UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHAMBER OF COMMERCE OF THE UNITED STATES, **1615 H Street, NW** **Washington, DC 20062** **NATIONAL ASSOCIATION OF MANUFACTURERS,** **1331 Pennsylvania Avenue, NW** **Washington, DC 20004** **NATIONAL ASSOCATION OF WHOLESALER-DISTRIBUTORS** **1725 K Street, NW** **Washington, DC 20006** **AND** **U.S. CHAMBER POLITICAL ACTION COMMITTEE** **1615 H Street, NW** **Washington, DC 20062** **Plaintiffs,** **v.** **FEDERAL ELECTION COMMISSION,** **999 E Street, NW** **Washington, DC 20463** **AND** **FEDERAL COMMUNICATIONS COMMISSION**, **445 12th Street, SW** **Washington, DC 20554** **Defendants.**	**Case No. _____**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
INTRODUCTION

1. To protect their own free speech rights as well as the rights of their member businesspeople across this nation, the Chamber of Commerce of the United States ("Chamber"), the National Association of Manufacturers ("NAM"), the National Association of Wholesaler-Distributors ("NAW"), and the U.S. Chamber Political Action Committee ("U.S. Chamber PAC") join as plaintiffs to ask the Court to declare that various provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, which substantially amends the Federal Election Campaign Act ("FECA"), violate fundamental rights guaranteed to plaintiffs and their members by the First and Fifth Amendments to the Constitution of the United States, and to enjoin the government defendants permanently from administering and enforcing these provisions. Plaintiffs challenge three key aspects of the BCRA:

a. **The Ban on Core Political Speech**. The BCRA seeks to ban core political speech by corporations and labor organizations through primary and fallback restrictions, both of which are unconstitutional.

i. **Blackout Periods and Zones**. For a period that may range from 30 days to more than a full year preceding a Federal election, the BCRA makes it a crime for for-profit and non-profit corporations and labor organizations to "refer[] to a clearly identified candidate" in broadcast, cable, and satellite communications received by 50,000 or more "persons" in the "relevant

electorate." In Federal elections, which are held every two years, the candidates to whom reference may not be made during the blackout periods and in substantial geographic blackout zones will include virtually the entire membership of the United States House of Representatives, about one-third of all United States Senators, often the President and Vice-President, and all non-incumbent individuals who are candidates for Federal office. During the blackout period, corporations and labor organizations will face civil penalties or criminal prosecution for public broadcasts that, for example, inform the public that such elected officials and candidates support or oppose pending legislation, address public policy issues, or otherwise comment on their official conduct. Merely using common ways of referring to pending legislation, such as the "Shays-Meehan," "McCain-Feingold," "Tauzin-Dingell" or "Kennedy-Kassebaum" bills, may expose corporations and labor organizations to criminal penalties. Such a draconian system of regulation, violating established Supreme Court doctrine that only speech that expressly advocates the election or defeat of a clearly identified candidate may be regulated, will seriously impair the plaintiffs' First Amendment right to speak out on public issues, to associate for public purposes, and to petition for the redress of grievances.

ii. <u>Alternative Ban on "Electioneering Communications".</u> The BCRA further provides that if this prohibition on "refer[ring]" to candidates is held "constitutionally insufficient," then, as a fallback, the same corporations and labor organizations will be prohibited -- at all times and in all places -- from financing any broadcast communication that "promotes or supports . . . or attacks or opposes a candidate" and "also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." This vague yet sweeping ban will apply "regardless of whether the communication expressly advocates a vote for or against a candidate."

Forcing corporations to predict what statements will be deemed to suggest such a forbidden message would severely chill their exercise of core First Amendment rights and violate the Due Process Clause of the Fifth Amendment.

b. **The Coordination Ban**. The BCRA expands and obscures the existing ban on corporate or labor organization speech that is "coordinated" with a candidate, campaign, or political party. The BCRA extends this ban to speech that does not expressly advocate the election or defeat of a candidate. Moreover, the BCRA repeals the regulatory definition of "coordination" adopted by the Federal Election Commission ("FEC"), but it adopts no substitute and instead instructs the FEC to issue a new regulation that conforms with vague and intrusive standards as to what contacts with candidates -- including federal officeholders acting in their official capacities -- and campaigns and parties constitute proscribed "coordination." Plaintiffs and their members, who regularly deal with government and political party officials on significant legislative and policy matters, thus must curtail such activities to steer far clear of anything that arguably might be deemed "coordination" so as not to subject to civil or criminal enforcement proceedings their future political, legislative, and advocacy activities and speech on a wide range of subjects. These restrictions violate the First and Fifth Amendments.

c. Compelled Disclosures of Possible Future Communications.

