

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 LAWRENCE D. PRATT,
ON BEHALF OF GUN OWNERS OF AMERICA, INC. AND
GUN OWNERS OF AMERICA POLITICAL VICTORY FUND**

Lawrence D. Pratt, Executive Director of Gun Owners of America, Inc., a plaintiff in the above-captioned matter, declares pursuant to 28 U.S.C. Section 1746 as follows:

1. I am Executive Director of Gun Owners of America, Inc. (“GOA”) and, as such, I have responsibility, *inter alia*, for the day-to-day operations of the organization. I have served GOA in that capacity since July, 1976. I am also a member of GOA’s Board of Directors.

2. GOA 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, where it is authorized to carry on its operations and otherwise do business. The Internal Revenue Service (“IRS”) has determined GOA to be exempt from federal income taxes under 26 U.S.C. Section 501(c)(4). True copies of GOA’s Articles of Incorporation, Certificate of Incorporation, Virginia Certificate of Authority to Transact Business, Certificate of Good Standing, IRS

determination letter, and IRS Form 990s for 1999-2001 (reporting, listing and categorizing, *inter alia*, GOA's receipts and expenditures for the last three years) are attached to this Declaration as Pratt GOA-GOAPVF Declaration Exhibit A.

3. GOA is a nonpartisan educational and advocacy 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. One of its principal functions is the dissemination of information concerning such rights. GOA 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. Copies of documents representing a sampling of GOA's communications to its members and to the general public during the period from 1992 to the present with respect to public policy issues, including communications mentioning during campaigns for federal office, are attached to this Declaration as Pratt GOA-GOAPVF Declaration Exhibit B.

4. This Declaration is being submitted in support of the causes of action alleged against the defendants in the above-captioned action by plaintiffs GOA and Gun Owners of America, Inc. Political Victory Fund ("GOAPVF"). GOAPVF is the separate segregated fund ("SSF") of GOA, and it was created because of the discriminatory licensing scheme and prohibitions in the Federal Election Campaign Act ("FECA"), 2 U.S.C. §§ 431, *et seq.*, as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA") against contributions and expenditures in

federal elections by organizations such as GOA. The constitutional rights of both GOA and GOAPVF in conducting their legitimate First Amendment activities are unreasonably restricted by the FECA/BCRA in several ways, as described below.

GOA

5. In the past, GOA has propounded and/or promoted ideas relevant to numerous public policy issues and legislative proposals. These include, but not limited to, matters involving firearms registration, public safety, gun bans, and arming aircraft pilots, and GOA has made known its views on such issues in various forums and by various modes of communications, including, but not limited to, letters mailed, telefaxed and e-mailed to members and supporters of GOA and the general public, 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, GOA has disseminated writings to the general public, in its regular newsletter (*The Gun Owners*) and other publications, by mail, including direct mail and e-mail, which writings have addressed various public policy issues of importance, such as legislation to limit citizens' rights to own and carry firearms, authorization for the Department of Defense to confiscate surplus arms, violations of the law by government agencies, attacks on American sovereignty, arming pilots to combat terrorism, and other important matters. These non-electoral issues, and numerous other matters of importance to the general public, have been addressed in GOA's publications and advertisements distributed to the public for more than two decades, up to and including the present, including

advertisements broadcast by radio and television, and GOA intends to continue to distribute such messages to the American public.

- As mentioned above, a sampling of GOA's written publications is attached to this Declaration as Pratt GOA-GOAPVF 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 (*e.g.*, *The Gun Owners* is, and has been, published bimonthly), even if any such date is within 30 or 60 days of a federal election involving such candidates for federal legislative office. Indeed, it is common for a GOA publication to refer to such public policy issues, even when they involve such candidates, during such a period near to an election, because during such periods the public's interest in such issues is heightened. Moreover, this is frequently the period when such legislation is debated and voted on. Many of GOA's statements in these publications, if broadcast by radio or television within 60 days of a general federal election or 30 days of a federal primary election, would be illegal under the BCRA/FECA if they refer to a clearly-identified candidate for the federal office sought in that election. Since GOA'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 GOA, which receives some

contributions from corporations and which could not, without serious administrative changes and expense, adopt a system of bookkeeping, banking, and operations which would segregate contributions according to donor.

