

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

SENATOR MITCH McCONNELL,

United States Senate,
Washington, DC 20510;

REPRESENTATIVE BOB BARR,

United States House of Representatives,
Washington, DC 20515;

REPRESENTATIVE MIKE PENCE,

United States House of Representatives,
Washington, DC 20515;

ALABAMA ATTORNEY GENERAL BILL PRYOR,

Office of the Attorney General,
Alabama State House,
11 South Union Street, Third Floor,
Montgomery, AL 36130;

Case No. 02-0582 (RJL)

LIBERTARIAN NATIONAL COMMITTEE, INC.,

2600 Virginia Avenue NW, Suite 100,
Washington, DC 20037;

**ALABAMA REPUBLICAN EXECUTIVE
COMMITTEE, AS GOVERNING BODY
FOR THE ALABAMA REPUBLICAN PARTY,**

3321 Lorna Road, Suite 6,
Birmingham, AL 35216;

LIBERTARIAN PARTY OF ILLINOIS,

316 1/2 North River Street, Suite B,
East Dundee, IL 60018

DUPAGE POLITICAL ACTION COUNCIL,

4633 Elm Street,
Downers Grove, IL 60515;

**JEFFERSON COUNTY REPUBLICAN
EXECUTIVE COMMITTEE,**

2804 Crescent Avenue,
Homewood, AL 35209;

AMERICAN CIVIL LIBERTIES UNION,)
125 Broad Street,)
New York, NY 10004;)
)
ASSOCIATED BUILDERS AND)
CONTRACTORS, INC.,)
1300 North Seventeenth Street,)
Arlington, VA 22209;)
)
ASSOCIATED BUILDINGS AND CONTRACTORS)
POLITICAL ACTION COMMITTEE,)
1300 North Seventeenth Street,)
Arlington, VA 22209;)
)
CENTER FOR INDIVIDUAL FREEDOM,)
901 North Washington Street, Suite 402,)
Alexandria, VA 22314;)
)
CHRISTIAN COALITION OF AMERICA, INC.,)
499 South Capitol Street, S.W., Suite 615,)
Washington, DC 20003;)
)
CLUB FOR GROWTH,)
1776 K Street, N.W., Suite 300,)
Washington, DC 20006;)
)
INDIANA FAMILY INSTITUTE,)
55 Monument Circle, Suite 322,)
Indianapolis, IN 46204;)
)
NATIONAL RIGHT TO LIFE COMMITTEE, INC.,)
512 Tenth Street, N.W.,)
Washington, DC 20004;)
)
NATIONAL RIGHT TO LIFE EDUCATIONAL)
TRUST FUND,)
512 Tenth Street, N.W.,)
Washington, DC 20004;)
)

NATIONAL RIGHT TO LIFE POLITICAL ACTION)
COMMITTEE,)
512 Tenth Street, N.W.,)
Washington, DC 20004;)
)
THE NATIONAL RIGHT TO WORK COMMITTEE,)
8001 Braddock Road, Suite 500,)
Springfield, VA 22160;)
)
60 PLUS ASSOCIATION, INC.,)
1600 Wilson Boulevard, Suite 960,)
Arlington, VA 22209;)
)
SOUTHEASTERN LEGAL FOUNDATION, INC.,)
3340 Peachtree Road, Suite 2515,)
Atlanta, GA 30326;)
)
U.S. d/b/a ProENGLISH,)
1601 North Kent Street, Suite 1100,)
Arlington, VA 22209;)
)
MARTIN CONNORS,)
3321 Lorna Road,)
Birmingham, AL 35236;)
)
THOMAS E. McINERNEY,)
255 East 49th Street,)
New York, NY 10017;)
)
BARRET AUSTIN O'BROCK,)
248 Lakepoint Drive,)
Shreveport, LA 71109;)
)
TREVOR M. SOUTHERLAND,)
42 Peppercorn Lane,)
Rossville, GA 30741;)
)
Plaintiffs,)
)
v.)

FEDERAL ELECTION COMMISSION,

999 E Street, N.W.,
Washington, DC 20463;

FEDERAL COMMUNICATIONS COMMISSION,

445 Twelfth Street, S.W.,
Washington, DC 20554,

Defendants.

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs bring this action for declaratory and injunctive relief, alleging as follows:

INTRODUCTION

1. This is an action challenging numerous provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) as violating the United States Constitution. The BCRA limits and criminalizes speech and related activities touching on the widest range of public issues. In doing so, it dramatically extends the scope of the Federal Election Campaign Act of 1971 (FECA) and the Federal Communications Act of 1934 (FCA) in a manner that violates several provisions of the Constitution. The BCRA's 91 densely packed pages impose all manner of new federal rules that would radically alter, in a fundamental and unconstitutional fashion, the ways that citizens, corporations, labor unions, trade associations, officeholders, candidates, advocacy groups, tax-exempt organizations, and national, state, and local political party committees are permitted to participate in our Nation's democratic process.

2. Central to the BCRA is its effort to regulate core political speech. When such speech, long and correctly viewed as entitled to the highest degree of First Amendment protection, is

broadcast in the form of an issue advertisement on television or radio and merely mentions a federal officeholder or candidate in the months leading up to an election, it can be a crime, with penalties of up to five years in prison. If the BCRA had been in effect in 2000, criminal punishments could have been meted out simply for the sponsorship of ads urging a Member of Congress to vote yes or no on pending proposals to expand the federal hate crimes law, to preempt Oregon’s law permitting physician-assisted suicide, to regulate speech on the Internet, or to abolish the Electoral College and provide for direct popular election of the President. Not since the Alien and Sedition Acts, enacted in the earliest days of our Republic, could criminal sanctions be so easily incurred simply by engaging in such core political speech.

3. By creating a new crime of incitement to political action, the BCRA flagrantly contravenes more than a quarter century of unbroken Supreme Court and lower court precedent. In *Buckley v. Valeo*, for example, the Supreme Court held that the federal government could regulate spending for purposes of engaging in core political speech only when the speech “in express terms advocate[s] the election or defeat of a clearly identified candidate for federal office.”* By purporting to regulate spending for core political speech when such speech merely “refers to a clearly identified Federal candidate,” the BCRA ignores *Buckley*’s express holding, sweeps well beyond the permissible scope of regulation under the First Amendment, and criminalizes vast quantities of fully protected speech.

4. Nor does it stop there. The BCRA attempts to re-engineer the way our democratic process works, and in doing so pervasively violates the Constitution. To take but a few examples:

! The BCRA unconstitutionally favors some speakers over others.

* 424 U.S. 1, 44 (1976).

- ! The BCRA unconstitutionally constrains the rights of officeholders and candidates to raise money for tax-exempt organizations, political parties, and other candidates.
- ! The BCRA treads on First Amendment-protected associational rights by compelling organizations to disclose the identity of their supporters to a far greater, and more dangerous, extent than ever before contemplated, and imposes expensive and burdensome reporting requirements.
- ! The BCRA places unprecedented limits on political parties' ability to make expenditures for core political speech.

All this is accomplished by the use of language that is itself unconstitutionally vague and overbroad and, in some instances, violative of the constitutional guarantee of equal protection under the laws.

5. The far-reaching provisions of the BCRA, particularly those seeking to regulate and control issue advocacy by groups independent of any candidate or campaign, do not improve democracy. The impact of the law is not merely to suppress speech, but to insulate incumbent officeholders from effective criticism. The BCRA permits candidates for federal office to specify what topics are to be discussed during their campaigns and with what intensity. The First Amendment does not permit the government to impose any such regime.

6. Many of the BCRA's supporters have acknowledged that the BCRA raises serious constitutional questions, but these questions did not prevent the BCRA's enactment by the Congress and signature by the President, who likewise has noted the BCRA's grave constitutional implications. The federal courts therefore stand, as so often before in our history, as the ultimate guardians of the Constitution and the Bill of Rights. Plaintiffs urge that this Court take up that solemn responsibility and invalidate the many constitutionally problematic provisions of the BCRA.

BACKGROUND

7. On February 14, 2002, and March 20, 2002, the House and Senate passed the BCRA. On March 27, 2002, the President signed the BCRA into law.

8. Title I of the BCRA, captioned “Reduction of Special Interest Influence,” includes a ban on so-called “soft money”: that is, a prohibition on the solicitation, receipt, or use by national political party committees of any funds that were not raised subject to the so-called “hard money” source-and-amount restrictions of the FECA. It also requires that state, district, and local political party committees pay for what the BCRA defines as “federal election activity” only with money raised subject to the FECA’s restrictions. The BCRA carves out a narrow exception for certain types of “federal election activity,” including some voter registration, voter identification, and get-out-the-vote activity; for these activities, state, district, and local political party committees may use funds that are not raised subject to the FECA’s restrictions, as long as the funds used for the state share of such activities are raised in amounts no greater than \$10,000, are segregated from the party committee’s other funds, and are fully reported to the federal authorities. Title I generally prohibits federal officeholders and candidates from participating in raising or spending any funds, for themselves or others, for “federal election activity” if those funds are not raised subject to the FECA’s restrictions. And Title I bars state candidates from spending funds on communications that promote or support candidates for federal office, even if those communications do not expressly advocate a vote for or against a candidate.