The BCRA substantially revises and augments numerous reporting and disclosure requirements of the FECA by compelling disclosures concerning non-express advocacy speech by most corporations and labor organizations that are not political committees, and by compelling disclosures of planned and prospective communications by such entities and political committees before, and irrespective of whether, the communications are actually transmitted. Compelling corporations, labor organizations,

and political committees to make such disclosures chills their speech and creates a regimen of required registration before transmitting communications in violation of the First Amendment. Moreover, the vague and overbroad standards contained in these BCRA provisions violate the Due Process Clause of the Fifth Amendment as well as the First Amendment.

The BCRA also violates the First and Fifth Amendments in other, related ways set forth below. A breach of any of the provisions of the BCRA subjects the violator to civil enforcement through civil penalties and injunctive relief, or criminal enforcement through fines and imprisonment.

PARTIES

2. Plaintiff *Chamber of Commerce of the United States* is the world's largest not-for-profit business federation. Founded in 1912, the Chamber represents over 3,000,000 businesses and business associations. The Chamber is a corporation, as are many of its members and contributors. It is exempt from taxation under Section 501(c)(6) of the Internal Revenue Code.

a. To advance the interests of its members, the Chamber regularly consults with Members of Congress, officers in the Executive Branch, and others, including political party officials and current or likely candidates for election to Federal office.

b. Similarly, the Chamber spends funds for television, radio, cable, and other public communications concerning matters of interest to the members of the Chamber and the public, including matters that the Chamber has discussed with persons in government and others, including political party officials and current and likely candidates for election to Federal office. Such Chamber speech may refer to candidates for Federal office, but does not expressly advocate their election or defeat.

c. The Chamber was the subject of a complaint filed with the FEC alleging that its speech on television and through direct mail in 1996 was regulated under and violated the FECA. After a burdensome multi-year investigation, that complaint was dismissed by the FEC.

3. Plaintiff *National Association of Manufacturers* is the oldest and largest broad-based industrial trade association in the United States. Representing 18 million people, the NAM's membership is comprised of 14,000 companies and 350 member associations that serve manufacturers and employees in every industrial sector and all 50 states. Like many of its members and contributors, the NAM is a corporation. It is exempt from taxation under Section 501(c)(6) of the Internal Revenue Code.

a. To advance the interests of its members, the NAM regularly consults with members of Congress, officers in the executive branch, and others, including political party officials and current and likely candidates for election to Federal office.

b. Similarly, the NAM expends funds for television, radio, cable, and other public communications concerning matters of interest to the members of the NAM and the public, including matters that the NAM has discussed with persons in government and others, including political party officials and current and likely candidates for election to Federal office. Such NAM speech may refer to candidates for Federal office, but does not expressly advocate their election or defeat.

c. The NAM was the subject of a complaint filed with the FEC alleging that its television and direct mail speech in 1996 was regulated under and violated the FECA. After a burdensome multi-year investigation, that complaint was dismissed by the FEC.

d. The NAM does not, and never has, established a separate segregated fund

pursuant to 2 U.S.C. § 441b, and it does not wish to incur the burdens and risks of doing so.

4. The *National Association of Wholesaler-Distributors* is the national trade association representing the wholesale distribution industry. The NAW encompasses over 100 national line-of-trade associations, representing virtually all products that move to market via wholesaler-distributors; approximately 50 regional, state, and local wholesale distribution associations; approximately 40,000 wholesale distribution companies, most of which belong to one or more of NAW's national, regional, state, and local associations; and 85,000 wholesale distribution company personnel. Like many of its members and contributors, the NAW is a corporation. It is exempt from taxation under Section 501(c)(6) of the Internal Revenue Code.

a. To advance the interests of its members, the NAW regularly consults with members of Congress, officers in the executive branch, and others, including political party officials and current and likely candidates for election to Federal office.

b. Similarly, the NAW expends funds for television, radio, cable, and other public communications concerning matters of interest to the members of the NAW and the public, including matters that the NAW has discussed with persons in government and others, including political party officials and current and likely candidates for election to Federal office. Such NAW speech may refer to candidates for Federal office, but does not expressly advocate their election or defeat.

c. The NAW was the subject of a complaint filed with the FEC alleging that its television and direct mail speech in 1996 was regulated under and violated the FECA. After a burdensome multi-year investigation, that complaint was dismissed by the FEC.

d. The NAW has established a federal separate segregated fund pursuant to 2

U.S.C. § 441b, called the Wholesaler-Distributor PAC of the National Association of Wholesaler-Distributors ("WDPAC"). WDPAC makes contributions to federal candidates.

