicides, of which 23 were assisted by the same doctor. So while most Oregon doctors won't
16 participate, Kevorkian-style advocates do the grisly work.

17 Dr. Jeffrey also discovered that, contrary to popular perception, people who employ
18 assisted suicide are people who seek control, not people who are suffering. “They are independ-
19 ent and have no interest in receiving palliative or hospice care,” he wrote.

18 And Dr. Jeffrey described a case in which it was not certain that the patient was compe-
19 tent when he took the lethal prescription. In fact, another had a feeding tube installed just for
20 assisted suicide, a practice allowing easy administration to patients unable to act on their own to
21 take the deadly drugs. Such questions about competence fly in the face of the assurances that all
22 is going properly in Oregon's assisted suicide plan—a plan that is neither set up nor funded to
23 detect the predicted and apparent abuses.

22 The public needs to receive this sort of information as assisted suicide advocates once
23 again offer biased, inaccurate, and rosy depictions of this grisly practice. The public needs to
24 know that the answer is love and care at the end of life, not eliminating patients. And people need
25 to be reminded of the importance of patients always being able to trust that physicians will be
26 care givers, not life takers.

25 Human Life of Washington is vigilant, but we need funds to broadcast our planned
26 educational ads. Will you help? Please send us \$100, \$50, \$25 or whatever you can afford for
this vital cause. Do it today. Vigilance is impotent if no one answers the call.

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Your friend for life,

Dan Kennedy

P.S.—Things are not well in Oregon’s assisted-suicide scheme. The public needs to know of the problems. And they need to know about the many abuses in the Netherlands, where assisted suicide has proven to be a slippery slope leading to involuntary deaths and active euthanasia. Please help us today to get the truth out once again.

[Exhibit 3—HLW Phone Script]

1st Presentation

Hello, Mr./Mrs. _____, my name is [First & Last Name], a paid caller for MDS calling on behalf of Human Life of Washington. Right now we are trying to reach every pro-life household in Washington with an urgent update. As you've probably heard, former Governor Booth Gardner is trying to get an initiative on the ballot this fall that would legalize physician-assisted suicide in the State of Washington. We fear that many Washingtonians do not know the grisly facts about physician-assisted-suicide and its devastating effect on a culture of life.

We need your help at this critical time to get the truth out. We plan to broadcast radio advertisements bringing awareness to this issue and asking the hard questions that others gloss over. Your donation to help us broadcast these ads would make a real difference. If we sent you a letter in the mail, will you help us with a gift of \$100 or even \$150?

2nd Presentation

I understand, Mr./Mrs. _____, (repeat objection), and many people are helping with smaller amounts as well because there is so much at stake. We must protect the most vulnerable citizens of our state and we must ensure that patients can trust physicians. Physicians are to be care givers, not life takers. That is why we're pleading for your help. I know it may be a real sacrifice. With this in mind, is there any way you can help with a smaller donation of say \$40 or \$50 to help us educate the public on this important issue?

3rd Presentation

I completely understand, Mr./Mrs. _____, and I know that your heart is with us so I want to give you an opportunity to help. Is there any way you could help us broadcast these ads with a gift of even \$20 or \$25?

[Exhibit 4—HLW Ads]

Settled

(radio: 30 seconds; M = male; F = female)

M: Assisted suicide is back in the news!

F: Didn't we settle that issue?

M: We *rejected* a ballot measure.

F: Has anything changed?

M: We know more about the dangers.

F: Such as?

M: A new study said one doctor did 23 of the 28 assisted suicides at an Oregon hospice.

F: Sounds like a Kevorkian!

M: And it said one man seemed rushed into it . . . then took hours to die after the drugs. Wife left . . . couldn't take it . . . so depressed that *she* attempted suicide.

F: All reasons *not* to reconsider the issue.

Narrator: Paid for by Human Life of Washington.

Slippery

(radio: 30 seconds)

F: Don't the Dutch do assisted suicide?

M: *And* euthanasia . . . since the 70s.

F: How's it going?

M: Studies say it's a slippery slope. It's only legal with consent, but people who *can't* consent—like babies—are being killed . . .

F: Babies?!

M: . . . and it's only legal for the terminally ill in unbearable physical pain, but some do it for people who are not terminally ill and just tired of life . . . and some who do dozens of killings do no palliative care.

F: But keeping people comfortable is what doctors *should* do, not kill people!

M: It is slippery!

Narrator: Paid for by Human Life of Washington

Tolerance

(radio: 30 seconds)

F: Why do disability rights groups oppose assisted suicide?

M: Some people think that persons with disabilities don't have lives worth living . . .

F: Like Nazi docs!

M: . . . and steer them to assisted suicide. But persons with disabilities aren't disabled *persons*. They just have different abilities. *They* value their lives. So should we.

F: The Hemlock Society's founder called them "handicapped *person[s]*."

M: And said we should be "tolerant" of helping them die.

F: *He* should be more tolerant—of persons with disabilities.

Narrator: Paid for by Human Life of Washington.

Trust

(radio: 30 seconds)

F: Whatever happened to the Hippocratic Oath?

M: You mean the part that says "I will neither give a deadly drug to anybody who asked for it, nor will I make a suggestion to this effect?"

F: Exactly. It was a quantum leap in medicine when you knew that you could always trust your doctor. Before that, who knew whether he'd been hired by a family member to hurry up the inheritance?

M: That trust is the foundation of medicine.

F: Assisted suicide removes it . . . turns doctors into killers. That's dangerous.

Narrator: Paid for by Human Life of Washington