

**United States District Court
District of Columbia**

<p>Wisconsin Right to Life, Inc. <i>Plaintiff,</i></p> <p>v.</p> <p>Federal Election Commission, <i>Defendant,</i></p> <p><i>and</i></p> <p>Sen. John McCain et al., <i>Intervenor-Defendants.</i></p>	<p>Civil Action No. 04-1260 (DBS, RWR, LFO)</p> <p>THREE-JUDGE COURT</p>
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Third Affidavit of Barbara L. Lyons

I, Barbara L. Lyons, declare as follows:

1. I have served for nineteen years as the Executive Director of Wisconsin Right to Life, Inc. (“WRTL”), in which capacity I have overseen all aspects of WRTL’s work. Before that I served for a decade as WRTL’s Legislative Director. Before that I served as the President of WRTL’s Milwaukee chapter from 1975-1977.

2. I have personal knowledge of the facts about WRTL’s activities, including those set out herein, and if called upon to testify I would competently testify as to the matters stated herein.

3. WRTL is an issue advocacy group with long experience advocating its issues in the public policy arena.

4. I have extensive experience with grassroots lobbying campaigns (i.e., urging constituents to contact their government representatives and ask these public officials to take action in a certain way on issues before them) and communications in a wide range of broadcast and nonbroadcast media in connection with such campaigns. Through these experience, I am familiar with the most effective ways to run a grassroots lobbying campaign for WRTL.

5. I have worked with professional media consultants who have provided me with their expert knowledge as to what is effective and not effective in WRTL's campaigns, including the sort of grassroots lobbying presently planned and discussed herein. Exhibit A is a true and accurate copy of summary pages that I received from my communication consultant, Jason Vandergound, showing the superiority of both television and radio communication over other means, which I believe to be true.

6. I have extensive knowledge of Wisconsin politics and public policy issue debates, based on the requirements of my jobs with WRTL and long experience, so that I make statements about Wisconsin politics herein based on personal knowledge.

7. On August 14, 2006, I received an email communication (the "Action Request") from the Federal Legislation Department of the National Right to Life Committee ("NRLC") in Washington, D.C. A true and accurate copy is attached hereto as Exhibit B.

8. The Action Request, entitled "Senate Democratic Leaders Block Progress of Parental Notification Legislation," is about Senate and House bills concerning the rights of parents to be notified before an abortion is performed on their minor daughter. In the Senate, the bill is known as the Child Custody Protection Act ("CCPA"). The Action Request

explains:

The House and Senate have passed different versions of the legislation by sizeable majorities, but with only five short weeks remaining before Congress adjourns for the year, pro-abortion lawmakers are trying to “run out the clock” by throwing up roadblocks to the normal legislative process, according to NRLC Legislative Director Douglas Johnson.

Exhibit B at 1.

9. The Action Request explains that normally a conference committee would have been appointed to reconcile the differences between the two bills, but that Democratic objections have prevented that from happening. Exhibit B at 1.

10. The Action Request adds: “A final version of the bill still can be approved and sent to the President, despite the continued objections of Harry Reid and other Democratic leaders, if Republican leaders press the issue, and if 60 senators support the move,” explained Johnson. Exhibit B at 2.

11. The Action Request asks recipients to contact their Senators, express their distress at the situation, and “urge them to give final approval to the legislation.” Exhibit B at 5.

12. WRTL is the official state affiliate of NRLC for Wisconsin and I regularly receive similar communications from the NRLC Federal Legislation Office concerning pending legislative action. I have found these communications to be consistently accurate and reliable, so I believe that the current situation is as the Action Request describes it, both as to the facts stated and as to the urgency of grassroots lobbying of Senators.

13. I have personally communicated with Douglas Johnson by email concerning the subject of the Action Request and the likely timing of a vote on the issue. It is my understanding from our communication that it is highly likely that the recited vote on final

approval of the CCPA, will occur around September 11, but that there are unpredictable contingencies in the Senate that may alter this time frame. If the vote is not on September 11, then it will likely happen sometime shortly thereafter before the congressional recess on or about October 6 for Senators to campaign before the November 7 elections.

14. As set out in the Action Request, the CCPA was approved by the Senate by a 65 to 34 vote on July 25, 2006, but on repeated occasions since that date the Senate Democratic leadership has refused to agree to naming a Senate conference committee. Exhibit B at 1.

15. I, and WRTL, only become aware of the need for a grassroots lobbying campaign upon receipt of the Action Request on August 14, 2006.

