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U.S. DISTRICT COURT
DISTRICT OF WYOMING
2017 JUN 26 PM 3:23
STEPHAN HARRIS, CLERK
CHEYENNE

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Attorneys for Plaintiffs

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF WYOMING
CHEYENNE DIVISION**

VICTORY PROCESSING, LLC, and
DAVE DISHAW

Plaintiffs,

v.

PETER K. MICHAEL, in his official capacity
as Attorney General for the State of Wyoming,

Defendant.

Case No. 17-CV-109-J

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Victory Processing, LLC, (“Victory Processing”) and Dave Dishaw (“Dishaw”) (collectively “Plaintiffs”) hereby file this petition pursuant to 42 U.S.C. § 1983 for declaratory and prospective injunctive relief from the unconstitutional restraint imposed by WYO. STAT. ANN. § 6-6-104 (2016) (hereinafter referred to as the “Robocall Ban”) on Plaintiffs’ right to free speech protected by the First and Fourteenth Amendments to the U.S. Constitution.

PARTIES

1. Victory Processing, LLC is a limited liability company organized pursuant to the laws of the State of Michigan, with offices located at 190 Monroe NW, Suite 500, Grand Rapids, Michigan 49503. Victory Processing provides political consulting services to political campaigns in various areas of the United States. Dishaw is the managing member of Victory Processing.

2. Dave Dishaw is a citizen of the United States and the State of Michigan. Through his company, Victory Processing, LLC, Dishaw engages in political communications, including through automated telephonic communications on behalf of political campaigns.

3. Peter K. Michael is the Attorney General for the State of Wyoming, with offices located at 2320 Capitol Avenue, Cheyenne, Wyoming. The Attorney General is charged with the enforcement of the provisions of the Robocall Ban.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331, 1341(a)(4), 2201, and 2202. This action arises under the Constitution and laws of the United States. Plaintiffs seek a declaration that WYO. STAT. ANN. § 6-6-104 violates the free speech clause of the First Amendment to the U.S. Constitution and prospective injunctive relief from future enforcement thereof.

5. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) as all the Defendants reside in the State of Wyoming. Venue is also proper in this district under 28 U.S.C. § 1391(b)(2) as the events giving rise to the claim occurred in this district.

BACKGROUND

6. The primary method by which Plaintiffs communicate political messages is through the use of an automated telephone system.

7. During 2016, Plaintiffs were approached by numerous prospective clients interested in engaging the firm for political consulting services to assist with conveying political messaging on issues that were to be presented to voters in the State of Wyoming.

8. When conducting the due diligence necessary to assess their ability to assist these prospective clients, Plaintiffs discovered that the provisions of the

Robocall Ban restricted the ability of persons to convey political messages through the use of an automated telephone system.

9. Because of the Robocall Ban's restrictions on the use of automated telephone systems to convey political messages, Plaintiffs were unable to convey political messages to Wyoming voters.

10. Plaintiffs desire to engage in political speech in the future within the State of Wyoming. Specifically, Plaintiffs desire to convey that political speech by means of an automated telephone system.

11. Plaintiffs are unable to engage in such political messaging because such messaging is chilled or otherwise restrained by the Robocall Ban.

12. Specifically, the Robocall Ban provides:

No person shall use an automated telephone system or device for the selection and dialing of telephone numbers and playing of recorded messages if a message is to be completed to the dialed number, for purposes of

...

Promoting or any other use related to a political campaign.

WYO. STAT. ANN. § 6-6-104(a)(v).

13. The Wyoming Attorney General is charged with the enforcement of the Robocall Ban. *See* WYO. STAT. ANN. § 9-1-603.

14. Violations of the Robocall subject the violator to imprisonment and/or civil penalties. *See* WYO. STAT. ANN. § 6-6-104(c).

CLAIM

The Robocall Ban Violates the Free Speech Clause of The First Amendment to the U.S. Constitution

15. Plaintiffs bring this claim pursuant to 42 U.S.C. §§ 1983 and 1988, against the Attorney General in his official capacity, and seek a declaration from this Court finding that the Robocall Ban on its face unconstitutionally deprives Plaintiffs of their right to free speech guaranteed by the First Amendment to the U.S. Constitution and prospective injunctive relief from future enforcement thereof.

