

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH MCCONNELL, <i>et al.</i>,	)	CIVIL ACTION NO. 02-CV-582
	)	(CKK, KLH, RJL)
Plaintiffs,)	
	)	Consolidated with:
v.)	
	)	CIVIL ACTION NOS.
FEDERAL ELECTION COMMISSION, <i>et al.</i>,	)	02-CV-581 (CKK, KLH, RJL)
	)	02-CV-633 (CKK, KLH, RJL)
Defendants.	)	02-CV-751 (CKK, KLH, RJL)
	)	02-CV-753 (CKK, KLH, RJL)
	)	02-CV-754 (CKK, KLH, RJL)
	)	02-CV-874 (CKK, KLH, RJL)
CONGRESSMAN RON PAUL, <i>et al.</i>,	)	02-CV-875 (CKK, KLH, RJL)
	)	02-CV-877 (CKK, KLH, RJL)
Plaintiffs,	)	02-CV-881 (CKK, KLH, RJL)
)	
v.	)	and
	)	CIVIL ACTION NO. 02-CV-582
FEDERAL ELECTION COMMISSION, <i>et al.</i>,	)	(CKK, KLH, RJL)
)	
Defendants.)	
)	

**PROPOSED FINDINGS OF FACT OF PLAINTIFFS
IN CIVIL ACTION NO. 02-CV-781, CONGRESSMAN RON PAUL, GUN OWNERS OF
AMERICA, INC., GUN OWNERS OF AMERICA POLITICAL VICTORY FUND,
REALCAMPAIGNREFORM.ORG, CITIZENS UNITED, CITIZENS UNITED
POLITICAL VICTORY FUND, MICHAEL CLOUD, AND CARLA HOWELL**

1. Plaintiffs Congressman Ron Paul, Gun Owners of America, Inc., Gun Owners of America Political Victory Fund, RealCampaignReform.org, Citizens United, Citizens United Political Victory Fund, Michael Cloud, and Carla Howell (“the Paul Plaintiffs”) have joined in a single complaint five claims requesting declaratory and injunctive relief with respect to certain Bipartisan Campaign Reform Act of 2002 (“BCRA”)/Federal Election Campaign Act of 1971, as amended (FECA) (hereinafter “BCRA/FECA”) provisions that unconstitutionally

abridge their rights guaranteed by the First Amendment's freedom of the press. In support of their cause, they submitted declarations of eleven fact witnesses, Congressman Ron Paul, Thomas Lizardo, Mark Elam, Lawrence D. Pratt, James H. Babka, Jr., David N. Bossie, Michael Boos, Anonymous Witness No. 1, Anonymous Witness No. 2, Michael Cloud, Carla Howell, and reports of three expert witnesses, James C. Miller, III, Walter J. Olson, and Perry Willis, attaching documentary exhibits to said declarations and reports.

THE PAUL PLAINTIFFS

2. Congressman Ron Paul is a member of the Republican Party, and was the Republican nominee in 2002 for the congressional seat he now holds. He is a Member of the United States House of Representatives from the 14th Congressional District of Texas, a position to which he was first elected in 1996. Paul Decl. ¶ 1. In 1976, and then from 1978-1984, Congressman Paul also served as an elected Member of the House of Representatives, representing the people of the Texas 22nd Congressional District. In 1984, he unsuccessfully sought the Republican nomination for the U.S. Senate from Texas, and in 1988 he was the Libertarian Party candidate for President of the United States, an election he did not win. Paul Decl. ¶ 2. Congressman Paul, a physician by profession, is also a fundraiser as well as a donor to campaigns of candidates for federal office. Paul Decl. ¶¶ 3-4. He has studied American monetary and foreign policy, and has promoted policies that would facilitate a free market economy backed up by a sound monetary system and a foreign policy protecting the sovereignty and independence of the United States of America consistent with the original vision of America's founders as found in the written text of the United States Constitution. To that end, he has proposed legislation, spoken on the House floor, communicated regularly with

his constituents, published articles, sent e-mail and faxes, established web sites, supported and raised money for organizations that share his political principles and goals for America, and provided financial and other support for persons who share his principles and goals and who were seeking election to office, both state and federal. Paul Decl. ¶ 4.

3. Gun Owners of America, Inc. (“GOA”) is a nonpartisan, not-for-profit, non-stock corporation organized under the laws of the State of California which has its principal place of business in Springfield, Virginia. Pratt Decl. ¶¶ 2, 3. It is an educational and advocacy organization exempt from federal income taxes under 26 U.S.C. Section 501(c)(4), and is dedicated primarily to defending the rights guaranteed under the Second Amendment of the United States Constitution. *Id.*

4. Gun Owners of America Political Victory Fund (“GOAPVF”) is a multi-candidate “political committee,” which is the federally-registered, connected political committee of Gun Owners of America, Inc. Pratt Decl. ¶ 11 (p. 12). It is independent of any political party. *Id.*

5. RealCampaignReform.org (“RCR”) is a nonpartisan, not-for-profit, non-stock corporation organized under the laws of the Commonwealth of Virginia which is exempt from federal income taxes under 26 U.S.C. Section 501(c)(4) and has its principal place of business in Alexandria, Virginia. Babka Decl. ¶¶ 2, 3. It is an educational and advocacy organization dedicated primarily to public information concerning, and the defense of, campaign and election-related rights guaranteed under the First Amendment of the United States Constitution. As a principal function, it disseminates information concerning campaign and election-related rights. Babka Decl. ¶ 3.

6. Citizens United (“CU”) is a nonpartisan, not-for-profit, non-stock corporation

organized under the laws of the Commonwealth of Virginia, exempt from federal income taxes under 26 U.S.C. Section 501(c)(4), with its principal place of business in Sterling, Virginia. Bossie Decl. ¶¶ 2, 3. It is an educational, advocacy organization dedicated primarily to principles of limited government and national sovereignty and rights secured under the United States Constitution, and has as a principal function the dissemination of information concerning rights secured under the United States Constitution. *Id.*

7. Citizens United Political Victory Fund (“CUPVF”) is a multi-candidate “political committee,” independent of any political party, which is the federally-registered, connected political committee of Citizens United. Boos Decl. ¶ 4.

