No. 02-

IN THE SUPREME COURT OF THE UNITED STATES

NATIONAL RIFLE ASSOCIATION, *et al.*,

Appellants,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Appellees.

On Appeal From The United States
District Court For The District of Columbia

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether Congress restricted corporate and union "electioneering communications" about candidates in Title II of the Bipartisan Campaign Reform Act of 2002 ("BCRA") in order to serve a compelling governmental purpose, as required by the First Amendment to the United States Constitution.
2. Whether Congress, in regulating identical speech differently depending upon the medium through which it travels and the speaker that utters it, adequately tailored the definitions of "electioneering communications" in Section 201 of BCRA to serve the anti-corruption purpose proffered in support of those definitions.
3. Whether Congress adopted the least restrictive means of regulating political speech by flatly prohibiting "electioneering communications" by both nonprofit 501(c)(4) corporations and for-profit corporations alike in Section 204 of BCRA, rather than permitting 501(c)(4) corporations to fund such communications exclusively with individual contributions, as was initially contemplated by BCRA.
4. Whether the alternative "fallback" definition of "electioneering communications" in Section 201 of BCRA, as originally worded or as now construed by the district

court below to prohibit, without temporal or other qualification, any broadcast communication that "promotes or supports a candidate . . . for office, or attacks of opposes a candidate for . . . office," comports with the First Amendment.

5. Whether Congress violated the Equal Protection guarantee of the Fifth Amendment by granting a special exemption in § 201 of BCRA for political speech by corporations that own broadcast facilities, as opposed to all other corporations whose identical speech constitutes forbidden "electioneering communications."

PARTIES TO THE PROCEEDINGS

Appellants, plaintiffs in the court below, are the National Rifle Association ("NRA") and the National Rifle Association Political Victory Fund ("PVF"), a Political Action Committee ("PAC") of the NRA.

Appellees, defendants or intervenor-defendants below, are the Federal Election Commission and its Commissioners; the Federal Communications Commission; the United States of America; Senator John McCain; Senator Russell Feingold; Representative Christopher Shays; Representative Martin Meehan; Senator Olympia Snowe; and Senator James Jeffords.

STATEMENT PURSUANT TO RULE 29.6

Neither appellant has a parent corporation, and no publicly held company owns 10% or more of the stock of either appellant.

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INTRODUCTION

Circuit Judge Karen LeCraft Henderson put it well in writing that BCRA "breaks faith with the fundamental principle — understood by our Nation's Founding Generation, inscribed in the First Amendment and repeatedly affirmed by the United States Supreme Court — that 'debate on public issues should be uninhibited, robust and wide open,' " Henderson, J., Mem. Op. 5 (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)). The opinions of her colleagues, however, perversely "leave standing [BCRA's] most pernicious provisions" that strike at the heart of this vital premise. *Id.*

The district court's series of divided opinions somehow find their way to affirming a constitutional right to give and receive unlimited sums of soft money, while denying the right of nonprofit political associations such as the NRA to *speak* on behalf of their individual members -- precisely *inverting* this Court's consistent teachings regarding the greater protections to which independent expenditures are entitled as compared to contributions under the First Amendment.[1] The district court upheld BCRA's ban on the expenditure on political speech of individual $30 contributions that the NRA pools from its members,

[1] *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 44 (1976); *California Medical Ass'n v. FEC*, 453 U.S. 182, 197-99 n.17 (1981); *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 617 (1996).

even as the court affirmed the statute's exemption for the expenditure on political speech of vast corporate resources by massive media conglomerates. And, after striking BCRA's primary definition of "electioneering communications" as overbroad, the district court effectively rewrote the fallback definition such that it now reaches any broadcast reference to any candidate for federal office -- at any time -- "that . . . is *not* neutral as to [the] candidate[]." Leon, J., Mem. Op. 92. Offering cold comfort for the resulting "chilling effect," the court has instructed that entities such as the NRA "can avoid regulation simply by not mentioning a candidate for federal office" or else "seek[ing] an advisory opinion from the FEC to determine whether a communication is regulated." *Id.* at 95. So, in order to avoid criminal punishment for engaging in political speech, groups like the NRA must now either censor themselves to avoid referencing candidates or else submit the script of their political speech to government bureaucrats for preclearance.

BCRA's regime, both in its original form and as it exists in the wake of the district court's decision, is anathema to the First Amendment and ruinous of political speech in this country. Review by this Court is imperative. Appellants urge the Court to note probable jurisdiction on the questions presented herein, and to reverse the district court on each of these questions.

OPINIONS BELOW

The three-judge district court issued four opinions: a per curiam and an individual opinion by each judge. None of the opinions is reported. *See* Appendix ("App.") 4a. Appellants' notice of appeal is reprinted at App. 1a.

JURISDICTION

The district court entered judgment on May 2, 2003. Appellants filed their timely notice of appeal on May 5, 2003. This Court has appellate jurisdiction under Section 403(a)(3) of BCRA.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Bipartisan Campaign Reform Act ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, is reprinted at App. 7a.

The First Amendment to the United States Constitution is reprinted at App. 5a.

The Fifth Amendment to the United States Constitution is reprinted at App. 6a.

STATEMENT OF THE CASE

1. Title II of BCRA criminalizes the funding of any "electioneering communication" from corporate or union general treasury funds.[2] *See* Section 203 (prohibiting corporate and union "electioneering communications"); Section 312 (authorizing

[2] In addition, BCRA imposes disclosure obligations upon persons who fund "electioneering communications." *See* Section 201.

imprisonment of up to five years for a violation). Under Title II's primary definition of "electioneering communications," corporations and unions cannot fund

> any broadcast, cable, or satellite communication which—
>
> (I) refers to a clearly identified candidate for Federal office;
>
> (II) is made within . . . 60 days before a general, special, or runoff election for the office sought by the candidate[,] or 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
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> (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

See Section 201(revising 2 U.S.C. § 434(f)). Congress also included a back-up definition of "electioneering communication," however, to take effect if its primary definition is struck down as "constitutionally insufficient." *Id.* According to the fallback definition, "electioneering communication" means "any broadcast, cable, or satellite communication which promotes or supports a candidate for [Federal] office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." *Id.* Thus, in contrast to the primary definition's approach, the fallback definition specifies no temporal or targeting limita-

tions on its scope, but limits its prohibition to speech that has "no plausible meaning" apart from electioneering.

Both definitions of "electioneering communication" include a special media exemption. They do not reach "a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate." *Id.* Accordingly, corporations that own "the facilities of any broadcasting station" remain free to carry electioneering communications in the form of news stories, commentaries, or editorials. *See* Henderson, J., Mem. Op. 222.

Title II of BCRA contains a provision (Section 203, the so-called "Snowe-Jeffords provision") exempting the "electioneering communications" of 501(c)(4) corporations to the extent they are funded from a segregated fund to which only individuals may contribute. Anomalously, another provision of Title II (Section 204, the so-called "Wellstone Amendment") entirely negates this exemption. The district court's per curiam opinion explains how the relevant provisions interact to achieve this result:

> The Snowe-Jeffords Provision [in Section 203] permits nonprofit organizations to use their general treasury funds to pay for electioneering communications if they are incorporated under Section 501(c)(4) and/or Section 527(e)(1) of the Internal Revenue Code . . . .

> While a nonprofit corporation under Snowe-Jeffords is permitted to use general treasury funds for electioneering communications, . . . these corporations are not permitted to use funds donated by a corporation, labor union, or national bank to purchase them. Under Snowe-Jeffords, a nonprofit corporation may only use funds donated by individuals to pay for electioneering communications. If a nonprofit corporation, for example, has accepted corporate contributions and mixed those contributions with general treasury funds that contained individual donations, the nonprofit corporation would not be permitted to use their [sic] general treasury funds to engage in electioneering communications.
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> . . . .
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> Despite drafting and including the Snowe-Jeffords provision in the Act, an amendment offered by Senator Paul Wellstone and adopted by the Senate effectively eviscerates the Snowe-Jeffords Provision from the Act . . . . The direct consequence of the Wellstone Amendment is that organizations organized under Section 501(c)(4) and Section 527(e)(1) of the Internal Revenue Code, or those entities who have received funds from corporations, are not permitted to use their general treasury funds for electioneering communications.
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> The Wellstone Amendment was codified in a separate section of BCRA in order to preserve severability: hence, if the Court finds the inclusion of Section 501(c)(4) organizations and Section 527 within the ban on electioneering communications to be unconstitutional, the Wellstone Amendment can be cleanly struck from the law and the original Snowe-Jeffords exception for these groups will be restored. *See* BCRA Section 401 (discussing that BCRA is subject to severability).

Per Curiam Op. 67-70.[3] The NRA is one such 501(c)(4) corporation

[3] *See also* Henderson, J., Mem. Op. 37 ("section 204 — referred to by the parties as the "Wellstone Amendment — eliminates the section 203(b) exception"); Kollar-Kotelly, J., Mem. Op. 455 ("With the Snowe-Jeffords' provision, BCRA appeared to provide for an

that, under Snowe-Jeffords, could have pooled donations from millions of individual members into a powerful, collective voice expressing their shared political message, but whose "electioneering communications" will now be silenced, on pain of imprisonment, by the Wellstone Amendment as upheld by the district court.

2. The National Rifle Association "is a tax-exempt corporation governed by 501(c)(4) of the Internal Revenue Code and incorporated in the State of New York." Per Curiam Op. 85, ¶ 13. Its four million members are individual Americans bound together by a common desire to advance its defining mission: the preservation of the Second Amendment right to "keep and bear arms." *Id.*; *see* Henderson, J., Mem. Op. 67, ¶ 2. Most of these members "are individuals of modest means," Henderson, J., Mem. Op. 110-11, ¶ 51(f)-(g); "the average NRA donor donates approximately $30 per year." Per Curiam Op. 96, ¶ 41. The NRA uses these donations to represent the views of its membership "on legislative and public policy issues before federal, state and local officials and the general public." Per Curiam Op. 85, ¶ 13; Henderson, J., Mem. Op. 67, ¶ 2. In addition, the NRA sponsors activities, such as firearm-safety training and shooting

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exception to the electioneering communication ban for certain types of corporations; however, this exception has been eliminated by the 'Wellstone Amendment.' "); Leon, J., Mem. Op. 97 ("What Section 203 provides, however, Section 204 takes away.").

competitions, that promote the enjoyment of the very Second Amendment freedoms it seeks to preserve. *See* Per Curiam Op. 85, ¶ 13.

