IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Memorandum in Support of Certain Madison Center Plaintiffs' Motion for Injunction Pending Appeal

Alan P. Dye (Bar No. 215319)
Heidi K. Abegg (Bar No. 463935)
WEBSTER, CHAMBERLAIN & BEAN
1747 Pennsylvania Ave., N.W.
Suite 1000
Washington, D.C. 20006
(202) 785-9500
(202) 835-0243 facsimile

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

Table of Contents

Table of Authorities

Cases

Other Authorities

Motion Before the Court

Certain Plaintiffs represented by the James Madison Center for Free Speech[1] ("Plaintiffs") have moved for an injunction pending appeal of the Court's holding that the backup definition of "electioneering communication" in the Bipartisan Campaign Reform Act of 2002 (BCRA), § 201(f)(3)(A)(ii), is constitutional ("with its final clause severed," *Memorandum Opinion* at 8 (per curiam)) until the United States Supreme Court has made a final decision on the merits of this issue.

Opposition to Staying the Primary Definition

Concomitantly, Plaintiffs oppose any stay of the holding that the primary "electioneering communication" definition, § 201(f)(3)(A)(i), is unconstitutional because such a stay would also pose irreparable harm to Plaintiffs.

In particular, Plaintiffs note that, the National Rifle Association has moved to stay the Court's judgment with respect to *both* the primary and truncated backup definitions of "electioneering communication." The NRA makes compelling arguments as to why the truncated backup definition of "electioneering communication" is unconstitutional and should be enjoined. But the NRA request would leave in place the primary definition of "electioneering communication," which this Court has already held to be unconstitutional. The NRA believes this is helpful because that provision would have no effect until December of this year (30 days before the primary seasons begin). But even assuming the Supreme Court hears oral argument on this case at the beginning of its term in early October, as is likely, that would leave only two months before the 30-day gag period of the primary definition would be activated by the beginning of a series of primaries. This court took five months after oral arguments to decide the present case and draft the opinions. It is unreasonable to expect the Supreme Court to do so in two months.

---

[1]The Madison Center represents the following Plaintiffs for the present Motion: Club for Growth, Inc., Indiana Family Institute, Inc., National Right to Life Committee, Inc., National Right to Life Educational Trust Fund.

Moreover, issue advocacy groups such as Plaintiffs need planning time. A decision in December, if it were possible, would not allow Plaintiffs time to make plans for their issue advocacy during the critical primary period. If politicians know that they will be protected from criticism by issue advocacy groups during the rolling primary periods, they could schedule votes on crucial legislation to the disadvantage of Plaintiffs, since this could shield vulnerable incumbents from criticism during the 30-day gag periods. Issue advocacy groups need time to plan alternative avenues of bringing pressure to bear on such politicians during the legislatively intense period of the primaries.

Standard for Injunction or Stay Pending Appeal

The standard for an injunction or stay pending appeal[2] was recently set out by this Court as follows:

> To obtain a stay pending appeal, [movant] "must show (1) that it has a substantial likelihood of success on the merits; (2) that it will suffer irreparable injury if the stay is denied; (3) that issuance of the stay will not cause substantial harm to other parties; and (4) that the public interest will be served by issuance of the stay." *United States v. Philip Morris Inc.,* 314 F.3d 612, 617 (D.C.Cir.2003) (citing *Washington Metro. Area Transit Comm'n v. Holiday Tours. Inc.,* 559 F.2d 841, 843 (D.C. Cir.1977)). "These factors interrelate on a sliding scale and must be balanced against each other." *Serono Labs., Inc. v. Shalala,* 158 F.3d 1313, 1318 (D.C.Cir.1998); *CityFed Fin. Corp. v. Office of Thrift Supervision,* 58 F.3d 738, 747 (D.C. Cir.1995) ("If the arguments for one factor are particularly strong, [a stay] may issue even if the arguments in other areas are rather weak."). On a motion for stay, "it is the movant's obligation to justify the court's exercise of such an extraordinary remedy." *Cuomo v. U.S. Nuclear Reg. Comm'n,* 772 F.2d 972, 978 (D.C. Cir.1985).

Recording Industry Association of America v. Verizon Internet Services, ___ F. Supp. 2d ___, 2003 WL 1946489 at *19 (D.D.C. Apr. 24, 2003).

An injunction pending appeal is appropriate to protect First Amendment rights to political speech. *See Homans v. City of Albuquerque,* 264 F.3d 1240, 1243-45 (10th Cir. 2001) (enjoining campaign spending limit pending appeal after district court held it was constitutional). Once

---

[2]This Court has used the terms "injunction pending appeal" and "stay pending appeal" interchangeably. *See Ellsworth Assocs., Inc. v. United States,* 917 F. Supp. 841, 846-47 (D. D.C. 1996) (citing FED. R. CIV. P. 62(c)). The standards are the same. *Compare id.* at 847 (injunction pending appeal) *with Recording Industry Association of America v. Verizon Internet Services*, ___ F. Supp. 2d ___, 2003 WL 1946489 at *19 (D.D.C. Apr. 24, 2003) (stay pending appeal).

substantial likelihood of success on the merits is established, "the public interest is better served by following binding Supreme Court precedent and protecting the core First Amendment right of political expression." *Homans,* 264 F.3d at 1244.

Argument

Shortly after United States armed forces liberated Iraq, some Iraqis exercised a core liberty of free people everywhere – they criticized government officials. They complained that American military commanders were not providing water, food, services, and security fast enough. Some stated their outright opposition to Americans as government officials. President Bush expressed no shock, simply noting that criticizing government officials is a right of free people, which the Iraqis were now free to exercise.

As soon as Iraqi television is established and citizen groups discover that pooling resources in citizen groups to broadcast communications in the burgeoning marketplace of ideas is an effective way to amplify one's voice on the vital issues of the day, it is certain that they will exercise this liberty to broadcast communications "promoting" or "attacking" government officials and public figures, some of whom will be candidates for public office.

Americans will applaud because if you ask the average American what the First Amendment stands for, she will tell you that it protects the right to criticize politicians, whether it be King George, President George, or Iraqi National Congress leader Ahmad Chalabi, and whether or not they are running for office. If the American military administration barred such Iraqi citizen-group broadcasts commenting on issues relating to candidate Chalabi unless they contained only "neutral" things, Americans would be outraged.

