UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SPEECHNOW.ORG,
DAVID KEATING,
FRED M. YOUNG, JR.,
EDWARD H. CRANE, III,
BRAD RUSSO, and
SCOTT BURKHARDT

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION

Defendant.

Case: 1:08-cv-00248
Assigned To : Robertson, James
Assign. Date : 2/14/2008
Description: Labor-ERISA

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

This case is a constitutional challenge to campaign finance laws that prevent individuals from joining together to exercise their First Amendment rights to speech and association. Plaintiff SpeechNow.org is an independent group of citizens whose mission is to engage in express advocacy in favor of candidates who support the First Amendment and against those who do not. Toward that end, SpeechNow.org plans to run television advertisements during the 2008 election cycle in the states and districts of political candidates whose records demonstrate that they do not support full protections for First Amendment rights. SpeechNow.org has prepared scripts for four such ads and is prepared to produce the ads, purchase the air time, and begin broadcasting those ads immediately. Plaintiffs David Keating, Edward Crane, Fred Young and others are prepared to donate the money to SpeechNow.org that is necessary to fund the production and broadcasting of the ads.

However, under the campaign finance laws, if SpeechNow.org accepted any of these donations or the individual Plaintiffs actual made the donations, both would be subject to civil and criminal fines and even jail time. The reason is that the donations are "contributions" under the campaign finance laws, and if SpeechNow.org accepted any of them it would immediately become a "political committee." Under the campaign finance laws, political committees may not accept contributions of more than $5000 from any one donor in any calendar year. However, the donations that SpeechNow.org must accept in order to pay for the ads it wants to broadcast, and the donations that Plaintiffs Keating, Crane, and Young want to make, are necessarily greater than $5000 each.

In short, the campaign finance laws treat SpeechNow.org—which will only make independent expenditures under those laws—as though it were a full-fledged political action

committee, or PAC, that will make contributions to political candidates. But SpeechNow.org does not want to make contributions to candidates, and, under its by-laws, it is prevented from making any such contributions either directly or indirectly or from coordinating with candidates or political parties in any way. SpeechNow.org exists to allow individuals to pool their funds in order to speak. It is not a conduit for contributions to candidates; it is a group of citizens who want to spend their own money on their own speech. SpeechNow.org thus raises no concerns about corruption or its appearance that would justify limiting the funds it can raise or requiring it to register as a political committee. SpeechNow.org will comply with the existing disclosure and disclaimer requirements for those who make independent expenditures under the campaign finance laws, which will address any interests the government has in disclosure. Accordingly, there is no constitutionally adequate justification for requiring SpeechNow.org to become a full-fledged PAC and limiting the contributions it may accept.

Because the campaign finance laws prevent SpeechNow.org from accepting the individual Plaintiffs' donations and thus prevent it and its supporters from exercising their rights to speech and association, Plaintiffs are entitled to a preliminary injunction preventing the FEC from enforcing those laws against SpeechNow.org and its supporters while the issues in this case are fully litigated.

STATEMENT OF FACTS

Plaintiff David Keating created SpeechNow.org because he believes that the issue of free speech and the threats posed to it by campaign finance laws are vital to the future of the nation. Declaration of David Keating at ¶ 3. He wanted individuals who share this concern to be able pool their funds so they could speak out as loudly and effectively in favor of First Amendment rights as possible. *Id.* Because federal elections provide a rare opportunity both to impact public

policy—by affecting the political futures of the candidates who make it—and to influence public debate, David believes that running advertisements calling for the election or defeat of candidates based on their support for free speech and association is the most effective way for private citizens to protect those rights. *Id.* In David's view, if an individual is permitted to spend unlimited amounts of money advocating the election or defeat of candidates for office, there is absolutely no reason why groups of individuals should be prevented from doing so. He created SpeechNow.org to give ordinary Americans the ability to band together to achieve these purposes.

A. Structure and Operations of SpeechNow.org

SpeechNow.org is an unincorporated non-profit association organized under the District of Columbia Uniform Unincorporated Nonprofit Associations Act, D.C. Code section 29-971.01 *et seq.*, and registered as a "political organization" under section 527 of the Internal Revenue Code. See Keating Decl., Ex. D. SpeechNow.org was founded by individuals and will operate solely on private donations from individuals. *Id.*, Ex. E, art. II. It cannot accept, directly or indirectly, any donations or anything of value from business corporations, labor organizations, national banks, federal government contractors, foreign nationals, or political committees. *Id.*, art. X, § 1. Nor can it engage in business activities or offer to any donors or members any benefit that is a disincentive for them to disassociate themselves with SpeechNow.org on the basis of the organization's position on a political issue. *Id.*, art. VI, §§ 6, 8.

SpeechNow.org is independent of any political candidates, committees, and parties, and its by-laws require it to operate wholly independently of any of these entities. *Id.*, art. X, §§ 2-10. SpeechNow.org cannot make contributions or donations of any kind directly or indirectly to any FEC-regulated candidate or political committee, and it cannot coordinate its activities, as

defined in 2 U.S.C. §§ 441a(a)(7)(B) & C and 11 C.F.R. Part 109, with any candidates, national, state, district or local political party committees, or their agents. *Id.*, art. VI § 10; art. X §§ 2-10.

SpeechNow.org will solicit donations from individuals for funds to cover operating expenses and to buy public, political advertising to promote the election or defeat of candidates based on their positions on free speech and associational rights. Keating Decl. at ¶ 10. SpeechNow.org's solicitations will inform potential donors that their donations may be used for political advertising that will advocate the election or defeat of candidates to federal office based on their support for First Amendment rights. *Id.* SpeechNow.org will also advise its donors that their donations are not tax deductible. *Id.* at ¶ 12. Some of SpeechNow.org's solicitations will refer to particular candidates for federal office by name. *Id.* at ¶ 10.