Furthermore, the disclosure requirements imposed by the BCRA/FECA with respect to such electioneering communications will severely burden GOA in the conduct of its activities. They require GOA to maintain records and to prepare and file reports that resemble reports filed by political action committees with the FEC. Although such reporting is required only upon reaching aggregate yearly expenditures of \$10,000 for electioneering communications, the \$10,000 threshold would be easily met in any year in which GOA broadcast radio and television advertisements. In the current year alone, for example, GOA ran a simple radio message for five days in Manchester, New Hampshire — within the 30 day period prior to the primary election of the New Hampshire Republican U.S. Senatorial nominee — regarding proposed legislation allowing airplane pilots to be armed, and the broadcast costs alone for that one communication were more than \$5,000. *See* Armed Pilots advertisement in Pratt GOA-GOAPVF Declaration Exhibit B.

- GOA does not always broadcast its views on the airwaves, but it recognizes the value of such advertising in reaching the eyes, ears and minds of the citizenry, particularly during the period prior to elections when legislators are announcing their positions on such issues and the voters are eager to hear them. GOA broadcasts its views on the airwaves, on important policy issues with which

GOA and its members and supporters are concerned, as often as the GOA budget will allow. In 1996, for example, GOA spent more than \$25,000 for radio advertisements concerning firearms legislation in the three-month period prior to the general federal election in November 1996. And its radio broadcasts both before and after that time, although sporadic in terms of their actual production and not always part of every GOA communication campaign because of budgetary problems, otherwise are a normal, regular and desired part of GOA's activities.

- With the exception of its above-described 2002 radio advertisement regarding the proposed armed pilots bill, GOA has been unable to locate tapes, scripts, or other records of the various advertisements that it broadcast, by radio and/or television, during the period 1992 through the present. I estimate, however, that GOA has broadcast at least 15 separate advertisements during the last ten years, and has spend an estimated \$ 75,000 (for broadcast costs alone) for such ads. 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 federal election, or 30 days of a federal primary election, for the office sought by such candidates, would be prohibited under Section 203 of the BCRA. Clearly, that law will restrict GOA's First Amendment activities, for GOA will not be able to communicate 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. GOA 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, GOA has always refrained from engaging in “express advocacy” under the FECA because, and only because, of the prohibition against such communications by corporations under the FECA and the FEC regulations governing 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 broadcast or print news organizations and their publications, broadcasts, and other media disseminations fall within the media exemption to the prohibition against express advocacy by corporations. GOA 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 in the FECA against such communications by GOA (no such prohibition existing with respect to what is generally considered the news media).

7. GOA 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 communicating its message to the public in such a fashion. As already mentioned above, certain of its past communications, if repeated in the future, would constitute “electioneering communications” as that term is defined by the BCRA/FECA.

- For example, in the summer and fall of 1996, GOA’s communications program included a series of issue radio broadcasts in Texas, and the broadcasts mentioned one or more candidates for the 9th Congressional District’s seat in the U.S. House of Representatives. Clearly, those communications

(“advertisements”), all of which appeared within 60 days of the general election, would have been prohibited under the BCRA. Similarly, GOA’s 2002 radio broadcast concerning the armed pilots bill (*see* Exhibit B to this Declaration), which mentioned a candidate for the Republican nomination for U.S. Senator from New Hampshire and was broadcast in New Hampshire within 30 days of the election for that nomination, would have been prohibited pursuant to BCRA Section 203.

- Similarly, other radio and television advertisements broadcasted by GOA during the period 1992 to the present are of a type which could have run afoul of the prohibition against “electioneering communications” set forth in the BCRA if they happened to be aired during the periods that the BCRA proscribes them. To so restrict GOA by prohibiting its advertisements, so that certain legislators are immune from mention simply because they are standing for election/re-election, is to unreasonably restrict GOA’s speech and press activities under the First Amendment.
- GOA 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 GOA’s continued participation in said marketplace. Such “electioneering communications” will

be made through various modes, as GOA's past communications have been made, including, but not limited to, "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. To require GOA either to discontinue accepting corporate contributions in order to broadcast such advertisements, or to segregate its records, books of accounts, bank accounts, and activities so as to be able to demonstrate that no corporate moneys were involved in broadcasting such communications, would cause GOA to incur substantial burdens and expense in changing and operating its activities, and likewise unreasonably restricts GOA's speech and activities under the First Amendment

