

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONGRESSMAN RON PAUL)
203 Cannon House Office Building)
Washington, D.C. 20515)

GUN OWNERS OF AMERICA, INC.)
8001 Forbes Place, Suite 102)
Springfield, Virginia 22151-2205)

GUN OWNERS OF AMERICA)
POLITICAL VICTORY FUND)
8001 Forbes Place, Suite 102)
Springfield, Virginia 22151-2205)

REALCAMPAINREFORM.ORG)
6718 Lenclair Street)
Alexandria, Virginia 22306)

CITIZENS UNITED)
109 Carpenter Drive, Suite 210)
Sterling, Virginia 20164)

CITIZENS UNITED POLITICAL VICTORY FUND)
109 Carpenter Drive, Suite 210)
Sterling, Virginia 20164)

MICHAEL CLOUD)
6 Goodman Lane)
Wayland, Massachusetts 01778)

and)

CARLA HOWELL)
6 Goodman Lane)
Wayland, Massachusetts 01778,)

Plaintiffs)

v.)

FEDERAL ELECTION COMMISSION)
999 E Street, N.W.)
Washington, D.C. 20463)

CIVIL ACTION NO.

and)
)
 UNITED STATES OF AMERICA,)
)
 Defendants.)
 _____)

COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF THIS ACTION

1. This is an action for declaratory and injunctive relief with respect to certain provisions of the Bipartisan Campaign Reform Act of 2002, P. L. No. 107-155, as it amends the Federal Election Campaign Act, 2 U.S.C. Sections 431, *et seq.* (“BCRA/FECA”), as well as certain related provisions of the FECA, and against their enforcement by the Defendants on the grounds that these integrally related provisions deprive the Plaintiffs of the Freedom of the Press in violation of the First Amendment of the Constitution of the United States.

2. The First Amendment prohibits Congress from making any law “abridging the freedom ... of the press,” a liberty predating the Bill of Rights, having been established in England over 100 years previously as essential to the nature of a free state. Since the founding of the American republic, the freedom of the press has prohibited government licensing of speech, guaranteeing to the People — not just to BCRA/FECA-exempted newspapers, magazines, and periodical publications not owned or controlled by a political party, political committee or candidate for election to federal office or broadcast facility not owned or controlled by any political party, political committee or candidate for election to federal office

— editorial control of communications made in relation to campaigns for election to federal office, including control of whether to identify the publisher or author of any communication and his financial supporters without imposition of any discriminatory economic burdens and penalties, and the burden of unlimited liability placed upon the treasurer of a candidate's authorized campaign committee.

3. The BCRA/FECA abridges the freedom of the press by imposing discriminatory licensing regulations, editorial controls, and significant economic burdens and penalties upon political parties, political committees, candidates for federal office and their authorized campaign committees, broadcast, satellite and cable media companies, nonmedia companies and associations, nonprofit organizations, and individuals, denying to such entities and persons the same unrestricted right that print media companies enjoy to publish news stories, editorials and commentaries whereby such media select the issues and the candidates for coverage in relation to federal elections without having to register with, or otherwise to secure permission from, the Federal Election Commission ("FEC"), without having to report, or otherwise to submit to FEC editorial control, including having to making public disclosures of the names and addresses of authors, publishers or financial supporters, and without having to suffer under the economic burdens imposed or economic penalties enforced by the FEC.

4. The BCRA/FECA also abridges the freedom of the press by extending the licensing power, editorial control, and discriminatory economic burdens and penalties of the FEC to "electioneering communications" by "broadcast, satellite, or cable communication" within 30 days of a primary or 60 days of a general election for federal office, unless such communications are engaged in by the "broadcast, satellite, or cable" media, which is

exempted from the licensing requirements, editorial controls, and discriminatory economic burdens enforced by the FEC with respect to such electioneering communications, or unless such electioneering communications are exempt because they are part of a debate or forum licensed and controlled by the FEC, or unless such electioneering communications are otherwise exempt pursuant to FEC regulations.

5. The BCRA/FECA abridges the freedom of the press by imposing discriminatory economic burdens and penalties upon political committees not functioning as a candidate's authorized campaign committee or as a political party, by raising the individual contribution limits imposed upon a candidate's campaign committee and upon a political party and indexing such limits to inflation, but failing to raise such limits and provide such indexing to political committees operating independently from any candidate's authorized campaign committee and any political party.

6. The BCRA/FECA abridges the freedom of the press by extending the current regime of licensing, editorial control and discriminatory economic burdens and penalties that favor incumbent officeholders, shielding such officeholders from uninhibited, robust, and wide-open debate on public issues by a grant of censorial power over the people reminiscent of the power exercised by the infamous Star Chamber to regulate elections and license the press to ensure government by royal favorites in 17th-century England.

7. In sum, Congress has, by its enactment of the BCRA/FECA, conferred upon the FEC broad and ill-defined powers to license and control core political speech relating to federal elections which, by means of a system of prior restraints, editorial controls, and economic burdens, discriminate in favor of newspapers, magazines and other periodic

publications not owned or controlled by persons or entities required to register with or report to the FEC, and to a lesser extent broadcast facilities, and discriminate among persons and entities required to register with or report to the FEC with respect to political communications in relation to campaigns for election to federal office, all of which constitute an unconstitutional abridgment of the freedom of the press in violation of the First Amendment.

JURISDICTION AND VENUE

8. This Court has jurisdiction under Section 403 of the BCRA and 28 U.S.C. Sections 1331, 2201 and 2202.

9. Plaintiffs request that a three-judge court be convened pursuant to Section 403 of the BCRA and 28 U.S.C. Section 2284.

