SENATOR MITCH McCONNELL, *et al.*,	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	02-0582 (CKK, KLH, RJL)
FEDERAL ELECTION COMMISSION, *et al.*,	)	
	)	**CONSOLIDATED ACTIONS**
Defendants.	)	

ORDER

Upon consideration of the motion for leave to file an *amici curiae* brief by the Former Leadership of the American Civil Liberties Union, it is this ___ day of November, 2002:

ORDERED that the motion for leave to file is granted.

SO ORDERD.

_____
KAREN LE CRAFT HENDERSON
United States Circuit Judge

_____
COLLEEN KOLLAR-KOTELLY
United States District Judge

_____
RICHARD J. LEON
United States District Judge

SENATOR MITCH McCONNELL, *et al.*,	)	
Plaintiffs,	)	Civil Action No. 02-0582 (CKK, KLH, RJL)
v.	)	
FEDERAL ELECTION COMMISSION, *et al.*,	)	
Defendants.	)	**CONSOLIDATED ACTIONS**

BRIEF OF *AMICI CURIAE*, FORMER LEADERSHIP OF THE AMERICAN CIVIL LIBERTIES UNION, IN SUPPORT OF DEFENDANTS FEDERAL ELECTION COMMISSION, *ET AL.*

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STATEMENT OF INTEREST AND POSITION

Amici curiae have served the American Civil Liberties Union in leadership positions over several decades. Norman Dorsen served as ACLU General Counsel from 1969-1976 and as President of the ACLU from 1976-1991. John Pemberton served as Executive Director of the ACLU from 1962-1970 and Aryeh Neier served as Executive Director from 1970-1978. Melvin Wulf served as National Legal Director of the ACLU from 1962-1977 and john powell served as National Legal Director from 1987-1993. John Shattuck served as National Legislative Director of the ACLU from 1976-1984 and Morton Halperin as National Legislative Director from 1984-1992. Together, *amici* constitute every living person to have served as ACLU President, ACLU Executive Director, ACLU National Legal Director, or ACLU National Legislative Director with the exception of the current leadership and Ira Glasser, who retired as ACLU Executive Director in 2001.[1]

Amici have devoted much of their professional lives to the ACLU and, in particular, to the protection of free speech. They are proud of their ACLU service,

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[1] Burt Neuborne, who served as National Legal Director from 1982-1986, represents the intervenor-defendants Senator John McCain *et al.* in defense of the constitutionality of the Bipartisan Campaign Reform Act and is therefore ineligible to appear on this brief. Charles Morgan, Jr., who served as National Legislative Director from 1972-1976, signed a letter to Congress with the other *amici* publicly supporting the constitutionality of the BCRA, but he is currently ill and unable to consent to appear on this brief.

and they continue to support the ACLU's matchless efforts to preserve the Bill of Rights. They believe, however, that the opposition of the current leadership of the ACLU to campaign finance reform in general, and the Bipartisan Campaign Reform Act ("BCRA"), Pub. L. 107-155, 116 Stat. 81, in particular, is misplaced.

The First Amendment is designed to promote a functioning and fair democracy. The current system of campaign financing makes a mockery of that ideal by enabling wealthy and powerful interests effectively to set the national agenda through the exercise of disproportionate influence over the behavior of public officials, leaving voters with "the cynical assumption that large donors call the tune" and "jeopardiz[ing] the willingness of voters to take part in democratic governance." *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 390 (2000). In *amici's* view, when the government intervenes to restore the integrity of the democratic process, it enhances, rather than retards, First Amendment interests.

The current debate over the constitutionality of BCRA should not be perceived as pitting the First Amendment against regulation of federal campaign activity. Rather, there are important First Amendment interests on both sides of the issue. In particular, the democracy-enhancing role of the First Amendment supports the efforts of those who have sought to reform the current, disastrous system of campaign finance. *Amici* believe that the reasonable, content-neutral limits on electioneering communications and the reasonable disclosure

requirements in BCRA are well within the government's power to advance the democratic process and do not unduly impinge upon the ability of participants in the electoral process to speak.

