IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, United States Senate, Washington, DC 20510, Plaintiff, v. **FEDERAL ELECTION COMMISSION,** 999 E Street, N.W., Washington, DC 20463, Defendant; **FEDERAL COMMUNICATIONS COMMISSION,** 445 Twelfth Street, S.W., Washington, DC 20554, Defendant.	Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Senator Mitch McConnell brings this action for declaratory and injunctive relief, alleging as follows:

INTRODUCTION

1. This is an action challenging numerous provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) as violating the United States Constitution. The BCRA limits and criminalizes speech and related activities touching on the widest range of public issues. In doing so, it dramatically extends the scope of the Federal Election Campaign Act of 1971 (FECA) and the Federal Communications Act of 1934 (FCA) in a manner that violates several provisions of the Constitution. The BCRA's 91 densely packed pages impose all manner of new federal rules that

would radically alter, in a fundamental and unconstitutional fashion, the ways that citizens, corporations, labor unions, trade associations, officeholders, candidates, advocacy groups, tax-exempt organizations, and national, state, and local political party committees are permitted to participate in our Nation's democratic process.

2. Central to the BCRA is its effort to regulate core political speech. When such speech, long and correctly viewed as entitled to the highest degree of First Amendment protection, is broadcast in the form of an issue advertisement on television or radio and merely mentions a federal officeholder or candidate in the months leading up to an election, it can be a crime, with penalties of up to five years in prison. If the BCRA had been in effect in 2000, criminal punishments could have been meted out simply for the sponsorship of ads urging a Member of Congress to vote yes or no on pending proposals to expand the federal hate crimes law, to preempt Oregon's law permitting physician-assisted suicide, to regulate speech on the Internet, or to abolish the Electoral College and provide for direct popular election of the President. Not since the Alien and Sedition Acts, enacted in the earliest days of our Republic, could criminal sanctions be so easily incurred simply by engaging in such core political speech.

3. By creating a new crime of incitement to political action, the BCRA flagrantly contravenes more than a quarter century of unbroken Supreme Court and lower court precedent. In *Buckley v. Valeo*, for example, the Supreme Court held that the federal government could regulate spending for purposes of engaging in core political speech only when the speech "in express terms advocate[s] the election or defeat of a clearly identified candidate for federal office."[*] By purporting to regulate spending for core political speech when such speech merely "refers to a clearly identified

[*] 424 U.S. 1, 44 (1976).

Federal candidate," the BCRA ignores *Buckley*'s express holding, sweeps well beyond the permissible scope of regulation under the First Amendment, and criminalizes vast quantities of fully protected speech.

4. Nor does it stop there. The BCRA attempts to re-engineer the way our democratic process works, and in doing so pervasively violates the Constitution. To take but a few examples:

- The BCRA unconstitutionally favors some speakers over others.
- The BCRA unconstitutionally constrains the rights of officeholders and candidates to raise money for tax-exempt organizations, political parties, and other candidates.
- The BCRA treads on First Amendment-protected associational rights by compelling organizations to disclose the identity of their supporters to a far greater, and more dangerous, extent than ever before contemplated, and imposes expensive and burdensome reporting requirements.
- The BCRA places unprecedented limits on political parties' ability to make expenditures for core political speech.

All this is accomplished by the use of language that is itself unconstitutionally vague and overbroad and, in some instances, violative of the constitutional guarantee of equal protection under the laws.

5. The far-reaching provisions of the BCRA, particularly those seeking to regulate and control issue advocacy by groups independent of any candidate or campaign, do not improve democracy. The impact of the law is not merely to suppress speech, but to insulate incumbent officeholders from effective criticism. The BCRA permits candidates for federal office to specify what topics are to be discussed during their campaigns and with what intensity. The First Amendment does not permit the government to impose any such regime.

6. Many of the BCRA's supporters have acknowledged that the BCRA raises serious constitutional questions, but these questions did not prevent the BCRA's enactment by the Congress and signature by the President, who likewise has noted the BCRA's grave constitutional implications. The federal courts therefore stand, as so often before in our history, as the ultimate guardians of the Constitution and the Bill of Rights. Plaintiff urges that this Court take up that solemn responsibility and invalidate the many constitutionally problematic provisions of the BCRA.

BACKGROUND

7. On February 14, 2002, and March 20, 2002, the House and Senate passed the BCRA. On March 27, 2002, the President signed the BCRA into law.

