

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DELAWARE STRONG FAMILIES,	)	
a Delaware nonprofit corporation,	)	
	)	
Plaintiff,	)	C.A. No.
	)	
v.	)	
	)	
JOSEPH R. BIDEN III,	)	
In his official capacity as Attorney General, of	)	
the State of Delaware	)	
EILEEN MANLOVE,	)	
In her official capacity as State Commissioner	)	
of Elections,	)	
	)	
Defendants.	)	

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**VERIFIED COMPLAINT**

Plaintiff, Delaware Strong Families, hereby sets forth its Complaint as follows:

**NATURE OF THE CASE**

1. This case challenges provisions of the Delaware Elections Disclosure Act, as codified at 15 *Del. C.* § 8001, *et. seq.*
2. Plaintiff Delaware Strong Families (“DSF”) is a Delaware corporation exempt from taxation pursuant to §501(c)(3) of the Internal Revenue Code. DSF regularly releases voter guides before general elections in the state of Delaware.
3. DSF believes that, under certain provisions of Delaware’s election laws, it will be forced to file reports with the State. Such reports are burdensome and require disclosure of an organization’s confidential information, including the identities and home addresses of its contributors. DSF believes this mandatory reporting is unconstitutional under the First and Fourteenth Amendments.

4. DSF reasonably fears that, should it fail to disclose its contributors or report to the State as demanded, it and/or its officers may be subject to enforcement actions, investigations, and penalties levied by the Defendants and their agents.

5. Delaware's election laws function to chill discussion of state government and public issues by forcing would-be speakers, including DSF, to comply with unconstitutional regulatory burdens merely for mentioning a candidate for office, even if that speech neither promotes nor disparages the candidate.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction, because this action arises under the First and Fourteenth Amendments to the United States Constitution. *See* 28 U.S.C. § 1331.

7. This Court also has jurisdiction, because this action arises under the Civil Rights Act of 1871. *See* 42 U.S.C. §§ 1983, 1988; 28 U.S.C. § 1343(a).

8. This Court also has jurisdiction under the Declaratory Judgment Act. *See* 28 U.S.C. §§ 2201 and 2202.

9. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1) and (b)(2).

### **PARTIES**

10. Plaintiff Delaware Strong Families is a Delaware corporation exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code.

11. Defendant Joseph R. Biden III is the Attorney General of Delaware and is empowered to "investigate matters involving the public peace, safety and justice" in the State of Delaware. *29 Del. C. § 2504*. Under *15 Del. C. § 8044(c)(2)*, "the Commissioner shall notify the Office of the Attorney General" of parties which fail to file required reports. Failure to file such reports constitutes a class A misdemeanor. *15 Del. C. § 8043(c)*.

12. Defendant Elaine Manlove is the Commissioner of Elections of the State of Delaware, and is empowered to issue regulations with the force of law regarding Delaware election laws pursuant to 15 *Del. C.* § 302. The Commissioner also has the power to levy fines against those “who fail[] to file or deliver to the Commissioner any report required” under Delaware’s campaign finance laws. 15 *Del. C.* § 8044.

#### **STATEMENT OF FACTS**

13. This case arises from vague and overbroad provisions of Chapter 15 of the Delaware Code Annotated, as amended by the Delaware Elections Disclosure Act.

14. The Delaware Elections Disclosure Act went into effect on January 1, 2013.

#### **The Past and Future Activities of DSF**

15. DSF is a registered Delaware nonprofit corporation exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code. DSF’s current president is Nicole Theis.

16. DSF is not under the control or influence of any political party or any political candidate. DSF does not offer memberships to any persons.

17. DSF is affiliated with a 501(c)(4) organization, the Delaware Family Policy Council. DSF and the Delaware Family Policy Council maintain separate bank accounts and websites.

18. DSF’s mission is to promote Biblical worldview values, resources and programs, and educate and empower citizens to stand strong for those values in all arenas.

19. DSF plans to publish a voter guide within 60 days of the 2014 general election. The voter guide will be distributed to Delaware registered voters via U.S. mail and public distribution. It will also be placed on the DSF website and available to the general public for download. DSF engaged in similar activity in 2012.

20. The 2012 voter guide did not contain words of express advocacy, nor was it the functional equivalent of express advocacy. The guide listed all candidates running for state-wide office in Delaware. The guide then listed candidate responses to a series of questions.

21. DSF's affiliate organization also produced a legislative scorecard. That organization sent out neutrally worded questions to all state and federal candidates on the ballot in 2012. The candidate responses to these neutrally worded questions were shared with DSF, which used them to create its own separate voter guide.

22. The DSF voter guide is attached as Exhibit A.

23. The 2012 voter guide contained fifteen questions which had been answered by state and county-level candidates. The guide also contained fourteen questions answered by federal candidates.

24. For candidates for the U.S. House of Representatives and Senate, these questions concerned national issues, such as a federal ban on human cloning, the Employment Non-Discrimination Act and the Patient Protection and Affordable Care Act and its implementing regulations.

25. For state-wide and county-wide candidates, these questions concerned state-level issues, such as sex education, parental consent laws governing abortions for minors and state inspections of abortion clinics.

26. If a candidate did not reply to the questionnaire within approximately four weeks, DSF searched for that candidate's public statements regarding the surveyed issues and then used this publicly-available material to complete the guide. References for these responses were placed as "endnotes" on the DSF website and the guide directed readers seeking more information to visit the website.

