at 209-10, is that much greater where, as here, the Congress, "a coequal branch of government whose Members take the same oath [judges] do to uphold the Constitution . . . specifically considered the question of [BCRA's] constitutionality." Rostker v. Goldberg, 453 U.S. 57, 64 (1981); Littlewolf v. Lujan, 877 F.2d 1058, 1063 (D.C. Cir. 1989) ("[F]ederal statutes enjoy a presumption of constitutionality, especially where . . . Congress explicitly considered constitutional questions.").[114] Because BCRA is targeted exclusively at corporate and labor union advertising that presents the clearest potential for corrosive distortion of electoral politics, it is not overbroad. Austin, 494 U.S. at 660.

F. BCRA's Application to Nonprofit Corporations Does Not Impair Its Constitutionality.

BCRA § 203 extends FECA § 441b's well-established hard money requirement for independent expenditures i.e., that corporations and unions use separate segregated funds to pay for such expenditures to electioneering communications as well. BCRA § 204 applies this requirement to nonprofit corporations operating under § 501(c)(4) or § 527 of the Internal Revenue Code, as FECA § 441b has always provided.[115] In the alternative to their arguments that BCRA's

[114] To the extent that Congress relied upon scientific analyses of data such as those contained in Buying Time, see, e.g., 148 Cong. Rec. S2117 (Mar. 20, 2002) (Sen. Jeffords), plaintiffs bear the burden of demonstrating why such reliance on such legislative facts was unreasonable. In other constitutional challenges that involved complex factual analyses, the Supreme Court has deferred to legislative factfinding of that kind. See Turner II, 520 U.S. at 196 ("We owe Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power. Even in the realm of First Amendment questions where Congress must base its conclusions upon substantial evidence, deference must be accorded to its findings as to . . . the remedial measures adopted . . . ."); Vance v. Bradley, 440 U.S. 93, 110 (1979) ("In an equal protection case ... those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker."); Walters v. National Ass'n of Radiation Survivors, 473 U.S. 305, 330 n.12 (1985). Even if the ultimate standard of scrutiny applicable in these cases may vary, deference to Congress's underlying factfinding is proper.

[115] As originally introduced, the Snowe-Jeffords provisions made exceptions for non-profit corporations having tax-exempt status under § 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(a), (c)(4), and for incorporated "political organizations" as defined under § 527(e)(1) of the Internal Revenue Code, so long as the communications in question are "paid for exclusively by funds provided directly by individuals." See BCRA, § 203(b), adding 2 U.S.C. 441b(c)(2); see id., adding 2 U.S.C. 441b(c)(3), (4). However, pursuant to an amendment sponsored by Senator Wellstone, who worried that this exception would create a loophole in the statute, see 147 Cong. Rec. S2845-2849, S2882-2884 (March 26, 2001), § 204 of BCRA adds a further paragraph (6) to new subsection 441b(c), which in effect eliminates the exception made for 501(c)(4) and 527 organizations under paragraph (2) of subsection 441b(c).

electioneering communications provisions must be struck down on their face, plaintiffs maintain that they may not constitutionally be applied to non-profit corporations. See McConnell Second Amend. Compl., ¶¶ 49, 62; NRA Compl., ¶ 73. Contrary to plaintiffs' assertions, applying to nonprofit corporations the same hard money requirements that are made applicable to business corporations does not violate the First Amendment, or principles of Equal Protection.

The Supreme Court's decision in Austin is dispositive. In that case, the Michigan Chamber of Commerce, a nonprofit corporation, challenged a state statute which, like FECA § 441b, required for-profit and nonprofit corporations alike to make independent expenditures through a separate segregated fund. Austin, 494 U.S. at 655-56. In upholding the statute, the Court rejected the argument that the statute was "overinclusive, because it includes within its scope closely held corporations that do not possess vast reservoirs of capital." Id. at 661. The Court found that, due to the "special benefits conferred by the corporate structure," all corporations present the potential to distort the electoral process, and it "'accept[ed] Congress' judgment that it is the potential for such influence that demands regulation.'" Id. (quoting NRWC, 459 U.S. at 209-10) (emphasis in Austin).

