

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

**CHRISTIAN ACTION NETWORK,** )

Plaintiff, )

vs. )

Case No. \_\_\_\_\_

**STATE OF MAINE;** )

**JOHN BALDACCI**, in his official )

capacity as Governor of the State of )

Maine; and **ANNE L. HEAD**, in her )

official capacity as Commissioner of )

the Department of Professional and )

Financial Regulation, )

Defendants. )

**INJUNCTIVE RELIEF SOUGHT**

\_\_\_\_\_ )

**PLAINTIFF’S VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

Plaintiff, CHRISTIAN ACTION NETWORK, by and through its undersigned counsel, for its Complaint shows the Court as follows:

1. This is a civil action whereby Plaintiff seeks Preliminary and Permanent Injunctive Relief enjoining Defendants, the State of Maine, Governor John Baldacci, and Anne L. Head, Commissioner of the Department of Professional and Financial Regulation, their agents, servants, employees and those acting in active concert and with actual notice thereof, from enforcing 9 M.R.S. §5001 et seq., the Maine Charitable Solicitation Act (“the Act”) and from acting in such a manner as to violate Plaintiff’s rights to free speech and free press as guaranteed under the First and Fourteenth Amendments to the United States Constitution. Plaintiff also prays for declaratory judgment to

determine the constitutionality of Defendants' Policy and actions in infringing Plaintiff's rights and to declare the Policy and Defendants' actions, both on their face and as applied, unconstitutional as a direct violation of Plaintiff's rights and a violation of the freedoms protected by the First Amendment. An actual controversy exists between the parties involving substantial constitutional issues in that the challenged Act, both on its face and as applied, violates the First and Fourteenth Amendment rights of Plaintiff.

#### JURISDICTION AND VENUE

2. This action arises under the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. §1983. As such, this Court has jurisdiction of the claims under, and by virtue of, 28 U.S.C. §§1331 and 1343.

3. This Court is authorized to grant Plaintiff's prayer for relief regarding costs, including a reasonable attorney's fee, under 42 U.S.C. §1988.

4. This Court is authorized to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§2201-02, and to issue injunctive relief under Fed. R. Civ. P. 65.

5. Venue is proper under 28 U.S.C. §1391(b). Each and all of the acts alleged herein were done by Defendants, and each of them, not as individuals, but under the color and pretense of statutes, ordinances, regulations, customs, and uses of the State of Maine.

#### PARTIES

6. Plaintiff, Christian Action Network, is an organization incorporated under the laws of the State of Virginia with its principal place of business in the state of Virginia.

7. Defendant State of Maine is a public body politic with the authority to sue and be sued.

8. Defendant John Baldacci is and was at all times relevant herein the Governor of the State

of Maine, and is charged with enforcing the laws of the State of Maine. He is sued in his official capacity.

9. Defendant Anne L. Head is and was at all times relevant herein the Commissioner of the Maine Department of Professional and Financial Regulation. She is sued in her official capacity.

#### STATEMENT OF FACTS

10. Plaintiff is and was at all times relevant herein, a non-profit and tax-exempt organization dedicated to protecting America's religious and moral heritage through educating the public and urging action on various matters of public concern, including contacting their public officials.

11. As part of its normal activities, Plaintiff sends informational and educational materials, and solicits charitable contributions, into the State of Maine and into all of the other 49 states in the union.

12. Thirty-nine states and the District of Columbia require registration for charitable solicitations, and each has a different registration scheme.

13. The State of Maine has enacted a comprehensive system of regulating the solicitation of charitable contributions set forth in the Act.

14. Under its system of regulation, the State of Maine requires certain disclosures and purports to require payment of a fee and the granting of a license to engage in solicitation of charitable contributions.

15. On or about January 14, 2008, Plaintiff mailed and Defendants shortly thereafter received a timely (pursuant to an extension) charitable solicitation registration and check for the charitable registration fee.

16. Defendants cashed the check for the charitable registration fee for the period November 2007 through October 2008.

17. Defendants contend that they sent a notice of deficiency in the registration via email.

18. Plaintiff received no notice of any kind regarding any deficiency in the registration for the period November 2007 through October 2008.

19. Defendants never returned the check nor refunded Plaintiff's registration fee for the period November 2007 through October 2008.

20. On or about March 31, 2009, pursuant to an extension of time granted by Defendants, Plaintiff timely filed an application to renew its license to solicit charitable contributions in Maine and delivered a check for the registration fee for the period November 2008 through October 2009.

21. On or about April 3, 2009, Defendants cashed the check for the registration fee for the period November 2008 through October 2009.

22. On or about April 6, 2009, Defendants notified Plaintiff that the financial information it had supplied inadvertently contained some blank pages.

23. On or about April 21, 2009, Plaintiff timely provided a complete copy of its year-end June 30, 2008, financial statement pursuant to the request of Defendants.