27. The guides listed publicly-available telephone contact information for all candidates, where such information was available.

28. Candidate comments on the guide's questions, if any, were limited to 75 words per question and made available on DSF's website. The guide noted that the DSF website contained this information.

29. The guide also contained the following message from DSF President Nicole Theis: "this Voter Guide does not address a candidate's character, only their position on the issues. It should not take the place of your effort to personally evaluate a candidate."

30. DSF plans to produce and distribute similar voter guides for the 2014 primary and general elections. Upon information and belief, the production and distribution of the voter guides before the 2014 primary elections will cost DSF more than \$500.

31. In 2014, DSF plans to produce and disseminate voter guides in a manner substantively similar to the process used in 2012.

32. In 2012, DSF spent over 250 hours of employee time on the creation of DSF's voter guide.

33. The voter guides involve an extensive process of developing questions, researching candidates and contracting for services (such as printing and mailing). Further, the guides are published only after consultation with counsel.

34. This process must begin by July 1st, 2014 in order for the guides to be made available before the 2014 election.

35. None of DSF's activities constitute express advocacy or its functional equivalent. Aside from its production and distribution of the voter guide discussed *supra*, none of its

activities constitute “third-party advertisements” as that term is defined under Delaware law. 15 *Del. C.* § 8002(27). This will remain true for its activities in 2014.

36. Upon information and belief, DSF’s activities will place it under the regulatory purview of Defendants, the State Attorney General and Election Commissioner. Regulating the speech of DSF is unconstitutional under a line of cases dating back to *Buckley v. Valeo*, 424 U.S. 1 (1976).

37. Absent a declaratory judgment, DSF will not publish and disseminate its voter guides in 2014, for fear of risking enforcement of the Delaware Elections Disclosure Act. Thus, Delaware’s campaign finance regime—left untouched—will chill speech in a manner found unconstitutional by the Supreme Court. *Buckley v. Valeo*, 424 U.S. 1, 42 (1976).

**Delaware’s Regulatory Scheme for Electioneering Communications  
and Third-Party Advertisements**

38. Delaware law defines an “electioneering communication” as any communication distributed by “television, radio, newspaper or other periodical, sign, Internet, mail or telephone” which “[r]efers to a clearly identified candidate” and “[i]s publicly distributed within 30 days before a primary election or special election, or 60 days before a general election to an audience that includes members of the electorate for the office sought by such candidate.” 15 *Del. C.* § 8002(7)(10). This definition did not exist before the Delaware Elections Disclosure Act (“the Act”) took effect on July 1, 2013.

39. The Act also created a new category of regulable speech: the “third-party advertisement.” 15 *Del. C.* § 8002(27).

40. “‘Third-party advertisement’ means an independent expenditure or an electioneering communication.” 15 *Del. C.* § 8002(27).

41. In relevant part, 15 *Del. C.* § 8031 states that any person (that is, “any individual, corporation, company, incorporated or unincorporated association, general or limited partnership, society, joint stock company, and any other organization or institution of any nature,” 15 *Del. C.* § 8002(17)) that spends more than \$500 on third-party advertisements must “file[] under penalty of perjury” a “third-party advertisement report with the Commissioner.”

42. The third-party advertisement report must contain, *inter alia*, “[t]he full name and mailing address of each person who has made contributions to such person during the election period in an aggregate amount or value in excess of \$100; the total of all contributions from such person during the election period, and the amount and date of all contributions from such person during the reporting period.” 15 *Del. C.* § 8031(a)(3).

43. Delaware does not define a single “election period.” 15 *Del. C.* § 8002(11).

44. Rather, “[f]or a candidate for reelection to an office to which the candidate was elected in the most recent election held therefor, the period beginning on January 1 immediately after the most recent such election, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office” is the election period. 15 *Del. C.* § 8002(11)(a)(1). And, “[f]or a candidate for election to an office which the candidate does not hold, the period beginning on the day on which the candidate first receives any contribution from any person (other than from the candidate or from the candidate's spouse) in support of that candidate's candidacy for the office, and ending on the December 31 immediately after the general election at which the candidate seeks election to the office” is the election period. 15 *Del. C.* § 8002(11)(3).

45. “For a person who makes an expenditure for a third-party advertisement, the election period shall begin and end at the same time as that of the candidate identified in such advertisement.” 15 *Del. C.* § 8002(11)(d).

46. “If the expenditure is made more than 30 days before a primary or special election or 60 days before a general election, the report required under this section shall be filed within 48 hours after such expenditure is made. If the expenditure is made 30 days or less before a primary or special election or 60 days or less before an election, such report shall be filed with the Commissioner within 24 hours after such expenditure is made.” 15 *Del. C.* § 8031(d).

47. If a contributor “is not an individual,” the third-party advertisement report must list “the full name and mailing address of...[a]ny person who, directly or otherwise, owns a legal or equitable interest of 50 percent or greater in such entity; and...[o]ne responsible party, if the aggregate amount of contributions made by such entity during the election period exceeds \$1,200.” 15 *Del. C.* § 8031(a)(4).

48. Those “required to file reports under this section shall retain complete records of all expenditures made and contributions received in connection” with the third-party advertisement for three years “following the election for which such report was filed.” 15 *Del. C.* § 8031(f).