At the same time, the Court in Austin reaffirmed its holding in MCFL that a small class of ideological nonprofit corporations could not constitutionally be required to set up a separate segregated fund in order to make independent expenditures. 494 U.S. at 661-65. However, the Court held despite the plaintiff corporation's nonprofit status that "[b]ecause the Chamber does not share [the three] crucial features" that had been "essential" to the Court's holding in MCFL, "the Constitution does not require that it be exempted from the generally applicable" restrictions on corporate independent expenditures. Id. at 661-62.[116] Thus, Austin clearly establishes that "the

[116] MCFL (1) had been formed to promote political ideas and could not engage in business activities, (2) lacked any members who had an economic disincentive for disassociating with the corporation if they disagreed with its political activity, and (3) was not established by, and had a policy of not accepting contributions from, business (continued...)

Constitution does not require" exemption of a nonprofit corporation from an otherwise valid restriction on corporate election expenditures unless it possesses the three characteristics set out in MCFL.

Hence, there is no basis for plaintiffs' various contentions that BCRA is unconstitutional in virtue of imposing hard money requirements on "organizations whose major purpose is not the nomination or the election of candidates," McConnell Second Amend. Compl. ¶ 49, or "expressive associations," id., or organizations that are tax-exempt under §§ 501(c)(4) and 527 of the tax code, id. ¶ 62. BCRA's hard money requirements simply apply to corporations across the board, just like FECA's restrictions, and just like the restrictions upheld in Austin. If a corporation shares the three "crucial features" set out in MCFL, then it is entitled to an as-applied exemption from these restrictions, Austin, 494 U.S. at 661; beyond its bearing on those factors, however, a corporation's "major purpose" or "expressive" nature or tax-exempt status is of no constitutional significance.[117]

It is also insignificant that BCRA does not codify the MCFL exemption. Neither does FECA § 441b, the very provision scrutinized in MCFL; nor did the statute in Austin where the Supreme Court specifically found it permissible for the statute to treat all corporations equally on its face. See Beaumont v. FEC, 278 F.3d 261, 277-78 (4th Cir. 2002) ("[P]laintiffs' argument that § 441b(a) is facially invalid because its text does not contain an MCFL exception fails in view of the Court's own refusal in Austin to declare an almost identical state statute facially invalid for the same

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[116](...continued)
corporations. Id. at 662-64. The Austin Court found that the Chamber lacked all of these characteristics, but in particular the Court focused on the fact that, "[b]ecause the Chamber accepts money from for-profit corporations, it could . . . serve as a conduit for corporate political spending." This concern is borne out by the election activity of 1996-2000, in which non-profits such as Citizens for Reform and Citizens for Better Medicare served as conduits for millions of dollars of corporate campaign spending. See supra at 42-43, 46-47.

[117] Indeed, if an organization's preferred tax status has any constitutional significance in this context, it implies that Congress has more, not less, leeway to regulate the organization's political spending, to ensure that public money is not used to finance activity that Congress does not wish to subsidize. See Regan v. Taxation with Representation of Wash., 461 U.S. 540 (1983) (upholding speech restrictions on tax-exempt organization as valid condition attached to federal subsidy).

reason.") (citations omitted), petition for cert. filed, 71 U.S.L.W. 3190 (Sep. 12, 2002) (No. 02-0403). MCFL merely carves out an as-applied exemption to restrictions on corporate election activity; it does not supply the basis for a facial attack.

The MCFL exemption applies to electioneering communications under BCRA to the same extent as it applies to independent expenditures under FECA.[118] Indeed, while the MCFL exemption is not codified in statute, it is codified in regulations promulgated under BCRA, paralleling similar regulations promulgated under FECA. See Final Rule, Electioneering Communications, 67 Fed. Reg. at 65,211-12 (to be codified at 11 C.F.R. 114.10); see also 67 Fed. Reg. 65,205-06. These regulations make it easy for qualified nonprofit corporations running electioneering communications to invoke the MCFL exemption by simply certifying to the FEC that they meet the relevant criteria. See id. § 114.10(e)(1)(ii). Hence, there is no basis for concluding that BCRA is facially unconstitutional merely because it does not explicitly recite the MCFL exemption in its text.

