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 PATRIOTIC VETERANS, INC.'S CITATION OF SUPPLEMENTAL AUTHORITY

Plaintiff Patriotic Veterans, Inc. hereby submits *Cahaly v. Larosa*, Cause No. 14-1651 (4th Cir. Aug. 6, 2015) as supplemental authority in support of its motion for summary judgment in this matter. In *Cahaly*, the Fourth Circuit affirmed a district court decision striking down South Carolina's prohibition on automated telephone calls. Patriotic Veterans submitted the district court decision in *Cahaly* as supplement authority on July 23, 2014. *See* Dkt. 80.

In the Fourth Circuit's affirmance, the Court applied the Supreme Court's analysis in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) to hold that the statute banning automated political calls was content based and therefore subject to review under the rigorous strict scrutiny standard. See Slip Op. 9-10. *Reed* requires a two-step review to determine whether a speech restriction is content based. First, the courts must "determin[e] whether the law is content neutral on its face." 135 S. Ct. at 2228. If a speech-restrictive statute passes this facial challenge, the court must look to the second step, which provides that "a facially content-neutral law will still be categorized as content based if it cannot be 'justified without reference to the content of the regulated speech,' or . . . adopted by the government 'because of disagreement with the message [the speech] conveys.'" Slip Op. 10 (quoting *Reed*, 135 S. Ct. at 2228).

The Fourth Circuit found that the ban on automated calls was content based because it

applied to political speech but not to other categories of speech:

> *Reed* instructs that "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." 135 S. Ct. at 2227. Here, the antirobocall statute applies to calls with a consumer or political message but does not reach calls made for any other purpose.

Slip Op. at 11.

This same deficiency permeates Indiana's restriction on automated political calls, as Indiana's statute allows commercial speech and other forms of speech but bans political speech through that same means. *See* Ind. Code § 24-5-14-5 (allowing automated calls for commercial speech, speech related to employment, and speech related to schools but providing no exception for political speech).

The *Cahaly* opinion then found that the ban on automated political calls could not survive strict scrutiny. The Court assumed for the sake of argument that the interest in "tranquility" could be a compelling state interest. Slip Op. at 12. However, the Court held that the ban on political calls could not survive under the "narrowly tailored" requirement of strict scrutiny because "[p]lausible less restrictive alternatives include time-of-day limitations, mandatory disclosure of the caller's identity, or do-not-call lists." *Id.* Again, the same deficiency applies to Indiana's ban on political calls.

A copy of the Fourth Circuit's opinion is submitted with this notice.

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 August 10, 2015, 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