49. These burdens are essentially the same as—and in some instances, more burdensome than—those imposed by the state of Delaware when an entity becomes a political committee (“PAC”), as demonstrated below:



<p align="center"><b>Third-Party Advertisement Report</b>  <i>After spending more than \$500 on any combination of independent expenditures or electioneering communications, a Delaware group must...</i></p>	<p align="center"><b>Political Committee Report</b>  <i>After spending more than \$500 or receiving more than \$500 in contributions, a Delaware PAC must...</i></p>
<p>Disclose all contributions to the organization during the election period of over \$100, including names and addresses of contributors. §8031(a)(3).</p>	<p>Disclose all contributions to the organization during the election period of over \$100, including names and addresses of contributors. §8030(d)(2).</p>
<p>If not an individual, disclose the full name and address of anyone with a 50 percent stake in the entity and “one responsible party” if aggregate contributions from a non-individual exceed \$1,200. §8031(a)(4)(a)-(b).</p>	<p>If aggregate contributions from a non-individual exceed \$1,200, name and address of “one responsible party.” §8030(d)(2).</p>
<p>At minimum, file reports during the same reporting period used by PACs. §8031(b).</p>	<p>Abide by mandatory reporting period. §8030(b).</p>
<p>48 hour reporting if expenditure is made more than 60 days before a general election or 30 days before of a primary/special election. §8031(d).</p>	<p>If an independent expenditure or electioneering communication is made, must abide by same rule.</p>
<p>24 hour reporting if expenditure is made 60 days or less before a general election or 30 days or less before a primary/special election. §8031(d).</p>	<p>If an independent expenditure or electioneering communication is made, must abide by same rule.</p>
<p>Mandatory retention of “complete records” of all expenditures and contributions for three years following the election. §8031(f).</p>	<p>Mandatory retention of “complete records” of all expenditures and contributions for three years following the election. §8005(3).</p>
<p>File report under penalty of perjury. §8031(a).</p>	<p>Candidate or PAC treasurer must file a sworn affidavit supporting the report. §8030(f).</p>

50. The Delaware General Assembly’s web page for the Act, as well as the bill as introduced, contains a summary explaining the Legislature’s intent. The Synopsis summarizes the new electioneering communication definition as directly encompassing speech which

“advocate[s] indirectly for a candidate (for example, ‘Call Candidate X and tell him he’s wrong on education.’)” 146th General Assembly, *House Bill # 300 w/HIA 2, HA 1 to HA 2, HA3*, DELAWARE GENERAL ASSEMBLY, <http://legis.delaware.gov/lis/lis146.nsf/vwLegislation/HB+300>.

51. The Act further provides, “Without limitation of the foregoing, no later than December 31, 2012, the Commissioner shall promulgate all forms required in connection with the filing of reports under this chapter, as well as regulations (a) [e]xempting, to the extent possible, persons from reporting duplicative information hereunder; (b) [p]romulgating standards with respect to the size, layout and timing of the statements required under § 8021 of this chapter; (c) [a]dopting any amendments or modifications to the statements required under § 8021 or exemptions from the requirements thereunder; and (d) [a]dopting procedures for the electronic filing of reports and the posting of said reports to the Commissioner of Elections’ web site.” 15 *Del. C.* § 8041(1).

52. The Commissioner has promulgated new regulations to implement the Act. 1-900-901 *Del. Code Regs.* § 1.0 *et seq.* (LexisNexis 2013). These new regulations have not been posted to the Commissioner’s website.

53. The new regulations define “electioneering communication” and “third-party campaign advertisement” has having the same definition set forth in 15 *Del. C.* § 8002(11) and 15 *Del. C.* § 8002. 271-900-901 *Del. Code Regs.* § 2.0 (LexisNexis 2013).

54. The promulgated regulations neither expand upon nor clarify the statutory provisions at issue in this action. *See* 1-900-901 *Del. Code Regs.* § 9.0-10.3 (LexisNexis 2013).

55. Further, the regulations explicitly “do not excuse any person from the obligation to comply with the provisions of that statute.” 1-900-901 *Del. Code Regs.* § 13.0 (LexisNexis 2013).

56. Upon information and belief, the Commissioner has failed to “promulgate all forms required in connection with the filing of reports under this chapter.”

### **The First Amendment, Issue Speech and Disclosure**

57. In the seminal campaign finance case of *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court ruled that the governmental interest in “independent reporting requirements on individuals and groups that are not candidates or political committees” dissolves unless the “contributions...[are] earmarked for political purposes or authorized or requested by a candidate or his agent, to some person other than a candidate or political committee” or “when they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.” 424 U.S. at 80.

58. *Buckley* also determined that express advocacy meant directly advocating the election or defeat of a candidate as expressed through words such as “vote for” or “elect.” *Buckley*, 424 U.S. at 42, 44, n. 52.

59. The Court explicitly drew this distinction to prevent the new campaign finance regime from reaching speech discussing issues of public policy, since “the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.” *Buckley*, 424 U.S. at 42.

60. The Court also held that the government could only force PAC status upon organizations with “the major purpose” of nominating or electing a candidate. *Buckley*, 424 U.S. at 79. The Court did so explicitly to avoid permitting the law to be “interpreted to reach groups engaged purely in issue discussion.” *Id.*

61. The Court subsequently affirmed this decision, noting that “[i]mposing the full panoply of regulations that accompany status as a political committee under the [law]” is only

permissible if an entity's express advocacy "spending become[s] so extensive that the organization's major purpose may be regarded as campaign activity." *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 ("MCFL").