B. SpeechNow.org's Planned Political Advertisements

SpeechNow.org plans to run advertisements on television and in other media during the 2008 election cycle and other future election cycles. *Id.* at ¶ 13. SpeechNow.org has prepared television scripts for four such advertisements. *Id.*, Ex. F. Two of the advertisements call for the defeat of Dan Burton, a Republican Congressman currently running for reelection in the fifth district of Indiana. Both ads criticize Representative Burton for voting for a bill that would restrict the speech of many public interest groups. The first urges voters to "Say no to Burton for Congress." The second states that "Dan Burton voted to restrict our rights. Don't let him do it again." *Id.*, Ex. F. SpeechNow.org intends to broadcast these advertisements in the fifth district of Indiana, where Representative Burton is running for office. *Id.* at ¶ 17.

The other two advertisements call for the defeat of Mary Landrieu, a Democratic Senator currently running for reelection in Louisiana. Both ads criticize Landrieu for voting for a law to restrict the speech of public interest groups. The first urges voters to "Say no to Landrieu for

Senate." The second concludes by saying that "Our founding fathers made free speech the First Amendment to the Constitution. Mary Landrieu is taking that right away. Don't let her do it again." *Id.*, Ex. F. SpeechNow.org intends to broadcast these advertisements in Louisiana, where Senator Landrieu is running for office. *Id.* at ¶ 17.

The production costs for these advertisements would be approximately $12,000. The cost to air the advertisements depends on the number of times they are run and the size of the audience SpeechNow.org wants to reach. Id. at ¶¶ 18-19; Ex. G; Declaration of Ed Traz at ¶¶ 3-5. Ideally, David Keating would like to be able to run the ads enough times so that the target audience could view the ads at least ten times, but that would cost roughly $400,000. A less expensive option is simply to run the ads fewer times. Keating Decl. at ¶¶ 18-19. SpeechNow.org knows of at least four individuals who are willing, ready, and able to donate funds that would allow it to produce and broadcast the ads enough times to have an impact on the audience in the relevant markets. *Id.* David Keating is willing to donate $5500. *Id.* at ¶ 25. Edward Crane is willing to donate $6,000. Declaration of Edward Crane at ¶ 6. Richard Marder is willing to donate $5,500. Keating Decl. at ¶ 25. Fred M. Young is willing to donate $110,000. Declaration of Fred Young at ¶ 5.

However, under the federal campaign finance laws, these individuals may not make their donations and SpeechNow.org may not accept them because they are all over the limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). SpeechNow.org also knows of two individuals who are willing to donate amounts under the contribution limits. Plaintiffs Brad Russo and Scott Burkhardt are each willing to donate $100 to SpeechNow.org. Declaration of Brad Russo at ¶ 5; Declaration of Scott Burkhardt at ¶ 5. Even though Plaintiffs Russo and Burkhardt could not themselves finance the production and broadcast of SpeechNow.org's ads,

they wish to associate with SpeechNow.org's other supporters in order to amplify their voices and reach an audience far greater than they would be able to achieve without SpeechNow.org. Russo Decl. at ¶ 3; Burkhardt Decl. at ¶ 3. However, because SpeechNow.org is unable to accept donations above $5000, it cannot operate at all and thus cannot accept donations even below the contribution limits. Keating Decl. at ¶ 33.

C. The Application of the Federal Election Campaign Act to SpeechNow.org

Under the Federal Election Campaign Act (FECA), SpeechNow.org's expenditures for advertisements would be "independent expenditures." Independent expenditures are expenditures by a person "expressly advocating the election or defeat of a clearly identified candidate" that are "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." 2 U.S.C. § 431 (17). As a result, SpeechNow.org will comply with all disclaimer and reporting obligations for those who make independent expenditures under the campaign finance laws. For instance, under 2 U.S.C. § 441d(a), SpeechNow.org's advertisements and other communications will include its name, address and telephone number or World Wide Web address, along with a statement indicating that the communication was paid for by SpeechNow.org and was not authorized by any candidate or candidate's committee. Under 2 U.S.C. § 441d(d)(2), SpeechNow.org's advertisements will include a statement indicating that SpeechNow.org is responsible for the content of the advertisement. And, pursuant to 2 U.S.C. § 434(c), SpeechNow.org will file statements with the FEC reporting its donations and its donors' identities as well as its expenditures. *See* Keating Decl., Ex. ¶¶ 22-24.

At the same time, however, if SpeechNow.org accepts any of the donations that Plaintiffs Keating, Crane, or Young are prepared to make or produces and broadcasts the advertisements

for which it has scripts, SpeechNow.org will immediately become a "political committee"—or PAC—and be subject to all regulations that apply to PACs, including limits on contributions.

A "political committee" is "any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year." 2 U.S.C. § 431(4). A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal Office." *Id.* § 431(8). "Expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9).

Under these provisions, SpeechNow.org would become a political committee if it accepted any of the donations from Plaintiffs Keating, Crane, or Young because they would be made "for the purpose of influencing" a federal election. *See* Keating Decl. at ¶ 25; Crane Decl. at ¶ 3; Young Decl. at ¶ 2. Likewise, if SpeechNow.org spent the money necessary to produce and broadcast the ads for which it has scripts, it would also become a political committee because those expenditures would be made "for the purpose of influencing" a federal election. *See* Keating Decl. at ¶ 31.

Political committees are subject to limits on the contributions they may accept. Two limits in particular would apply to SpeechNow.org and its donors. Under 2 U.S.C. § 441a(a)(1)(C), SpeechNow.org and its donors would be subject to annual contribution limits $5000 from any one person; and under 2 U.S.C. § 441a(a)(1)(C), supporters of SpeechNow.org would be subject to biennial aggregate limits of $42,700 for contributions to political committees and parties and $108,200 for all contributions to candidates, political committees and party

committees. Under these provisions, Plaintiffs Keating, Crane and Young cannot make the donations to SpeechNow.org that they are ready, willing, and able to make and SpeechNow.org cannot accept those donations.

