

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL RIFLE ASSOCIATION OF)
AMERICA)
11250 Waples Way Road)
Fairfax, VA 22030)

and)

NATIONAL RIFLE ASSOCIATION)
POLITICAL VICTORY FUND,)
11250 Waples Way Road)
Fairfax, VA 22030)

Plaintiffs,)

vs.)

FEDERAL ELECTION COMMISSION;)
DAVID W. MASON, KARL J.)
SANDSTROM, DANNY L. MCDONALD,)
BRADLEY A. SMITH, SCOTT E. THOMAS,)
and DARRYL R. WOLD, in their official)
capacities as Commissioners of the FEC,)
999 E. Street, N.W.)
Washington, D.C. 20463)

and)

JOHN ASHCROFT, in his official capacity as)
Attorney General of the United States,)
U.S. DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530-0001,)

Defendants.)

COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE RELIEF

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. The Bill of Rights begins by placing a simple, but fundamental, restriction on the power of the federal government: “Congress shall make no law . . . abridging the freedom of speech.” This bedrock liberty was designed to ensure full and free political debate that is the hallmark of a democratic form of government. At its core, it protects the rights of citizens to engage in political discourse. And it protects the rights of citizens to associate to promote shared political principles and to engage in collective speech. Since the founding of the republic, much of that speech has addressed important political issues in the context of elections to public office.

2. The Bipartisan Campaign Reform Act (“BCRA”) eviscerates the core protections of the First Amendment by prohibiting, on pain of criminal punishment, political speech. Specifically, BCRA forbids corporations and labor unions from engaging in any speech that refers to a candidate for federal office within 30 days of a primary or within 60 days of a general election. This sweeping prohibition criminalizes any such communication. The law thus silences nonprofit corporations on issues of fundamental importance to their members. The only exception to this gag order is bestowed upon media corporations, such as the Disney Corporation, Viacom, and the New York Times Company, who will continue to be allowed to voice their political beliefs in the time leading up to elections.

3. The National Rifle Association (“NRA”) is devoted to a singular mission: to preserve and protect the right to keep and bear arms, as guaranteed by the Second Amendment to the United States Constitution. In defense of this fundamental constitutional right, the NRA has availed itself of its equally fundamental constitutional freedom to speak and to champion its members’ Second Amendment rights. BCRA trammels upon the NRA’s and its members’

constitutional rights in several distinct ways. First, it contravenes the letter and spirit of the First Amendment by preventing the NRA from voicing its opinion on issues relating to the right to keep and bear arms in the context of election contests. This criminalization of core political speech is anathema to the First Amendment. Second, the scope of the prohibition, though sweeping, is ill-defined, and this inherent vagueness in the statute, coupled with the threat of severe civil and criminal penalties, will chill the speech of the NRA. Third, the statute discriminates among speakers: it grants the media corporations the right to voice their views on all political issues, including issues related to the Second Amendment, while silencing the NRA. Fourth, the statute infringes on the associational rights of the NRA's members by requiring invasive public disclosure of certain contributors. And finally, the law seeks to isolate the NRA from its elected representatives, including members of Congress who sit on the NRA's board, by adopting a sweeping definition of prohibited "coordination."

4. In short, the statute is the archetype of laws that the First Amendment was designed to prevent. If the First Amendment's guarantee has any force, then surely this statute's prohibition on political speech by citizen organizations such as the NRA must be invalid.

NATURE OF THIS ACTION

5. This is an action for declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act 2 U.S.C. §§ 431 *et seq.*, (hereinafter referred to as "FECA") as amended by BCRA, and against their enforcement by the Defendants, on the grounds that these challenged provisions deprive the Plaintiffs of freedom of speech and association, of the right to petition the government for redress of grievances, and of the rights to equal protection and due process under the laws, all in violation of the First and Fifth Amendments to the Constitution of the United States.

