

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONGRESSMAN RON PAUL, <i>et al.</i>,	)	CIVIL ACTION NO. 02-CV-781
Plaintiffs,	)	(CKK, KLH, RJL)
)	
v.	)	Consolidated with
	)	CIVIL ACTION NOS.
	)	02-CV-582 (CKK, KLH, RJL) (Lead)
FEDERAL ELECTION COMMISSION, <i>et al.</i>,	)	02-CV-581 (CKK, KLH, RJL)
Defendants.	)	02-CV-633 (CKK, KLH, RJL)
	)	02-CV-751 (CKK, KLH, RJL)
	)	02-CV-753 (CKK, KLH, RJL)
	)	02-CV-754 (CKK, KLH, RJL)
	)	02-CV-874 (CKK, KLH, RJL)
	)	02-CV-875 (CKK, KLH, RJL)
	)	02-CV-877 (CKK, KLH, RJL)
	)	02-CV-881 (CKK, KLH, RJL)

**DECLARATION OF DAVID N. BOSSIE
ON BEHALF OF PLAINTIFFS CITIZENS UNITED
AND CITIZENS UNITED POLITICAL VICTORY FUND**

David N. Bossie, President of Citizens United, a plaintiff in the above-captioned matter, declares pursuant to 28 U.S.C. Section 1746 as follows:

1. I am President of Citizens United and, as such, am the chief executive officer of Citizens United, with responsibility, *inter alia*, for the day-to-day operations of the organization. I have served Citizens United in such capacity since October, 2001. Prior thereto, during the years 1992-1995, I was employed by Citizens United as its Political and Communications Director. During the years 1995-1996, I served on the staff of U.S. Senator Lauch Faircloth, and during the period 1997-1998, I was employed as Chief Investigator of the Government Reform and Oversight Committee of the U.S. House of Representatives.

2. 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.

The Internal Revenue Service (“IRS”) has determined Citizens United to be exempt from federal income taxes under 26 U.S.C. Section 501(c)(4). True copies of Citizen United’s Articles of Incorporation, Certificate of Incorporation, Certificate of Good Standing, IRS determination letter, and IRS Form 990s (1994, 1996, and 2000) (which, *inter alia*, report, list, and categorize Citizens United’s receipts and expenditures for those calendar years) are attached to this Declaration as Bossie CU-CUPVF Declaration Exhibit A.

3. Citizens United is a nonpartisan organization, dedicated primarily to principles of limited government and national sovereignty and to the defense of rights secured under the United States Constitution. One of its principal functions is the dissemination of information concerning such rights and other important policy issues. Citizens United accepts contributions from individuals and business entities, including corporations, and represents its views, and the views of its members and contributors, on legislative and public policy issues before federal, state and local officials and the general public, and it engages in, including spending significant funds for, communications on such issues during campaigns for election to federal office, utilizing broadcast, cable and satellite facilities. True copies of documents representing a sampling of Citizens United’s communications to the general public during the period 1991 through the present are attached to this Declaration as Bossie CU-CUPVF Declaration Exhibit B.

4. This Declaration is being submitted, together with the Declaration of Michael Boos, Vice President of Citizens United, in support of the causes of action alleged against the defendants in the above-captioned action by plaintiffs Citizens United and Citizens United Political Victory Fund (“CUPVF”). CUPVF is the separate segregated fund of Citizens United, which was created because of the discriminatory licensing scheme and prohibitions in

the Federal Election Campaign Act (“FECA”), 2 U.S.C. §§ 431, *et seq.*, against contributions and expenditures in federal elections by certain corporations such as Citizens United.

Although I have final authority with respect to contributions and expenditures by CUPVF, I have read the above-referenced Declaration of Michael Boos on Behalf of Citizens United and Citizens United Political Victory Fund in this action, and I concur with respect to the statements therein contained with respect to the past, present and future intended activities of CUPVF.

5. In the past, Citizens United has propounded and/or promoted ideas relevant to numerous public policy issues, including, but not limited to, the nomination of Clarence Thomas as Supreme Court Associate Justice in 1991, administration tax proposals, the conduct of, and impeachment proceedings related to, then-President William J. Clinton, American sovereignty, legislative proposals such as the proposed Fairness in Broadcasting Act, and D.C. statehood, and has made known its views on such issues in various forums and by various modes of communications, including, but not limited to, letters mailed, and telefaxed to the members and supporters of Citizens United and the general public, and messages and articles on its website, www.citizensunited.org, as well as audio tapes, videotapes, and radio and television broadcasts to the public, throughout the United States.

