No.

In the Supreme Court of the United States

FEDERAL ELECTION COMMISSION, ET AL., APPELLANTS

v.

SENATOR MITCH MCCONNELL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

In March 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The questions presented are as follows:

1. Whether the limitations on political parties imposed by Section 101 of BCRA are constitutional.

2. Whether the funding limitations and disclosure requirements imposed by Sections 201 and 203 of BCRA with respect to "electioneering communications" are constitutional.

3. Whether the limitations imposed by Section 213 of BCRA on coordinated expenditures by a political party committee are constitutional.

4. Whether the prohibition imposed by Section 318 of BCRA on contributions to federal candidates or political party committees made by minors is constitutional.

5. Whether the reporting and record-keeping requirements imposed on broadcast stations by Section 504 of BCRA are constitutional.

PARTIES TO THE PROCEEDINGS

This jurisdictional statement is filed on behalf of the following appellants: the Federal Election Commission (FEC) and David W. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John D. Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties were defendants in the district court (current FEC Commissioners Weintraub and Toner replaced former Commissioners Karl J. Sandstrom and Darryl R. Wold, who were originally named as defendants).

The following parties were intervenor-defendants in the district court: Senator John McCain; Senator Russell Feingold; Representative Christopher Shays; Representative Martin Meehan; Senator Olympia Snowe; and Senator James Jeffords.

The following parties were plaintiffs in the district court: Senator Mitch McConnell; Representative Bob Barr; Representative Mike Pence; Alabama Attorney General Bill Pryor; Libertarian National Committee, Inc.; Alabama Republican Executive Committee, as governing body for the Alabama Republican Party; Libertarian Party of Illinois, Inc.; DuPage Political Action Council, Inc.; Jefferson County Republican Executive Committee; American Civil Liberties Union; Associated Builders and Contractors, Inc.; Associated Builders and Contractors Political Action Committee; Center for Individual Freedom; Christian Coalition of America, Inc.; Club for Growth, Inc.; Indiana Family Institute, Inc.; National Right to Life Committee, Inc.;

National Right to Life Educational Trust Fund; National Right to Life Political Action Committee; National Right to Work Committee; 60 Plus Association, Inc.; Southeastern Legal Foundation, Inc.; U.S. d/b/a ProENGLISH; Martin Connors; Thomas E. McInerney; Barret Austin O'Brock; Trevor M. Southerland; National Rifle Association of America; National Rifle Association Political Victory Fund; Emily Echols, a minor child, by and through her next friends Tim and Wendy Echols; Hannah McDow, a minor child, by and through her next friends Tim and Donna McDow; Isaac McDow, a minor child, by and through his next friends Tim and Donna McDow; Jessica Mitchell, a minor child, by and through her next friends Chuck and Pam Mitchell; Daniel Solid, a minor child, by and through his next friends Kevin and Bonnie Solid; Zachary C. White, a minor child, by and through his next friends John and Cynthia White; Republican National Committee (RNC); Mike Duncan as member and Treasurer of the RNC; Republican Party of Colorado; Republican Party of Ohio; Republican Party of New Mexico; Dallas County (Iowa) Republican County Central Committee; California Democratic Party; Art Torres; Yolo County Democratic Central Committee; California Republican Party; Shawn Steel; Timothy J. Morgan; Barbara Alby; Santa Cruz County Republican Central Committee; Douglas R. Boyd, Sr.; Victoria Jackson Gray Adams; Carrie Bolton; Cynthia Brown; Derek Cressman; Victoria Fitzgerald; Anurada Joshi; Peter Kostmayer; Nancy Russell; Kate Seely-Kirk; Rose Taylor; Stephanie L. Wilson; California Public Interest Research Group; Massachusetts Public Interest Research Group; New Jersey Public Interest Research Group; United States Public Interest Research Group; The Fannie Lou Hamer Project; Association of Community Orga-

nizers for Reform Now; Chamber of Commerce of the United States; National Association of Manufacturers; National Association of Wholesaler-Distributors; U.S. Chamber Political Action Committee; American Federation of Labor and Congress of Industrial Organizations; AFL-CIO Committee on Political Education Political Contributions Committee; Representative Ron Paul; Gun Owners of America, Inc.; Gun Owners of America Political Victory Fund; Real Campaign Reform.Org; Citizens United; Citizens United Political Victory Fund; Michael Cloud; Carla Howell; Representative Bennie G. Thompson; Representative Earl F. Hilliard; and National Association of Broadcasters.

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OPINIONS BELOW

The opinions of the district court are not yet reported. See App., *infra*, 9a.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Notices of appeal (App., *infra*, 1a-6a, 7a-8a) were filed by the Federal Election Commission on May 2, 2003, and by the other appellants on May 5, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 113-114.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I, Section 4, Clause 1 of the United States Constitution is reproduced at App., *infra*, 10a.
2. The First Amendment to the United States Constitution is reproduced at App., *infra*, 11a.
3. The Fifth Amendment to the United States Constitution is reproduced at App., *infra*, 12a.

4. The Tenth Amendment to the United States Constitution is reproduced at App., *infra*, 13a.

5. The Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, is reproduced at App., *infra*, 14a-49a.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3).

1. "[T]he history of federal campaign finance regulation, having its origins in the Administration of President Theodore Roosevelt, is a long-standing and recurring problem that has challenged our government for nearly half of the life of our Republic." Per Curiam op. 16; see Kollar-Kotelly op. 6 ("over the course of the last century, the political branches have endeavored to protect the integrity of federal elections with carefully tailored legislation addressing corruption or the appearance of corruption inherent in a system of donor-financed campaigns"). This Court has previously canvassed the history of such regulation and has repeatedly recognized Congress's authority to protect the integrity of federal elections and prevent corruption of federal office-holders. See, *e.g.*, *FEC* v. *Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) (*Colorado II*); *FEC* v. *National Right to Work Comm.*, 459 U.S. 197 (1982) (*NRWC*); *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam); *Pipefitters Local Union No. 562* v. *United States*, 407 U.S. 385 (1972); *United States* v.

