IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

The Hispanic Leadership Fund, Inc., Plaintiff,) Civil Case No. 4:12-cv-00339-JAJ-TJS
v.) POST HEARING REPLY
Federal Election Commission,)
Defendant.)))

At oral argument today, the Court asked Counsel for Plaintiff The Hispanic Leadership Fund, Inc. ("HLF) for information about the actions of the Defendants at issue in accordance with *Woodke v. Dahm*, 70 F.3d 983 (8th Cir. 1995). Plaintiffs wish to submit this additional authority to the Court about the actions of the Defendant that are relevant, and why HLF faces fear of prosecution by the Defendants in the Southern District of Iowa if it airs its planned advertising in Des Moines, Iowa. In analyzing standing to sue the Federal Election Commission, another court found:

The VSHL notes that the FEC is empowered to "institute a civil action ... in the district court of the United States for the district in which the person against whom such action is brought is found, resides, *or transacts business*." 2 U.S.C. § 437g(a)(6)(A) (emphasis added). As observed by the VSHL, the FEC has chosen to bring enforcement actions in the districts where potential violators have transacted business on numerous occasions, rather than in the districts where those parties were found or resided. (Pl.'s Resp. § II(A).). The VSHL therefore reasonably fears prosecution by the FEC in the District of Columbia, both for its radio advertisements and for any advertising collaborations between the VSHL and D.C.-based organizations, such as the National Right to Life Committee. (Id.). While the FEC argues that any fear of prosecution in the District of Columbia is too

speculative to be "imminent," this fear appears to be perfectly reasonable.

Virginia Society for Human Life v. Federal Election Commission, 83 F.Supp 2d. 668, 673-674 (E.D. Va. 2000). Additionally, in the decision substantially affirming the lower court opinion there, the United States Court of Appeals for the Fourth Circuit noted:

The FEC has in the past prosecuted groups in the judicial districts where they distributed advertising materials, as opposed to the states where they are chartered or headquartered. See, e.g., *FEC v. Pub. Citizen, Inc.*, 64 F. Supp. 2d 1327 (N.D. Ga. 1999) (D.C. organization prosecuted in Georgia for "Boot Newt" television advertisement that aired in Atlanta and for distribution of postcards to Georgia voters); *FEC v. Nat'l Conservative Political Action Comm.*, 647 F. Supp. 987 (S.D.N.Y. 1986) (D.C. organization prosecuted in New York for activities related to campaign to defeat Senator Daniel Patrick Moynihan).

Va. Society for Human Life, Inc. v. Federal Election Commission, 263 F.3d 379 (4th Cir. 2001).

These two cases, and the cases noted therein, leave Plaintiff with a reasonable fear of prosecution by the Defendant in the Southern District of Iowa if it proceeds with its planned activity under its belief that the advertisements it proposes are in fact not electioneering communications.

Dated: August 8, 2012 By: /S/Jason Torchinsky

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CERTIFICATE OF SERVICE

I hereby certify that on August 8-9, 2012, I sent copies of the foregoing Post Hearing Reply by electronic service and U.S. first class mail on the following parties:

VIA ELECTRONIC SERVICE Federal Election Commission 999 E Street, NW Washington, DC 20463

And

VIA U.S. FIRST CLASS MAIL Nicholas A. Klinefeldt U.S. Attorney for the Southern District of Iowa U.S. Courthouse Annex 110 East Court Avenue, Suite # 286 Des Moines, Iowa 50309-2053

/s/ Jason Torchinsky JASON TORCHINSKY