- For example, from its inception through the present time, Citizens United has disseminated writings to the general public, in its newsletter (“Citizens Agenda”) and other publications, by mail, including direct mail, which writings have addressed various public policy issues of importance, such as legislation to terminate the inheritance tax, attacks on American sovereignty, impeachment of

then-President Bill Clinton, Whitewater, proposals for statehood for the District of Columbia, and international treaties. These non-electoral issues, and numerous other matters of importance, have been addressed in Citizens United's publications and advertisements distributed to the public from 1988 to the present, including advertisements broadcast by radio and television, and Citizens United intends to continue to distribute such messages to the American public.

- As mentioned above, a sampling of Citizens United's written publications is attached to this Declaration as Bossie Declaration Exhibit B. These writings, many of which contain the names of federal legislators and/or candidates for federal legislative office, are disseminated to the public on a regular basis, throughout the year, even if any such date is within 60 days of a general election or 30 days of a primary election involving such candidates for federal legislative office, and Citizens United historically has also communicated its view on such important issues by radio and television broadcast. Indeed, it is common for a Citizens United publication or broadcast to refer to such public policy issues, even when they involve such candidates for office, during such a period near to an election, because the legislative candidates are often prime actors in the policy debate and during such periods the public's interest in such issues is heightened. Many of Citizens United's statements in these publications, if broadcast by radio or television within 60 days of a general election or 30 days of a primary election, would be illegal under the BCRA/FECA if they refer to a clearly-defined candidate for the federal office sought by that election. Since

Citizens United's public communications and advertisements, particularly around election time, often refer to such candidates — not to advocate their election or defeat, but rather to speak about them in connection with an issue — the BCRA/FECA provision prohibiting such electioneering communications will severely limit the First Amendment activities of Citizens United, which receives some contributions from corporations and which could not, without serious administrative changes and expense, adopt a system of bookkeeping, caging, banking, and operations which would segregate contributions according to donor to isolate and separately manage corporate donations. Furthermore, the disclosure requirements imposed by the BCRA/FECA with respect to such electioneering communications will severely burden Citizens United in the conduct of its activities. The BCRA/FEC will require Citizens United to maintain records and to prepare and file reports that resemble reports filed by political committees with the FEC. Although such reporting is required only upon reaching aggregate yearly expenditures of \$10,000 for electioneering communications, such a threshold is easily met by virtually any Citizens United communication to the general public, and certainly by any Citizens United radio or television broadcast.

- In addition, during the period 1994-1995, Citizens United aired an hourly radio show on a daily/weekday basis, entitled "Floyd Brown's Talk Back to Washington," in which Citizens United not only presented argument and debate about public policy issues, but also broadcast its views on issues of public

policy, some of which mentioned individuals who were candidates for federal elective office. No tapes of such radio shows, and no scripts regarding such messages, have been located, but statements during such broadcasts on behalf of Citizens United were similar in scope and effect to the articles and advertisements published by Citizens United over the years, as discussed above. Approximately two years ago, Citizens United acquired equipment to outfit a full radio broadcast studio, and the number of its radio broadcasts should increase if it achieves sufficient funding for that activity.

- Citizens United has located a number of videotapes of advertisements that it broadcast, by radio and/or television, during the period 1991 through 1999, which were provided to defendants during discovery in this action, and which represent a sampling of Citizens United's communications to the general public on public policy issues. Scripts of those advertisements were prepared, and they are attached hereto as Bossie CU/CUPVF Declaration Exhibit C. As discussed below, advertisements of this nature in the future — if the individuals they referred to were clearly-defined candidates and if broadcast within 60 days of a general election, or 30 days of a primary election, for the office sought by such candidates — would be prohibited under section 203 of the BCRA. Clearly, that law restricts Citizens United's First Amendment activities, for it prevents Citizens United from communicating lawfully with the public on certain policy issues of importance as it has done in the past and wants to continue to do in the future.

6. Citizens United does not engage in “express advocacy,” as that term has been defined by the federal courts, with respect to federal and/or state elections. To the best of my knowledge, Citizens United has always refrained from engaging in “express advocacy” under the BCRA/FECA because, and only because, of the prohibition against such communications by corporations under the BCRA/FECA and the FEC regulations defining contributions and expenditures (*see* 2 U.S.C. § 441b. and 11 CFR § 114.2(b)), although other corporations are permitted to engage in such communications — for example, if they are considered news organizations and their publications, broadcasts, and other media disseminations fall within the media exemption to the prohibition against express advocacy by corporations. Citizens United would like to be free to engage in such communications, but does not engage in such communications (except through its separate segregated fund) because of the discriminatory prohibition against such communications by Citizens United (no such prohibition existing with respect to the news media) as contained in the Federal Election Campaign Act, 2 U.S.C. section 431, et seq., and regulations adopted by the Federal Election Commission (11 CFR).