6. On March 27, 2002, President George W. Bush signed BCRA into law, thereby enacting a comprehensive revision and enlargement of the nation's campaign finance regulatory regime. This revision and enlargement seeks to implement sweeping new restrictions on the rights of corporations, individuals, and other entities to participate in the political process and to exercise their constitutional right to express their views on political matters. Its restrictions seek to regulate speech that is at the very heart of the protections provided by the First Amendment to the Constitution.

7. For this reason, and for the reasons set forth in the allegations below, Plaintiffs seek declaratory relief invalidating the challenged provisions of both BCRA and FECA, and enjoining the Defendants from enforcing any and all unconstitutional provisions.

PARTIES TO THIS ACTION

8. Plaintiff NATIONAL RIFLE ASSOCIATION OF AMERICA (hereinafter "NRA") is a not-for-profit, non-stock membership corporation within the meaning of 26 U.S.C. § 501(c)(4), organized under the laws of the State of New York, with its principal place of business in Fairfax, Virginia. It is a nonpartisan organization, dedicated primarily to defending the rights guaranteed under the Second Amendment to the Constitution and having, as a principal function, the dissemination of information concerning such rights. Plaintiff NRA has approximately four million members and represents the views of its members on legislative and public policy issues before federal, state, and local officials, and the general public. This action is brought by the NRA on its own behalf and on behalf of its individual members.

9. Plaintiff NATIONAL RIFLE ASSOCIATION POLITICAL VICTORY FUND (hereinafter "VICTORY FUND") is a connected political committee within the meaning of 2 U.S.C. § 431(4) and 26 U.S.C. § 527(e)(1) and is a separate segregated fund of Plaintiff NRA

pursuant to 2 U.S.C. § 441b(b). Plaintiff VICTORY FUND is independent of the two major political parties and of any other political party. Plaintiff VICTORY FUND accepts “contributions” exclusively from members of Plaintiff NRA and makes “expenditures,” as those terms are defined in 2 U.S.C. § 431(9), and interpreted by the United States Supreme Court. Such expenditures, including contributions to candidates, are made for the purposes of furthering the NRA’s and its members’ views on the Second Amendment right to keep and bear arms and related issues of public importance; and of promoting candidates for federal office who support the NRA’s positions and opposing candidates for federal office who oppose the NRA’s positions. This action is brought by the VICTORY FUND on its own behalf and on behalf of its contributors.

10. Defendant FEDERAL ELECTION COMMISSION (hereinafter “FEC”) is established by 2 U.S.C. § 437(c) and is an independent agency with regulatory authority over federal elections and campaigns of candidates for federal office. The duties of the FEC include the repository, review, and audit of disclosures of campaign finance information by regulated entities, the enforcement of the provisions of FECA, as amended by BCRA, and oversight of the public funding of Presidential elections. The FEC has exclusive jurisdiction with respect to civil enforcement of FECA.

11. Defendant DAVID M. MASON is a Commissioner and the Chairman of the FEC. As a Commissioner, he is responsible for administering and enforcing FECA, as amended by BCRA. He is sued in his official capacity.

12. Defendant KARL J. SANDSTROM is a Commissioner and the Vice Chairman of the FEC. As a Commissioner, he is responsible for administering and enforcing the Federal Election Campaign Act, as amended by BCRA. He is sued in his official capacity.

13. Defendant DANNY L. McDONALD is a Commissioner of the FEC. As a Commissioner, he is responsible for administering and enforcing the Federal Election Campaign Act, as amended by BCRA. He is sued in his official capacity.

14. Defendant BRADLEY A. SMITH is a Commissioner of the FEC. As a Commissioner, he is responsible for administering and enforcing the Federal Election Campaign Act, as amended by BCRA. He is sued in his official capacity.

15. Defendant SCOTT E. THOMAS is a Commissioner of the FEC. As a Commissioner, he is responsible for administering and enforcing the Federal Election Campaign Act, as amended by BCRA. He is sued in his official capacity.

16. Defendant DARRYL R. WOLD is a Commissioner of the FEC. As a Commissioner, he is responsible for administering and enforcing the Federal Election Campaign Act, as amended by BCRA. He is sued in his official capacity.