24. In April, 2009, Plaintiff sent an informational and educational packet into Maine alerting citizens to the remarkable privileges afforded the religion of Islam in American public schools and universities, including the provision of a "prayer room," foot baths, instructions in the Five Pillars of Islam, discussion of key passages of the Koran, and even an exercise in which seventh grade students were told that they "will become Muslim." See Special Report, an insert in the packet, attached hereto as Exhibit 1.

25. The envelope in which the correspondence arrived contained the name, "Governor John Baldacci" in order to identify him as the public official ultimately responsible for public education in the State of Maine. In addition to informing and educating the public, the materials urged residents to

petition Governor Baldacci concerning preferential treatment of Islam as a religion in the public schools of the State of Maine. They also solicited a charitable contribution.

26. Plaintiff had not asked for and Defendant Baldacci had not given written consent to Plaintiff to use his name in these materials.

27. 9 M.R.S. §5013(1) (“the Statute”), a part of the Act, states: “No person shall, for the purpose of soliciting contributions from persons in this State, use the name of any other person, without the specific written consent of the other person.”

28. On or about May 6, 2009, Defendants informed Plaintiff by letter that its application for a license as a charitable organization had been preliminarily denied. A copy of the letter is attached hereto as Exhibit 2.

29. The grounds on which Defendants purported to deny Plaintiff’s license included the following:

a) Plaintiff’s correspondence urging non-preferential treatment of Islam in the public schools was “an inflammatory anti-Muslim message;”

b) The Governor had not consented to the use of his name on Plaintiff’s correspondence; and

c) Plaintiff had engaged in charitable solicitation during periods when Defendants, who had received applications for registration and cashed Plaintiff’s check, nevertheless considered Plaintiff’s registration incomplete.

30. Defendants therefore proposed that Plaintiff sign a Consent Agreement agreeing to pay sanctions in the amount of three thousand dollars (\$3,000) for the allegedly improper use of the Governor’s name and one thousand dollars (\$1,000) for allegedly soliciting contributions without a license. A copy of the proposed Consent Agreement is attached hereto as Ex. 3.

31. Plaintiff declined to sign the Consent Agreement, and instead appealed the preliminary denial of its license. The appeal is still pending. However, the administrative agency has no jurisdiction to determine the constitutionality of the Act.

32. By the preliminary denial of the purported license to speak, Defendants have barred Plaintiff from speaking in the State of Maine to solicit charitable contributions or be subject criminal penalties imposed by 9 MSA § 5014.

COUNT I – VIOLATION OF FIRST AMENDMENT TO THE  
UNITED STATES CONSTITUTION  
(Free Speech -- Prior Restraint)

33. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 31.

34. On its face and as applied, the Act constitutes an unconstitutional prior restraint on Plaintiff's affirmative right to freedom of speech under the First and Fourteenth Amendments to the United States Constitution.

35. Under these circumstances, Defendants have no compelling interest sufficient to justify their prior restraint on speech.

36. The Act is not the least restrictive means to accomplish any permissible government purpose sought to be served thereby

37. Plaintiff has no adequate remedy at law to correct the continuing deprivation of cherished constitutional liberties.

38. As a direct and proximate result of Defendants' actions and policies, practices, and customs as alleged herein, Plaintiff and third parties not before the Court are chilled and deprived of

their rights to free speech.

39. Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm as a direct result of Defendants' conduct.

WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth in the prayer for relief.

COUNT II -- VIOLATION OF FIRST AMENDMENT TO THE  
UNITED STATES CONSTITUTION

(Free Speech -- Overbreadth)

40. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 31.

41. Defendants' Statute, both on its face and as applied, constitutes an unconstitutionally overbroad abridgement of Plaintiff's affirmative right to freedom of speech under the First and Fourteenth Amendments to the United States Constitution, as well as the rights of third parties not before the Court.

42. The Statute, both on its face and as applied, is substantially overbroad, in that it sweeps within its ambit a significant amount of constitutionally protected speech.

43. Defendants' Statute is not a narrowly tailored restriction on free speech.

44. Defendants' Statute does not serve a significant government interest.

45. As a direct and proximate result of Defendants' actions and their policies, practices, and customs as alleged herein, Plaintiff and third parties not before the Court are chilled and deprived of their rights to free speech.

46. Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm as a direct result of Defendants' conduct.

WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth in the prayer for relief.

COUNT III -- VIOLATION OF FIRST AMENDMENT TO THE  
UNITED STATES CONSTITUTION  
(Free Speech -- Viewpoint Discrimination)

47. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 31.

48. The Act, as applied against Plaintiff, constitutes unconstitutional viewpoint discrimination in violation of Plaintiff's affirmative right to freedom of speech under the First and Fourteenth Amendments to the United States Constitution.