8. Title I of the BCRA, captioned "Reduction of Special Interest Influence," includes a ban on so-called "soft money": that is, a prohibition on the solicitation, receipt, or use by national political party committees of any funds that were not raised subject to the so-called "hard money" source-and-amount restrictions of the FECA. It also requires that state, district, and local political party committees pay for what the BCRA defines as "federal election activity" only with money raised subject to the FECA's restrictions. The BCRA carves out a narrow exception for certain types of "federal election activity," including some voter registration, voter identification, and get-out-the-vote activity; for these activities, state, district, and local political party committees may use funds that are not raised subject to the FECA's restrictions, as long as the funds used for the state share of such activities are raised in amounts no greater than $10,000, are segregated from the party committee's other funds, and are fully reported to the federal authorities. Title I generally prohibits federal officeholders and candidates from participating in raising or spending any funds, for themselves or others, for "federal election activity" if those funds are not raised subject to the

FECA's restrictions. And Title I bars state candidates from spending funds on communications that promote or support candidates for federal office, even if those communications do not expressly advocate a vote for or against a candidate.

9. Title II, entitled "Noncandidate Campaign Expenditures," prohibits corporations and labor unions from using funds not raised subject to the FECA's limitations to pay for so-called "electioneering communications": that is, for broadcast, cable, or satellite communications that refer to a clearly identified federal candidate and are made within sixty days of a general election or thirty days of a primary. The BCRA provides a "fall-back" definition of "electioneering communications" in the event that the primary definition is held to be unconstitutional. Both definitions include communications containing issue advocacy, which does not expressly advocate the election or defeat of clearly identified federal candidates. In addition to the limitations on corporations and labor organizations, any person who makes "electioneering communications" is subject to stringent new disclosure requirements. This required disclosure includes the disclosure of the names and addresses of any individual who contributes as little as $1,000 to an organization that engages in "electioneering communications." Moreover, any disbursements for "electioneering communications" that are coordinated with candidates or their political parties are treated as contributions to the candidates, and are therefore subject to the source-and-amount limitations of the FECA. With respect to any given candidate, Title II requires political party committees to choose between making independent expenditures on behalf of that candidate and making coordinated expenditures with that candidate. Finally, Title II directs the FEC broadly to define the term "coordinated activity."

10. Title III, captioned "Miscellaneous," sets revised limits on contributions by individuals to candidates for federal office and to national party committees, and sets an aggregate limit on an individual's total contributions to candidates, political action committees, and political parties. These contribution limits are modified by the so-called "Millionaires' Provisions," which increase contribution limits by up to six times for the campaigns of congressional candidates whenever they confront opponents who expend substantial personal funds on their own campaigns. In certain cases, Title III also lifts limits on coordinated expenditures by political parties aiding wealthy candidates' opponents.

11. Title V, titled "Additional Disclosure Provisions," imposes additional disclosure obligations, including significant disclosure obligations on broadcasters with respect to political advertisements.

12. Finally, the BCRA dramatically enhances the criminal penalties for violations of the FECA. It increases the maximum prison sentence from one to five years and eliminates language capping the amount of any fine. The BCRA also lengthens the limitations period and orders the United States Sentencing Commission to promulgate sentencing guidelines for FECA violations.

13. The BCRA takes effect on November 6, 2002, although funds not raised subject to the FECA's limitations may be spent by national party committees for certain limited purposes until January 1, 2003. Recognizing the serious constitutional questions the BCRA raises, the law provides for immediate judicial review by a three-judge panel of this Court of any constitutional action for declaratory or injunctive relief, with expedited appellate review by the Supreme Court of the United States. The BCRA also gives any Member of Congress the right to bring suit challenging the BCRA's constitutionality.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 2201. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and section 403 of the BCRA.

PARTIES

15. Plaintiff Mitch McConnell is the senior United States Senator from the Commonwealth of Kentucky, and one of the Senate's foremost advocates for unfettered political speech and association. He was first elected in 1984 and is currently a candidate for reelection. He is the former Chairman and current Ranking Member of the Senate Committee on Rules and Administration, which has jurisdiction over federal election law. He has served as Chairman of the National Republican Senatorial Committee, which promotes issues and supports the campaigns of Republican candidates on the federal, state, and local level.

16. Senator McConnell is a United States citizen, member of Congress, candidate, voter, donor, recipient, fundraiser, and party member, and has been, and will continue to be, injured by the BCRA in each of these capacities.