G. The Media Exception in BCRA's Definition of Electioneering Communications Does Not Violate Principles of Equal Protection.

Plaintiffs next take issue with BCRA's so-called "media exception." See, e.g., McConnell Second Amend. Compl., ¶ 51; NRA Compl., ¶ 83; AFL-CIO Compl., ¶ 11. Under BCRA, new FECA § 434(f)(3)(B)(i) excludes from the definition of an electioneering communication a "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 any political

[118] As Senator McCain made clear during congressional debate: "BCRA does not purport in any way, shape, or form to overrule or change the Supreme Court's construction of [FECA] in MCFL. Just as an MCFL-type corporation, under the Supreme Court's ruling, is exempt from the current prohibition on the use of corporate funds for expenditures containing 'express advocacy,' so too is an MCFL-type corporation exempt from the prohibition in the Snowe-Jeffords amendment on the use of its treasury funds to pay for 'electioneering communications.' Nothing in this bill purports to change MCFL." 148 Cong. Rec. S2141 (Mar. 20, 2002).

party, political committee, or candidate." This new provision is nearly identical to a pre-existing provision of FECA, 2 U.S.C. 431(9)(B)(i), that excludes from the definition of "expenditure" news stories and editorials broadcast or published by the media. This so-called "media exception" protects the traditional role of the press and does not violate the equal protection clause.

Again, Austin is dispositive on this issue. The Court there rejected the claim that Michigan's segregated fund requirement for corporations unfairly favored media corporations by excluding them from its scope. The Court held, 494 U.S. at 666-69 (citations and footnote omitted; emphasis added):

> Although all corporations enjoy the same state-conferred benefits inherent in the corporate form, media corporations differ significantly from other corporations in that their resources are devoted to the collection of information and its dissemination to the public. We have consistently recognized the unique role that the press plays in "informing and educating the public, offering criticism, and providing a forum for discussion and debate." Bellotti, 435 U.S., at 781 . . .. The Act's definition of "expenditure"... conceivably could be interpreted to encompass election-related news stories and editorials. The Act's restriction on independent expenditures therefore might discourage incorporated news broadcasters or publishers from serving their crucial societal role. The media exception ensures that the Act does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events. . . . A valid distinction thus exists between corporations that are part of the media industry and other corporations that are not involved in the regular business of imparting news to the public. Although the press' unique societal role may not entitle the press to greater protection under the Constitution, Bellotti, supra, 435 U.S., at 782, and n.18, it does provide a compelling reason for the State to exempt media corporations from the scope of political expenditure limitations. We therefore hold that the Act does not violate the Equal Protection Clause.

BCRA's media exception serves the same purpose and is constitutional for the same reasons.

H. BCRA's Definition of Electioneering Communications Does Not Violate Either the First Amendment or Principles of Equal Protection by Excluding Non-Broadcast Communications from the Scope of Its Regulation.

As mentioned above, BCRA's definition of electioneering communications encompasses only television and radio communications and not communications made through other media, such as print. See FECA 434(f)(i); 11 C.F.R. 100.29(b)(1). Plaintiffs allege that by excluding other media BCRA violates the First Amendment and the equal protection component of the due process clause. McConnell Second Amend. Compl. ¶ 51; NAB Compl. ¶ 24. These allegations have no merit.

Plaintiffs have no ground on which to complain that BCRA regulates less speech rather than more. See Blount v. SEC, 61 F.3d 938, 946 (D.C.Cir.1995) ("The First Amendment does not require the government to curtail as much speech as may conceivably serve its goals."); DLS, Inc. v. City of Chattanooga, 107 F.3d 403, 412 n.7 (6th Cir. 1997) (same for Equal Protection Clause).[119] As Buckley makes clear, reform in this area "may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." 424 U.S. at 105(citation omitted); see also MCFL, 479 U.S. at 258 n.11 ("While business corporations may not represent the only organizations that pose th[e] danger [of distorting the political marketplace], they are by far the most prominent example.").