Automobile Workers, 352 U.S. 567 (1957); *United States* v. *CIO*, 335 U.S. 106 (1948). In particular, Congress has sought to eliminate the actual and apparent corruption associated with unrestricted political fundraising and spending, in order "to sustain the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." *Automobile Workers*, 352 U.S. at 575; see *NRWC*, 459 U.S. at 208-209.

As the district court explained (Per Curiam op. 16-42), the history of Congress's efforts to ensure the integrity of the federal electoral process has followed a pattern of congressional action to respond to particular electoral abuses; attempts by those in the regulated community to circumvent the limitations established by the applicable regulatory scheme; and congressional action to "plug [an] existing loop-hole." *Automobile Workers*, 352 U.S. at 582. After years of deliberation and debate, Congress enacted BCRA in response to "burgeoning problems with federal campaign finance laws." Per Curiam op. 42. In crafting that legislation, Members of Congress drew upon their own unique experience and familiarity with the problems to which BCRA is addressed as central participants in the federal campaign system.

2. a. BCRA amends the Federal Election Campaign Act of 1971 (FECA), 2 U.S.C. 431 *et seq.*, which regulates the financing of federal election campaigns. FECA was intended to reduce "the actuality and appearance of corruption" resulting from the "opportunities for abuse inherent in a regime of large individual financial contributions." *Buckley*, 424 U.S. at 26-27. Before BCRA was enacted, FECA's central features included limitations on the amounts that individuals and political committees could contribute to candidates for

federal office, political party committees, and independent political committees. See 2 U.S.C. 441a(a)(1)-(4), 441a(d) (2000).[1] FECA also continued in effect longstanding prohibitions against the use of general treasury funds by corporations and labor unions for the purpose of influencing federal elections. See 2 U.S.C. 441b (2000).[2] In addition, FECA included a variety of

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[1] Before BCRA was enacted, individuals were permitted to contribute up to $20,000 to any national political party committee and up to $5000 to any other political committee in any calendar year, and up to $1000 per election to any candidate for federal office, with an overall annual limit of $25,000 by any contributor. 2 U.S.C. 441a(a)(1) (2000). Under BCRA, those limits have been increased to $25,000 per year to any national political party committee, $10,000 per year to any state party committee, and $2000 per election to any federal candidate. See BCRA §§ 102, 307. The overall annual limit is now $37,500 per election cycle for contributions to candidates and $57,500 for other contributions (of which not more than $37,500 may be attributable to contributions to political committees that are not national party committees). See BCRA § 307. BCRA also provides that most of the current contribution limits are indexed for inflation. See BCRA § 307(d); Henderson op. 339. One set of plaintiffs in this litigation challenged the constitutionality of the increased contrbution limits, but the district court held that the plaintiffs lacked standing. See Per Curiam op. 11, 15; Henderson op. 338-342.

[2] In 1907, Congress first prohibited any corporation from making a "money contribution" in connection with federal elections. Tillman Act, ch. 420, 34 Stat. 864-865. Congress later extended the prohibition on corporate contributions to "anything of value." Federal Corrupt Practices Act, 1925 (FCPA), ch. 368, §§ 302, 318, 43 Stat. 1071, 1074. The FCPA also made it a crime for a candidate to accept corporate contributions. 43 Stat. 1074. In 1943, temporary wartime legislation extended the proscription against corporate campaign contributions to labor organizations. Smith-Connally Act, ch. 144, § 9, 57 Stat. 167-168; see *Automobile Workers*, 352 U.S. at 578. The Taft-Hartley Act of 1947, ch. 120, § 304, 61 Stat. 159, again amended the FCPA "to proscribe any 'expenditure' as well as 'any contribution' [and] to make permanent [the

recordkeeping and disclosure requirements that were intended to inform the electorate, deter corruption, and facilitate detection of violations of the contribution and expenditure limits. See 2 U.S.C. 432-434 (2000). Congress also established the Federal Election Commission (FEC) to administer and enforce FECA. See generally 2 U.S.C. 437c(b)(1), 437d(a), 437g (2000).

b. "In the area of campaign finance regulation, congressional action has been largely incremental and responsive to the most prevalent abuses or evasions of existing law at particular points in time." Kollar-Kotelly op. 6; see Per Curiam op. 16-42 (reviewing Congress's incremental approach to campaign-finance regulation); *NRWC*, 459 U.S. at 209 (discussing Congress's "cautious," "step by step" approach). In enacting BCRA, Congress sought principally to address (1) the acceptance and use by political parties of "soft money" (*i.e.*, money raised outside the framework of FECA's disclosure requirements and source and amount limits) for the purpose of influencing federal elections; and (2) the growing use of corporate and union general treasury funds for communications designed to influence, and generally known to influence, the outcome of federal elections. "Broadly speaking, Title I [of BCRA] attempts to regulate political party use of nonfederal funds, while Title II seeks to prohibit

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FCPA's] application to labor organizations." *Automobile Workers*, 352 U.S. at 582-583. FECA permitted corporations and unions to establish and administer separate, segregated accounts for the purpose of making political contributions and expenditures using funds collected from stockholders, members, executive and administrative personnel, and their families. See *Pipefitters Local Union No. 562* v. *United States*, 407 U.S. 385, 387, 409-410 (1972). Although BCRA added new restrictions on certain "electioneering" activities of corporations and labor unions, it left the basic prohibitions on corporate and union treasury contributions unaffected.

labor union and corporate treasury funds from being used to run issue advertisements that have an ostensible federal electioneering purpose." Per Curiam op. 50.

i. Before BCRA was enacted, application of FECA's disclosure requirements and source and amount limitations to funds received by a national or state political party turned on whether the relevant funds were used "for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i) (2000). Political parties were permitted to raise and spend soft money for activities intended to influence the nomination or election of candidates for state or local office. With respect to various "party-building" activities (*e.g.*, get-out-the-vote drives, or generic party advertising), which could be expected and presumably were intended to influence the outcome of both federal and non-federal elections, prior FEC regulations established allocation formulas specifying the extent to which soft money could be used. See generally 11 C.F.R. 106.5 (2002) (expired) (providing for allocation of expenses between federal and non-federal accounts).[3]