8. Michael Cloud, the 2002 Libertarian Party candidate for the U.S. Senate from Massachusetts, is a citizen of the Commonwealth of Massachusetts and the United States who is eligible to vote in federal elections and is a registered voter in the Commonwealth of Massachusetts. Cloud Decl. ¶¶ 1-2. He has been a member of the Libertarian Party for 27 years, and has been active in federal and state elections both as a candidate and as an active supporter of candidates. During the last 11 years, he has personally raised over \$8 million for Libertarian candidates and the Libertarian Party. Like his co-plaintiff, Congressman Paul, Mr. Cloud intends to participate in federal elections in the future as a candidate and/or as an active supporter of a candidate, has accepted, currently accepts, and intends to continue to accept campaign contributions, and has first-hand experience in dealing with the “real world” impact that the BCRA/FECA causes and will cause to challenger candidates for federal office who represent a “third party.” Cloud Decl. ¶¶ 4-6.

9. Carla Howell, the Libertarian Party candidate for Governor of the Commonwealth

of Massachusetts in 2002, is a citizen of the Commonwealth of Massachusetts and the United States who is eligible to vote in federal elections and a registered voter in the Commonwealth of Massachusetts. Howell Decl. ¶¶ 1-2. She was the Libertarian Party candidate for the U.S. Senate from Massachusetts in 2000, and intends to run again for federal office in Massachusetts. Her goal as a Libertarian candidate is not merely to win office, but also to support issues, such as the initiative in Massachusetts to abolish the state income tax, and to promote the Libertarian Party philosophy to the public so others who share this philosophy can be elected to federal and state office and/or inspired to work towards instituting Libertarian principles. Howell Decl. ¶¶ 2-3. She is a donor to campaigns for Libertarian candidates. She has been, and is, an active supporter of other Libertarian Party candidates, and intends to participate in federal and state elections in the future as a candidate and/or as an active supporter of a candidate, and she has accepted, does accept, and intends to continue to accept, campaign contributions. Howell Decl. ¶¶ 3-4. Like her co-plaintiffs, Congressman Paul and Mr. Cloud, she has first-hand experience in dealing with the “real world” impact that the FECA has caused, and that the FECA as amended by the BCRA will cause to challenger candidates for state and federal office, especially those who, like Ms. Howell, represent a “third-party.” *Id.*

THE PAUL PLAINTIFFS’ WITNESS

10. Each of the Paul Plaintiffs, in person or through representatives, testified in this case by submitting declarations setting forth the nature of their relevant First Amendment press activities and describing how those activities are impacted by BCRA/FECA. They are summarized in paragraphs 2-9 above.

A. Additional Paul Fact Testimony. In addition to Congressman Paul's testimony, summarized above, both his campaign manager, Mark Elam, and one of his main political consultants, Thomas Lizardo, as well as two "anonymous" witnesses, both donors to Congressman Paul's campaigns, submitted declarations. Campaign manager Elam, Congressman Paul's campaign manager for all of Paul's campaigns for the Texas 14th District House seat, testified concerning the extraordinary burdens that FECA has placed on the Paul campaigns, adversely impacting the ability of those campaigns to communicate effectively Congressman Paul's political philosophy and policy positions to the people of his congressional district. Elam Decl. ¶¶ 1-7, 9-11. Political consultant Lizardo confirmed the Elam testimony, adding that Congressman Paul has had to develop numerous alternative means to communicate his message to the people on account of the major media opposition to Congressman Paul's election and to his political and policy positions. Lizardo Decl. ¶¶ 1-6. Anonymous Witness No. 1 testified that he would give more to the Paul campaigns than is permitted under the FECA, and at the same time, he expressed reluctance to continue his giving because of a newly acquired awareness of the public availability of his political contribution history as provided for under FECA. Anon. Wit. No. 1 Decl. ¶¶ 1, 3-9. Anonymous Witness No. 2 testified that he would give more than \$200 per year to the Paul campaign, but for the FECA forced disclosure requirements. Anon. Wit. No. 2 Decl. ¶¶ 1-8.

B. Expert witnesses.

1. James C. Miller, III. Dr. Miller, a Ph.D. economist, former chairman of the Federal Trade Commission, former Director of the Office of Management and Budget, former candidate for the U.S. Senate from Virginia, and author of the 1999 book, *Monopoly*

Politics (a copy of which is appended to his report), submitted a report testifying to the actual operation and effect of the federal election laws, as well as the rules promulgated and enforced by the Federal Election Commission (“FEC”), including the requirement that candidates for office secure a license from the government in order to compete for election to federal office and to take their public policy message to the people. Miller Exp. Rep. at 1-2, 13-24. His report documents how BCRA/FECA operates to the disadvantage of challengers, and to the advantage of incumbents, and how campaign finance regulations generally impair the quantity and quality of public debate by candidates on the issues. *Id.* at 8-13. His report also attests that voters would be better served by the exchange of ideas according to the principles of the competitive marketplace, rather than under the regulatory regime of BCRA/FECA. *Id.* at 3-8, 24-27.

2. Walter J. Olson. Mr. Olson, a certified public accountant, a management consultant, and expert in FEC compliance matters, submitted a report containing detailed testimony about the burdensome, intricate, labor-intensive, time-consuming, and costly record keeping and reporting requirements imposed by FECA, and further increased by BCRA. Olson Exp. Rep. ¶ 7-15, 17-60, 116. Mr. Olson’s report demonstrates that BCRA/FECA exposes individuals and organizations engaged in federal election activities to serious penalties for violation of an extensive, intricate, and burdensome set of operating, reporting, filing, and record keeping requirements so complex that the FEC’s own information and software specialists are sometimes unable to provide answers. *Id.* ¶ 8.

3. Perry Willis. Mr. Willis, an experienced federal campaign manager and consultant, submitted a report in which he testified at great length as to how BCRA/FECA

serves to protect the Democratic and Republican parties' domination of American politics by artificial enhancement of media influence on elections through a special privilege exemption, and imposition of draconian contribution limits and reporting requirements on minor parties and their candidates, who are oftentimes ignored by the exempt institutional media. Willis Exp. Rep. ¶¶ 5-13. Mr. Willis further described how BCRA/FECA will continue to deter qualified individuals from becoming candidates for federal office and, by means of reporting requirements, will chill public participation in campaign activity, particularly on behalf of candidates for federal office who challenge either incumbents or candidates of the two major parties. *Id.* ¶¶ 14-15.