9. Title II, entitled “Noncandidate Campaign Expenditures,” prohibits corporations and labor unions from using funds not raised subject to the FECA’s limitations to pay for so-called “electioneering communications”: that is, for broadcast, cable, or satellite communications that refer

to a clearly identified federal candidate and are made within sixty days of a general election or thirty days of a primary. The BCRA provides a “fall-back” definition of “electioneering communications” in the event that the primary definition is held to be unconstitutional. Both definitions include communications containing issue advocacy, which does not expressly advocate the election or defeat of clearly identified federal candidates. In addition to the limitations on corporations and labor organizations, any person who makes “electioneering communications” is subject to stringent new disclosure requirements. This required disclosure includes the disclosure of the names and addresses of any individual who contributes as little as \$1,000 to an organization that engages in “electioneering communications.” Moreover, any disbursements for “electioneering communications” that are coordinated with candidates or their political parties are treated as contributions to the candidates, and are therefore subject to the source-and-amount limitations of the FECA. With respect to any given candidate, Title II requires political party committees to choose between making independent expenditures on behalf of that candidate and making coordinated expenditures with that candidate. Finally, Title II directs the FEC broadly to define the term “coordinated activity.”

10. Title III, captioned “Miscellaneous,” sets revised limits on contributions by individuals to candidates for federal office and to national party committees, and sets an aggregate limit on an individual’s total contributions to candidates, political action committees, and political parties. These contribution limits are modified by the so-called “Millionaires’ Provisions,” which increase contribution limits by up to six times for the campaigns of congressional candidates whenever they confront opponents who expend substantial personal funds on their own campaigns.

In certain cases, Title III also lifts limits on coordinated expenditures by political parties aiding wealthy candidates' opponents.

11. Title V, titled "Additional Disclosure Provisions," imposes additional disclosure obligations, including significant disclosure obligations on broadcasters with respect to political advertisements.

12. Finally, the BCRA dramatically enhances the criminal penalties for violations of the FECA. It increases the maximum prison sentence from one to five years and eliminates language capping the amount of any fine. The BCRA also lengthens the limitations period and orders the United States Sentencing Commission to promulgate sentencing guidelines for FECA violations.

13. The BCRA takes effect on November 6, 2002, although funds not raised subject to the FECA's limitations may be spent by national party committees for certain limited purposes until January 1, 2003. Recognizing the serious constitutional questions the BCRA raises, the law provides for immediate judicial review by a three-judge panel of this Court of any constitutional action for declaratory or injunctive relief, with expedited appellate review by the Supreme Court of the United States. The BCRA also gives any Member of Congress the right to bring suit challenging the BCRA's constitutionality.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 2201. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and section 403 of the BCRA.

PARTIES

15. Plaintiff Mitch McConnell is the senior United States Senator from the Commonwealth of Kentucky, and one of the Senate's foremost advocates for unfettered political

speech and association. He was first elected in 1984 and is currently a candidate for reelection. He is the former Chairman and current Ranking Member of the Senate Committee on Rules and Administration, which has jurisdiction over federal election law. He has served as Chairman of the National Republican Senatorial Committee, which promotes issues and supports the campaigns of Republican candidates on the federal, state, and local level. Senator McConnell is a United States citizen, member of Congress, candidate, voter, donor, recipient, fundraiser, and party member, and has been, and will continue to be, injured by the BCRA in each of these capacities.

16. Plaintiff Bob Barr is a Representative from the Seventh Congressional District of the State of Georgia. He was first elected in 1994 and is currently a candidate for reelection. He is an Assistant Majority Whip, is Vice Chairman of the Government Reform Committee, and serves on the Judiciary and Financial Services Committees. Representative Barr is a United States citizen, member of Congress, candidate, voter, donor, recipient, fundraiser, and party member, and has been, and will continue to be, injured by the BCRA in each of these capacities.

17. Plaintiff Mike Pence is a Representative from the Second Congressional District of the State of Indiana. He was first elected in 2000 and is currently a candidate for reelection. He is an Assistant Majority Whip, is Chairman of the Small Business Subcommittee on Regulatory Reform and Oversight, and serves on the Judiciary and Agriculture Committees. Representative Pence has raised and assisted to raise, and wishes to continue to raise and assist in raising, funds for Plaintiff Indiana Family Institute (“IFI”), and he has communicated and wishes to continue to communicate with IFI with regard to raising and assisting in raising funds for IFI. Representative Pence is a United States citizen, member of Congress, candidate, voter, recipient, fundraiser, and

party member, and has been, and will continue to be, injured by the BCRA in each of these capacities.

18. Plaintiff Bill Pryor is presently the Attorney General of the State of Alabama. He is the Alabama Republican Party candidate in this calendar year election for the office of Alabama Attorney General, and he intends to be a candidate for Alabama Attorney General or some other State office thereafter. As an officeholder, General Pryor intends this year and in the future to make public communications that refer to a clearly defined candidate for federal office and that promotes or supports a candidate or attacks or opposes a candidate for that office, including communications that do not expressly advocate a vote for or against a candidate. General Pryor has received, and he hopes and intends to receive in the future, “soft money” contributions from the Republican National State Elections Committee, a division of the Republican National Committee, which has given him such contributions in the past and would give them to him in the future. As a candidate, General Pryor intends this year and in the future to spend funds lawfully raised to campaign for state office, but raised and spent without regard to the limitations, prohibitions, and reporting requirements of the FECA as amended by the BCRA, for the purpose of: (a) making public communications that refer to a clearly identified candidate for federal office and that promote or support a candidate or attack or oppose a candidate for that office, including communications that do not expressly advocate a vote for or against a candidate; (b) engaging in voter registration activities conducted within 120 days of a federal election, and (c) engaging in voter identification, get-out-the-vote, and generic campaign activities conducted in connection with an election in which a candidate for federal office is on the ballot. As a candidate in association with or in a group of candidates for state or local office or of individuals holding state or local office, General Pryor intends this year and in the future

to spend funds lawfully raised to campaign for state office, but raised and spent without regard to the limitations, prohibitions, and reporting requirements of the FECA as amended by the BCRA, for the purpose of: (a) making public communications that refer to a clearly identified candidate for federal office and that promote or support a candidate or attack or oppose a candidate for that office, including communications that do not expressly advocate a vote for or against a candidate; (b) engaging in voter registration activities conducted within 120 days of a federal election, and (c) engaging in voter identification, get-out-the-vote, and generic campaign activities conducted in connection with an election in which a candidate for federal office is on the ballot. Attorney General Pryor have been and will continue to be injured by the BCRA in each of these capacities.

19. Plaintiff Libertarian National Committee, Inc. (“LNC”) is the governing body of the Libertarian Party at the national level. The LNC is incorporated in the District of Columbia as a nonprofit corporation, and it is governed by I.R.C. § 527. The LNC seeks to represent the principle that all individuals have the right to exercise sole dominion over their lives, and have the right to live in whatever manner they choose, so long as they do not forcibly interfere with the equal right of others to live in whatever manner they choose. Notwithstanding its specific objections to the BCRA, the LNC and Libertarian Party oppose all federal campaign finance laws, and reserve the right to mount a broad challenge to the constitutionality of these laws in the future.

a. The LNC and Libertarian Party have in the past and intend in the future to solicit, receive, and use “soft money” and “hard money” to advocate issues, and as a means to this end support Libertarian Party candidates in campaigns for federal and state elective office; however, no Libertarian Party candidate has ever been elected to federal office. The LNC has in the past and intends in the future to solicit, receive, and use “soft money” funds, as such funds are defined by

BCRA, to finance issue advocacy communications. The LNC has in the past and intends in the future to transfer “soft money” funds to state-affiliated parties that have in the past and intend in the future to receive such funds.

b. The LNC has in the past and intends in the future to communicate with candidates for federal office and with federal officeholders and to spend “soft money” for issue advocacy communications regarding issues supported by such candidates and officeholders. As it has in the past and intends in the future, the LNC has made and intends to make both independent and coordinated expenditures on behalf of candidates for state and federal office after the party’s candidates are nominated and to transfer funds between national, state, and local party committees.