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[3] From 1990 until the recent promulgation of new regulations implementing BCRA, FEC rules required party committees that chose to establish federal accounts to allocate a portion of their "[a]dministrative expenses" (11 C.F.R. 106.5(a)(2)(i) (2002)) and expenses for "[g]eneric voter drives," which included "voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. 106.5(a)(2)(iv) (2002). National party committees were required to allocate at least 65% of those expenses to federal accounts during presidential election years, and at least 60% in non-presidential election years. 11 C.F.R. 106.5(b) and (c) (2002). For state and local parties, the allocation was determined by the proportion of

In recent years, however, soft money contributions to political parties have increased dramatically. Soft money has been used, *inter alia*, to purchase advertisements that have featured federal candidates but have not expressly advocated a particular electoral result. See Per Curiam op. 38. The parties have paid for such advertisements "with a mix of federal and nonfederal funds as permitted by FEC allocation rules." *Ibid.* Under the pre-BCRA regime, national party funds were often transferred to state parties for use in such activities because FEC regulations established more favorable allocation formulas (*i.e.*, permitted greater use of soft money) for state than for national party committees. See *id.* at 38-39. Congress ultimately concluded that the effect of such practices was to enable corporations, labor unions, and wealthy individuals to make unlimited and unreported contributions to political parties that were in turn used to benefit federal candidates, thus reintroducing the "opportunities for abuse inherent in a regime of large * * * financial contributions" that FECA was intended to foreclose. *Buckley*, 424 U.S. at 27.

Congress enacted Title I of BCRA to address the opportunities for real or apparent corruption presented when donors make contributions to political parties in amounts that exceed FECA's contribution limits, and the problems caused by the growing use of soft money for activities that are designed and generally known to influence federal elections. BCRA § 101(a) adds a new FECA § 323 (to be codified at 2 U.S.C. 441i). New FECA § 323 consists of several interrelated provisions that work together to ensure "that national parties, federal officeholders and federal candidates use only

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federal offices to all offices on the state's general election ballot. See 11 C.F.R. 106.5(d) (2002).

funds permitted in federal elections to influence federal elections, and that state parties stop serving as vehicles for channeling soft money into federal races to help federal candidates." 147 Cong. Rec. S3251 (daily ed. Apr. 2, 2001) (Sen. Thompson).

New FECA § 323(a)(1) provides that "[a] national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of [the FECA]." Under new FECA § 323(a)(2), that ban applies to the national committee itself and to "any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee." "The clear import of [Section 323(a)] is that national party committees are banned from any involvement with nonfederal money." Per Curiam op. 58. BCRA imposes no limits on how the national party committees may spend their money; it simply requires that all national party funds must be raised in accordance with the longstanding disclosure requirements and source and amount limitations imposed by FECA.

New FECA § 323(b) addresses the use of soft money by state and local party committees. Section 323(b)(1) provides as a general rule that any disbursements made by a state, district, or local committee of a political party for "Federal election activity" must "be made from funds subject to the limitations, prohibitions, and reporting requirements of FECA]." The term "Federal election activity" is defined to include (i) voter registration activity within the 120 days before a federal

election; (ii) get-out-the-vote and similar generic campaign activities "conducted in connection with an election in which a candidate for Federal office appears on the ballot"; (iii) any "public communication that refers to a clearly identified candidate for federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office"; and (iv) all services provided by any employee who devotes more than 25% of his compensated time to activities in connection with federal elections. See BCRA § 101(b) (adding FECA § 301(20)(A)(i)-(iv)). New FECA § 323(b)(2)—known as the "Levin Amendment"—establishes exceptions to that general rule, authorizing state-level party committees to use soft money in limited amounts, raised under certain restrictions, to fund an allocated portion of specified activities that affect both federal and state elections. See Per Curiam op. 58-59.

New FECA § 323(d) prohibits political party committees from soliciting any funds for, or making or directing any donations to, certain organizations described in Sections 501(c) and 527 of the Internal Revenue Code (26 U.S.C.). See Per Curiam op. 60-61. New FECA § 323(e)(1)(A) generally prohibits federal candidates and officeholders from soliciting, receiving, directing, transferring, or spending any soft money in connection with an election for federal office. Per Curiam op. 61. New FECA § 323(e)(1)(B) permits federal candidates to raise money in connection with state and local elections, but only in amounts that do not exceed federal contribution limits and only from sources that are permitted to donate to federal campaigns. Per Curiam op. 61-62. Federal candidates and officeholders are permitted to attend fundraising events for state, district, or local committees of a politi-

cal party and to make certain solicitations on behalf of nonprofit organizations. See FECA § 323(e)(2)-(4); Per Curiam op. 62. Finally, new FECA § 323(f) prohibits any state or local officeholder, or any candidate for such office, from spending soft money for a "public communication that 'refers' to a clearly identified candidate for federal office * * * and 'promotes,' 'supports,' 'attacks,' or 'opposes' a candidate for that office." Per Curiam op. 63.

ii. Title II of BCRA addresses the escalating use of union and corporate treasury funds for broadcast advertising that, while clearly intended to influence the outcome of federal elections, escaped federal regulation under the prior legal regime. Federal law has long prohibited corporations and labor unions from spending general treasury funds to influence federal elections. See p. 4 & note 2, *supra*; 2 U.S.C. 441b (2000). This Court, however, has interpreted both FECA's prohibition of corporate and union spending on federal elections (see 2 U.S.C. 441b (2000)) and FECA's requirements for disclosure of independent political expenditures (see 2 U.S.C. 434(c) (2000)) to apply only to communications that expressly advocate the election or defeat of a candidate for federal office—*i.e.*, those using so-called "magic words" such as "vote for," "elect," "defeat" or "reject." See *Buckley*, 424 U.S. at 44 n.52; *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (*MCFL*). In recent years, corporations and unions have made increasing use of so-called "issue advocacy" campaigns, disseminating advertisements that praise or denounce a candidate for federal office but do not in express terms urge his election or defeat. See Per Curiam op. 41-42. Because those advertisements do not include words of express

advocacy, the expenditures used to finance them escaped regulation under FECA.