The NRA Political Victory Fund (the "PVF") is a political committee within the meaning of 2 U.S.C. § 431(4) and is a separate segregated fund of the NRA. *Id.* at 85, ¶ 14; Henderson, J., Mem. Op. 67, ¶ 3.

The NRA, in the course of defending the constitutional rights of its members, constantly engages in political speech on issues of vital importance to its mission. It does so as part of a robust, ongoing, and consistently heated debate that roils in this country over the meaning of the Second Amendment and the protections to which gun owners are constitutionally entitled. The NRA's frequent references to candidates for federal office are an integral part of its contribution to this debate; wholly apart from influencing elections, these references enable it to respond to pointed attacks that candidates themselves frequently direct against it, to educate the general public about the Second Amendment and those who would threaten it, and to raise funds from Americans who are favorably disposed to its cause. *See* Henderson, J., Mem. Op. 107-10, ¶ 51; Kollar-Kotelly, J., Mem. Op. 324 & nn.103-04.

In defense of its First Amendment rights to engage in such political speech, the NRA initiated this action on March 27,

2002 -- the very morning on which BCRA was signed into law -- seeking to enjoin Title II's criminalization of "electioneering communications." In light of the diverging, and indeed conflicting, interests of the plaintiffs challenging Title II, the NRA subsequently agreed to consolidation of its challenge with those of its fellow plaintiffs only upon receiving an explicit assurance from the district court that it would be permitted to file its own brief and to present oral argument.

3. Although distilling the three-judge district court's holdings from its four separate opinions is not easy, the court's holding with respect to the constitutionality of Title II's definition of electioneering communication is controlled largely by the memorandum opinion of Judge Leon: Judge Leon joins Judge Henderson in striking the primary definition of "electioneering communication" because of its overbreadth; he then upholds the fallback definition, joined by Judge Kollar-Kotelly, adopting a saving construction striking the "final clause" that would otherwise render it "unconstitutionally vague." Leon, J., Mem. Op. 93.

The district court's per curiam opinion, which Judge Henderson does not join, *see* Per Curiam 4 n.1, does not treat with Congress' definition and prohibition of "electioneering communi-

cations" in Title II of BCRA.[4] It does, however, make plain the deep fissures that weave throughout the "separate opinions by the members of this three-judge panel" such that "not any one opinion is fully dispositive." *Id.* at 171. Indeed, all four opinions present hundreds of pages of separate though often repetitive findings of fact. *See* Leon, J., Mem. Op. 65, 115 ("Despite our best efforts to produce a complete set of Findings of Fact, in which two or more members of this Court concur, we were

[4] The Court's per curiam opinion is written by Judges Kollar-Kotelly and Leon and, besides summarizing the Court's overall holding and offering some background discussion, speaks only to discrete aspects of this case. *See* Per Curiam 5. After offering, in Part I, a helpful summary of the Court's ultimate holdings with respect to the various provisions of BCRA that are at issue, *see id.* at 5-15, Part II of the opinion: (a) "canvass[es] the history of campaign finance regulation," *id.* at 15-42; (b) traces the legislative history of BCRA, *see id.* at 42-50; (c) describe the procedural history of this litigation, *see id.* at 50-57; and (d) outlines various provisions of Titles I through V of BCRA. *See id.* at 57-80. Thereafter, Part III of the opinion offers findings of fact that describe "the identities of the parties" and generally relate to BCRA's disclosure provisions. *Id.* at 80-106, ¶¶ 1-52. Part IV of the opinion contains its conclusions of law, which (a) address and reject the Paul plaintiffs' unique arguments that BCRA violates freedom of the press, *see id.* at 106-13; and then (b) address plaintiffs' collective arguments that various disclosure and coordination provisions of BCRA are unconstitutional, upholding all of the provisions against challenge -- or rejecting challenges to them as nonjusticiable -- except for the requirement of Section 201 that a contract for an "electioneering communication" be disclosed before it is run. *See id.* at 113-70. The opinion concludes with a short Part V, explaining that the three memorandum opinions of the respective judges are arranged "in order of seniority" and clarifying "that not any one opinion is fully dispositive." *Id.* at 170-71.

unable to do so.").[5]

Judge Henderson would have struck Congress' attempt to regulate "electioneering communications" under Title II on numerous, independent grounds. First, Judge Henderson concluded that Congress' restriction of "electioneering communications," under either of Section 201's definitions, would unconstitutionally reach beyond this Court's definition of express advocacy in *Buckley v. Valeo*, 424 U.S. 1 (1976). Henderson, J., Mem. Op. 204-19. Second, Judge Henderson held in the alternative that Congress' ban on "electioneering communications" in Section 203 could not survive the strict scrutiny required by the First Amendment because it does not " 'alleviate the [alleged] harms *in a direct and material way*' ";[6] in failing to regulate identi-

[5] *See also* Henderson, J., Mem. Op. 65 n.55 ("To be clear, I do not join the *per curiam* statement of facts, nor do I join the factual findings set forth in the other opinions."); Kollar-Kotelly, J., Mem. Op. 16 ("though . . . I am in dissent on most of Title I, as well as in dissent with regard to the primary definition of electioneering communication in Title II, I have found it appropriate to adequately set forth the bases of my Factual Findings to assist the appellate review of the three-judge District Court's decisions"); Leon, J., Mem. Op. 115-16 ("I believe it is necessary to set out, for the most part, those facts which in my judgment are sufficiently relevant and probative to rely upon in reaching my conclusions. Accordingly, while there may be other relevant and probative facts in the record, I do not accord them sufficient weight to warrant either relying on them in my judgments, or including them in my Findings.").

[6] *Id.* at 220 (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 662, 664 (1994)).

cal electioneering content carried by newspapers, direct mail, the Internet, or even that broadcast by media corporations, the statute's "underbreadth 'diminish[es] the credibility of the government's rationale for restricting speech in the first place.' " [7] *See id.* at 219-23. Finally, Judge Henderson explained that, even if Title II "served the government's interest in preventing . . . actual or apparent corruption,"[8] it is not narrowly tailored to do so: It both sweeps in the wrong speech, regulating ads designed to influence legislative outcomes as well as electoral ones, and the wrong speakers, forbidding (via the Wellstone Amendment in Section 204) nonprofit voluntary political associations "from the ACLU to the NRA to MCFL itself" from funding "electioneering contributions, notwithstanding their use of individual as opposed to corporate contributions.[9] *See id.* at 224-27.

Judge Kollar-Kotelly, in contrast, would have upheld virtually all of Title II,[10] including its primary definition of

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[7] *Id.* at 223 (quoting *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994)).

[8] *Id.* at 224.

[9] *Id.* at 226.

[10] The exceptions are the prior disclosure requirement of Section 201, which Judges Kollar-Kotelly and Leon struck down in the per curiam opinion, *see* Per Curiam 121-24, and Section 213, forcing political parties to choose between making either coordinated expenditures or unlimited independent expenditures on behalf of

"electioneering communications." Applying strict scrutiny, Judge Kollar-Kotelly found this the "rare" case in "which a content-based restriction on speech" should be upheld. Kollar-Kotelly, J., Mem. Op. 475. Specifically, she concluded (1) that the record demonstrated a compelling interest in combating both corruption and the appearance of corruption associated with "sham" issue ads funded by corporations and unions; (2) that *Buckley* did not limit Congress to regulating only express advocacy; and (3) that Title II's regulation of particular speech, media, and speakers was narrowly tailored to serve its purpose. *See id.* at 356-476. Judge Kollar-Kotelly nonetheless acknowledged that her upholding of BCRA's primary definition of "electioneering communication" departed from "the majority who have found the primary definition unconstitutional." *Id.* at 357. And despite repeatedly voicing concerns about the inherent subjectivity of determining whether particular issue ads are "genuine" as opposed to "sham,"[11] Judge Kollar-Kotelly joined Judge

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candidates. *See* Kollar-Kotelly, J., Mem. Op. 744; Leon, J., Mem. Op. 99-106.

[11] *See, e.g., id.* at 431 ("By constructing [the primary definition's] bright-line test, and avoiding a test that rests on subjectivity, Congress . . . avoided the vagueness problems that plagued FECA"); *id.* at 443 ("[T]he problem with this approach is that it asks the Court to sit as the viewer and find that these advertisements were pure issue advertisements. The *Buckley* Court warned against a statutory test that relied on the viewer and listener's interpretation of the political message."); *id.* at 446-47 ("The expert testimony in this case demonstrates the

Leon in upholding the fallback definition of "electioneering communications," *see id.* at 357, 476, which turns entirely upon whether a particular ad is understood to "promote[] or support[] . . . or attack[] or oppose[]" a candidate.[12]

Judge Leon cast the decisive vote in both striking down Title II's primary definition of "electioneering communications" and upholding its fallback definition. In Judge Leon's view, the primary definition is unconstitutionally overbroad because "the periods preceding elections are the most effective times to run issue advertisements discussing pending legislation,"[13] and "there are many reasons why it is helpful, if not necessary, to mention a candidate's name in these advertisements in order to focus the public's attention on a particular piece of pending legislation."[14] The primary definition would ban issue and electioneering ads alike and therefore was unconstitutional on its face: "[T]he realistic danger that the primary definition of electioneering communications will significantly compromise

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subjective nature of the effort of trying to capture mental impressions of viewers, and illustrates how one person's genuine issue advertisement can be another's electioneering communication.").

[12] *See* Section 201; Leon, J., Mem. Op. 92-93, 80 ("the backup definition . . . depend[s] on the effect of the communication's message on a candidate's election").

[13] Leon, J., Mem. Op. 76.

[14] *Id.* at 77.

genuine issue advocacy necessitates such a finding."[15] *See id.* at 74-86.