c. As it has in the past and intends in the future, the LNC solicits funds for and makes donations to I.R.C. § 527 organizations. It intends in the future to solicit funds for and make donations to I.R.C. § 501(c) organizations that make expenditures and disbursements in connection with federal elections.

d. The national Libertarian Party is a membership organization that requires the regular payment of dues from members to the LNC. Dues are frequently paid to state-affiliated Libertarian Parties, with a portion to be distributed to the national Libertarian Party, so that those who pay dues may be members of both the state and national parties. Dues are often paid by one person on behalf of another, as a wife might pay for a husband, and are often paid with delays in forwarding them to the LNC. In these circumstances, the funds are appropriately deposited in state affiliates’ “soft money” accounts. Under the BCRA, these funds may not be transferred to the LNC, so that members who pay dues in such a manner must be denied membership in the national Libertarian Party. Further, the national LNC is substantially sustained by “soft money” dues

transfers from state-affiliated parties to the national LNC and by purchases of literature and other educational materials from the LNC by state-affiliated parties. By forbidding such “soft money” transfers, the BCRA thus effectively criminalizes the current structure of the national Libertarian Party as a membership organization.

e. The LNC has offered and intends to continue to offer advertising space in its monthly newsletters that has been and is to be purchased by corporate entities. The LNC frequently rents its mailing list through the use of a corporate rental agent, which in turn recompenses the LNC for use of its list. The mailing list is also often rented by corporate entities that in turn recompense the LNC. The LNC has planned and intends to purchase a building in which to conduct national Libertarian Party affairs, and it has planned and intends to solicit, receive, and use “soft money” for this purpose.

f. The LNC has in the past and intends in the future to use “soft money” to finance its ballot access drives and to finance all of its national conventions, which are held every other year. Libertarian Party conventions held in years when there are no federal presidential elections are solely devoted to discussion and advocacy of issues; no candidates for public office are nominated for or selected to run as Libertarian Party candidates at these conventions.

g. The national Libertarian Party presently has many, but an indeterminate number of, minor members; dues must be paid as a condition for membership in the national Libertarian Party. Minors are forbidden by the BCRA to contribute their membership dues as “hard money” to the LNC; persons are forbidden to contribute their dues as “soft money” to the LNC; any dues contributed as “soft money” to state-affiliated parties cannot be transferred to the LNC under

the BCRA. As a consequence, the BCRA effectively forbids minors from being members of the national Libertarian Party.

h. Because many of the Libertarian Party's state affiliate party committees have a unified membership structure that requires state members to also contribute to the LNC and become national Libertarian Party members, and because only a state or national member may be elected as a Libertarian Party National Convention Delegate, the BCRA would effectively prohibit minors from serving as convention delegates, though many have done so in the past and intend to do so in the future. Because the LNC does not receive federal funding for its national conventions like the Republican and Democratic Parties, it must charge attendees for the cost of their participation. In the past, many minors have attended Libertarian Party national conventions and have paid the LNC to do so. As a consequence, BCRA effectively forbids minors from attending Libertarian Party national conventions, because minors are prohibited from contributing funds to the LNC to defray the costs of their participation at the conventions.

i. The LNC and the Libertarian Party have been and will continue to be injured in each of these capacities.

20. Plaintiff Alabama Republican Executive Committee ("AREC") is the governing body of the Alabama Republican Party. The Alabama Republican Party is an Alabama unincorporated, non-profit association governed by I.R.C. § 527. The object of the Alabama Republican Party is to build and promote the Republican Party in the State of Alabama, and it performs the duties imposed by law and custom on executive committees political parties, including the solicitation, receipt, and use of "soft money" funds to further the object of the Alabama Republican Party.

a. The Alabama Republican Party has in the past and intends in the future to solicit, receive, and use both “soft money” and “hard money” funds, as these terms are defined by the BCRA, both to fund issue advocacy communications and to contributions to the campaigns for election of candidates for state and federal office. The Alabama Republican Party has in the past and intends in the future to transfer “soft money” funds to the Republican National Committee and to local and district party affiliates; it has in the past and intends in the future to receive “soft money” funds from the Republican National Committee and from local and district party affiliates.

b. The Alabama Republican Party has in the past and intends in the future to communicate with candidates for federal office and with federal officeholders and to spend “soft money” for issue advocacy communications regarding issues supported by such candidates and officeholders. As it has in the past and intends in the future, the Alabama Republican Party has made and intends to make independent expenditures on behalf of candidates after the party’s candidates are nominated, as well as coordinated expenditures, as this term is defined by the BCRA, after the party’s candidates are nominated.

c. As it has in the past and intends in the future, the Alabama Republican Party solicits funds for and makes donations to I.R.C. § 527 organizations. The Alabama Republican Party has planned and intends to purchase a building in which to conduct the affairs of the Alabama Republican Party and to solicit, receive, and use “soft money” funds for this purpose.

d. The Alabama Republican Party has in the past and intends in the future to use “soft money” to finance voter registration, voter identification, and get-out-the-vote activities with regard to elections in which there are candidates for state and federal office. As it has in the past and intends in the future, the Alabama Republican Party uses non-federal money for broadcast

communications that do not solely refer to clearly identified candidates for state or local office; it receives amounts in aggregate excess of \$10,000 contributed by a single person to the Alabama Republican Party.

e. The AREC and the Alabama Republican Party have been and will continue to be injured in each of these capacities.

21. Plaintiff Libertarian Party of Illinois, Inc. (LPI) is an Illinois non-profit corporation governed by I.R.C. § 527. The object of LPI is to build and promote the principles of libertarianism in Illinois. The LPI performs the duties imposed by law and custom on executive committees political parties, including the solicitation, receipt, and use of “soft money” funds to further the principles of the LPI.

a. The LPI has in the past and intends in the future to solicit, receive, and use both “soft money” and “hard money” funds, as these terms are defined by the BRCA, both to fund issues advocacy communications and to fund the campaigns for election of candidates for state and federal office. The LPI has in the past and intends in the future to transfer “soft money” funds to the national Libertarian Party and to local party affiliates; it has in the past and intends in the future to receive “soft money” funds from the national Libertarian Party and from local party affiliates.

b. The LPI has in the past and intends in the future to communicate with candidates for federal office and with federal officeholders and to spend “soft money” for issue advocacy communications regarding issues supported by such candidates and officeholders. The LPI has made and intends to make both independent and coordinated expenditures on behalf of candidates after the party’s candidates are nominated.

c. As it has in the past and intends in the future, the LPI on its own behalf and through entities established, financed, and controlled by the LPI solicits funds for and makes donations to both I.R.C. § 501(c) organizations that make expenditures and disbursements in connection with federal elections and I.R.C. § 527 organizations.

d. The LPI has in the past and intends in the future to use “soft money” to finance voter registration, voter identification, and get-out-the-vote activities with regard to elections in which there are candidates for state and federal office. As it has in the past and intends in the future, the LPI uses non-federal money for broadcast communications that do not solely refer to clearly identified candidates for state or local office; it receives amounts in aggregate excess of \$10,000 contributed by a single person to state, district, and local party committees; it raises funds with district and local party committees and on behalf of one another for activities that are regulated by the FECA, as amended by the BCRA.

e. The LPI is a membership organization that requires the regular payment of dues from members of the LPI. Dues are paid to the LPI, and a portion of the dues are apportioned to the national Libertarian Party, so that members of LPI become members of the national Libertarian Party. A significant but indeterminate number of the members of the LPI are minors.

f. The Libertarian Party of Illinois has been and will continue to be injured by the BCRA in each of its capacities.

22. Plaintiff DuPage Political Action Council (DPAC) is an Illinois non-profit corporation governed by I.R.C. § 527. DPAC is the political committee of the Libertarian Club of DuPage County, Illinois, which is an affiliate of the Libertarian Party of Illinois. The object of the DPAC is to build and promote the principles of libertarianism in DuPage County. The DPAC

performs the duties imposed by law and custom on executive committees of political parties, including the solicitation, receipt, and use of “soft money” funds to further the principles of the DPAC.

a. The DPAC has in the past and intends in the future to solicit, receive, and use both “soft money” and “hard money” funds, as these terms are defined by the BRCA, both to fund issue advocacy communications and to fund the campaigns for election of candidates for state and federal office. The DPAC has in the past and intends in the future to transfer “soft money” funds to the national Libertarian Party and to local party affiliates; it has in the past and intends in the future to receive “soft money” funds from the national Libertarian Party and from local party affiliates.

b. The DPAC has in the past and intends in the future to communicate with candidates for federal office and with federal officeholders and to spend “soft money” for issue advocacy communications regarding issues supported by such candidates and officeholders. As it has in the past and intends in the future, the DPAC has made and intends to make both independent and coordinated expenditures on behalf of candidates after the party’s candidates are nominated.

c. As it has in the past and intends in the future, the DPAC on its own behalf and through entities established, financed, and controlled by the DPAC solicits funds for and makes donations to both I.R.C. § 501(c) organizations that make expenditures and disbursements in connection with federal elections and I.R.C. § 527 organizations.

d. The DPAC has in the past and intends in the future to use “soft money” to finance voter registration, voter identification, and get-out-the-vote activities with regard to elections in which there are candidates for state and federal office. As it has in the past and intends in the

future, the DPAC uses non-federal money for broadcast communications that do not solely refer to clearly identified candidates for state or local office; it intends to receive amounts in aggregate excess of \$10,000 contributed by a single person to state, district, and local party committees; it raises funds with district and local party committees and on behalf of one another for activities that are regulated by the FECA as amended by the BCRA.

e. The DPAC is a membership organization that requires the regular payment of dues from members of the DPAC. Dues are paid to the DPAC, and a portion of the dues are transferred to other causes on a local and state level.

f. The DPAC has been and will continue to be injured in each of these capacities.