Yet this Court has approved such a gag rule for American citizens, every hour of every day, year round. The fact that a government official declared himself a candidate or raised $5,000 in campaign funds (facts that must now be researched before speaking out about an official or public figure), should not insulate him from criticism or approbation by the American people.

Yet this is what this Court's incredibly broad and incredibly vague definition of "electioneering communication" does to America.

Plaintiffs have requested relief from this regime while they appeal to the Supreme Court. As shown below, they meet the criteria for the requested relief.

I. Plaintiffs Have a Substantial Likelihood of Success on the Merits.

Plaintiffs have a substantial likelihood of success on the merits with their claim that this Court's truncated definition of "electioneering communication" is unconstitutional for vagueness and overbreadth because (1) it is grossly overbroad and vague language, (2) severance that broadened the definition was beyond congressional intent, (3) the Supreme Court decided in *Buckley v. Valeo*, 424 U.S. 1 (1976), and *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (*MCFL*), that its express advocacy test is the "only" way to avoid vagueness and overbreadth when protecting issue advocacy, (4) the great weight of authority in other courts interpreting *Buckley* and *MCFL* as do Plaintiffs, and (5) gratitude and access are not compelling interests to limit issue advocacy.

A. The Truncated Backup Definition Increases Overbreadth and Vagueness.

In a splintered decision, this Court decided that "'*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).*" BCRA, § 201(f)(3)(A)(ii) (last clause deleted)[3] (emphasis added).

By amputating the last clause of the backup definition of "express advocacy," this Court made a vague definition vaguer, a broad definition broader. The last clause – "*and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific*

[3]This Court entered judgment "for Defendants with regard to [Section 203's] applicability to the backup definition of "electioneering communication" as defined in Section 201 of BCRA, in accordance with Judge Leon's Memorandum Opinion." *Final Judgment* at 5; *see also Per Curiam Memorandum Opinion* at 8. Judge Leon upheld the constitutionality of the definition of "electioneering communication" only without the final clause, which he held to be unconstitutionally vague. *Leon Memorandum Opinion* at 94-95.

candidate" – surely had vagueness problems, as Judge Leon identified. *Leon Memorandum Opinion* at 93-95. But it at least required the rest of the definition to be about "an exhortation to vote" and carried some notion of a "specific candidate" to go some distance toward focusing the provision on elections.

Amputating this qualifier leaves the truncated definition with no language requiring that the candidate be "clearly identified" and with no language focasing the communication on voting. While the definition is of an "*electioneering* communication," the definition gives that term its only meaning. As defined, "electioneering" means only attacking or promoting someone who happens to be "a candidate" (whether or not known to be so),[4] and has nothing necessarily to do with exhortation, voting, or even an election. This is confirmed by the parenthetical material of the truncated definition, which proclaims that "promotes or supports" or "attacks or opposes" is not compassed by the limitations of either express advocacy or voting , i.e., "(regardless of whether the communication expressly advocates a vote for or against a candidate)."

As a result, the truncated definition is entirely governed by four unqualified, undefined verbs: *promote*,[5] *support*,[6] *attack*,[7] and *oppose*.[8] The common dictionary definitions provided

---

[4]"Candidate" means only that the individual referenced (or her agent) transacted a "contribution" or "expenditure" of $5,000. Citizen groups might not even know a referenced person is a candidate, absent burdensome research (especially burdensome where a grassroots lobbying campaign is targeting numerous members of Congress).

[5]*Promote* means

> 1a. To raise to a more important or responsible job or rank. b. To advance (a student) to the next higher grade. 2. To contribute to the progress or growth of; further. . . . 3. To urge the adoption of; advocate: *promote a constitutional amendment*. 4. To attempt to sell or popularize by advertising or publicity: *commercials promoting a new product*. 5. To help establish or organize (a new enterprise), as by securing financial backing: *promote a Broadway show*. [*The American Heritage Dictionary of the English Language* (4th ed. 2000).]

[6]As a transitive verb, *support* means

> 1. To bear the weight of, especially from below. 2. To hold in position so as to keep from falling, sinking, or slipping. 3. To be capable of bearing; withstand: "*'His flaw'd heart . . . too weak the conflict to support*'" (Shakespeare, *King Lear* 5.3.197 1605). 4. To keep from weakening or failing; strengthen: *The letter supported him in his grief*. 5. To provide for or maintain, by supplying with money or necessities. 6. To furnish corroborating evidence for: *New facts supported her story*. 7a. To aid

(continued...)

below in footnote reveal the breathtaking breadth of what is prohibited as well as the vagueness inherent in choosing among the possible meanings.

Judge Leon declared that the phrase he excised "depends on a number of variables such as the context of the campaign, the issues that are the centerpiece of the campaign, the timing of the ad, and the issues with which the candidates are identified." *Leon Memorandum Opinion* at 93. The present four verbs depend on similar contextual, subjective vagaries for determination, but they have the further problem of having nothing to do with any election campaign or exhortation to vote. The truncated definition speaks not of supporting or opposing a candidate's *election*, only of supporting or opposing *a candidate*. Judge Leon declares that truncating the definition "assures that there will be no . . . effect on political discourse *unrelated* to federal elections," *id.* at 94, but he overlooks the fact that his truncated definition leaves nothing to *relate* the governed communication to federal elections.

Judge Leon's gloss on the truncated statute is that communicators needs only to stick to "neutral" statements to avoid opposing or supporting. *Id.* at 92. But what is "neutral" is subjective, too. Some would consider simply labeling a legislator, who happens to be a candidate, as "pro-life" or "pro-choice" to be supporting or opposing the candidate. Others would

---

[6](...continued)
the cause, policy, or interests of: *supported her in her election campaign.* b. To argue in favor of; advocate: *supported lower taxes.* 8. To endure; tolerate: "*At supper there was such a conflux of company that I could scarcely support the tumult*" (Samuel Johnson, *OED (letter to Mrs. Thrale)* 1773). 9. To act in a secondary or subordinate role to (a leading performer). [*The American Heritage Dictionary of the English Language* (4th ed. 2000).]

[7]As a transitive verb, *attack* means:
1. To set upon with violent force. 2. To criticize strongly or in a hostile manner. 3. To start work on with purpose and vigor: attack a problem. 4. To begin to affect harmfully: *a disease that attacks the central nervous system.* [*The American Heritage Dictionary of the English Language* (4th ed. 2000).]