Judge Leon had no such problem with the fallback definition, however. And although he concluded "that the backup definition's final clause, which requires the message to be 'suggestive of no plausible meaning other than an exhortation to vote,' is unconstitutionally vague,"[16] Judge Leon thought the definition susceptible to a saving construction simply deleting its final clause. *See id.* at 90-95. Under the modified definition, "one need only conclude, in effect, that [an] ad is *not* neutral as to both candidates for it to have satisfied the backup definition, and [it] thereby . . . satisfie[s] the objective First Amendment standard that a reasonable person considering the context and nature of the expression at issue is able to evaluate the speech."[17] According to Judge Leon, any would-be speaker who might be chilled by doubts about the "neutrality" of a particular reference to a candidate could "avoid regulation simply by not mentioning a candidate for federal office in its ad" or seek "an advisory opinion from the FEC" prior to running it.[18]

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[15] *Id.* at 86.

[16] *Id.* at 93.

[17] *Id.* at 92.

[18] *Id.* at 95.

With respect to the purpose and tailoring of Title II's regulation of "electioneering communications," Judge Leon ultimately concluded that they satisfy strict scrutiny. He therefore upheld the ban on "electioneering communications" (as defined in the modified fallback definition) funded from corporate and union treasury funds. *Id.* at 87-90, 96-98.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

> "[A] representative democracy ceases to exist the moment that the public functionaries are by any means absolved from their responsibility to their constituents; and this happens whenever the constituent can be restrained in any manner from speaking, writing, or publishing his opinions upon any public measure, or upon the conduct of those who may advise or execute it."

New York Times Co. v. Sullivan, 376 U.S. 254, 297 (1964) (quoting 1 ST. GEORGE TUCKER, BLACKSTONE'S COMMENTARIES (1803), 297 (editor's appendix)) (Black, J., joined by Douglas, J., concurring). If there is truth in this proposition, then Title II of BCRA cannot stand, for it restrains, on pain of criminal sanction, the airing of broadcast ads "speaking, writing, or publishing . . . opinions . . . upon the conduct of those who may advise or execute" public measures. It is, after all, "*electioneering communications*" that BCRA in terms restricts the NRA and similar issue advocacy organizations from broadcasting during an election campaign.

The speech-suppressing purpose of Title II of BCRA is plain from the face and operation of the statute itself. And its true purpose was candidly proclaimed, by those who urged BCRA's passage in Congress: "[Title II] is about slowing political advertising and making sure the flow of negative ads by outside interest groups does not continue to permeate the airways." 148 CONG. REC. S2096, S2117 (daily ed. Mar. 20, 2002)(statement of Sen. Cantwell). *That* is Title II's true purpose, and that, accordingly, is its epitaph.

I. TITLE II'S OPERATION AND LEGISLATIVE RECORD REVEAL ITS SPEECH-SUPPRESSING PURPOSE.

Title II restricts speech based upon its content. Appellees therefore concede that they must prove that the measure advances a compelling governmental purpose in the least restrictive manner. Opening Government Brief at 133-34. Appellees also assert that Title II's "compelling governmental purpose" was the same one relied upon by the State of Michigan in *Austin* -- "to ensure that [political] spending 'reflect[s] actual support for the political ideas espoused by corporations' and unions, rather than their success in the economic marketplace." Government Brief in Opposition at 55 (quoting *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652, 660 (1990)). But this is belied both by Title II's operation and by the legislative record.

Targeted by its terms specifically at broadcast ads referring to a federal candidate during an election campaign, Title II's speech-suppressing purpose is plain on its face: to suppress to the maximum possible extent the specific political speech by "outside interest groups" -- "negative attack ads" -- that BCRA's proponents openly and uniformly decried. The sponsors of Title II were candid about their goal of suppressing such "negative attacks ads" and "sham issue ads," both in the legislative record and in their sworn depositions in this case. *See, e.g.*, 145 CONG. REC. S12,575, S12,606-07 (daily ed. Oct. 14, 1999) (statement of Sen. Wellstone) ("I think these issue advocacy ads are a nightmare. I think all of us should hate them. . . . We could get some of this poison politics off television."); 148 CONG. REC. at S2117 (statement of Sen. Cantwell) ("[Title II] is about slowing political advertising and making sure the flow of negative ads by outside interest groups does not continue to permeate the airwaves."); 147 CONG. REC. S3084, S3115-16 (daily ed. Mar. 21, 2001)(statement of Sen. McCain) (Issue ads have "demeaned and degraded all of us because people don't think very much of you when they see the kinds of attack ads that are broadcast on a routine basis."). If "strict scrutiny" means anything, it surely must mean that the "compelling governmental interest" necessary to justify a content-based speech restriction must be the purpose that *actually* motivated

Congress when it passed the law in question. *See, e.g., Thompson v. Western States Med. Ctr.*, 535 U.S. 357 (2002).

Far from preventing *Austin*-type corruption, BCRA perversely ensures that the power of the NRA's political voice will be *artificially deflated* vastly below its "contributors' support for the corporation's political views." *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652, 660-61 (1990). Title II channels the NRA's "electioneering communications" through its PAC, the PVF, which receives a pittance compared to the NRA's revenue from individual contributions, for few NRA members can afford to pay twice -- first, to satisfy the NRA's membership fee and, second, to donate specifically to PVF -- as would be required for their dollars actually to flow to PVF. 11 C.F.R. § 114.7; 11 C.F.R. § 114.1. *See* Henderson, J., Mem. Op. 110, ¶ 51.g.1. This congressional attempt at speech suppression for its own sake is antithetical to the First Amendment.

II. THE GOVERNMENT HAS FAILED TO PROVE THAT THERE IS NO LESS RESTRICTIVE ALTERNATIVE TO TITLE II.

Even if the Government could establish that preventing *Austin*-type corruption truly was Congress's purpose in stifling the "electioneering communications" of grassroots issue advocacy groups like the NRA, Title II would nevertheless have to be struck down. The First Amendment "imposes an especially heavy burden on the Government to explain why a less restrictive pro-

vision would not be as effective," *Reno v. ACLU,* 521 U.S. 844, 879 (1997), and here appellees are at a complete loss.

In its original form, as proposed by Senators Snowe and Jeffords, Title II of BCRA allowed 501(c)(4) nonprofit organizations and 527 "political organizations" to spend general treasury funds for electioneering communications so long as those funds were derived from contributions by individuals rather than corporations. *See* Section 203(b) ("the Snowe-Jeffords provision"). But Senator Wellstone's amendment to Title II added Section 204 ("the Wellstone Amendment"), which "effectively eviscerates" the Snowe-Jeffords exception. Per Curiam Op. 69.

This Court need look no further than the original Snowe-Jeffords provision for a less restrictive alternative to Title II for ensuring that business profits do not spill over into the political marketplace. That provision is a complete answer to the problem identified in *Austin* and supposedly addressed by Title II: that corporations distort the political process when they speak with the support of "market profits," Intervenors' Brief in Opp. at I-57, which 'have little or no correlation to the public's support for the corporation's political ideas.' *Austin*, 494 U.S. at 660-61. Plainly, individual contributions to a grassroots issue-advocacy organization from its members closely "correlate" with the public's support for its views.

The acknowledged purpose of the Wellstone Amendment further demonstrates its invalidity. Appellees maintained below that the amendment aims to "prevent large soft-money donations from individuals . . . from being passed through nonprofit corporations to purchase electioneering ads." Government Reply Brief at 58. Of course, this rationale has nothing to do with *Austin*-style corruption, the only governmental interest that has ever been found by this Court sufficiently compelling to stifle political speech.

As noted above, the Wellstone Amendment took the unusual form of a separate section nullifying but not deleting the Snowe-Jeffords provisions precisely so that it could be severed without dooming the rest of Title II. The principal sponsors of Title II were openly concerned that the Wellstone Amendment would be held unconstitutional, and they insisted on coupling it with an express severability provision.[19] If the Wellstone Amendment is enjoined, therefore, grassroots political advocacy organizations like the NRA will have regained their right to

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[19] *See, e.g.*, 147 CONG. REC. S3070, S3073 (daily ed. Mar. 29, 2001) (statement of Sen. Feingold) ("I thought and still think that [the Wellstone Amendment] makes Snowe-Jeffords more susceptible to a constitutional challenge, but it passed when many Senators who oppose the bill voted for it. In any event, the Wellstone Amendment was written to be severable from the remainder of the Snowe-Jeffords provision. That gives even more significance to the vote we will have today on severability. But if we win that vote, Snowe-Jeffords will survive even if the Wellstone Amendment is held to be unconstitutional.").

participate in the Nation's political discourse, while other major sponsors of issue ads, such as the Chamber of Commerce (a 501(c)(6) organization) and the AFL-CIO, will still remain subject to Title II's restrictions. Notably, the NRA was the sole plaintiff in the court below to challenge the Wellstone Amendment on the grounds set forth above. Only Judge Henderson recognized this inconsistency between the Wellstone Amendment and the requirement of narrow tailoring. *See* Henderson, J., Mem. Op. 225-27

III. BCRA IS AN ARBITRARY PENAL CODE FOR POLITICAL SPEECH THAT IS BOTH OVERBROAD AND UNDERINCLUSIVE.

To sustain BCRA's ban on "electioneering communications," the Government "must do more than simply posit the existence of the disease sought to be cured. It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) (internal quotations and citations omitted). BCRA's alleged statutory "purpose is belied . . . by the provisions of the statute, which are both underinclusive and overinclusive." *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 793 (1978). Title II's patchwork of confusing and contradictory restrictions constitutes an arbitrary speech code that is not narrowly tailored to advance a legitimate, let alone a compelling, governmental

purpose.

A. BCRA Is Fatally Overbroad.

BCRA's prohibition on electioneering communications is fatally overbroad both because it silences *speakers* that pose no threat of the harms allegedly sought to be prevented and because it criminalizes *categories of speech* that are wholly divorced from the statute's purposes. "The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002). *Ashcroft* struck down the Child Pornography Prevention Act as overbroad on the basis of *hypothesized* applications of the law. *See id.* at 259; *id.* at 273 (Rehnquist, C.J., dissenting). Here, by contrast, there is *compelling evidence* that the NRA and other nonprofit advocacy organizations engage in conduct that does not implicate the statute's purpose, and in speech that falls outside the ambit of the restriction's purported rationale.