23. Plaintiff Jefferson County Republican Executive Committee (JCREC) is the governing body for the Republican Party of Jefferson County, Alabama. The JCREC is organized as a political committee and is governed by I.R.C. § 527. The objective of the JCREC is to build and promote the Republican Party in Jefferson County, Alabama. The JCREC also encourages and aids the campaigns of Republican nominees for public office.

a. The JCREC has in the past and intends in the future to solicit, receive, and use both “soft money” and “hard money” funds, as these terms are defined by the BCRA, both to fund issue advocacy communications and to help fund the campaigns for election of candidates for state and federal office. The JCREC has in the past and intends in the future to transfer “soft money” funds to its state Republican Party affiliate; it has in the past and intends in the future to receive “soft money” funds from its state Republican Party affiliate.

b. The JCREC has in the past and intends in the future to communicate with candidates for federal office and with federal officeholders and to spend “soft money” for issue advocacy communications regarding issues supported by such candidates and officeholders. As it has in the past and intends in the future, the JCREC has made and intends to make both independent and coordinated expenditures on behalf of candidates after the party’s candidates are nominated.

c. The JCREC has in the past and intends in the future to use “soft money” to finance voter registration, voter identification, and get-out-the-vote activities with regard to elections in which there are candidates for state and federal office. As it has in the past and intends in the future, the JCREC uses non-federal money for broadcast communications that do not solely refer to clearly identified candidates for state or local office; it receives amounts in aggregate excess of \$10,000 contributed by a single person to state, district, and local party committees; it raises funds with district and local party committees and on behalf of one another for activities that are regulated by the FECA, as amended by the BCRA.

d. The JCREC has been and will continue to be injured in each of these capacities.

24. Plaintiff American Civil Liberties Union (ACLU) is a nationwide, non-profit, non-partisan organization with approximately 300,000 members nationwide dedicated to the principles of liberty and equality embodied in the Constitution. It is also a tax-exempt organization under §501(c)(4) of the Internal Revenue Code. The ACLU is incorporated in Washington, D.C.

a. The ACLU has never taken a position in a partisan political election in its 82-year history. However, it frequently takes positions on public issues of significance to the organization and its members. For example, on March 15-18, the ACLU purchased a radio ad that,

upon information and belief, was broadcast to more than 50,000 people in the congressional district of Dennis Hastert, Speaker of the House of Representatives. The ad called on Speaker Hastert to permit a floor vote on the Employment Non-Discrimination Act (ENDA), a bill to prohibit employment discrimination against gays and lesbians. The ad was broadcast within 30 days of a primary election in which Speaker Hastert was running unopposed. Under the BCRA, the ad would have been prohibited even though it did not mention the primary or urge voters to support or oppose Speaker Hastert's reelection. At the same time, the ACLU purchased a newspaper ad containing a substantially similar message. That print ad would not have been prohibited under the BCRA. In pursuit of its advocacy goals, the ACLU would like to retain the option of purchasing both print and broadcast ads in the future.

b. As an advocacy organization, the ACLU also has frequent conversations with federal officials and candidates about civil liberties issues. However, neither those conversations nor any subsequent communications by the ACLU are intended to encourage individuals to support or oppose a candidate for federal office.

c. The ACLU has never operated a PAC and has no interest in establishing one. The creation of a PAC would be fundamentally inconsistent with the ACLU's mission and identity as a nonpartisan organization.

d. The ACLU has consistently defended the First Amendment right of its members and donors to remain anonymous if they so choose.

25. Plaintiff Associated Builders & Contractors, Inc. ("ABC") is a Maryland nonprofit corporation exempt from federal income tax pursuant to I.R.C. § 501(c)(6) that is funded primarily by individual and corporate membership dues. ABC is a national trade association representing

more than 23,000 contractors and related firms in the construction industry. ABC's members, which include both unionized and non-union employers, share the philosophy that construction work should be awarded and performed on the basis of merit, regardless of labor affiliation. Representatives of ABC meet with officeholders, candidates, political party officials, and their respective staffs to encourage their support of legislation that advances ABC's goals. In addition, ABC has paid for broadcast communications that referred to clearly identified candidates for federal office and that aired within 60 days of a general election and within 30 days of a primary election.

26. Plaintiff Associated Builders & Contractors Political Action Committee ("ABC PAC") is a political committee within the meaning of 2 U.S.C. § 431(4) and I.R.C. § 527(e)(1), and is the separate segregated fund of ABC pursuant to 2 U.S.C. § 441b(b)(4)(B). ABC pays the administrative and support costs of ABC PAC as permitted by the FECA. ABC PAC solicits contributions from individual members of ABC and from the restricted classes of corporate members of ABC that have given their prior written approval pursuant to 2 U.S.C. § 441b(b)(4)(B). ABC PAC makes contributions to candidates for federal office who support the principles of ABC and funds independent expenditure communications on their behalf. The board of directors of ABC PAC works closely with ABC's leadership to determine which candidates merit contributions.

27. Plaintiff Center for Individual Freedom ("CIF") is a Virginia non-stock corporation exempt from federal income tax under I.R.C. § 501(c)(4). CIF was formed for the purpose of protecting and defending individual rights and freedoms, as guaranteed by federal and state constitutions. CIF focuses its efforts on attracting public, legislative, and judicial attention to its favored issues. Representatives of CIF meet with officeholders, candidates, political party officials, and their respective staffs to encourage them to support legislation consistent with CIF's mission,

and CIF subsequently runs advertisements advancing the issues discussed with these persons. CIF also promotes its favored issues over its Internet site (www.cfif.org). CIF is a recipient of private financial support from individuals, associations, and corporations. CIF has been, and will continue to be, injured by the BCRA in each of these capacities.

28. Plaintiff Christian Coalition of America, Inc. (“CCA”) represents a growing group of nearly two million people of faith to have a voice in the conversation called democracy. CCA is driven by the belief that people of faith have a right and a responsibility to be involved in the world around them, including involvement in community, social, and political action. CCA is a Texas non-profit corporation exempt from federal income tax under I.R.C. § 501(c)(4). CCA regularly makes disbursements for the direct costs of producing and airing “electioneering communications” in excess of \$10,000 in a calendar year that: (a) refer to clearly identified candidates for federal office, (b) are made within 60 days before general, special, and runoff elections for the offices sought by the candidates and within 30 days before primary elections, preference elections, and conventions and caucuses of political parties with authority to nominate candidates for the offices sought by the candidates, and (c) are targeted to relevant electorates. On a regular and recurring basis, CCA (a) lobbies candidate legislators on legislation, (b) consults with both incumbent and challenger candidates on their positions on issues, (c) engages in “electioneering communications” (as defined by the Act), and (d) publishes printed materials, including voter guides and scorecards. Some of these communications are (a) done without any communication with any candidate, (b) done after communication with a candidate, and (c) done with the agreement and/or formal collaboration of a candidate. CCA qualifies as an “MCFL-type” organization under *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), in that it was not established as a business corporation or a labor

union, and has no shareholders or other persons affiliated with it who have a claim on its assets or earnings; its organizational purposes are to engage in public welfare activities, and its major purpose is not to nominate, elect, or defeat federal or state candidates; no part of its net earnings inure to the benefit of any private shareholder or individual, and except for reasonable compensation for services rendered to the corporation it does not afford any pecuniary gains to its members, directors, officers, or any other persons; it has no capital stock; receipts from other corporations, if any, are *de minimis*, and its business income is insubstantial; and the entity is not affiliated with any political candidate, political party, or campaign committee. CCA is an “expressive association” as described in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). CCA intends to continue in its described activities that are banned by the BCRA, but will not do so while the BCRA is in effect.