[8]As a transitive verb, *oppose* means:
1. To be in contention or conflict with: *oppose the enemy force.* 2. To be resistant to: *opposes new ideas.* 3. To place opposite in contrast or counterbalance. 4. To place so as to be opposite something else. [*The American Heritage Dictionary of the English Language* (4th ed. 2000).]

declare that supporting or opposing a legislator's human cloning bill amounts to supporting or opposing the candidate. To solve just such problems and keep speakers from having to "hedge and trim," the United States Supreme Court created its "express advocacy" test as the "only" way to eliminate overbreadth and vagueness when legislating on the border of issue advocacy, as discussed *infra*.

Judge Leon also suggested that communicators could simply never use a candidate's name or they could get an FEC advisory opinion before communicating. *Leon Memorandum Opinion* at 95. This means a citizen group could never broadcast a communication encouraging citizens to call Senator X and encourage him to oppose Senator Y's cloning bill. And the FEC could never issue advisory opinions fast enough to keep up with the fast-breaking, changing need for broadcasting grassroots lobbying communications during an active legislative session. Such limitations impose enormous burdens on core political speech,[9] and given the solicitude of the Supreme Court for issue advocacy, *infra*, there is a strong likelihood that Plaintiffs will have success on the merits.

B. Truncating "Electioneering Communication" Violated Severance Rules.

Don Simon of Common Cause, a principle drafter of the BCRA, is quoted in a *USA Today* article entitled "Campaign finance hit by ruling" (May 4, 2003)[10] as saying of the truncated definition of "electioneering communication" that "[w]e got more from the court than we ever could have gotten from Congress" and that "people haven't come to grips with . . . how sweeping it is."

---

[9]Similarly, Judge Leon's use of the AFL-CIO advertisement entitled "No Two Way" as an example of a communication that is not "neutral" because it "attacks [a legislator's] position on the federal budget" reveals how incredibly broad is the concept of oppose/attack in the truncated definition of "electioneering communication." Not only does it reach protected issue advocacy in the election context, in the truncated definition that is cut loose from the restraints of the election context the concept of oppose/attack (i.e., whatever is not "neutral") has enormous reach.

[10]*See* <http://www.usatoday.com/news/washington/2003-05-04-court-soft-money_x.htm> (*USA Today* website) (visited May 7, 2003).

"'"Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.'" *Buckley v. Valeo,* 424 U.S. at 108-09 (quoting *Champlin Refining Co. v. Corporation Comm'n of Oklahoma,* 286 U.S. 210, 234 (1932)).

Because the truncated backup definition is sweepingly more expansive than the definition Congress enacted, as described at length *supra* (i.e., Congress at least intended to anchor the definition to an exhortation, voting, and campaign context), it is certain that Congress would not have enacted the definition as truncated. The language of BCRA was the subject of much debate and compromise, and as Don Simon is quoted as saying, reform advocates could never have gotten from Congress anything so sweeping as the truncated backup definition. Therefore, it was improper to amputate the final clause of the backup definition, as the Supreme Court will likely hold, meaning that the whole backup definition is unconstitutional and should be enjoined.

C. The Supreme Court's Express Advocacy Test Is the "Only" Cure.

The final authority on vagueness and express advocacy is the mandate of the United States Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 and *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*"). Therefore, it is vital to properly understand *Buckley/MCFL*.

Buckley set out the express advocacy test as the essential bright-line test to eliminate vagueness in the highly-protected First Amendment area of election-related speech and issue advocacy. 424 U.S. at 43, 44 n.52. A decade later, the Court reaffirmed the necessity of the express advocacy test both to prevent vagueness and to protect issue advocacy in *MCFL*.

It is important to note what the Supreme Court said is and is not permitted with respect to avoiding vagueness in statutes bordering on issue advocacy. *Buckley*'s vagueness analysis involved two steps.

First, to avoid vagueness, the Supreme Court in *Buckley* narrowly construed "any expenditure . . . relative to a clearly identified candidate" to mean "advocating the election of a candidate." 424 U.S. at 41-42. But the Court immediately declared that this construction merely "refocuses the *vagueness* question." *Id.* at 42 (emphasis added). More was needed because "the

distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." *Id.*

The importance of what the Court said must not be missed – it is *not* sufficient to avoid vagueness to even say "*advocating the election of a candidate*." Nor is it sufficient to avoid vagueness to (a) plug that construction into the statute being construed, (b) incorporate the opposite of "election," and (c) explain that the candidate is running for federal office, i.e., *advocating the election or defeat of a clearly identified candidate for federal office*. The problem was that the seemingly obvious term *advocating* is rife with ambiguity in the highly-protected area of First Amendment rights in the election context. In this context, the Supreme Court cuts no slack on the basis that all language has inherent ambiguities.

The second step addressed *advocating*. The Court noted a specific problem related to this continuing vagueness problem in "an analogous context" in *Thomas v. Collins*, 323 U.S. 516 (1945). *Buckley*, 424 U.S. at 43. The problem was that *advocating* involves "a question both of intent and effect," and could be defined to depend on "the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning." *Buckley*, 424 U.S. at 43 (internal quotation marks and citation omitted). That inherent vagueness in *advocating* is constitutionally intolerable: "Such a distinction offers no security for free discussion . . . [because] it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim." *Id.* (internal quotation marks and citation omitted).

Note that fixing the vagueness problem of *advocating* required a construction that did *not* rely in any way on questions of intent and effect, the varied understanding of hearers, and inferences drawn as to intent and meaning.

The *Buckley* court concluded that the "only" fix for this vagueness problem was an objective test that looked only at the words of the communication itself and did not in any way depend on the subjective understanding of the audience: "The constitutional deficiencies [of vagueness as to intent and effect] can be avoided ***only*** by reading [the statute] as limited to communications that include explicit words of advocacy of election or defeat of a [clearly

identified] candidate . . . as part of the communication." *Id.* (emphasis added). In footnote 52 the Court called its test an "*express words of advocacy*" test, and indicated that it is not a so-called "magic words" test (i.e., involving only the words listed) because the examples are introduced by "such as." *Id.* at 44, n.52 (emphasis added). The fact that all the examples given in footnote 52 would occur within a communication itself without reference to external context, reemphasizes the Court's earlier insistence that the explicit words examined must be "part of the communication." *Id.* at 43.

