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JAN 14 1994

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

By: *[Signature]*
Deputy Clerk

ORIGINAL

GEORGIA STATE AFL-CIO
and its affiliated
Labor organizations,
Plaintiffs

vs.

STATE OF GEORGIA ETHICS
COMMISSION and
GEORGE C. REID, in his official
capacity as Chairman of
the State of Georgia Ethics
Commission,
Defendants

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FILE NUMBER:

194 CV-0103 -MHS

COMPLAINT FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY AND PERMANENT INJUNCTION

Comes now the Plaintiffs, Georgia State AFL-CIO and its affiliated Labor organizations, by and through their attorney of record, Ronald C. Conner, 874-A North Main Street, Conyers, Georgia, 30207 and alleges that:

PARTIES

I. (A)

Plaintiff Georgia State AFL-CIO is a non-profit labor union organization doing business throughout the State of Georgia with a state office as their principle place of business located at 501 Pulliam Street, SW, Atlanta, Georgia 30305.

I. (B)

The other Plaintiffs are affiliated labor organizations with

[Handwritten mark]

the Georgia State AFL-CIO and are non-profit labor union organizations doing business throughout the State of Georgia. See attached list of affiliated organizations, labeled exhibit "A" and made a part hereof.

II.

Defendant Commission is a Georgia state agency operating under the laws of the State of Georgia and may be personally served through its registered agent and officer, C. Theodore Lee, Executive Secretary, State Ethics Commission, who can be served at 2082 East Exchange Place, Suite 235, Tucker, Georgia 30084.

III.

Defendant Reid is the Chairman of the State of Georgia Ethics Commission and may be personally served at 2082 East Exchange Place, Suite 235, Tucker, Georgia 30084.

JURISDICTION

IV.

This is a injunctive relief proceeding under the Federal Rules of Civil Procedure, Rule 65. This matter involves a controversy regarding liberties guaranteed and arising under the First and Fourteenth Amendment of the Constitution of the United States. Accordingly, this court has jurisdiction pursuant to 28 USC 1331. Venue is proper under 28 USC 1391. All actions of the Defendant were under color of law.

FACTUAL ALLEGATIONS

V.

On or about, December 1993, Plaintiffs began their annual process of preparing for the Georgia Legislative session, which requires registering lobbyists for their organizations with the Defendant State Ethics Commission. Plaintiffs were prepared to register their lobbyists with the commission for the 1994 legislative year. The Defendant Commission delineates the registration requirements and fees required to register lobbyists with Defendant Commission in O.C.G.A. 21-5-71 (f), the Ethics in Government Act, as follows:

" a person employed by an organization exempt from Federal Income Taxation under Section 501(c)(3) or Section 501(c) (4) of the Internal Revenue Code...shall be exempted from payment of such registration fees except for payment of an initial registration fee of \$25.00."

If not exempt under those two IRS sections the regular annual registration fee is \$200.00 per lobbyist. A copy of O.C.G.A section 21-5-71 (f) is attached hereto as exhibit "A".

VI.

Section 501 (c) (3) or Section 501 (c) (4) of the Internal Revenue Code exempt organizations organized and operated for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children and animals, and civic organizations and local associations of employees. Plaintiffs have a tax exempt status under Section 501 (c)(5) of the Internal Revenue Code, Labor,

Agricultural and horticultural organizations. Photocopies of Sections 501 (c) (3), (4), (5), are attached and incorporated herein as exhibit "B".

VII.

Plaintiffs have attempted to register their lobbyists and under O.C.G.A. section 21-5-17 (f) of the Ethics in Government Act, regulated by the Defendants. However, due to the cost limitations enforced by the Defendants, only employees of IRS Section 501 (c) (3) and (4) are exempt for the costly registration dues. Since, Plaintiffs are non-profit organizations, they cannot afford to register as many lobbyists as they would like due to the financial restraints placed upon them by the Defendants.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

FIRST AMENDMENT VIOLATION

VIII.

This is an action for injunctive relief. Plaintiff incorporates by reference the allegations contained in paragraphs one (I) through (VII) of this Complaint.

IX.

Section 21-5-71 (f) of the Ethics In Government Act, regulated by the Defendants, is void as a matter of law as it infringes on the first amendment liberties of the Plaintiff. Section 21-5-71

(f) is overbroad by virtue of operation, as it prohibits substantially more speech than is necessary. The fee schedule is vague and has chilled the First Amendment freedoms of the Plaintiffs since Plaintiffs are being forced to pay the higher fees. Plaintiffs further allege that the Federal Tax code itself is vague and that the Defendants violate the Plaintiffs' first amendment freedoms by limiting the lobbyist fee exemption to I.R.S. Section 501 (3) and (4) organizations only. This IRS section is for tax purposes only and not for determining the fee structure for registering lobbyists. The fee regulation is not narrowly tailored to achieve an important government interest and has no reasonable relationship to a legitimate regulatory purpose. The fee scheme is unconstitutional as it gives the State Ethics Commission unbridled discretion as to which organizations it may provide a tax exemption status to for registering lobbyists.