In addition to being subject to contribution limits, political committees are subject to burdensome organizational, administrative, and reporting requirements. These include, among other things, the obligation to file a statement of organization, appoint a treasurer, maintain records of all contributions and expenditures for three years, and file regular reports disclosing detailed information concerning the amounts of all contributions and expenditures, the identities of all contributors, persons who make loans or give rebates or refunds to the committee, persons who provide any dividend or interest to the committee, the identities of those to whom expenditures are made, and the committees' operating expenses, among other information. *See* 2 U.S.C. §§ 432, 433, and 434.

D. SpeechNow.org's Advisory Opinion Request

On November 19, 2007, SpeechNow.org filed a request for an advisory opinion (AOR) with the FEC pursuant to 2 U.S.C. § 437f. The request presented, in essence, three questions: (1) Must SpeechNow.org register as a political committee as defined in 2 U.S.C. § 431(4), and, if so, when? (2) Are donations to SpeechNow.org "contributions" (as defined in 2 U.S.C. § 431(8)) subject to the limits described in 2 U.S.C. § 441a(a)(1)(C)? (3) Must an individual donor to SpeechNow.org count his donations to SpeechNow.org among the contributions applicable to his biennial aggregate contribution limit described in 2 U.S.C. § 441a(a)(3)? *See* Declaration of Steven M. Simpson, Ex. 1.

Under FEC rules, the Commission is required to issue a written advisory opinion within sixty days of accepting a request. 11 C.F.R. § 112.4(a). If it is unable to render an advisory

opinion within that time, the rules state that the FEC "shall issue a written response stating that the Commission was unable to approve" the request by a required vote of four commissioners. *Id.* The FEC issued its response to SpeechNow.org's AOR on January 28, 2008. Because the FEC is currently without a full complement of commissioners, it lacks a quorum and thus could not issue an advisory opinion in response to SpeechNow.org's request. Accordingly, under FEC rules, SpeechNow.org's request was not approved. *See* Simpson Decl., Ex. 2.

However, the general counsel's office of the FEC issued a draft advisory opinion in response to SpeechNow.org's AOR. *Id.*, Ex. 3. Consistent with the analysis, above, the draft advisory opinion concluded that, among other things, the donations Plaintiffs Keating, Crane, and Young wish to make to SpeechNow.org would be "contributions" under 2 U.S.C. § 431(8); expenditures by SpeechNow.org on advertisements calling for the election or defeat of candidates for federal office would be "expenditures" under 2 U.S.C. § 431(9); SpeechNow.org has a "major purpose" of campaign activity; accepting the contributions noted above to fund its advertisements would make SpeechNow.org a "political committee" under § 431(4); as a political committee, SpeechNow.org would be subject to the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) and the registration, administrative and reporting requirements for political committees contained in 2 U.S.C. §§ 432, 433, and 434. *See* Simpson Decl., Ex. 3. In short, the draft advisory opinion concluded that the campaign finance laws prohibit SpeechNow.org from accepting donations that exceed the contribution limits in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to fund its advertisements.

The draft advisory opinion was consistent with the FEC's position on other groups that make independent expenditures. The FEC has consistently required such groups both to register as political committees and to abide by contribution limits. *See* Simpson Decl., Exs. 4-9.

The application of the PAC requirements and contribution limits to SpeechNow.org places the organization and its supporters in an impossible position. If SpeechNow.org accepts the donations that Plaintiffs Crane, Young and Keating want to make, it immediately becomes a "political committee," making those donations illegal and subjecting both SpeechNow.org and those who make the donations to civil and criminal liability. If it does not accept those donations, SpeechNow.org cannot produce and broadcast its advertisements and fulfill its mission. *See* Keating Decl. at ¶ 26. Moreover, if it does not accept donations above the contribution limits, SpeechNow.org will not only be unable to produce the ads it currently wants to run, it will be prevented from obtaining the start-up funding necessary to begin operations and to allow it to raise additional funds to produce and broadcast additional advertisements. *See id.* at ¶ 27.

ARGUMENT

"Freedom of speech plays a fundamental role in a democracy; as [the Supreme] Court has said, freedom of thought and speech is the matrix, the indispensable condition of nearly every other form of freedom." *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 264 (1986) (internal citation and quotation marks omitted) [hereinafter *MCFL*]. Plaintiffs seek to preliminarily enjoin contribution limits that, if applied to SpeechNow.org and its supporters, will prevent them from exercising their rights to speech and association during the only time in which those rights, for them, are effective—the election season.

To warrant preliminary injunctive relief, the moving party must show (1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction. *Chaplaincy of Full Gospel*

Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006). As demonstrated below, each of these factors weighs in Plaintiffs' favor.

I. Plaintiffs Are Substantially Likely to Succeed on the Merits.

The burden of proof at the preliminary injunction stage tracks the burden of proof at trial. Therefore, where First Amendment rights are at stake, the FEC must demonstrate the likelihood that the law will be upheld. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006); *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). In this context, that means that the FEC must demonstrate that the contribution limits meet strict scrutiny as applied to SpeechNow.org and its supporters. *See FEC v. Wisc. Right to Life, Inc.*, 127 S.Ct. 2652, 2664 (2007) (stating that the government bears the burden of demonstrating that a statute that burdens speech passes strict scrutiny as applied to a particular speaker) [hereinafter *WRTL II*].