Again it is important to note carefully what the Court said – the only addition to the formulation of the first step and the term *advocacy* are the words *explicit words* and/or *express words*. And the Court declared that the ***"only"*** way to avoid vagueness was to add these terms to advocacy. In short, the phrase *explicit/express words* is the essential and sole key to a formulation avoiding the vagueness the Court identified in *advocating*. Anything short of that *express words of advocacy* test, or beyond it, reintroduces the vagueness the Supreme Court mandated the express advocacy test to avoid.

A decade later, in *MCFL*, 479 U.S. 238, the Supreme Court was again faced with the need to construe a statute that bordered on the protected ground of issue advocacy. The Court reiterated the discussion mentioned *supra* about how "[t]he distinction between discussion of issues . . . and advocacy of election or defeat . . . may often dissolve in practical application." *Id.* at 249 (internal quotation marks and citation omitted). In *Buckley*, the Court made the quoted statement in the context of a "refocuse[d] . . . vagueness question." 424 U.S. at 42. The *MCFL* opinion clarified that the vagueness problem in *Buckley* had to be resolved not only to avoid vagueness but also "to avoid the problems of overbreadth" that would occur if government were permitted to tread on issue advocacy's protected territory. 479 U.S. at 248. Plainly, wherever a regulation shares a border with issue advocacy, vagueness and overbreadth converge and the o*nly* resolution of the constitutional problem of protecting issue advocacy is the precise language of the express advocacy test.

MCFL reaffirmed that the express advocacy test governs all contexts that operate next to issue advocacy, and was not simply a helpful way to identify "express advocacy" nor just one way of describing a vagueness resolution in *Buckley*. *MCFL* authoritatively declared the now broadly binding test to be precisely the one declared in *Buckley*. *MCFL*, 479 U.S. at 249. With *MCFL*, the test was no longer open to other authoritative construction by lower courts because the Court had itself authoritatively construed the express advocacy test as precisely what it had said before in *Buckley*.

MCFL also authoritatively demonstrated exactly how the test was to be applied. It declared that "a finding of 'express advocacy' *depended upon* the use of language such as 'vote for,' 'elect,' 'support,' etc." *Id.* (quoting *Buckley*, 249 U.S. at 44, n.52) (emphasis added). In examining the newsletter at issue, it found that "[j]ust such an exhortation appears in the 'Special Edition.'" *Id.* In examining just the language of the communication itself, the Court noted that the newsletter urged readers to vote pro-life and identified pro-life candidates. *Id.* The court recognized the coupling of "vote pro-life" with "Candidate Smith is pro-life" as identical to "vote for Candidate Smith," an indisputable equation. *Id.*

This was not a broadening of the express advocacy test, because the Court clearly declared that this newsletter contained "[j]ust such an exhortation" as those described in footnote 52, which it had just cited. *Id.* The Court declared that because "this message is marginally less direct than 'Vote for Smith' does not change its essential nature," but this is no invitation to go sniffing out "essences" beyond the Court's own express advocacy test because the Court said this advocacy plainly fits that plain, unvarnished test – "it provides in effect an explicit directive: vote for these (named) candidates." *Id.* Nor does the phrase "in effect" provide license to go beyond a test that looks at the actual words of the communication itself to see if they contain explicit words expressly advocating the election or defeat of a clearly identified candidate for public office. It merely refers to the effect of the equation described. After all, the Supreme Court created the express advocacy test precisely to resolve the vagueness problem identified as "a question both of intent and *effect*," as described above. *Buckley*, 424 U.S. at 43 (emphasis

added). Finally, the Court looked at each term in the context of other terms in the communication at issue – an essential part of the express advocacy test – but the context did not extend beyond the terms themselves.

Therefore, any legislation bordering on issue advocacy must, positively, conform to the precise language of the express advocacy test, which includes, negatively, not being dependent in any way on factors external to the terms of the communication or on the subjective understanding of the hearer. In short, a bright line is required to eliminate hedging and trimming and to satisfy the non-vagueness mandate. The bright line test of *Buckley* was reaffirmed by the Court in *MCFL* and made broadly applicable, without qualification, to all situations where regulations border on issue advocacy as the *"only"* way to avoid the vagueness as to intent and effect of *advocacy*. *Buckley*, 424 U.S. at 43 (emphasis added).

It is instructive to briefly compare the language the *Buckley* Court found yet vague (so as to need the explicit/express words qualifier) with the now truncated definition of "electioneering communication:

Too vague, per Supreme Court (*see supra)*	**"Electioneering Communication"**
"advocating the election or defeat of a clearly identified candidate for federal office"	"promot[ing] or support[ing] . . . or attack[ing] or oppos[ing] a candidate for that office"

The stark difference in clarity between these two formulations readily reveals the vagueness of the latter, which conclusion is all the more profound in light of the Supreme Court's conclusion that the one on the left is yet too vague and requires the addition of "explicit words" or "express words" to the beginning to pass constitutional muster.

D. The Weight of Authority Is Against the Truncated Definition.

The end result of this Court's consideration of "electioneering communication" is one judge (Henderson) who finds both definitions of the phrase unconstitutional, one judge (Kollar-Kotelly) who would uphold the primary definition and grudgingly supports the full backup

definition, and one judge (Leon) who will only go along with a truncated backup definition. A truncated definition favored by only one judge, who wins his position by having the lowest common denominator position, is hardly a strongly supported holding.

Moreover, the overwhelming weight of authority in other circuits runs contrary to this Court's holding. Other courts recognize the binding nature of the Supreme Court's express advocacy test whenever legislation borders on the protected territory of issue advocacy.[11]