Subtitle A of Title II of BCRA reflects Congress's effort to identify more precisely those advertisements that are intended to influence federal elections, by defining a new category of "electioneering communications" in a manner that does not depend on the use of "magic words" of express advocacy. New FECA § 304(f)(3)(A)(i) (added by BCRA § 201(a)) defines the term "electioneering communication" to mean a television or radio communication that "refers to a clearly identified candidate for Federal office"; is made within the 60 days before the federal general election, or the 30 days before the federal primary election, in which the identified candidate is running; and is "targeted to the relevant electorate" (*i.e.*, it can be received by at least 50,000 persons in the State or district where the election is to be held). See Per Curiam op. 63-64. BCRA also includes a backup definition of the term "electioneering communication," to be used in the event that the primary definition is held to be unconstitutional. Under the backup definition, "the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for [federal] office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." BCRA § 201(a) (adding FECA § 304(f)(3)(A)(ii)); see Per Curiam op. 64-65.

BCRA § 203(a) amends FECA § 316(b)(2) (2 U.S.C. 441b(b)(2)) to provide that corporate and labor union general treasury funds may not be used to finance

"electioneering communications" as defined in BCRA. See Per Curiam op. 65. "The prohibition on electioneering communications only applies to the general treasury funds of national banks, corporations, and labor unions, or any other person using funds donated by these entities." *Ibid.* Because BCRA does not alter the pre-existing FECA provisions that allow corporations and labor unions to use funds from separate segregated accounts (or "PACs") for the purpose of influencing federal elections, such funds may lawfully be used to sponsor electioneering communications. See 2 U.S.C. 441b(b)(2)(C) and (4) (2000); Per Curiam op. 65-66; see also *NRWC*, 459 U.S. at 200 n.4 (a "separate segregated fund may be completely controlled by the sponsoring corporation or union").[4]

New FECA § 304(f)(1)-(2) (added by BCRA § 201(a)) requires that any person who spends more than $10,000 on electioneering communications in a calendar year must file statements with the FEC that, *inter alia*, identify the persons making the disbursements, those

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[4] FECA permits unions and corporations to use treasury funds to establish and administer "separate segregated fund[s] to be utilized for political purposes." 2 U.S.C. 441b(b)(2)(C) (2000); see note 2, *supra*. Such a fund (commonly called a "PAC") is a political committee under FECA. See 2 U.S.C. 431(4)(B) (2000). The fund can solicit and receive voluntary contributions (subject to the source and amount limits imposed by FECA) from corporate employees and stockholders, from union members, from members of a membership corporation, and from their families. 2 U.S.C. 441b(b)(4)(A)-(C) (2000). Those funds can be contributed to federal candidates (subject again to FECA's contribution limits) or used to pay for independent expenditures or electioneering communications. Corporations and unions may also use treasury funds to finance communications on any subject with their stockholders, executive and administrative personnel, and their "members." 2 U.S.C. 431(9)(B)(iii), 441b(b)(2) (2000); see Per Curiam op. 65-66.

to whom the disbursements were made, and the persons who contributed $1000 or more to the persons making the disbursement. New FECA § 304(f)(5) (added by BCRA § 201(a)) provides that "[f]or purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement."

iii. Title II of BCRA also addresses the treatment of campaign expenditures that are coordinated between candidates and their political parties. FECA has long treated such expenditures as contributions, see 2 U.S.C. 441a(a)(7)(B)(i) (2000); see also Henderson op. 244, which are subject to the same source and amount limitations that apply to any other contribution. Under FECA, however, political party committees are permitted to make coordinated expenditures in amounts substantially greater than the limits that apply to other donors. Thus, while other multi-candidate political committees can contribute no more than $5000 per election to a candidate, see 2 U.S.C. 441a(a)(2)(A) (2000), party committees are permitted to make contributions in the form of coordinated expenditures that far exceed that limit, see 2 U.S.C. 441a(d) (2000); *Colorado Republican Fed. Campaign Comm.* v. *FEC*, 518 U.S. 604, 610-611 (1996) (opinion of Breyer, J.) (*Colorado I*).[5] Under this Court's decision in *Colorado*

[5] National and state party committees are permitted to make coordinated expenditures of up to two cents multiplied by the voting age population of the United States for a Presidential candidate; the greater of $20,000 or two cents multiplied by the voting age population of a State for the State's candidate for Senator; and $10,000 for a candidate for Representative. See 2 U.S.C. 441a(d)(2)-(3) (2000). Those limits are adjusted each year for inflation. 2 U.S.C. 441a(c) (2000). In the year 2000, the limits on those additional coordinated expenditures ranged from $33,780 to $67,560 for House of Representative races and, for Senate races,

I, political party committees have a First Amendment right to make unlimited independent expenditures to support their candidates. See *id.* at 608, 618 (opinion of Breyer, J.); see also *id.* at 627-631 (opinion of Kennedy, J.); *id.* at 644-648 (opinion of Thomas, J.).

BCRA § 213 alters the range of spending options available to a party committee once the party has nominated a candidate for a particular federal election. Under Section 213, the party must choose, for the remainder of the election cycle, either (1) to forgo independent expenditures in support of that candidate, while remaining subject to the increased coordinated-expenditure limits applicable to political parties under 2 U.S.C. 441a(d) (2000); or (2) to make unlimited independent expenditures in support of that candidate, while abiding by the $5000 limit on contributions and coordinated expenditures applicable to all other multicandidate political committees.

BCRA § 214(a) provides that expenditures made in coordination with political party committees will be treated as contributions to the party. Section 214(a) parallels pre-existing FECA provisions under which expenditures made in coordination with candidates are treated as contributions to the candidate. See Per Curiam op. 74-75; p. 13, *supra*. BCRA § 214(b) repeals pre-existing FEC regulations concerning coordinated communications that are paid for by persons other than candidates or parties, and BCRA § 214(c) directs the

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from $67,560 to $1.6 million. See *Colorado II*, 533 U.S. at 439 n.3. The FEC interprets Section 441a to permit national and state political parties to make direct contributions to a candidate of up to $5000 (the limit applicable to contributions by political committees generally under Section 441a(a)) in addition to the coordinated expenditures authorized by Section 441a(d). See, *e.g.*, 11 C.F.R. 110.7(b)(3) (2002).