17. A variety of other plaintiffs are expected to join this complaint, or file separate complaints, in the near future. Senator McConnell anticipates that a substantially amended complaint will be filed to include these new plaintiffs and their varying interests. Senator McConnell is committed to taking all steps necessary to ensure that the many issues identified in this complaint are efficiently presented for resolution by the three-judge Court.

18. Defendants Federal Election Commission (FEC) and Federal Communications Commission (FCC) are government agencies charged with enforcing the relevant provisions of the BCRA.

COUNT I

Prohibition of "Electioneering Communications"

19. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

20. Section 201(a) of the BCRA adds new section 304(f) of the FECA, which defines an "electioneering communication" as "any broadcast, cable, or satellite communication which . . . refers to a clearly identified candidate for Federal office . . . 60 days before a general, special, or runoff election for the office sought by the candidate; or . . . 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 . . . 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."

21. Anticipating that this definition of "electioneering communication" may be declared unconstitutional, section 201(a) provides a fall-back definition. It defines "electioneering communication" as "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."

22. Section 203(a) of the BCRA amends section 316(b)(2) of the FECA to prohibit corporations and labor unions from engaging in "electioneering communications." Section 203(b) of the BCRA adds new section 316(c)(1) to the FECA, which prohibits any other persons from engaging in "electioneering communications" using funds donated by corporations or labor unions.

23. By prohibiting or limiting speech that does not expressly advocate the election or defeat of a clearly identified candidate, either under the original definition or the fall-back definition of "electioneering communication," sections 201 and 203 burden the right of free speech in violation of the First Amendment.

24. Moreover, by specifying in so vague and overbroad a manner what speech is prohibited or limited, sections 201 and 203 violate the First Amendment and the Due Process Clause of the Fifth Amendment.

25. By arbitrarily limiting disbursements for broadcast, cable, and satellite communications but allowing disbursements for other forms of communications, sections 201 and 203 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

26. By imposing limitations on corporations and labor unions that are not imposed on other groups such as certain non-profit organizations, political organizations, and corporations that own news-media organizations, sections 201 and 203 violate the First Amendment and equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT II

Disclosures Relating to "Electioneering Communications"

27. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

28. Section 201(a) of the BCRA also requires that any person (including any individual) who spends more than $10,000 on "electioneering communications" in a calendar year make disclosures to the FEC. In those disclosures, the person must specify, *inter alia*, the amount of any

disbursement over $200; the person to whom the disbursement was made; the election to which the "electioneering communication" pertains; and the candidate identified or to be identified in the "electioneering communication."

29. In addition, section 201(a) requires that, where an organization makes disbursements for "electioneering communications" from funds donated by individuals, the names and addresses of any individuals donating $1,000 or more also be disclosed.

30. Section 201(a) also requires disclosures not only when a person has made disbursements for "electioneering communications," but also when a person has entered into a contract to make disbursements, prior to any disbursement and even if the disbursement never actually takes place.

31. By requiring these disclosures, section 201 burdens the rights of free speech and free association in violation of the First Amendment.

COUNT III

Non-Profit and Political Organizations and "Electioneering Communications"

32. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

33. Section 203(a) of the BCRA bars incorporated non-profit organizations, as defined by I.R.C. § 501(c)(4), and political organizations, as defined by I.R.C. § 527, from making disbursements for "electioneering communications," just as it bars corporations and labor unions from doing so. Section 203(b) contains a narrow exception seemingly allowing section 501(c)(4) and section 527 organizations to make "electioneering communications" if the communications are paid for exclusively out of funds provided directly by individuals. However, section 204 of the

BCRA, adding section 316(c)(6) to the FECA, then appears to shut the door on this exception, stating that "electioneering communications" (which, according to the primary definition in section 201, must be "targeted"), cannot be "targeted," or broadcast to voters for the named candidate. Like corporations and labor unions, therefore, section 501(c)(4) and section 527 organizations appear to be precluded altogether by the BCRA from making "electioneering communications."

34. The unconstitutional disclosure obligations of section 201 apply both to section 501(c)(4) and section 527 organizations making disbursements for "electioneering communications." For the reasons given in Count II, section 201 burdens the rights of free speech and free association in violation of the First Amendment.

