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June 10, 2003

Hon. William K. Suter
Clerk of the Court
United States Supreme Court
1 First Steet, N.E.
Washington, DC 20543

Re: *National Right to Life Committee, et al. v. FEC, et al.*, No. 02-1733

Dear Mr. Suter:

Pursuant to the Court's Order dated June 5, 2003, and the accompanying memorandum from the Clerk's office, we hereby respond on behalf of Appellants in No. 02-1733 ("JMC¹ Plaintiffs"). JMC Plaintiffs are the most diverse, unique group of plaintiffs-appellants in the various challenges to the Bipartisan Campaign Reform Act of 2002 ("BCRA"). They include a national political party, several issue-advocacy nonprofit corporations, a political action committee, a federal officeholder and candidate, a state officeholder and candidate, and a minor. Consequently, as set out in their *Jurisdictional Statement*, they have standing to brief several issues.

JMC Plaintiffs strongly support coordinated briefing to reduce the volume of briefing in this case. They have already coordinated joint briefing with the plaintiffs-appellees in No. 02-1676 (*FEC, et al. v. McConnell, et al.*) in filing a *Joint Motion to Affirm Summarily* on the issue of minors' rights to contribute to candidates and political parties and anticipate further coordination of briefing on the minor's issue if summary affirmance is not granted.

JMC Plaintiff Libertarian National Committee has agreed to a joint brief with all of the national, state, and local political party plaintiffs, as set out in the letter submitted to the Clerk by Bobby R. Burchfield. The Libertarian National Committee adopts Mr. Burchfield's proposal for a single brief of 100 pages for the political parties to brief the described Title I issues.

The JMC Plaintiffs also participated in a conference call on coordinated briefing with allied counsel on Friday, June 6, and followed up with an immediate email to all the same counsel making specific proposals for coordinating briefing. In these communications, JMC Plaintiffs expressed their

¹The James Madison Center for Free Speech ("JMC") represents the following Plaintiffs-Appellants: U.S. Representative Mike Pence, Alabama Attorney General Bill Pryor, Libertarian National Committee, Inc., Club for Growth, Inc., Indiana Family Institute, Inc., National Right to Life Committee, Inc., National Right to Life Educational Trust Fund, National Right to Life Political Action Committee, and Barret Austin O'Brock.

desire to brief the express advocacy issue regarding the “electioneering communication” provision and their interest in joining briefing by others on the “advance notice” requirements (that contracts for broadcast time be treated as if a broadcast communication had already occurred). Some counsel have responded, but not in a fashion that would presently permit a single coordinated proposal to the Court, other than the agreements for coordinated briefing reported above. Because plaintiffs-appellants’ counsel had been unable to agree on a significant amount of coordination, each plaintiff group make a separate submission to the Court indicating its position.

Therefore, JMC Plaintiffs advise the Court that they will be filing an opening brief of 50 pages and a reply brief of up to 20 pages, as permitted by Rule 33. To the extent they are able to later identify briefing they can join or coordinate with on common issues, JMC Plaintiffs will make every effort to do so.

In keeping with the request to identify areas where they have common and unique interests in topics, JMC Plaintiffs annotate their “questions presented” as follows:

1. Whether the prohibition of § 101 of the Bipartisan Campaign Reform Act of 2002 (BCRA) on the solicitation, receipt, redirection, or use of “soft money” by any national political party for any communication that “promotes or supports . . . or attacks or opposes” a federal candidate, violates the First and Fifth Amendment and principles of federalism.

Comment: JMC Plaintiff Libertarian National Committee shares an interest in this issue with other political parties and has agreed to be on a joint brief with them on Title I issues.

2. Whether the prohibition on federal officeholders and candidates from soliciting, receiving, directing, transferring, or spending “soft money” contained in BCRA § 101 violates the First Amendment.

Comment: JMC Plaintiff U.S. Rep. Mike Pence shares this issue with other federal officeholders and candidates, but he and Indiana Family Institute, Inc. have a unique fact pattern of activity that they need to brief alone.

3. Whether the prohibition on state officeholders and candidates from soliciting, receiving, directing, transferring, or spending “soft money” in connection with an election for federal office in BCRA §101 violates the First Amendment.

Comment: JMC Appellant Bill Pryor is unique as the sole state officeholder and state candidate plaintiff and needs to brief this issue alone.

4. Whether the backup “electioneering communication” definition at BCRA § 201, or its construction by the district court, violates the First Amendment.

Comment: JMC Plaintiffs National Right to Life Committee and the other non-profi, issue-advocacy groups have this issue in common with some other appellants. We have proposed allocation of some of the issues common to such plaintiffs in order to reduce the overall briefing, as reported above. No agreement, however, has been reached.

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5. Whether the requirements that “disbursements” and “expenditures” be reported as occurring when contracted for, rather than when made, BCRA §§ 201 and 212, are justiciable and violate the First Amendment.

Comment: JMC Plaintiffs National Right to Life Committee and the other non-profit, issue-advocacy groups, as well as National Right to Life PAC, have this issue in common with some other plaintiffs-appellants. As reported above, we have proposed that we join the brief of another on this issue. No agreement, however, has been reached.

6. Whether the District Court injunction should extend to activities outside the District of Columbia.

Comment: This issue was only raised by JMC Plaintiffs.

7. Whether BCRA § 403(b), permitting members of Congress to intervene, and the permitted intervention by Intervenor-Defendants without regard to whether they have Article III standing, violates the Constitution.

Comment: This issue was only raised by JMC Plaintiffs.

Finally, JMC Plaintiffs believe three principles should govern briefing:

- (a) Plaintiff groups should be authorized to cede pages to another plaintiff group when they are briefing common issues to facilitate coordinated briefing;
- (b) Common briefing sections should be clearly identified in the briefs, indicating who is joining what briefing; and
- (c) JMC Plaintiffs have no objection to any plaintiff group briefing issues as *amicus curiae* but would object to any lessening of its page limits as a result of a request by any other plaintiff group for more pages to brief issues for which no plaintiff of that group has standing to challenge the briefed provision.

Sincerely,

BOPP, COLESON & BOSTROM

/s/

James Bopp, Jr.

c: all counsel of record by email