29. The Club for Growth (“the Club”) is a nationwide political membership organization with approximately 5,000 members dedicated to advancing public policies that promote economic growth. The mission of the Club is to identify for its members the political candidates running for elected office who believe in these ideals, to monitor their performance in elected office, and to help finance their elections through the Club’s connected PAC. The Club also helps finance strategic issue campaigns to advance its policy goals. The Club works broadly for economic growth policy goals, and its board is not comprised of any current or former political party or elected officials. The Club is a Virginia corporation, organized under § 527 of the Internal Revenue Code. The Club regularly makes disbursements for the direct costs of producing and airing “electioneering communications” in excess of \$10,000 in a calendar year that: (a) refer to clearly identified candidates for federal office, (b) are made within 60 days before general, special, and runoff elections for the offices sought by the candidates and within 30 days before primary elections, and

(c) are targeted to relevant electorates. The Club regularly talks with candidates about their positions on the issues in interviews and forums. On a regular and recurring basis, the Club (1) consults with both incumbent and challenger candidates on their positions on issues, (2) does “electioneering communications” (as defined by the Act), and (3) publishes communications with information about candidates’ positions on issues. Some of these communications are done without any communication with any candidate and some are done after a communication with a candidate. As a § 527 organization, the Club sends required reports to the IRS, and the Club also has a connected PAC that reports to the FEC. The Club is an “expressive association” as described in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). The Club intends to continue in its described activities that are banned by the BCRA, but will not do so while the BCRA is in effect. The Club takes no position on provisions of the BCRA that it has no standing to challenge.

30. Plaintiff Indiana Family Institute, Inc. (“IFI”), is dedicated to encouraging and invigorating Indiana families by offering them time-proven solutions to problems which harm the family, the church, and society. Over 10,000 Indiana residents receive IFI publications and many hear IFI radio programs and commentaries throughout the State of Indiana. IFI is an Indiana corporation exempt from federal taxation under I.R.C. § 501(c)(3). IFI intends to make disbursements for the direct costs of producing and airing “electioneering communications” in excess of \$10,000 in this year’s campaigns for election and in election cycles thereafter that: (a) refer to clearly identified candidates for federal office, (b) are made within 60 days before general, special, and runoff elections for the offices sought by the candidates and within 30 days before primary elections, preference elections, and conventions and caucuses of political parties with authority to nominate candidates for the offices sought by the candidates, and (c) are targeted to relevant

electorates. On a regular and recurring basis, IFI (a) lobbies candidate legislators on legislation, (b) consults with both incumbent and challenger candidates on their positions on issues, (c) engages in “electioneering communications” (as defined by the Act), and (d) publishes printed materials, including voter guides. Some of these communications are (a) done without any communication with any candidate, (b) done after communication with a candidate, and (c) done with the agreement and/or formal collaboration of a candidate. Plaintiff Mike Pence has and will continue to raise and to assist in raising funds for IFI; IFI has communicated and will continue to communicate with Representative Pence with regard to raising and assisting in raising funds for IFI. IFI entity qualifies as an “MCFL-type” organization under *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), in that it was not established as a business corporation or a labor union, and has no shareholders or other persons affiliated with it who have a claim on its assets or earnings; its organizational purposes are to engage in public welfare activities, and its major purpose is not to nominate, elect, or defeat federal or state candidates; no part of its net earnings inure to the benefit of any private shareholder or individual, and except for reasonable compensation for services rendered to the corporation it does not afford any pecuniary gains to its members, directors, officers, or any other persons; it has no capital stock; receipts from other corporations, if any, are *de minimis*, and its business income is insubstantial; and the entity is not affiliated with any political candidate, political party, or campaign committee. IFI is an “expressive association” as described in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). IFI intends to continue in its described activities that are banned by the BCRA, but will not do so while the BCRA is in effect.

31. Plaintiff National Right to Life Committee, Inc. (“NRLC”) is a non-profit corporation whose purpose is to promote respect for the worth and dignity of all human life from conception to

natural death. It is a District of Columbia corporation exempt from federal taxation under I.R.C. § 501(c)(4). NRLC regularly makes disbursements for the direct costs of producing and airing “electioneering communications” in excess of \$10,000 in a calendar year that: (a) refer to clearly identified candidates for federal office, (b) are made within 60 days before general, special, and runoff elections for the offices sought by the candidates and within 30 days before primary elections, preference elections, and conventions and caucuses of political parties with authority to nominate candidates for the offices sought by the candidates, and (c) are targeted to relevant electorates. On a regular and recurring basis, NRLC (a) lobbies candidate legislators on legislation, (b) consults with both incumbent and challenger candidates on their positions on issues, (c) engages in “electioneering communications” (as defined by the Act), and (d) publishes printed communications, including voter guides. Some of these communications are done without any communication with any candidate and some are done after a communication with a candidate. NRLC qualifies as an “MCFL-type” organization under *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), in that it was not established as a business corporation or a labor union, and has no shareholders or other persons affiliated with it who have a claim on its assets or earnings; its organizational purposes are to engage in public welfare activities, and its major purpose is not to nominate, elect, or defeat federal or state candidates; no part of its net earnings inure to the benefit of any private shareholder or individual, and except for reasonable compensation for services rendered to the corporation it does not afford any pecuniary gains to its members, directors, officers, or any other persons; it has no capital stock; receipts from other corporations, if any, are *de minimis*, and its business income is insubstantial; and it is not affiliated with any political candidate, political party, or campaign committee. NRLC is an “expressive association” as described in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

NRLC intends to continue in its described activities that are banned by the BCRA, but will not do so while the BCRA is in effect.

32. Plaintiff National Right to Life Educational Trust Fund (“NRL Ed Fund”) is an internal § 501(c)(3) fund of NRLC. NRL Ed Fund has spent, and intends to do so again, more than \$10,000 in a calendar year on broadcast and print communications that mention no candidate but advocate for or against issues that are hotly contested in contemporaneous political campaigns on which candidates running in the same geographic area have taken a position. Under the vague alternative definition of “electioneering communication,” which examines whether a “communication . . . promotes or supports” or “attacks or opposes a candidate,” BCRA § 201(a), it is unclear whether such conduct would be considered an “electioneering communication” in that context. NRL Ed Fund qualifies as an “MCFL-type” organization under *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), in that it was not established as a business corporation or a labor union, and has no shareholders or other persons affiliated with it who have a claim on its assets or earnings; its organizational purposes are to engage in public welfare activities, and its major purpose is not to nominate, elect, or defeat federal or state candidates; no part of its net earnings inure to the benefit of any private shareholder or individual, and except for reasonable compensation for services rendered to the corporation it does not afford any pecuniary gains to its members, directors, officers, or any other persons; it has no capital stock; receipts from other corporations, if any, are *de minimis*, and its business income is insubstantial; and it is not affiliated with any political candidate, political party, or campaign committee. NRL Ed Fund is an “expressive association” as described in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). NRL Ed Fund intends to continue

in its described activities that are banned by the BCRA, but will not do so while the BCRA is in effect.

33. National Right to Life Political Action Committee (“NRL PAC”) is an internal § 527 fund of NRLC that is registered with the Federal Election Commission as a PAC subject to the FECA. NRL PAC regularly makes contracts for independent expenditure communications in federal elections days, weeks, and months in advance of the time the actual independent expenditures are made. NRL PAC has suffered harassment and interference with contractual relationships as a result of federal candidates learning about arrangements with broadcasters to air independent expenditure communications in opposition to these candidates. NRL PAC intends to continue making independent expenditures, but its freedom of expression is burdened by the necessity of reporting when contracts are made instead of when the independent expenditure is made.

34. Plaintiff The National Right to Work Committee (“NRTWC”) is a Virginia non-stock corporation exempt from federal income tax under I.R.C. § 501(c)(4). It supports the right to work, free of compulsory unionization in the workplace. NRTWC advertises on radio and television in proximity to primary and general elections for the purpose of communicating its views to the electorate and encouraging citizens to lobby politicians to support right-to-work principles. Representatives of NRTWC meet with officeholders, candidates, political party officials, and their respective staffs to encourage them to support right-to-work legislation, and NRTWC subsequently runs advertisements advancing the issues discussed with these persons. NRTWC also promotes its favored issues over its Internet site (www.nrtwc.org). NRTWC is a recipient of private financial support from individuals, associations, and corporations. NRTWC has been, and will continue to be, injured by the BCRA in each of these capacities.