Amici recognize that the Supreme Court's 1976 decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), constrains Congress's ability to reform every aspect of the current campaign finance system. However, even within the framework set forth in *Buckley*, the limited campaign finance reform measures contained in BCRA are constitutional.

Amici have publicly supported the constitutionality of BCRA and have submitted to Congress a letter in support of its passage. As dedicated defenders of the First Amendment, *amici* submit this brief to elucidate their view that BCRA serves the First Amendment's democracy-enhancing purposes and is fully consistent with the framework set forth in *Buckley*.

ARGUMENT

I. BCRA'S PROVISIONS RELATING TO ELECTIONEERING COMMUNICATIONS ARE CONSTITUTIONAL

A. The Growing Use of Sham Issue Advertisements Has Undermined the Federal Election Campaign Act's Prohibition on Corporate and Labor Union Funding of Electioneering Activities and Disclosure Requirements

The electioneering provisions of BCRA, Sections 201-204, regulate so-called "sham issue advertisements," *i.e.*, broadcast advertisements designed to

influence Federal elections, yet not subject to the disclosure requirements or the funding source prohibitions that for decades have been placed on other forms of electioneering activity. By anyone's estimation, these ads promote the election or defeat of a candidate.[2] However, by carefully avoiding words expressly advocating the election or defeat of a particular candidate, these sham issue advertisements are funded with no limits on the source of the contributions or any requirement that the source of funds for the ad be disclosed.

Congress carefully studied the increasing use of sham issue advertisements to evade existing funding limitations and disclosure requirements. Since the 1996 election, there has been a dramatic increase in the use of such advertisements -- from $150 million in 1996 to $340 million in 1998 to $500 million in the year 2000 election. The increased use of such advertisements has undermined the

[2] To take one example from the legislative record, the following is an advertisement from a group called Citizens for Reform, which began running the ad two weeks before the Montana 1996 congressional election. The ad, although clearly opposing Democrat Bill Yellowtail's candidacy, cleverly avoided expressly advocating Yellowtail's defeat and therefore evaded any restrictions on corporate or labor union funding or any requirement that the sources of funding for the advertisement be disclosed:

> Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her. But "her nose was not broken." He talks law and order . . . but is himself a convicted felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments -- then voted against child support enforcement. Call Bill Yellowtail. Tell him to support family values.

federal election law's prohibition on the use of corporate or labor union treasury funds for advertisements advocating the election or defeat of a candidate, and has allowed other individuals and entities to fund such advertisements without disclosing their identities or providing the electorate with crucial information regarding funding sources to enable the electorate to make informed federal electoral choices.

Congress addressed the problem of sham issue advocacy in BCRA in two significant ways. First, in line with long-upheld restrictions on corporate and labor union electioneering activities, BCRA prohibits corporate and labor union funding of broadcast communications which clearly identify a candidate within 60 days of a general election or 30 days of a primary election and are targeted to the candidate's electorate. Second, BCRA requires entities or individuals who spend more than $10,000 in a calendar year on such broadcast communications to disclose the sources of funding for these communications. These provisions were carefully drawn to address the problem of sham issue advertisements in a manner fully consistent with the First Amendment.

B. BCRA's Restriction of Corporation and Labor Union Funding of Electioneering Communications Is Constitutional

Federal law has long prohibited the use of corporate and labor treasury funds for federal election activities and required that any corporate or labor expenditures

on these activities be made from separate, segregated funds. Congress prohibited corporate contributions to candidates for election to federal offices in the Tillman Act of 1907, 34 Stat. 864 (1907). Congress extended the prohibition on corporate contributions to labor unions and prohibited corporate and union expenditures in connection with federal elections in the Taft-Hartley Act, 61 Stat. 136 (1947). These long-standing prohibitions were incorporated into the Federal Election Campaign Act ("FECA"), Pub. L. No. 93-443 (1974), adopted following the Watergate scandal, *see* 2 U.S.C. § 441b, and have long been upheld.