---

[11]Lower federal court cases recognizing constitutional protection for unfettered issue advocacy and the Supreme Court's express advocacy test include: Me. Right To Life Comm. v. FEC, 98 F.3d 1 (1st Cir. 1996); Faucher v. FEC, 928 F.2d 468 (1st Cir. 1991); Vt. Right to Life Comm. v. Sorrell, 221 F.3d 376 (2d Cir. 2000); FEC v. Cent. Long Island Tax Reform Immediately Comm., 616 F.2d 45 (2d Cir. 1980); Virginia Society for Human Life v. FEC, 263 F.3d 379 (4th Cir. 2001); Perry v. Bartlett, 231 F.3d 155 (4th Cir. 2000); N.C. Right To Life, Inc. v. Bartlett, 168 F.3d 705 (4th Cir. 1999); Va. Soc'y For Human Life v. Caldwell, 152 F.3d 268 (4th Cir. 1998); FEC v. Christian Action Network, 92 F.3d 1178 (4th Cir. 1996) (*CAN I*); FEC v. Christian Action Network, Inc., 110 F.3d 1049 (4th Cir. 1997) (*CAN II*); Brownsburg Area Patrons Affecting Change v. Baldwin, 137 F.3d 503 (7th Cir. 1998); Iowa Right to Life Comm. v. Williams, 187 F.3d 963 (8th Cir. 1999); FEC v. Furgatch, 807 F.2d 857 (9th Cir. 1987); Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000); Fla. Right to Life v. Lamar, 238 F.3d 1288 (11th Cir. 2001) (affirming Fla. Right to Life v. Mortham, No. 98-770CIVORL19A, 1999 WL 33204523 (M.D. Fla. 1999)). FEC v. Colo. Republican Fed. Campaign Comm., 839 F. Supp. 1448 (D. Colo. 1993), *rev'd*, 59 F.3d 1015 (10th Cir. 1995), *vacated and remanded on other grounds*, 518 U.S. 604 (1996); FEC v. Christian Coalition, 52 F. Supp. 2d 45 (D.D.C. 1999); FEC v. NOW, 713 F. Supp. 428 (D.D.C. 1989); FEC v. AFSCME, 471 F. Supp. 315 (D.D.C. 1979); Kansans for Life, Inc. v. Gaede, 38 F. Supp. 2d 928 (D. Kan. 1999); Clifton v. FEC, 927 F. Supp. 493 (D. Me. 1996), *aff'd on other grounds*, 114 F.3d 1309 (1st Cir. 1997); Planned Parenthood Affiliates of Mich. v. Miller, 21 F. Supp. 2d 740 (E.D. Mich. 1998); Right to Life of Mich., Inc. v. Miller, 23 F. Supp. 2d 766 (W.D. Mich 1998); N.C. Right to Life, Inc. v. Leake, 108 F. Supp. 2d 498 (E.D.N.C. 2000); Right To Life of Dutchess County, Inc. v. FEC, 6 F. Supp. 2d 248 (S.D.N.Y. 1998); FEC v. Survival Educ. Fund, No. 98 Civ. 0347, 1994 WL 9658, (S.D.N.Y. Jan. 12, 1994), *aff'd in part and rev'd in part on other grounds*, 65 F.3d 285 (2d Cir. 1995); Oklahomans for Life v. Luton, No. CIV-00-1163, slip. op. (W.D. Okla. May 25, 2001); West Virginians For Life, Inc. v. Smith, 919 F. Supp. 954 (S.D. W. Va. 1996). *But cf. Wisconsin Realtors Ass'n v. Ponto*, No. 02-C-424-C, 2002 WL 31758663, at *b-8 (W.D. Wis. Dec. 11, 2002 (questioning whether the express advocacy test is "*the* definitive test" but noting that issue advocacy is plainly protected from regulators).

State cases recognizing constitutional protection of unfettered issue advocacy include: Alaska v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999); Conn. v. Proto, 526 A.2d 1297 (Conn. 1987); Doe v. Mortham, 708 So. 2d 929 (Fla. 1998); Brownsburg Area Patrons Affecting Change v. Baldwin, 714 N.E. 2d 135 (Ind. 1999); Klepper v. Christian Coalition, 259 A.D.2d 926 (N.Y. App. Div. 1999); Osterberg v. Peca, 12 S.W.3d 31 (Tex. 2000); Va. Soc'y for Human Life v. Caldwell, 500 S.E.2d 814 (Va. 1998); Wash. State Republican Party v. Wash. State Public Disclosure Comm'n, 4 P.3d 808 (Wash. 2000); Elections Bd. v. Wisconsin Mfr. & Commerce, 597 N.W.2d 721 (Wisc. 1999).

While the "defendants contend that '*Buckley* does not prohibit Congress from enacting narrowly tailored anti-corruption measures simply because they are not limited to communications containing express advocacy,'" *Henderson Memorandum Opinion* at 208 (quoting Gov't Br. at 148), all federal appellate courts addressing the issue have concluded that *Buckley* established express advocacy as the constitutional standard for regulable political speech. "These courts rely primarily on *Buckley*'s emphasis on (1) the need for a bright-line rule demarcating the government's authority to regulate speech and (2) the need to ensure that regulation does not impinge on protected issue advocacy." *Chamber of Commerce v. Moore*, 288 F.3d 187, 193 (5th Cir. 2002). *See*, e.g. *Virginia Soc'y for Human Life v. FEC*, 263 F.3d 379, 391-92 (4th Cir. 2001) (a regulation that "shifts the focus of the express advocacy determination away from the words themselves to the overall impressions of the hypothetical, reasonable listener or viewer . . . is precisely what *Buckley* warned against and prohibited"); *Citizens for Responsible Gov't State PAC v. Davidson*, 236 F.3d 1174, 1187, 1193-95 (10th Cir. 2000) (Statutes unconstitutional where they could not be narrowly construed to apply "only to expenditures for communications that contain explicit words advocating the election or defeat of a clearly identified candidate."); *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 386 (2d Cir. 2000) (finding all the parties "in essential agreement that the disclosure provisions . . . and reporting provisions . . . *are necessarily unconstitutional* unless they apply only to [communications] 'that expressly advocate the election or defeat of a clearly identified candidate.'" (emphasis added) (quoting *Buckley*, 424 U.S. at 80)); *Iowa Right to Life Comm. v. Williams*, 187 F.3d 963, 969-70 (8th Cir. 1999) (To be regulable, "the communication must contain express language of advocacy with an exhortation to elect or defeat a candidate," and "[t]he Supreme Court has made clear that a 'finding of "express advocacy" depend[s] upon the use of language such as 'vote for,' 'elect,' 'support,' etc." (quoting *MCFL*, 479 U.S. at 249 (quoting *Buckley*, 424 U.S. at 44, n. 52)) ; *Brownsburg Area Patrons Affecting Change v. Baldwin*, 137 F.3d 503, 506 (7th Cir. 1998) (The Court [in *Buckley*] recognized the important First Amendment interest in protecting political speech, including discussions surrounding

elections and candidates. . . . Because of the vital importance of protecting such speech, the *Buckley* Court articulated what has come to be known as the 'express advocacy' test . . . ."); *Faucher v. Fed. Election Comm'n*, 928 F.2d 468, 470 (1st Cir.1991) ("The Supreme Court, recognizing that such broad language . . . creates the potential for first amendment violations, sought to avoid future conflict by explicitly limiting the statute's prohibition to "express advocacy.")