35. Because sections 201, 203, and 204 bar or severely restrict section 501(c)(4) and section 527 organizations from engaging in speech that does not expressly advocate the election or defeat of a clearly identified candidate, they burden the right of free speech and free association in violation of the First Amendment.

36. By imposing advocacy limitations on corporations, unions, section 501(c)(4) non-profit organizations, and section 527 political organizations that are not imposed on individuals and other organizations, sections 201, 203, and 204 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT IV

Coordinated "Electioneering Communications"

37. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

38. Section 202 of the BCRA amends section 315(a)(7) of the FECA to treat coordinated disbursements for "electioneering communications" as "contributions" to the "supported" candidates. These "contributions," in turn, are subject to the source-and-amount limitations of the FECA.

39. Section 214(c) directs the FEC to define the concept of coordination broadly, and specifically directs that any promulgated regulations shall not require agreement or formal collaboration between the candidate or political party and the entity making the disbursement in order to establish coordination. Under this definition, for instance, a Member of Congress could be liable for receiving, and a citizen group liable for making, a "contribution" simply because the Member met with the group about pending legislation and the group then took out an advertisement to promote that legislation.

40. In addition, section 214(a) states that any expenditure made by a person "in cooperation, consultation, or concert with, or at the request or suggestion of," a party committee shall be treated as a "contribution" to that committee.

41. By specifying in so overbroad a manner what constitutes coordination with candidates and party committees, sections 202 and 214 burden the rights of free speech and free association and the right to petition the government for redress of grievances, all in violation of the First Amendment.

42. Moreover, by specifying in so vague a manner what constitutes coordination with candidates and party committees, sections 202 and 214 violate the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT V

Independent and Coordinated Expenditures

43. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

44. Section 213 of the BCRA, amending section 315(d) of the FECA, requires that a national, state, district, or local political party committee make an irrevocable choice as to whether to make independent or coordinated expenditures on behalf of any given candidate at the time the party's candidate is nominated. In addition, section 213 restricts transfers of funds between political party committees that have elected to make only independent expenditures and those that have made only coordinated expenditures, regardless of the purpose of such transfers.

45. By restricting political party committees from making otherwise permissible expenditures, section 213 burdens the rights of free speech and free association in violation of the First Amendment.

46. Moreover, by restricting "all political committees established and maintained by" a national or state political party from making expenditures of one type or the other "with respect to the candidate," and by barring transfers from committees that have made or "intend[] to make" independent expenditures, section 213 is excessively vague and overbroad, in violation of the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT VI

Broadcasting Records

47. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

48. Section 504 of the BCRA amends section 315 of the FCA to require licensees to collect and disclose records of requests to purchase broadcast time for communications "relating to any political matter of national importance," including communications relating to "a legally qualified candidate" or "any election to Federal office."

49. Section 504 also requires disclosures not only when communications have actually been broadcast, but also when a person has made "a request to purchase broadcast time," prior to any broadcast actually taking place.

50. By requiring these disclosures, section 504 burdens the rights of free speech and free association in violation of the First Amendment.

51. Moreover, by requiring disclosures when communications "relating to any matter of national importance" are made, section 504 is excessively vague and overbroad, in violation of the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT VII

Limitations on Contributions

52. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

53. Sections 102 and 307 of the BCRA amend section 315 of the FECA to alter the limits on political contributions by individuals. Section 301, inserting new section 313 in the FECA, specifies the permissible uses of those contributions.

54. Sections 304(a) and 316 of the BCRA amend section 315 of the FECA to allow a candidate for the United States Senate to accept and spend contributions in excess of the otherwise applicable limits where that candidate's opponent expends substantial personal funds. Specifically,

the otherwise applicable contribution limits may be increased by as much as sixfold, and the limitations on coordinated expenditures by the candidate's political party lifted altogether, depending on how much in personal funds the opponent expends. Section 304(b) of the BCRA amends section 304(a)(6) of the FECA to require a candidate for the Senate who intends to expend substantial personal funds to notify the FEC and his opponents, within 15 days of becoming a candidate, stating the total amount of expenditures from personal funds that the candidate intends to make. Section 319 of the BCRA amends section 315 of the FECA, and adds new section 315A of the FECA, to impose similar requirements for candidates for the United States House of Representatives.

55. By increasing the limits on contributions for the opponent of a candidate who spends his own funds on his campaign, and thereby punishing a candidate for using his own money to engage in core political speech, sections 304, 316, and 319 burden the exercise of the rights of free speech and free association in violation of the First Amendment.