5. The *U.S. Chamber Political Action Committee* is a federal political action committee sponsored by the U.S. Chamber of Commerce. U.S. Chamber PAC is a "political committee" within the meaning of Section 301(4) of the FECA and is registered as such with the FEC. U.S. Chamber PAC is also a "political organization" within the meaning of Section 527(e)(1) of the Internal Revenue Code. U.S. Chamber PAC regularly makes contributions to federal candidates and is entitled under the First Amendment and FECA to make "independent expenditures" that expressly advocate the election or defeat of federal candidates.

6. Defendant *Federal Election Commission* is an agency of the United States Government that has direct responsibility for enforcing substantial portions of the BCRA, including Sections 201, 202, 203, 204, 212, 214 and 311.

7. Defendant *Federal Communications Commission* ("FCC") is an agency of the United States Government that has direct responsibility for enforcing certain provisions of the BCRA, including Sections 201 and 504.

JURISDICTION AND VENUE

8. 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. Under Section 403(a)(1) of the BCRA, this case is to be "heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code."

COUNT I

BAN ON CORE POLITICAL SPEECH OF CORPORATIONS AND LABOR ORGANIZATIONS (BLACKOUT PROVISIONS) (BCRA SECTIONS 201 AND 203)

9. Section 201(a) of the BCRA amends Section 304 of the FECA by adding Section 304(f), which introduces and defines a new statutory term, "electioneering communication." The BCRA goes on to prohibit certain corporations and all labor organizations from engaging in speech that fits the definition of an "electioneering communication." The BCRA also requires that corporations and labor unions report their intent to engage in this type of speech weeks or months in advance. As amended, Section 304(f)(3)(A) of the FECA defines "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." In turn, amended Section 304(f)(3)(C) of the FECA defines the term "targeted to the relevant electorate" to mean that it "can be received by 50,000 or more persons" within the jurisdiction the "refer[red]"-to candidate seeks to represent.

10. Section 203(a) of the BCRA amends Section 316(b)(2) of the FECA by prohibiting corporations -- including all for-profit corporations and all non-profit corporations except those qualifying under Sections 501(c)(4) and 527(e)(1) of the Internal Revenue Code -- and all labor

organizations from engaging in "electioneering communications." And, Section 203(b) of the BCRA adds new Section 316(c)(1) to the FECA, which prohibits any person from engaging in "electioneering communications" using funds directly or indirectly donated by corporations or labor organizations.

11. Section 203 establishes blackout time periods covering substantial portions of each federal election cycle and blackout geographic zones covering some or all of the United States, as times and places where corporations and labor organizations are barred from making or financing (knowingly or unknowingly) speech in the broadcast, cable or satellite media that refers to any clearly identified federal candidate ("broadcast speech"), regardless of the speech's other content.

12. These blackout periods and zones are both far-reaching and of imprecise scope, and, accordingly, they will chill and entrap corporations that attempt to comply with Sections 201 and 203. And, although the BCRA mentions blackout periods of "60" and "30" days, in fact the blackout periods often will extend from four months to a full year, and often far beyond the location of the electoral jurisdiction. For example:

a. As to a House or Senate election, the Democratic, Republican and other parties may hold primaries, conventions, caucuses or similar events to nominate candidates on different dates. Each such event will trigger the ban on broadcast speech by corporations referring to candidates for the preceding 30 days; and, the blackout period will then extend to the 60 days before the general election, and will extend for another 60 days if there is a runoff election. The ban will apply even as to nominating events involving a single, unopposed candidate.

b. Also as to a House or Senate election, the blackout zone can extend far beyond the geographic confines of the electoral jurisdiction because "electioneering communications" are

prohibited, regardless where they originate, if their transmission by broadcast, cable or satellite "can be received" by 50,000 or more "persons" in the electoral jurisdiction. Many terms used in this provision -- such as "communication" and "can be received" -- are undefined; "person" is defined by Section 301(11) of the FECA to include not only individuals (regardless of age, citizenship or voting eligibility status) but also corporations, labor organizations, associations, partnerships, political committees "or any other organization or group of persons." Many broadcast stations span multiple congressional districts and states; broadcast, cable and satellite transmissions typically have multi-state and even national reach; radio and television broadcasts may be "streamed" over the Internet; and, it may be difficult or impossible for a speaker to know whether speech is in fact "targeted" in a prohibited manner.