SECOND CAUSE OF ACTION

EQUAL PROTECTION VIOLATION

X.

This is an action for injunctive relief. Plaintiff incorporates by reference the allegations in paragraphs one (I) through nine (IX) of this complaint.

XI.

Section 21-5-71 of the Ethics in Government Act, regulated by the Defendants, is also void as a matter of law as it denies the Plaintiffs Equal Protection of the law as guaranteed under the

fourteenth amendment of the constitution of the United States. There is no rational relation to any conceivable government interest to classify Section 501 (c) (5) groups differently from Section 501 (c) (3) and (4) groups. Any differentiation in fees for one type of organization versus another is a direct violation of the Equal protection clause of the fourteenth amendment. This classification limits the Plaintiffs fundamental right to free speech and denies Plaintiffs equal protection of the law.

THIRD CAUSE OF ACTION

FEDERAL LAW PRE-EMPTS STATE LAW

XII.

This is an action for injunctive relief. Plaintiff incorporates by reference the allegation contained in paragraphs one (I) through eleven (XI) of this Complaint.

XIII.

The National Labor Relations Act (hereinafter "NLRA"), codified in 29 USC 151 et. seq., mandates under Section 7 of the NLRA that:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to ENGAGE IN THER CONCERTED ACTIVITIES FOR THE PURPOSE OF COLLECTIVE BARGAINING OR OTHER MUTUAL AID AND PROTECTION...".

Section 21-5-71 (f) violates the NLRA by quashing the rights of the employees to lobby the government and by limiting the ability of the leaders to provide sufficient representation to their members. The NLRA protects the concerted activities of labor organizations and their members. Lobbying is a concerted activity for the mutual aid and protection of the union members and the State is interfering in that right.

The NLRA also mandates that, as a condition of employment, that representatives of a labor organization provide their employees with rigorous representation. Section 21-5-71 (f) of the Ethics in Government Act prohibits the representatives of the labor unions from adequately doing their federally mandated job by making the representatives pay high lobbying fees to adequately represent their members. The Ethics in government act interferes with the duty of the leaders and chills their representation due to the registration fee. The Ethics in Government Act section 21-5-71 (f) is a direct violation of the NLRA as no member of a labor union may lobby the legislature without first registering and paying the high fees. A copy of an Unofficial Opinion from the Attorney General is attached and made a part hereof as exhibit "c". The state is attempting to influence what type of concerted activities the members of labor unions may participate in. Therefore, section 21-5-71 (f) of the Ethics in Government act as applied by the Defendants, is in direct violation of federal law and should be declared void.

XI.

By reason's of Defendants' actions, Plaintiffs have suffered and will continue to suffer extreme hardship and actual and impending irreparable injury, harm, loss and damage to their free speech right as guaranteed under the first amendment of the U.S. Constitution. Plaintiffs are unable to register their lobbyists due to the State's action on fees charged to labor organizations. By losing the ability to lobby the legislature, Plaintiffs lose the ability to assert and expound their opinions and views towards pending and proposed state legislation and Plaintiffs are blocked from engaging in protected concerted activity and their free speech.

XII.

Plaintiffs therefore have no adequate or speedy remedy at law, and this action for injunctive relief is plaintiffs' only means for securing relief.

XIII.

That if Plaintiffs be required to give Defendants notice of the application for preliminary injunction, it would cause a delay in issuance of the preliminary injunction of 60 days and by reason of this delay, Plaintiffs will suffer irreparable damage for the reason that the legislature will reconvene on January 18, 1994. Plaintiffs will suffer an unfair disadvantage if they are forced to refrain from lobbying until after this dispute is resolved.