62. To do otherwise would "offer[] no security for free discussion" because the fine distinction between expressly supporting a candidate and merely discussing issues "blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim." *Buckley*, 424 U.S. at 43 (internal citations and quotations omitted.); *see also MCFL*, 479 U.S. at 263.

63. In 2002, Congress enacted the Bipartisan Campaign Reform Act (BCRA), which created a novel form of regulated speech, the federal electioneering communication.

64. "BCRA's definition of 'electioneering communication'...encompass[ed] any broadcast, cable, or satellite communication that refer[red] to a candidate for federal office and...aired within 30 days of a federal primary election or 60 days of a federal general election in the jurisdiction in which that candidate is running for office." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 457-458 (2007) ("*WRTL II*") (citing 2 U.S.C. § 434(f)(3)(A)).

65. This new electioneering communication was designed to regulate "advertisements that do not urge the viewer to vote for or against a candidate in so many words, [but] are no less clearly intended to influence the election." *McConnell*, 540 U.S. at 194.

66. In 2003, the Court clarified that this pool of regulable speech encompasses "express advocacy" and speech that is the "functional equivalent of express advocacy." *McConnell v. FEC*, 540 U.S. 93, 206 (2003).

67. "[T]he functional-equivalent test is objective: A court should find that a communication is the functional equivalent of express advocacy only if it is susceptible of *no reasonable interpretation* other than as an appeal to vote for or against a specific candidate."

*Citizens United v. FEC*, 558 U.S. 310, 325 (2010) (internal punctuation, quotations, and citations omitted) (emphasis supplied).

68. The Court has also taken pains to provide concrete protection for “genuine issue” speech against a broad reading of the “functional equivalent” test. *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 470 (2007) (“*WRTL II*”).

69. The advertisements at issue in *WRTL II* were found not to be express advocacy or its functional equivalent, based on the phrase “Contact Senators Feingold and Kohl and tell them to oppose the filibuster.” *WRTL II*, 551 U.S. at 459; compare Text of H.B. 300 (As Enrolled) at 13 (expressing intent to regulate advertisements stating “Call Candidate X and tell him he’s wrong on education.”).

70. The disclosure regime the Court upheld in *Citizens United* was more limited than Delaware’s. First, it applied to a specific type of speech—federal electioneering communications, distributed via broadcast media, which “referred to [a federal candidate]...by name shortly before a primary and contained pejorative references to her candidacy.” *Citizens United*, 558 U.S. at 368. Second, it required disclosure only after the expenditure of a larger sum of money and required the disclosure of certain contributors of a larger size. 2 U.S.C. 434(f)(2)(E), (F).

71. At the time of the *Citizens United* decision, if “disbursements [for electioneering communications] were made by a corporation” said corporations only needed to disclose to the state “the name and address of each person who made a donation aggregating \$1,000 or more to the corporation...which was made for the purpose of furthering electioneering communications.” 11 C.F.R. § 104.20(c)(9) (Dec. 26, 2007) (emphasis supplied).

72. This “earmark-only” disclosure regime for electioneering communications was explicitly enacted by regulation in order to prevent corporations from disclosing all of their funders as a condition of engaging in First Amendment political speech. Explanation and Justification for Final Rules on Electioneering Communications, 72 Fed. Reg. 72899, Federal Election Commission (Dec. 26, 2007). This was the form of disclosure upheld in *Citizens United*.

73. In cases involving voter guides, the Supreme Court has been extremely wary of imposing burdensome disclosure requirements upon advocacy groups, even when such voter guides plainly constituted express advocacy. *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 252-53 (1986).

74. The Supreme Court has also forbidden the government from requiring PAC status as a precondition of corporate speech. *Citizens United*, 558 U.S. at 338-39 (*inter alia*, because of the “onerous restrictions” imposed upon PACs and because “PACs have to comply with these regulations just to speak;” PACs are not an acceptable substitute for direct corporate speech).

75. This unbroken line of Supreme Court precedent prohibits the very chill of constitutionally protected issue speech that has occurred in this case.

76. Delaware’s regime requiring the disclosure of associational activity unrelated to express advocacy of candidates or parties (or its functional equivalent) chills political speech and serves no compelling government interest. Similarly, its burdensome organization and reporting requirements for groups that do not engage in express advocacy or its functional equivalent discourage political speech and are not justified by any constitutionally sufficient government interest.

## COUNT I

### **Declaratory Judgment Regarding the Definition of “Electioneering Communication” at 15 Del. C. § 8002(10)**

77. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs as if set forth fully herein.

78. Under Delaware’s definition of “electioneering communication,” DSF’s voter guides would constitute an electioneering communication, even though the guides are not express advocacy or its functional equivalent. *Buckley*, 424 U.S. at 42, *McCormell*, 540 U.S. at 206, *Citizens United*, 558 U.S. at 325.

79. Because the law does not distinguish between express advocacy or its functional equivalent and genuine issue speech, 15 Del. C. § 8002(10) is facially unconstitutional as vague and overbroad under the First and Fourteenth Amendments.

80. Additionally, the law as applied to DSF and its voter guides is unconstitutionally vague and overbroad under the First and Fourteenth Amendments, as it reaches speech conducted without the objective intent of advocating for or against the election of a candidate. *See Buckley*, 424 U.S. at 79-80.