Even the Ninth Circuit in *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), recognized the binding nature of the express advocacy test, although in dicta it discussed the test in ways that seemed broader than the Supreme Court's articulation of the test.[12] But even the so-called *Furgatch* test looks narrow and precise compared to broad and vague language of this Court's truncated definition of "electioneering communication," which does not even include *Furgatch*'s "clear plea for action." 807 F.2d at 864.

These other federal courts have understood, as did Judge Henderson, that "the express advocacy test is not simply the Supreme Court's interpretation of FECA but an irreducible constitutional minimum that no campaign finance restriction can diminish," *Henderson Memorandum Opinion* at 208 (citations omitted), and that the Supreme Court created the test to give breathing room to the First Amendment and "foresaw its costs and dismissed them as insufficient to justify overbroad restrictions on issue-driven speech at the core of the First Amendment." *Id.* at 210-211.

E. "Gratitude" and Access Are Not Compelling Interests to Regulate Issue Advocacy.

Judge Kollar-Kotelly believes there is a compelling interest in regulating issue advocacy that might "earn the candidate's gratitude" because it might create the appearance of corruption.

---

[12] *Cf. FEC v. Christian Action Network*, 110 F.3d 1049, 1054 (4th Cir. 1997) (*CAN II*) (*Furgatch* contains broad dicta, but the Fourth Circuit summarized the narrower *holding* of *Furgatch* as: "where political communications . . . include an explicit directive to voters to take some [unclear] course of action, . . . 'context' . . . may be considered in determining whether the action urged is the election or defeat of a . . . candidate . . . .").

Kollar-Kotelly Memorandum Opinion at 442; *see also id.* at 145, 279, 424. Judge Leon agrees. *Leon Memorandum Opinion* at 35, 60.

However, if "gratitude" creates the appearance of corruption. then surely the practice of vote swapping, a.k.a. logrolling, in Congress must be outlawed, which BCRA fails to address. But the Framers already thought of "gratitude," and it cuts the wrong way for Defendants. A *Federalist* paper dealt with the charge that Members of Congress would "be most likely to aim at the ambitious sacrifice of the many to the aggrandizement of the few." *The Federalist* No. 57 (Alexander Hamilton or James Madison) . But the author specifically listed "gratitude" as one of the reasons this would *not* happen.[13] "[W]hat is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of the society? . . . Duty, *gratitude*, interest, ambition itself, are the chords by which they will be bound to fidelity and sympathy with the great mass of the people." *Id.* (emphasis added). The Framers already considered gratitude and undue influence. They answered those "who profess the most flaming zeal for republican government, yet boldly impeach the fundamental principle of it," *id.*, with a confidence in "the vigilant . . . spirit which actuates the people of America" and the belief that legislators who would remain in office will be those who are grateful to the "great mass of the people" who put them in office. *Id.* The checks and balances are already built into "the genius of the whole system." *Id.* BCRA disrupts this genius.

Defendants and this Court similarly insist that corruption exists if people who support a candidate get "access" to the official. *See*, *e.g.*, *Leon Memorandum Opinion* at 60. But if that were true, then lobbying would be corrupting unless officials provide equal time for all views. And people get access for many reasons besides giving money. Celebrities from entertainment and sports, as well as the editorial boards of prominent news organizations, get special access to elected officials. And some of these people use non-monetary influence to promote candidates

---

[13]"[T]hey will enter into the public service under circumstances which cannot fail to produce a temporary affection at least to their constituents. There is in every breast a sensibility to marks of honor, of favor, of esteem, and of confidence, which, apart from all considerations of interest, is some pledge for *grateful* and benevolent return." *Id.* (emphasis added).

with endorsements, slanted movies and television programs, editorials, and so on.[14] If access is evil, then BCRA is unconstitutionally underinclusive, vitiating any asserted interest in preventing corruption. *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) (judicial candidate rules underinclusive).

The effect of Defendants' efforts at campaign finance reform, if sustained, would be to make our government non-representative. It would eliminate the accountability of elected officials to citizens who band together in expressive associations to amplify their voices. *Buckley*, 424 U.S. at 22. It would make elected officials like the unelected judiciary, with lifetime appointments, no ex parte access, and no discussion without all sides represented. But elected officials are not platonic guardians to govern the people. In our representative republic, they are supposed to be accountable to the people. *Minnesota Republican Party*, 536 U.S. at 805-06 (Ginsburg, J., dissenting, joined by Stevens, Souter, and Breyer, JJ.) ("Legislative and executive officials serve in representative capacities. They are agents of the people . . . ."). And that means the rough and tumble of the public's issue advocacy encroaching on legislators' carefully planned legislative agendas and campaign plans. And creating non-representative government is not a compelling interest justifying "electioneering communications."

* * *

In sum, Plaintiffs have a more than substantial chance of success on the merits concerning their contention that the truncated "electioneering communication" definition is unconstitutional. Given the strength of Plaintiffs likelihood of success on the merits, they would not need to make as strong a showing on the other elements for an injunction pending appeal. "These factors interrelate on a sliding scale and must be balanced against each other." *Serono Labs., Inc. v. Shalala,* 158 F.3d 1313, 1318 (D.C.Cir.1998); *CityFed Fin. Corp. v. Office of Thrift Supervision,* 58 F.3d 738, 747 (D.C. Cir.1995) ("If the arguments for one factor are particularly strong, [an

[14]There are "forms of 'association' that can be fully as corrupt as a contribution intended as a quid pro quo such as the eleventh-hour endorsement by a former rival, obtained for the promise of a federal appointment." *Buckley*, 424 U.S. at 246 (Burger, CJ, concurring in part and dissenting in part).

injunction] may issue even if the arguments in other areas are rather weak."). However, the remaining three factors also strongly favor granting Plaintiffs the requested relief.

II. Plaintiffs Will Suffer Irreparable Injury Without a Injunction Pending Appeal.

Plaintiff National Right to Life Committee, Inc. (NRLC) is in the midst of a congressional legislative battles to ban human cloning, to pass the Unborn Victims of Violence Act, and to pursue other legislative interests.[15] As part of these campaigns, NRLC plans to run broadcast advertisements in the congressional districts of key members of Congress, naming the members of congress, many or all of whom are candidates (i.e., have transacted $5,000 in "contributions" or "expenditures"), and could be viewed as attacking/opposing their positions on these legislative issues. The ads will be paid for with general corporate funds and will be similar to the AFL-CIO advertisement, "No Two Way," that Judge Leon found "not neutral" because "it attacks [the candidate's] position on the federal budget." *Leon Memorandum Opinion* at 92. Consequently, they will be "electioneering communications." Therefore, NRLC will not broadcast these communications unless it obtains the protection of the requested injunction pending appeal.