17. Defendant JOHN ASHCROFT is the Attorney General of the United States. As such, he is charged with the enforcement of criminal sanctions against violations of the United States Code. He is also empowered to receive from the Defendant FEDERAL ELECTION COMMISSION and/or its supervisory officers notifications of apparent violations of FECA and BCRA, and at the request of the FEDERAL ELECTION COMMISSION and/or its supervisory officers, to institute civil actions for relief or any other appropriate order. In any case in which the FEDERAL ELECTION COMMISSION refers an apparent violation to Defendant ASHCROFT, he must report to the Commission with respect to any action taken by him regarding the apparent violation.

JURISDICTION AND VENUE

18. This Court has jurisdiction under 28 U.S.C. §§ 1331, 2201, and 2202, and § 403 of BCRA.

19. The NRA requests that a three-judge court be convened pursuant to 28 U.S.C. § 2284, and § 403 of BCRA.

20. Venue in this Court is proper pursuant to § 403 of BCRA.

FACTUAL BASIS FOR CLAIMS

21. FECA contains a broad and complex array of provisions designed to limit the extent to which individuals, corporations, labor unions, and other entities may expend financial resources in support of candidates for federal office. Among other things, these provisions effectively prohibit corporations from “mak[ing] a contribution or expenditure in connection with any election to any political office.” The prohibition on corporate campaign expenditures has been interpreted to prohibit corporations from funding “express advocacy”; that is, funding any public communication that expressly advocates the election or defeat of a clearly identified candidate for a federal office.

22. As amended by BCRA, FECA now prohibits an even broader category of political speech. Specifically, the new amendments prohibit corporations from engaging in any “electioneering communication”; that is, any broadcast, satellite, or cable communication that (i) “refers” to a clearly identified candidate for federal office, (ii) is made within 60 days before a general election or 30 days before a primary election, and (iii) is targeted to the relevant electorate. This prohibition applies even if the “electioneering communication” at issue is designed solely to advocate a particular position on a particular public policy issue, and does not expressly advocate the election or defeat of any candidate for election to a Federal office.

23. As set forth in detail below, these and other restrictions contained in FECA, as amended by BCRA, violate the constitutional rights of Plaintiffs to engage in free speech, to associate freely with others of like mind for political and other purposes, to assemble freely and without interference from the government, to petition the government for redress of grievances, and to equal protection and due process under the law.

Regulation of Political Contributions

24. FECA restricts the amount of money an individual can contribute to a political candidate, a political party, or a political committee in any calendar year, and also provides an annual limit for all such contributions.

25. FECA prohibits corporations from contributing any money at all to a political candidate, a political party, or a political committee. Specifically, it provides: “It is unlawful . . . for any corporation . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for.”

26. FECA provides that a corporation may establish a “separate segregated fund” that may make political contributions, subject to specified limitations.

Regulation of Expenditures for Political Speech

27. FECA prohibits the NRA and other corporations from making an expenditure “in connection with any election” for federal office. The prohibition on corporate campaign expenditures has been interpreted to prohibit corporations from funding express advocacy. The prohibition thus applies to prevent corporations from funding political advertisements and other public communications that expressly advocate the election or defeat of a clearly identified candidate for federal office.

28. Before the enactment of BCRA, FECA did not restrict the amounts that corporations could spend on political advertising or communications that did not expressly advocate the election or defeat of a political candidate. Thus, FECA previously permitted the NRA and other corporations to fund so-called “issue advocacy” communications; that is, communications advocating particular positions on particular public policy issues. The NRA and other corporations could expend money on issue advocacy even if the communications also referenced elected federal officeholders or candidates for federal office.

29. After BCRA, the ability of the NRA to engage in issue advocacy is substantially curtailed.

Regulation of Electioneering Communications

30. BCRA expands the category of expenditures that the NRA and other corporations are prohibited from making in connection with a federal election. Specifically, BCRA now prohibits corporations from making expenditures for any communication that simply “refers to” a clearly identified federal candidate, even though it does not expressly advocate the election or defeat of the candidate.