FEC to promulgate new regulations on the subject that "shall not require agreement or formal collaboration to establish coordination." See Per Curiam op. 75.

iv. BCRA § 318 prohibits individuals who are less than 18 years old from making contributions to candidates or political party committees. See Per Curiam op. 79.

v. BCRA §§ 305 and 504 amend Section 315 of the Communications Act of 1934, 47 U.S.C. 315. The Communications Act requires stations to sell broadcast time to a candidate at the "lowest unit charge" during the 45-day period before a federal primary election or the 60-day period before a federal general election. 47 U.S.C. 315(b)(1).[6] Under BCRA § 305, a candidate is entitled to obtain the "lowest unit charge" only if he satisfies one of two requirements. First, the candidate may certify in writing that neither he nor any authorized committee will make any "direct reference to another candidate for the same office" during the broadcast advertisement. BCRA § 305(a)(3) (adding 47 U.S.C. 315(b)(2)(A)). Alternatively, "[t]he candidate can be exempted from this provision, and thus be eligible for the lowest unit charge without such a promise, if the candidate clearly identifies himself at the end of the broadcast and states that he approves of the broadcast." Per Curiam op. 77; see BCRA § 305(a)(3) (adding 47 U.S.C. 315(b)(2)(C) and (D)).

BCRA § 504 requires a broadcast station to maintain and make publicly available a complete record of requests to purchase broadcast time "made by or on behalf of a legally qualified candidate for public office"

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[6] The "lowest unit charge" provision was added to the Communications Act, 47 U.S.C. 315, in 1972 as part of FECA. See *Miller* v. *FCC*, 66 F.3d 1140, 1142 (11th Cir. 1995), cert. denied, 517 U.S. 1155 (1996).

or to broadcast a "message relating to any political matter of national importance," including "a legally qualified candidate," "any election to Federal office," or "a national legislative issue of public importance." BCRA § 504 (adding 47 U.S.C. 315(e)(1)). The record created by the licensee must include "the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person." BCRA § 504 (adding 47 U.S.C. 315(e)(2)).

3. Pursuant to BCRA § 403(a), a variety of individuals, party committees, interest groups, and others filed 11 separate lawsuits, alleging that BCRA on its face violates the First, Fifth, and Tenth Amendments to the Constitution. The FEC, the individual FEC Commissioners, the Federal Communications Commission, the Department of Justice, and the Attorney General were named as defendants. The United States intervened as a defendant to defend the constitutionality of BCRA. The principal sponsors of BCRA also were granted leave to intervene as defendants.

After extensive discovery was completed, the three-judge district court upheld some provisions of the statute; found that some of the constitutional challenges were nonjusticiable; and invalidated other BCRA provisions and enjoined their enforcement and application. The district court issued a per curiam opinion that summarized the court's disposition of the various constitutional challenges (see Per Curiam op. 5-15); discussed the history of federal campaign finance regulation (*id.* at 16-42); described the provisions of the BCRA (*id.* at 42–80); set forth findings of fact (*id.* at 80-106) and announced conclusions of law with respect to some of the constitutional claims, chiefly those in-

volving BRCA's disclosure provisions (*id.* at 106-170). In addition, each member of the panel (Circuit Judge Henderson and District Judges Kollar-Kotelly and Leon) filed a separate opinion.[7]

a. With respect to the principal provisions of Title I, the district court invalidated in significant respects BCRA's restrictions on the solicitation and use of soft money by national and state political parties. Judge Kollar-Kotelly would have upheld those provisions; Judge Henderson would have struck them down in their entirety. See Per Curiam op. 5-6, 12; Henderson op. 258-305; Kollar-Kotelly op. 478-609.

Judge Leon, whose vote was controlling (Per Curiam op. 6; cf. note 7, *supra*), concluded that those restrictions were unconstitutional except as applied to "Section 301(20)(A)(iii) activities"—*i.e.*, to any "public communication that refers to a clearly identified candidate for federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office." BCRA § 101(b) (adding FECA § 301(20)(A)(iii)). Judge Leon found that state and national parties could permissibly be barred from using soft money to pay for such communications because "Section 301(20)(A)(iii) * * * describes conduct which is targeted exclusively at federal elections and which directly affects federal elections." Leon op. 44; see *id.* at 44-45, 50-68. Judge Leon concluded, however, that

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[7] Judge Kollar-Kotelly found only three of the challenged provisions (BCRA §§ 213, 318, 504), which she described as "not central to [BCRA's] core mission," to be unconstitutional. See Kollar-Kotelly op. 11. Judge Henderson, by contrast, expressed the view that BCRA "is unconstitutional in virtually all of its particulars." Henderson op. 5. Thus, with respect to the disposition of most of the constitutional claims before the district court, Judge Leon's opinion proved to be controlling.

BCRA's restrictions on the acceptance and use of soft money by national and state parties were otherwise invalid, on the ground that Congress lacks constitutional authority "to regulate nonfederal funds used for nonfederal and mixed purposes." *Id.* at 26; see *id.* at 45-50.

b. With respect to Title II's prohibition on the use of corporate and union general treasury funds to finance "electioneering communications," the district court again adopted an intermediate position, and Judge Leon's views were again controlling. Judge Kollar-Kotelly and Judge Leon agreed that "the record before the Court clearly demonstrates that * * * the evolving present use of issue advertisements, specifically the use of 'issues' to cloak supportive or negative advertisements clearly identifying a candidate for federal office, threaten[s] the purity of elections." Per Curiam op. 135 (internal quotation marks omitted). Judge Kollar-Kotelly would have sustained the expenditure prohibition under either the primary or the backup definition of the term "electioneering communication." See *id.* at 8-9, 12-13; Kollar-Kotelly op. 356-455. Judge Henderson would have found the expenditure ban invalid under either definition. See Per Curiam op. 8-9, 12-13; Henderson op. 201-228.

