

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

PATRIOTIC VETERANS, INC.,)
)
Plaintiff,) CIVIL ACTION NO. 1:10-cv-0723 WTL-TAB
v.)
)
STATE OF INDIANA)
EX REL. GREG ZOELLER,)
ATTORNEY GENERAL, and)
GREG ZOELLER, Attorney General,)
)
Defendants.)

**PLAINTIFF’S CITATION
OF SUPPLEMENTAL AUTHORITY**

On June 10, 2014, the Court in *Cahaly v. LaRosa*, 2014 WL 2592555 (D.S.C. 2014) struck down a ban on the use of automated dialing machines under the First Amendment, the relief sought by Plaintiff Patriotic Veterans, Inc. in this case. In *Cahaly*, the Court held that the South Carolina prohibition on the use of automated dialing machines for political calls was a content-based restriction on core political speech that could not survive strict scrutiny. *See id.* at 6-8. Because that conclusion applies equally to Indiana’s prohibition on automated political speech, Patriotic Veterans respectfully requests that the Court apply *Cahaly* in this case and enter summary judgment in Patriotic Veterans’ favor.

Like the Indiana statute that Patriotic Veterans challenges in this case, the statute at issue in *Cahaly* prohibited automated political calls. *Compare* South Carolina Code § 16-17-446 with Ind. Code § 24-5-14-5. The Court in *Cahaly* determined that a ban on automated political calls was content-based because it restricted political and commercial speech based on the content of the calls. *See Cahaly*, 2014 WL 2592555 at **6-7. It did not place such restrictions on other forms of speech, and the only way the courts could sort through which calls were prohibited is to refer to the content of the speech at issue. *Id.* For instance, speakers could use automated dialing machines “when primarily connected with an existing debt or contract, payment or performance

of which has not been completed at the time of the call” or “in response to a person with whom the telephone solicitor has an existing business relationship or has had a previous business relationship.” South Carolina Code § 16-17-446. Similar exemptions exist in the Indiana statute. *See* Ind. Code § 24-5-14-5 (“to subscribers with whom the caller has a current business or personal relationship”). Because the distinctions the statute drew were based on the content of the calls, the Court in *Cahaly* held that the statute was a content-based regulation of speech. *See Cahaly*, 2014 WL 2592555 at **6-7.

Because the statute was content-based, the Court reviewed it under a strict scrutiny standard. The Court in *Cahaly* struck down the statute under that standard, finding that the statute was “underinclusive” to protect the State’s interest in privacy because it allowed calls for multiple purposes other than political speech. *Id.* at * 8 (“Given that interest, the court finds the statute is fatal for its underinclusiveness and its singling out of commercial and political speech.”).

A true and accurate copy of *Cahaly* is attached hereto as **Exhibit A**. Patriotic Veterans respectfully requests that the Court consider that opinion in reviewing its motion for summary judgment.

Respectfully submitted,

/s/Mark J. Crandley
Mark J. Crandley (Atty No. 22321-53)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Telephone: (317) 236-1313
Facsimile: (317) 231-7433
Email: mark.crandley@btlaw.com

Attorney for Plaintiff Patriotic Veterans, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 23rd, 2014, a copy of the foregoing was served on all counsel of record via the Court's electronic filing system:

Thomas M. Fisher – tom.fisher@atg.in.gov

Heather Hagan McVeigh – heather.hagan@atg.in.gov

/s/Mark J. Crandley

Mark J. Crandley

1444215