56. Moreover, by increasing the otherwise applicable contribution limits, sections 304, 316, and 319 make clear that the underlying limits are not necessary to achieve the purported goals of the BCRA and the FECA.

57. By allowing a contributor to donate more to a candidate running against an opponent who expends his own funds than to a candidate without such an opponent, sections 304, 316, and 319 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

58. By lifting altogether the limits on coordinated expenditures by the political party of the opponent of a candidate who expends his own funds, and thereby allowing a political party to spend more money on behalf of a candidate running against an opponent who expends his own funds

than on behalf of a candidate without such an opponent, sections 304, 316, and 319 violate the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

59. By requiring that a candidate make advance disclosure of his intent to use his own money to fund core political speech, sections 304 and 319 impose an unconstitutional condition on the exercise of the rights of free speech and free association under the First Amendment.

COUNT VIII

Prohibitions on Contributions by Minors

60. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

61. Section 318 of the BCRA adds new section 324 to the FECA, which prohibits any individual seventeen years of age or younger from making a contribution, in any amount, to a candidate or a contribution or donation to a political party committee.

62. By barring the speech of individuals seventeen or under who wish to make contributions in their own right, section 318 violates the rights to free speech and free association under the First Amendment.

COUNT IX

Unavailability of "Lowest Unit Charge" for Federal Candidates Mentioning Opposition

63. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

64. Section 305 of the BCRA amends section 315(b) of the FCA to deny a candidate the lowest unit charge for broadcast advertisements "unless the candidate provides written certification to the broadcast station that the candidate . . . shall not make any direct reference to another

candidate for the same office, in any broadcast using the rights and conditions of access under this Act," unless the candidate satisfies the content requirements set forth in section 305(a).

65. By conditioning the cost of advertisements on their content, section 305 burdens the right of free speech in violation of the First Amendment.

COUNT X

Ban on the Solicitation or Use of Non-Federal Money by National Party Committees

66. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

67. Section 101(a) of the BCRA adds new section 323 to the FECA, which prohibits a national political party committee or its officers or agents, including a party's national congressional campaign committee, from soliciting, receiving, or directing any money that is not subject to the FECA's contribution limitations, prohibitions, and reporting requirements. This ban also applies to any entity that is directly or indirectly established, financed, maintained, or controlled by a national committee. Finally, section 101(a) of the BCRA, adding new section 323(d) to the FECA, prohibits national party committees from soliciting funds for, or making donations to, either section 501(c) organizations that make expenditures or disbursements in connection with federal elections, or section 527 organizations.

68. By restricting the funding of core political speech and restricting the amount of speech in which national party committees are able to engage, section 101(a) violates the rights of free speech and free association under the First Amendment.

69. By preventing national party committees from pooling the resources of party members and contributors in support of campaigns for office; preventing the sharing of funds with, and raising

funds for, like-minded party committees and non-party organizations and individuals; limiting the resources available to national party committees for all activities, including voter registration, voter identification, get-out-the-vote activity, and internal communications with their own members and employees on non-election-related issues; and restricting the ability of a national party committee to associate with its affiliated state, district, and local committees, section 101(a) further violates the right of free association under the First Amendment.

70. By regulating the role of national party committees in state and local elections and barring national party committees from soliciting funds for, or making donations to, section 501(c) and section 527 organizations even when such expenditures relate exclusively to state elections, section 101(a) usurps the States' power to regulate such elections, and thereby violates the Tenth Amendment and principles of federalism.

71. By prohibiting national party committees from soliciting, receiving, or directing any money not subject to the FECA's restrictions, and thereby imposing restrictions on national party committees that are not placed on other similarly situated entities, section 101(a) violates the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

72. By barring national party committees from "solicit[ing]" anything of value not obtained pursuant to the FECA's restrictions and extending its prohibition to "any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee," section 101(a) uses excessively vague and overbroad terms, in violation of the First Amendment and the Due Process Clause of the Fifth Amendment.

COUNT XI

Ban on the Solicitation or Use of Non-Federal Money by State and Local Party Committees

73. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

74. Section 101(a) of the BCRA adds new section 323(b) to the FECA, which prohibits state, district, and local party committees or their officers or agents from using funds not raised subject to FECA's restrictions with respect to federal elections, regardless of applicable state law. Section 101(a) imposes federal restrictions on financing the state portion, as well as the federal portion, of voter registration, voter identification, and "get out the vote" activities. Further, section 101(a) precludes the use of non-federal money for broadcast communications, unless the communications "refer[] solely to a clearly identified candidate for state or local office." Section 101(a) limits to $10,000 the amount that state, district, and local party committees can annually receive from one person for any regulated activities.