1. BCRA Criminalizes the Speech of Organizations That Pose No Threat of Corrupting The Political Process.

This Court has repeatedly held that core political speech is protected by the First Amendment even when corporations are the speakers. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 45, 50, 187 (1976); *Bellotti*, 435 U.S. at 777; *Federal Election Comm'n*

v. MCFL, 479 U.S. 238, 259 (1986). Indeed, in *Massachusetts Citizens for Life*, the Court upheld a nonprofit voluntary membership corporation's First Amendment right to make unlimited independent expenditures to fund its political speech, including express advocacy. Only once -- in *Austin* -- has this Court upheld an independent expenditure restriction on core political speech. And, the specific danger identified in *Austin* -- corruption of the political process through the aggregation of wealth generated by business corporations -- has no application to nonprofit membership organizations that are devoted to the advancement of specific rights and ideas and are funded almost exclusively by the dues and donations of individual members. Title II of BCRA must therefore be struck down.

In *MCFL*, 479 U.S. 238 (1986), this Court held that a voluntary membership organization committed to a political purpose does not lose its First Amendment rights simply by taking the corporate form:

> The resources in the treasury of a *business corporation* . . . are not an indication of popular support for the corporation's political ideas. . . .
>
> . . . .
>
> . . . Groups such as MCFL, however, do not pose that danger of corruption. MCFL was formed *to disseminate political ideas, not amass capital*. The resources it has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace.

479 U.S. at 258-59 (emphasis added). The *Austin* Court, in contrast, upheld a state law restricting expenditures on express advocacy by the Michigan Chamber of Commerce because 75 percent of the Chambers' funding came from for-profit corporate members and, thus, "resources amassed in the economic marketplace" could have been used by the Chamber "to provide an unfair advantage in the political marketplace." *MCFL*, 479 U.S. at 257. The "corrosive and distorting effects" of the Chamber's corporate wealth had "*little or no correlation* to the public's support for the corporation's political ideas." *Austin*, 494 U.S. at 660 (emphasis added).

MCFL and *Austin* thus draw a line between advocacy organizations that fund their speech with individual dues and contributions, and business or trade associations that fund their speech largely with contributions from business corporations. The former, unlike the latter, pose no danger of *corrupting* the political process through wealth generated in the economic marketplace.

The NRA is the archetypal issue advocacy group protected by the First Amendment. Like MCFL, it "was formed to disseminate political ideas, not amass capital," District Court NRA Appendix ("NRA App.") 106, and its members are "fully aware of its political purposes." *See* NRA App. 133-56. Thus, the NRA's resources plainly "are not a function of its success in the eco-

nomic marketplace, but its popularity in the political marketplace." 479 U.S. at 259.[20] The organization serves as a vehicle through which "large numbers of individuals of modest means can join together . . . to '[amplify] the voice of their adherents.' " *Federal Election Comm'n v. NCPAC*, 470 U.S. 480, 494 (1985) (quoting *Buckley*, 424 U.S. at 22) (alteration in original).

> To say that their collective action in pooling their resources to amplify their voices is not entitled to full First Amendment protection would subordinate the voices of those of modest means as opposed to those sufficiently wealthy to be able to buy expensive media ads with their own resources.

NCPAC, 470 U.S. at 495. And the aggregated wealth that the NRA receives in $30 contributions from its members corresponds with its members' support for its political ideas. If the NRA's voice is loud and reverberates through the halls of Congress, it is precisely because the organization is the *collective voice* of millions of Americans speaking in unison. That "is not a *corruption* of the democratic political process; it *is* the democratic political process." *Renne v. Geary*, 501 U.S. 312, 319 (1991) (Marshall, J., dissenting).

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[20] The NRA derives *de minimis income* from business corporations. Although the NRA derives substantial *revenue* from advertising in its magazines and the sale of NRA memorabilia, it *loses* money on these activities. Additionally, the NRA generates about $1.7 million a year in rental income from leasing its building space. Finally, the NRA receives minimal contributions from for-profit businesses.

2. BCRA Criminalizes Speech That Is Not Intended To Influence Elections.

BCRA's restriction on electioneering communications also fails the narrow tailoring standard because it unfairly criminalizes *numerous categories of speech* that are not intended to, and will not have the effect of, influencing federal elections.

The NRA's extensive independent expenditures on television and radio broadcasting are designed to serve three principal purposes: (a) to educate the public about Second Amendment and related firearm issues, including pending legislative initiatives; (b) to defend itself against attacks aired by the broadcast media, including attacks by politicians opposed to the NRA's views on the Second Amendment and related issues; and (c) to recruit members and raise funds. When engaging in such speech, the NRA often makes references to public officials and candidates for federal office. The vast majority of this speech is not intended to influence elections, and BCRA's criminalization of this speech demonstrates the statute's dramatic overbreadth.

B. BCRA Is Fatally Underinclusive.

The dramatic overbreadth of Title II's ban on "electioneering communications" is matched in degree by its glaring underinclusiveness. Congress has drawn haphazard lines and indulged arbitrary distinctions that prohibit electoral speech "only at

certain times and in certain forms," *Republican Party of Minn. v. White*, 536 U.S. 765, 783 (2002), and that "depend upon the identity of its source." *Bellotti*, 435 U.S. at 777. "It would naively underestimate the ingenuity and resourcefulness of . . . groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted th[is] restriction . . . but nevertheless benefited the candidate's campaign." *Buckley*, 424 U.S. at 45. The palpable underinclusiveness of BCRA's speech regulations fatally " 'diminish[es] the credibility of the government's rationale for restricting speech in the first place.' " Henderson, J., Mem. Op. 223 (quoting *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994)).

Specifically, corporations can engage in unlimited print advertising, direct mail, and internet broadcasts, even if such communications are squarely intended to influence a federal election. Additionally, under BCRA, wealthy individuals and unincorporated groups remain free to spend unlimited sums on ads designed to influence federal elections.

Even more egregiously, Congress has specifically exempted from its ban any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station." Section 201(a). This means that General Electric through its NBC subsidiary or Microsoft through its ownership of MSNBC can broadcast the very same "electioneering

communications" that Congress has forbidden the NRA and other nonprofits from sponsoring. The media exception thus stands for the perverse proposition that it is wrong to use corporate money to pay for a discrete amount of broadcast time to air electioneering communications, *unless* the amount of money used is so enormously large that it purchases *an entire station's worth* of broadcast time.

IV. TITLE II'S EXEMPTION FOR MEDIA CORPORATIONS VIOLATES EQUAL PROTECTION.

Again, Title II's ban on "electioneering communications" does not extend to any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcast station." During the period when all other corporations are muzzled, media companies may air as many of *their own* electioneering programs as they wish. Unlike other corporations, they can endorse candidates for election and name candidates while editorializing on particular issues. But Title II's media exception does more than give the broadcast companies a special license to discuss candidates for federal office. By banning advocacy groups from buying their own advertising time, Title II puts those broadcasters in the position of being able to grant (or deny) speech licenses to advocacy groups whose only remaining hope for air time is to be chosen by a broadcaster for inclusion on one of its programs.

This is unconstitutional. This Court has rejected the proposition that "communication by corporate members of the institutional press is entitled to greater protection than the same communication by [non-media companies]." *Belotti*, 435 U.S. at 782 n.18. The Constitution's equal protection guarantee prohibits the Government from discriminating between classes of speakers without a compelling governmental purpose. *See Austin*, 494 U.S. at 667. In *Austin,* the Court identified a purpose sufficient to survive this strict scrutiny. The "unique role that the press plays in 'informing and educating the public, offering criticism, and providing a forum for discussion and debate,'" provided Michigan with a compelling interest for exempting the media from a prohibition against corporate political expenditures that "conceivably could be interpreted to encompass election-related news stories and editorials." 494 U.S. at 667-68 (citation omitted). "[M]edia corporations differ significantly from other corporations in that their resources are devoted to the collection of information and its dissemination to the public." *Id.* at 667.

Austin cannot save BCRA's media exception because its factual predicates -- the assumptions that media corporations (1) occupy a "unique societal role" in disseminating information and (2) devote their resources to the news business -- are no longer true. Henderson, J., Mem. Op. 124-27, ¶ 54. The emergence of

the internet and the absorption of the broadcast networks by non-media conglomerates have profoundly altered the nature of the traditional media companies and the role that they play. Thus, BCRA's media exemption violates the equal protection component of the Fifth Amendment. Only the NRA advanced this argument in the briefing below.

V. THE "FALLBACK" DEFINITION OF ELECTIONEERING COMMUNICATIONS IS UNCONSTITUTIONAL.

The fallback definition of "electioneering communications" is derived from the Ninth Circuit's decision in *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), "a case that has been largely discredited. *See, e.g., Chamber of Commerce v. Moore*, 288 F.2d 187, 194 (5th Cir. 2002) (citing cases disagreeing with *Furgatch*)." Kollar-Kelly, J., Mem. Op. 377. This provision is constitutionally infirm for much the same reasons as the principal definition: it is animated by the same impermissible purpose; there was a less restrictive alternative available to Congress in the form of the Snowe-Jeffords provision; and the measure is overbroad insofar as it applies to expenditures by voluntary membership organizations funded exclusively by individuals. And as rewritten by Judge Leon, the back-up definition has no geographic or temporal limitation and thus is wildly overbroad.

This definition, both before and especially after Judge Leon's "saving" construction, suffers from an additional prob-

lem: vagueness. If there was one subject upon which the members of the district court panel agreed, it was the difficulty of ascertaining the meaning of a particular advertisement. Title II's fallback definition requires the NRA and other speakers to endeavor to divine whether the Government, armed with criminal enforcement power, will determine that an ad "promotes or supports" or "attacks or opposes" a candidate. As Judge Kollar-Kotelly noted, "[t]he *Buckley* Court warned against a statutory test that relied on the viewer and listener's interpretation of a political message." Kollar-Kotelly, J., Mem. Op. 443. And "[t]he expert testimony in this case demonstrates the subjective nature of the effort of trying to capture mental impressions of viewers, and illustrates how one person's genuine issue advertisement can be another's electioneering commercial." *Id.* at 446-47. The chilling effect of such uncertainty is an independent basis for invalidating this provision.