8. As indicated in paragraph 42 of its Amended Complaint in this action, GOA 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 GOA, 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 GOA 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," GOA 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. Although GOA does not engage in communications constituting or containing “express advocacy” under the BCRA/FECA — because such communications are considered illegal contributions under the BCRA/FECA, although not for certain news organizations — the very mission of the organization is to explore and take positions on public policy questions, and by communicating its views, to educate and inspire Americans on some of the most important issues facing the country. Making such communications is important at all times, and particularly those times 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, as mentioned above, it is also within the two months prior to federal general elections when Congress frequently debates and acts on legislation of interest to GOA. The provisions in the BCRA/FECA restricting such communications, by labeling them “electioneering communications” and prohibiting them prior to certain elections, is a severe, unjustifiable infringement on GOA’s communications.

10. Furthermore, Section 323 of BCRA would appear to prohibit federal office holders from signing solicitation letters on behalf of GOA. This would severely restrict GOA’s educational communications to the public and its fundraising activity. Congressional representatives in the past have signed written solicitation letters on behalf of GOA (*see* Exhibit B to this Declaration), and GOA intends for this practice to continue. Indeed, such Congressional appeals constitute a fundamental part of GOA’s communications program.

GOA, which accepts corporate contributions (*see* estimates attached as part of Exhibit B to this Declaration), and could not reasonably change its administrative, accounting, and communications systems to exclude such contributions with respect to potential “electioneering communications,” could not represent, as BCRA Section 323 requires, that the proceeds from any such appeal would not be used for expenditures or disbursements “in connection with a federal election.” Although GOA 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” could include GOA’s routine expenditures for such things as publications, communications, and the administrative costs of its separate segregated fund, GOAPVF. Furthermore, GOA’s so-called “electioneering communications” would apparently be considered “federal election activity” under the BCRA. The provisions in the BCRA/FECA prohibiting federal office holders from signing GOA’s fundraising solicitations constitute a severe, unjustifiable infringement on GOA’s First Amendment activities, communications, and rights.

11. Furthermore, the BCRA/FECA unjustly discriminates against GOA by not permitting it to make contributions and expenditures, including communications constituting or containing “express advocacy” or “electioneering communications” as described above, while permitting other corporations to engage in such communications if such corporations are considered news organizations.

GOAPVF

11. My duties as Executive Director of GOA also include assisting in the management and operations of GOA's separate segregated fund, GOAPVF, of which I am Chairman, and which is also a plaintiff in the above-captioned action, as well as overseeing/managing GOAPVF's records. GOAPVF is a federally-registered, connected political action committee that has been in existence since 1992, and has been active since that time. Under regulations of the Federal Election Commission, it is known technically as a separate segregated fund (or "SSF") of GOA. GOAPVF also is a "multicandidate political committee," as that term is used in BCRA/FECA, and GOAPVF is independent of any political party. It has supported federal candidates in each federal election cycle since the creation of GOAPVF in 1992, 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 GOAPVF's positions on public policy issues. Attached hereto as Pratt GOA/GOAPVF Declaration Exhibit C are true copies of GOAPVF's initial and amended Statements of Organization (FEC Form 1) filed by GOAPVF with the Federal Election Commission in 1992 and 1999, respectively.

12. GOAPVF was established because of the inability of its connected organization, GOA, under the FECA, to support or oppose candidates, to make contributions, or otherwise to engage in "express advocacy" with respect to federal elections — a discriminatory licensing scheme that burdens and restricts organizations like GOA and effectively exempts the news media from its restrictions — except through a separate segregated fund such as GOAPVF.

GOAPVF, in turn, is also restricted by the FECA, including the Bipartisan Campaign Reform Act of 2002 (“BCRA”) that amended the FECA, in a number of ways — including, but not limited to, the restriction on the maximum contribution that may be donated to GOAPVF, as well as the maximum contribution that GOAPVF may make to the candidate(s) of its choice — that GOAPVF believes are discriminatory and deprive GOAPVF of its rights under the First Amendment to the U.S. Constitution. *See* 2 U.S.C. § 441a.(a)(1)(C) (limiting maximum contribution of individuals to political committees such as GOAPVF to \$5,000 per calendar year) and (a)(2)(A), (C) (limiting maximum contribution of multicandidate political committee to candidate and candidate’s committee, and to other, non-party political committees, to \$5,000 per calendar year).