WHEREFORE, Plaintiffs, Georgia State AFL-CIO and its affiliated labor organizations, respectfully requests that this court:

1. Issue a temporary restraining order and a preliminary injunction ordering Defendants, State Ethic Commission and George C. Reid, its officers, agents, employees, attorneys and all those in active concert or participation with them to refrain immediately and pending the final hearing and determination of this action from utilizing the Georgia Attorney General's opinion letter concerning definitions in O.C.G.A. 21-5-70 and the standards delineated in Section 21-5-7(f) of the Ethics in Government Act for purposes of determining which organizations will pay fees and which organizations will be exempt from said fees for registering Lobbyists;

2. Issue a temporary restraining order and a preliminary injunction ordering Defendant, State Ethic Commission and George C. Reid, its officers, agents, employees, attorneys and all those in active concert or participation with them to refrain immediately and pending the final hearing and determination of this action from collecting any lobbyist registration fees in the amount of \$200.00 from any labor organization, their officers and employees;

3. Issue a temporary restraining order and a preliminary injunction ordering Defendant, State Ethic Commission and George C. Reid, its officers, agents, employees, attorneys and all those in active concert or participation with them to refrain immediately and pending the final hearing and determination of this action from

utilizing the standards in O.C.G.A. 21-5-71 of the Ethics in Government Act for purposes of determining which organizations or people may be prosecuted criminally under this statute;

4. Issue a permanent injunction perpetually enjoining and restraining Defendants, State Ethics Commission and George C. Reid, Commissioner, its officers, agents, employees, successors, attorneys and all those in active concert or participation with them, of the conduct complained of herein;

5. Declare regulation Section 21-5-71 (f) of the Ethics in Government Act to be void as a matter of law as it violates the first amendment guarantee of free speech and permanently enjoin Defendants from utilizing said criteria for determining registration fees for lobbyists;

6. Declare O.C.G.A. Section 21-5-71 (f) of the Ethics in Government Act to be null and void as it is unconstitutional and permanently enjoin Defendants from utilizing said criteria for determining registration fees for lobbyists;

7. Declare O.C.G.A. Section 21-5-71 (f) of the Ethics in Government Act to be null and void as a matter of law as it directly contradicts the National Labor Relations Act and permanently enjoin Defendants from utilizing said criteria for determining registration fees for lobbyists;

8. Award to Plaintiffs, their costs and disbursements in this action, as well as reasonable attorneys fees; and

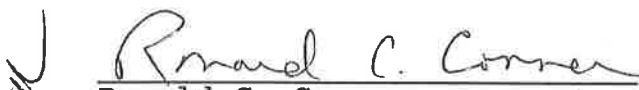
9. Issue an order directing Defendants to appear, on a day certain to be fixed by the Court, and then and there show cause,

if any he has, why a preliminary injunction should not be issued restraining Defendants, their agents, servants, and employees, from impeding the Plaintiffs' constitutional right to freedom of speech and equal protection of the laws by the imposition of unfair and random filing fees.

10. Award Plaintiffs such other and further relief as this court may deem proper and fit.

This 14th day of January, 1994

Respectfully submitted.


Ronald C. Conner
Attorney for the Plaintiffs
Ga. Bar # 182013

874-A Main Street
Conyers, Georgia 30207
(404) 922-2125

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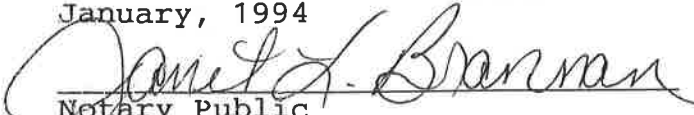
AFFIDAVIT

Personally appeared before the undersigned officer, duly authorized to administer oaths in and for said State and County, the below signed person, who on first being sworn, deposes and says "I am Herbert H. Mabry, President of the Georgia State AFL-CIO and I do hereby state that the facts set forth in the within and foregoing Complaint are true and correct to the best of my knowledge."



Herbert H. Mabry, President
Georgia State AFL-CIO

Sworn before me this 14th day of
January, 1994



Notary Public
State of Georgia

Notary Public, Henry County, Georgia
My Commission Expires July 20, 1997

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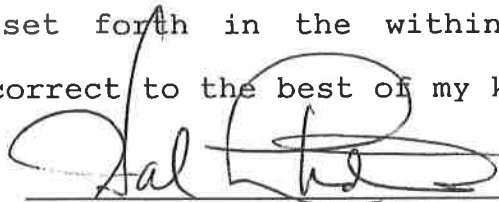
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FILE NUMBER:

AFFIDAVIT

Personally appeared before the undersigned officer, duly authorized to administer oaths in and for said State and County, the below signed person, who on first being sworn, deposes and says "I am Hal Landis, President of the organization chartered as the Atlanta Graphic Communications Union Local No. 8-M and I do hereby state that the facts set forth in the within and foregoing Complaint are true and correct to the best of my knowledge."



Hal Landis, President
Atlanta Graphic Communications Union
Local No. 8-M

Sworn before me this 14th day of
January, 1994



Notary Public
State of Georgia
Notary Public, Henry County, Georgia
My Commission Expires July 20, 1997