THE PAUL PLAINTIFFS' PRESS ACTIVITIES AS IMPACTED BY THE BCRA/FECA

11. Each of the Paul Plaintiffs engages in a variety of First Amendment activities that the Paul Plaintiffs contend are protected by the First Amendment's freedom of the press.

12. Congressman Paul, in addition to his own activities as a voter and contributor to other organizations and candidates, conducts a number of press activities as a candidate for federal office. Following the dictates of FECA, he has a FEC-registered campaign committee. He and his campaign committee issue campaign newsletters and communicate with the public by means of newsletters, direct mail, e-mail, targeted telephone facsimiles, telephone calls, and the Internet, as well as radio and television advertisements, to promote his candidacy for federal office and his policies of free market, sound money, independent sovereignty, and constitutionally-limited government. Paul Decl. ¶ 13; Lizardo Decl. ¶ 5. The FECA in the past and present, and the BCRA/FECA in the future, has interfered, does interfere, and will

interfere with Congressman Paul's free press activities by reducing the quality and quantity of these communications. Paul Decl. ¶ 14; Lizardo Decl. ¶ 5; Elam Decl. ¶¶ 6-7. But for the BCRA/FECA, Congressman Paul would be able to raise more money from individuals and organizations for communicative activities, as well as expand the range of fundraising events, receive more assistance from volunteers, and redirect resources expended to comply with FEC licensing, record keeping, and reporting requirements. Paul Decl. ¶ 14; Elam Decl. ¶¶ 4-5, 7, 10; Anon. Wit. No. 1 Decl. ¶¶ 7-9; Anon. Wit. No. 2 Decl. ¶¶ 6-8. The FECA in the past and present, and the BCRA/FECA in the future, has interfered, does interfere, and will interfere with such activities by imposing restrictions, controls, and prohibitions on such activities, and by interfering with and affecting Congressman Paul's editorial control over the above-mentioned communicative activities. Such restrictions, controls and prohibitions are part of the federal campaign regulatory system that operates as a prior restraint on Congressman Paul's campaigns for federal elective office and that has an intimidating effect on Congressman Paul's communicative, press activities in the political marketplace. Paul Decl. ¶¶ 15-18; Lizardo Decl. ¶¶ 5-6; Elam Decl. ¶¶ 10-11.

13. Plaintiffs Howell and Cloud also engage in press activities similar to those engaged in by Congressman Paul, both as citizens and voters, and as candidates for federal office, although neither Ms. Howell nor Mr. Cloud has yet been elected to federal office. Ms. Howell and Mr. Cloud, both members of the Libertarian Party, as well as respective state and federal candidates of the Libertarian Party in 2002, engage in press activities that have been, are, and will continue to be profoundly affected by the federal campaign laws embodied in BCRA/FECA that are being challenged by the Paul Plaintiffs. In general, these press activities

are of a kind similar to those citizen/voter/candidate activities of Congressman Paul. The effects on such activities have to do with the prior restraints and intimidating effects, both financial and organizational, also of a kind similar to those experienced by Congressman Paul and resulting from BCRA/FECA. *See* ¶ 12, *supra*. For example, both Ms. Howell and Mr. Cloud, and their campaigns, promote (and seek to educate the public regarding) various policy issues and ideas, including the reduction of the size of government, abolition of the Massachusetts income tax, and the restoration of personal liberties, and both work with other Libertarian candidates for state and federal office. Howell Decl. ¶¶ 2, 6; Cloud Decl. ¶¶ 2, 6, 20; Willis Exp. Rep. ¶ 7. In fact, as 2002 state and federal Libertarian Party candidates, respectively, Ms. Howell and Mr. Cloud coordinated certain campaign activities with one another in the 2002 federal election cycle, which would be prohibited by BCRA's "soft money" rules. Howell Decl. ¶ 7; Cloud Decl. ¶ 20. The press campaign activities of both Ms. Howell and Mr. Cloud in the past have been restrained, economically challenged, and adversely impacted by the FECA laws limiting campaign contributions and requiring registration, reporting, and disclosure, which will be exacerbated under BCRA/FECA. Howell Decl. ¶¶ 7, 9, 15-22; Cloud Decl. ¶¶ 2, 4, 7-9, 14-17, 19-21. FECA in the past, and BCRA/FECA in the future, has interfered and will interfere with Ms. Howell's and Mr. Cloud's free press activities by imposing editorial control and discriminatory burdens on their respective campaigns for federal office and their support for other campaigns for federal office. Howell Decl. ¶ 23; Cloud Decl. ¶¶ 19-21; Willis Exp. Rep. ¶ 8. Like Congressman Paul, Ms. Howell's and Mr. Cloud's press activities are impacted by the discriminatory effects of the FECA with respect to the institutional media, if not to a much higher degree because of the

Massachusetts candidates' involvement with the Libertarian Party, which is a "third party."

Compare Paul Decl. ¶¶ 13, 16 *with* Howell Decl. ¶¶ 8-12 *and* Cloud Decl. ¶¶ 7-9, 25-28.

Additionally, a primary objective of Libertarian campaigns in general is to educate the public about small government and other aspects of Libertarian Philosophy. Willis Exp. Rep. ¶¶ 7-8.

The existence of the Libertarian Party and any details of the Party's platform is almost universally ignored by the corporate mass media. Cloud Decl. ¶¶ 24-28; Howell Decl. ¶¶ 11-14, Willis Exp. Rep. ¶¶ 7-9.

