

**02-1674 McCONNELL, SENATOR, ET AL. v. FEC, ET AL.**

**Ruling Below: U. S. District Court for the District of Columbia, 251 F. Supp.2d 176.**

**QUESTIONS PRESENTED**

1. Whether the district court erred by upholding portions of the "soft money" provision (section 101) of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No.107-155, 116 Stat. 81, because it constitutes an invalid exercise of Congress' power to regulate elections under Article I, Section 4, of the Constitution; violates the First Amendment or the equal protection component of the Fifth Amendment; or is unconstitutionally vague.
2. Whether the district court erred by upholding portions of the "electioneering communications" provisions (sections 201, 203, 204, and 311) of BCRA, because they violate the First Amendment or the equal protection component of the Fifth Amendment, or are unconstitutionally vague.
3. Whether the district court erred by holding nonjusticiable challenges to, and upholding, portions of the "advance notice" provisions of BCRA (sections 201 and 212), because they violate the First Amendment.
4. Whether the district court erred by holding nonjusticiable challenges to, and upholding, the "coordination" provisions of BCRA (sections 202, 211, and 214), because they violate the First Amendment.
5. Whether the district court erred by holding nonjusticiable challenges to, and upholding, the "attack ad" provision of BCRA (section 305), because it violates the First Amendment.

**02-1675 NRA, ET AL. v. FEC, ET AL.**

**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."

## **02-1676 FEC, ET AL. v. McCONNELL, SENATOR, ET AL.**

### **QUESTIONS PRESENTED**

In March 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The questions presented are as follows:

1. Whether the limitations on political parties imposed by Section 101 of BCRA are constitutional.
2. Whether the funding limitations and disclosure requirements imposed by Sections 201 and 203 of BCRA with respect to "electioneering communications" are constitutional.
3. Whether the limitations imposed by Section 213 of BCRA on coordinated expenditures by a political party committee are constitutional.
4. Whether the prohibition imposed by Section 318 of BCRA on contributions to federal candidates or political party committees made by minors is constitutional.
5. Whether the reporting and record-keeping requirements imposed on broadcast stations by Section 504 of BCRA are constitutional.

## **02-1702 McCain, Senator, Et Al. v. McConnell, Senator, Et Al.**

### **QUESTIONS PRESENTED**

Whether the three-judge district court erred in invalidating on First Amendment grounds portions of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, including provisions addressing:

1. the raising, directing, transferring, and use of funds by political parties, federal candidates, and federal officeholders (BCRA § 101);
2. the use of funds from corporate and labor union general treasuries to finance broadcast advertisements that are intended or likely to influence federal elections, and disclosure requirements for all such broadcast advertisements (BCRA §§ 201, 203, 204); and
3. the ability of political parties to make both "independent" and "coordinated" expenditures to support the campaigns of candidates they have nominated to seek federal office (BCRA § 213).

## **02-1727 REPUBLICAN NAT. COMM. v. FEC, ET AL.**

### **QUESTIONS PRESENTED**

1. Do the restrictions imposed upon national, state, and local political parties by Title I of the Bipartisan Campaign Reform Act of 2002 ("BCRA ") violate Article I, Section 4 of the U.S. Constitution, the First, Fifth, and Tenth Amendments, and principles of federalism?
2. Does BCRA 's requirement that the Federal Election Commission promulgate a definition of "coordination" that does not require proof of an "agreement" violate the First Amendment?
3. Do BCRA's "Millionaires Provisions," which requires political parties to provide different treatment to similarly situated candidates, violate the equal protection components of the First and Fifth Amendments?

## **02-1733 NAT. RIGHT TO LIFE, ET AL. v. FEC, ET AL.**

### **Questions Presented**

1. Whether the prohibition of § 101 of the Bipartisan Campaign Reform Act of 2002 (BCRA) on the solicitation, receipt, redirection, or use of "soft money" by any national political party for any communication that "promotes or supports...or attacks or opposes" a federal candidate, violates the First and Fifth Amendment and principles of federalism.
2. Whether the prohibition on federal officeholders and candidates from soliciting, receiving, directing, transferring, or spending "soft money" contained in BCRA §101 violates the First Amendment.
3. Whether the prohibition on state officeholders and candidates from soliciting, receiving, directing, transferring, or spending "soft money" in connection with an election for federal office in BCRA §101 violates the First Amendment.
4. Whether the backup "electioneering communication" definition at BCRA §201, or its construction by the district court, violates the First Amendment.
5. Whether the requirements that "disbursements" and "expenditures" be reported as occurring when contracted for, rather than when made, BCRA §§ 201 and 212, are justiciable and violate the First Amendment.
6. Whether District Court injunction should extend to activities outside the District of Columbia.
7. Whether BCRA §403(b ), permitting members of Congress to intervene, and the permitted intervention by Intervenor-Defendants without regard to whether they have Article III standing, violates the Constitution.