The FEC cannot meet its burden here for the primary reason that SpeechNow.org does not present any threat of corruption or its appearance that would be necessary to justify limiting the contributions SpeechNow.org may accept or requiring it to become a fully-regulated PAC. SpeechNow.org is, in essence, an independent expenditure committee. Under its by-laws it is prohibited from making contributions directly or indirectly to candidates, political parties or political committees or coordinating in any way with candidates or parties. Plaintiff David Keating created SpeechNow.org to allow like-minded individuals to pool their resources so they can purchase advertisements calling for the election or defeat of candidates depending on those candidates' support for free speech. *See* Keating Decl. at ¶ 3. SpeechNow.org's members and donors wish to contribute to the organization because they agree with both its message and its means and they wish to add their voices to SpeechNow.org's so that, collectively, they may speak more effectively and reach a wider audience than any of them would be able to do on their

own. *See id.* at ¶ 35; Crane Decl. at ¶¶ 3-4; Young Decl. at ¶¶ 2-3; Russo Decl. at ¶¶ 2-3; Burkhardt Decl. at ¶¶ 2-3. In short, SpeechNow.org is a group of individuals who simply want to spend their own money on their own speech.

The Supreme Court has held that independent expenditures, whether by individuals or committees, cannot constitutionally be limited, because they are, by definition, unconnected to candidates and thus cannot raise any concerns about corruption. *See FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-97 (1985) [hereinafter *NCPAC*]; *Buckley v. Valeo*, 424 U.S. 1, 47 (1976). The Court has also held that limits on contributions to groups that make independent expenditures are necessarily restrictions on their expenditures. *See Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 299-300 (1981). Combined, these principles make clear that the contribution limits that apply to fully-regulated PACs cannot constitutionally be applied to SpeechNow.org, which is independent of political candidates, committees and parties and raises money only to spend it directly on speech. Moreover, SpeechNow.org will report all contributions and expenditures under the reporting requirements that apply to those who make independent expenditures. These provisions satisfy the government's interest in disclosure and in ensuring that SpeechNow.org does not coordinate with candidates or political parties or circumvent the limitations that apply to those entities.

A. As Applied to SpeechNow.org and Its Supporters, the Contribution Limits are Subject to Strict Scrutiny.

Strict scrutiny applies where a law burdens the exercise of fundamental First Amendment rights. *WRTL II*, 127 S.Ct. at 2664. SpeechNow.org's activities are at the very core of the First Amendment's protections, and the Supreme Court has held that the speech-related activities of groups very similar to the SpeechNow.org are entitled to the full protections of the First Amendment. Because the contribution limits that apply to SpeechNow.org impose extreme

burdens on its and its members and supporters rights under the First Amendment, strict scrutiny applies.

As the Supreme Court has repeatedly stated, a fundamental purpose of the First Amendment was to protect the discussion of governmental affairs, and, in particular, of candidates, in order to "ensure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Buckley*, 424 U.S. at 14. Thus, the First Amendment protects vigorous advocacy intended to influence the outcome of elections no less than the discussion of ideas. *See First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978). It also protects the right of individuals to associate with one another because "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). By associating with others, "individuals can make their views known, when, individually, their voices would be faint or lost." *Citizens Against Rent Control*, 454 U.S. at 294. *See also Buckley*, 424 U.S. at 22 (stating that the purpose of the right of association is to allow individuals to amplify their voices by associating with others).

SpeechNow.org's activities are at the heart of the First Amendment's protections. SpeechNow.org and its members and supporters wish to band together to advocate political and social change—greater protections for First Amendment rights. SpeechNow.org will accomplish this by broadcasting advertisements calling for the election or defeat of candidates. In short, SpeechNow.org will seek to influence the outcome of elections in order to influence the decisions and the political futures of the politicians who make the laws that affect First Amendment rights. *See* Keating Decl. at ¶ 2. By associating with SpeechNow.org, its members and supporters will be able to amplify their voices beyond what any of them would be able to

achieve on their own, because they either lack the financial means or the time and the experience to speak out effectively on their own. *See id.* at ¶ 35; Crane Decl. at ¶ 4; Young Decl. at ¶ 3; Russo Decl. at ¶ 3; Burkhardt Decl. at ¶ 3.

SpeechNow.org will only make independent expenditures—that is, expenditures on express advocacy that are not coordinated with candidates or political parties. *See* 2 U.S.C. § 431(17). The Supreme Court has held that "[i]ndependent expenditures constitute expression 'at the core of our electoral process and of the First Amendment freedoms.'" *MCFL*, 479 U.S. at 254 (quoting *Buckley*, 424 U.S. at 39). *See also NCPAC*, 470 U.S. at 493 (stating that independent expenditures "produce speech at the core of the First Amendment"). As a result, limits on what independent expenditure committees can spend are subject to strict scrutiny. *See id. See also id.* at 496. As the Court stated in *NCPAC*, "[a] restriction on the amount of money a person or group can spend on political communications during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money." *Id.* at 493-94 (quoting *Buckley*, 424 U.S. at 19).

While the limit at issue in *NCPAC* operated directly on expenditures by the group, rather than contributions to it, limits on contributions to independent expenditure committees such as SpeechNow.org automatically operate to limit the group's expenditures. This conclusion necessarily follows from the Supreme Court's decision in *Citizens Against Rent Control*. That case involved a $250 limit on contributions to support or oppose a ballot measure. 454 U.S. at 292. Concluding that the limit prevented individuals from pooling their funds in order to finance

their collective advocacy, the Court applied strict scrutiny[1] and struck it down. *See id.* at 294-95, 300. In arriving at that conclusion, the Court recognized that the limit on contributions necessarily limited the funds that the group could spend on its own speech. *See id.* at 299. As the Court explained, while an individual may make unlimited expenditures under the law, she may not "contribute beyond the $250 limit when joining with others to advocate common views. The contribution limit thus automatically affects expenditures, and limits on expenditures operate as a direct restraint on freedom of expression . . . ." *Id.* *See also id.* ("Placing limits on contributions which in turn limit expenditures plainly impairs freedom of expression.").