Although Congress could have included non-broadcast communications within BCRA's scope, it chose instead to focus narrowly on redressing the recent abuses connected with broadcast communications. Broadcast communications are not only more far-reaching and influential than

[119] See also Mariani v. U.S., 212 F.3d 761, 774 (3d Cir. 2000) (en banc) ("Congress may regulate speech so long as it demonstrates that the recited harms are real, and it may, consistent with that principle, choose to regulate just some part of that speech.").

non-broadcast communications, see, e.g.,

but, most important, they are far more expensive. See, e.g., S2614 (March 21, 2001) (Sen. Durbin) ("The cost [of air time] . . . is going through the roof."). The high price of broadcast advertising time is the primary engine driving the escalating costs of contemporary elections, which, in turn, threaten to pressure candidates and parties to curry favor with groups able to pay for the ads. Broadcast is thus the primary medium by which large aggregations of wealth may be used to distort or corrupt the political process. It was therefore entirely reasonable for Congress to single out television and radio for regulatory attention.

I. The "Backup" Definition of Electioneering Communications Is Also Constitutional.

BCRA § 201 includes an alternate provision applicable only if its main definition of electioneering communications is judged to be unconstitutional. If the primary definition is stricken, then the statute provides that:

> the term 'electioneering communication' means 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.

BCRA § 201(a), adding 2 U.S.C. 434(f)(3)(A)(ii). Contrary to the plaintiffs' assertions, e.g., McConnell Second Amend. Compl., ¶ 48; AFL-CIO Compl., ¶¶ 15-16 , this definition is neither vague nor overbroad.

The backup definition is narrowly tailored and highly protective of First Amendment interests. It precludes regulation of a communication unless it has "no plausible meaning other than an exhortation to vote for or against a specific candidate." This requirement by itself rules out the

possibility that the provision covers pure issue advocacy: if a communication has only one plausible meaning and that meaning is an exhortation to support or oppose a candidate, its message cannot by definition be a mere discussion of issues. The provision also satisfies the Buckley Court's concerns because it is "directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate." 424 U.S. at 80.

The backup definition also avoids placing the speaker at the mercy of the subjective "varied understanding of his hearers," Buckley, 424 U.S. at 43 (quoting Thomas v. Collins, 323 U.S. 516, 535 (1945)). To the contrary, the definition makes clear that if more than one plausible interpretation is possible, a communication will not be considered an electioneering communication, even if many listeners would likely interpret it as calling for an election result. In essence, the backup definition is no different from other First Amendment tests that use an objective, "reasonable person" standard that does not vary depending upon the sensitivity or special knowledge or ignorance of particular listeners. In areas as diverse as obscenity (see Miller v. California, 413 U.S. 15 (1973)), fighting words (see Brandenburg v. Ohio, 395 U.S. 444 (1969); Hess v. Indiana, 414 U.S. 105 (1973)), and religious expression (see County of Allegheny v. ACLU, 492 U.S. 573 (1989)), the Supreme Court has eschewed mechanical tests and has instead evaluated the interests at stake with sensitivity for the context and the nature of the expression at issue. Moreover, here Congress has not only defined electioneering communications with an objective test, but with an extremely narrow one.

In sum, if both of Congress's definitions of electioneering communication were invalidated, the prohibitions of 2 U.S.C. 441b would require little more than careful diction and would do almost nothing to prevent millions of dollars from the general treasuries of unions and corporations from

being used directly to influence federal elections, and from doing so without disclosing to the public the source of the influence. Construing the requirements of the First Amendment in such a rigid and unrealistic manner would provide a powerful incentive for the spread of "covert speech" that carefully avoids stating clearly its central electoral message and thereby, as Justice Kennedy has stated, "mocks the First Amendment." Shrink Missouri, 528 U.S. at 406 (Kennedy, J., dissenting).

J. BCRA'S Disclosure Requirements for Electioneering Communications Are Constitutional.

Plaintiffs also direct a number of claims of unconstitutionality at BCRA's requirements for disclosure of electioneering communications. McConnell Second Amend. Compl., ¶¶ 54-58; NRA Compl., ¶¶ 86-88; Chamber Compl., ¶¶ 23-26; AFL-CIO Compl., ¶ 21. As in the case of BCRA's segregated fund requirement, plaintiffs cannot prevail in a pre-enforcement facial challenge to the statute's disclosure requirements unless they can show that these provisions "could never be applied in a valid manner," or are substantially overbroad. New York State Club Ass'n., 487 U.S. at 11.