CONCLUSION

For the foregoing reasons, the Court should note probable jurisdiction.

Respectfully submitted,

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Dated: May 6, 2003

APPENDIX

APPENDIX
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	**CONSOLIDATED ACTIONS** **Civ. No. 02-0582 (CKK, KLH, RLL)**
NATIONAL RIFLE ASSOCIATION, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	**Civ. No. 02-0581 (CKK, KLH, RLL)**

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the following plaintiffs hereby appeal to the Supreme Court of the United States from any and all adverse rulings incorporated in, antecedent to, or ancillary to the final judgment of the three-judge district court entered in this action on May 2, 2003: National Rifle Association and the

National Rifle Association Political Victory Fund (in No. 02-581, *National Rifle Association v. FEC*).

This appeal is taken pursuant to section 403(a)(3) of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, 114.

Respectfully submitted,

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Dated: May 5, 2003

OPINION OF THE DISTRICT COURT

Due to the length of the opinions below, and on the advice of the Clerk's Office, appellants are not including the district court opinions in the appendix to their typewritten jurisdictional statement. The opinions can be found on the Internet at http://lsmns2o.gtwy.uscourts.gov/dcd/mcconnell-2002-ruling.html.

UNITED STATES CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

UNITED STATES CONSTITUTION

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

BIPARTISAN CAMPAIGN REFORM ACT OF 2002
PUB. L. NO 107-155, 116 Stat. 81

[March 27, 2002]

An Act To amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.--This Act may be cited as the "Bipartisan Campaign Reform Act of 2002".

(b) Table of Contents.--The table of contents of this Act is as follows:

TITLE I--REDUCTION OF SPECIAL INTEREST INFLUENCE

Sec. 101. SOFT MONEY OF POLITICAL PARTIES.

(a) In General.--Title III of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431* et seq.) is amended by adding at the end the following:

"Sec. 323. SOFT MONEY OF POLITICAL PARTIES.

"(a) National Committees.-

"(1) In general.-- A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other

thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) Applicability.-- The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

"(b) State, District, and Local Committees.-

"(1) In general.-- Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) Applicability.---

" (A) In general.--Notwithstanding clause (i) or (ii) of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts-

"(i) which consist solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act (other than amounts described in subparagraph (B)(iii)); and

"(ii) other amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).

"(B) Conditions.--Subparagraph (A) shall only apply if-

"(i) the activity does not refer to a clearly identified candidate for Federal office;

"(ii) the amounts expended or disbursed are not for the costs of any broadcasting, cable, or satellite communication, other than a communication which refers solely to a clearly identified candidate for State or local office;

"(iii) the amounts expended or disbursed which are described in subparagraph (A)(ii) are paid from amounts which are donated in accordance with State law and which meet the requirements of subparagraph (C), except that no person (including any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district, or local committee of a political party in a calendar year for such expenditures or disbursements; and

"(iv) the amounts expended or disbursed are made solely from funds raised by the State, local, or district committee which makes such expenditure or disbursement, and do not include any funds provided to such committee from-

"(I) any other State, local, or district committee of any State party,

"(II) the national committee of a political party (including a national congressional campaign committee of a political party),

"(III) any officer or agent acting on behalf of any commit-

tee described in subclause (I) or (II), or

"(IV) any entity directly or indirectly established, financed, maintained, or controlled by any committee described in subclause (I) or (II).

"(C) Prohibiting involvement of national parties, federal candidates and officeholders, and state parties acting jointly.--Notwithstanding subsection (e) (other than subsection (e)(3)), amounts specifically authorized to be spent under subparagraph (B)(iii) meet the requirements of this subparagraph only if the amounts-

"(i) are not solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e); and

"(ii) are not solicited, received, or directed through fundraising activities conducted jointly by 2 or more State, local, or district committees of any political party or their agents, or by a State, local, or district committee of a political party on behalf of the State, local, or district committee of a political party or its agent in one or more other States.

"(c) Fundraising Costs.--An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(d) Tax-Exempt Organizations.--A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on be-

half of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to-

"(1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or

"(2) an organization described in section 527 of such Code (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

"(e) Federal Candidates.-

"(1) In general.-- A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not-

"(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

"(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds-

"(i) are not in excess of the amounts permitted with respect

to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a); and

"(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

"(2) State law.-- Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

"(3) Fundraising events.-- Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

"(4) Permitting certain solicitations.---

"(A) General solicitations.--Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses (i) and (ii) of section 301(20)(A)) where such solicitation does not specify how the funds will or should be spent.

"(B) Certain specific solicitations.--In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for carrying out the activities described in clauses (i) and (ii) of section 301(20)(A), or for an entity whose principal purpose is to conduct such activities, if-

"(i) the solicitation is made only to individuals; and

"(ii) the amount solicited from any individual during any calendar year does not exceed $20,000.

"(f) State Candidates.-

"(1) In general.-- A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section 301(20)(A)(iii) unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) Exception for certain communications.-- Paragraph (1) shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both.".

(b) Definitions.--Section 301 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431)* is amended by adding at the end thereof the following:

"(20) Federal election activity.---

"(A) In general.--The term 'Federal election activity' means--

"(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

"(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

"(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

"(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

"(B) Excluded activity.--The term 'Federal election activity' does not include an amount expended or disbursed by a State, district, or local committee of a political party for-

"(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

"(ii) a contribution to a candidate for State or local office,

provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

"(iii) the costs of a State, district, or local political convention; and

"(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

"(21) Generic campaign activity.-- The term 'generic campaign activity' means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

"(22) Public communication.-- The term 'public communication' means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.

"(23) Mass mailing.-- The term 'mass mailing' means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

"(24) Telephone bank.-- The term 'telephone bank' means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.".

Sec. 102. INCREASED CONTRIBUTION LIMIT FOR STATE COMMITTEES OF POLITICAL PARTIES.

Section 315(a)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(1)) is amended--

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C)--

(A) by inserting "(other than a committee described in subparagraph (D))" after "committee"; and

(B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.".

Sec. 103. REPORTING REQUIREMENTS.

(a) Reporting Requirements.--Section 304 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434)* is amended by adding at the end the following:

"(e) Political Committees.-

"(1) National and congressional political committees.-- The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

"(2) Other political committees to which section 323 applies.---

"(A) In general.--In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 323(b)(1) applies

shall report all receipts and disbursements made for activities described in section 301(20)(A), unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

"(B) Specific disclosure by state and local parties of certain non-federal amounts permitted to be spent on federal election activity.--Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B).

"(3) Itemization.-- If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

"(4) Reporting periods.-- Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).".

(b) Building Fund Exception to the Definition of Contribution.-

(1) In general.-- Section 301(8)(B) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431*(8)(B)) is amended-

(A) by striking clause (viii); and

(B) by redesignating clauses (ix) through (xv) as clauses (viii) through (xiv), respectively.

(2) Nonpreemption of state law.-- Section 403 of such Act

(2 U.S.C. 453) is amended-

(A) by striking "The provisions of this Act" and inserting "(a) In General.--Subject to subsection (b), the provisions of this Act"; and

(B) by adding at the end the following:

"(b) State and Local Committees of Political Parties.--Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.

TITLE II--NONCANDIDATE CAMPAIGN EXPENDITURES

Subtitle A--Electioneering Communications

Sec. 201. DISCLOSURE OF ELECTIONEERING COMMUNICATIONS.

(a) In General.--Section 304 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434),* as amended by section 103, is amended by adding at the end the following new subsection:

"(f) Disclosure of Electioneering Communications.-

"(1) Statement required.-- Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

"(2) Contents of statement.-- Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

"(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

"(B) The principal place of business of the person making the disbursement, if not an individual.

"(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

"(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

"(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act *(8 U.S.C. 1101*(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

"(F) If the disbursements were paid out of funds not de-

scribed in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

"(3) Electioneering communication.-- For purposes of this subsection-

"(A) In general.--(i) The term 'electioneering communication' means any broadcast, cable, or satellite communication which-

"(I) refers to a clearly identified candidate for Federal office;

"(II) is made within-

"(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

"(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

"(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

"(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication

expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

"(B) Exceptions.--The term 'electioneering communication' does not include-

"(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

"(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

"(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

"(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii).

"(C) Targeting to relevant electorate.--For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is 'targeted to the relevant electorate' if the communication can be received by 50,000 or more

persons-

"(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

"(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

"(4) Disclosure date.-- For purposes of this subsection, the term 'disclosure date' means-

"(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

"(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

"(5) Contracts to disburse.-- For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

"(6) Coordination with other requirements.-- Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

"(7) Coordination with internal revenue code.-- Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political cam-

paign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986.".

(b) Responsibilities of Federal Communications Commission. --The Federal Communications Commission shall compile and maintain any information the Federal Election Commission may require to carry out section 304(f) of the Federal Election Campaign Act of 1971 (as added by subsection (a)), and shall make such information available to the public on the Federal Communication Commission's website.

Sec. 202. COORDINATED COMMUNICATIONS AS CONTRIBUTIONS.

Section 315(a)(7) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(7)) is amended-

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

"(C) if-

"(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 304(f)(3)); and

"(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by

that candidate or that candidate's party; and".

Sec. 203. PROHIBITION OF CORPORATE AND LABOR DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS.

(a) In General.--Section 316(b)(2) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441b*(b)(2)) is amended by inserting "or for any applicable electioneering communication" before ", but shall not include".

(b) Applicable Electioneering Communication.--Section 316 of such Act is amended by adding at the end the following:

"(c) Rules Relating to Electioneering Communications.-

"(1) Applicable electioneering communication.-- For purposes of this section, the term 'applicable electioneering communication' means an electioneering communication (within the meaning of section 304(f)(3)) which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection (a) of this section.

"(2) Exception.-- Notwithstanding paragraph (1), the term 'applicable electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) made under section 304(f)(2)(E) or (F) of this Act if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act *(8 U.S.C. 1101*(a)(20))). For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity de-

scribed in subsection (a) of this section.