10. Venue in this Court is proper pursuant to Section 403 of the BCRA and 28 U.S.C. Section 1391(c).

PARTIES

11. (a) Plaintiff Ron Paul is a Member of the United States House of Representatives from the 14th Congressional District of Texas. He is a citizen of the State of Texas and the United States, and is eligible to vote in federal elections. He is a registered voter in the State of Texas, is a donor to campaigns of candidates for federal office, is a member of the Republican Party, and may be a delegate to the 2004 Republican Party National Convention. Plaintiff Ron Paul is also a candidate for federal office in 2002, may be a candidate for federal office in 2004, is a fundraiser, is the recipient of campaign contributions,

and is the potential recipient of further donations to his campaign. The receipt of funds is important to plaintiff Paul's activities as a candidate and potential candidate for federal office, and the expenditure of funds, including the expenditure of funds for press communications, as well as his own Internet communications, is essential to candidate Paul's success in conveying his ideas and positions on public issues to supporters as well as to voters and potential voters.

(b) Plaintiff Paul desires to enter and participate freely in the marketplace of ideas to promote his candidacy for election to federal office and the candidacies of others without having to comply with statutorily-imposed licensing regulations, editorial control, and discriminatory economic burdens, to wit: (i) without having to register with Defendant FEC his authorized campaign committee, as required by 2 U.S.C. Section 433, in order to be permitted to convey his ideas and positions on public issues to voters and potential voters, a licensing regulation not imposed upon the news media in Plaintiff Paul's congressional district before such media enter the marketplace of ideas to promote or oppose his candidacy; (ii) without having to file with Defendant FEC periodic reports, open to the public, of receipts and disbursements, as required by 2 U.S.C. Section 434, in order to be permitted to continue to convey his ideas and positions on public issues to voters and potential voters, editorial controls not imposed by law upon the news media in, and outside of, Plaintiff Paul's congressional district in order for such media to carry news reports, write editorials and otherwise publish their ideas and positions on such issues to voters and potential voters in connection with Plaintiff Paul's campaign for election; and (iii) without having to limit individual financial contributions to his campaign to the amounts and sources, as specified by 2 U.S.C. Section 441a-441j, as amended by the BCRA, and 2 U.S.C. Section 434, and to report the names,

addresses and occupations of said contributors to Defendant FEC for publication, as required by 2 U.S.C. Section 434, as amended by the BCRA, in order to convey Plaintiff Paul's positions on the public policy issues germane to his campaign for election, significant economic burdens not imposed upon the news media to take positions on public policy issues germane to such campaign.

(c) Additionally, as a United States citizen, voter, and donor to federal election campaigns, Plaintiff Paul desires to enter and to participate freely in the marketplace of ideas with respect to campaigns for federal office by means of "express advocacy" and "electioneering communications," on equal terms with the news media, but will be wrongfully restrained, discriminatorily treated, and otherwise injured by the BCRA/FECA in each such capacity.

12. (a) Plaintiff Gun Owners of America, Inc. (hereinafter "Gun Owners") is a not-for-profit, non-stock corporation organized under the laws of the State of California, with its principal place of business in Springfield, Virginia, which the Internal Revenue Service ("IRS") has determined to be exempt from federal income taxes under 26 U.S.C. Section 501(c)(4). It is a nonpartisan organization, dedicated primarily to defending the rights guaranteed under the Second Amendment of the United States Constitution and having, as a principal function, the dissemination of information concerning such rights. Plaintiff Gun Owners represents its views and the views of its members on legislative and public policy issues before federal, state and local officials and the general public, and it engages heavily in, including spending significant funds for, communications on such issues during campaigns for election to federal office, utilizing broadcast, cable and satellite facilities.

(b) Plaintiff Gun Owners plans to continue to enter and participate freely in the marketplace of ideas related to federal election campaigns, engaging in “electioneering communications,” as defined by the BCRA/FECA, and thereby, will be subject to the reporting and public disclosure requirements of the FEC which, by design and effect, transfer to the FEC significant licensing power, editorial control and economic limitations upon Plaintiff Gun Owner’s continued participation in said marketplace.

13. (a) Plaintiff Gun Owners of America Political Victory Fund (hereinafter “GOA-PVF”) is a multi-candidate “political committee,” as that term is used in BCRA/FECA, and is the federally-registered, connected political committee of Plaintiff Gun Owners. Plaintiff GOA-PVF is independent of any political party. It intends to support one or more candidates for federal office in the 2002 and 2004 federal election cycles, as well as further in the future, and desires to receive contributions from individuals in excess of \$5,000 per calendar year, and to make contributions to many such candidates in excess of \$5,000 per election, in furtherance of GOA-PVF’s positions on public policy issues.

(b) As a political committee, Plaintiff GOA-PVF is required to comply with statutorily-imposed licensing regulations, editorial control, and discriminatory economic burdens, to wit: (i) registration with the FEC as a political committee, as required by 2 U.S.C. Section 433, in order to be permitted to engage in any communicative activity expressly advocating the election or defeat of a candidate for federal office; (ii) the filing of periodic reports, open to the public, of receipts and disbursements, as required by 2 U.S.C. Section 434, in order to be permitted to continue to engage in such communicative activity; and (iii) compliance with limits upon individual financial contributions, as specified by 2 U.S.C. Sections 434 and 441a-

441j, and reporting to Defendant FEC the names, addresses and occupation of said contributors, as required by 2 U.S.C. Section 434, in order to convey Plaintiff GOA-PVF's candidate preferences in a federal election.