In *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), the Court examined provisions of Michigan's campaign finance law, which, like FECA, prohibited corporate contributions or expenditures in connection with an election. The Court reasoned that, given the peculiar advantages conferred on corporations under state law, they can accumulate large quantities of capital which "have little or no correlation to the public's support for the corporation's political ideas." *Id.* at 660. *Austin* upheld the prohibition on corporate contributions and expenditures to guard against "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form" and to "ensure[] that expenditures reflect actual public support for the political ideas espoused by corporations." *Id.*; *see also United States v. United Auto*

Workers ("*UAW*"), 352 U.S. 567, 585 (1957) (examining extensive history of prohibition of labor union contributions and expenditures in federal elections).

The restrictions on corporate and labor union spending in BCRA are clearly constitutional under the Court's precedents. Section 203 amends 2 U.S.C. § 441b(b)(2) to prohibit corporations and unions from spending treasury funds on "electioneering communications." The definition of "electioneering communications" is narrowly drawn and applies only to a "broadcast, cable, [or] satellite communication" that "refers to a clearly identified candidate for Federal office," made within 60 days of a general election or 30 days of a primary election and within the jurisdiction in which the candidate is seeking election. Section 201(a). As under current law, a corporation or labor union may still engage in "electioneering communications" by organizing a separate segregated fund ("SSF"), comprised of voluntary contributions from individuals, using its general treasury funds to pay for the costs of operating and raising money for the SSF, directing the management of the SSF, and deciding how it should spend its funds, so long as the corporation or labor union does not make a contribution to the SSF itself. 2 U.S.C. § 441b(b)(2); 11 CFR § 114.5(d). Further, a corporation or labor union is free, under BCRA, to spend its treasury funds on a general public communication referring to a clearly identified candidate outside of the narrow

time frames described in BCRA, provided that such a communication does not contain express advocacy.

BCRA likewise preserves the ability of incorporated organizations formed for the express purpose of promoting political ideas and which do not receive business corporation or labor union funding to make contributions to federal candidates. The exemption from the ban on corporate treasury spending for such organizations established in *FEC v. Massachusetts Citizens for Life* ("*MCFL*"), 479 U.S. 238, 264 (1986), is fully applicable to BCRA. *See* Electioneering Communications, 67 Fed. Reg. 65190, 65203-04 (October 24, 2002), available at <http://www.fec.gov/pdf/nprm/electioneering_comm/fr67n205p65189.pdf>. As was the case in *MCFL*, an organization formed for the express purpose of promoting political ideas with no shareholders or other persons with a claim on its assets or earnings, and with no corporate or labor union funding can use its treasury funds to finance electioneering communications under BCRA.

C. BCRA Is Not Unconstitutionally Vague or Overbroad

The definition of "electioneering communication" in BCRA is neither vague nor overbroad. Contrary to the hyperbole of the opponents of BCRA, the Supreme Court has never held that the First Amendment limits the scope of the government's power to regulate independent federal electioneering spending to communications expressly advocating the election or defeat of a particular

candidate, nor is such a standard compelled by the First Amendment. Rather, in *Buckley*, the Court adopted a limiting construction with respect to two provisions of FECA, the $1,000 expenditure limits of Section 608(e)(1) and the disclosure requirements of section 434(e). *Buckley*, 424 U.S. at 42-43, 78-80. The former applied to expenditures "relative to a clearly identified candidate" and the latter to expenditures "for the purpose of influencing" a federal election. Neither provision was considered to provide a clear guidepost for would-be speakers and both were deemed to have the potential to encompass a broad variety of speech not directed to a particular election. Indicating that the possibility of criminal liability under FECA would chill protected speech, the Court adopted a narrowing construction for both provisions, restricting their application to expenditures for communications which expressly advocated the election or defeat of a candidate. *Id.* at 44 & n.52, 80.

