IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	Civil Action No. 02-0582 (CKK, KLH, RJL) **CONSOLIDATED ACTIONS**

PLAINTIFF AMERICAN CIVIL LIBERTIES UNION MOTION FOR STAY PURSUANT TO RULE 62 (C)

Upon the attached affidavit of Anthony Romero, Executive Director of the American Civil Liberties Union, and incorporating by reference the relevant points in the Memorandum of Points and Authorities filed on May 7, 2003 by the National Rifle Association, the American Civil Liberties Union hereby moves for a stay pursuant to FRCP 62(C), pending appeal to the Supreme Court of the United States of this Court's May 2, 2003 Judgment with respect to the constitutionality of the definitions of "electioneering communications" contained in Title II of the Bipartisan Campaign Reform Act ("BCRA") Pub. L. No. 107-155.

The reasons for this motion, more fully set out in the Affidavit of Anthony Romero, are as follows:

First, if not stayed pending appeal, this Court's decision of May 2nd will cause irreparable injury to the American Civil Liberties Union in the immediate and near future.

The net effect of this Court's decision - in upholding the so-called "fallback definition of "electioneering communication" while striking the limiting clause ("suggestive of no plausible meaning other than an exhortation to vote...") is that any broadcast communication paid for by the ACLU which can be deemed one that "promotes" or "supports" or "attacks" or "opposes" a candidate for Federal office (regardless of whether the communication expressly advocates a vote for or against that candidate) is subject to the full brunt of the Federal Election Campaign Act.

According to published reports, the Bush Administration is preparing new legislation, dubbed Patriot Act II, which would enhance the already broad powers granted to law enforcement under USA PATRIOT Act enacted in the wake of September 11th. It is vital that the country engage in a full and informed debate about these proposals and their civil liberties costs. The ACLU is committed to playing a central role in that debate and to using all the advocacy tools at its disposal, including radio and broadcast ads targeting key members of congress if we deem it appropriate, to ensure that civil liberties are not further eroded by legislation that is hastily adopted.

This court's May 2 decision confronts the ACLU with an intolerable and unacceptable dilemma. We can continue to speak out on these vital civil liberties issues at the risk of civil or criminal penalties if it is determined by governmental authorities that the speech comes within the Court's wholly new statutory definition of "electioneering communications." Or we can remain silent and not engage in any speech that could even arguably come within that definition until such time - perhaps 6 to 8 months from now - when the Supreme Court finally resolves these issues.

The day before the BCRA was passed, so far as the campaign finance laws were concerned, the ACLU could say anything about elected federal officials who will be running for office unless that speech "expressly advocated" the election or defeat of those officials. The day after this court's decision, so far as the campaign finance laws are concerned, the ACLU cannot say anything about elected federal officials who will be running for office if that speech in any way "promotes" "supports" "attacks" or "opposes" that official. This sea change in the right of non-partisan issue organizations to speak out on the vital issues of the day and the top-level officials who create those issues, should not be implemented until the Supreme Court has had the final say in these historic matters.

Finally, for the reasons set forth more fully in the Memorandum of Points and Authorities of the NRA, staying the enforcement of the fallback definition, and thus reinstating the potential applicability of the primary definition, properly balances the equities between the public interest in proper enforcement of campaign finance laws and the public interest in preserving the full measure of First Amendment freedoms. We adopt the pertinent reasoning and analysis set forth in the NRA's memorandum and therefore and do not submit a separate memorandum of points and authorities.

May 9, 2003

Respectfully Submitted,

Joel M. Gora
250 Joralemon Street
Brooklyn, NY 11201
Of Counsel

Mark J. Lopez
(*Pro Hac Vice)*
Steven R. Shapiro
American Civil Liberties Union
125 Broad Street 17th Floor
New York, NY 10004
212-549-2608