Judge Leon found the primary definition of "electioneering communication," and the attendant ban on the use of corporate and union general treasury funds to finance "electioneering communications" as so defined, to be unconstitutionally overbroad. Judge Leon based that conclusion on his view that the communications covered by the primary definition include a significant number of "genuine issue advertisements" that are not aimed at influencing electoral results. Leon op. 75; see *id.* at 73-87. At the same time, how-

ever, Judge Leon concluded that the backup definition of "electioneering communication" is for the most part constitutional because it "requires as a link between the identified federal candidate and his election to that office, certain language the purpose of which is advocacy either for, or against, the candidate." *Id.* at 88. He explained that large expenditures for communications falling within that definition can be expected to "give rise to a public perception that the candidate is being directly benefitted and will naturally reciprocate." *Id.* at 90.

Judge Leon determined, however, "that the backup definition's final clause, which requires the message to be 'suggestive of no plausible meaning other than an exhortation to vote,' is unconstitutionally vague." Leon op. 93. Finding that the final clause "can be excised without rewriting the entire definition" (*id.* at 94), Judge Leon upheld the backup definition as so modified. Judge Kollar-Kotelly "concur[red] in that conclusion solely as an alternative to [the district court's] finding that the primary definition is unconstitutional." Per Curiam op. 8. Thus, the effect of the district court's decision was to sustain BCRA's prohibition on the use of corporate and union general treasury funds for "electioneering communications," with that term defined to mean "any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)."

c. The district court held that BCRA § 318, which prohibits persons less than 18 years old from making contributions to federal candidates or to political parties, is unconstitutional. See Per Curiam op. 11, 15. Each of the panel members found that minors have a

presumptive First Amendment right to engage in political expression, and that the government had failed to produce sufficient evidence that minors would otherwise be used to circumvent statutory limits on adult contributors. See Henderson op. 326-333; Kollar-Kotelly op. 610-613; Leon op. 106-111. The district court also struck down the record-keeping and disclosure requirements imposed upon broadcast stations by BCRA § 504. See Per Curiam op. 11-12, 15. The panel members found that the government had failed to demonstrate a public interest sufficient to justify the burdens that Section 504 places upon broadcasters and on those who purchase political advertisements. See Henderson op. 234-238; Kollar-Kotelly op. 614; Leon op. 111-115.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Congress vested this Court with appellate jurisdiction to review district court decisions in suits challenging the constitutionality of BCRA. See BCRA § 403(a)(3). This case falls squarely within the Court's appellate jurisdiction under Section 403(a)(3). Congress further directed this Court to "expedite to the greatest possible extent the disposition of" any appeal taken under the statute. BCRA § 403(a)(4).

This Court "has never * * * doubted" the importance of the government interest in protecting federal elections from the threat of "real or apparent corruption" stemming from the creation or suggestion of political debts. *First Nat'l Bank* v. *Bellotti*, 435 U.S. 765, 788 n.26 (1978); see *FEC* v. *National Right to Work Comm.*, 459 U.S. 197, 207, 209-210 (1982) (*NRWC)*; *Automobile Workers*, 352 U.S. at 570, 575. In invalidating key provisions of BCRA, the district court substituted its own judgment for that of Congress, which has first-hand experience with the electoral process and

a unique understanding of the concerns to which campaign finance laws are addressed. Those holdings plainly warrant this Court's review.

1. a. The district court held that the soft money restrictions imposed on national political party committees by new FECA § 323(a), and on state and local party committees by new FECA § 323(b), are valid only insofar as they require the use of federally-regulated funds to finance any "public communication that refers to a clearly identified candidate for Federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office." See BCRA § 101(b) (adding FECA § 301(20)(A)(iii)). Judge Leon, whose vote and analysis were controlling (see pp. 17-18, *supra*), found that narrowing of the statute to be constitutionally required on the ground that Congress's authority in this area is limited to party expenditures that directly and *exclusively* affect federal elections. In Judge Leon's view, Congress lacks power to regulate a party committee's acquisition of funds "used for nonfederal and mixed purposes." Leon op. 26.

That holding is both novel and erroneous. With respect to national party committees, Congress reasonably concluded that, given the pervasive connections between party organizations and federal office-holders, large unregulated contributions to the national parties would have the inherent tendency to cause actual or apparent corruption within the federal government, regardless of the manner in which the relevant funds were ultimately spent. See Kollar-Kotelly op. 512-513 ("federal officeholders and candidates control the national party committees and are so deeply involved in raising non-federal funds for the national party committees that there is no meaningful separation between

the national committees and the federal candidates and officeholders that control them."); *id.* at 524 (evidence in this case demonstrates that major donors of soft money to national political parties "are provided access to federal officeholders and candidates in exchange for their large contributions"). Congress also had ample basis for concluding that funds raised by national parties are *predominantly* used for activities that affect federal elections, even though occasional national party expenditures might be directed to state elections only. See *id.* at 550-551.

With respect to state party committees, Congress prohibited the use of soft money only for "Federal election activity," see FECA § 323(b)(1) (added by BCRA § 101(a)), and it carefully limited the definition of that term to specified categories of party activities that can reasonably be expected to influence the outcome of federal elections, see FECA § 301(20)(A)(i)-(iv) (added by BCRA § 101(b)). It is doubtless true that the activities described in new FECA § 301(20)(A)(i), (ii), and (iv) can be expected to influence the outcome of state elections as well. But nothing in this Court's precedents supports Judge Leon's novel conclusion that Congress lacks constitutional authority to regulate the collection of funds used for those state party activities, such as voter registration or get-out-the-vote drives, that can be expected to influence *both* federal *and* state elections. Indeed, the FEC has long required that various "generic" party activities must be funded in part by money raised in accordance with FECA limitations, precisely because such activities can be expected to influence the outcome of federal elections. See note 3, *supra*. Although the FEC has allowed party committees to use soft money to pay a portion of those

costs, this Court's decisions do not suggest that the FEC's allocation regime is constitutionally compelled.

b. The district court also erred in invalidating new FECA § 323(d) (added by BCRA § 101(a)), which prohibits party committees from making solicitations for, and donations to, certain tax-exempt organizations. See Henderson op. 306-315; Leon op. 68-71. Those restrictions on efforts to channel funds to tax-exempt organizations are an appropriate means of combating circumvention of BCRA's soft money restrictions and FECA's contribution limitations and disclosure requirements. As Judge Kollar-Kotelly explained in dissenting on this issue, "[i]t is clear that political parties and candidates have used tax-exempt organizations to assist them in their efforts to win federal elections. Given this fact, and the fact that BCRA prohibits state and national political parties from using nonfederal funds to affect federal elections, the attractiveness of using these tax-exempt proxies would become even more attractive to the political parties if nothing had been done by Congress to address this obvious circumvention route." Kollar-Kotelly op. 561 (citation omitted). Congress properly acted to prevent such circumvention, and this Court has repeatedly honored similar anti-circumvention rationales. See, *e.g.*, *Colorado II*, 533 U.S. at 457 n.19.