16. 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

17. An actual controversy exists between the parties as to the constitutionality of the Robocall Ban. “We do not require ‘a plaintiff to risk actual prosecution before challenging an allegedly unconstitutional statute.’” *Bronson v. Swensen*, 500 F. 2d 1099, 1107 (10th Cir. 2007). “The threat of prosecution is

generally credible where a challenged provision on its face proscribes the conduct in which a plaintiff wishes to engage, and the state has not disavowed any intention of invoking the provision against the plaintiff.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 302 (1979).

18. The provisions of the Robocall Ban, on their face, unconstitutionally chill the freedom of speech guaranteed by the First and Fourteenth Amendments to the U.S. Constitution and thereby violate 42 U.S.C. § 1983. Plaintiffs are allowed to facially challenge a statute as violating the First Amendment on overbreadth grounds because of the concern that protected speech or associated activities may be chilled. *See Secretary of State of Maryland v. Munson*, 467 U.S. 947, 956 (1984).

19. “The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.” *Eu v. San Francisco Cty. Democratic Central Comm.*, 489 U.S. 214, 223 (1989). Political speech “is, and has always been, at the core of the protection afforded by the First Amendment.” *281 Care Comm. v. Arneson*, 766 F.3d 774 (8th Cir. 2014).

20. “The fundamental concept of liberty embodied in [the Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment.” *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940). Thus, the protections afforded

by the First Amendment were made applicable to the states through their incorporation into the Fourteenth Amendment's concept of liberty.

21. The Attorney General's enforcement of the Robocall Ban restricts Plaintiffs' ability to engage in automated telephone calls based on the content of the message conveyed by those calls. If the automated telephone call is made for the purpose of conveying a political message in support of a political campaign, such call is unlawful.

22. Content-based restrictions are presumptively invalid and subject to strict scrutiny by the Court. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015); *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992).

23. Under a strict scrutiny analysis, the Attorney General must show that the Robocall Ban's restriction on automated telephone calls conveying a message in support of a political campaign advances a compelling governmental interest and is narrowly-tailored to serve that interest. *See, Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (2015).

24. The Robocall Ban violates Plaintiffs' right to free speech guaranteed by the First and Fourteenth Amendments to the U.S. Constitution because it does not advance a compelling governmental interest.

25. Alternatively, the Robocall Ban violates Plaintiffs' right to free speech guaranteed by the First and Fourteenth Amendments to the U.S. Constitution because it is not narrowly-tailored to advance a compelling governmental interest.

26. Accordingly, Plaintiffs seek a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that the Robocall Ban unconstitutionally deprives them of the right to free speech as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution and thereby violates 42 U.S.C. § 1983, and an injunction prohibiting enforcement of the Robocall Ban.

WHEREFORE, Plaintiffs request that the Court render judgment on this Complaint in their favor and grant the following relief:

1. Declare that the Robocall Ban unconstitutionally deprives Plaintiffs of their right to free speech as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution;
2. Enter an order permanently enjoining Defendant from enforcing, or taking any steps to enforce, the Robocall Ban;
3. Award Plaintiffs their costs incurred in this action, including reasonable attorneys' fees, as permitted by 42 U.S.C. § 1988; and
4. Grant such additional and further relief as this Court deems just and proper.

Respectfully submitted this 26th day of June, 2017.

VICTORY PROCESSING, LLC
and DAVE DISHAW,

Plaintiffs,

By: 

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Victory Processing, LLC and Dave Dishaw

(b) County of Residence of First Listed Plaintiff Kent County, Michigan
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Patrick J. Crank, Crank Legal Group
1815 Evans Avenue
Cheyenne, Wyoming 82001
307.634.2994

DEFENDANTS

Peter K. Michael, in his official capacity as Attorney General for the State of Wyoming

County of Residence of First Listed Defendant Laramie County, Wyoming
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Mike Robinson, Senior Assistant Attorney General
2320 Capitol Avenue
Cheyenne, Wyoming 82002
307.777.7841

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:
First Amendment Violation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 26913AMOUNT 400-

APPLYING IFP

JUDGE

Johnson

MAG. JUDGE

Rankin