13. As evidence of the licensing scheme established and perpetuated by the FECA/BCRA, prior to engaging in any “federal election” activities, GOAPVF was required to file with the FEC its initial Statement of Organization referenced above. In addition, GOAPVF has been required to maintain its records in such a way that it is able to prepare and file with the FEC a number of reports in each year of its existence, as well as to spend the time, effort, and money to actually prepare and file those reports. These filing and reporting duties, together with a description of other requirements imposed by federal law on SSFs, are described with specificity in paragraphs 19-61 of the Declaration of Walter J. Olson, an expert witness engaged by the plaintiffs in this action, and they include the following:

- GOAPVF was required to include in its name the full name of its connected organization. (11 CFR 100.6(a) and 102.14(c).)
- GOAPVF was required to engage and appoint a treasurer before it accepted contributions or makes expenditures. (11 CFR 102.7(a) and (b).)

- The treasurer of GOAPVF was required to prepare and file the initial FEC Form 1 (Statement of Organization) for the SSF, which includes the following information (11 CFR 102.2):
 - (i) name and address of the SSF;
 - (ii) electronic mail address if such an address exists and if the committee is required to file electronically;
 - (iii) Internet address of the committee's official web site, if such a web site exists;
 - (iv) name and address of the connected organization;
 - (v) type of connected organization;
 - (vi) name and address of the custodian of records;
 - (vii) name and address of the treasurer; and
 - (viii) name and mailing address of banks or other depositories.

- The initial FEC Form 1 for GOAPVF was required to be filed with the FEC. (11 CFR 105.4.)

- A copy of the FEC Form 1 for GOAPVF was required to be filed with the designated State officer of Virginia, in which GOAPVF is situated. (11 CFR 108.1.)

- After the original, executed FEC Form 1 was filed with the FEC, the FEC assigned an Identification Number (C002278101) to GOAPVF. (11 CFR 102.2(c).)

- GOAPVF is required to prepare and file an amendment to its registration statement (FEC Form 1) with the FEC within 10 days after there is any change or correction to the information contained in the registration statement, which GOAPVF did in 1999 to reflect a new treasurer and depository. (11 CFR 102.2(a)(2).)

- GOAPVF was required to designate as its campaign depository or depositories only state banks, federally chartered depository institutions (including national banks), or depositories insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration. (11 CFR 103.2.)

- GOAPVF is required to maintain at least one checking account or transaction account at one of its depositories. (11 CFR 103.2.)

- GOAPVF's treasurer is responsible for ensuring that all receipts are deposited in a designated depository account identified in the SSF's registration statement

within 10 days of receipt, or are returned to the contributor without being deposited within 10 days of receipt. (11 CFR 103.3(a).)

- GOAPVF may not receive contributions or make expenditures when there is a vacancy in the office of treasurer if the committee does not have an assistant treasurer. (11 CFR 102.7.)
- GOAPVF must make all disbursements by check or similar draft drawn on accounts established at a designated depository or depositories, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. (11 CFR 102.10.)
- GOAPVF's treasurer is responsible for ensuring that excessive contributions are not deposited in an account depository of the SSF. (11 CFR 103.3(b).)
- Before qualifying as a multicandidate committee, GOAPVF could only make contributions only up to \$1,000 per election to a candidate for federal office, including a candidate for the office of Representative, Senator, or President of the United States. (2 U.S.C. §441a(a).)
- When GOAPVF qualified as a multicandidate committee (*i.e.*, when it (i) received contributions from more than 50 persons, (ii) had been registered with the FEC for at least six months, and (iii) made contributions to at least five federal candidates), the treasurer filed a completed, executed FEC Form 1M (Notification of Multicandidate Status) with the FEC. (2 U.S.C. §441a(a) and 11 CFR 100.5(e)(3) and 102.2(a)(3).)
- After GOAPVF qualified as a multicandidate committee and filed an FEC Form 1M with the FEC, the committee could give up to \$5,000 per election to a candidate for federal office. (2 U.S.C. §441a(a) and 11 CFR 110.2(b).)
- A qualified multicandidate committee such as GOAPVF must give a recipient federal candidate or campaign committee written notification that the SSF has qualified as a multicandidate committee when it makes a contribution to a federal candidate or campaign committee. (11 CFR 110.2(a)(2).)
- GOAPVF may solicit contributions at any time from GOA's restricted class, which includes (i) its noncorporate members (such as individuals or partnerships), (ii) its executive and administrative personnel, and (iii) the families of both groups. (11 CFR 114.7.)