16. This is just the sort of situation that WRTL described in its Amended Verified Complaint (Document #30), when I verified the following statement:

WRTL intends to run materially similar grass-roots lobbying ads falling within the electioneering communication prohibition periods before future primary and general elections in Wisconsin when there are pending matters in the legislative or executive branch that similarly require referencing a clearly identified candidate for federal office in broadcast communications to the citizens of Wisconsin. WRTL is concerned about a range of issues – such as embryonic stem cell research, cloning, permissive abortion, fetal pain legislation, unborn victims of crime legislation, abortion clinic regulations, partial-birth abortion, abortion funding, abortion in government facilities, government funding of abortion, abortion programs in foreign aid policy, infanticide, Medicare policy, health-care rationing, withdrawal of nutrition and hydration, assisted suicide, euthanasia, judicial appointments, judicial filibusters, non-discrimination policies with respect to medical training and practice, and the freedom to advance its issues in the public forum – that regularly have and will become issues in the legislative and executive branch. Because the legislative and executive branches often deal with important legislative and executive branch issues in the periods before elections, there is a strong likelihood that WRTL's need to broadcast grass-roots lobbying ads will again coincide with the electioneering communications blackout periods. And given the limited funds in WRTL's PAC account, it is also highly likely that WRTL will at such times not have adequate PAC funds to pay for such ads and will be unable to raise the funds in the usual short time span available when hot issues are coming to a head.

AVC ¶ 16 (Document #30 at 4-5).

17. Executive and legislative branch matters of the present sort that require prompt grassroots lobbying with little advance notice are a regularly recurring event for WRTL, NRLC, and similar issue advocacy groups of which I have personal knowledge.

18. Further information about the subject of the Action Request, i.e., the Child Custody Protection Act is available on WRTL's website, www.wrtl.org, and on NRLC's website, www.nrlc.org.

19. I believe, as does WRTL, that grassroots lobbying, i.e., urging people in Wisconsin to call their Senators and ask them to act to give final approval to the Child Custody Protection Act ("CCPA"), is vital to WRTL's interests.

20. WRTL has already been involved in a grassroots lobbying campaign concerning passage of the CCPA and the subject of the Action Request, i.e., the sudden appearance of an unforseen effort to "run out the clock" on finalizing the CCPA. Attached as Exhibit C are true and accurate copies of materials that WRTL has published in support of the Act's passage and the need now to finalize the process. WRTL intends to continue publishing materially-similar, nonbroadcast communications about the imminent vote on the CCPA.

21. I believe, as does WRTL, that it is vital that WRTL also engage in grassroots lobbying about the imminent vote on the CCPA by radio, as an effective way of reaching in a timely fashion the greatest possible number of Wisconsin constituents of Wisconsin Senators Kohl and Feingold in the week of September 5 and thereafter as necessary. I believe (and believe it is objectively true based on years of experience advocating issues with WRTL and from reviewing information provided for my review by hired media consultants) that no other

medium (except television) will enable WRTL to reach the same number of people with this grassroots lobbying message, in such a timely fashion, with equal communication impact, as radio.

22. If WRTL obtains injunctive relief from this Court, WRTL will use its general corporate treasury funds to pay for radio broadcasting of the radio advertisement attached in transcript form as Exhibit D (“CCPA Ad”).

23. If fundraising permits, WRTL plans to use general treasury funds to do a full radio broadcast campaign of the CCPA Ad on the schedule and at the costs set out in Exhibit E. Both of these exhibits are true and accurate copies of the originals.

24. In the alternative, if necessary to obtain injunctive relief, WRTL will both raise funds into and pay for broadcasting the CCPA Ad from “a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence directly to this account for electioneering communications,” as described in Count 2 of WRTL’s Amended Verified Complaint. Document #30 at 12-13.

25. Attached as Exhibit F is a true and accurate transcript of a fundraising request that will be sent to potential donors by email to raise funds to pay for a full broadcasting campaign for the CCPA Ad if this Court grants the requested injunctive relief. The extent of WRTL’s broadcasting of the CCPA ad will depend on the success of this fundraising effort, but WRTL will broadcast the ad as it is able if it receives requested injunctive relief.

26. Senator Kohl is a candidate for reelection to the U.S. Senate in the November 7, 2006 election, so that WRTL is presently prohibited from using general treasury funds to run

the CCPA Ad because it would be an electioneering communication. Senator Feingold is not currently a candidate, having been reelected in 2004.

27. WRTL has in the past opposed Senator Kohl in various communications.

28. WRTL has not endorsed Senator Kohl's present opponent in the current Senate primary election campaign.

29. In my opinion, and that of WRTL, Senator Kohl is running effectively unopposed in the coming primary vote because his opponent has gained insufficient public support to be of any real threat to Sen. Kohl.

30. Senator Kohl has a Republican opponent in the coming November election for Senate, but WRTL-PAC has not endorsed him and has no plans to do so.

31. WRTL does not intend to affect the election of Senator Kohl by broadcasting the CCPA Ad, only to affect his and Senator Feingold's actions concerning taking final action on the CCPA.

32. It is my opinion, and that of WRTL, that the CCPA Ad will have no effect on the election of Senator Kohl.

33. To my knowledge, and that of WRTL, neither the CCPA itself nor present Democratic leadership efforts to block a conference committee to finalize the legislation is a campaign issue for Senator Kohl or any opponent of his in the coming primary and general elections.

34. Senator Kohl has not been criticized by WRTL in any way concerning the CCPA, rather WRTL has praised him for his vote in favor of CCPA. Nor has WRTL accused him of, or criticized him for, any possible involvement in Democratic leadership efforts to block a

conference committee to finalize the legislation.