c. As to a presidential election, the blackout period will extend for nearly a full year, since primaries and caucuses ordinarily are conducted between January and June of the election year, triggering a blackout period beginning during the previous December, and a "preference election" can take place even before then, commencing the blackout period even earlier. Each such nominating event will trigger a 30-day nationwide blackout because the BCRA includes no "targeting" restriction for a presidential election. After the primaries conclude, the Democratic and Republican parties and, both before and after the primaries conclude, a myriad of other parties, typically hold conventions and other nominating events, extending the nationwide blackout through July and August -- even if by then a candidate is no longer opposed for nomination -- and that blackout will then extend throughout the 60-day period before the November general election date. The Section 203 prohibition usually will criminalize every broadcast by a corporation or labor organization that refers to an incumbent President or Vice President for nearly one year before a presidential election; indeed, the last time neither the

incumbent President nor Vice President was a national general election nominee -- let alone a candidate who sought but failed to secure such a nomination -- was 1952.

13. As amended by the BCRA, Section 304(f)(3)(B)(i) of the FECA exempts from the term "electioneering communication" any "communication appearing in a news story, commentary or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by a political party, political committee, or candidate."

14. By banning speech that does not expressly advocate the election or defeat of a clearly identified candidate, Sections 201 and 203 burden plaintiffs' rights of free speech, association and petition for a redress of grievances in violation of the First Amendment.

15. By imposing prohibitions and limitations on broadcast speech by corporations while allowing other groups such as unincorporated organizations, political organizations and corporations that own news-media facilities to engage in such speech without such restrictions, Section 201 and 203 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

16. Expressly acknowledging that the definition of "electioneering communication" may be declared unconstitutional, Section 201(a) provides a fall-back definition: "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." Unlike the primary definition, this fall-back definition has no temporal or geographic limitations whatsoever.

17. This fall-back definition does not define the key terms "promotes," "supports," "attacks," "opposes" or "exhortation," and it explicitly forbids any construction that requires express advocacy content. The fall-back definition also does not define the term "suggestive," and fails to specify the person to whom the "suggesti[on]" must appear or whether the "suggesti[on]" must arise from the language of the communication or may be implied from other content of the communication or surrounding circumstances.

18. By rejecting the constitutionally mandated "express advocacy" standard and imposing a vague and overbroad standard that applies if the primary standard is held unconstitutional, the BCRA violates the First and Fifth Amendments and compounds the violations alleged in prior paragraphs of this Count.

COUNT II

COMPELLED DISCLOSURES RELATING TO "ELECTIONEERING COMMUNICATIONS" (BCRA SECTIONS 201(a) and 311)

19. Section 201(a) of the BCRA amends Section 304 of the FECA by adding a requirement that any person that disburses or "execute[s] a contract" to disburse an aggregate of more than $10,000 during a calendar year for "the direct costs of producing and airing electioneering communications" must file a statement with the FEC within 24 hours of reaching each such $10,000 increment. In its statement the person must specify its identity and that of any person "sharing or exercising direction or control" over the person's "activities"; the amount and recipient of any disbursement over $200; the election to which the "electioneering communication" pertains; and "the

candidates identified or to be identified" by the communication.

20. Section 201(a) also requires that the person making the electioneering communication identify the names and addresses of all "contributors" of $1,000 or more to the person; or, where the disbursements are made from the person's segregated bank account that consists of funds contributed solely by individuals for "electioneering communications," that the person identify the names and addresses of all individuals who contributed $1,000 or more to that account.

21. Section 304(11)(B) of the FECA, as amended by Section 501 of the BCRA requires that the FEC make such statements available to the public on the Internet within 24 hours of the FEC's receipt of it, and Section 201(b) of the BCRA also requires the FCC to compile and make such information available to the public on the FCC's website.

22. Plaintiff U.S. Chamber PAC can lawfully make "electioneering communications" under the BCRA and will be subject to the Section 201(a) disclosure requirements. If the prohibitions in BCRA Sections 203 and 204 are invalidated, then plaintiff corporations will also lawfully be able to make "electioneering communications" and will be subject to the Section 201(a) disclosure requirements.