2. a. The district court erred in invalidating BCRA § 201's primary definition of the term "electioneering communication," as well as BCRA § 203's ban on the use of union and corporate general treasury funds for "electioneering communications" as so defined. See pp. 18-19, *supra*. Under established constitutional principles, corporations and unions may be prohibited from using general treasury funds to make independent expenditures for the purpose of influencing electoral

results, at least so long as they retain the option of establishing separate segregated funds to finance such communications. See, *e.g.*, *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652, 657-661 (1990).[8] Such restrictions on corporate and union spending serve both to prevent the creation of political "debts" and the resulting actual or apparent corruption of office-holders, and to protect individuals who have paid money to the corporation or union for reasons unrelated to support of political candidates. See Kollar-Kotelly op. 357-358; *Austin*, 494 U.S. at 658-660.

Insofar as it prohibits the use of corporate and union general treasury funds for communications intended to influence federal elections, BCRA breaks no new

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[8] This Court has held that 2 U.S.C. 441b's longstanding ban on federal campaign expenditures from corporate treasuries cannot constitutionally be applied to a so-called "*MCFL* corporation" (or "qualified nonprofit corporation," see 11 C.F.R. 114.10(c) (2002))—*i.e.*, a corporation that (1) "was formed for the express purpose of promoting political ideas, and cannot engage in business activities"; (2) "has no shareholders or other persons affiliated so as to have a claim on its assets or earnings"; and (3) "was not established by a business corporation or labor union, and [has a] policy not to accept contributions from such entities." *MCFL*, 479 U.S. at 264. In extending Section 441b's prohibition to payments made for "electioneering communications," Congress evinced no intent to override this Court's decision in *MCFL*, see Kollar-Kotelly op. 459 (discussing legislative history), and the usual presumption is that Congress intends to stay within the constitutional boundaries drawn by this Court. In promulgating regulations to implement BCRA, the FEC has made clear that "[a] qualified nonprofit corporation may make electioneering communications * * * without violating the prohibitions against corporate expenditures." 67 Fed. Reg. 65,211 (2002) (to be codified at 11 C.F.R. 114.10(d)(2)). We therefore do not challenge the district court's holding (see Per Curiam op. 9, 14; Kollar-Kotelly op. 461) that BCRA's prohibition on the use of corporate treasury funds to finance electioneering communications cannot properly be applied to *MCFL* corporations.

ground. See Kollar-Kotelly op. 357 ("For close to one hundred years the political branches have made the choice, consistent with the Constitution, that individual voters have a right to select their federal officials in elections that are free from the direct influence of aggregated corporate treasury wealth and—for over fifty years—from the direct influence of aggregated labor union treasury wealth."). Rather, BCRA's innovation is in the articulation of new criteria for identifying those corporate and union expenditures that are in fact intended to affect federal electoral results. Congress had ample basis for concluding that, under the pre-BCRA regime, "corporations and unions routinely [sought] to influence the outcome of federal elections with general treasury funds by running broadcast advertisements that skirt the prohibition contained in [2 U.S.C.] 441b by simply avoiding *Buckley*'s 'magic words' of express advocacy." *Id.* at 358; see Per Curiam op. 135 ("record * * * clearly demonstrates" that so-called "issue advertisements" financed by corporate and union general treasury funds "threaten the purity of elections"). Drawing upon its Members' extensive campaign experience, Congress "responded to this problem by tightly focusing on the main abuse: broadcast advertisements aired in close proximity to a federal election that clearly identify a federal candidate and are targeted to that candidate's electorate." Kollar-Kotelly op. 358.

BCRA's primary definition of "electioneering communication" is clear and objective. Congress's choice of that definition reflects its informed judgment that advertisements having the specified characteristics are typically intended to influence electoral outcomes and are likely to have that effect. That legislative judgment, which was based in large measure on Members'

direct observations of the use of such communications to circumvent pre-BCRA restrictions on corporate and union campaign spending, is entitled to considerable judicial respect. To the extent that the primary definition could extend to occasional union or corporate communications that are not intended to affect federal elections, the burden that would be imposed by BCRA §§ 201 and 203 is limited. The union or corporation that wishes to distribute such advertisements may finance them from a separate segregated fund; it may disseminate them outside the narrow window of time immediately preceding the relevant federal election or through alternative media; or it may modify the content of such advertisements by deleting express references to a particular federal candidate.[9]

b. The district court largely sustained the disclosure requirements concerning electioneering communications imposed by BCRA § 201. See Per Curiam op. 113-115. The court held, however, that BCRA § 201 is invalid insofar as it requires disclosure of executed contracts for future electioneering communications that

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[9] Although it invalidated BCRA's primary definition of "electioneering communication," the district court held that the backup definition is constitutional, while severing the final clause of that definition on vagueness grounds. See pp. 18-19, *supra*. That final clause requires the message to be "suggestive of no plausible meaning other than an exhortation to vote." BCRA § 201(a) (adding FECA § 304(f)(3)(A)(ii)). Contrary to Judge Leon's determination, that clause is not "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *United States* v. *Lanier*, 520 U.S. 259, 266 (1997). In any event, the final clause of the backup definition is plainly intended to *protect* corporate and union speakers, and to *narrow* the reach of BCRA's restrictions on corporate and union expenditures, by reducing BCRA § 203's potential applicability to communications that are not in fact intended to affect federal elections.

have not yet been publicly distributed. *Id.* at 115-123; see FECA § 304(f)(5) (added by BCRA § 201(a)) ("For purposes of this subsection, a person shall be treated as having made the disbursement if the person has executed a contract to make the disbursement."). That holding is erroneous. Even assuming that new FECA § 304(f)(5) might sometimes have the effect of requiring that contracts be disclosed before the public distribution of an electioneering communication, that requirement would neither prevent any person from speaking nor require disclosure of the specific content of any advertisement. Indeed, under the pre-BCRA regime the definition of "expenditure" included a "written contract, promise, or agreement to make an expenditure," 2 U.S.C. 431(9)(A)(ii) (2000); see 11 C.F.R. 104.11(b), so a requirement that contracts be disclosed at the time of execution would not represent a significant departure from prior law.