Absent the requested protection, NRLC will suffer irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Virginia v. American Bookseller's Ass'n Inc.*, 484 U.S. 383, 393 (1988) (self-censorship "[i]s a harm that can be realized even without actual prosecution"); *Elam Construction, Inc. v. Regional Transportation District,* 129 F.3d 1343, 1347 (10th Cir. 1997) ("chilling effect" on "First Amendment rights" "constitutes irreparable harm").

If the requested relief is not granted, NRLC will likely forever lose its opportunity to promote its position on these legislative interests through such broadcast advertisements. The present case is not yet in the hands of the Supreme Court, which normally ends its session in late

[15] *See*, *e.g.*, <http://www.capwiz.com/nrlc/issues/alert/?alertid=1366326&type=CO> (NRLC legislative action page urging contacts with legislators) (visited May 7, 2003).

June or early July and does not begin its regular session until October. Even if the Supreme Court hears this case (after time for briefing) prior to the end of this year, a decision is not likely to issue until well after the turn of the year, perhaps in February at the earliest. By that time, Congress may well have voted on these legislative issues removing forever NRLC's opportunity to influence that vote.

Similarly, Club for Growth, Inc. (CFG) has been running broadcast advertisements in support of President Bush's proposed tax cut. An advertisement that has been running in Ohio as recently as May 7, 2003, depicts Ohio Senator George Voinovich and has the following text:

> President Kennedy cut income taxes and the economy soared.
> President Reagan cut taxes more, and created fifteen million new jobs.
> President Bush knows tax cuts create jobs, and that helps balance the budget.
> But senator George Voinovich opposes the president.
> Ohio has lost thousands of jobs, and president Bush has a plan to help.
> Tell George Voinovich to support the Kennedy, Reagan, Bush tax policy that will bring jobs back to Ohio.[16]

Senator Voinovich is presently a candidate for federal office.[17] While CFG believes that their advertisement is "neutral" and lawful, it depicts a federal candidate and could be considered, by someone, as not "neutral" under Judge Leon's criterion for "electioneering communication," for the reasons just discussed *supra*, and so could be considered as "attacking or promoting" a candidate under the vague definition. CFG plans to continue running these advertisements but fears that it will have to defend against unwarranted complaints and FEC investigations against it under the truncated backup definition of "electioneering communication." Absent the relief presently requested, CFG is presently at risk but chooses to continue so as not to forever lose this opportunity to affect the public policy debate on these matters.

---

[16] *See* <http://clubforgrowth.org/advertising/presidents-ohio-script.php> (visited May 7, 2003) (containing text of advertisement and permitting viewing of the video clip).

[17] *See* <http://herndon1.sdrdc.com/cgi-bin-cancomsrs/> and <http://herndon1.sdrdc.com/cgi-bin/fecimg/?C00309419> (visited May 7, 2003) (FEC websites showing recent contributions received by Sen. Voinovich).

III. An Injunction Will Not Cause Substantial Harm to Other Parties.

By contrast, if the requested protection is extended to Plaintiffs, no other party will suffer any constitutionally cognizable harm. The status quo will simply be maintained while all await the Supreme Court's definitive resolution of the issues at stake. The FEC will suffer no cognizable harm if Plaintiffs are free to engage in grassroots lobbying and the FEC is not able to enforce the FECA with the truncated backup definition of "electioneering communication." Nor will the Intervenors suffer any cognizable irreparable harm if Plaintiffs are permitted to engage in opposing human cloning or promoting a tax cut.

IV. An Injunction Pending Appeal Is in the Public Interest.

An injunction pending appeal is appropriate to protect First Amendment rights to political speech. *See Homans v. City of Albuquerque,* 264 F.3d 1240, 1243-45 (10th Cir. 2001) (enjoining campaign spending limit pending appeal after district court held it was constitutional). Once substantial likelihood of success on the merits is established, "the public interest is better served by following binding Supreme Court precedent and protecting the core First Amendment right of political expression." *Homans,* 264 F.3d at 1244. "The public interest favors the assertion of First Amendment rights and we believe this outweighs the interests served by regulating the kind of speech at issue in this case." *Kansans for Life v. Gaede*, 38 F. Supp. 2d 928, 938 (D. Kan. 1999) (citing *Elam Construction, Inc. v. Regional Transportation District,* 129 F.3d 1343, 1347 (10th Cir.1997)).

The public interest will clearly be advanced if the protections of the First Amendment are construed broadly "'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Buckley v. Valeo,* 424 U.S. 1, 14 (1976) (quoting, *Roth v. United States,* 354 U.S. 476, 484, (1957))."'[D]ebate on public issues should be uninhibited, robust, and wide-open.'" *Id.* (quoting *New York Times Co. v. Sullivan,* 376 U.S. 254, 270 (1964)).

CONCLUSION

Plaintiffs have meet their burden of proof on all elements of the standard for an injunction pending appeal. Therefore, this Court should enjoin the truncated backup definition of "electioneering communication" pending the final determination of the merits of this case by the United States Supreme Court.

Respectfully submitted,

Alan P. Dye (Bar No. 215319)
Heidi K. Abegg (Bar No. 463935)
WEBSTER, CHAMBERLAIN & BEAN
1747 Pennsylvania Ave., N.W.
Suite 1000
Washington, D.C. 20006
(202) 785-9500
(202) 835-0243 facsimile

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

Certificate of Service

This is to certify that on May 8, 2003, I caused a copy of the foregoing to be served by facsimile and first-class mail upon the following persons:

Kenneth W. Starr
Kirkland & Ellis
655 15th Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 879-5130 (Telephone)
(202) 879-5200 (Fax)

Valle Simms Dutcher
Southeastern Legal Foundation, Inc.
3340 Peachtree Road, N.E.
Suite 3515
Atlanta, Georgia 30326
(404) 365-8500 (Telephone)
(404) 365-0017 (Fax) [no fax by request]