31. BCRA prohibits expenditures on any “applicable electioneering communication” by any entity described in § 441b(a) of FECA, which includes all corporations. “Electioneering communications” is in turn broadly defined to cover: “any broadcast, satellite, or cable communication, which (I) refers to a clearly identified candidate for Federal office, (II) is made within (aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and (III) in the case of a communication which refers to a candidate for an office other than

President or Vice President, is targeted to the relevant electorate.” In the case of a congressional or senatorial candidate, a communication is targeted to the relevant electorate if the communication can be received by 50,000 or more persons in either the district a candidate for the House of Representatives seeks to represent, or in the State a candidate for Senator seeks to represent.

32. In the case of an election for President and Vice President, BCRA prohibits the NRA from making such an “electioneering communication” regardless of the size or geographic location of the audience receiving the communication.

33. BCRA thus prohibits the NRA and other corporations from funding any broadcast, cable, or satellite communications that refer to a federal candidate within 60 days of a general election or 30 days of a primary election or a convention or caucus of a political party that has authority to nominate a candidate.

34. BCRA also contains an alternative definition of “electioneering communication” that applies in the event that the definition set forth above “is held to be constitutionally insufficient.” The alternative definition of an electioneering communication is “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.”

Exception for Print Media

35. As alleged above, BCRA (under either of its two definitions of electioneering communications) limits its prohibition on electioneering communications to “broadcast, cable,

and satellite communications,” and does not extend its prohibition to such communications made through any other medium, including the print media and written publications of any kind.

36. Thus, the NRA is not prohibited from funding a communication made through the print media that would otherwise qualify as an electioneering communication.

37. For example, under BCRA, the NRA is permitted to pay for a full-page print advertisement that refers to a clearly identified candidate (but does not expressly advocate any specific election outcome) within 60 days of a general or 30 days of a primary election, even if more than 50,000 people are likely to read the advertisement. However, BCRA would at the same time prohibit the NRA from paying for a broadcast, cable, or satellite advertisement that simply read – or showed the words – of precisely the same advertisement.

Exception for Media Corporations

38. FECA excepts from the definition of expenditure any “news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.”

39. FECA does not contain any definition of what constitutes a “news story, commentary, or editorial” to qualify for this exception.

40. Thus, outside of its proprietary publications, the NRA is prohibited from funding any communication to the general public that expressly advocates the election or defeat of a candidate for federal office, while media corporations such as Disney Corp. (which owns the ABC network), General Electric Corp. (which owns the NBC network), Viacom (which owns the CBS network), while AOL-Time Warner, Inc. (which owns *Time* and dozens of other periodical publications), and the New York Times Company (which owns the *New York Times*, the *Boston*

Globe, 50% of the *International Herald-Tribune* and several television and radio stations) may run news stories, editorials and commentaries in which they may expressly advocate for or against candidates without limitation.

41. BCRA provides an exception to its definition of electioneering communication such that the term does not include “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 party, political committee, or candidate.”

42. BCRA contains no definition of the terms “news story, commentary, or editorial,” nor does it otherwise describe what qualifies for this exception.

43. The NRA is thus prohibited from funding a broadcast television communication within 60 days before a general election that refers to a federal candidate, while broadcast media corporations, as well as local broadcast stations, may run news stories, commentaries, and editorials in which they discuss the relative virtues or demerits of each of the candidates, advocate the media corporations’ views on various public policy issues, and comment upon which candidates they prefer. The NRA will be unable even to purchase time to respond to such broadcasts in like manner.

Coordinated Expenditures Treated As Contributions

44. With respect to both individuals and corporations, FECA treats certain “coordinated expenditures” as contributions. Coordinated expenditures are defined in FECA as “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents” Thus, because corporations are banned from making political contributions, they are also banned from making “coordinated expenditures.” Likewise, coordinated expenditures count towards the

absolute limits on the amount of political contributions that individuals and political committees may make to federal candidates.