"(3) Special operating rules.---

"(A) Definition under paragraph (1).--An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in subsection (a) directly or indirectly disburses any amount for any of the costs of the communication.

"(B) Exception under paragraph (2).--A section 501(c)(4) organization that derives amounts from business activities or receives funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 304(f)(2)(E).

"(4) Definitions and rules.-- For purposes of this subsection--

"(A) the term 'section 501(c)(4) organization' means-

"(i) an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

"(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

"(B) a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

"(5) Coordination with internal revenue code.-- Nothing in

this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 to carry out any activity which is prohibited under such Code.".

Sec. 204. RULES RELATING TO CERTAIN TARGETED ELECTIONEERING COMMUNICATIONS.

Section 316(c) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441b),* as added by section 203, is amended by adding at the end the following:

"(6) Special rules for targeted communications.---

"(A) Exception does not apply.--Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

"(B) Targeted communication.--For purposes of subparagraph (A), the term 'targeted communication' means an electioneering communication (as defined in section 304(f)(3)) that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

"(C) Definition.--For purposes of this paragraph, a communication is 'targeted to the relevant electorate' if it meets the requirements described in section 304(f)(3)(C).".

Subtitle B--Independent and Coordinated Expenditures

Sec. 211. DEFINITION OF INDEPENDENT EXPENDITURE.

Section 301 of the Federal Election Campaign Act *(2 U.S.C. 431)* is amended by striking paragraph (17) and inserting the following:

"(17) Independent expenditure.-- The term 'independent expenditure' means an expenditure by a person-

"(A) expressly advocating the election or defeat of a clearly identified candidate; and

"(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.".

Sec. 212. REPORTING REQUIREMENTS FOR CERTAIN INDEPENDENT EXPENDITURES.

(a) In General.--Section 304 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434)* (as amended by section 201) is amended-

(1) in subsection (c)(2), by striking the undesignated matter after subparagraph (C); and

(2) by adding at the end the following:

"(g) Time for Reporting Certain Expenditures.-

"(1) Expenditures aggregating $1,000.----

"(A) Initial report.--A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

"(B) Additional reports.--After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

"(2) Expenditures aggregating $10,000.----

"(A) Initial report.--A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

"(B) Additional reports.--After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

"(3) Place of filing; contents.-- A report under this subsection-

"(A) shall be filed with the Commission; and

"(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.".

(b) Time of Filing of Certain Statements.-

(1) In general.-- Section 304(g) of such Act, as added by subsection (a), is amended by adding at the end the following:

"(4) Time of filing for expenditures aggregating $1,000.--Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.".

(2) Conforming amendments.-- (A) Section 304(a)(5) of such Act *(2 U.S.C. 434*(a)(5)) is amended by striking "the second sentence of subsection (c)(2)" and inserting "subsection (g)(1)".

(B) Section 304(d)(1) of such Act *(2 U.S.C. 434*(d)(1)) is amended by inserting "or (g)" after "subsection (c)".

Sec. 213. INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.

Section 315(d) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(d)) is amended-

(1) in paragraph (1), by striking "and (3)" and inserting ", (3), and (4)"; and

(2) by adding at the end the following:

"(4) Independent versus coordinated expenditures by party.---

"(A) In general.--On or after the date on which a political party nominates a candidate, no committee of the political party may make--

"(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time af-

ter it makes any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle; or

"(ii) any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

"(B) Application.--For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

"(C) Transfers.--A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.".

Sec. 214. COORDINATION WITH CANDIDATES OR POLITICAL PARTIES.

(a) In General.--Section 315(a)(7)(B) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(7)(B)) is amended-

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting after clause (i) the following new clause:

"(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and".

(b) Repeal of Current Regulations.--The regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees adopted by the Federal Election Commission and published in the Federal Register at page 76138 of volume 65, Federal Register, on December 6, 2000, are repealed as of the date by which the Commission is required to promulgate new regulations under subsection (c) (as described in section 402(c)(1)).

(c) Regulations by the Federal Election Commission.--The Federal Election Commission shall promulgate new regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees. The regulations shall not require agreement or formal collaboration to establish coordination. In addition to any subject determined by the Commission, the regulations shall address-

(1) payments for the republication of campaign materials;

(2) payments for the use of a common vendor;

(3) payments for communications directed or made by persons who previously served as an employee of a candidate or a political party; and

(4) payments for communications made by a person after substantial discussion about the communication with a candi-

date or a political party.

(d) Meaning of Contribution or Expenditure for the Purposes of Section 316.--Section 316(b)(2) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441b*(b)(2)) is amended by striking "shall include" and inserting "includes a contribution or expenditure, as those terms are defined in section 301, and also includes".

TITLE III--MISCELLANEOUS

Sec. 301. USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

Title III of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431* et seq.) is amended by striking section 313 and inserting the following:

"Sec. 313. <*2 USC 439a*> USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

"(a) Permitted Uses.--A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual-

"(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;

"(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;

"(3) for contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986; or

"(4) for transfers, without limitation, to a national, State, or local committee of a political party.

"(b) Prohibited Use.-

"(1) In general.-- A contribution or donation described in subsection (a) shall not be converted by any person to personal use.

"(2) Conversion.-- For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including-

"(A) a home mortgage, rent, or utility payment;

"(B) a clothing purchase;

"(C) a noncampaign-related automobile expense;

"(D) a country club membership;

"(E) a vacation or other noncampaign-related trip;

"(F) a household food item;

"(G) a tuition payment;

"(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and

"(I) dues, fees, and other payments to a health club or rec-

reational facility.".

Sec. 302. PROHIBITION OF FUNDRAISING ON FEDERAL PROPERTY.

Section 607 of title 18, United States Code, is amended-

(1) by striking subsection (a) and inserting the following:

"(a) Prohibition.-

"(1) In general.-- It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

"(2) Penalty.-- A person who violates this section shall be fined not more than $5,000, imprisoned not more than 3 years, or both."; and

(2) in subsection (b), by inserting "or Executive Office of the President" after "Congress".

Sec. 303. STRENGTHENING FOREIGN MONEY BAN.

Section 319 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441e)* is amended--

(1) by striking the heading and inserting the following: " contributions and donations by foreign nationals "; and

(2) by striking subsection (a) and inserting the following:

"(a) Prohibition.--It shall be unlawful for-

"(1) a foreign national, directly or indirectly, to make-

"(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

"(B) a contribution or donation to a committee of a political party; or

"(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or

"(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.".

Sec. 304. MODIFICATION OF INDIVIDUAL CONTRIBUTION LIMITS IN RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.

(a) Increased Limits for Individuals.--Section 315 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a)* is amended-

(1) in subsection (a)(1), by striking "No person" and inserting "Except as provided in subsection (i), no person"; and

(2) by adding at the end the following:

"(i) Increased Limit To Allow Response to Expenditures From Personal Funds.-

"(1) Increase.---

"(A) In general.--Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the 'applicable limit') with respect to that candidate shall be the increased limit.

"(B) Threshold amount.-

"(i) State-by-state competitive and fair campaign formula.--In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of-

"(I) $150,000; and

"(II) $0.04 multiplied by the voting age population.

"(ii) Voting age population.--In this subparagraph, the term 'voting age population' means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under section 315(e)).

"(C) Increased limit.--Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over-

"(i) 2 times the threshold amount, but not over 4 times that

amount-

"(I) the increased limit shall be 3 times the applicable limit; and

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

"(ii) 4 times the threshold amount, but not over 10 times that amount-

"(I) the increased limit shall be 6 times the applicable limit; and

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

"(iii) 10 times the threshold amount-

"(I) the increased limit shall be 6 times the applicable limit;

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

"(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

"(D) Opposition personal funds amount.--The opposition personal funds amount is an amount equal to the excess (if any) of-

"(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 304(a)(6)(B)) that an opposing candidate in the same election makes; over

"(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

"(2) Time to accept contributions under increased limit.---

"(A) In general.--Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)--

"(i) until the candidate has received notification of the opposition personal funds amount under section 304(a)(6)(B); and

"(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

"(B) Effect of withdrawal of an opposing candidate.--A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

"(3) Disposal of excess contributions.---

"(A) In general.--The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

"(B) Return to contributors.--A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

"(j) Limitation on Repayment of Personal Loans.--Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.".

(b) Notification of Expenditures From Personal Funds.--Section 304(a)(6) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434*(a)(6)) is amended-

(1) by redesignating subparagraph (B) as subparagraph (E); and

(2) by inserting after subparagraph (A) the following:

"(B) Notification of expenditure from personal funds.-

"(i) Definition of expenditure from personal funds.--In this subparagraph, the term 'expenditure from personal funds'

means-

"(I) an expenditure made by a candidate using personal funds; and

"(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

"(ii) Declaration of intent.--Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with-

"(I) the Commission; and

"(II) each candidate in the same election.

"(iii) Initial notification.--Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with-

"(I) the Commission; and

"(II) each candidate in the same election.

"(iv) Additional notification.--After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed $10,000 with--

"(I) the Commission; and

"(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

"(v) Contents.--A notification under clause (iii) or (iv) shall include-

"(I) the name of the candidate and the office sought by the candidate;

"(II) the date and amount of each expenditure; and

"(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

"(C) Notification of disposal of excess contributions.--In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 315(i)) and the manner in which the candidate or the candidate's authorized committee used such funds.

"(D) Enforcement.--For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 309.".

(c) Definitions.--Section 301 of the Federal Election Cam-

paign Act of 1971 *(2 U.S.C. 431),* as amended by section 101(b), is further amended by adding at the end the following:

"(25) Election cycle.-- For purposes of sections 315(i) and 315A and paragraph (26), the term 'election cycle' means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat. For purposes of the preceding sentence, a primary election and a general election shall be considered to be separate elections.

"(26) Personal funds.-- The term 'personal funds' means an amount that is derived from-

"(A) any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had-

"(i) legal and rightful title; or

"(ii) an equitable interest;

"(B) income received during the current election cycle of the candidate, including-

"(i) a salary and other earned income from bona fide employment;

"(ii) dividends and proceeds from the sale of the candidate's stocks or other investments;

"(iii) bequests to the candidate;

"(iv) income from trusts established before the beginning of

the election cycle;

"(v) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

"(vi) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and

"(vii) proceeds from lotteries and similar legal games of chance; and

"(C) a portion of assets that are jointly owned by the candidate and the candidate's spouse equal to the candidate's share of the asset under the instrument of conveyance or ownership, but if no specific share is indicated by an instrument of conveyance or ownership, the value of 1/2 of the property.".