The same is true here. To produce and broadcast just the initial ads for which SpeechNow.org now has scripts will cost upwards of $110,000. *See* Keating Decl. at ¶¶ 18-19. Without the contributions from Plaintiffs Keating, Crane, and Young, as well as Richard Marder—all of which exceed $5000—SpeechNow.org would be unable to produce and broadcast those ads at all. *See id.* at ¶ 26. Even assuming SpeechNow.org could raise sufficient funds in increments of $5000 or less to pay for these ads, the contribution limits would still significantly limit the number of times it could run those ads, and would limit its ability to run additional ads concerning other federal candidates in other races. *See id.* at ¶ 29. In short, it is undeniable that the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) directly restrain SpeechNow.org's expenditures and reduce the quantity of its expression by restricting the number of political candidates it can discuss, the number of times it can run its ads, and the size of the audience it can reach.

Thus, as in *NCPAC* and *Citizens Against Rent Control*, the contribution limits that apply to SpeechNow.org restrict its and its members and supporters rights to pool their funds in order

[1] While the Court in *Citizens Against Rent Control* referred to the scrutiny it applied as "exacting," it has elsewhere made clear that "exacting scrutiny" is the same as "strict scrutiny." *See Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 192 n.12, 204 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995).

to amplify their voices beyond what any of them would be able to achieve on their own. *See NCPAC*, 470 U.S. at 495; *Citizens Against Rent Control*, 454 U.S. at 296. The contribution limits thus restrict the rights to free speech and association of both SpeechNow.org and its supporters. *See Citizens Against Rent Control*, 454 U.S. at 299-300 (stating that the rights of speech and association "blend and overlap" and are both implicated by contribution limits imposed on groups that support or oppose ballot issues). In other words, the contribution limits restrict not only SpeechNow.org's right to free speech by limiting the funds it has available to spend on its advertisements. The limits also directly restrict its supporters' rights to free speech by preventing them from pooling their funds and speaking collectively through SpeechNow.org. *See NCPAC*, 470 U.S. at 495. SpeechNow.org's supporters like and agree with both its means and its message, and they wish to add their voices to that message. *See* Keating Decl. at ¶ 35; Crane Decl. at ¶ 3; Young Decl. at ¶ 2; Russo Decl. at ¶ 2; Burkhardt Decl. at ¶ 2. By associating with one another through SpeechNow.org, the group's members and supporters are just as much exercising their rights to free speech and association as were the individuals who associated through the groups at issue in *NCPAC* and *Citizens Against Rent Control.*

SpeechNow.org and its members and supporters thus join the long practice in American politics of "persons sharing common views banding together to achieve a common end" to which the Supreme Court has often referred in cases involving restrictions on the right to associate. *See Citizens Against Rent Control*, 454 U.S. at 294. As the Supreme Court stated in *NCPAC*, "[t]o 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." 470 U.S. at 495. *See also* Russo Decl. at ¶ 3; Burkhardt Decl. at ¶ 3 (stating that

while they lack the financial means to donate more than a few hundred dollars, their ability to associate with SpeechNow.org and its wealthier donors allows them to speak out effectively where they would otherwise be unable to do so).

Thus, as applied to SpeechNow.org, the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) operate very differently from the contribution limits in the circumstances in which the Supreme Court upheld them in *Buckley*. There, the Court addressed limits that applied to contributions made directly to candidates or to their committees. 424 U.S. at 23-38. Finding that contributions to candidates served only as a "general expression of support for the candidate and his views but does not communicate the underlying basis for the support" and that the contributors' expression "rests solely on the undifferentiated symbolic act of giving," the Court concluded that the speech element in contributions to candidates was minimal. *See id.* at 21. By contrast, SpeechNow.org makes only independent expenditures that directly fund speech, not contributions to candidates. Support for SpeechNow.org thus conveys much more than the "undifferentiated, symbolic act if giving." It conveys agreement with SpeechNow.org's message—the importance of First Amendment rights—and its means—express advocacy for and against candidates based on their support for those rights. As the Court stated in rejecting the "speech by proxy" argument in *NCPAC*, "the contributors obviously like the message they are hearing from these organizations and want to add their voices to that message; otherwise, they would not part with their money." 470 U.S. at 495.

As a result, contributions to SpeechNow.org enjoy the full protections of the First Amendment, and the contribution limits that apply to it and its supporters are subject to strict scrutiny. *See, e.g., Comm. on Jobs Candidate Advocacy Fund v. Herrera*, No. 07-03199, 2007 U.S. Dist. LEXIS 73736, at *8-*10 (N.D. Cal. Sept. 20, 2007) (holding that "[l]imits on

contributions to independent expenditure committees are subject to strict scrutiny" and granting motion for preliminary injunction); *OAKPAC v. The City of Oakland*, No. 06-6366, 2006 U.S. Dist. LEXIS 96900, at *3 (N.D. Cal. Oct. 19, 2006) (holding that by "limiting the source of funds available for political committees to conduct independent expenditures" contribution limits were subject to strict scrutiny and granting preliminary injunction). Under strict scrutiny, the FEC must demonstrate applying the contribution limits to SpeechNow.org narrowly serves a compelling state interest.

B. The FEC Cannot Demonstrate a Compelling State Interest in Limiting Contributions to SpeechNow.org.

The Supreme Court has only identified one interest sufficiently compelling to limit contributions to political organizations: the interest in preventing corruption of candidates.[2] As the Court has stated, "preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances." *NCPAC*, 470 U.S. at 496-97. *See also Randall v. Sorrell*, 126 S.Ct. 2479, 2491-92 (2006) (recognizing corruption as the only interest that can support contribution limits and striking down limits as broader than necessary to achieve that interest); *Citizens Against Rent Control*, 434 U.S. at 437-38 ("*Buckley* identified only a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributors to a *candidate*.") (emphasis in original).