23. By requiring a person to file the statement when the person reaches the $10,000 increment by either (or both) making disbursements for "producing and airing electioneering communications" or "execut[ing] a contract" to make such disbursements, Section 201(a) requires that the statement be filed, and therefore become publicly available, before, and irrespective of whether, the person's "electioneering communication" actually is transmitted. By requiring such advance disclosures of possible future communications, Section 201(a) burdens the rights of free speech, association and petition for a redress of grievances in violation of the First Amendment.

24. By requiring persons to disclose information because the person, or its segregated bank account, makes or contracts to make disbursements for broadcast communications that do not contain express advocacy, Section 201(a) burdens the rights of free speech and association in violation of the First Amendment and Fifth Amendment.

25. Section 318 of the FECA requires any person that "makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate" to state in the communication who paid for the communication and whether or not it is authorized by a candidate, a candidate's authorized political committee, or its agents.

26. Section 311 of the BCRA amends Section 318 of the FECA by adding a requirement that any person that makes a disbursement for an "electioneering communication" as defined in Section 201(a) of the BCRA must also comply with the Section 318 communications content requirements.

27. By imposing disclosure requirements on communications not containing express advocacy, Section 311 burdens the rights of free speech and association in violation of the First Amendment and Fifth Amendment.

COUNT III

THE FORCED CHOICE BETWEEN CONSULTATION WITH FEDERAL OFFICIALS AND CANDIDATES AND SPEECH ON MATTERS OF PUBLIC CONCERN (BCRA SECTIONS 202 AND 214)

28. Section 316(a) of the FECA prohibits "any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with" any Federal election.

29. Section 315(a)(7) of the FECA provides that "expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents shall be considered to be a contribution to such a candidate." Because corporations are prohibited from making contributions to federal candidates, this provision bans corporations altogether from undertaking such coordinated expenditures at peril of both civil and criminal penalty. This prohibition applies to "expenditures" for communications by broadcast, print and other means.

30. Section 214(a) of the BCRA amends Section 315(a)(7)(B) of the FECA by inserting a new subsection (ii) that extends the current ban on coordination with candidates to coordination with any "national, State, or local committee of a political party" as well.

31. Section 202 of the BCRA amends Section 315(a)(7) of the FECA by inserting a new subsection (C) that provides that "any disbursement for any electioneering communication" that is "coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or officer of any such candidate, party, or committee . . . shall be treated as a contribution to the candidate supported by the electioneering communication or

that candidate's party . . . ." Thus, the BCRA bars corporations from making any disbursement for a "coordinated" "electioneering communication."

32. In 1999 this Court held that Section 315(a)(7) must be narrowly construed in order to avoid interfering with the right of citizens to petition their elected officials and other rights protected by the First Amendment. *See Christian Coalition v. F.E.C.*, 52 F. Supp. 2d 45 (D.D.C. 1999). In response to this decision, the FEC issued regulations defining in some detail when public communications by corporations, labor organizations and individuals are coordinated for purposes of Section 315(a)(7).

33. Section 214(b) of the BCRA repeals these FEC regulations, effective as of the date by which the FEC is required to promulgate new regulations. Section 402(c) of the BCRA requires promulgation of new regulations no later than 270 days after the BCRA's enactment, which occurred on March 27, 2002. Repeal of the existing regulations is not conditioned on timely issuance of new regulations. Section 214(c) of the BCRA mandates that any new FEC regulations "shall not require agreement or formal collaboration to establish coordination," and directs the FEC to address in its new regulations four specific issues, including "payments for the use of a common vendor"; "payments for communications directed or made by persons who previously served as an employee of a candidate or a political party"; and "payments for communications made by a person after substantial discussion about the communication with a candidate or a political party."

34. By defining coordinated expenditures to include communications that do not expressly advocate the election or defeat of a clearly identified candidate, Sections 202 and 214 of the BCRA violate the rights of free speech, association and petition for a redress of grievances in violation of the

First Amendment.

35. By repealing the FEC regulations defining coordinated expenditures and mandating that any replacement regulations "shall not require agreement or formal collaboration to establish coordination," Section 214 of the BCRA violates the rights of free speech, association and petition for a redress of grievances in violation of the First Amendment.