Mark J. Lopez
American Civil Liberties Union
125 Broad Street
New York, New York 10004
(212) 549-2608 (Telephone)
(212) 549-2651 (Fax) [no fax by request]

G. Hunter Bates
1215 Cliffwood Drive
Goshen, Kentucky 40026
(502) 216-9265 (Telephone)
(502) 473-8338 (Fax) [no fax by request]

Charles J. Cooper
Cooper & Kirk, PLLC
1500 K Street, N.W.
Suite 200
Washington, D.C. 20005
(202) 220-9660 (Telephone)
(202) 220-9601 (Fax)

James Matthew Henderson Sr.
The American Center for Law and Justice
205 Third Street, S.E.
Washington, D.C. 20003
(202) 546-8890 (Telephone)
(703) 837-8510(Fax)

Jan Witold Baran
Wiley, Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7330 (Telephone)
(202) 719-7049 (Fax) [no fax by request]

Floyd Abrams
Cahill, Gordon & Reindel
80 Pine Street, Room 1914
New York, New York 10005-1702
(212) 701-3621 (Telephone)
(212) 269-5420 (Fax)

Laurence E. Gold
AFL-CIO
815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5130 (Telephone)
(202) 637-5323 (Fax) [no fax by request]

William J. Olson
William J. Olson, P.C.
8180 Greensboro Drive
Suite 1070
McLean, VA 22102-3860
(703) 356-5070 (Telephone)
(703) 356-5085 (Fax) [no fax by request]

Bobby R. Burchfield
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-5350 (Telephone)
(202) 778-5350 (Fax) [no fax by request]

Thomas W. Kirby
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7062 (Telephone)
(202) 719-7049 (Fax) [no fax by request]

Joseph E. Sandler
Sandler, Reiff & Young, P.C.
50 E Street, S.E.
Suite 300
Washington, D.C. 20003
(202) 479-1111 (Telephone)
(202) 479-1115 (Fax) [no fax by request]

John C. Bonifaz
National Voting Rights Institute
Suite 500
27 School Street
Boston, MA 02108
(617) 624-3900 (Telephone)
(617) 624-3911 (Fax) [no fax by request]

Frederick A. O. Schwartz, Jr.
Brennan Center for Justice
12th Floor
161 Avenue of the Americas
New York, NY 10013
212-998-6730 (Telephone)
212-998-4341 (Fax) [no fax by request]

Sherri L. Wyatt
Sherri L. Wyatt, PLLC
Suite 300
1017 12th Street, N.W.
Washington, D.C. 20005
(202) 216-9850 (Telephone)
(202) 216-9360 (Fax) [no fax by request]

Stephen E. Hershkowitz
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20436
(202) 694-1650 (Telephone)
(202) 219-0260 (Fax)

James J. Gilligan
Trial Attorney
U.S. Department of Justice, Civil Division
20 Massachusetts Ave., NW, Room 7136
Washington, D.C. 20001
(202) 514-3358 (Telephone)
(202) 616-8470 (Fax)

Randolph D. Moss
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6640 (Telephone)
(202) 663-6363 (Fax)

Also, on the same date, I caused a copy of the foregoing document to be served upon the following electronic addresses:

adye@wc-b.com
andrea.gacki@usdoj.gov
awyler@law.stanford.edu
bburchfield@cov.com
bginsberg@pattonboggs.com
bmarkley@cahill.com
bonnie@nvri.org
bw@nvri.org
cbell@bmhlaw.com
CBurns@wrf.com
ccooper@cooperkirk.com
cmitchell@foleylaw.com
cmmay@aclj-dc.org
david.wilson@haledorr.com
deborah@olsonhagel.com
Douglas.Letter@usdoj.gov
dshaffer@cooperkirk.com
dthompson@cooperkirk.com
edward_warren@dc.kirkland.com
ekuwana@pattonboggs.com
fabrams@cahill.com
forecast22@pinn.net
fritz.schwarz@nyu.edu
grant_dixton@dc.kirkland.com
habegg@wc-b.com
hhume@cooperkirk.com
hmacdougald@wcsr.com
hunter.bates@mcconnell02.com
james.gilligan@usdoj.gov
jamundson@nam.org
jbaran@wrf.com
jbonifaz@nvri.org
jboppjr@aol.com
jboppjr@aol.com
jgora@brooklaw.edu
JMHenderson@aclj-dc.org
johnsmiles@hotmail.com
joshua.rosenkranz@nyu.edu
jtimmerman@nab.org
kannon_shanmugam@dc.kirkland.com
KBailey@wilmer.com
kenneth_starr@dc.kirkland.com
lance@olsonhagel.com
lance@olsonhagel.com
LAWLLH@langate.gsu.edu
ldanetz@nvri.org
lgold@aflcio.org
lgoodman@wrf.com
lhogue@gsu.edu
litigation@fec.gov
lweinberg@afscme.org
lwmurphy@aol.com
lwmurphy@dcaclu.org
macarvin@jonesday.com
marc.kesselman@usdoj.gov
Michael.Raab@usdoj.gov
MLeffel@wilmer.com
MLOPEZ@aclu.org
mmcgill@cooperkirk.com
mrenaud@wrf.com
mtrister@ltsrlaw.com
r.wolf@mooreandlee.com
randy.evans@agg.com
Rbader@fec.gov
rcoleson@bopplaw.com
reiff@sandlerreiff.com
rkelner@cov.com
rlenhard@afscme.org
Rmoss@wilmer.com
rupa.bhattacharyya@usdoj.gov
Rwitten@wilmer.com
Sandler@sandlerreiff.com
sbokat@uschamber.com
sbuckley@cahill.com
serrin.turner@usdoj.gov
Shannen.Coffin@usdoj.gov
sherrissima@juno.com
Shershkowitz@fec.gov
SSHAPIRO@aclu.org
sullivan@law.stanford.edu
Swaxman@wilmer.com
tbarnett@cov.com
terry.henry@usdoj.gov
Theodore.Hirt@usdoj.gov
tituslawfirm@aol.com
tkirby@wrf.com
tmarzen@bopplaw.com
vsdutcher@southeasternlegal.org
wjo@mindspring.com
young@sandlerreiff.com

Alan P. Dye (Bar No. 215319)
Heidi K. Abegg (Bar No. 463935)
WEBSTER, CHAMBERLAIN & BEAN
1747 Pennsylvania Ave., N.W.
Suite 1000
Washington, D.C. 20006
(202) 785-9500
(202) 835-0243 facsimile