45. Before the enactment of BCRA, the operative FEC regulations provided that an expenditure was coordinated if it was paid for by someone other than the candidate, and was created, produced, or distributed: (i) at the request or suggestion of the candidate, (ii) after the candidate has exercised control over content, timing, location, mode, audience, volume of distribution or frequency of the communication, or (iii) after substantial discussion or negotiation between the creator, producer or distributor of the communication, or the person paying for the communication, and the candidate regarding the content or manner of the communication, the result of which was collaboration or agreement. Substantial discussion or negotiation could be evidenced by one or more meetings, conversations or conference regarding the value or importance of the communication for a particular election.

46. BCRA mandates the repeal of the FEC regulations governing coordinated expenditures and requires the FEC to promulgate new regulations. BCRA provides that the new regulations shall not require agreement or formal collaboration to establish coordination.

47. BCRA provides that any disbursement for an electioneering communication that is coordinated with a candidate or a political party committee shall be treated as a contribution to that candidate or political party committee.

Description of Disclosure Requirements

48. BCRA imposes new disclosure requirements that are triggered by “electioneering communications” and by certain independent expenditures. Each time an individual or corporation disburses, in the aggregate, \$10,000 or more for electioneering communications within a calendar year, the individual or corporation must report, within 24 hours of reaching that

total, and under penalty of perjury: (i) the identity of the person making the disbursement, (ii) the identity of any person controlling or directing that person's activities, (iii) the identity of the custodian of that person's books and accounts, (iv) the principal place of business of the person (if not an individual) making the disbursement, and (v) the amount and recipient of any disbursement over \$200 during the reporting period. The report must also identify "elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified."

49. BCRA further provides that if the disbursements are made out of a segregated bank account consisting of funds contributed (i) directly to the account for electioneering communications and (ii) solely by United States citizens or nationals, then the reports must disclose the names and addresses of all contributors of \$1,000 or more to that account, dating from the preceding calendar year; if the disbursements are not made out of such a segregated account, the reports must disclose the names and addresses of all contributors who contributed \$1,000 or more to the person making the disbursement, dating from the preceding calendar year.

50. BCRA requires the FEC to make all reports that are filed with it available to the public by promptly posting them on the internet.

Civil and Criminal Penalties

51. The FEC may seek civil penalties, including the greater of \$5,000 or the amount of the contributions or expenditures at issue, for any violation of FECA. If the violation is knowing or willful, the FEC may seek civil penalties of up to \$10,000 or 200 percent of the amount of the contributions or expenditures at issue.

52. Criminal penalties attach to any knowing and willful violation of FECA that involves the making, receiving, or reporting of any contributions, donations, or expenditures

totaling \$2,000 or more during a calendar year. That is, if the NRA funds “express advocacy” or “applicable electioneering communications,” in excess of \$2,000 during a calendar year, it is subject to criminal penalties.

53. These criminal penalties are increased under BCRA. An individual or corporation that knowingly and willfully commits a violation involving contributions, donations, or expenditures totaling \$2,000 or more is subject to fines under Title 18 of the United States Code, and imprisonment for up to one year. An individual or corporation that knowingly commits a violation involving contributions, donations, or expenditures that total \$25,000 or more is subject to fines under Title 18 of the United States Code, and imprisonment for up to five years.

Political Speech Engaged in by Plaintiffs

54. The NRA is a voluntary not-for-profit, non-stock membership corporation organized and operated to advance a singular mission: to preserve, protect, and defend the right to keep and bear arms, as guaranteed by the Second Amendment to the United States Constitution. As announced in its bylaws, the NRA’s defining goal is: “To protect and defend the Constitution of the United States, especially with reference to the inalienable right of the individual American citizen guaranteed by such Constitution to . . . enjoy the right to use arms.”

55. The NRA’s participation in political debate and expression is robust; in order to pursue its public policy mission and to inform the American people, the NRA expends many millions of dollars each year to voice its views on public policy issues that are of present and vital importance to its mission. Its public policy purposes and views are clear and well known to its members and contributors, and to the public at large.

