
IN THE SUPREME COURT OF THE UNITED STATES

**AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS, *et al.*,**

Appellants,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Appellees.

On Appeal from the United States District Court
For the District of Columbia

**RESPONSE OF THE AFL-CIO PLAINTIFFS
CONCERNING COORDINATED BRIEFING**

The American Federation of Labor and Congress of Industrial Organizations and the AFL-CIO Committee on Political Education Political Contributions Committee (collectively, the "AFL-CIO plaintiffs"), appellants in No. 02-1755 and appellees in Nos. 02-1676 and 02-1702, submit this response to the request of the Court for the parties' positions regarding the length of briefs on the merits. The AFL-CIO plaintiffs wish to submit separate argument on the following issues raised in their Jurisdictional Statement or on which they prevailed in the District Court: (1) the constitutionality of the primary and fallback definitions of "electioneering communications" in BCRA § 201, as applied to broadcast communications of labor organizations and corporations

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by BCRA § 203; (2) the constitutionality of BCRA's new coordination provisions in BCRA §§ 202 and 214; (3) the constitutionality of the advance disclosure requirement for electioneering communications in BCRA § 201(a), adding 2 U.S.C. § 434(f)(5); (4) the constitutionality of the advance public disclosure requirement for broadcasters in BCRA § 504. In order to present these arguments fully, we respectfully request the opportunity to file opening and reply briefs of 50 and 20 pages, respectively, as provided in the Rules of the Court.

1. With respect to the definition of "electioneering communication", our primary focus will be on the extent to which BCRA's provisions will unconstitutionally interfere with the AFL-CIO's ability to carry out its lobbying and public education programs on issues of importance to working families, and comparable speech by other groups. The opinions below striking down the primary definition of "electioneering communications", and related findings of fact, devoted significant attention to the AFL-CIO's broadcast advertising program, see, e.g., Henderson op. 116-128; Leon op. 78, 337-44, and Judge Leon's analysis of the fallback definition similarly relied heavily on the AFL-CIO's ads. See, Leon op. 92, 344-346. None of the other briefs on plaintiffs' side are expected to address the AFL-CIO's program in detail, if at all. Furthermore, as we did in the District Court, the AFL-CIO plaintiffs will coordinate their briefs with the McConnell plaintiffs, the Business plaintiffs and others challenging Title II of BCRA in order to minimize repetition of legal argument.

2. With respect to coordination, the AFL-CIO plaintiffs expect to focus on the practical effects of the unconstitutional reach of BCRA's provisions, as evidenced, again, by the AFL-CIO's own unique experience.

3. With respect to the advance disclosure argument, the AFL-CIO plaintiffs took the

lead on this issue in the District Court and we do not expect other plaintiff groups to devote significant argument to this issue. Other plaintiff groups will be making broader challenges to BCRA's disclosure requirements issue.

4. With respect to the advance public disclosure argument for broadcasters, we expect to focus on the impact of this provision on labor organizations and other groups whose requests for broadcast time must be disclosed, as distinct from the impact on broadcasters, which will be addressed by plaintiff National Association of Broadcasters.

5. The plaintiffs in this litigation represent a broad range of political and social interests, including both labor and business, and include many organizations and individuals who frequently disagree on matters of social and economic policy and other issues. Although the plaintiffs have coordinated their efforts throughout the litigation in order to avoid burdening the Court with unnecessary and repetitive filings, it has also been critical that the disparate, and often traditionally adversarial, interests on plaintiffs' side be able to present their own experiences in their own voices without relying on other parties to advance their unique perspectives or to characterize each other's conduct over the years. As was the case in the District Court, the AFL-CIO, and other plaintiff groups, should be allowed to file full briefs on the merits in accordance with the Court's usual practice.

Respectfully submitted,



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This is to certify that I caused a copy of the foregoing **Response of the AFL-CIO Plaintiffs Concerning Coordinated Briefing** be served on all counsel required to be served, on June 10, 2003, by the means indicated below:

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