## **02-1734 ACLU v. FEC, ET AL.**

### QUESTIONS PRESENTED

1. Whether the district court erred by upholding broad new restrictions on so-called "electioneering communications" embodied in sections 201, 203, and 204 of the BCRA?
2. Whether the district court erred by upholding aspects of the broad new "coordination" rules embodied in sections 202 and 214 of the BCRA, and dismissing the challenge to other aspects of those rules as non-justiciable?

## **02-1740 ADAMS, ET AL. v. FEC, ET AL.**

### QUESTION PRESENTED

Whether the District Court erred in ruling that a challenge to the increased "hard money" contribution limits found in sections 304, 307 and 319 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No.107-155, 116 Stat. 81, 97-100, 102-03, and 109-112 (codified as amended at 2 U.S.C. §§ 441a and 441a-1) is non-justiciable due to lack of cognizable injury, even though the increases will confer preponderant electoral power on wealthy donors and will effectively exclude candidates and voters without access to networks of large donors from electoral participation, in violation of the equal protection guarantee incorporated by the due process clause of the Fifth Amendment to the United States Constitution.

## **02-1747 PAUL, CONGRESSMAN, ET AL. v. FEC, ET AL.**

### QUESTIONS PRESENTED FOR REVIEW

1. Whether the district court erred by dismissing appellants' freedom of the press challenge to various provisions of BCRA, and to provisions of FECA amended by BCRA, on the ground that, in the area of campaign finance regulation, the freedom of the press guarantee in the First Amendment to the United States Constitution

contains no greater rights than those protected by the guarantees of free speech and association?

2. Whether the district court erred by upholding the statutory exemptions in BCRA enjoyed by the "institutional press" and other FEC-licensed press activities from the prohibitions against, and regulations of, electioneering communications and contribution limits governing appellants, on the ground that Congress may, regardless of the freedom of the press guarantee, grant greater rights to the "institutional press" than to the "general press," only the latter of which appellants are a part?

3. Whether the district court erred by holding that, regardless of the constitutional guarantee of the freedom of the press, the fall-back definition of electioneering communication in Title II of BCRA (as modified by the court) and the accompanying prohibitions and regulations, are constitutional as applied to appellants as members of the "general press" even though the institutional press and other FEC-licensed press activities are exempted?

4. Whether the district court erred by holding that, regardless of the constitutional guarantee of the freedom of the press, those appellants who are federal officeholders and/or candidates for federal office must, as members of the "general press," submit to the Federal Election Commission's licensing power and editorial control as provided for in BCRA Section 101(a) (FECA Section 323(e)), including limiting their ability to assist candidates and causes they support, whereas members of the "institutional press" are exempt?

5. Whether the district court erred by holding that, regardless of the freedom of the press, those appellants who are candidates for election to state office, must, as members of the "general press," submit to the licensing power and editorial control of the Federal Election Commission as provided for in BCRA Section 101(a) (FECA Section 323(f)), if they refer to a candidate for federal office and the Federal Election Commission determines this to constitute promotion or support, whereas members of the "institutional press" are exempt?

6. Whether the district court erred by holding that, regardless of the freedom of the press, appellant Congressman and candidates for federal office, being members only of the "general press," had no standing to challenge the constitutionality of FECA amended by BCRA Section 307(a) limiting individual contributions to federal election campaigns, and mandating disclosure of contributor identities and donations, despite the impact of such limits upon the editorial function of their campaigns for federal office, and by dismissing appellant candidates' press challenge to such statute limits and requirements?

## **02-1753 CALIFORNIA DEMOCRATIC PARTY, ET AL. v. FEC, ET AL.**

### **QUESTION PRESENTED**

Do the restrictions imposed upon state and local political parties and party officers by Title I of the Bipartisan Campaign Reform Act of 2002 ("BCRA ") violate Article I, section 4 of the U.S. Constitution, the First, Fifth, and Tenth Amendments, and principles of federalism?

## **02-1755 AFL-CIO, ET AL. v. FEC, ET AL.**

### **QUESTIONS PRESENTED**

1. Whether the prohibition of certain broadcast communications by labor organizations and corporations in BCRA § 203(a) abridges the First Amendment insofar as it incorporates the "fallback" definition of the term "electioneering communications" set forth in BCRA § 201, with its last clause severed.

2. Whether the provisions prohibiting coordinated expenditures in BCRA §§ 202 and 214(a) are constitutional in light of the statute's mandate that no definition of "coordination" may require proof of "agreement or formal collaboration."

**02-1756 CHAMBER OF COMMERCE, ET AL. v. FEC, ET AL.**

QUESTIONS PRESENTED

1. Whether the "electioneering communications" provisions of the Bipartisan Campaign Reform Act ("BCRA") (§§ 201, 203, 204, and 311), violate the right of business corporations and those who wish to hear their independent speech and associate with them under the First Amendment.
2. Whether the "coordination" provisions of BCRA (§§ 202 and 214) violate the First Amendment rights of business corporations and those who wish to hear their speech and associate with them.

PROBABLE JURISDICTION NOTED: 6/5/03

Consolidated for four hours oral argument.

Expedited briefing schedule.