(c) Additionally, Plaintiff GOA-PVF has engaged in, including spending significant funds for, communications on issues during campaigns for election to federal office, utilizing broadcast, cable and satellite facilities. Accordingly, Plaintiff GOA-PVF plans to engage in "electioneering communications," as defined by the BCRA/FECA, and will be subject thereby to the reporting and public disclosure requirements administered by the FEC which, by design and effect, transfer to the FEC significant licensing power, editorial control, and economic limitations upon Plaintiff GOA-PVF's continued participation in the marketplace of ideas related to federal election campaigns.

14. Plaintiff RealCampaignReform.org ("RealReform") is a not-for-profit, non-stock corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business in Alexandria, Virginia, which the IRS has determined to be exempt from federal income taxes under 26 U.S.C. Section 501(c)(4). It is a nonpartisan organization, dedicated primarily to defending the campaign and election-related rights guaranteed under the First Amendment of the United States Constitution and having, as a principal function, the dissemination of information concerning such rights. Plaintiff RealReform represents its views and the views of its members on legislative and public policy issues before federal, state and local officials and the general public, utilizing broadcast, cable and satellite facilities. Plaintiff RealReform and its members plan in the future to engage in "electioneering communications," as defined by BCRA/FECA, and thereby will be subject to the reporting and disclosure

requirements of the FEC which, by design and effect, transfer to the FEC significant licensing power, editorial control and economic limitations upon Plaintiff RealReform's continued participation in the marketplace of ideas related to federal elections.

15. (a) Plaintiff Citizens United is a not-for-profit, non-stock corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business in Sterling, Virginia, which the IRS has determined to be exempt from federal income taxes under 26 U.S.C. Section 501(c)(4). It is a nonpartisan organization, dedicated primarily to principles of limited government and national sovereignty and rights secured under the United States Constitution and having, as a principal function, the dissemination of information concerning such rights. Plaintiff Citizens United represents its views and the views of its members on legislative and public policy issues before federal, state and local officials and the general public, and it heavily engages in, including spending significant funds for, communications on such issues during campaigns for election to federal office, utilizing broadcast, cable and satellite facilities.

(b) Plaintiff Citizens United and its members plan in the future to continue to enter the marketplace of ideas related to federal election campaigns, engaging in "electioneering communications," as defined by the BCRA/FECA, and thereby will be subject to the reporting and disclosure requirements of the FEC which, by design and effect, transfer to the FEC significant licensing power, editorial control, and economic limitations upon Plaintiff Citizens United's continued participation in said marketplace.

16. (a) Plaintiff Citizens United Political Victory Fund ("CUPVF") is a multi-candidate "political committee," as that term is used in BCRA/FECA, and is the federally-

registered, connected political committee of Plaintiff Citizens United. Plaintiff CUPVF is independent of any political party. It intends to support one or more candidates for federal office in the 2002 and 2004 federal election cycles, as well as further in the future, and desires to receive contributions from individuals in excess of \$5,000 per calendar year, and to make contributions to many such candidates in excess of \$5,000 per election, in furtherance of CUPVF's positions on public policy issues.

(b) As a political committee, Plaintiff CUPVF is required to comply with statutorily-imposed licensing regulations, editorial control, and discriminatory economic burdens, to wit: (i) registration with the FEC as a political committee, as required by 2 U.S.C. section 433, in order to be permitted to engage in any communicative activity expressly advocating the election or defeat of a candidate for federal office; (ii) the filing of periodic reports, open to the public, of receipts and disbursements, as required by 2 U.S.C. Section 434, in order to be permitted to continue to engage in such communicative activity; and (iii) compliance with limits upon individual financial contributions, as specified in 2 U.S.C. Section 434 and 441a-441j, and reporting the names, addresses and occupations of said contributors to the FEC, as required by 2 U.S.C. Section 434, in order to convey Plaintiff CUPVF's candidate preferences in federal elections.

(c) Additionally, Plaintiff CUPVF has engaged in, including spending significant funds for, communications on issues during campaigns for election to federal office, utilizing broadcast, cable and satellite facilities. Accordingly, Plaintiff CUPVF plans to engage in "electioneering communications," as defined by BCRA/FECA, and will be subject thereby to the reporting and disclosure requirements administered by the FEC, which, by design and

effect, transfer to the FEC significant licensing power, editorial control, and economic limitations upon Plaintiff CUPVF's continued participation in the marketplace of ideas related to federal election campaigns.

17. (a) Michael Cloud is a citizen of the Commonwealth of Massachusetts and the United States, and eligible to vote in federal elections. He is also a registered voter in the Commonwealth of Massachusetts, a donor to campaigns for candidates for federal office, a fundraiser, a member of the Massachusetts and National Libertarian Parties, and has been, and may be in 2004, a delegate to the Libertarian Party National Convention. Plaintiff Cloud is the 2002 Libertarian Party candidate for the United States Senate from Massachusetts, and intends to be a candidate for federal or state office thereafter. As a candidate for federal office, Plaintiff Cloud is the recipient of campaign contributions, the receipt and expenditure of which is essential to Plaintiff Cloud's success in engaging the incumbent United States Senator in an uninhibited, robust and wide-open debate on the public issues, and as a potential future candidate for federal office, Plaintiff Cloud expects to seek such contributions and may make such expenditures in future efforts to unseat incumbent office holders.