14. GOA, RCR and CU, by their respective undertakings, engage in press activities. Each of them has as a principal function the dissemination of information concerning rights secured under the United States Constitution and other important legislative and policy issues. Pratt Decl. ¶ 3; Babka Decl. ¶ 3; Bossie Decl. ¶ 3. GOA and CU each spends significant funds for communications on such issues during periods, *inter alia*, just prior to federal primary and general federal elections, utilizing broadcast, cable, and satellite facilities. Pratt Decl. ¶ 3; Bossie Decl. ¶ 3. GOA and CU each also communicates with the public by means of mailed and telefaxed letters, messages and articles on its Internet web site, audio tapes, videotapes, and radio and television broadcasts to the public. Pratt Decl. ¶ 5; Bossie Decl. ¶ 5. The press activities of both GOA and CU include engaging in issue advocacy, including communications which will constitute "electioneering communications" as that term is defined by BCRA. The provisions of BCRA which restrict such communications will prevent GOA and CU from engaging in such press activities within 30 days of a primary federal election and 60 days of a general federal election. Pratt Decl. ¶¶ 7, 9; Bossie Decl. ¶ 7. RCR, which was formed in 2000, does not have the many years of press activities that GOA and CU have, but it

regularly distributes educational communications by e-mail to a subscriber list of 15,000; it also has engaged in developing communications to the public by radio broadcast which would constitute “electioneering communications” as defined by BCRA. Babka Decl. ¶ 4. Future “electioneering communications” are planned utilizing various media, including radio broadcasting. Such communications would include “targeted communications” as defined by BCRA. Babka Decl. ¶ 7. The communications to the public of GOA, RCR, and CU that are in evidence do not constitute “express advocacy,” within the meaning of federal election law, but rather “issue advocacy,” and the types of communications that GOA, RCR, and CU are prohibited by BCRA/FECA from broadcasting shortly before federal elections do not constitute “express advocacy.” Pratt Decl. ¶ 6; Babka Decl. ¶ 5; Bossie Decl. ¶ 6. BCRA/FECA would substantially interfere with the press activities of GOA, RCR, and CU in prohibiting them from broadcasting electioneering communications.

15. In addition to the adverse, discriminatory impact that BCRA/FECA has upon their participation in press activities such as electioneering communications, impeding their ability to communicate with the public on public policy issues during key periods of time leading up to primary and general elections, the press activities of GOA, RCR, and CU are negatively impacted by BCRA/FECA with respect to their working relationships with federal officeholders. For example, both GOA and CU solicit funds through direct mail endorsed by Members of Congress who support the goals of those organizations. Pratt Decl. ¶ 10; Bossie Decl. ¶ 9. RCR has not yet reached that stage of its development, but would like to engage in such communications in the future. Babka Decl. ¶ 9. BCRA/FECA would effectively prohibit such communications, and thus would substantially interfere with the press activities of GOA,

RCR, and CU in this way as well. Even if these plaintiffs were able to engage in such communications in the future, by adopting separate funds that received no corporate contributions and using those funds exclusively to pay for electioneering communications, their press activities would be substantially burdened thereby, including the increased record keeping and reporting requirements with respect to electioneering communications under BCRA/FECA. Pratt Decl. ¶ 7; Bossie Decl. ¶ 5 (p. 5).

16. Plaintiffs GOA and CU, GOAPVF and CUPVF, as political committees, engage in press activities which are severely burdened and restricted by BCRA/FECA. Such burdens and restrictions include the discriminatory registration, reporting, and disclosure requirements mandated by those laws, as well as the discriminatory contribution limits upon political committees and donors to political committees. Pratt Decl. ¶¶ 13, 16-19; Boos Decl. ¶¶ 8, 11-14. *See* Olson Exp. Rep. ¶¶ 17-61. The amount of time, effort, and expense required to fulfill the myriad, complex reporting requirements substantially interferes with the press activities of these organizations. *See* ¶ 47, *infra*.

17. BCRA/FECA subjects the Paul Plaintiffs' press activities to a system of federal licensure. Plaintiffs Paul, Cloud, and Howell, who have been federal candidates, have been required to file a "statement of organization" (signed by a treasurer who assumes unlimited personal liability for legal compliance of the principal campaign committee) with the FEC (or the Secretary of the Senate regarding Senate candidates) before the individual or any committee established by the individual can expend more than \$5,000 on "campaign activities," including publishing communications that expressly advocate the individual's election to federal office. Paul Decl. ¶ 14; Cloud Decl. ¶ 14. *See* Olson Exp. Rep. ¶¶ 16, 67, 73.

18. BCRA/FECA imposes economically burdensome regulations upon federal candidates and their committees. BCRA/FECA requires candidates' committees to file periodic reports with the FEC (or the Secretary of the Senate regarding Senate candidates) containing the name, address, occupation, and employer of any contributor of more than \$200 in the aggregate in a calendar year. Paul Decl. ¶ 11; Cloud Decl. ¶ 16; Willis Exp. Rep. ¶ 13; Lizardo Decl. ¶ 3. This regulatory burden limits the funds available to federal candidates. For example, plaintiff Cloud estimated that his 2002 campaign for Senate would have received between \$100,000 and \$300,000 in additional contributions from at least 261 contributors who would have donated more, but did not do so because any contributions over \$200 in the aggregate in a calendar year from an individual would have required that his or her identity be disclosed in filed reports. Cloud Decl. ¶¶ 14, 16. There is other substantial evidence that this reporting/disclosure requirement interferes with plaintiffs' press activities by restricting the funds that would otherwise be available for their federal candidacies. *E.g.*, Paul Decl. ¶ 14; Lizardo Decl. ¶¶ 3-4; Anon. Wit. No. 2 Decl. ¶ 8; Willis Exp. Rep. ¶ 13. This burden is discriminatory because it is not imposed on other elements of the press, such as the institutional media. Paul Decl. ¶ 13; Lizardo Decl. ¶ 5; Willis Exp. Rep. ¶ 6.

19. BCRA/FECA imposes additional economically burdensome regulations upon federal candidates and their committees. BCRA/FECA would limit contributions to candidate committees to \$2,000 per election. Willis Exp. Rep. ¶ 7. This regulatory burden limits the funds available to federal candidates. Paul Decl. ¶ 14; Cloud Decl. ¶ 15; Willis Exp. Rep. ¶ 7. Plaintiff Cloud estimates that the limitation of \$1,000 prior to BCRA cost his campaign committee between \$350,000 and \$700,000 in net contributions from at least 46 donors.

Cloud Decl. ¶ 15. This discriminatory burden is not imposed on other elements of the press, such as the institutional media, which are permitted to editorialize, endorse, and report as they see fit. Paul Decl. ¶ 13; Willis Exp. Rep. ¶ 7; Lizardo Decl. ¶ 5. Such discrimination enhances the role and influence of institutional media corporations in the electoral process. Cloud Decl. ¶¶ 8-9; Miller Exp. Rep. at 19.