75. As with national party committees, section 101(a) bars the transfer of funds among state, district, and local party committees for any regulated activities. Section 101(a) also prohibits state, district, and local party committees from raising money jointly or on behalf of one another for regulated activities.

76. Again as with national party committees, section 101(a) prohibits state, district, and local party committees from soliciting funds for, or making donations to, either section 501(c) organizations that make expenditures or disbursements in connection with federal elections, or section 527 organizations.

77. By regulating the funding of core political speech and restricting the amount of speech in which state, district, and local party committees are able to engage, section 101(a) violates the rights of free speech and free association under the First Amendment.

78. By barring the transfer of funds among state, district, and local party committees, section 101(a) further violates the right of free association under the First Amendment.

79. By regulating the way in which state, district, and local party committees may raise, spend, and manage funds, and barring state, district, and local party committees from soliciting funds for, or making donations to, section 501(c) and section 527 organizations even when such expenditures relate exclusively to state elections, section 101(a) violates the Tenth Amendment and principles of federalism.

80. By prohibiting state, district, and local party committees from funding federal election activities by soliciting, receiving, or directing any money not subject to the FECA's restrictions, and thereby imposing restrictions that are not placed on other similarly situated entities, section 101(a) violates the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT XII

Ban on the Solicitation or Use of Non-Federal Money by Federal Officeholders and Candidates

81. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

82. Section 101(a) of the BCRA adds new section 323(e) to the FECA, which prohibits federal officeholders and candidates, and their agents, from soliciting, receiving, directing, transferring, or spending money not subject to the FECA's restrictions in connection with an election

for federal office, including funds for any "federal election activity." Section 101(a) carves out a narrow exception for general solicitations on behalf of section 501(c) non-profit organizations, and for certain specific solicitations on behalf of organizations whose principal purpose is to engage in certain types of "federal election activity."

83. By restricting the funding of core political speech and restricting the amount of speech in which federal officeholders and candidates are able to engage, section 101(a) violates the rights of free speech and free association under the First Amendment.

84. By restricting the activities of federal officeholders and candidates with respect to state and local election campaigns and processes, section 101(a) violates the Tenth Amendment and principles of federalism.

85. By allowing general solicitations for section 501(c) non-profit organizations but not for other similarly situated organizations, including political parties, section 101(a) violates the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT XIII

Ban on the Solicitation or Use of Non-Federal Money by State Officeholders and Candidates

86. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

87. Section 101(a) of the BCRA adds new section 323(f) to the FECA, which prohibits state officeholders and candidates, and their agents, from spending funds not subject to FECA's requirements for "a communication described in [section 101(b)]": that is, "a public communication that refers to a clearly identified candidate for Federal office . . . and that 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)."

88. By restricting the funding of core political speech and restricting the amount of speech in which state officeholders and candidates are able to engage, section 101(a) violates the rights of free speech and free association under the First Amendment.

89. By interfering in the conduct of campaigns for state office, section 101(a) usurps the States' power to regulate such elections, and thereby violates the Tenth Amendment and principles of federalism.

COUNT XIV

Definition of "Federal Election Activity"

90. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

91. Section 101(b) of the BCRA adds new section 301(20) to the FECA, which defines "federal election activity" to include "a public communication that refers to a clearly identified candidate for Federal office . . . and that 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)."

92. Section 101(b) leaves undefined several terms used in the definition of "federal election activity," including "refers to," "promotes or supports," and "attacks or opposes."

93. Because the ability and extent of persons and entities to engage in political speech is defined throughout the BCRA by whether their speech falls within the definition of "federal election activity," and because many terms used to define "federal election activity" are excessively

vague and overbroad, section 101(b) violates the First Amendment and the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for the following relief:

1. an order and judgment declaring the aforementioned provisions of the BCRA unconstitutional;

2. an order and judgment enjoining defendants from enforcing the aforementioned provisions of the BCRA;

3. costs and attorneys' fees pursuant to any applicable statute or authority; and

4. any other relief as this Court in its discretion deems just and appropriate.

Respectfully submitted,

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