Sec. 305. LIMITATION ON AVAILABILITY OF LOWEST UNIT CHARGE FOR FEDERAL CANDIDATES ATTACKING OPPOSITION.

(a) In General.--Section 315(b) of the Communications Act of 1934 *(47 U.S.C. 315*(b)) is amended-

(1) by striking "(b) The charges" and inserting the following:

"(b) Charges.-

"(1) In general.-- The charges";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

"(2) Content of broadcasts.---

"(A) In general.--In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this Act, unless such reference meets the requirements of subparagraph (C) or (D).

"(B) Limitation on charges.--If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

"(C) Television broadcasts.--A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds-

"(i) a clearly identifiable photographic or similar image of the candidate; and

"(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

"(D) Radio broadcasts.--A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

"(E) Certification.--Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.

"(F) Definitions.--For purposes of this paragraph, the terms 'authorized committee' and 'Federal office' have the meanings given such terms by section 301 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431)*.".

(b) Conforming Amendment.--Section 315(b)(1)(A) of the Communications Act of 1934 *(47 U.S.C. 315*(b)(1)(A)), as amended by this Act, is amended by inserting "subject to paragraph (2)," before "during the forty-five days".

(c) Effective Date.--The amendments made by this section shall apply to broadcasts made after the effective date of this Act.

Sec. 306. SOFTWARE FOR FILING REPORTS AND PROMPT DISCLOSURE OF CONTRIBUTIONS.

Section 304(a) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434*(a)) is amended by adding at the end the following:

"(12) Software for filing of reports.---

"(A) In general.--The Commission shall--

"(i) promulgate standards to be used by vendors to develop software that-

"(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

"(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

"(III) allows the Commission to post the information on the Internet immediately upon receipt; and

"(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

"(B) Additional information.--To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

"(C) Required use.--Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

"(D) Required posting.--The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.".

Sec. 307. MODIFICATION OF CONTRIBUTION LIMITS.

(a) Increase in Individual Limits for Certain Contributions.--Section 315(a)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(1)) is amended-

(1) in subparagraph (A), by striking "$1,000" and inserting "$2,000"; and

(2) in subparagraph (B), by striking "$20,000" and inserting "$25,000".

(b) Increase in Annual Aggregate Limit on Individual Contributions.--Section 315(a)(3) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(3)) is amended to read as follows:

"(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than-

"(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

"(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.".

(c) Increase in Senatorial Campaign Committee Limit.--Section 315(h) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(h)) is amended by striking "$17,500" and inserting "$35,000".

(d) Indexing of Contribution Limits.--Section 315(c) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(c)) is amended--

(1) in paragraph (1)--

(A) by striking the second and third sentences;

(B) by inserting "(A)" before "At the beginning"; and

(C) by adding at the end the following:

"(B) Except as provided in subparagraph (C), in any calendar year after 2002--

"(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

"(ii) each amount so increased shall remain in effect for the calendar year; and

"(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

"(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election."; and

(2) in paragraph (2)(B), by striking "means the calendar year 1974" and inserting "means-

"(i) for purposes of subsections (b) and (d), calendar year 1974; and

"(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001".

(e) Effective Date--The amendments made by this section shall apply with respect to contributions made on or after January 1, 2003.

Sec. 308. DONATIONS TO PRESIDENTIAL INAUGURAL COMMITTEE.

(a) In General.--Chapter 5 of title 36, United States Code, is amended by-

(1) redesignating section 510 as section 511; and

(2) inserting after section 509 the following:

"Sec. 510. Disclosure of and prohibition on certain donations

"(a) In General.--A committee shall not be considered to be the Inaugural Committee for purposes of this chapter unless the committee agrees to, and meets, the requirements of subsections (b) and (c).

"(b) Disclosure.-

"(1) In general.-- Not later than the date that is 90 days after the date of the Presidential inaugural ceremony, the committee shall file a report with the Federal Election Commission disclosing any donation of money or anything of value made to the committee in an aggregate amount equal to or greater than $200.

"(2) Contents of report.-- A report filed under paragraph (1)

shall contain-

"(A) the amount of the donation;

"(B) the date the donation is received; and

"(C) the name and address of the person making the donation.

"(c) Limitation.--The committee shall not accept any donation from a foreign national (as defined in section 319(b) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441e*(b))).".

(b) Reports Made Available by FEC.--Section 304 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434),* as amended by sections 103, 201, and 212 is amended by adding at the end the following:

"(h) Reports From Inaugural Committees.--The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of title 36, United States Code, accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.".

Sec. 309. PROHIBITION ON FRAUDULENT SOLICITATION OF FUNDS.

Section 322 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441h)* is amended-

(1) by inserting "(a) In General.--" before "No person"; and

(2) by adding at the end the following:

"(b) Fraudulent Solicitation of Funds.--No person shall--

"(1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

"(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).".

Sec. 310. STUDY AND REPORT ON CLEAN MONEY CLEAN ELECTIONS LAWS.

(a) Clean Money Clean Elections Defined.--In this section, the term "clean money clean elections" means funds received under State laws that provide in whole or in part for the public financing of election campaigns.

(b) Study.-

(1) In general.-- The Comptroller General shall conduct a study of the clean money clean elections of Arizona and Maine.

(2) Matters studied.---

(A) Statistics on clean money clean elections candidates.-- The Comptroller General shall determine-

(i) the number of candidates who have chosen to run for public office with clean money clean elections including-

(I) the office for which they were candidates;

(II) whether the candidate was an incumbent or a challenger; and

(III) whether the candidate was successful in the candidate's bid for public office; and

(ii) the number of races in which at least one candidate ran an election with clean money clean elections.

(B) Effects of clean money clean elections.--The Comptroller General of the United States shall describe the effects of public financing under the clean money clean elections laws on the 2000 elections in Arizona and Maine.

(c) Report.--Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress detailing the results of the study conducted under subsection (b).

Sec. 311. CLARITY STANDARDS FOR IDENTIFICATION OF SPONSORS OF ELECTION-RELATED ADVERTISING.

Section 318 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441d)* is amended-

(1) in subsection (a)--

(A) in the matter preceding paragraph (1)--

(i) by striking "Whenever" and inserting "Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever";

(ii) by striking "an expenditure" and inserting "a disbursement";

(iii) by striking "direct"; and

(iv) by inserting "or makes a disbursement for an electioneering communication (as defined in section 304(f)(3))" after "public political advertising"; and

(B) in paragraph (3), by inserting "and permanent street address, telephone number, or World Wide Web address" after "name"; and

(2) by adding at the end the following:

"(c) Specification.--Any printed communication described in subsection (a) shall-

"(1) be of sufficient type size to be clearly readable by the recipient of the communication;

"(2) be contained in a printed box set apart from the other contents of the communication; and

"(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

"(d) Additional Requirements.-

"(1) Communications by candidates or authorized persons.----

"(A) By radio.--Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

"(B) By television.--Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement-

"(i) shall be conveyed by-

"(I) an unobscured, full-screen view of the candidate making the statement, or

"(II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

"(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

"(2) Communications by others.-- Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: ' G7 XXXXX is responsible for the content of this advertising.' (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.".

Sec. 312. INCREASE IN PENALTIES.

(a) In General.--Subparagraph (A) of section 309(d)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 437g*(d)(1)(A)) is amended to read as follows:

"(A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure-

“(i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or

"(ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, or imprisoned for not more than 1 year, or both.".

(b) Effective Date.--The amendment made by this section shall apply to violations occurring on or after the effective date of this Act.

Sec. 313. STATUTE OF LIMITATIONS.

(a) In General.--Section 406(a) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 455*(a)) is amended by striking "3" and inserting "5".

(b) Effective Date.--The amendment made by this section shall apply to violations occurring on or after the effective date of this Act.

Sec. 314 SENTENCING GUIDELINES.

(a) In General.--The United States Sentencing Commission shall-

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Election Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Election Campaign Act of 1971 and related election laws.

(b) Considerations.--The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violation involves-

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Govern-

ment.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

(c) Effective Date; Emergency Authority To Promulgate Guidelines.-

(1) Effective date.-- Notwithstanding section 402, the United States Sentencing Commission shall promulgate guidelines under this section not later than the later of-

(A) 90 days after the effective date of this Act; or

(B) 90 days after the date on which at least a majority of the members of the Commission are appointed and holding office.

(2) Emergency authority to promulgate guidelines.-- The Commission shall promulgate guidelines under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under such Act has not expired.

Sec. 315. INCREASE IN PENALTIES IMPOSED FOR VIOLATIONS OF CONDUIT CONTRIBUTION BAN.

(a) Increase in Civil Money Penalty for Knowing and Will-

ful Violations.--Section 309(a) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 437g*(a)) is amended-

(1) in paragraph (5)(B), by inserting before the period at the end the following: "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation)"; and

(2) in paragraph (6)(C), by inserting before the period at the end the following: "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation)".

(b) Increase in Criminal Penalty.--Section 309(d)(1) of such Act *(2 U.S.C. 437g*(d)(1)) is amended by adding at the end the following new subparagraph:

"(D) Any person who knowingly and willfully commits a violation of section 320 involving an amount aggregating more than $10,000 during a calendar year shall be-

"(i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more);

"(ii) fined not less than 300 percent of the amount involved in the violation and not more than the greater of-

"(I) $50,000; or

"(II) 1,000 percent of the amount involved in the violation; or

"(iii) both imprisoned under clause (i) and fined under

clause (ii).".

(c) Effective Date.--The amendments made by this section shall apply with respect to violations occurring on or after the effective date of this Act.

Sec. 316. RESTRICTION ON INCREASED CONTRIBUTION LIMITS BY TAKING INTO ACCOUNT CANDIDATE'S AVAILABLE FUNDS.

