

Louisiana Ethics Board Clarifies State's Express-Advocacy Standard

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In February 2015, the Louisiana Board of Ethics issued an advisory opinion that clarifies the state's express-advocacy standard after years of uncertainty. Responding to a request from Wiley Rein on behalf of the Center for Individual Freedom (a 501(c)(4) organization), the Commission confirmed that independent "expenditures" under state law cover only advertisements with "express words of advocacy of election or defeat of a particular candidate or support or opposition of a proposition or question submitted to the voters." Adv. Op. 2014-1565 (Feb. 23, 2015).

The opinion offers much-needed guidance on an important issue. Under Louisiana law, anyone making more than \$500 in expenditures during a calendar year must file detailed reports with the state. Failure to comply with these provisions can give rise to penalties, meaning that whether speech qualifies as an "expenditure" has profound consequences for people and entities interested in entering into public discourse in Louisiana.

Nearly ten years ago, in 2006, the U.S. Court of Appeals for the Fifth Circuit concluded that the term "expenditure" would be unconstitutionally vague without a limiting interpretation. "To cure that vagueness," the court ruled that Louisiana's law covers only speech that contains "magic words" of express advocacy (words like "vote for" and "vote against").

Following that decision, however, Louisiana regulators took several actions suggesting that they might not honor the standard announced by the Fifth Circuit. In one matter, for example, the Board issued charges based on a flyer that did not even mention elections—much less explicitly advocate for or against a candidate. By affirming the

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Board's adherence to the federal court's bright-line standard, this most recent advisory opinion thus marks a significant step in clarifying Louisiana law.