20. BCRA/FECA also imposes economically burdensome regulations upon Section 501(c)(4) organizations, including plaintiffs GOA, CU, and RCR, and the connected separate segregated funds (“SSFs”) of GOA and CU. Because of the discriminatory prohibitions on corporate involvement in federal elections, plaintiffs GOA and CU have been required to establish SSFs (*i.e.*, plaintiffs GOAPVF and CUPVF, respectively) to conduct “express advocacy,” and GOAPVF and CUPVF have been required to file “statements of organization” with the FEC in order to register before they were permitted to provide any financial support to federal candidates, including publishing communications that expressly advocate the election or defeat of any federal candidate. Pratt Decl. ¶¶ 12-13; Boos Decl. ¶¶ 4-5. *See* Olson Exp. Rep. ¶¶ 19, 22. No multicandidate SSF, including plaintiffs GOAPVF and CUPVF, may receive contributions in excess of \$5,000 per year from an individual. Pratt Decl. ¶¶ 12, 18; Boos Decl. ¶ 13. GOAPVF, CUPVF, and other political committees supporting or opposing federal candidates also are required to file periodic reports with the FEC regarding their financial activities. Pratt Decl. ¶ 13; Boos Decl. ¶ 11; Olson Exp. Rep. ¶¶ 11, 17. GOAPVF, CUPVF, and other political committees registered with the FEC are further required to report the name, address, employer, and occupation of each contributor donating more than \$200 in a calendar year. Pratt Decl. ¶ 17; Boos Decl. ¶ 13. This burden on

plaintiffs' press activities is not imposed on other elements of the press, such as the institutional media, and is discriminatory. Pratt Decl. ¶ 19; Boos Decl. ¶ 14. The reporting burden can be 20 percent or more of an SSF's annual receipts. Boos Decl. ¶ 14.

BCRA TITLE I'S IMPACT ON THE PAUL PLAINTIFFS' PRESS ACTIVITIES

21. The press activities of CU and GOA in the past have included solicitation letters signed by Members of Congress, and they desire to engage in such speech in the future. Bossie Decl. ¶ 9; Pratt Decl. ¶ 10. RCR desires to engage in such speech in conjunction with federal officeholders in the future. Babka Decl. ¶ 9. In addition, Congressman Paul desires to help raise money for nonprofit organizations, such as GOA, RCR, and CU, that promote his positions on public policy issues. Paul Decl. ¶ 16. BCRA/FECA (BCRA Section 101(a) creating FECA section 323(e(1)) subjects such press activities of the Paul Plaintiffs to editorial control by severely limiting, and effectively prohibiting, federal candidates and office holders from signing solicitation letters on behalf of nonprofit organizations, such as GOA, CU, and RCR.

22. BCRA/FECA would subject the press activities of the Congressman Paul and Libertarian party candidates Cloud and Howell to editorial control and discriminatory burdens by substantially interfering with the activities of state and local parties with respect to "federal election activity." Congressman Paul's press activities would be adversely impacted in that he will be deterred from working closely with the state and local Republican parties during his campaigns for election to federal office. Paul Decl. ¶ 16. Future candidates Cloud's and Howell's press activities would be adversely impacted in that they, as members of the Libertarian party, would simply be unable to continue to conduct integral party campaigns for

federal and state offices. Cloud Decl. ¶¶ 20, 26, 29-30; Howell Decl. ¶ 7; Willis Exp. Rep. ¶ 16. Specifically, Section 101(b) of Title I of BCRA which defines “federal election activity” confers upon the FEC broad discretionary authority to determine the meanings of “voter registration activity,” “get-out-the-vote activity,” and “voter identification” activity, and pursuant to that authority, the FEC has exercised such editorial powers. Thus, the statute on its face, and as applied, will adversely impact upon the press activities of plaintiffs Paul, Cloud, and Howell in relation to such voter registration, get-out-the-vote and voter identification activities.

23. Plaintiffs Paul, Cloud, and Howell, as candidates for federal and state office, have engaged in, and desire to continue to engage in, joint press activities between state and federal candidates. Paul Decl. ¶ 16; Cloud Decl. ¶ 20; Howell Decl. ¶ 7. As members of the Libertarian Party, plaintiffs Cloud and Howell have found it a necessity to run joint press activities as federal and state candidates, and to be able to refer to other candidates, both state and federal, in communicating their ideas and political philosophy during their campaigns. Cloud Decl. ¶¶ 20, 26, 29-30. Section 101(a) of Title I of BCRA places significant barriers in the way of continuing such cooperative press activities between federal and state candidates, and in doing so, substantially and adversely impacts on the power of plaintiffs Cloud, Howell, and Paul to exercise editorial control over their press activities in relation to their respective campaigns for federal and state office.

BCRA TITLE II'S IMPACT ON THE PAUL PLAINTIFFS' PRESS ACTIVITIES

24. BCRA/FECA would subject the press activities of Plaintiffs to editorial control by effectively prohibiting plaintiffs GOA, RCR, and CU — organizations receiving corporate

contributions — from engaging in “electioneering communications.” These organizations have engaged in broadcasting communications in the past which would have or could have qualified as electioneering communications under BCRA, and desire to broadcast electioneering communications in the future. Pratt Decl. ¶¶ 7, 9; Bossie Decl. ¶ 7; Babka Decl. ¶¶ 4, 7, 9. Publishing such communications is important at all times, and particularly within 60 days of federal, state, and local elections, when candidates for office are taking (or refusing to take) their own positions on such issues, and American citizens are paying particular attention to what is being said. In fact, it is also within the two months prior to federal general elections when Congress frequently debates and acts on legislation of interest to plaintiffs and the public. Furthermore, not permitting organizations such as GOA, RCR, and CU to respond by broadcast to correct possible public misinformation on issues caused by candidate misinformation during the intense debate periods just prior to federal primary and general elections would severely impair the press activities of these plaintiffs, contrary to the public interest. Pratt Decl. ¶¶ 3, 5-7; Bossie Decl. ¶¶ 3-5; Babka Decl. ¶¶ 3-4.

25. The reporting requirements of BCRA/FECA are voluminous and extremely burdensome. Olson Exp. Rep. ¶¶ 7-15, 17-60, 116; Miller Exp. Rep. at 23; Pratt Decl. ¶¶ 13-16; Boos Decl. ¶¶ 7-11, Cloud Decl. ¶ 14; Howell Decl. ¶ 20.