(b) Plaintiff Cloud desires to enter and participate freely in the marketplace of ideas to promote his candidacy for election to the United States Senate, and future candidacies for federal office, without having to comply with statutorily-imposed licensing regulations, editorial control, and discriminatory burdens, to wit: (i) register his authorized campaign committee with Defendant FEC, as required by 2 U.S.C. Section 433, in order to be permitted to convey his ideas and positions on public issues to voters and potential voters, a licensing regulation not imposed upon the news media in or outside of the Commonwealth of

Massachusetts before such media may enter the marketplace of ideas to promote or oppose his candidacy and potential candidacy; (ii) file with Defendant FEC periodic reports, open to the public, of receipts and disbursements, as required by 2 U.S.C. Section 434, in order to be permitted to continue to convey his ideas and positions on public issues to voters and potential voters, editorial controls not imposed by law upon the news media in, or outside of, Massachusetts in order for such news media to carry news reports, write editorials and otherwise publish their ideas and positions on such issues to voters and potential voters in connection with Plaintiff Cloud's present and future campaigns for federal office; and (iii) operate subject to limitations upon individual financial contributions to Plaintiff Cloud's current and future campaigns to the amounts and sources, as specified by 2 U.S.C. Section 441a-441j, as amended by the BCRA, and to report the names, addresses and occupations of said contributors to Defendant FEC for publication, as required by 2 U.S.C. Section 434, as amended by the BCRA, in order for Plaintiff Cloud to convey his positions on public policy issues germane to his current and future campaigns, significant economic burdens and penalties not imposed upon the media for the privilege of conveying their positions on public policy issues germane to such campaigns.

(c) Additionally, as a United States citizen, voter, donor, fundraiser and party member involved in federal election campaigns, Plaintiff Cloud desires to enter and to participate in the marketplace of ideas related to campaigns for federal office by means of "express advocacy" and "electioneering communications" on equal terms with the media, but will be wrongfully restrained, discriminatorily treated, and otherwise injured by the BCRA/FECA in each such activity.

18. (a) Carla Howell is a citizen of the Commonwealth of Massachusetts and of the United States, and eligible to vote in federal elections. She is also a registered voter in the Commonwealth of Massachusetts, a donor to campaigns for candidates for federal office, a fundraiser, a member of the Massachusetts and National Libertarian Parties, has been, and may very well be in 2004, a delegate to the Libertarian Party National Convention, and has been, and may be in the future, a Libertarian Party candidate for federal office. Plaintiff Howell is the 2002 Libertarian Party candidate for Governor of Massachusetts. She may well be a candidate for Governor or some other state office thereafter. As a candidate for Governor, and as a future candidate for state office, Plaintiff Howell intends this year and in the future to make public communications that refer to clearly defined candidates for election to federal office and that promote or support, or attack or oppose, such candidates, including communications that do not expressly advocate a vote for or against any such candidate. Plaintiff Howell has received, and hopes and intends to receive in the future, "soft money" contributions from the Libertarian National Party and intends this year and in the future to spend funds lawfully raised to campaign for state office, but raised and spent without regard to the limitations, prohibitions and reporting requirements of the BCRA/FECA for the purpose of: (i) making public communications that refer to clearly identified candidates for federal office and that promote or support a candidate or attack or oppose candidates for that office, including communications that do not expressly advocate a vote for or against such candidates; (ii) engaging in voter registration activities conducted within 120 days of a federal election; and (iii) engaging in voter identification, get-out-the-vote, and generic campaign activities

conducted in connection with an election in which a candidate for federal office is on the ballot.

(b) As a candidate, in association with other Libertarian Party candidates for state or local office, Plaintiff Howell this year and in the future plans to spend funds lawfully raised to campaign for state office, but raised without regard to the limitations, prohibitions and reporting requirements of the BCRA/FECA, for the purpose of: (i) making public communications that refer to clearly identified candidates for federal office and that promote and support, or attack or oppose, such candidates, including communications that do not expressly advocate a vote for or against such candidates; (ii) engaging in voter registration activities conducted within 120 days of a federal election; and (iii) engaging in voter identification, get-out-the-vote, and generic campaign activities conducted in connection with an election in which a candidate for federal election is on the ballot.

(c) Not only has Plaintiff Howell been injured, but she will continue to be injured, by the BCRA/FECA in each of these activities, as well as in her capacities as a United States citizen, voter, donor, fundraiser and participant in the marketplace of ideas in relation to campaigns for federal office by means of “express advocacy” and “electioneering communications” by discriminatory exemptions granted and continued by the BCRA/FECA in favor of the media.

19. Defendant Federal Election Commission (hereinafter “FEC”) is established by and exists according to 2 U.S.C. Section 437(c) as a Republican and Democratic bipartisan federal licensing agency, and, *inter alia*, is authorized to enforce the registration, reporting, disclosure, and economic limits placed upon political committees, as defined by 2 U.S.C.

Section 431(4), compliance with which is a prerequisite for engaging in any communicative activity (except as defined in 2 U.S.C. Section 431(9)(A)) expressly urging the election or defeat of a candidate for election to federal office. Defendant FEC is responsible for issuing special licenses for the conduct of presidential debates, and for enforcing the licensing and editorial control system created by the BCRA/FECA that governs campaigns for President and Vice President of the United States and other federal offices, including regulations of, limitations on, registrations and forced disclosures related to, and exemptions from the law governing “electioneering communications,” and regulations of, limitations on, registrations and forced disclosures related to, and exemptions from the law governing “campaign contributions and expenditures. To these ends, the FEC has been empowered to enforce, and has enforced and will continue to enforce, a system of prior restraints upon possible and threatened violations of the BCRA/FECA, including the institution of significant registration, reporting and disclosure requirements, the administration of conciliation procedures, and the institution of civil actions for permanent or temporary injunctions or restraining orders, and for seeking significant civil penalties.