81. Plaintiff is, therefore, entitled to a declaration that the definition of “electioneering communication” at 15 Del. C. § 8002(10) is unconstitutionally vague and overbroad, facially and as applied to DSF.

## COUNT II

### **Declaratory Judgment on the Definition of “Third-Party Advertisements” at 15 Del. C. § 8002(27)**

82. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs as if set forth fully herein.

83. Under Delaware's definition of a third-party advertisement ("independent expenditure" or "electioneering communication") DSF's voter guides constitute such an advertisement, even though the guides are not express advocacy or its functional equivalent. *Buckley*, 424 U.S. at 42, *McConnell*, 540 U.S. at 206, *Citizens United*, 558 U.S. at 325-326.

84. Because the law does not distinguish between express advocacy or its functional equivalent, and genuine issue speech, 15 *Del. C.* § 8002(27) is facially unconstitutional as vague and overbroad under the First and Fourteenth Amendments.

85. Additionally, as applied to DSF and its voter guides, 15 *Del. C.* § 8002(27) is unconstitutionally vague and overbroad under the First and Fourteenth Amendments, because it reaches speech conducted without the objective intent of advocating for or against the election of a candidate. *See Buckley*, 424 U.S. at 79-80.

86. Plaintiff is, therefore, entitled to a declaration that the definition of "electioneering communication" at 15 *Del. C.* § 8002(27) is unconstitutionally vague and overbroad, facially and as applied to DSF.

### COUNT III

#### **Declaratory Judgment Regarding Reporting for "Third-Party Advertisements" Under 15 *Del. C.* § 8031**

87. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs as if set forth fully herein.

88. Because DSF intends to spend more than \$500 on communications which qualify as third-party advertisements under 15 *Del. C.* § 8002(27), DSF must "file[] under penalty of perjury" a third-party advertisement report with the State Elections Commissioner containing the information in paragraphs 40-42, *supra*. 15 *Del. C.* § 8031.



89. The third-party advertisement report, as discussed *supra*, imposes essentially the “full panoply” of Delaware’s state PAC burdens on any entity making a “third-party advertisement.” *See MCFL*, 479 U.S. at 262.

90. Furthermore, the government has no cognizable interest in obtaining information about contributors who do not earmark their funds for an electioneering communication conducted by a corporation. *Citizens United*, 558 U.S. at 366-368 (constitutionally permissible to mandate disclosure to “provid[e] the electorate with information about the sources of *election-related* spending”) (internal citations and quotations omitted, emphasis supplied); *see also NAACP v. Alabama*, 357 U.S. 449 (1958).

91. Thus, Delaware has defined electioneering communication and third-party advertisement disclosure “in terms of amount of annual...expenditures” such that the state’s reach necessarily “could be interpreted to reach groups engaged purely in issue discussion.” *Buckley*, 424 U.S. at 79. Consequently, these disclosure provisions are facially unconstitutional for both vagueness and overbreadth under the First and Fourteenth Amendments.

92. To the extent that §8031 reaches DSF’s voter guides—which are pure issue speech, and contain neither express advocacy nor its functional equivalent—that section is unconstitutional as applied to those activities under the First and Fourteenth Amendments.

93. Plaintiff is, therefore, entitled to a declaration that the definition of “electioneering communication” at 15 *Del. C.* § 8002(10) is unconstitutionally vague and overbroad, facially and as applied to DSF.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- A. A declaration that the definition of “electioneering communication” at 15 *Del. C.* § 8002(10) is unconstitutionally vague and overbroad, facially and as applied to DSF.
- B. A declaration that the definition of “third-party advertisement” at 15 *Del. C.* § 8002(27) is unconstitutionally vague and overbroad, facially and as applied to DSF.
- C. A declaration that the disclosure regime for third-party advertisements at 15 *Del. C.* § 8031, is unconstitutionally vague and overbroad, facially and as applied to DSF.
- D. Such injunctive relief as this Court may direct.
- E. Costs and attorneys’ fees under 42 U.S.C. § 1988 and any other applicable statute or authority.
- F. Such other relief as this Court may grant in its discretion.

Respectfully submitted this 23rd day of October, 2013.

WILKS, LUKOFF & BRACEGIRDLE, LLC

/s/ David E. Wilks

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VERIFICATION

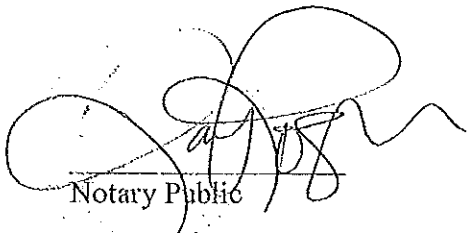
STATE OF DELAWARE            )  
COUNTY OF Sussex            )

I, NICOLE THEIS, being first duly sworn, state under oath that

1. I am the president of Delaware Strong Families, a Delaware nonprofit corporation, and that I am authorized to execute this Verification.
2. I have read the foregoing Verified Complaint, and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Nicole Theis  
Nicole Theis

Subscribed and sworn before me this 22 day of October, 2013.