- GOAPVF may solicit contributions no more than twice a year from employees who are nonexecutive and nonadministrative personnel and their families. (11 CFR 114.6.)
- GOAPVF may accept contributions of no more than \$5,000 in the aggregate per calendar year from a contributor. (11 CFR 110.1(d).)
- If any contribution received by GOAPVF exceeds the limit, the treasurer must return or refund the excessive amount unless it follows the following procedure within 60 days of receipt of the excessive contribution by the treasurer. The excessive amount of the contribution may be retained by the SSF, if, within 60 days of receipt by the treasurer, (i) the excessive amount was reattributed to another individual, such as a joint account holder, by obtaining signed written authorizations from each person making the contribution pursuant to 11 CFR 110.1(k)(3), and (ii) the treasurer informs the individual making the contribution that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. (11 CFR 110.1(k)(3).)
- GOAPVF may not accept contributions made from the general treasury funds of corporations, labor organizations, or national banks. (11 CFR 114.2(a) and 114.2(b).)
- GOAPVF may not accept contributions made by federal government contractors. (11 CFR 115.)
- GOAPVF may not accept contributions by foreign nationals as defined in 11 CFR 110.4(a)(4). (11 CFR 110.4(a).)
- GOAPVF may not accept contributions made by one person in the name of another. (11 CFR 110.4(b).)
- GOAPVF may accept neither cash contributions of more than \$100, nor anonymous cash contributions of more than \$50. (11 CFR 110.4(c)(1), 110.4(c)(2) and 110.4(c)(3).)
- GOAPVF's treasurer is responsible for making his best efforts in determining the legality of a contribution. (11 CFR 103.3(b)(1).)
- An SSF registered with the FEC, such as GOAPVF, must file periodic FEC Form 3X reports with the FEC until it has terminated its registration and reporting obligations by filing a termination report. (11 CFR 104.5(c).)

- An SSF registered with the FEC, such as GOAPVF, must file FEC Form 3X reports on either a quarterly or monthly schedule. During a nonelection year, in which there are no regularly scheduled federal elections, a quarterly filer is required to file two semiannual FEC Form 3X reports: (i) a mid-year report (January 1 through June 30); and (ii) a year-end report (July 1 through December 31). During an election year, an SSF which is a quarterly filer is required to file the following FEC Form 3X reports (11 CFR 104.5(c)):
 - (i) April 15 Quarterly;
 - (ii) July 15 Quarterly;
 - (iii) October 15 Quarterly;
 - (iv) 12-Day Pre-General (if appropriate);
 - (v) 30-Day Post-General;
 - (vi) January 31 Year End; and
 - (vii) 12-Day Pre-Election (*e.g.*, primary, runoff) reports (if appropriate).

- If an SSF is a monthly filer, it is required to file the following FEC Form 3X reports (11 CFR 104.5(c)):
 - (i) February 20 Monthly;
 - (ii) March 20 Monthly;
 - (iii) April 20 Monthly;
 - (iv) May 20 Monthly;
 - (v) June 20 Monthly;
 - (vi) July 20 Monthly;
 - (vii) August 20 Monthly;
 - (viii) September 20 Monthly;
 - (ix) October 20 Monthly;
 - (x) 12-Day Pre-General (election years only, if appropriate);
 - (xi) 30-Day Post-General (election years only);
 - (xii) November 20 Monthly (nonelection years only);
 - (xiii) December 20 Monthly (nonelection years only); and
 - (xiv) January 31 Year End.

- An SSF which is a multicandidate committee, such as GOAPVF, must indicate that it has qualified as a multicandidate committee on the summary page of each FEC Form 3X (Report of Receipts and Disbursements) report filed with the FEC.

- When GOAPVF files its FEC Form 3X reports with the FEC, it is required to simultaneously file copies of the summary page, detailed summary page and the appropriate Schedule B (Itemized Disbursements) pages of a FEC Form 3X report with the Secretary of State of the appropriate State or with the other designated State officer in which the respective committee supported or opposed candidates during the reporting period, unless that State has received a waiver

from the requirement to maintain copies of FEC statements and reports. (11 CFR 108.1.)