35. Plaintiff 60 Plus Association, Inc. (“60 Plus”) is a Virginia non-stock corporation exempt from federal income tax under I.R.C. §501(c)(4). It was formed for the purpose of representing the interests of senior citizens in initiatives to promote lower taxes, Social Security and Medicare reforms, and the provision of prescription drugs to needy senior citizens. Representatives of 60 Plus meet with officeholders, candidates, political party officials, and their respective staffs to encourage them to support public policy legislation, and 60 Plus subsequently runs advertisements advancing the issues discussed with these persons. 60 Plus also promotes its favored issues over its Internet site (www.60plus.org). 60 Plus is a recipient of private financial support from individuals, associations, and corporations. 60 Plus has been, and will continue to be, injured by the BCRA in each of these capacities.

36. Plaintiff Southeastern Legal Foundation, Inc. (“SLF”) is a Georgia non-stock corporation exempt from federal income tax under I.R.C. § 501(c)(3). SLF was founded for the purpose of promoting limited government, individual economic freedom, and the free-enterprise system. SLF engages in issue advocacy and litigation in support of these principles. SLF engages in issue advocacy by taking advertisements in the news media, and has run radio advertisements referring to elected officials and candidates in order to promote legislative initiatives. SLF also promotes its favored issues over its Internet site (www.southeasternlegal.org). SLF is a recipient of private financial support from individuals, associations, and corporations. SLF has been, and will continue to be, injured by the BCRA in each of these capacities.

37. Plaintiff U.S. d/b/a ProEnglish (“ProEnglish”) is a self-governing project of U.S., a Michigan non-stock corporation, and is exempt from federal income tax under I.R.C. § 501(c)(3). ProEnglish was formed for the purpose of promoting the use of the English language. In addition

to conducting research and providing *pro bono* legal assistance, ProEnglish conducts a range of public education activities aimed at enacting laws making English the official language. ProEnglish uses radio advertisements to encourage citizens and politicians to support its principles. ProEnglish also promotes its favored issues over its Internet site (www.proenglish.org). ProEnglish is a recipient of private financial support from individuals, associations and corporations. ProEnglish has been, and will continue to be, injured by the BCRA in each of these capacities.

38. Plaintiff Martin J. Connors is Chairman of the Alabama Republican Executive Committee, which governs the Alabama Republican Party, and, as such, he is also a member of the Republican National Committee. He has in the past and intends in the future to raise “soft money” funds for the Alabama Republican Party and the Republican National Committee. However, he cannot and will not raise “soft money” funds for either entity as long as the BCRA remains in effect.

39. Plaintiff Thomas E. McInerney is a New York resident and U.S. citizen. He is a registered voter in the State of New York, and a member of various organizations and committees of the Republican Party at the national, state, and local levels. Plaintiff is interested in promoting and supporting public policy issues and candidates at the national, state and local level through donating money to parties, candidates, and political action committees. He has pursued his public policy goals by donating in the past and would donate in the future amounts in excess of \$57,500 per cycle to national parties and in excess of \$10,000 per year to state and local parties for grassroots voter mobilization efforts. Plaintiff has been, and will continue to be, injured by the BCRA in each of these capacities.

40. Plaintiff Barret Austin O'Brock, age 14 on April 9, 2002, is a Louisiana resident and U.S. citizen. He intends to make contributions to federal candidates in future elections, including

the 2002 and 2004 elections. Specifically, he intends to contribute at least \$20 of his own money (not received from any other person for purposes of the contribution) to John Milkovich, candidate for United States Representative for the Fourth Congressional District of Louisiana, prior to the November 2002 general election. Mr. O’Brock knows candidate Milkovich personally because the candidate was the Plaintiff’s Sunday School teacher for two years. In addition, Mr. O’Brock intends to make contributions to federal candidates, running for election after 2002, who share his views on the issues. However, he cannot and will not make contributions after the 2002 election as long as the BCRA remains in effect.

41. Plaintiff Trevor M. Southerland, age 16 on May 28, 2001, is a Georgia resident and U.S. citizen. He is Affiliate Development Director of the Libertarian Party of Georgia and, as such, is a member of the Libertarian Party of Georgia State Executive Committee. He has in the past and intends in the future to pay his annual membership dues of \$25 to the Libertarian Party of Georgia, which has in the past and intends in the future to transfer a portion of his dues to the national Libertarian Party so that he will be and remain a member of both parties. However, as a minor, Mr. Southerland is prohibited from contributing “hard money” dues to the national Libertarian Party, dues contributed as “soft money” to the Georgia Libertarian Party cannot be transferred to the national Libertarian Party, and the national Libertarian Party cannot accept “soft money” dues under the BCRA. As a consequence, Mr. Southerland is effectively forbidden to continue to be a member of the national Libertarian Party. Mr. Southerland has been and will continue to be injured by the BCRA in the described capacities.

42. Plaintiffs have differing views on many political, social and jurisprudential subjects, and sometimes even on certain legal theories articulated in this complaint. Plaintiff American Civil

Liberties Union, for example, differs with the legal theory set forth in paragraphs 96, 105, 110, and 115 of this complaint. All plaintiffs agree, however, that significant portions of the BCRA cannot be squared with the Constitution.

43. Defendants Federal Election Commission (FEC) and Federal Communications Commission (FCC) are government agencies charged with enforcing the relevant provisions of the BCRA.

COUNT I

Prohibition of “Electioneering Communications”

44. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

45. Section 201(a) of the BCRA adds new section 304(f) of the FECA, which defines an “electioneering communication” as “any broadcast, cable, or satellite communication which . . . refers to a clearly identified candidate for Federal office . . . 60 days before a general, special, or runoff election for the office sought by the candidate; or . . . 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and . . . in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.”

46. Anticipating that this definition of “electioneering communication” may be declared unconstitutional, section 201(a) provides a fall-back definition. It defines “electioneering communication” as “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) and which also is

suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.”

47. Section 203(a) of the BCRA amends section 316(b)(2) of the FECA to prohibit corporations and labor unions from engaging in “electioneering communications.” Section 203(b) of the BCRA adds new section 316(c)(1) to the FECA, which prohibits any other persons from engaging in “electioneering communications” using funds donated by corporations or labor unions.

48. By prohibiting or limiting speech that does not expressly advocate the election or defeat of a clearly identified candidate, either under the original definition or the fall-back definition of “electioneering communication,” sections 201 and 203 burden the right of free speech in violation of the First Amendment.

49. By prohibiting or limiting the speech of corporations without making an exception for those organizations identified in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986); organizations whose major purpose is not the nomination or the election of candidates; or for expressive associations, sections 201 and 203 burden the rights of free speech and free association in violation of the First Amendment.

50. Moreover, by specifying in so vague and overbroad a manner what speech is prohibited or limited, sections 201 and 203 violate the First Amendment and the Due Process Clause of the Fifth Amendment.

51. By arbitrarily limiting disbursements for broadcast, cable, and satellite communications but allowing disbursements for other forms of communications, sections 201 and 203 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

52. By imposing limitations on corporations and labor unions that are not imposed on other groups such as certain non-profit organizations, political organizations, and corporations that own news-media organizations, sections 201 and 203 violate the First Amendment and equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT II

Disclosures Relating to “Electioneering Communications”

53. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

54. Section 201(a) of the BCRA also requires that any person (including any individual) who spends more than \$10,000 on “electioneering communications” in a calendar year make disclosures to the FEC. In those disclosures, the person must specify, *inter alia*, the amount of any disbursement over \$200; the person to whom the disbursement was made; the election to which the “electioneering communication” pertains; and the candidate identified or to be identified in the “electioneering communication.”

55. In addition, section 201(a) requires that, where an organization makes disbursements for “electioneering communications” from funds donated by individuals, the names and addresses of any individuals donating \$1,000 or more also be disclosed.

56. Section 201(a) also requires disclosures not only when a person has made disbursements for “electioneering communications,” but also when a person has entered into a contract to make disbursements, prior to any disbursement and even if the disbursement never actually takes place.

57. By requiring these disclosures, section 201 burdens the rights of free speech and free association in violation of the First Amendment.

COUNT III

Non-Profit and Political Organizations and “Electioneering Communications”

58. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

59. Section 203(a) of the BCRA bars incorporated non-profit organizations, as defined by I.R.C. § 501(c)(4), and political organizations, as defined by I.R.C. § 527, from making disbursements for “electioneering communications,” just as it bars corporations and labor unions from doing so. Section 203(b) contains a narrow exception seemingly allowing section 501(c)(4) and section 527 organizations to make “electioneering communications” if the communications are paid for exclusively out of funds provided directly by individuals. However, section 204 of the BCRA, adding section 316(c)(6) to the FECA, then appears to shut the door on this exception, stating that “electioneering communications” (which, according to the primary definition in section 201, must be “targeted”), cannot be “targeted,” or broadcast to voters for the named candidate. Like corporations and labor unions, therefore, section 501(c)(4) and section 527 organizations appear to be precluded altogether by the BCRA from making “electioneering communications.”