26. To the extent that GOA, RCR, and CU were permitted to make electioneering communications, they, like GOAPVF and CUPVF, would be required to comply with additional recordkeeping and reporting requirements if they spend \$10,000 or more per year in “electioneering communications.” Any significant broadcast television or radio activity will easily meet this threshold. Pratt Decl. ¶ 5.

27. By requiring organizations to raise money to support the broadcast of electioneering communications in accordance with the contribution prohibitions and limits governing communications expressly advocating the election or defeat of a candidate for federal office, Section 201 of BCRA Title II deprives plaintiffs GOA, RCR, and CU of editorial control of such broadcast communications by limiting their ability to obtain the necessary resources to carry out their broadcast plans for issue advocacy.

28. By requiring the forced disclosure of the identities of contributors of \$1,000 or more to the broadcast of electioneering communications that cost \$10,000 or more, Section 201 of BCRA Title II deprives plaintiffs GOA, RCR, CU, GOAPVF, and CUPVF of their editorial control of their press activities devoted to public policy issues by taking from plaintiffs, and their respective contributors, the editorial discretion not to disclose the identities of the publishers of such electioneering communications, and in doing so reduces the quality and quantity of such communications in light of the fact that individuals are deterred from contributing to public causes by forced public disclosure of their identities. *E.g.*, Pratt Decl. ¶¶ 8-9; Bossie Decl. ¶ 5; Anon. Wit. No. 1 Decl. ¶¶ 6-8.

29. By specifying the content of electioneering communications for the purpose of governing such communications by the prohibitions and standards set forth in Section 201 of BCRA Title II, BCRA Title II deprives plaintiffs GOA, RCR, CU, GOAPVF, and CUPVF of their editorial control over the content of broadcast communications on the issues.

30. By discriminating against plaintiffs GOA, RCR, CU, GOAPVF, and CUPVF, in that such plaintiffs do not qualify under the BCRA exemption for broadcasting station facilities not owned or controlled by any political party, political committee or candidate, BCRA Title II

places a discriminatory economic burden upon such plaintiffs, in that such exempt broadcasting facilities are not required to meet the contribution prohibitions and limits, the forced disclosure requirements, or the content limitations governing the electioneering communications of said plaintiffs.

BCRA TITLE III'S IMPACT ON PAUL PLAINTIFFS' PRESS ACTIVITIES

31. BCRA Section 301 is intended to codify existing FEC regulations relating to permitted and prohibited uses of campaign contributions. 148 Cong. Rec. S 2143 (Sen. Feingold). These regulations and the associated explanations and justifications occupy 14 pages in the Federal Register. In spite of the extended explanation, the FEC regulations are “far from clear, and convey the notion that it is really impossible to write a clear rule, and therefore violations must be left to the judgment of the FEC.” Miller Exp. Rep. at 21, fn 41.

32. Section 301 of Title III of BCRA, creating amended Section 313 of FECA, would subject the press activities of the Paul Plaintiffs to editorial control by authorizing the FEC to exercise editorial supervision over campaign expenditures with authority to determine if such expenditures are permitted or prohibited, and by discriminating between how challengers and federal office holders are permitted to use campaign funds.

33. BCRA/FECA Section 313(a)(1) empowers the FEC to determine whether any expenditure made by plaintiffs Paul, Cloud, and Howell as candidates for election to federal office is “authorized in connection with the campaign for Federal office of the candidate,” and thereby empowers the FEC to exercise editorial control over the press activities of plaintiffs Paul, Cloud, and Howell as candidates for election to federal office.

34. BCRA/FECA Section 313(a)(2) discriminates against candidate challengers and

candidate incumbents, and therefore against plaintiffs Cloud and Howell, in that BCRA/FECA Section 313(a)(2) permits incumbent federal office holders to use campaign contributions “for ordinary and necessary expenses incurred in connection with duties of the candidate as a holder of Federal office,” but does not provide for any comparable use by an candidate challenger, even when that challenger is a state office holder.

35. BCRA/FECA Section 313(b)(2) would codify the FEC’s rules prohibiting a candidate from using campaign contributions “converted to personal use,” *i.e.*, used “to fulfill a commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a Federal office holder,” yet incumbent federal office holders are expressly authorized to use contributions made to their campaigns for ordinary and necessary expenses incurred in connection with their duties as federal office holders. *Olson Exp. Rep.* ¶¶ 106-113. Plaintiff Howell, a past and future candidate for federal office, desires to conduct campaigns for federal office free from such discrimination in the use of campaign funds. *Howell Decl.* ¶¶ 22-23.

36. The plain language of BCRA Section 301 states that certain expenditures are per se prohibited. This includes expenditures for clothing. BCRA Section 301(b)(2)(B). Plaintiff Howell is a home-based consultant whose normal personal and business life does not require her to own the sort of professional attire expected of a political candidate. Ms. Howell views professional attire of the type she wears during campaigns as “uniform” she must wear as a candidate. Because she must take a sabbatical from her job while campaigning, she does not have the personal funds to purchase the clothing she needs for campaigns. *Howell Decl.* ¶ 22. Section 301 imposes a prior restraint and editorial control upon Ms. Howell’s press activities

by prohibiting her from using campaign funds to purchase these campaign props, which are required for various press activities, including press conferences, photo sessions, and video presentations, to name a few.

37. BCRA/FECA subjects the press activities of the Paul Plaintiffs to editorial control by limiting the financial resources available to candidates. Federal candidates are now limited to contributions of \$2,000 per election from individuals, reducing the quantity and quality of the press activities of candidates. Paul Decl. ¶¶ 14-15; Cloud Decl. ¶¶ 21-22; Howell Decl. ¶¶ 15, 23; Lizardo Decl. ¶ 5; Elam Decl. ¶ 5; Miller Exp. Rep. at 15-17. Individuals would also continue to be prohibited from contributing as much as they desire to facilitate the spread of ideas and policies which they support. Anon. Wit. No. 1 Decl. ¶¶ 5, 8.