49. Defendants have singled out and sought to punish Plaintiff on the basis of its allegedly "inflammatory anti-Muslim message," thereby discriminating against Plaintiff on the basis of its viewpoint.

50. There is no compelling government interest sufficient to justify Defendants' discrimination on the basis of Plaintiff's viewpoint.

51. As a direct and proximate result of Defendants' actions and policies, practices, and customs as alleged herein, Plaintiff is chilled and deprived of its rights to free speech.

52. Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm as a direct result of Defendants' conduct.

WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth in the prayer for relief.

COUNT IV -- VIOLATION OF FIRST AMENDMENT TO THE  
UNITED STATES CONSTITUTION  
(Freedom of the Press)

53. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 31.

54. The Act and the Statute, both on their face and as applied, constitute an unconstitutional abridgement of Plaintiff's affirmative right to freedom of the press under the First and Fourteenth Amendments to the United States Constitution.

55. There is no compelling government interest sufficient to justify Defendants' abridgement of Plaintiff's right to freedom of the press.

56. Neither the Act nor the Statute is not the least restrictive means to accomplish any permissible government purpose sought to be served thereby.

57. As a direct and proximate result of Defendants' actions and their policies, practices, and customs as alleged herein, Plaintiff and third parties not before the Court are chilled and deprived of their rights to free speech.

58. Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm as a direct result of Defendants' conduct.

WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth in the prayer for relief.

COUNT V -- VIOLATION OF FIRST AMENDMENT TO THE  
UNITED STATES CONSTITUTION  
(Free Exercise/Free Speech/Freedom of the Press Hybrid)

59. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 31.

60. The Act, both on its face and as applied, constitutes an unconstitutional abridgement of Plaintiff's affirmative rights to the free exercise of religion, free speech, and freedom of the press under the First and Fourteenth Amendments to the United States Constitution.

61. There is no compelling government interest sufficient to justify Defendants' abridgement of Plaintiff's constitutional rights.

62. The Act is not the least restrictive means to accomplish any permissible government purpose sought to be served thereby.

63. Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm as a direct result of Defendants' conduct.

WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth in the prayer for relief.

COUNT VI -- VIOLATION OF FIRST AMENDMENT TO THE  
UNITED STATES CONSTITUTION  
(Right to Petition the Government for a Redress of Grievances)

64. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 31.

65. The Statute, both on its face and as applied, constitutes an unconstitutional abridgement of Plaintiff's affirmative right to petition the government for a redress of grievances under the First and Fourteenth Amendments to the United States Constitution.

66. There is no compelling government interest sufficient to justify Defendants' abridgement of Plaintiff's constitutional rights.

67. The Statute is not the least restrictive means to accomplish any permissible government purpose sought to be served thereby.

68. Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm as a direct result of Defendants' conduct.

WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth in the prayer for relief.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

- A. Assume jurisdiction over this action;
- B. Declare that Maine's Charitable Solicitations Act, 9 M.R.S. §5001 et seq., is unconstitutional on its face;
- C. Declare that Maine's Charitable Solicitations Act, 9 M.R.S. §5001 et seq., is unconstitutional as applied against Plaintiff;
- D. Declare that the Statute, 9 M.R.S. §5013(1) is unconstitutional on its face;
- E. Declare that the Statute, 9 M.R.S. §5013(1) is unconstitutional as applied against Plaintiff;
- F. Declare that the actions of Defendants constitute viewpoint discrimination;
- G. Enter a preliminary injunction enjoining Defendants, their officers, agents, employees and all other persons acting in active concert with them from enforcing the Act against Plaintiff;
- H. Enter a permanent injunction enjoining Defendants, their officers, agents, employees and all other persons acting in active concert with them from enforcing the Act against anyone;
- I. Enter a preliminary injunction enjoining Defendants, their officers, agents, employees and all other persons acting in active concert with them from enforcing the Statute against Plaintiff;
- J. Enter a permanent injunction enjoining Defendants, their officers, agents, employees and all other persons acting in active concert with them from enforcing the Statute against anyone;

K. Award Plaintiff the reasonable costs and expenses of this action, including attorney's fees, in accordance with 42 U.S.C. § 1988;

L. Grant such other and further relief as this Court deems equitable and just in the circumstances.

Respectfully submitted,

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**VERIFICATION**

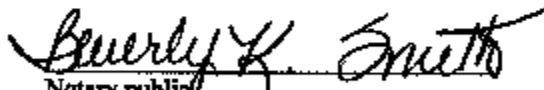
The factual allegations set forth in the foregoing complaint (Christian Action Network v. State of Maine et al) are true to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Martin J Mawyer, President  
Christian Action Network

Dated this 28 day of September, 2009.

State of Virginia:  
County of Spencer ss:

Sworn to and subscribed before me this 28 day of September, 2009.

  
\_\_\_\_\_  
Notary public