3. The district court erred in invalidating BCRA § 213. See Per Curiam op. 10, 14; Henderson op. 256-257; Kollar-Kotelly op. 477; Leon op. 99-106. Once a political party has nominated a candidate for a particular federal election, Section 213 permits the party either (1) to forgo independent expenditures in support of that candidate (in which case it may invoke the increased coordinated-expenditure limits applicable to political parties under 2 U.S.C. 441a(d) (2000)); or (2) to make unlimited independent expenditures in support of that candidate, while abiding by the $5000 limit on contributions and coordinated expenditures applicable to political committees generally. Consistent with the Constitution, Congress might have limited party committees to the second alternative, thereby treating them exactly the same as every other multicandiate political committee. Congress's decision to provide party

committees an additional spending option cannot render the BCRA regime unconstitutional.

4. The district court erred in invalidating BCRA § 318, which prohibits persons less than 18 years old from making contributions to federal candidates or to political parties. See Per Curiam op. 11, 15; Henderson op. 326-333; Kollar-Kotelly op. 610-613; Leon op. 106-111. Section 318 is a valid means of preventing adults from circumventing FECA's contribution limits by making surrogate contributions through minors under their control, and it is consistent with longstanding restrictions on minors' ability to control and dispose of property. In addition, any First Amendment interests that minors may have in participating in the *financing* of federal elections is substantially limited by the fact that minors have no constitutional right to *vote* in such elections. See U.S. Const. Amend. XXVI.

5. The district court erred in striking down BCRA § 504, which requires broadcast stations to maintain and make publicly available specified categories of requests to purchase broadcast time. See Per Curiam op. 11-12, 15; Henderson op. 234-238; Kollar-Kotelly op. 614; Leon op. 111-115. Section 504 applies only to television and radio broadcast stations and cable television systems, and this Court has upheld more intrusive regulation of those media than of any other form of communication. See, *e.g.*, *Turner Broad. Sys., Inc.* v. *FCC*, 512 U.S. 622, 637 (1994); *CBS* v. *FCC*, 453 U.S. 367 (1981). Long-standing Federal Communications Commission regulations have required broadcast stations to disclose candidate "requests" to purchase broadcast time, see 47 C.F.R. 73.1943 (broadcast stations); 47 C.F.R. 76.1701 (cable television systems), and have required disclosure of the sponsors of broadcasts concerning "controversial issue[s] of public importance," see 47 C.F.R. 73.1212(e);

see also 47 C.F.R. 76.1701(d) (cable television). The similar disclosure mandated by BCRA § 504 provides the public with access to information concerning the amounts that individuals and groups are prepared to spend to broadcast messages on political matters of national importance, as well as the sums actually spent on such broadcasts. Requiring disclosure of the identities of those who make requests, and the broadcasters' dispositions of the requests, also enables the public to evaluate whether broadcasters are processing requests in an evenhanded fashion.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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MAY 2003

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 02-582
(CKK, KLH, RJL)

SENATOR MITCH MCCONNELL, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-581
(CKK, KLH, RJL)

NATIONAL RIFLE ASSOCIATION OF AMERICA, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-633
(CKK, KLH, RJL)

EMILY ECHOLS, A MINOR CHILD, BY AND THROUGH HER
NEXT FRIENDS, TIM AND WINDY ECHOLS, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-751
(CKK, KLH, RJL)

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-753
(CKK, KLH, RJL)

NATIONAL ASSOCIATION OF BROADCASTERS, PLAINTIFF

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-754
(CKK, KLH, RJL)

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-781
(CKK, KLH, RJL)

CONGRESSMAN RON PAUL, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-874
(CKK, KLH, RJL)

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-875
(CKK, KLH, RJL)

CALIFORNIA DEMOCRATIC PARTY, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-877
(CKK, KLH, RJL)

VICTORIA JACKSON GRAY ADAMS, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-881
(CKK, KLH, RJL)

REPRESENTATIVE BENNIE G. THOMPSON, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

[Filed: May 5, 2003]

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given that defendants the United States of America, Attorney General John Ashcroft, the United States Department of Justice, and the Federal Communications Commission, hereby appeal to the

United States Supreme Court from the Final Judgment entered in these consolidated actions on the 2nd day of May, 2003. A direct appeal to the United States Supreme Court is authorized by section 403(a)(3) of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, 114.

Respectfully submitted,

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Dated: May 3, 2003

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. Civil Action No. 02-0582
(CKK) (KLH) (RJL)
Consolidated Actions

SENATOR MITCH MCCONNELL, ET AL., PLAINTIFF

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

[Filed: May 2, 2003]

NOTICE OF APPEAL

Notice is hereby given that the Federal Election Commission, defendant in the above named cases, appeals to the Supreme Court of the United States from the final judgment entered in these actions on May 2, 2003.

Respectfully submitted

_____

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APPENDIX C

OPINIONS OF THE DISTRICT COURT

Due to the length of the opinions below, appellants are not including the district court's opinions in the appendix to their jurisdictional statement. The opinions can be found on the Internet at http://lsmns2o.gtwy.uscourts.gov/dcd/mcconnell-2002-ruling.html. Appellants have filed a motion to dispense with filing the district court opinions in the appendix to the jurisdictional statement.

APPENDIX D

Article I, Section 4, Clause 1 of the United States Constitution provides as follows:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The First Amendment to the United States Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The Tenth Amendment to the United States Constitution provides as follows:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.