38. Limits on contributions disproportionately constrain challengers more than incumbents and thereby benefit incumbents, in part because the marginal gain in votes per dollar spent is substantially greater for challengers. Miller Exp. Rep. at 16-17; Willis Exp. Rep. ¶ 11. It is in the interest of incumbents to limit contributions, and therefore spending, because they already tend to be well known, while challengers must raise substantial sums of money simply to obtain basic name recognition. Miller Exp. Rep. at 16-18. Contribution limits increase the marginal cost of each donation received by candidates by reducing the net effect of every appeal made to each donor who might have contributed more in the absence of the legal limitation. This increase in fund raising costs has less effect on incumbents, who have broad-based pre-existing sources of financing. The spending increases that would likely follow an increase in, or elimination of, individual contribution limits would not increase the communicative activity of incumbents, because they are already able to saturate their districts

with communications. Thus, contribution limits serve only to limit communications by challengers. Willis Exp. Rep. ¶¶ 10-12. With contribution limits in place, most challengers cannot raise enough money to win, to be remembered, to be heard, or even to have any kind of lasting impact. Willis Exp. Rep. ¶ 12.

39. Plaintiff Cloud received donations in the maximum amount allowed by FECA from 46 contributors in his recent Senate campaign. Cloud estimates that in the absence of BCRA/FECA's limits, these donors would have been willing to donate between \$350,000 and \$700,000. Cloud Decl. ¶ 15. Plaintiff Howell received donations in the maximum amount allowed by FECA from 52 contributors. She estimates that at least 30 of these donors would have contributed more in the absence of limits. Howell Decl. ¶ 15. Experienced fund-raisers regularly encounter donors who would be willing to donate amounts greater than \$1,000, or \$2,000, if there were no such limitations. Paul Decl. ¶ 14; Elam Decl. ¶ 5. Similarly, political action committees ("PAC") fundraisers often encounter individuals who would like to donate amounts greater than \$5,000, but are unable to due to BCRA/FECA's limitations. Pratt Decl. ¶ 19.

40. Contribution limits directly impact the press activities of donors. Donors give to campaigns and PACs because they support the issues supported by the campaign or PAC, but due to the lack of the necessary time, skills, or temperament they feel the campaign or PAC is better able to promote the supported ideas than they could personally. Additionally, by donating to campaigns and PACs the donor is able to work together with others having similar beliefs, thus obtaining greater results than any individual donor would have with direct individual expenditures. See Anon. Wit. No. 1 Decl. ¶ 5.

41. BCRA/FECA also subjects the press activities of the Paul Plaintiffs to editorial control by limiting the financial resources available to candidates in another way. Federal candidates are limited to contributions of \$5,000 per election from multicandidate SSFs, reducing the quantity and quality of political speech by candidates. Pratt Decl. ¶¶ 12, 18-19; Boos Decl. ¶14.

42. Additionally, BCRA/FECA would subject the press activities of the Paul Plaintiffs to editorial control by limiting the financial resources available to SSFs. Despite raising certain of the individual contribution limits in federal campaigns, SSFs remain limited to contributions of \$5,000 per year from individuals, reducing the quantity and quality of political speech by plaintiffs GOAPVF and CUPVF, which are severely limited with respect to their ability to raise funds in support of their own press activities, as well as their speech for or against federal candidates. Pratt Decl. ¶¶ 18-19; Boos Decl. ¶¶ 5, 12; Howell Decl. ¶¶ 15, 23; Lizardo Decl. ¶ 5; Olson Exp. Rep. ¶ 39. Individuals would also continue to be prohibited from contributing as much as they desire to facilitate the spread of ideas and policies which they support. Anon. Wit. No. 1 Decl. ¶¶ 4, 9.

43. Reporting requirements reduce the funds contributed to campaigns because certain contributors, for various reasons, do not want to have their donations revealed to the public. Certain donors are concerned about retribution from incumbents for donations to challengers. Others, fear business or personal consequences of such revelations. Still others object on philosophical grounds to having personal information collected and published. Willis Exp. Rep. ¶¶ 13; Lizardo Decl. ¶¶ 3-4; Elam Decl. ¶ 4, Anon. Wit. No. 1 Decl. ¶ 6; Anon. Wit. No. 2 Decl. ¶ 3; Cloud Decl. ¶¶ 16; Howell Decl. ¶¶ 15-16. There is little doubt that the

fears of retribution or other adverse consequences are well-founded. This rational basis for fear of retribution from incumbents for donations to challengers' campaigns is illustrated by Senator Edward Kennedy's challenge to the confirmation of Richard Egan an Ambassador to Ireland, citing Mr. Egan's donation to the campaign of Carla Howell against Senator Kennedy as his basis for objection. Cloud Decl. ¶ 17; Howell Decl. ¶ 18. The estimated loss to plaintiff Cloud's senate campaign due to donors seeking to avoid having donations disclosed is between \$100,000 and \$300,000. Cloud Decl. ¶ 16.

44. In addition to limiting donations to candidates, the reporting requirements of BCRA/FECA discourage candidate entry into the political process. This is due to both the fact that these campaign finance laws make it virtually impossible to raise sufficient funds to compete and the extreme burden involved in complying with the reporting requirements, together with potential liability for even unintentional violations. Willis Exp. Rep. ¶¶ 14, 22.

45. Similar reporting requirements are not imposed on corporate mass media. Willis Exp. Rep. ¶ 9.

46. FECA, as amended by BCRA, clearly discriminates between distinct elements of the press as defined under the First Amendment. Institutional media corporations are exempt from funding limitations placed on candidates and candidate committees. Paul Decl. ¶ 16; Willis Exp. Rep. ¶¶ 6-7. These institutional media corporations remain intensely partisan and active participants in the electoral process. Paul Decl. ¶ 13; Howell Decl. ¶¶ 8-14; Cloud Decl. ¶¶ 23-28; Willis Exp. Rep. ¶ 5-7. BCRA/FECA's limitations on funding to candidates enhances the voice and influence of the institutional media corporations. Miller Exp. Rep. at 19. This discrimination also operates to benefit most incumbents. Willis Exp. Rep. ¶ 9, 10;

Miller Exp. Rep. at 19.

47. FECA, as amended by BCRA, also clearly discriminates between distinct elements of the press in other ways. Institutional media corporations are exempt from reporting requirements placed on candidates and candidate committees. Paul Decl. ¶ 16; Willis Exp. Rep. ¶¶ 6, 8; Cloud Decl. ¶ 28. These institutional media corporations remain intensely partisan and active participants in the electoral process. Paul Decl. ¶ 13; Howell Decl. ¶¶ 8-14; Cloud Decl. ¶¶ 23-28; Willis Exp. Rep. ¶¶ 5-7. BCRA/FECA creates barriers to entry by non-incumbents into the electoral process. Cloud Decl. ¶ 10; Willis Exp. Rep. ¶ 14. For example, incumbents benefit from the contribution limitations. Cloud Decl. ¶¶ 10-13; Howell Decl. ¶¶ 4-7 and 15-20; Miller Exp. Rep. at 16-18. Incumbents also benefit from the discriminatory standards and impacts of the limitations on personal use of campaign funds. Howell Decl. ¶ 22; Olson Exp. Rep. ¶¶ 106-112.