  
Notary Public

My Commission expires: 4/13/14

LAURA BETH ROGERS  
NOTARY PUBLIC - STATE OF DELAWARE  
SUSSEX COUNTY  
MY COMMISSION EXPIRES ON  
April 13, 2014

A

## 2012 General Election Values Voter Guide

# DELAWARE STRONG

An affiliate of Delaware Family Policy Council



Delaware Strong Families (DSF) is pleased to present the 2012 Values Voter Guide. DSF, an affiliate of Delaware Family Policy Council, is a 501c3 non-profit organization. DSF does not endorse or oppose candidates for elective office.

All candidates were provided a questionnaire and given an equal opportunity to respond and to provide explanations or comments concerning each question. Any additional explanations or comments that were made by candidates are noted with an asterisk (\*) next to the answer and can be found our website.

For your convenience, the Voter Guide includes phone numbers for all candidates if you wish to call those who failed to respond. Position statements for non-responding candidates are based on voting records, public statements, and/or campaign literature.

A printable version of the Voter Guide is available on our website [www.delawarestrong.org](http://www.delawarestrong.org). Please Facebook and share the Voter Guide and encourage your friends and family to vote on November 6th.

*Remember, this Voter Guide does not address a candidate's character, only their position on issues. It should not take the place of your effort to personally evaluate a candidate.*

The stakes couldn't be higher this election. Our hope is that on November 6<sup>th</sup>, this Voter Guide will help you choose candidates who best represent your values.

*Nicole Treis*

President

Delaware Strong Families

An affiliate of Delaware Family Policy Council



### FEDERAL QUESTIONS: Do you Support or Oppose?

1. Taxpayer funding of abortions.
2. Giving tax dollars to Planned Parenthood.
3. The federal funding of embryonic stem cell research.
4. Federal legislation prohibiting human cloning of all kinds, both "therapeutic" and "reproductive."
5. The repeal of the federal estate tax.
6. Parental rights in education (educational choice).
7. The state constitutional amendments preserving natural marriage.
8. Enforcement of the Defense of Marriage Act (DOMA).
9. A marriage protection amendment to the U.S. Constitution that defines marriage as the union of one man and one woman.
10. The Federal Employment Non-Discrimination Act.
11. Strict constructionist judges.
12. Open homosexuality in the military.
13. The healthcare law known as "Obamacare."
14. Protection for institutions, organizations, and individuals from having the government force them to violate their moral or religious beliefs.

Federal Candidates	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Senate (202) 905-6706 Alexander Pires (I) X	-	-	-	-	-	-	O	O	O	-	-	S	-	-
Senate (202) 224-2441 Thomas Carper (D) X	S	S	S	-	-	-	-	O	O	-	O	S	S	O
Senate (302) 339-1763 Kevin Wade (R)	O	O	O	S	S	S	S	S	S	O	S	O	O	S
US Congress (302) 536-9495 Tom Kovach (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Congress (302) 654-1718 John Carney (D) X	S	S	-	-	-	O	-	O	-	-	-	-	S	-

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### Answer Key

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1. The right of parents to choose what services their children may receive at school-based wellness centers.
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3. Tax incentives to encourage natural marriage and incent married couples to stay together as a solution to reducing poverty and dependency on government services.
4. Same-sex civil union legislation (SB30).
5. Parental consent of abortion for minors under the age of 18 (HB80).
6. Strengthening and maintaining marriage as the union of one man and one woman, and not redefining or adding to man/woman marriage.
7. Add "gender identity or gender expression" to the protected classes in Delaware's anti-discrimination laws for housing, employment, and public accomodation.
8. Legislation that includes legalizing Internet gambling as a means to increase state revenue and provide jobs (HB333).
9. Prohibit coverage for abortion in the state insurance exchanges mandated by the new federal health care law.
10. An annual inspection of abortion clinics for unsafe and unsanitary conditions (HA4 to HB47).
11. Reducing Delaware's corporate tax rate.
12. Use tax-payer money to fund Planned Parenthood and other organizations that provide abortion services.
13. A policy that ensures parental guardian notification prior to the introduction or instructional use of classroom curriculum or materials, whether brought or introduced by school educators, administrators, and officials, or by guests invited at their request, which involve human sexual education, human sexuality issues, sexual acts, family planning, profanity, drugs or alcohol.
14. A Single Payer Healthcare System for Delaware.
15. Delaware Marriage Protection Amendment defining marriage between a man and a woman in the state constitution (It does not ban civil unions. SS1 for SB27-2009).

Statewide Races			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Governor	322-8800	Jack Markell (D) X	-	-	-	S	-	O	S	S	-	-	-	-	-	-	O
Governor	521-3761	Jeffrey Cragg (R)	S	S	S	U	S	S	O	O	S	S	S	O	S	O	S
Lt. Governor	Not Listed	Matthew Denn (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
Lt. Governor	563-2655	Cheryl Valenzuela (R)	S	S	S	U	S	S	O	O	S	S	S	O	S	O	S
Insurance Com.	559-1434	Karen W Stewart (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance Com.	690-2403	Benjamin Mobley (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Sussex County: Clerk of the Peace			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
604-4925		Brooks Witzke (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
542-5189		John Brady (D) X	-	-	-	-	-	-	-	-	-	-	-	O	-	-	O