The First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed. Zauderer v. Office of Disciplinary Counsel of Sup. Ct. of Ohio, 471 U.S. 626, 651 n.14 (1985). In Buckley, while the Court stated that "exacting scrutiny" applied to the disclosure provisions at issue there, the Court framed the inquiry as whether there existed "a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed." 424 U.S. at 64; see also id. at 80 (upholding disclosure requirements upon finding that they "bear[] a sufficient relationship to a substantial governmental interest").

Applying that standard, the Supreme Court has already upheld FECA's existing disclosure requirements, Buckley, 424 U.S. at 60-84, finding them justified by three governmental interests:

> First, disclosure provides the electorate with information "as to where political campaign money comes from . . ." in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.
>
> Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. . . .
>
> Third, and not least significant, recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above.

Buckley, 424 U.S. at 66-68 (footnotes omitted).

BCRA's new disclosure requirements governing electioneering communications are justified by the same interests underlying FECA's existing disclosure requirements. Indeed, BCRA simply remedies the evasion of FECA's existing disclosure requirements through the use of "issue ads." As discussed in greater detail above, see supra at 42-43, 46-47, in the three election cycles preceding BCRA's enactment, Congress witnessed tens of millions of dollars being spent on such ads, exerting a substantial influence on election campaigns, while the sources of this campaign spending went entirely undisclosed to the public under FECA. Compounding the problem, many ad sponsors further concealed their identity from the public by electioneering pseudonymously, through front organizations such as "The Coalition: Americans Working for Real Change," "Citizens for Reform."

See id.; see also Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 298 (1981) ("[W]hen individuals or corporations speak through committees, they often adopt seductive names that may tend to conceal the true identity of the source."); see also Selected Interest Group "Issue Ads," App. A to Defs.' Mem., Tab 1. Thus, due to exploitation of the "issue advocacy" loophole, a large and growing portion of recent federal election activity has been enshrouded in secrecy, leaving the public under-informed and corruptive practices unexposed. Krasno & Sorauf Expert Rep. at 73-74 ("Secrecy is one of the outstanding characteristics of issue ads . . . . [W]e and regulators are hampered by a remarkable paucity of information about them. . . . This secrecy, by itself, creates enormous opportunities for wrongdoing, for favors to be exchanged between issue advocates and public officials.").

BCRA aims to dissipate this shroud of secrecy by extending the requirement of disclosure to electioneering communications. As the sponsor of BCRA's disclosure provisions explained:

> We deter the appearance of corruption by shining sunlight on the undisclosed expenditures for sham issue advertisements. Corruption will be deterred when the public and the media are able to see clearly who is trying to influence the election. In addition our provisions will inform the voting public of who is sponsoring and paying for an electioneering communication.

147 Cong. Rec. S3034 (Mar. 28, 2001) (Sen. Jeffords).

BCRA's disclosure provisions are modest and appropriately tailored to these goals. BCRA's provisions merely impose the same type of disclosure obligations already imposed on individuals and groups under FECA § 434(c)'s well-established disclosure requirements for independent expenditures. See MCFL, 479 U.S. at 262 (noting that § 434(c)'s disclosure requirements for individuals and groups serve governmental disclosure interests in an appropriately tailored manner);

Buckley, 424 U.S. at 82 (upholding predecessor to § 434(c)); Richey v. Tyson, 120 F. Supp. 2d 1298, 1321-22 (S.D. Ala. 2000) (upholding state disclosure provisions comparable to § 434(c)).[120]