48. Additionally, FECA, as amended by BCRA, discriminates between distinct elements of the press by limiting SSFs to contributions of \$5,000 per year from individuals. This also reduces the quantity and quality of the press activities of the Paul Plaintiffs. Pratt Decl. ¶¶ 16, 18-19; Boos Decl. ¶¶ 4-5, 12; Howell Decl. ¶ 23; Lizardo Decl. ¶ 5; Olson Exp. Rep. ¶ 39. BCRA has further discriminated against SSFs by its failure to increase the maximum level of legal contributions to SSFs, as contrasted with BCRA's increases to the maximum level of legal individual contributions to federal candidates, which are also indexed for inflation. Pratt Decl. ¶¶ 16, 18-19; Boos Decl. ¶¶ 11-14. Individuals, including the individual Paul Plaintiffs, would also continue to be prohibited from contributing as much as they desire to facilitate the spread of ideas and policies which they support. Anon. Wit. No. 1

Decl. ¶¶ 4, 9.

49. Unlike the other classes of political actors regulated by BCRA, BCRA/FECA does not index for inflation donations made by or to PACs. Thus, inflation will gradually reduce the significance of PACs vis-a-vis other BCRA/FECA-regulated political presses. Pratt Decl. ¶ 18; Boos Decl. ¶ 13. FECA's failure to index contribution limits for inflation was a contributing factor to the soft money usage that BCRA/FECA purports to regulate. Thomas Mann Exp. Rep. at 17. An anticipated effect, and intended consequence, of BCRA's increase of personal limits, periodically indexed for inflation, is to reduce the relative influence of PACs. Sen Feinstein, 148 Cong. Rec. S 2154 (Mar. 20, 2002).

BCRA/FECA: PRIOR RESTRAINT ON PAUL PLAINTIFFS' PRESS ACTIVITIES

50. The underlying and overall stated object of BCRA and the campaign finance system that it amends purports to be the "prevention of corruption or the appearance of corruption." *See, e.g.*, Defendants' Opening Brief, at 62, I-20. In fact, the underlying and overall effect of BCRA and the campaign finance system that it amends will be to create in the public's mind the appearance that Congress is legislating to prevent corruption and the appearance of corruption. Congress seeks to have the public's confidence in incumbent legislators and the present two-party system is restored, while Congress actually legislates to limit the ability of challengers and minor parties to compete and thereby challenge their power and control. Miller Exp. Rep. at 13-24; Willis Exp. Rep. ¶ 17.

51. Because BCRA and the campaign finance system that it amends is designed and operates as a preventive measure, whether designed to prevent corruption and the appearance of corruption, or to preserve the integrity of the electoral system, or to insure fairness in

election campaigns, BCRA and the campaign finance system that it amends, in conjunction with the FEC regulations and notices of proposed rules implementing BCRA — including final regulations regarding electioneering communications (67 Fed. Reg. 65190-65218); prohibited and excessive communications (67 Fed. Reg. 49064-49132); coordinated and independent expenditures (67 Fed. Reg. 60042-60069); disclaimers, fraudulent solicitations, civil penalties, and personal use (67 Fed. Reg. 55348-55357); contribution limitations and prohibitions (67 Fed. Reg. 54366-54379); and reporting (67 Fed. Reg. 64555-64568) — operates as a federal licensing system requiring certain persons and entities to obtain permission from the government to engage in certain activities related to the marketplace of ideas related to federal elections, to submit to the editorial control of the FEC, and as such, acts as a prior restraint upon the Paul Plaintiffs’ press activities in relation to campaigns for election to federal office.

52. Additionally, because they are designed and operate as a preventive measure, BCRA and the campaign finance system that it amends operate as a prior restraint upon the Paul Plaintiffs’ press activities by means of the severe civil and criminal penalties imposed for violations of BCRA/FECA. These include but not limited to, the rule of personal liability of the treasurers of the authorized campaign committees of plaintiffs Paul, Cloud, and Howell and the severe penalties attached to the knowing or willful violations of any provision relating to making, receiving, or reporting contributions or expenditure (punishable by a fine equal to the greater of \$25,000 or 300 percent of the amount involved and/or up to one year in prison. 2 U.S.C. Section 437g(d)(1)(A)), and the increased criminal liabilities under BCRA Section 312 (Violations involving up to \$25,000 specify a fine under Title 18 and/or up to one year in prison and violations involving amounts over \$25,000 support a fine under Title 18 and/or up

to five years in prison), under BCRA Section 315 (providing a separate penalty set for making contribution in the name of another), BCRA Section 313 (extending the statute of limitation for all covered offences from three years to five years), and the new sentencing guidelines promulgated by the United States Sentencing Commission (“USSC”) as directed by BCRA Section 314. *See* http://www.ussc.gov/AGENDAS/11_19_02/campfinan003.pdf (visited, November 21, 2002).

53. The Defendants have produced no evidence that the prior restraints imposed upon the Paul Plaintiffs’ press activities by BCRA’s extension of the FEC licensing requirements, editorial control and forced disclosures is necessary to prevent an imminent danger of violent overthrow of the existing government, or of any other threat of similar magnitude.

Respectfully submitted,

Herbert W. Titus
TROY A. TITUS, P.C.
5221 Indian River Road
Virginia Beach, Virginia 23464
(757) 467-0616; Fax: (757) 467-0834

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; Fax: (703) 356-5085

Richard O. Wolf (D.C. Bar No. 413373)
MOORE & LEE, LLP
1750 Tysons Boulevard, Suite 1450
McLean, Virginia 22102-7225
(703) 506-2050; Fax: (703) 506-20

Attorneys for Plaintiffs Ron Paul, Gun
Owners of America, Inc., Gun Owners of
America Political Victory Fund, Citizens
United, Citizens United Political Victory
Fund, RealCampaignReform.org, Michael
Cloud, and Carla Howell