- An SSF may change its filing schedule (*e.g.*, monthly to quarterly) only once per calendar year. (11 CFR 104.5(c).)
- An SSF such as GOAPVF must file a 24-hour report, signed by the treasurer under penalty of perjury, when it makes independent expenditures aggregating \$1,000 or more after the 20th day but more than 24 hours before the day of an election. The notice must be received by the FEC within 24 hours after the expenditure is made. The notice must include all the information required on the Schedule E (Itemized Independent Expenditures) of FEC Form 3X, including the name of the SSF and the FEC Identification Number of the SSF. Each independent expenditure which, by itself or when added to other independent expenditures made to the same payee during the same calendar year, exceeds \$200 must be itemized, including the following information (11 CFR 104.3(b)(3)(vii)(B), 104.4(b) and 104.5(g)):
 - (i) name and address of the payee;
 - (ii) date of expenditure;
 - (iii) amount of expenditure;
 - (iv) purpose of expenditure;
 - (v) name of the federal candidate who is supported or opposed; and
 - (vi) office sought by the federal candidate.
- An SSF may file a termination report at any time, provided that (i) it no longer intends to receive contributions or make expenditures, and (ii) it does not have any outstanding debts or obligations. (11 CFR 102.3)
- An SSF is required to file hard copy reports, such as FEC Form 3X and amendments to FEC Form 1, with the FEC, unless it receives contributions or makes expenditures in excess of \$50,000 in a calendar year, or has “reason to expect to exceed” \$50,000 in contributions or expenditures in a calendar year. (11 CFR 104.18(a).)
- Beginning with the reporting period that started on January 1, 2001, GOAPVF has been required to file reports, such as FEC Form 3X and amendments to FEC Form 1, electronically with the FEC, since its combined total contributions or combined total expenditures exceed, or “have reason to expect to exceed,” \$50,000 in a calendar year. An SSF that is not required to file electronically may choose to file its reports in an electronic format. (11 CFR 104.18.)
- The treasurer of GOAPVF is required to keep copies of each registration statement (FEC Form 1), FEC Form 3X report and other documents (*e.g.*, 24-

hour report of independent expenditures) for three years after they are filed. (11 CFR 102.9(c) and 104.14(b).)

- The treasurer of GOAPVF is required to keep records and accounts of all contributions received by or on behalf of the SSF, and of all disbursements made by or on behalf of the SSF, for three years after the report to which such records and accounts relate is filed. (11 CFR 102.9.)
- The treasurer of GOAPVF must ensure that the contribution records identify each contribution: (i) of more than \$50 by amount, date of receipt, and donor's name and address; and (ii) of more than \$200 by amount, date of receipt, and donor's name, address, occupation, and employer. (11 CFR 102.9(a).)
- According to the FEC, the treasurer of GOAPVF is personally responsible for carrying out the following (11 CFR 103.3 and 104.14(d)):
 - (i) filing complete and accurate reports and statements with the FEC on time;
 - (ii) signing all reports and statements filed with the FEC;
 - (iii) depositing receipts in the committee's designated bank within 10 days;
 - (iv) authorizing expenditures or appointing an agent (either orally or in writing) to authorize expenditures;
 - (v) monitoring contributions to ensure compliance with the law's limits and prohibitions; and
 - (vi) keeping the required records of receipts and disbursements.

These recordkeeping and reporting requirements, together with other FEC requirements, have been, and continue to be, extremely burdensome for both GOA and GOAPVF, involving significant expenditures of administrative time, effort, and expense, as well as actual out-of-pocket expenditures that have been considerable. As GOA's FEC reports indicate (*see* paragraph 14, below, and Exhibit D hereto), its gross contributions have not exceeded \$290,000 per year, and they are normally substantially less (*e.g.*, \$28,615 in 1993, \$72,756 in 1994, \$12,970 in 1995, \$91,717 in 1998, \$145,953 in 2001). Yet I would estimate the real cost of maintaining and operating GOAPVF, as an SSF complying with the FEC's recordkeeping and reporting requirements, at between \$5,000 and \$15,000 per year, at a

minimum, depending on the number of reports that were filed in a particular year. This amount could be substantially more, of course, if it became necessary to seek an advisory opinion, or FEC compliance questions arose, and legal advice and/or representation became necessary.