There is thus no basis for plaintiffs' contentions that BCRA's disclosure requirements unduly burden their rights of association by forcing them to disclose the identities of their contributors. See AFL-CIO Compl. ¶ 12; Chamber Compl. ¶ 24; McConnell Second Amend. Compl. ¶¶ 4, 58; NRA Compl. ¶¶ 64-65, 87-89. Such disclosure has long been required for independent expenditures under FECA § 434(c) and is necessary to reveal the true sponsors of electioneering communications especially where such communications are broadcast in the name of a front organization. Indeed, BCRA's new disclosure provisions are considerably less intrusive in this regard than those of § 434(c). Whereas § 434(c) requires groups making independent expenditures to identify each of their donors contributing over $200, id. § 434(c)(1)(C), BCRA's requirements reach only donors contributing over $1000, id. § 434(f)(2)(E). Moreover, if a group makes disbursements for electioneering communications from a separate bank account containing money donated only by individuals, then under BCRA the group need only identify persons contributing more than $1,000 to that account. Id. § 434(f)(2)(E). Hence, the statute provides such a group with ample means to protect the anonymity even of large donors to its general treasury, if it so chooses, simply by setting up a separate bank account for donations to finance electioneering communications.[121]

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[120] Specifically, BCRA requires sponsors of electioneering communications to disclose their identity, to a certain extent the identities of their donors (explained further infra), the elections and candidates to which their electioneering communications pertain, and the amount of each of their disbursements for the electioneering communications over $200 much the same information FECA § 434(c) already requires regarding independent expenditures. Compare 2 U.S.C. 434(f)(2) with id. § 434(c)(1). BCRA does not require disclosure of electioneering communications at all until an individual or group spends more than $10,000 to produce and air such communications in a single calendar year. 2 U.S.C. 434(f)(1). By comparison, FECA 434(c)'s existing disclosure requirements for independent expenditures are triggered by a far lower threshold of $250. 2 U.S.C. 434(c)(1).

[121] In any event, plaintiffs cannot launch a facial challenge to BCRA's contributor-disclosure requirement based on the claim that it infringes on their associational rights; rather, such a claim can be pursued only on an as-applied basis, with each plaintiff having to make an individualized showing that disclosure of its contributors will cause them to suffer significant harassment. See Buckley, 424 U.S. at 74. Even were such individual as-applied challenges to be entertained in this litigation, no plaintiffs have made the requisite showing of a "reasonable probability that the

Nor can plaintiffs successfully argue that BCRA's disclosure requirements fail simply because they encompass more than express advocacy. While in Buckley the Court limited the independent expenditure disclosure provisions at issue there to encompass only express advocacy, the Court did so out of a concern for the vagueness of the language of those provisions. See supra 148-53. By contrast, BCRA's disclosure provisions are not vague, nor, for that matter, are they overbroad; like the corporate and union financing restrictions discussed above, they rest on a bright-line definition of "electioneering communication" that does not capture a substantial amount of pure issue advocacy.

Indeed, even if this Court were to find the governmental interest in avoiding the appearance of corruption inadequate to justify BCRA's financing restrictions on electioneering communications, BCRA's disclosure requirements for such communications would still be constitutional because of the separate informational interests they serve. Buckley, 424 U.S. at 81. The government has a substantial interest in "aid[ing] the voters in evaluating those who seek federal office." Id. at 66-67. Any ad falling within BCRA's definition of electioneering communication, by virtue of discussing a candidate in the midst of a federal election, is virtually certain to contain argument bearing on the voters' evaluation of the candidate. By requiring disclosure for such ads, BCRA "helps voters to define more of a candidate's constituencies," information the Supreme Court has recognized as important to casting an informed vote. Id. at 81.[122] Accordingly, apart from whether BCRA's disclosure requirements are justified on the same grounds as its restrictions on corporate and union

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compelled disclosure . . . will subject them to threats, harassment, or reprisals." Id.

[122] As shown by defendants' expert Professor David Magleby, voters are frequently confused over the sources of advertisements referring to candidates around the time of an election, and, in polls, they have consistently indicated that they consider this information important for them to know. Magleby Expert Rep. at 29-30; Mark Mellman & Richard Wirthlin, Research Findings of a Telephone Study Among 1300 Adult Americans (Sep. 23, 2002) at 20 [DEV 2-Tab 5]; see also Krasno & Sorauf Expert Rep. at 78-79 (discussing Magleby study).