20. Defendant United States of America is the entity empowered to enforce criminal penalties for knowing and wilful violations of BCRA/FECA, and whose agents are responsible for regulating and enforcing the statutory provisions challenged herein by the Plaintiffs.

FACTUAL BASIS FOR CLAIMS

The FEC Power to License and Exercise Editorial Control

21. In the 1970's, Congress enacted, and subsequently amended, the FECA, creating the FEC as a Democratic and Republican bipartisan agency to license and exercise editorial control over the marketplace of ideas related to campaigns for federal office by means of a broad and complex structure of provisions regulating and limiting the financial resources that could be made available — through individuals, media corporations and associations, both for-profit and nonprofit, political parties, political committees, individuals, and other entities — to candidates for federal office. The FECA specifically exempted from such licensing power certain publishers of “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,” and conferred upon the FEC editorial functions, including the power to distinguish between a communication expressly advocating the election or defeat of a candidate for federal office (“express advocacy”) and a communication advocating a position on an issue that relates to the election or defeat of a candidate for federal office (“issue advocacy”).

22. For the FEC to administer its licensing power and editorial authority, the FECA requires, *inter alia*, that the person who intentionally, or by operation of law, becomes a candidate for election to federal office, the candidate’s authorized campaign committees, and other nonexempt entities, must: first, register as a “political committee” with the FEC, designating a treasurer who assumes unlimited personal liability for violations of the FECA, in order to obtain permission to engage in any communicative activity expressly advocating the

election of the person to federal office (2 U.S.C. Section 433); second, make periodic reports of “receipts and disbursements,” disclosing the amounts of contributions and their sources, including the names, addresses and occupations of individuals whose aggregate contributions exceed \$200 or more in order to continue to engage in activity expressly advocating the election of the person for federal office (2 U.S.C. Section 434); and third, comply with certain limits on the amounts that may be contributed toward communicative activity that expressly advocates the election or defeat of a person for federal office (2 U.S.C. Sections 441a-441j), all enforced by enhanced penalties imposed by Sections 312 and 315 of the BCRA.

The FEC Power to License and Edit the Content of Political Communications

23. To enforce the licensing and editorial control provisions governing the express advocacy of the election of a person to federal office, the FEC has been authorized by the FECA to license entry into the marketplace of ideas related to campaigns for federal office, with power to distinguish between political communications that expressly advocate the election or defeat of a candidate for federal office and political communications that do not (“issue advocacy”), requiring such “express advocacy” to meet the licensing and editorial control requirements of the FECA, and allowing such “issue advocacy” to operate outside of the FEC-licensed and FEC-editorially-controlled marketplace of ideas related to federal election campaigns.

24. By its enactment of the BCRA, Congress has extended Defendant FEC’s licensing power and editorial control of the marketplace of ideas related to federal election campaigns by prohibiting any nonprofit organization, as defined by I.R.C. Section 501(c)(4),

or any political organization, as defined by I.R.C. Section 527, from making any “electioneering communication” with funds not raised in accordance with the BCRA’s limitation and disclosure requirements.

25. In express recognition of the possible “constitutional insufficiency” of its definition of “electioneering communication” to include “any broadcast, cable or satellite communication which ... refers to a clearly identified candidate for Federal office,” even though such communication does not “expressly advocate” the election or defeat of that candidate, Congress provided in BCRA for an alternative definition, to wit: “any broadcast, cable or satellite communication which promotes or supports a candidate for [federal] 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 is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.” Both definitions of “electioneering communications” extend and expand the FEC’s licensing powers and editorial control in the marketplace of ideas related to federal election campaigns.

26. By limiting the definition of “electioneering communication” in the BCRA to “broadcast, cable or satellite communication,” Congress has continued its policy established in the original FECA to immunize newspapers, magazines, and other periodical publications not owned or controlled by any political party, political committee, or candidate, from any and all of the FEC’s licensing and editorial powers in the marketplace of ideas related to campaigns for federal office.

27. By excepting from the definition of “electioneering communication” in the BCRA “any news story, commentary, or editorial distributed through the facilities of any

broadcasting station,” Congress has conferred a special privilege exempting “broadcast, cable or satellite” broadcasting stations to engage in their own “electioneering communications” without being subject to the FEC’s licensing power and editorial control, while subjecting to such power and control the “electioneering communications” of FEC-licensed entities or individuals distributed through the facilities of such broadcasting stations.

28. By excepting from the definition of “electioneering communication” in the BCRA “a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the FEC or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum,” Congress has conferred a special privilege upon sponsors of debates and forums approved by the FEC to make such communications outside the FEC’s licensing and editorial control powers that would otherwise be extended to such communications.

29. By providing the FEC with a broad grant of power to exempt other “electioneering communications” in the BCRA, Congress has extended and expanded the FEC licensing and editorial control over the marketplace of ideas related to federal election campaigns without any meaningful or discernible guidelines or standards.

The FEC Power to License and Control the Quantity of Political Communications

30. By enactment of, and subsequent amendments to, the FECA, Congress has empowered the FEC to exercise licensing and editorial control in the marketplace of ideas related to campaigns for election to federal office through limitations, including public disclosure requirements, upon “contributions” to campaigns, but not through limitations on

“expenditures,” either by any particular campaign committee or by any person or entity acting independent from any campaign.