56. The NRA was not established by business corporations, and it does not accept business corporations as members. The contributions that NRA receives from business

corporations are *de minimis*, especially in relation to its income from membership fees and contributions from individuals. Likewise, the net income that the NRA receives from the sale of advertising in its publications and from other such activities is not significant especially in relation to its income from membership fees and contributions. The NRA's resources are attributable to and reflect its members' and contributors' support of the NRA's public policy missions, not the economically motivated decisions of investors and business customers.

57. Much of the NRA's political speech refers to candidates for public office, including federal office.

58. The NRA has spent funds in prior years on issue advocacy in television and radio advertisements that would have been prohibited as "electioneering communications" under BCRA.

59. Absent the prohibitions of BCRA, the NRA would continue to engage in "electioneering communications," but under BCRA, it will be prohibited from doing so. Because it will face the prospect of serious penalties, including civil investigations and litigations and even criminal prosecutions, the NRA's political speech and communications in the 2004 election cycle and beyond will be severely chilled should BCRA become effective.

60. Plaintiff VICTORY FUND spends millions of dollars each election cycle on express advocacy that urges the election or defeat of particular federal candidates and on making direct contributions to candidates.

61. The VICTORY FUND also expends funds on advertisements that refer to clearly identified candidates for federal office.

62. The NRA sends external communications over the internet and posts information on its website in which it refers to candidates for federal office, including those for President of the United States.

63. Because many internet communications travel via cable and satellite, the prohibition on electioneering communications by its terms governs those communications.

64. BCRA's disclosure requirements associated with electioneering communications, which require that the identities and addresses of donors contributing at least \$1,000 be disclosed, would discourage NRA members from contributing \$1,000 and above. The reduced contributions received by the NRA as a result will reduce the NRA's ability to engage in political speech.

65. Some NRA members currently contribute to the NRA rather than to the VICTORY FUND because they do not want their identities to be disclosed, as would otherwise be required if they contributed to the VICTORY FUND.

66. The NRA, largely through its affiliate, the NRA Institute for Legislative Action ("NRA-ILA"), is in frequent communication with elected representatives and other government officials at the federal, state, and local levels, and their various political party committees.

67. At the federal level, the NRA-ILA meets with members of Congress and executive branch officials and their employees and staff members many times each year. The NRA-ILA also meets with representatives of political party committees on a regular basis. At these meetings, the NRA discusses a wide range of legislative and regulatory issues that affect its members, focusing particularly on protecting the rights of firearm owners.

68. Four members of Congress sit on the NRA's Board of Directors: Rep. Bob Barr, Rep. Barbara Cubin, Rep. Don Young, and Sen. Larry Craig. At meetings of the Board of

Directors, the Board regularly discusses the legislative issues affecting the NRA and its members. The Board also considers legislative and public education strategies that serve to educate and influence citizens and government officials.

CLAIMS FOR RELIEF

COUNT I

69. Plaintiffs hereby reallege and incorporate each of the foregoing allegations as if set forth herein.

70. FECA, as amended by BCRA, prohibits all corporate expenditures for express advocacy and for “electioneering communications.” These communications are core political speech.

71. Accordingly, BCRA’s prohibition on electioneering communications is an unconstitutional abridgement of the NRA’s First Amendment rights of free speech.

COUNT II

72. Plaintiffs hereby reallege and incorporate each of the foregoing allegations as if set forth herein.

73. Because the NRA is a voluntary, not-for-profit public policy organization, organized and operated for ideological purposes and not for business purposes, the government has no interest that can justify this sweeping evisceration of the NRA’s First Amendment right to freedom of speech that is effected by FECA, as amended by BCRA.

74. Thus, by prohibiting the NRA’s funding of electioneering communications as well as express advocacy, FECA, as amended by BCRA, unconstitutionally abridges the NRA’s First Amendment right of free speech.

COUNT III

75. Plaintiffs hereby reallege and incorporate each of the foregoing allegations as if set forth herein.

76. BCRA prohibits, on pain of both civil and criminal penalties, electioneering communications that “refer to” clearly identified federal candidates. The legislation does not define the term “refers to” or otherwise describe the communications that are covered by this term.

