IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, *et al.*, Defendants.	**CONSOLIDATED ACTIONS** **Civ. No. 02-0582** **(CKK, KLH, RLL)**
NATIONAL RIFLE ASSOCIATION, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, *et al.*, Defendants.	**Civ. No. 02-0581** **(CKK, KLH, RLL)**

PLAINTIFFS NATIONAL RIFLE ASSOCIATION AND NATIONAL RIFLE ASSOCIATION POLITICAL VICTORY FUND'S MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES FOR ADMNISTRATIVE STAY, PENDING ADJUDICATION OF THEIR MOTION FOR STAY UNDER RULE 62(C)

Plaintiffs National Rifle Association ("NRA") and NRA Political Victory Fund ("NRA PVF") respectfully move for an administrative stay of this Court's decision with respect to Title II's definition of an "electioneering communication," pending the Court's consideration of Plaintiffs' pending motion for a stay under FED. R. CIV. P. 62(c).

Plaintiffs are in receipt of this Court's order prescribing an expedited briefing schedule for any and all stay applications that may be filed in the above-referenced case. The schedule

indicates that briefing will be completed at noon on Wednesday, May 14; Plaintiffs understand that to be the earliest time at which this Court would address the NRA's pending motion to stay the Court's judgment with respect to the constitutionality of Title II's definition of an "electioneering communication."

Plaintiffs do not gainsay the interests of judicial economy and practical administration that are at work in a case of this complexity and magnitude. And we recognize and appreciate that the briefing schedule presented by the Court is extremely expedited. But Plaintiffs, with all respect to the Court, cannot abide even for a few days irreparable injury to their rights under the First Amendment. As Wayne LaPierre, the NRA's Executive Vice President, stated in his declaration of yesterday, May 7, it is "imperative" that the NRA "take[] its message to America's airways *immediately*" in support of legislation that is now pending before Congress, and the NRA intends to broadcast its radio spots "as soon as practicable." LaPierre Decl. at 4, ¶¶ 8-10.

As detailed in our stay papers, this Court's decision has effectively criminalized political speech about pending federal legislation that the NRA seeks to broadcast *now* and the NRA has demonstrated that it stands to suffer irreparable injury *every moment* that this Court's decision is not stayed. Our research reveals no instance in American history in which a federal court's order effectively restrained political speech concerning a legislative issue pending before Congress. Nor can we conceive that any of the Defendants will have a valid basis for opposing the NRA's pending stay request, which simply asks that Title II's definition of "electioneering communication" -- the status quo ante -- be restored as Congress initially wrote and passed it, pending resolution of the case in the Supreme Court.[1] In this circumstance, we respectfully submit that there

[1] *Cf.* Richard A. Oppel, Jr., *N.R.A., Citing Free Speech, Asks Stay of Campaign Ruling*, N.Y. TIMES, May 8, 2003, at A32 ("Even Senator Russell D. Feingold, a Wisconsin Democrat who has one of the law's authors, says he has doubts about" the Court's definition of "electioneering

is no justification for awaiting two additional rounds of briefing before freeing the NRA to broadcast its political message. Indeed, given the irreparable injury posed to the NRA and the compelling First Amendment interests severely imperiled by this Court's interpretation of "electioneering communication," the discrete relief requested by the NRA is comparable to a request for a temporary restraining order,[2] which could be granted *ex parte*. *See* FED. R. CIV. P. 65(b).

Accordingly, this Court should preliminarily grant an administrative stay of the Court's Title II ruling pending briefing and final adjudication of all stay requests. By entering such a temporary stay, this Court would be following established procedure in this Court and in the D.C. Circuit. *See, e.g.*, *In re Verizon Internet Services, Inc. (Subpoena Enforcement Matter)*, No. 03-MS-0040, 2003 U.S. Dist. LEXIS 6778, at *3 n.2 (D.D.C. Apr. 14, 2003) (entering "temporary stay of 14 days" to "enable [a party] to seek a stay in the Court of Appeals."). The D.C. Circuit's Handbook of Practice and Internal Procedures, at 33, while acknowledging that the panel "does not normally grant the relief requested before receiving a response," acknowledges that "it may enter an administrative stay of very short duration before receiving a response to give the Court more time to consider the matter."[3] Where, as here, delay in the resolution of a stay would

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communications"); Jim Drinkard and Joan Biskupic, *Ruling Makes a Mess of Parties' Planning for Next Election*, May 8, 2003, USA TODAY, at 5A (quoting "Don Simon of Common Cause, which backed the law" as saying: "We got more from the Court than we ever could have gotten from Congress").

[2] *See, e.g., Francis v. District of Columbia Armory Bd.*, No. 92-0077, 1992 U.S. Dist. LEXIS 11352, at * 2 (D.D.C. July 31, 1992) (referring to court's grant of temporary restraining order in First Amendment context).

[3] *See also United States v. Judicial Watch, Inc.*, No. 03-5019, 2003 U.S. App. LEXIS 2412, at *2 (unpub. op.) (D.C. Cir. Feb. 7, 2003) (entering administrative stay of district court's order pending further consideration by the court of motion for stay); *In re Sealed Case No. 99-3091* (Office of Independent Counsel Contempt Proceeding), 192 F.3d 995 (D.C. Cir. 1999) (lifting administrative stay entered to consider motion for summary reversal or, in the alternative, stay pending appeal and granting motion for summary reversal).

itself result in the irreparable deprivation of a constitutional right and thus irreparable injury, a temporary stay is urgently needed and plainly appropriate.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request immediate entry of an administrative stay pending resolution of its motion for stay.

Respectfully submitted,

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Cleta Mitchell
FOLEY & LARDNER
(D.C. Bar No. 433386)
3000 K Street, N.W.
Suite 500
Washington, D.C. 20007
(202) 295-4081

Charles J. Cooper
(D.C. Bar No. 248070)
David H. Thompson
(D.C. Bar No. 450503)
Hamish P.M. Hume
(D.C. Bar No. 449914)
Derek L. Shaffer
(D.C. Bar No. 478775)
COOPER & KIRK, PLLC
1500 K Street, N.W.
Suite 200
Washington, D.C. 20005
(202) 220-9600

Brian S. Koukoutchos
COOPER & KIRK, PLLC
28 Eagle Trace
Mandeville, LA 70471
(985) 626-5052

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