60. The unconstitutional disclosure obligations of section 201 apply both to section 501(c)(4) and section 527 organizations making disbursements for “electioneering communications.” For the reasons given in Count II, section 201 burdens the rights of free speech and free association in violation of the First Amendment.

61. Because sections 201, 203, and 204 bar or severely restrict section 501(c)(4) and section 527 organizations from engaging in speech that does not expressly advocate the election or defeat of a clearly identified candidate, they burden the right of free speech and free association in violation of the First Amendment.

62. By imposing advocacy limitations on corporations, unions, section 501(c)(4) non-profit organizations, and section 527 political organizations that are not imposed on individuals and other organizations, sections 201, 203, and 204 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT IV

Coordinated “Electioneering Communications”

63. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

64. Section 202 of the BCRA amends section 315(a)(7) of the FECA to treat coordinated disbursements for “electioneering communications” as “contributions” to the “supported” candidates. These “contributions,” in turn, are subject to the source-and-amount limitations of the FECA.

65. Section 214(c) directs the FEC to define the concept of coordination broadly, and specifically directs that any promulgated regulations shall not require agreement or formal collaboration between the candidate or political party and the entity making the disbursement in order to establish coordination. Under this definition, for instance, a Member of Congress could be liable for receiving, and a citizen group liable for making, a “contribution” simply because the

Member met with the group about pending legislation and the group then took out an advertisement to promote that legislation.

66. In addition, section 214(a) states that any expenditure made by a person “in cooperation, consultation, or concert with, or at the request or suggestion of,” a party committee shall be treated as a “contribution” to that committee.

67. By specifying in so overbroad a manner what constitutes coordination with candidates and party committees, sections 202 and 214 burden the rights of free speech and free association and the right to petition the government for redress of grievances, all in violation of the First Amendment.

68. Moreover, by specifying in so vague a manner what constitutes coordination with candidates and party committees, sections 202 and 214 violate the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT V

Independent and Coordinated Expenditures

69. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

70. Section 213 of the BCRA, amending section 315(d) of the FECA, requires that a national, state, district, or local political party committee make an irrevocable choice as to whether to make independent or coordinated expenditures on behalf of any given candidate at the time the party’s candidate is nominated. In addition, section 213 restricts transfers of funds between political party committees that have elected to make only independent expenditures and those that have made only coordinated expenditures, regardless of the purpose of such transfers.

71. By restricting political party committees from making otherwise permissible expenditures, section 213 burdens the rights of free speech and free association in violation of the First Amendment.

72. Moreover, by restricting “all political committees established and maintained by” a national or state political party from making expenditures of one type or the other “with respect to the candidate,” and by barring transfers from committees that have made or “intend[] to make” independent expenditures, section 213 is excessively vague and overbroad, in violation of the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT VI

Broadcasting Records

73. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

74. Section 504 of the BCRA amends section 315 of the FCA to require licensees to collect and disclose records of requests to purchase broadcast time for communications “relating to any political matter of national importance,” including communications relating to “a legally qualified candidate” or “any election to Federal office.”

75. Section 504 also requires disclosures not only when communications have actually been broadcast, but also when a person has made “a request to purchase broadcast time,” prior to any broadcast actually taking place.

76. By requiring these disclosures, section 504 burdens the rights of free speech and free association in violation of the First Amendment.

77. Moreover, by requiring disclosures when communications “relating to any matter of national importance” are made, section 504 is excessively vague and overbroad, in violation of the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT VII

Limitations on Contributions

78. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

79. Sections 102 and 307 of the BCRA amend section 315 of the FECA to alter the limits on political contributions by individuals. Section 301, inserting new section 313 in the FECA, specifies the permissible uses of those contributions.

80. Sections 304(a) and 316 of the BCRA amend section 315 of the FECA to allow a candidate for the United States Senate to accept and spend contributions in excess of the otherwise applicable limits where that candidate’s opponent expends substantial personal funds. Specifically, the otherwise applicable contribution limits may be increased by as much as sixfold, and the limitations on coordinated expenditures by the candidate’s political party lifted altogether, depending on how much in personal funds the opponent expends. Section 304(b) of the BCRA amends section 304(a)(6) of the FECA to require a candidate for the Senate who intends to expend substantial personal funds to notify the FEC and his opponents, within 15 days of becoming a candidate, stating the total amount of expenditures from personal funds that the candidate intends to make. Section 319 of the BCRA amends section 315 of the FECA, and adds new section 315A of the FECA, to impose similar requirements for candidates for the United States House of Representatives.

81. By increasing the limits on contributions for the opponent of a candidate who spends his own funds on his campaign, and thereby punishing a candidate for using his own money to engage in core political speech, sections 304, 316, and 319 burden the exercise of the rights of free speech and free association in violation of the First Amendment.

82. Moreover, by increasing the otherwise applicable contribution limits, sections 304, 316, and 319 make clear that the underlying limits are not necessary to achieve the purported goals of the BCRA and the FECA.

83. By allowing a contributor to donate more to a candidate running against an opponent who expends his own funds than to a candidate without such an opponent, sections 304, 316, and 319 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

84. By lifting altogether the limits on coordinated expenditures by the political party of the opponent of a candidate who expends his own funds, and thereby allowing a political party to spend more money on behalf of a candidate running against an opponent who expends his own funds than on behalf of a candidate without such an opponent, sections 304, 316, and 319 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

85. By requiring that a candidate make advance disclosure of his intent to use his own money to fund core political speech, sections 304 and 319 impose an unconstitutional condition on the exercise of the rights of free speech and free association under the First Amendment.

COUNT VIII

Prohibitions on Contributions by Minors

86. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

87. Section 318 of the BCRA adds new section 324 to the FECA, which prohibits any individual seventeen years of age or younger from making a contribution, in any amount, to a candidate or a contribution or donation to a political party committee.

88. By barring the speech of individuals seventeen or under who wish to make contributions in their own right, section 318 violates the rights to free speech and free association under the First Amendment.

COUNT IX

Unavailability of “Lowest Unit Charge” for Federal Candidates Mentioning Opposition

89. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

90. Section 305 of the BCRA amends section 315(b) of the FCA to deny a candidate the lowest unit charge for broadcast advertisements “unless the candidate provides written certification to the broadcast station that the candidate . . . shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this Act,” unless the candidate satisfies the content requirements set forth in section 305(a).

91. By conditioning the cost of advertisements on their content, section 305 burdens the right of free speech in violation of the First Amendment.

COUNT X

Ban on the Solicitation or Use of Non-Federal Money by National Party Committees

92. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

93. Section 101(a) of the BCRA adds new section 323 to the FECA, which prohibits a national political party committee or its officers or agents, including a party's national congressional campaign committee, from soliciting, receiving, or directing any money that is not subject to the FECA's contribution limitations, prohibitions, and reporting requirements. This ban also applies to any entity that is directly or indirectly established, financed, maintained, or controlled by a national committee. Finally, section 101(a) of the BCRA, adding new section 323(d) to the FECA, prohibits national party committees from soliciting funds for, or making donations to, either section 501(c) organizations that make expenditures or disbursements in connection with federal elections, or section 527 organizations.

94. By restricting the funding of core political speech and restricting the amount of speech in which national party committees are able to engage, section 101(a) violates the rights of free speech and free association under the First Amendment.

95. By preventing national party committees from pooling the resources of party members and contributors in support of campaigns for office; preventing the sharing of funds with, and raising funds for, like-minded party committees and non-party organizations and individuals; limiting the resources available to national party committees for all activities, including voter registration, voter identification, get-out-the-vote activity, and internal communications with their own members and employees on non-election-related issues; and restricting the ability of a national party committee

to associate with its affiliated state, district, and local committees, section 101(a) further violates the right of free association under the First Amendment.

96. By regulating the role of national party committees in state and local elections and barring national party committees from soliciting funds for, or making donations to, section 501(c) and section 527 organizations even when such expenditures relate exclusively to state elections, section 101(a) usurps the States' power to regulate such elections, and thereby violates the Tenth Amendment and principles of federalism.

97. By prohibiting national party committees from soliciting, receiving, or directing any money not subject to the FECA's restrictions, and thereby imposing restrictions on national party committees that are not placed on other similarly situated entities, section 101(a) violates the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

98. By barring national party committees from "solicit[ing]" anything of value not obtained pursuant to the FECA's restrictions and extending its prohibition to "any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee," section 101(a) uses excessively vague and overbroad terms, in violation of the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT XI

Ban on the Solicitation or Use of Non-Federal Money by State and Local Party Committees

99. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

100. Section 101(a) of the BCRA adds new section 323(b) to the FECA, which prohibits state, district, and local party committees or their officers or agents from using funds not raised

subject to FECA's restrictions with respect to federal elections, regardless of applicable state law. Section 101(a) imposes federal restrictions on financing the state portion, as well as the federal portion, of voter registration, voter identification, and "get out the vote" activities. Further, section 101(a) precludes the use of non-federal money for broadcast communications, unless the communications "refer[] solely to a clearly identified candidate for state or local office." Section 101(a) limits to \$10,000 the amount that state, district, and local party committees can annually receive from one person for any regulated activities.