[2] The Court has recognized another type of corruption that has no application here. So-called "corporate form corruption" relates to "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 660 (1990) (emphasis added). This form of corruption applies only to corporations by virtue of "the *unique state-conferred corporate structure* that facilitates the amassing of large treasuries." *Id.* (emphasis added). This same concern for corporate-form corruption was used to justify the electioneering-communications provisions of the Bipartisan Campaign Reform Act of 2002. *See McConnell v. FEC*, 540 U.S. 93, 205 (2003). Because SpeechNow.org is not a corporation, conducts no business activities, and accepts no contributions from corporations, unions, or national banks, corporate form corruption has no bearing on this case. *See* Keating Decl. at ¶ 8. *See also NCPAC*, 470 U.S. at 495-96 (distinguishing cases dealing with limits on corporate solicitations and expenditures on the grounds that the statute at issue applied to any "committee, association, or organization" and thus was not limited to corporations).

Contributions to SpeechNow.org cannot raise any concerns about corruption, however, because SpeechNow.org cannot make contributions to or coordinate its activities with political candidates, parties or committees. SpeechNow.org exists to make independent expenditures—it wishes only to spend its supporters' money directly on speech that gives voice to its supporters' desire to expressly advocate for and against candidates based on their support for First Amendment rights. SpeechNow.org's independent expenditures, by definition, cannot raise any concerns about corruption. As the Supreme Court explained in *NCPAC*,

> Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial *quid pro quo*: dollars for political favors. But here the conduct proscribed is not contributions to the candidate, but independent expenditures in support of the candidate.

470 U.S. at 497. Likewise, here the conduct proscribed is not contributions to a candidate, but contributions to SpeechNow.org, a group of individuals who want to pool their funds in order to make independent expenditures. As the Court concluded in *NCPAC*, "there [is] a fundamental difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign." *Id.* Only the latter can raise any concerns over corruption or its appearance. SpeechNow.org's supporters make contributions only to advertise their views independently of any candidate. Their contributions cannot possibly raise concerns about corruption.

While the Supreme Court has never directly addressed whether the government has a compelling interest in limiting contributions to groups like SpeechNow.org, its decision in *California Medical Association v. FEC*, 453 U.S. 182 (1981) [hereinafter *CalMed*], provides guidance on the proper analysis of the issue in this case. *CalMed* involved a challenge by a multicandidate committee—a political committee that makes contributions to five or more

candidates for office—to the $5000 annual contribution limit under 2 U.S.C. § 441a(a)(1)(C). *Id.* at 194. Concluding that contributions to the multicandidate committee amounted merely to "speech by proxy" of the PAC's contributors—which was entitled to lesser protections under the First Amendment—a plurality of the Court upheld the limit on the ground that it served the government's interest in preventing circumvention of the limits on contributions made directly to candidates. *Id.* at 196-98. The multicandidate committee made contributions directly to candidates. Thus, according to the plurality, contributors seeking to avoid the $1000 annual contribution limits could make larger contributions to multicandidate committees, which could then be funneled to candidates. *Id.* at 197-98.

Justice Blackmun separately concurred, however, and concluded that the plurality's circumvention rationale applied only because the committee at issue was a multicandidate committee that made direct contributions to candidates. *Id.* at 203. Justice Blackmun rejected the plurality's conclusion that contributions to the multicandidate committee were not entitled to full First Amendment protection. *Id.* at 201-02. He joined the plurality's judgment, however, because he recognized that, as applied to multicandidate committees, the annual contribution limit was a narrow means of preventing circumvention of the limits that applied to direct contributions to candidates. *Id.* at 203.

Justice Blackmun made clear, however, that the same analysis would not apply to limits on contributions to committees "established for the purpose of making independent expenditures." *Id.* In sharp contrast to multicandidate committees—which are "conduits for contributions to candidates" and thus raise concerns about corruption—"contributions to a committee that makes only independent expenditures pose no such threat." *Id.* As Justice Blackmun explained,

> [t]he Court repeatedly has recognized that effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association. . . . By pooling their resources, adherents of an association amplify their own voices . . .; the association is but the medium through which its individual members seek to make more effective the expression of their own views.

Id. (internal quotation marks and citations omitted). Because Justice Blackmun's decision is the narrower one, his is the controlling decision in the case. *See Marks v. United States*, 430 U.S. 188, 193 (1977) (stating that when the Court issues a fragmented decision, the position of the narrowest concurrence controls).

Two principles emerge from *CalMed*. First and foremost, under Justice Blackmun's controlling decision, the government may limit contributions to groups only where they implicate the interest in preventing corruption or its appearance. 453 U.S. at 203. While contributions to multicandidate committees can raise such concerns, contributions to groups that make only independent expenditures cannot. *Id.* at 203-04. Second, even the plurality's conclusions apply only to multicandidate committees that make contributions directly to candidates. This point is not only implicit in the plurality's analysis; it is also stated expressly in the opinion. In a footnote, the plurality noted that the ACLU in an amicus brief claimed that the contribution limit at issue "would violate the First Amendment if construed to limit the amount individuals could jointly expend to express their political views." *Id.* at 197 n.17. This concern was not at issue in the case, however, because it involved only a multicandidate committee that made contributions directly to candidates. *Id.* As the plurality explained, "[c]ontributions to such committees are therefore distinguishable from expenditures made jointly by groups of individuals in order to express common political views." *Id.* In short, SpeechNow.org's case is distinguishable from the plurality's decision in *CalMed* and falls squarely within the reasoning of Justice Blackmun's controlling concurrence.

Accordingly because SpeechNow.org raises no concerns about corruption or its appearance and cannot be used to circumvent limits on contributions to candidates, the FEC cannot demonstrate any interest, much less a compelling interest, in applying the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to SpeechNow.org or its supporters. *See, e.g.*, *Herrera*, 2007 U.S. Dist. LEXIS 73736, at *12-*13 (holding that contribution limits applied to independent expenditure committees serve no compelling interest and granting motion for preliminary injunction); *OAKPAC*, 2006 U.S. Dist. LEXIS 96900, at *4-*5 (same). The individual supporters of SpeechNow.org—and, indeed, any individuals—are entitled to make unlimited independent expenditures advocating the election or defeat of candidates. Preventing those individuals from doing the same thing as a group violates their rights to free speech and association under the First Amendment. *See, e.g.*, *Citizens Against Rent Control*, 454 U.S. at 296 ("To place a Spartan limit—or, indeed, any limit—on individuals wishing to band together to advance their views on a ballot measure, while placing none of individuals acting alone, is clearly a restraint on the right of association").