31. To enforce the licensing and editorial control provisions governing the marketplace of ideas related to federal election campaigns, the FEC has been empowered by the FECA to distinguish between political communications that are “coordinated” with a candidate’s campaign for election to federal office and those that are not, requiring “coordinated” communications to meet the “contribution” limitations of the FECA and allowing the “uncoordinated” communications to be governed by the more liberal expenditure limitations, such as those which allow for certain corporations to make certain expenditures on behalf of a candidacy, but not make any contributions to any candidate’s authorized campaign committee.

32. Prior to the enactment of the BCRA, and pursuant to the standards set out in 11 C.F.R. Section 100.16, the FEC determined that an expenditure was coordinated with a campaign 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 communication; or (iii) after substantial discussion 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 conferences regarding the value or importance of the communication for a particular election.

33. By its enactment of the BCRA, Congress has amended the definition of “independent expenditures” and mandated the repeal of the FEC regulations governing coordinated expenditures, requiring the FEC to promulgate new regulations that would sweep more broadly, specifically providing that no “agreement or formal collaboration” be required to “establish coordination,” and providing guidelines that would extend the FEC’s licensing and editorial control rules governing contributions in the marketplace of ideas related to campaigns for federal office to merely “parallel” expenditures for different political communications of a candidate and a person acting independent from the candidate.

The FEC Licensing Power of Forced Disclosures

34. By the enactment of the FECA, as amended in the 1970's, Congress instituted a regime of forced disclosure of the names, addresses, occupations, and amounts of contributors to candidates for election to federal office, and the names, addresses, occupations and amounts of independent expenditures, empowering the FEC to make public disclosure of such information as a condition of engaging in communications expressly advocating the election or defeat of a candidate for election to federal office in the marketplace of ideas related to campaigns for election to federal office.

35. By enactment of the BCRA, Congress has extended the FEC’s licensing power to any individual or statutorily-permitted corporation or organization whenever such individual or corporation disburses, in the aggregate, \$10,000 or more in a calendar year for “electioneering communications,” by forcing such individual or corporation or organization to report, within 24 hours of reaching that total, as a condition of entry into the marketplace of

ideas related to campaigns for election to federal office, (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, (v) the amount and recipient of any disbursement of more than \$200 during the reporting period, and (vi) the identity of the "elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified," which report the FEC is to promptly post for public viewing on the Internet.

36. By enactment of the BCRA, Congress has also extended the FEC's licensing power with respect to any individual or statutorily-permitted corporation or organization spending an aggregate of \$10,000 or more in a calendar year for "electioneering communications," by forcing such individual or corporation or organization to disclose, as a condition of entry into the marketplace of ideas related to campaigns for election to federal office, the names and addresses of all individuals who have contributed as little as \$1,000 to such individual or corporation or organization, dating from the preceding calendar year, unless such individual or corporation or organization has paid for such communications 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, in which event such individual or corporation or organization is required to disclose the names and addresses of all contributors of \$1,000 or more to such account, dating from the preceding calendar year.

The FEC Editorial Power over Political Party Candidates and Political Committees

37. The FECA established a system imposing significant economic burdens and penalties upon political parties and candidates and other political committees to engage in communications expressly advocating the election or defeat of a candidate for federal office in the marketplace of ideas related to federal election campaigns, without placing any such economic burdens or penalties upon broadcasting stations, newspapers, magazines, or other periodical publications not owned or controlled by any political party, political committee, or candidate to engage in such “express advocacy.”

38. By enactment of the BCRA, Congress has also discriminated against political committees, denying to them the same exemption from the restrictions imposed upon “electioneering communications” as granted to “broadcast facilities.”

39. By enactment of the BCRA, Congress has also extended the FECA’s restrictive limitations upon a candidate for federal office’s entry and participation into the marketplace of ideas related to campaigns for federal office, imposing upon such candidates the same source-and-amount restrictions on their participation in “federal election activities” as are imposed by the FECA on their campaign activities.

40. By enactment of the BCRA, Congress has extended the FECA’s registration, contribution limitations and disclosure requirements to a state office candidate’s entry and participation in the marketplace of ideas related to campaigns for federal office, imposing the same source-and-amount restrictions on any such candidate for state office’s public communication that “refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) 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).”

Plaintiffs’ Activities in the Marketplace of Ideas Related to Federal Election Campaigns

41. As a past, current, and future candidate for election to federal office, Plaintiff Ron Paul has been, is currently, and will continue to be, injured by the afore-stated system of prior restraints and discriminatory regulations contained in FECA including: (a) registration with, periodic reports to, and disclosures of the names, addresses and occupations of certain contributors to, the FEC; and (b) compliance with the contribution limits imposed upon individuals and other entities, even as raised and indexed by BCRA, and with the congressional mandate concerning coordinated expenditures, as provided for in the BCRA. Such prior restraints and regulations currently impose, and will continue to impose, discriminatory economic burdens and penalties upon Plaintiff Paul’s communicative activity expressly advocating his election to federal office and promoting the policy positions that he takes as such a candidate, thereby preventing Plaintiff Paul, by threat of injunctive, and other restraining action, and by threat of civil and criminal penalties, as enhanced by BCRA, from engaging in the quality and quantity of political communications that he would choose in his editorial discretion, but for the licensing power, editorial control and discriminatory economic burdens and penalties placed upon him by the BCRA/FECA. Additionally, as a United States citizen, voter in and donor to federal election campaigns, and as to electioneering communications in relation to such campaigns, Plaintiff Paul is being discriminated against by

licensing requirements, editorial controls and economic burdens and penalties not imposed upon broadcasting facilities, newspapers, magazines and other periodical publications not owned or controlled by any political party, political committee or candidate, and which are not subject to the power of the FEC to threaten injunctive, and other restraining, action and civil and criminal penalties.

