



3. The NRA is a voluntary membership organization comprised of some 4 million Americans. The primary purpose of the NRA is to preserve and protect the Second Amendment's guarantee that individuals shall have the right to "keep and bear arms." The NRA's exercise of its free speech rights is critical to the fulfillment of its mission, and the NRA is constantly engaged in the public debate concerning firearms policy and Second Amendment rights.

4. Title II of the Bipartisan Campaign Finance Reform Act ("BCRA") stymies the NRA's participation in that political debate by criminalizing its political speech. But the NRA faces *dire* and *immediate* peril specifically from the decision of the three-judge district court. BCRA's primary definition of "electioneering communications" would impact the NRA's broadcasts *only* in the periods immediately preceding federal elections – 60 days before general elections and 30 days before primaries. BCRA's fallback definition would prevent the NRA from promoting or attacking candidates *only* if our speech had no plausible meaning other than to influence an election. But *neither* of these limitations applies under the district court's decision. If this remains the law in the months leading up to the Supreme Court's resolution of this case, then the NRA will be prevented from engaging in political speech that is essential to its mission.

5. The three-judge district court has struck down Title II's primary definition of electioneering communications as the NRA and other Plaintiffs had urged it to do. But the court has also upheld the fallback definition while effectively deleting its final clause that would limit its scope to broadcasts that have no plausible purpose apart from influencing an election. My understanding is that, as of now, *all* of our broadcasts that are "*not* neutral" in referencing federal candidates are banned. Although I do not know exactly what this means, I believe that very little of what the NRA says about federal officeholders will be deemed "neutral" by the FEC. When it educates the public, the NRA generally praises those politicians who are assisting its cause and

criticizes those who are opposing it. When it raises money from its membership and beyond, the NRA applauds those politicians who stand behind it and denounces those who are aligned against it. And when the NRA is attacked by anti-gun politicians, it naturally responds in kind. All of this speech is vital to the NRA's political mission, as detailed in my prior declaration.

6. The options the NRA is left with in the aftermath of the three-judge district court's decision are antithetical to the First Amendment. The NRA must either: (i) censor itself by foregoing its immediate plans to broadcast political ads that reference federal officeholders (who are also candidates for reelection in 2004); (ii) subject itself to a system of prior restraint by seeking, on bended knee, preclearance of its political speech by the FEC; or (iii) risk criminal punishment for engaging in the political debate on pending legislation.

7. Pressing legislative issues demand quick responses. Momentum supporting legislation, if not capitalized upon, can readily slow and then disappear once opposition forces gain traction; the hot item on the legislative agenda today, in the face of a filibuster, can be forgotten tomorrow and then for years to come. The NRA is successful in championing the interests of its supporters precisely because it is responsive to this political reality and determined and able to act aggressively when the window for legislative action is open.

8. As detailed in a story run on the front-page of the *Washington Post* on May 5, 2003, *see* Exhibit B, one such legislative issue has risen to the forefront of the congressional agenda and, therefore, the national political debate. The NRA has long been a proponent of legislation that would protect gun manufacturers from frivolous and vexatious litigation that is designed to put them out of business and thereby destroy the firearms industry. In recent weeks, the House of Representatives passed such legislation by a vote of more than two to one. The same bill, S. 659, is now coming before the Senate with 52 co-sponsors and support from the

White House. Anti-gun politicians such as Senators Charles Schumer, Dianne Feinstein, and Frank Lautenberg have announced their intention to try to thwart the will of the majority of their colleagues by attempting to kill the measure with a filibuster. The NRA is prepared to do everything in its power to prevent that from happening; this means taking its message to America's airways *immediately*.

9. It is imperative that NRA have access to the Nation's airwaves to address this issue. As the vote in the Senate approaches, anti-gun politicians will join forces with their allies in the media to demonize the NRA and its position. The huge media conglomerates will be able to fund this assault with their corporate warchests. The NRA's only chance to create a public debate and to have its views heard is through access to paid media.

10. The NRA currently intends to run a series of 60-second radio broadcasts as soon as practicable in critical areas around the country where Senators have yet to commit one way or the other as to where they stand on S 659. The same script will be followed for each ad, except for a concluding portion that urges listeners in various States to call their respective Senators and inserts the appropriate name.

11. The current script for these ads is attached to my declaration. *See* Exhibit C. As evident from the script, the ad includes three references to Senator "Chuck Schumer": the first describes him as among "those who don't want Americans to own firearms" and "are at it again"; the second associates him with "those opposed to firearm ownership"; and the third juxtaposes him with "freedom-loving Americans." *Id.* I understand that Senator Schumer is a candidate for reelection in 2004.

12. The ad will urge listeners in Arizona, Indiana, Ohio, and South Dakota to call their Senator -- John McCain in Arizona; Evan Bayh in Indiana; George Voinovich in Ohio; and

Tom Daschle in South Dakota -- and “tell [him] to stand with freedom-loving [Arizonans] and not with Chuck Schumer.” *Id.* Two of these Senators and Democrats and two are Republicans, and I understand that all four of these Senators are candidates for reelection in 2004.

13. None of the ad’s references to any of the relevant Senators is intended to influence an election.

14. The NRA’s intended references to Senator Charles Schumer are not and will not be considered “neutral,” and I believe that the ad’s planned references to the other Senators may well not be considered “neutral,” depending on whether those individuals decide to support or oppose S. 659.