Sussex County: State Senate			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
703-9090	6	Andrew Staton (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
703-2243		Ernesto Lopez (R)	S	S	O	S	S	S	O	O	S	S	S	O	S	O	O
422-3460 No Opponent	18	Gary Simpson (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
856-6534		Jane Hovington (D)	S	U	S*	-	S	S	O	O	-	S	O	O	S	U	S
858-0694 Write-In	19	Brian Pettyjohn (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
436-4633		Richard Eakle (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
539-4140	20	Gerald Hocker (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
744-4298		Robert Venables (D)	S	U*	S	O	S	S	O	O	O	S	U*	O	S	O	S
629-9788	21	Bryant Richardson (R)	S	S	S	O	S	S	U	O	S	S	S	O	S	O	S

Sussex County: State Representative			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
227-6252		Peter Schwartzkopf (D) X	O	-	-	S	-	O	S	O	-	O	-	-	-	-	O
231-2202	14	Margaret Melson (L)	S	S	S	S	S	O	O*	S	S	S	S	O	S	O	O*
684-1602		Marie Mayor (D) X	-	-	-	S	-	O	-	-	-	-	-	-	-	-	O
684-4577	20	Stephen Smyk (R)	S	S	S	O	S	S	O	O*	S	S	S	O	S	O	S
422-3454		David Wilson (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
349-5122	35	Ronnie Fitzgerald (L)	S	S	O	S	S	O	S	S	U	S	S	O	S	O	O
422-6155 No Opponent	36	Harvey Kenton (R)	S	S	S	O	S	S	O	O	S	S*	S	O	S	O	S*
947-2984		Elizabeth McGinn (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
856-2772	37	Ruth Briggs King (R)	S	S	S	O	S	S	U*	O	S	S	S	U*	S	O	S*
539-6738		Shirley Price (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
436-7024	38	Ronald Gray (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
628-5222 No Opponent	39	Daniel Short (R)	S	S	S	O	S	S	O	S*	S	S	S	O	S	O	S
875-5736		Benjamin Lowe (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
235-9806	40	Timothy Dukes (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
745-1587		John Atkins (D)	S	S	S	O*	S*	S	O	O*	S	S	S	O	S	O	S
381-1610	41	Richard Collins (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S

New Castle: State Senate			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
656-2921		Harris McDowell (D) X	-	-	-	S	-	O	S	S	-	-	-	-	-	-	O
764-2309	1	Robert Clark (I)	S	S	S	U	S	S	U	O	S	S	S	O	S	O	S
Not Listed		Brian Lintz (L)	S	S	O	S	U	O	O*	S	U*	U*	S	O	U	O	O
425-4148 No Opponent	2	Margaret Henry (D) X	-	-	-	S	-	O	S	S	-	-	-	-	-	-	O
656-7261 No Opponent	3	Robert Marshall (D) X	-	-	-	S	-	S	S	O	-	-	-	-	S	-	S
598-3194	4	Michael Katz (D) X	-	-	-	S	-	O	S	S	-	-	-	-	-	-	O
478-6128		Gregory Lavelle (R) X	S	-	-	O	S	-	-	O	-	S	-	-	-	-	-
439-0992	5	Christopher Counihan (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
478-9616		Christher Cloutier (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
994-4843	7	Patricia Blevins (D) X	-	-	-	S	-	O	S	S	-	-	-	-	-	-	O
Not Listed		James Christina (L) X	-	-	-	S	-	O	-	-	-	-	-	-	-	-	O
239-2193	8	David Sokola (D) X	-	-	-	S	-	O	S	S	-	-	-	-	O	-	O
894-4591		William Stritzinger (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
999-7522 No Opponent	9	Karen Peterson (D) X	-	-	-	S	-	O	S	O	-	-	-	-	-	-	-
378-8386 No Opponent	10	Bethany Hall-Long (D) X	-	-	-	S	-	O	S	S	-	-	-	-	-	-	O
709-1516	11	Bryan Townsend (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
754-1787		Evan Queitsch (R)	S	S	S	O*	S	S	O	O	S	S	S	O	S	O	S
562-2106	12	Nicole Poore (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
328-8944		Dorinda Connor (R) X	-	-	-	O	-	-	-	S	-	-	-	-	-	-	O
322-6100 No Opponent	13	David McBride (D) X	-	-	-	S	-	O	S	S	-	-	-	-	-	-	O
653-7566	14	Bruce Ennis (D)	S	S	S	O	U	S	U	S	U	S	S	U	S	U	S
378-6036		Scott Unruh (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
New Castle: State Representative			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
762-8322 No Opponent	1	Charles Potter (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
428-1269 No Opponent	2	Stephanie Bolden (D) X	O	-	-	S	O	-	S	S	-	S	-	-	-	-	-
655-7071 No Opponent	3	Helene Keeley (D) X	O	-	-	S	-	O	S	O	-	O	-	-	-	-	O
655-1373 No Opponent	4	Gerald Brady (D) X	O	-	-	S	S	O	S	S	-	O	-	-	S	-	O
832-1956 No Opponent	5	Melanie Smith (D) X	O	-	-	S	-	O	S	S	-	O	-	-	-	-	O
Not Listed	6	Debra Heffernan (D) X	O	-	-	S	-	O	S	S	-	O	-	-	-	-	O
478-4754		Eric Taylor (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
475-2252	7	Bryon Short (D) X	O	-	-	S	-	O	S	O	-	O	-	-	-	-	O
798-0960		Daniel Lepre (R)	S	S	O*	S	S	O*	S	O	S	S	S	O	S	O*	U*
378-2681	8	Quinton Johnson (D) X	S	-	-	S	O	O	S	S	-	O	-	-	-	-	O
919-900-0401		Matthew Brown (R)	S*	S	U*	U*	S*	S*	O	S*	S	S	S	O	S*	O	S
293-2356 No Opponent	9	Rebecca Walker (D) X	S	-	-	S	O	O	S	S	-	O	-	-	-	-	O
373-0115	10	Dennis Williams (D) X	O	-	-	S	-	O	S	S	-	O	-	-	-	-	O
478-4763		Robert Rhodunda (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
653-8247	11	Lynne Newlin (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
526-2267		Jeffrey Spiegelman (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
651-9571 No Opponent	12	Deborah Hudson (R) X	S	-	-	O	S	S	S	O	-	S	-	-	S	-	S
995-1803 No Opponent	13	John Mitchell (D) X	O	-	-	S	-	O	S	S	-	O	-	-	-	-	O
562-6640	15	Valerie Longhurst (D) X	O	-	-	S	-	O	S	S	-	O	-	-	-	-	O
Not Listed		Amy Merlino (L) X	U	-	-	S	-	O	-	-	-	-	-	-	-	-	O
322-3521	16	James Johnson (D) X	O	-	-	S	-	O	S	S	-	O	-	-	-	-	O
985-7025		John Machurek (L) X	U	-	-	S	-	O	-	-	-	-	-	-	-	-	O
322-1249	17	Michael Mulrooney (D) X	O	-	-	S	-	O	S	S	-	O	-	-	-	-	O
395-1998		Laura Brown (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
368-7257 No Opponent	18	Michael Barbieri (D) X	O	-	-	S	O	O	S	S	-	O	-	-	-	-	O
633-1289	19	Kimberly Williams (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
999-8191		Dennis Cini (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
584-8601 No Opponent	21	Michael Ramone (R) X	S	-	-	S	S	-	-	S	-	S	-	-	S	-	-
983-2622	22	David Ellis (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
454-1840		Joseph Miro (R)	S	S	U*	O*	S*	S	S*	S*	S	S	S	O	S*	O	S
562-4546	23	Paul Baumbach (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
731-9766		Mark Doughty (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
292-8903 No Opponent	24	Edward Osieski (D) X	O	-	-	S	O	O	S	S	-	O	-	-	-	-	O
547-9351 No Opponent	25	John Kowalko (D) X	O	-	-	S	O	O	S	S	-	O	-	-	-	-	O
832-2209 No Opponent	26	John Viola (D) X	O	-	-	S	-	O	S	S	-	O	-	-	-	-	O
834-9231 No Opponent	27	Earl Jaques (D) X	S	-	-	S	S	O	S	O	-	O	-	-	-	-	O