35. As stated in paragraphs 5-7 and Exhibit B of my Second Affidavit (Document #76-2 at 4; Document #90 (errata adding missing exhibit)), I believe, as does WRTL, that grassroots lobbying by WRTL has been effective in persuading Sen. Kohl to vote in ways that WRTL preferred.

36. Although Sen. Kohl voted for the CCPA, *see* 152 Cong. Record S8187 (also showing that Sen. Feingold voted against it), and the bill passed by a vote of 65-34, *id.*, I believe, as does WRTL, that there is no assurance that Sen. Kohl will vote to finalize the CCPA because, as stated in the Action Request, it is reported that the objection that began the effort to “run out the clock” without a conference committee was “made . . . with the full support of the Democratic caucus.” Exhibit B at 1 (quoting the *Las Vegas Sun* (July 30)).

37. The facts described in the preceding paragraph may indicate that some Senators who voted for the CCPA will take credit for voting for a popular bill while allowing it to effectively die because of procedural complexities not readily understood by constituents.

38. The situation described in the preceding two paragraphs makes it imperative that all Senators, including Senator Kohl, be actively and effectively lobbied (directly and by grassroots mobilization) to assure that the 60 votes that the Action Request indicates are necessary to finalize passage of this important bill are not eroded.

39. WRTL did not believe that it was necessary to run radio ads before because the CCPA and the companion House bill were very popular, enjoyed overwhelming support, and seemed certain of passage. While WRTL did do grassroots lobbying by nonbroadcast means, WRTL has limited funds and must invest them where it is most advantageous at any given

time. WRTL did not believe that spending money on the more effective, albeit more expensive, broadcast ads was warranted at that time.

40. At the present time, WRTL believes that using broadcast advertising is vital in light of the long effort and expense involved by the pro-life movement to arrive at passage of the CCPA and the House companion bill and the unique opportunity to push the CCPA on to final enactment with concerted effort. If this unique opportunity is not seized and maximized by employing broadcast communications, the legislative effort will have to begin all over again, and there is always uncertainty in attempting to enact legislation, especially in light of the possibility of changed situations resulting from the November elections. If WRTL is not able to do its grassroots lobbying now, in the most effective way possible, it will be irreparably harmed by the loss of this unique opportunity.

41. WRTL believes that requiring it to use alternative means, such as the PAC option may not be constitutionally required, but such alternatives would be inadequate to protect WRTL's First Amendment liberties of expression, association, and petition as means for participating in self-government by the people.

42. Using the PAC option is inadequate because at present WRTL has only \$5,500 in its federal PAC fund, and it is currently doing primary election mailings, which will deplete that amount. WRTL has devoted all of its fundraising in 2006 to raising funds for its general treasury fund. As stated in a previous affidavit, it is generally more difficult to raise PAC funds than other funds for a variety of reasons, and this has been specifically true in WRTL's and WRTL-PAC's recent experience. Moreover, WRTL intends to raise funds from non-members, so that using the PAC option is not suitable for this broad-based funding appeal.

43. Using the PAC option is inadequate because WRTL has no position on the present reelection campaign of Senator Kohl, and complying with PAC disclosure requirements would compel WRTL to speak in ways that are both inconsistent with this position and untrue. First, running the CCPA Ad with PAC funds would require a disclaimer declaring that this communication is “political” (i.e., having to do with elections) because it was made by a political committee, when in reality the CCPA Ad has nothing to do with elections. Second, using PAC funds would compel WRTL to file a PAC report stating that the expenditure for the CCPA Ad was either for or against the reelection of Sen. Kohl, when in truth it is neither.

44. As stated above, there is no nonbroadcast medium that will provide WRTL with the ability to reach as many people, in such a short time, and in as effective a manner.

45. Not naming persons who are the object of the grassroots lobbying is an inadequate alternative because, as stated in a prior affidavit, people need to be told who their Senator is as part of the grassroots lobbying communication in order to make it more likely that they will actually make the requested contact with their Senator. Naming the candidates is especially imperative here because Sen. Kohl voted for the CCPA and Sen. Feingold voted against it, so constituents need to know that context in order to communicate effectively with their representatives on this issue.

46. Exhibit G is a true and accurate copy of a July 24, 2006 letter from NRLC personnel to U.S. Senators concerning the importance and need for passage of the Child Custody Protection Act (S. 403) without amendment, which copy I received from the NRLC Federal Legislation Department.

47. I affirm under the penalties for perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on June 23, 2006.

/s/ Barbara L. Lyons
Barbara L. Lyons, Executive Director
Wisconsin Right to Life, Inc.

Exhibits

- A Fact Sheets Regarding Broadcast Communication
- B Email from NRLC Fed. Leg. Dept. Re CCPA (“Action Request”)
- C WRTL’s Nonbroadcast Communications Re CCPA
- D WRTL’s “CCPA Ad”
- E WRTL’s Projected Schedule of Broadcasts and Costs
- F WRTL Fundraising Letter
- G Letter from NRLC to Senators Re CCPA