Nothing in *Buckley*, or the Court's subsequent decisions, suggests that corporate or union treasury spending on electioneering activities can be prohibited only if these funds were used to advocate expressly for the election or defeat of a candidate. In *Buckley*, the Court did not act, and could not have acted, as a legislative body. It thus did not attempt to rewrite the vague and overbroad provisions of FECA, but instead gave a limiting construction to the language before it. In so doing, the Court did not hold that its particular narrowing

construction represented the outer boundary of permissible regulation of electioneering activities. Congress thus remains free to develop its own legislative definition of electioneering activities, as it has done in BCRA, so long as the definition adopted by Congress is neither vague nor overbroad.

In choosing a definition of "electioneering communications," Congress cured the vagueness and overbreadth problems identified in *Buckley* and drew a bright, distinct, and constitutional line for would-be participants in the political process to follow. *First*, BCRA requires the communication to refer to a "clearly identified candidate." Thus, a corporation or labor union may still use its treasury funds to engage in advocating political and policy positions as long as no candidate is clearly identified. *Second*, the 60-day and 30-day timeframes are clear and explicit. Therefore, subject to the existing limitation under FECA that the communication not expressly advocate the election or defeat of a candidate, corporations and labor unions are free to broadcast communications referring to clearly identified candidates outside these narrow timeframes. *Third*, BCRA restricts only corporation and labor union expenditures for broadcast, cable, and satellite communications. Outside these areas, which are clearly defined in BCRA, a corporation or labor union can freely advertise using its treasury funds so long as these advertisements do not expressly advocate the election or defeat of a candidate.

The regulation of "electioneering communications" is also not substantially overbroad. In *Broadrick v. Oklahoma*, 413 U.S. 601 (1973), the Court held that absent a showing that a broadly worded statute posed a significant threat to a substantial quantity of protected speech, the Court would apply traditional case-by-case judicial review. BCRA does not threaten a substantial quantity of protected speech. Indeed, the real-world record suggests that broadcast communications within 60 days of a general election or 30 days of a primary election, referring to a clearly identified candidate for federal office, and aired within the jurisdiction where that candidate is seeking office, are virtually always deliberate and obvious efforts to influence that election, rather than true issue advocacy. Moreover, corporations and unions that finance the rare true issue advertisement could simply omit mention of a federal candidate and thereby continue to use their treasury funds to finance equally effective public communications about policy issues. Further, even assuming the possibility of a few instances in which BCRA, as applied, may prohibit corporate or labor union funding of true issue advocacy, these few instances do not establish that BCRA is substantially overbroad. In such an instance, a plaintiff is free to pursue a traditional as-applied challenge.

D. BCRA's Disclosure Requirements for Electioneering Communications Are Constitutional

BCRA's requirement for disclosure of electioneering communications is likewise constitutional. In *Buckley*, the Court upheld the broad disclosure provisions of FECA, holding that disclosure requirements serve important First Amendment interests in preventing corruption and the appearance of corruption and providing the electorate with information regarding the sources of financial support. The disclosure rules enable the electorate to "place each candidate on the political spectrum more closely" and "alert the voter to the interests to which a candidate is most likely to be responsive." *Buckley*, 424 U.S. at 67. Disclosure also deters actual corruption and the appearance of corruption "by exposing large contributions and expenditures to the light of publicity." *Id.* In *Buckley*, the Court held that the First Amendment interest in providing the electorate with information regarding the sources of financial support for a candidate was sufficiently weighty to uphold FECA's requirement in section 434(e) that individuals disclose independent federal electioneering expenditures, regardless of the potential for corruption. The Court reasoned that a disclosure requirement "increases the fund of information concerning those who support the candidates" and "shed[s] the light of publicity on spending that is unambiguously campaign related but would not otherwise be reported because it takes the form of independent expenditures or of

contributions to an individual or group not itself required to report the names of its contributors." *Id.* at 81.

The same anti-corruption and informational interests recognized by the Court in *Buckley* sustain BCRA's disclosure requirements. Section 201 merely requires any person who spends more than $10,000 in a year on electioneering communications to disclose this fact and to report certain basic information. Given the prominence of sham issue advertisements in elections, there can be no serious doubt of the public's overwhelming interest in knowing the source of these advertisements.