36. By establishing a vague and overbroad standard of "coordination" that deprives corporations and labor organizations of prospective direction as to when they may communicate with the President, Members of Congress, and other federal candidates and officeholders without jeopardizing their rights to engage in otherwise permissible political and legislative activities, Sections 202 and 214 of the BCRA impair the plaintiffs' rights of free speech, association and petition for a redress of grievances in violation of the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT IV

COMPELLED DISCLOSURE OF POSSIBLE FUTURE INDEPENDENT EXPENDITURE COMMUNICATIONS (BCRA SECTION 212(a))

37. Under Section 301(17) of the FECA, as amended by Section 211 of the BCRA, an "independent expenditure" is an expenditure by any person "expressly advocating the election or defeat of a clearly identified candidate . . . that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." This definition includes such express advocacy communications

transmitted by any means and media, including print and broadcast.

38. Section 212(a) of the BCRA amends Section 304 of the FECA by adding a requirement that any person that makes or "contracts to make" independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election must file a report with the FEC within 24 hours of the making of, or contracting for, the expenditure. As with all reports of independent expenditures under Section 304(b)(6)(B)(iii) of the FECA, this report must disclose the name and address of any recipient of $200 or more from the person; the date, amount and purpose of the expenditure; a statement indicating whether the expenditure supports or opposes a candidate; that candidate's name and office sought; and a certification, under penalty of perjury, whether the expenditure is made "in cooperation, consultation, or concert, with, or at the request or suggestion, of any candidate or any authorized committee" or its agent.

39. Section 212(a) of the BCRA further amends Section 304 of the FECA by adding an identical reporting requirement for a person that makes or "contracts to make" independent expenditures aggregating $10,000 or more at any time until and including the 20th day before the date of an election. For these expenditures and contracts, the FEC report must be filed within 48 hours.

40. Plaintiff U.S. Chamber PAC is among the "persons" that lawfully may make independent expenditures, and that will be subject to Section 212(a).

41. Section 212(a)'s requirement that a political committee file detailed reports with the FEC within 24 or 48 hours, as the case may be, of "contract[ing] to make" independent expenditures, will require that these reports be filed, and therefore publicly available, before, and irrespective of whether, any such expenditure actually is made or the communication contracted for actually is

transmitted. By requiring such advance disclosures of planned and prospective communications, including communications that ultimately are never made, Section 212(a) burdens plaintiff U.S. Chamber PAC's rights of free speech and association in violation of the First Amendment.

COUNT V

COMPELLED DISCLOSURE OF REQUESTS TO BROADCAST CERTAIN COMMUNICATIONS (BCRA SECTION 504)

42. Section 504 of the BCRA amends Section 315 of the Federal Communications Act by adding a requirement that broadcast licensees collect and make publicly available records of "request[s]" by any person to purchase broadcast time for communications "relating to any political matter of national importance," including communications relating to "a legally qualified candidate," "any election to Federal office," or "a national legislative issue of public importance."

43. Section 504 requires such recordkeeping and disclosures not when or after such communications are actually broadcast, but when any person has made "a request to purchase broadcast time." The required records must reflect whether or not the "request" was accepted or rejected, and other information, including the name of the person and a list of its chief executive officers and members of its executive committee or board of directors; the date and time of the communication; the rate charged; and the name of either the candidate and office sought, the election, or the issue to which the communication "refers," as the case may be.

44. By requiring these disclosures, Section 504 burdens the rights of free speech, association and petition for a redress of grievances of persons making such requests in violation of the

First Amendment.

45. By requiring disclosures about requested communications "relating to any political matter of national importance," including "a national legislative issue of public importance," Section 504 is vague and overbroad in violation of the First Amendment and the Due Process Clause of the Fifth Amendment.

IRREPARABLE INJURY

46. As described above, the BCRA is inflicting immediate and irreparable injury on the plaintiffs and their members by restricting plaintiffs' participation in our democratic system, impairing plaintiffs rights to free speech, association, petition, due process and equal protection. This injury will continue and increase unless the unconstitutional provisions of the BCRA are declared unconstitutional and enjoined.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court grant all appropriate relief for the constitutional violations alleged above, including:

a. An order and judgment declaring the aforementioned provisions of the BCRA unconstitutional;

b. An order and judgment enjoining defendants from enforcing the aforementioned provisions of the BCRA;

c. Attorneys' fees and costs pursuant to any applicable statute or authority; and

d. Any other relief that this Court in its discretion deems just and appropriate.

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