7. Citizens United engages in issue advocacy, and has engaged in issue advocacy in the past by communicating its messages to the public as set forth above, and it intends to continue doing so. Some of those messages will constitute “electioneering communications,” as that term is defined in the BCRA. The provisions in the BCRA/FECA restricting such communications, by labeling them “electioneering communications” and prohibiting them prior to certain federal elections, is an unconstitutional infringement on Citizen United’s right to freedom of the press. As already mentioned above, certain of Citizens United’s past

communications are of the type that, if published within a prohibited time frame, also would constitute “electioneering communications” under the BCRA/FECA.

- For example, in 1991, Citizens United broadcasted a television message supporting the nomination of Clarence Thomas as Associate Justice of the United States Supreme Court. *See* Exhibit C to this Declaration. That communication to the general public, which contained explicit references to several United States senators and was broadcast nationally during September-October 1991, would have been a prohibited electioneering communication under sections 201- 204 of the BCRA if any of those senators had been candidates for election during that time frame. Thus, if Justice Thomas’ nomination (and the Senate hearings) had occurred one year later, clearly Citizens United’s television broadcast would have been prohibited under the BCRA’s electioneering communications provisions.
- Similarly, Citizens United broadcast other radio and television messages during the period 1988 to the present are of a type which could have run afoul of the prohibition against electioneering communications contained in the BCRA. For example, Citizens United’s television “infomercial” with respect to its publication, “Clinton Watch,” its 1993-1994 television message regarding the Clinton tax bill, and its 1999 “Chinese Connection” video documentary all are the type of communication to the public that would be prohibited under the BCRA/FECA if communicated by Citizens United during the BCRA-prohibited timeframe. These particular Citizens United messages simply illustrate the type

of communications between Citizens United and the public. To restrict and halt the activities of Citizens United by prohibiting its communications to the public, so that certain legislators are immune from mention simply because they are standing for election/re-election and it is too close to the election for mention, is to unreasonably restrict Citizens United's protected activities under the First Amendment.

- Citizens United and its members plan in the future to continue to be engaged in the marketplace of ideas related to federal election campaigns, and to continue to engage 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 Citizens United's continued participation in that marketplace of ideas. Such electioneering communications will be made through various modes, as Citizens United's past communications have been made, including, but not limited to, so-called electioneering communications distributed by a radio and television broadcast station. And such electioneering communications will include certain "targeted communications" as that term is defined in BCRA Sections 201 and 204.

8. As indicated in paragraph 42 of its Amended Complaint in this action, Citizens United will be injured by the system of prior restraints and discriminatory regulations imposed by and under the BCRA/FECA. Such prior restraints and regulations will impose discriminatory economic burdens and penalties upon the communicative activity of Citizens

United, by threat of injunctive, and other restraining, action, and by threat of civil and criminal penalties, as enhanced by BCRA. They will prevent Citizens United from engaging in the quality and quantity of political communications that Citizens United would choose in its editorial discretion, but for the licensing power, editorial control and discriminatory economic burdens and penalties placed upon it by the BCRA/FECA. Specifically, as to “electioneering communications,” 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.

9. Furthermore, section 323 of BCRA would appear to prohibit federal office holders from signing solicitation letters on behalf of Citizens United. This would severely impinge upon Citizens United’s right to communicate to its members and to the general public, including its ability to raise funds to support its programs. Congressional representatives in the past have signed written solicitation letters on behalf of Citizens United (*see* Exhibit B to this Declaration), and Citizens United intends to request federal office holders to sign this type of communication to the public on behalf of Citizens United in the future. Currently, for example, U.S. Representative Bob Barr (R-GA) is the Honorary Chairman of Citizens United, and Citizens United intends that Congressman Barr sign written letters, including direct mail fundraising appeals on behalf of Citizens United in the future. Citizens United could not economically or reasonably change its administrative, accounting, and communications systems to isolate and separately manage contributions from corporations, and it could not represent

that proceeds from any fundraising appeal made by a federal office holder would not be used for expenditures or disbursements “in connection with a federal election” because of the breadth of the definition of the term in the BCRA. Although Citizens United does not itself expressly advocate the election or defeat of candidates for federal office, BCRA Section 323's broad definition of “expenditures or disbursements in connection with a federal election” also could encompass a large segment of Citizens United’s routine expenditures for such things as publications, communications and the administrative costs of its separate segregated fund, Citizens United Political Victory Fund. These provisions in the BCRA/FECA prohibiting federal office holders from signing Citizens United’s fundraising solicitations is an unjustifiable infringement on Citizen United’s protected First Amendment activities, communications, and rights.

I declare, under penalty of perjury, that the foregoing is true and correct.


DAVID N. BOSSIE

Executed on: 3 October 2002