101. As with national party committees, section 101(a) bars the transfer of funds among state, district, and local party committees for any regulated activities. Section 101(a) also prohibits state, district, and local party committees from raising money jointly or on behalf of one another for regulated activities.

102. Again as with national party committees, section 101(a) prohibits state, district, and local party committees from soliciting funds for, or making donations to, either section 501(c) organizations that make expenditures or disbursements in connection with federal elections, or section 527 organizations.

103. By regulating the funding of core political speech and restricting the amount of speech in which state, district, and local party committees are able to engage, section 101(a) violates the rights of free speech and free association under the First Amendment.

104. By barring the transfer of funds among state, district, and local party committees, section 101(a) further violates the right of free association under the First Amendment.

105. By regulating the way in which state, district, and local party committees may raise, spend, and manage funds, and barring state, district, and local party committees from soliciting funds

for, or making donations to, section 501(c) and section 527 organizations even when such expenditures relate exclusively to state elections, section 101(a) violates the Tenth Amendment and principles of federalism.

106. By prohibiting state, district, and local party committees from funding federal election activities by soliciting, receiving, or directing any money not subject to the FECA's restrictions, and thereby imposing restrictions that are not placed on other similarly situated entities, section 101(a) violates the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT XII

Ban on the Solicitation or Use of Non-Federal Money by Federal Officeholders and Candidates

107. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

108. Section 101(a) of the BCRA adds new section 323(e) to the FECA, which prohibits federal officeholders and candidates, and their agents, from soliciting, receiving, directing, transferring, or spending money not subject to the FECA's restrictions in connection with an election for federal office, including funds for any "federal election activity." Section 101(a) carves out a narrow exception for general solicitations on behalf of section 501(c) non-profit organizations, and for certain specific solicitations on behalf of organizations whose principal purpose is to engage in certain types of "federal election activity."

109. By restricting the funding of core political speech and restricting the amount of speech in which federal officeholders and candidates are able to engage, section 101(a) violates the rights of free speech and free association under the First Amendment.

110. By restricting the activities of federal officeholders and candidates with respect to state and local election campaigns and processes, section 101(a) violates the Tenth Amendment and principles of federalism.

111. By allowing general solicitations for section 501(c) non-profit organizations but not for other similarly situated organizations, including political parties, section 101(a) violates the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT XIII

Ban on the Solicitation or Use of Non-Federal Money by State Officeholders and Candidates

112. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

113. Section 101(a) of the BCRA adds new section 323(f) to the FECA, which prohibits state officeholders and candidates, and their agents, from spending funds not subject to FECA's requirements for "a communication described in [section 101(b)]": that is, "a 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 (regardless of whether the communication expressly advocates a vote for or against a candidate)."

114. By restricting the funding of core political speech and restricting the amount of speech in which state officeholders and candidates are able to engage, section 101(a) violates the rights of free speech and free association under the First Amendment.

115. By interfering in the conduct of campaigns for state office, section 101(a) usurps the States' power to regulate such elections, and thereby violates the Tenth Amendment and principles of federalism.

COUNT XIV

Definition of “Federal Election Activity”

116. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

117. Section 101(b) of the BCRA adds new section 301(20) to the FECA, which defines “federal election activity” to include “a 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 (regardless of whether the communication expressly advocates a vote for or against a candidate).”

118. Section 101(b) leaves undefined several terms used in the definition of “federal election activity,” including “refers to,” “promotes or supports,” and “attacks or opposes.”

119. Because the ability and extent of persons and entities to engage in political speech is defined throughout the BCRA by whether their speech falls within the definition of “federal election activity,” and because many terms used to define “federal election activity” are excessively vague and overbroad, section 101(b) violates the First Amendment and the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, plaintiffs pray for the following relief:

1. an order and judgment declaring the aforementioned provisions of the BCRA unconstitutional;
2. an order and judgment enjoining defendants from enforcing the aforementioned provisions of the BCRA;
3. costs and attorneys' fees pursuant to any applicable statute or authority; and
4. any other relief as this Court in its discretion deems just and appropriate.

Respectfully submitted,

Floyd Abrams
CAHILL GORDON & REINDEL
80 Pine Street
New York, NY 10005
(212) 701-3000

Kathleen M. Sullivan
559 Nathan Abbott Way
Stanford, CA 94305
(650) 723-4455

James Bopp, Jr.
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807
(812) 232-2434

Attorneys for Senator Mitch McConnell

April 12, 2002

Kenneth W. Starr (Bar No. 273245)
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5000

Jan Witold Baran
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

COUNSEL FOR PLAINTIFFS

Floyd Abrams
CAHILL GORDON & REINDEL
80 Pine Street
New York, NY 10005
(212) 701-3000

Attorney for Senator Mitch McConnell

Kathleen M. Sullivan
559 Nathan Abbott Way
Stanford, CA 94305
(650) 723-4455

Attorney for Senator Mitch McConnell

James Bopp, Jr.
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807
(812) 232-2434

Attorney for Senator Mitch McConnell

Jan Witold Baran
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

**Attorney for Senator Mitch McConnell,
Associated Builders and Contractors,
Inc., Associated Builders and Contractors
Political Action Committee**

Kenneth W. Starr (Bar No. 273245)
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5000

**Attorney for Senator Mitch McConnell,
Southeastern Legal Foundation, Inc.,
Representative Bob Barr, Center for
Individual Freedom, National Right to
Work Committee, 60 Plus Association,
Inc., U.S. d/b/a Pro English**

James Bopp, Jr.
Richard E. Coleson
Thomas J. Marzen
JAMES MADISON CENTER FOR FREE SPEECH
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807
(812) 232-2434

**Attorneys for Representative Mike Pence,
Alabama Attorney General Bill Pryor,
Libertarian National Committee, Inc.,
Alabama Republican Executive
Committee as the governing body for the
Alabama Republican Party, Libertarian
Party of Illinois, DuPage Political Action
Council, Jefferson County Republican
Executive Committee, Christian Coalition
of America, Inc., Club for Growth,
Indiana Family Institute, National Right
to Life Committee, Inc., National Right to
Life Educational Trust Fund, National
Right to Life Political Action Committee,
Martin J. Connors, Barret Austin
O'Brock**

Alan P. Dye (Bar No. 215319)
Heidi K. Abegg (Bar No. 463935)
WEBSTER, CHAMBERLAIN & BEAN
Suite 1000
1747 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 785-9500

**Attorneys for 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, DuPage Political Action
Council, Jefferson County Republican
Executive Committee, Christian Coalition
of America, Inc., Club for Growth,
Indiana Family Institute, National Right
to Life Committee, Inc., National Right to
Life Educational Trust Fund, National
Right to Life Political Action Committee,
Martin J. Connors, Barret Austin
O'Brock**

Valle Simms Dutcher
SOUTHEASTERN LEGAL FOUNDATION, INC.
3340 Peachtree Road, N.E.
Suite 3515
Atlanta, GA 30326
(404) 365-8500

**Attorney for Southeastern Legal
Foundation, Inc., Representative Bob
Barr, Center for Individual Freedom,
National Right to Work Committee, 60
Plus Association, Inc., U.S. d/b/a Pro
English**

Steven R. Shapiro
Mark J. Lopez
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
(212) 549-2611

**Attorneys for
American Civil Liberties Union**

Joel M. Gora
250 Joralemon Street
Brooklyn, NY 11201
(718) 780-7926

**Attorney for
American Civil Liberties Union**

G. Hunter Bates
1215 Cliffwood Drive
Goshen, KY 40026
(502) 216-9265

Attorney for Thomas E. McInerney

CERTIFICATE OF SERVICE

This is to certify that on April 12, 2002, I caused a copy of the Amended Complaint to be served by hand upon the following persons:

Richard Blair Bader
Federal Election Commission
999 E Street, N.W.
4th Floor
Washington, DC 20463

William F. Caton
Acting Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable John Ashcroft
Attorney General of the United States
United States Department of Justice
Robert F. Kennedy Building
Tenth Street and Constitution Avenue, N.W.
Washington, DC 20530

Roscoe C. Howard, Jr.
United States Attorney for the District of Columbia
Judiciary Center Building
555 Fourth Street, N.W.
Washington, DC 20001

Kenneth W. Starr