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- Delaware Marriage Protection Amendment defining marriage between a man and a woman in the state constitution (It does not ban civil unions. SS1 for SB27/2009).

Kent County: Clerk of the Peace		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
335-3392	Loretta Wootten (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
730-0454	Mary McVay (L) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Kent County: State Senate		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
653-7566	14 Bruce Ennis (D)	S	S	S	O	U	S	U	S	U	S	S	U	S	U	S
378-6036	14 Scott Unruh (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
270-2012	15 Kathleen Cooke (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
492-1155	15 Dave Lawson (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
698-0960	16 Colln Bonini (R)	S	S	S	O	S	S	O	S	S	S	S	O	S	O	S
697-1740	16 Michael Tedesco (I) X	-	-	-	-	-	-	-	-	-	-	-	-	S	-	S
674-5442 No Opponent	17 Brian Bushweller (D) X	-	-	-	S	-	O	S	S	-	-	-	-	-	-	O
422-3460 No Opponent	18 Gary Simpson (R)	S	S	S	O	S	S	O	O	S	S	S	O	S	O	S
Kent County: State Representative		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
653-8247	11 Lynne Newlin (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
526-2267	11 Jeffrey Spiegelman (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
653-8642	28 William Carson (D) X	S	-	-	O	-	S	-	S	-	O	-	-	S	-	S
242-4253	28 Christopher Sylvester (R) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
659-5850	29 Charles Paradee (D) X	-	-	-	S	-	O	S	-	-	-	-	-	-	-	O
659-3436	29 Lincoln Willis (R)	S	S	U*	O	S	S	O*	S	S*	S	S	O	S	O	S
Not Listed	30 William Outten (R)	S	S	S	O	S	S	O*	O	S	S	S	O	S	O	S
272-1373	30 Gordon Smith (L)	S	S	S	S	S	U	S	U	S	S	O	O	S	U	U
735-1781	31 Darryl Scott (D) X	O	-	-	S	O	O	S	S	-	O	-	-	-	-	O
222-2577	31 Samuel Chick (R)	S	S	U*	O*	S	O*	O	O*	S	S*	S*	O	S*	O*	O*
545-0198	32 Andria Bennett (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
697-8271	32 Ellis Parrott (R)	S	S	S	O	O	S	S	O	S	S*	S	O	S	O	S
335-5633	33 John Robbins (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
335-4261	33 Harold Peterman (R)	S	S	S	O	S	S	O	S	U	S	S	U	U	O	S
697-2554	34 Theodore Yacucci (D) X	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
697-6723	34 Donald Blakey (R)	S	S	S	O	S	S	S	S	U	U	U	O	S	U*	S

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