



August 22, 2014

Via Electronic Filing

United States Court of Appeals for the Fifth Circuit  
600 South Maestri Place  
New Orleans, Louisiana 70130  
Attn: Lyle W. Cayce, Clerk

RE: Supplemental Letter Brief Concerning *Justice, et al. v. Hosemann, et al.*, No. 13-60754

As requested by this Court on August 13, 2014, *Amicus curiae* Center for Competitive Politics submits this supplemental letter brief addressing the impact of *Catholic Leadership Coal. of Texas v. Reisman*, 13-50582 (5th Cir. Aug. 12, 2014) on the above-reference case.

*Catholic Leadership* is of limited help in deciding this appeal. But its general approach, which demonstrated that this Court's "scrutiny of disclosure and/or organizational requirements is not a rubber stamp," is correct. Slip. Op. at 47 (citing *Davis v. FEC*, 554 U.S. 724, 744 (2008)). Like Texas, Mississippi "will have to persuasively defend a registration requirement" that imposes burdens on potential speakers. *Id.* And unlike Texas, it will have to do so on an as-applied basis.

**1. The Parties here differ markedly from those in *Catholic Leadership***

Because this is an as-applied challenge, the Plaintiffs' specific circumstances are of the first importance. Mr. Justice and his friends are like-minded individuals who wish to spend a limited amount of money discussing a ballot initiative.<sup>1</sup> As *Amicus* noted in its brief, "they are certainly not a PAC or a corporation." Br. at 8. They are not, in fact, an organization of any kind. Whether Mississippi may turn them into one is precisely the question.

By contrast, the plaintiffs in *Catholic Leadership* are "entities." Slip. Op. at 10. "Catholic Leadership Coalition... is a 501(c)(4) nonprofit corporation" that had the resources to hire "election lawyers" and, on their advice, "form a general-purpose committee to engage in direct advocacy." *Id.* at 10-11. Friends of SAFA Texas and Texas Freedom PAC were both already-registered general-purpose committees. *Id.* Indeed, the heart of their case was that Texas would not permit these groups to spend \$500 quickly enough. *Id.* at 7 (describing need to spend receive and spend "less than an aggregate \$500," and wait for 60 days, after appointment of a treasurer). Plaintiffs here do not command similar resources and, consequently, face a different set of difficulties.

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<sup>1</sup> In their application for a preliminary injunction, Mr. Justice, et al., sought only an as-applied order allowing them to spend less than \$1,000 without registering as a Mississippi political committee. *Justice v. Hosemann*, 829 F. Supp. 2d 504, 507 (N.D. Miss. 2011).

This alone is reason to apply *Catholic Leadership* with caution. The district court below noted that Mississippi’s statutes are confusing, and that “potential speakers”—explicitly including Mr. Justice and his associates—“might well require legal counsel to determine which regulations even apply, above and beyond how to comport with those requirements.” SJ Op. at 26 (ROA.2316). Such a need was one reason why “the burdens imposed by the State’s regulations are simply too great to be borne by the State’s interest in groups raising or expending as little as \$200.” SJ Op. at 26 (ROA.2316). The plaintiffs in *Catholic Leadership* had no such difficulty. Catholic Leadership Coalition explicitly contacted not only lawyers, but experts in the field of election law, despite arguably dealing with a significantly simpler legal environment. Plaintiffs here had no such option.

**2. This Court’s decision in *Catholic Leadership* emphasizes the importance of as-applied challenges.**

The marked differences between the relatively sophisticated entities in *Catholic Leadership* and the Appellees here is relevant. As *amicus* noted in its brief, as-applied challenges are a favored means of constitutional adjudication. Br. at 14.

Most of *Catholic Leadership* concerned contribution and expenditure restrictions, and not organizational restraints of the kind presented here. But the Court also considered a Texas law stating that “a general-purpose committee may not accept political contributions in excess of \$500 or engage in more than \$500 in aggregate expenditures and contributions until, among other things, a committee-treasurer has been appointed.” Slip Op. at 44.

The *Catholic Leadership* Court upheld Texas’s treasurer-appointment requirement facially and as applied to the plaintiffs in that case. Slip Op. at 51. It based that decision on the record before it. Importantly, the Court took pains to note that “[n]one of the [p]laintiffs...explain how the treasurer-appointment requirement (as opposed to the 60-day limit) actually burdened or impacted—in any way—their ability to form a general-purpose group to speak on their behalf. And without a persuasive explanation as to why the treasurer-appointment requirement constitutes a burden, Plaintiffs’ constitutional challenge faces an uphill battle.” Slip Op. at 49.

This case presents the opposite circumstance. There is indeed a record of how Mississippi law burdens the Plaintiffs. In fact, the lower court confined itself to the facts at bar when it limited its consideration of the Plaintiffs’ challenge to an as-applied one. On that record, it found that that “the \$200 threshold is simply too low for the substantial burdens that the statute imposes on groups and individuals.” SJ Op. at 33 (ROA.2322-23). *Catholic Leadership* contained no record on which to invalidate the treasurer-appointment requirement as applied to those plaintiffs, and the Court emphasized that because “Texas has excerpted small-scale general-purpose committee political activity from its registration requirements” the Court was “unwilling to say, *particularly given this record*, that the Constitution requires Texas to wait further before demanding to know who on the committee is responsible for the committee’s compliance with Texas’s disclosure regime.” Slip Op. at 15 (citation omitted).

*Catholic Leadership* considered an organizational restraint in the context of sophisticated entities that exist to influence policies and possess resources Plaintiffs here do not. Consequently,

in that context, the burdens of that organizational restraint were necessarily lighter. The context here, as persuasively explained by the district court, is different. The result should be as well.

### **Conclusion**

As its brief in this case relied principally on decisions of the U.S. Supreme Court and record evidence demonstrating the burdens of PAC status generally, *Amicus*'s arguments are not substantially altered by the decision in *Catholic Leadership*. Nevertheless, *Amicus* appreciates the opportunity to respond to that case, which again demonstrates that similar statutes "may be invalid as applied to one state of facts and yet valid as applied to another." *Ayotte v. Planned Parenthood*, 546 U.S. 320, 329-30 (2006) (internal citation and quotation marks omitted).

For the reasons given in its brief in this matter, and those explained above, the ruling of the district court should be affirmed.

Respectfully submitted the 22<sup>nd</sup> day of August, 2014,

/s/ Allen Dickerson  
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**CERTIFICATE OF SERVICE**

I certify that on August 22, 2014, I electronically filed the foregoing Supplemental Letter Brief of *Amicus Curiae* Center for Competitive Politics in Support of Plaintiffs-Appellees with the clerk of court using the CM/ECF system, which will notify and accomplish electronic service upon the following:

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I also certify that the Center for Competitive Politics sent electronic copies of the foregoing supplemental letter brief to the counsel listed above.

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Dated: August 22, 2014