42. Plaintiffs Gun Owners, RealReform, and Citizens United will be injured by the afore-stated system of prior restraints and discriminatory regulations under the BCRA/FECA. Such prior restraints and regulations will impose discriminatory economic burdens and penalties upon the communicative activity of Plaintiffs Gun Owners, RealReform, and Citizens United, thereby preventing Plaintiffs, by threat of injunctive, and other restraining, action, and by threat of civil and criminal penalties, as enhanced by BCRA, from engaging in the quality and quantity of political communications that each would choose in its editorial discretion, but for the licensing power, editorial control and discriminatory economic burdens and penalties placed upon them by the BCRA/FECA. Specifically, as to “electioneering communications,” Plaintiffs Gun Owners, RealReform, and Citizens United will be discriminated against by licensing requirements, editorial controls, and economic burdens not imposed upon broadcasting facilities, newspapers, magazines and other periodical publications not owned or controlled by any political party, political committee or candidate, and which are not subject to the power of the FEC to threaten injunctive, or other restraining, action and civil and criminal penalties.

43. Plaintiffs GOA-PVF and CUPVF have been, currently are, and will continue to be, injured by the afore-stated system of prior restraints and discriminatory regulations under

the BCRA/FECA, including: (a) registration with, reporting to and disclosure of the names, addresses and occupations of certain contributors, to the FEC; and (b) compliance with contribution limits imposed upon political committees independent of a candidate and a political party, having been neither raised nor indexed by BCRA. Such prior restraints and regulations currently impose, and will continue to impose, discriminatory economic burdens and penalties upon Plaintiffs GOA-PVF's and CUPVF's communicative activity expressly advocating or opposing the election of candidates to federal office, thereby preventing such Plaintiffs, by threat of injunctive, and other restraining, action and civil and criminal penalties, as enhanced by BCRA, from engaging in the quality and quantity of political communications that each would choose in its editorial discretion, but for the licensing power, editorial control and economic burdens and penalties placed upon them by BCRA/FECA. Additionally, as to "electioneering communications," Plaintiffs GOA-PVF and CUPVF are being discriminated against by licensing requirements, editorial controls, and economic burdens not imposed on broadcasting stations, newspapers, magazines, and other periodical publications not own or controlled by any political party, political committee or candidate, and which are not subject to the power of the FEC to threaten injunctive, or other restraining action, and civil and criminal penalties.

44. As past, present and likely future candidates for federal office, Plaintiffs Michael Cloud and Carla Howell have been, currently are, and will continue to be, injured by the afore-stated system of prior restraints and discriminatory regulations contained in FECA including: (a) registration with, periodic reports to, and disclosures of the names, addresses and occupations of certain contributors to, the FEC; and (b) compliance with the contribution

limits imposed upon individuals and other entities, even as raised and indexed by BCRA, and with the congressional mandate concerning coordinated expenditures, as provided for in the BCRA. Such prior restraints and regulations currently impose, and will continue to impose, discriminatory economic burdens and penalties upon Plaintiffs Cloud's and Howell's communicative activity expressly advocating election of each to federal office and promoting the policy positions that each takes as such a candidate, thereby preventing Plaintiff Cloud and Howell, by threat of injunctive, and other restraining action, and by threat of civil and criminal penalties, as enhanced by BCRA, from engaging in the quality and quantity of political communications that each would choose in his or her editorial discretion, but for the licensing power, editorial control and discriminatory economic burdens and penalties placed upon him and her by the BCRA/FECA. Additionally, as a United States citizen, voter in and donor to federal election campaigns, and as to electioneering communications in relation to such campaigns, Plaintiffs Cloud and Howell are being discriminated against by licensing requirements, editorial controls and economic burdens and penalties not imposed upon broadcasting facilities, newspapers, magazines and other periodical publications not owned or controlled by any political party, political committee or candidate, and which are not subject to the power of the FEC to threaten injunctive, and other restraining, action and civil and criminal penalties.

45. As candidates for state office in the future, and as members of the Massachusetts Libertarian Party, Plaintiffs Howell and Cloud will be injured by the editorial control and discriminatory economic burdens and penalties placed by the BCRA/FECA upon: (a) making public communications that refer to a clearly identified candidate for federal office, including

communications that do not expressly advocate a vote for or against a candidates; (b) engaging in voter registration activities conducted within 120 days of a federal election; and (c) engaging in voter identification, get-out-the-vote, and generic campaign activities conducted in connection with an election in which a candidate for federal office is on the ballot.

CLAIMS FOR RELIEF

COUNT I

(Unconstitutional Prior Restraint and Editorial Control)

46. Plaintiffs hereby reallege and incorporate by reference each of the foregoing allegations as if set forth fully herein.

47. The BCRA/FECA, by distinguishing between political communications related to a campaign for election to a federal office and such communications not related to such an election, including but not limited to such distinctions as “express advocacy” and “issue advocacy,” “electioneering communications” and non-electioneering communications, “federal election activity,” and other than federal election activity, and requiring persons and entities engaged in political communications related to a campaigns for election to a federal office, whether such communication expressly advocates the election or defeat of a candidate for election to a federal office, promotes or supports, or attacks or opposes, such a candidate, or merely refers to such candidate, to comply with certain registration and forced disclosure requirements and financial restrictions limiting such activity, has placed upon Plaintiffs an unconstitutional system of prior restraint, including licensing regulations, editorial controls,

and discriminatory economic burdens and penalties based upon the subject matter content of speech.