77. BCRA’s alternative definition of electioneering communications prohibits any communication “which promotes or supports 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 does not define the terms “support,” “oppose,” “suggestive,” “plausible,” and “exhortation,” nor otherwise describe the communications that are covered by these terms.

78. Because the terms “refer to,” “support,” “oppose,” “suggestive,” “plausible,” and “exhortation” are unclear, BCRA’s prohibition on electioneering communication does not adequately inform the NRA of what speech or communicative conduct will subject it to civil and criminal investigation, prosecution, and punishment.

79. Accordingly, BCRA’s provisions governing electioneering communications are unconstitutionally void for vagueness under the First and Fifth Amendments.

COUNT IV

80. Plaintiffs hereby reallege and incorporate each of the foregoing allegations as if set forth herein.

81. While FECA prohibits all corporations from making “expenditures” in connection with a federal election campaign, exempted from this definition is any “news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.”

82. Similarly, BCRA amends FECA to prohibit all corporations from engaging in electioneering communications, but excepts from this prohibition any communication by a broadcast corporation that is made as part of a “news story, commentary, or editorial.”

83. Accordingly, FECA, as amended by BCRA, unfairly and unconstitutionally discriminates against the NRA and in favor of broadcast media corporations, and thereby violates the NRA’s rights of free speech and equal protection under the First and Fifth Amendments.

COUNT V

84. Plaintiffs hereby reallege and incorporate each of the foregoing allegations as if set forth herein.

85. As explained above, the NRA is constitutionally entitled to engage in electioneering communications on behalf of itself, its members, and its contributors, although it is now barred from doing so under BCRA.

86. Assuming BCRA’s prohibition against the NRA engaging in electioneering communications is held unconstitutional, BCRA would still require that the NRA disclose its donors and their addresses if it engages in electioneering communications. In particular, BCRA would require disclosure of unidentified members and contributors who have heretofore contributed only to the NRA and not to the VICTORY FUND because they do not want their identities as NRA members to be publicly disclosed.

87. This disclosure requirement will burden such members' and contributors', as well as the NRA's, rights to freedom of political association and expression, a burden that is greatly compounded by the requirement that the FEC publish all such disclosures over the internet within 48 hours of their receipt, for free access by the public.

88. Accordingly, BCRA's disclosure and reporting requirements violate the First Amendment by unconstitutionally burdening and chilling the freedom of association and free speech of the NRA and its members and contributors.

COUNT VI

89. Plaintiffs hereby reallege and incorporate each of the foregoing allegations as if set forth herein.

90. Under FECA and its implementing regulations, expenditures made "in cooperation, consultation, or concert with, or at the request or suggestion of," a candidate are treated as contributions to the candidate.

91. BCRA further provides that not only expenditures, but also disbursements for electioneering communications that are coordinated with a candidate or political party committee will be treated as contributions to that candidate or political party committee, respectively.

92. BCRA requires the FEC to promulgate new regulations concerning "coordinated communications" within 270 days of the enactment of the statute and mandates that the new regulations "shall not require agreement or formal collaboration to establish coordination."

93. Any regulations promulgated by the FEC that do not require an "agreement or formal collaboration" will be void for vagueness and necessarily overbroad, violating the rights of the Plaintiffs to freedom of speech and to petition the government for redress of grievances.

94. Accordingly, BCRA's treatment of coordination violates the First Amendment.

RELIEF REQUESTED

Wherefore, Plaintiffs respectfully pray that a three-judge district court be convened and that said three-judge court hear this action, and upon such hearing:

1. Declare that the challenged provisions of FECA, as amended by BCRA, violate the Plaintiffs' rights under the Constitution of the United States;
2. Permanently enjoin and restrain Defendants, their agents, and assistants from enforcing, executing, and otherwise applying the challenged provisions in any and all respects in which the same may be found to violate the Constitution;
3. Grant and order such further relief as the Court may deem just and proper, together with the costs and expenses of this action.

Dated: March 27, 2002

Respectfully submitted,

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