14. GOAPVF has filed various reports with the Federal Election Commission from the inception of GOAPVF in 1992 to the present. All of GOAPVF's reports are on file with the Federal Election Commission, and copies of those reports were furnished to the defendants during the course of discovery in this action. Attached hereto as Pratt GOA/GOAPVF Declaration Group Exhibit D are true copies of GOAPVF's year-end reports (FEC Forms 3X) filed by GOAPVF with the Federal Election Commission each year, from 1992 through 2001. These January 31 Year-End Reports (FEC Forms 3X) are only some of the reports that GOAPVF has been required to file with the FEC, but they are demonstrative of the record-keeping detail that is required by the FECA/BCRA, and they help to illustrate the burdens and restrictions imposed upon political committees under those laws, as indicated with more specificity in paragraph 13, above.

15. As pointed out by Mr. Walter Olson, one of the plaintiffs' expert witnesses in this action (Declaration of Walter J. Olson, ¶¶ 7-15, 116), who also serves as GOAPVF's treasurer, and as confirmed in paragraph 13 of this Declaration above, these FEC filing and reporting requirements with respect to SSFs are quite burdensome, and I can confirm that these burdens have been, and continue to be, extraordinary, unduly harmful burdens for GOAPVF.

16. The burdens and restrictions imposed upon GOAPVF by the FECA/BCRA, which GOA and GOAPVF contend are unconstitutional, include the following: as a political committee, GOAPVF 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 441a, 441d, 441f, and 441g, and reporting to the FEC the names, addresses, occupations, and employers of said contributors, as required by 2 U.S.C. Section 434, in order to convey GOAPVF's candidate preferences in a federal election. These are substantial burdens, in terms of time and effort expended, out-of-pocket expense and employee salaries, and distraction from the substantive activities of GOAPVF (as well as GOA itself), that greatly interfere with the free exercise of the First Amendment rights of GOA and GOAPVF, and inhibit the ability of GOAPVF to carry out its activities with respect to federal elections.

17. As indicated in paragraph 43 of its Amended Complaint herein, GOAPVF has been, currently is, and will continue to be, injured by the BCRA/FECA's system of prior restraints and discriminatory regulations, including: (a) registration with, reporting to and disclosure of the names, addresses, occupations, and employers 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 GOAPVF's communicative activity

expressly advocating or opposing the election of candidates to federal office, thereby preventing GOAPVF, 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 GOAPVF would choose in its editorial discretion, but for the licensing power, editorial control and economic burdens and penalties placed upon them by BCRA/FECA.

18. Among GOAPVF's complaints in this litigation is the restriction on the maximum annual contribution — \$5,000 — that it can receive from any one individual or other non-party political committee, which is also the maximum amount that GOAPVF can itself contribute to any candidate or candidate's committee per election. These restrictions have injured GOAPVF in the past — both with respect to amounts it could have received from individuals but for the restriction as well as with respect to amounts that it would have contributed to certain candidates but for the restriction — and they threaten to do so in the future as well unless they are removed. In addition to the fact that such restrictions arbitrarily limit GOAPVF's activities in supporting or opposing federal candidates, they unfairly discriminate against GOAPVF and other non-party political committees, whose annual contribution limits were not raised or indexed by BCRA, as opposed to the raising and indexing of contribution limits for individuals and party committees as set forth in Section 301 of the BCRA.

19. I believe that the contribution limits imposed by BCRA/FECA on political committees such as GOAPVF, including restricting the maximum contribution that may be donated to GOAPVF, as well as the maximum contribution that GOAPVF may make to the candidate(s) of its choice — which limits are not imposed upon the news media — are

discriminatory and deprive GOAPVF of its rights under the First Amendment to the United States Constitution, including impeding GOAPVF from freely and effectively engaging in its First Amendment activities relative to both express advocacy. As GOAPVF's FEC reports clearly reveal, for example, many individuals in the past have donated the maximum \$5,000 contribution to GOAPVF, and I can attest that some of those contributors would have donated more to GOAPVF if they had not been restricted by the FECA as to how much they could have contributed. Similarly, as GOAPVF's FEC reports clearly reveal, in the past GOAPVF has donated the maximum \$5,000 contribution to certain candidates, and I can attest that GOAPVF, in the past, would have contributed more than the \$5,000 limit imposed by 2 U.S.C. Section 441a(a)(2) if such contribution limits did not exist, and I believe that GOAPVF would function more effectively if such contribution limits did not exist.

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



LAWRENCE D. PRATT

Executed on: 10/03/02