48. Accordingly, the BCRA/FECA, constitutes an abridgment of the freedom of the press in violation of the First Amendment to the United States Constitution, causing irreparable harm and injury to Plaintiffs.

COUNT II
(Unconstitutional Discriminatory Licensing System)

49. Plaintiffs hereby reallege and incorporate by reference each of the foregoing allegations as if set forth fully herein.

50. By exempting broadcasting stations, newspapers, magazines, and other periodicals owned by persons or entities who are not political parties, political committees, or candidates for election to federal office from the licensing system, editorial control and economic regulations administered by the FEC with respect to political communications related to campaigns for election to federal office, whether such communications expressly advocate the election or defeat of a candidate for election to federal office, or promote or support, or attack or oppose, such a candidate or refer to such a candidate, BCRA/FECA has placed upon Plaintiffs unconstitutional prior restraints, editorial control, and economic burdens through discriminatory registration requirements, reporting regulations, and disclosure requirements not placed upon such broadcasting facilities, media entities and persons.

51. Accordingly, the BCRA/FECA, constitutes an abridgment of the freedom of the press in violation of the First Amendment to the United States Constitution, causing irreparable harm and injury to Plaintiffs.

COUNT III
(Unconstitutional Editorial Control of Electioneering Communications)

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

53. By exempting broadcasting stations, newspapers, magazines and other periodicals owned by persons or entities who are not political parties, political committees, and candidates for election to federal office from the disclosure, reporting and contribution limitations governing “electioneering communications,” BCRA/FECA has placed upon Plaintiffs unconstitutional editorial control through discriminatory reporting regulations, disclosure requirements, and economic burdens and penalties, not placed upon such exempt entities and persons.

54. Accordingly, the BCRA/FECA constitutes an abridgment of the freedom of the press in violation of the First Amendment of the United States Constitution, causing irreparable harm and injury to Plaintiffs.

COUNT IV
(Unconstitutional Discriminatory Burden upon Plaintiffs GOA-PVF and CUPVF)

55. Plaintiffs GOA-PVF and CUPVF hereby reallege and incorporate by reference each of the foregoing allegations as is set forth fully herein.

56. By enacting BCRA, Congress has raised the individual contribution limitation to candidates and their authorized campaign committees, and to political parties, and provided for automatic raises of such limits indexed to inflation, but has not raised the individual contribution limit to independent political committees, nor indexed the current limit to inflation.

57. By raising the individual contribution limits with respect to candidates for election to federal office and their authorized campaign committees, and indexing those limits to inflation, and by raising individual contribution limits with respect to political parties and indexing those limits to inflation, but failing to raise such limits and to index such limits with respect to political committees functioning independently from candidates, their authorized campaign committees, or political parties, the BCRA/FECA imposes a discriminatory economic burden and penalty upon GOA-PVF and CUPVF, both of which engage in activities expressly advocating the election or defeat of candidates for election to federal office independently from such candidates and their committees and such political parties.

58. Accordingly, the BCRA/FECA constitutes an abridgment of the freedom of the press in violation of the First Amendment of the United States Constitution, causing irreparable harm and injury to Plaintiffs GOA-PVF and CUPVF.

COUNT V
(Unconstitutional Discriminatory Editorial Control of Political Party Candidates)

59. Plaintiffs Ron Paul, Michael Cloud and Carla Howell hereby reallege and incorporate by reference each of the foregoing allegations as if set forth fully herein.

60. By imposing new rules defining “coordinated” campaign expenditures, and further by targeting political parties and their candidates designed to limit the impact of “soft money” in the conduct of campaigns for election to federal office, BCRA/FECA has placed significant discriminatory editorial control and economic burdens and penalties upon such political parties and their candidates.

61. By imposing new rules upon “federal election activity” limiting state and local political parties, and upon candidates for state office, BCRA/FECA has placed significant editorial control and economic burdens and penalties upon such parties and their candidates.

62. Accordingly, BCRA/FECA constitutes an abridgment of the freedom of the press in violation of the First Amendment of the United States Constitution, causing irreparable harm and injury to Plaintiffs Paul, Cloud and Howell.

RELIEF REQUESTED

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

1. Declare that the provisions of the BCRA and FECA, as challenged, violate the Plaintiffs' rights under the Freedom of the Press guarantee of the United States Constitution.
2. Permanently enjoin and restrain Defendants, their agents, and assistants from enforcing, executing, and otherwise applying the challenged provisions against defendants and others in any and all respects in which the same may be found to violate the Freedom of the Press guarantee of the United States Constitution;
3. Award Plaintiffs costs and reasonable attorney's fees against Defendants; and
4. Grant and order such further relief as the Court may deem just and proper.

Herbert W. Titus
TROY A. TITUS, P.C.
5221 Indian River Road
Virginia Beach, Virginia 23464
(757) 467-0616

Richard O. Wolf (D.C. Bar No. 413373)
MOORE & LEE, LLP
1750 Tysons Boulevard, Suite 1450
McLean, Virginia 22102-4225
(703) 506-2050

William J. Olson (D.C. Bar No. 233833)

John S. Miles (D.C. Bar No. 166751)

WILLIAM J. OLSON, P.C.
8180 Greensboro Drive, Suite 1070
McLean, Virginia 22102-3860
(703) 356-5070

Attorneys for Plaintiffs
Dated: April 23, 2002