Section 315(i)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(i)(1)), as added by this Act, is amended by adding at the end the following:

"(E) Special rule for candidate's campaign funds.-

"(i) In general.--For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

"(ii) Gross receipts advantage.--For purposes of clause (i), the term 'gross receipts advantage' means the excess, if any, of-

"(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

"(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year

preceding the year in which a general election is held.".

Sec. 317. CLARIFICATION OF RIGHT OF NATIONALS OF THE UNITED STATES TO MAKE POLITICAL CONTRIBUTIONS.

Section 319(b)(2) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441e*(b)(2)) is amended by inserting after "United States" the following: "or a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act)".

Sec. 318. PROHIBITION OF CONTRIBUTIONS BY MINORS.

Title III of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431* et seq.), as amended by section 101, is further amended by adding at the end the following new section:

" prohibition of contributions by minors

"Sec. 324 *<2 USC 441k>* An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution or donation to a committee of a political party.".

Sec. 319. MODIFICATION OF INDIVIDUAL CONTRIBUTION LIMITS FOR HOUSE CANDIDATES IN RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.

(a) Increased Limits.--Title III of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431* et seq.) is amended by inserting after section 315 the following new section:

"modification of certain limits for house candidates in response to personal fund expenditures of opponents

"Sec. 315A. <*2 USC 441a-1*> (a) Availability of Increased Limit-

"(1) In general.-- Subject to paragraph (3), if the opposition personal funds amount with respect to a candidate for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress exceeds $350,000--

"(A) the limit under subsection (a)(1)(A) with respect to the candidate shall be tripled;

"(B) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to the candidate if the contribution is made under the increased limit allowed under subparagraph (A) during a period in which the candidate may accept such a contribution; and

"(C) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party on behalf of the candidate shall not apply.

"(2) Determination of opposition personal funds amount.----

"(A) In general.--The opposition personal funds amount is an amount equal to the excess (if any) of-

"(i) the greatest aggregate amount of expenditures from personal funds (as defined in subsection (b)(1)) that an opposing candidate in the same election makes; over

"(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

"(B) Special rule for candidate's campaign funds.--

"(i) In general.--For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (A), such amount shall include the gross receipts advantage of the candidate's authorized committee.

"(ii) Gross receipts advantage.--For purposes of clause (i), the term 'gross receipts advantage' means the excess, if any, of-

"(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

"(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

"(3) Time to accept contributions under increased limit.---

"(A) In general.--Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)--

"(i) until the candidate has received notification of the opposition personal funds amount under subsection (b)(1); and

"(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits

under this subsection for the election cycle, exceeds 100 percent of the opposition personal funds amount.

"(B) Effect of withdrawal of an opposing candidate.--A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

"(4) Disposal of excess contributions.---

"(A) In general.--The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

"(B) Return to contributors.--A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

"(b) Notification of Expenditures From Personal Funds.-

"(1) In general.---

"(A) Definition of expenditure from personal funds.--In this paragraph, the term 'expenditure from personal funds' means-

"(i) an expenditure made by a candidate using personal funds; and

"(ii) a contribution or loan made by a candidate using per-

sonal funds or a loan secured using such funds to the candidate's authorized committee.

"(B) Declaration of intent.--Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed $350,000.

"(C) Initial notification.--Not later than 24 hours after a candidate described in subparagraph (B) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of $350,000 in connection with any election, the candidate shall file a notification.

"(D) Additional notification.--After a candidate files an initial notification under subparagraph (C), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceeds $10,000. Such notification shall be filed not later than 24 hours after the expenditure is made.

"(E) Contents.--A notification under subparagraph (C) or (D) shall include-

"(i) the name of the candidate and the office sought by the candidate;

"(ii) the date and amount of each expenditure; and

"(iii) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

"(F) Place of filing.--Each declaration or notification required to be filed by a candidate under subparagraph (C), (D), or (E) shall be filed with-

"(i) the Commission; and

"(ii) each candidate in the same election and the national party of each such candidate.

"(2) Notification of disposal of excess contributions.-- In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under subsection (a)) and the manner in which the candidate or the candidate's authorized committee used such funds.

"(3) Enforcement.-- For provisions providing for the enforcement of the reporting requirements under this subsection, see section 309.".

(b) Conforming Amendment.--Section 315(a)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a),* as amended by section 304(a), is amended by striking "subsection (i)," and inserting "subsection (i) and section 315A,".

TITLE IV--SEVERABILITY; EFFECTIVE DATE

Sec. 401. SEVERABILITY.

If any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of

this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

Sec. 402. EFFECTIVE DATES AND REGULATIONS.

(a) General Effective Date.-

(1) In general.-- Except as provided in the succeeding provisions of this section, the effective date of this Act, and the amendments made by this Act, is November 6, 2002.

(2) Modification of contribution limits.-- The amendments made by-

(A) section 102 shall apply with respect to contributions made on or after January 1, 2003; and

(B) section 307 shall take effect as provided in subsection (e) of such section.

(3) Severability; effective dates and regulations; judicial review.-- Title IV shall take effect on the date of enactment of this Act.

(4) Provisions not to apply to runoff elections.-- Section 323(b) of the Federal Election Campaign Act of 1971 (as added by section 101(a)), section 103(a), title II, sections 304 (including section 315(j) of Federal Election Campaign Act of 1971, as added by section 304(a)(2)), 305 (notwithstanding subsection (c) of such section), 311, 316, 318, and 319, and title V (and the amendments made by such sections and titles) shall take effect on November 6, 2002, but shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date.

(b) Soft Money of National Political Parties.-

(1) In general.-- Except for subsection (b) of such section, section 323 of the Federal Election Campaign Act of 1971 (as added by section 101(a)) shall take effect on November 6, 2002.

(2) Transitional rules for the spending of soft money of national political parties.---

(A) In general.--Notwithstanding section 323(a) of the Federal Election Campaign Act of 1971 (as added by section 101(a)), if a national committee of a political party described in such section (including any person who is subject to such section under paragraph (2) of such section), has received funds described in such section prior to November 6, 2002, the rules described in subparagraph (B) shall apply with respect to the spending of the amount of such funds in the possession of such committee as of such date.

(B) Use of excess soft money funds.-

(i) In general.--Subject to clauses (ii) and (iii), the national committee of a political party may use the amount described in subparagraph (A) prior to January 1, 2003, solely for the purpose of-

(I) retiring outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

(II) paying expenses or retiring outstanding debts or paying for obligations that were incurred solely in connection with any runoff election, recount, or election contest resulting from an election held prior to November 6, 2002.

(ii) Prohibition on using soft money for hard money ex-

penses, debts, and obligations.--A national committee of a political party may not use the amount described in subparagraph (A) for any expenditure (as defined in section 301(9) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431*(9))) or for retiring outstanding debts or obligations that were incurred for such an expenditure.

(iii) Prohibition of building fund uses.--A national committee of a political party may not use the amount described in subparagraph (A) for activities to defray the costs of the construction or purchase of any office building or facility.

(c) Regulations.-

(1) In general.-- Except as provided in paragraph (2), the Federal Election Commission shall promulgate regulations to carry out this Act and the amendments made by this Act that are under the Commission's jurisdiction not later than 270 days after the date of enactment of this Act.

(2) Soft money of political parties.-- Not later than 90 days after the date of enactment of this Act, the Federal Election Commission shall promulgate regulations to carry out title I of this Act and the amendments made by such title.

Sec. 403. JUDICIAL REVIEW.

(a) Special Rules for Actions Brought on Constitutional Grounds.--If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28,

United States Code.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) Intervention by Members of Congress.--In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised (including but not limited to an action described in subsection (a)), any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

(c) Challenge by Members of Congress.--Any Member of Congress may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or

any amendment made by this Act.

(d) Applicability.-

(1) Initial claims.-- With respect to any action initially filed on or before December 31, 2006, the provisions of subsection (a) shall apply with respect to each action described in such section.

(2) Subsequent actions.-- With respect to any action initially filed after December 31, 2006, the provisions of subsection (a) shall not apply to any action described in such section unless the person filing such action elects such provisions to apply to the action.

TITLE V--ADDITIONAL DISCLOSURE PROVISIONS

Sec. 501. INTERNET ACCESS TO RECORDS.

Section 304(a)(11)(B) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434*(a)(11)(B)) is amended to read as follows:

"(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.".

Sec. 502. MAINTENANCE OF WEBSITE OF ELECTION REPORTS.

(a) In General.--The Federal Election Commission shall maintain a central site on the Internet to make accessible to the

public all publicly available election-related reports and information.

(b) Election-Related Report.--In this section, the term "election-related report" means any report, designation, or statement required to be filed under the Federal Election Campaign Act of 1971.

(c) Coordination With Other Agencies.--Any Federal executive agency receiving election-related information which that agency is required by law to publicly disclose shall cooperate and coordinate with the Federal Election Commission to make such report available through, or for posting on, the site of the Federal Election Commission in a timely manner.

Sec. 503. ADDITIONAL DISCLOSURE REPORTS.

(a) Principal Campaign Committees.--Section 304(a)(2)(B) of the Federal Election Campaign Act of 1971 is amended by striking "the following reports" and all that follows through the period and inserting "the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.".

(b) National Committee of a Political Party.--Section 304(a)(4) of such Act *(2 U.S.C. 434*(a)(4)) is amended by adding at the end the following flush sentence: "Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).".

Sec. 504. PUBLIC ACCESS TO BROADCASTING RECORDS.

Section 315 of the Communications Act of 1934 *(47 U.S.C. 315),* as amended by this Act, is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and inserting after subsection (d) the following:

"(e) Political Record.-

"(1) In general.-- A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that-

"(A) is made by or on behalf of a legally qualified candidate for public office; or

"(B) communicates a message relating to any political matter of national importance, including-

"(i) a legally qualified candidate;

"(ii) any election to Federal office; or

"(iii) a national legislative issue of public importance.

"(2) Contents of record.-- A record maintained under paragraph (1) shall contain information regarding-

"(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

"(B) the rate charged for the broadcast time;

"(C) the date and time on which the communication is aired;

"(D) the class of time that is purchased;

"(E) the name of the candidate to which the communication

refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

"(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

"(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

"(3) Time to maintain file.-- The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.".