C. As Applied to SpeechNow.org and Its Supporters, the Contribution Limits Are Not Narrowly Tailored.

"Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation." *MCFL*, 479 U.S. at 265. The "problem at hand" for which Congress passed FECA's contribution limits was the appearance or reality of corruption of candidates. *See Buckley*, 424 U.S. at 23-38. Thus, regulating "only to the degree necessary" to address that problem would mean applying contribution limits only to those groups that raise concerns about corruption. As demonstrated above, SpeechNow.org cannot raise such concerns and cannot be used to circumvent the limits on contributions to candidates. As a result, applying

contributions limits to SpeechNow.org and its supporters is not narrowly tailored. *See, e.g.*, *NCPAC*, 470 U.S. at 498; *CalMed*, 453 U.S. at 203-04 (Blackmun, J., concurring).

It is no answer to say that SpeechNow.org could speak through media that are cheaper than broadcast advertisements or alter what it wants to say by not engaging in express advocacy. As the Supreme Court made clear in *WRTL II*, cheaper alternatives to broadcast advertising are not reasonable alternatives in terms of "impact and effectiveness." 127 S.Ct. at 26771 n.9. And telling SpeechNow.org that it can speak as long as it does not expressly advocate the election or defeat of candidates would "run afoul of 'the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.'" *Id.* (quoting *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 573 (1995)). In short, SpeechNow.org and its supporters have the right to choose their media and their message.

SpeechNow.org will satisfy any governmental interests in disclosure by complying with the disclaimer and reporting obligations that apply to those who make independent expenditures. *See* Keating Decl. at ¶ 22-24. Beyond disclosure, the government has no legitimate interest in regulating SpeechNow.org or its supporters' First Amendment rights. Accordingly, applying contribution limits to them is not narrowly tailored to achieve a compelling state interest.

D. Plaintiffs Are Substantially Likely to Prevail Even If Strict Scrutiny Does Not Apply.

Even under the "less rigorous review" that applies to limits on contributions to candidates, those limits are permissible only if they are "closely drawn," to serve a "sufficiently important government interest." *Randall*, 126 S.Ct. at 2491 (quoting *Buckley*, 424 U.S. at 25). This is not a cursory review, and, to date, the Supreme Court has identified only the interest in

combating corruption of candidates as important enough to justify contribution limits.[3] *See, e.g., NCPAC*, 470 U.S. at 496-97; *Buckley*, 424 U.S. at 25; 28. As discussed above, SpeechNow.org cannot raise any concerns about corruption or its appearance and cannot be used to circumvent the contribution limits that apply to candidates. Thus, even if this court concludes that strict scrutiny does not apply here, Plaintiffs have still demonstrated a substantial likelihood of success on the merits to justify a preliminary injunction. *See, e.g., N.C. Right to Life, Inc. v. Leake*, 482 F.Supp.2d 686, 698-99 (W.D.N.C. 2007) (holding contribution limit unconstitutional as applied to independent expenditure committee even under the lesser scrutiny that applies to limits on contributions to candidates).

II. Plaintiffs Will Suffer Irreparable Harm Without an Injunction.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable harm." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Under the contribution limits applicable to PACs, SpeechNow.org cannot possibly produce and broadcast the ads for which it currently has scripts. Plaintiffs Keating, Crane, and Young, as well as Richard Marder, are ready, willing, and able to donate the necessary funds, and SpeechNow.org will produce and broadcast those ads if it is legally permitted to accept those funds. The only thing standing between SpeechNow.org and its ability to speak through its ads are the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). *See* Keating Decl. at ¶¶ 26, 35; Crane Decl. at ¶ 7; Young Decl. at ¶ 6. Thus, SpeechNow.org's and its supporters' First Amendment rights are in fact being impaired right now; there is nothing speculative about their claims. *See Chaplaincy of Full Gospel Churches v. England*, 454 F.3d

[3] As stated above, the only exception to this statement is so-called "corporate form corruption," which has no relevance to this case. *See supra* note 2.

290, 301 (D.C. Cir. 2006) (stating that "[w]here a plaintiff alleges injury from a rule or regulation that directly limits speech, the irreparable nature of the harm may be presumed").

The contribution limits irreparably harm not only the rights of SpeechNow.org, itself, but its supporters as well. Plaintiffs Crane, Young, Russo, and Burkhardt have neither the time, experience, nor, in most cases, the funds to be able to produce and broadcast advertisements of the type SpeechNow.org intends to run. It is only by pooling their funds and associating with each other and with SpeechNow.org that they will be able to produce and broadcast the ads SpeechNow.org currently intends to run, as well as other ads it intends to run in the near future. *See* Crane Decl. at ¶ 3; Young Decl. at ¶ 4; Russo Decl. at ¶ 3; Burkhardt Decl. at ¶ 3.

Indeed, by making it impossible for SpeechNow.org to function and to afford to produce and broadcast any ads at all, the contribution limits harm SpeechNow.org's supporters regardless of whether they can afford to donate more than the $5000 limit on contributions. According to David Keating, without sufficient start-up or "seed" funding, SpeechNow.org cannot produce and broadcast any ads and is significantly impaired in its ability to raise additional funds for future ads. *See* Keating Decl. at ¶ 27. Thus, without the ability to accept large donations that could actually fund its initial ads, accepting small donations from individuals such as Plaintiffs Russo and Burkhardt would be both pointless—because it is virtually impossible for SpeechNow.org to raise sufficient funds to produce and broadcast its ads with only small donations—and possibly even counterproductive—because it would simply trigger the burdensome registration, administrative, and reporting provisions that apply to PACs. *Id.* at ¶ 31. Accepting small donations above $1000—the trigger for political committee status—would require David Keating to spend his time complying with burdensome regulations that apply to PACs, but would provide no assurance that SpeechNow.org would ever be able to do

what it was formed to do—produce and broadcast advertisements. Accordingly, the contribution limits irreparably harm SpeechNow.org and all of its supporters regardless of the amount they can donate to the organization. *See, e.g.*, *Herrera*, 2007 U.S. Dist. LEXIS 73736, at *15-*16 (holding that contribution limits caused irreparable harm to independent expenditure committees and granting motion for preliminary injunction); *OAKPAC*, 2006 U.S. Dist. LEXIS 96900, at *5-*6 (same).

While Plaintiffs are irreparably harmed right now, that harm increases as time passes. SpeechNow.org's mission is not simply to speak out about candidates based on their support for First Amendment rights. Its mission is to call for the election or defeat of such candidates—that is, to attempt to protect First Amendment rights by influencing the political careers of the candidates who pass laws that affect those rights. SpeechNow.org's mission can be achieved only by producing and broadcasting ads during the election season in which the candidates it wishes to address are running for office. *See* Keating Decl. at ¶ 2. Several of the elections in which SpeechNow.org wishes to run ads are primaries, which are only a few months away. *Id.* at ¶ 28. Accordingly, Plaintiffs irreparable harm is ongoing and becomes more severe with the passage of time.

III. An Injunction Will Not Substantially Injure Others.

In its most recent campaign finance decision, the Supreme Court made clear that in any conflict between First Amendment rights and regulation, courts "must give the benefit of any doubt to protecting rather than stifling speech." *WRTL II*, 127 S.Ct. at 2667. Thus, even though the Court had earlier upheld the electioneering communications ban on its face, it held that the burden was still squarely on the government to demonstrate that the provision was constitutional as-applied to speakers in any given case. *Id.* at 2664. In fashioning a test to determine whether

speech was the functional equivalent of express advocacy under the electioneering communications ban, the Court rejected one that focused on the intent and effects of the speech because that would lead to too much burdensome litigation by those who wanted simply to exercise their First Amendment rights. *Id.* at 2666-67. As a result, the Court concluded that speech would be considered to be within the ban only if it was susceptible of no other reasonable interpretation. *Id.* at 2667. In short, *WRTL II* stands for the proposition that "[w]here the First Amendment is implicated, the tie goes to the speaker, not the censor." *Id.* at 2669.

Thus, while the FEC can be said to have an interest in enforcing the campaign finance laws, under the Supreme Court's approach to First Amendment rights in *WRTL II*, the FEC's interest simply cannot trump the First Amendment rights of SpeechNow.org and its supporters. As demonstrated above, SpeechNow.org raises no concern about corruption or circumvention of limits on contributions to candidates, and it will comply with the reporting and disclaimer provisions that apply to independent expenditures. Keating Decl. at ¶ 24. In short, permitting SpeechNow.org and its supporters to exercise their rights to speech and association cannot possibly harm the FEC.

IV. An Injunction Will Further the Public Interest.

The Supreme Court "has long viewed the First Amendment as protecting a marketplace for the clash of different views and conflicting ideas. That concept has been stated and restated almost since the Constitution was drafted." *Citizens Against Rent Control*, 454 U.S. at 295. SpeechNow.org and its supporters wish to participate in that marketplace of ideas by attempting to convince citizens to protect the First Amendment with their votes.

"[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs . . . includ[ing] discussion

of candidates." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Thus "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). SpeechNow.org and its supporters wish to participate in the process of self-government by urging voters to support candidates who protect rights to free speech and association and to oppose those who do not.

The First Amendment reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964). SpeechNow.org and its supporters wish to ensure that debate on all topics—including the First Amendment itself—remains uninhibited, robust, and wide-open by bringing to light abuses of First Amendment rights by particular politicians and urging Americans to vote against them.

In short, SpeechNow.org's activities are at the core of the First Amendment. Enjoining the contribution limits that apply to SpeechNow.org and its supporters and thus allowing SpeechNow.org and its supporters to exercise their rights to free speech and association is thus entirely consistent with the public interest.

V. The Court Should Waive the Bond Requirement Under F.R.C.P. 65(c).

Federal Rule of Civil Procedure 65(c) provides that no preliminary injunction shall issue without the giving of security by the applicant in an amount determined by the court. However, "[i]t is within the Court's discretion to waive Rule 65(c)'s security requirement where it finds such a waiver to be appropriate in the circumstances." *Cobell v. Norton*, 225 F.R.D. 41, 50 n.4 (D.D.C. 2004). In non-commercial cases, courts often waive the bond requirement where the likelihood of harm to the non-moving party is slight and the bond requirements would impose a significant burden on the moving party. *See, e.g., Temple Univ. v. White*, 941 F.2d 201, 219 (3d

Cir. 1991); *Herrera*, 2007 U.S. Dist. LEXIS 73736, at *17-*18. Cases raising constitutional issues are particularly appropriate for a waiver of the bond requirement. *See Ogden v. Marendt*, 264 F. Supp. 2d 785, 795 (S.D. Ind. 2003); *Smith v. Bd. of Election Comm'rs*, 591 F. Supp. 70, 71 (N.D. Ill. 1984). Accordingly, Plaintiffs respectfully request that the court waive the bond requirement in the event that it grants Plaintiffs' motion for preliminary injunction.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for preliminary injunction and enjoin the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) and 11 C.F.R. §§ 110.1(d) and 110.5(b) as they apply to SpeechNow.org and its supporters. The Court should also waive the bond requirement under Federal Rule of Civil Procedure 65(c).

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* Motions for *Pro Hac Vice* to be filed