The definition of electioneering communication is narrowly drawn to require disclosure only of expenditures for electioneering communications which exceed $10,000 and does not impinge on the rights of those with "modest resources" to engage in anonymous speech. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995). The disclosure requirement is narrowly and clearly targeted to large-scale expenditures for electioneering communications in federal elections. Even with respect to large-scale expenditures, entities that can demonstrate a reasonable probability that disclosure will lead to threats, harassment, or reprisals are exempt from the disclosure requirement. *Buckley*, 424 U.S. at 74; *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 88 (1982).

II. BCRA'S CLOSING OF THE SOFT MONEY LOOPHOLE IS CONSTITUTIONAL

BCRA eliminates the "soft money" loophole, which has allowed unlimited campaign contributions to political parties and has undermined Congress's effort to regulate the size and source of campaign contributions to candidates. There can be little doubt that large "soft money" contributions to the political parties can corrupt, and are widely perceived as corrupting, government officials. BCRA closes the "soft money" loophole in a manner fully consistent with the Constitution.

A. The Soft Money Loophole Has Permitted Widespread Evasion of FECA's Contribution Limits and Disclosure Requirements

The soft money loophole emerged from a 1978 FEC Advisory Opinion in which the FEC determined that funds used for what the FEC termed "party building" could be raised outside of FECA's limits. Op. Fed. Election Comm'n 1978–10. This "soft money" was to be used only for grassroots and "party-building" activities, rather than activities directly affecting the outcome of any particular election. Nevertheless, candidates seized upon the soft money loophole to raise money not covered by the federal contribution limits to finance advertising that featured and promoted their federal candidates.

The use of soft money increased dramatically in the 1990's. In 1988, the two parties raised a total of $45 million in soft money. By 1992, the figure rose to

$84.4 million and, in 1996, soft money raised totaled $235.9 million. In the 2000 election, the total amount of soft money raised by both parties climbed further to $463.1 million--nearly double the soft money contributions of the previous presidential election and ten times the amount raised only twelve years prior.

These vast amounts could not have been raised directly for a candidate's campaign under FECA, which subjects individual contributions to an aggregate $25,000 annual limit and a $1,000 per candidate per election limit, and bars unions and corporations from making campaign contributions. Despite these clear caps on legal contributions, individuals used the soft money loophole to donate well beyond these limits. Unions and corporations, barred from giving directly to candidates from their general treasuries, filled the coffers of both political parties with soft money donations. To take one notorious example, Enron Corporation contributed over $2 million in soft money to the national parties in the 1999/2000 election cycle.

Congress determined that this rampant abuse of the soft money loophole created both actual and apparent corruption in the federal election system, undermining the electorate's faith in the democratic process. Although soft money goes to the political parties, the candidates themselves often solicit the contributions. Even if they do not solicit the contributions, candidates usually know who makes them, creating the appearance of corruption, as the electorate

legitimately questions what these large soft money contributors demand in exchange for their largesse.

B. BCRA's Soft Money Ban Is Constitutional

BCRA closes the soft money loophole by prohibiting national parties from raising, receiving or spending funds that are not subject to FECA's amount limitations, source prohibitions, and reporting requirements. Furthermore, BCRA requires state and local party committees to use federally regulated funds to finance "federal election activity." "Federal election activity" is defined in the statute to include voter registration activity within 120 days of a federal election; voter identification, get-out-the-vote activity and campaign activity in connection with an election in which a candidate for federal office appears on the ballot; a public communication that clearly refers to a federal candidate for office and that promotes or opposes a candidate for that office; and services provided by an employee of a local or state committee in connection with a federal election.

Taken together, these provisions decisively close the soft money loophole and are clearly constitutional. The Court in *Buckley* upheld FECA's strict individual contribution limits and FECA's disclosure requirements. *Buckley*, 424 U.S. at 29, 81. The Court has likewise upheld the prohibitions on corporate or labor union funding of federal elections. *See Austin*, 494 U.S. at 660; *UAW*, 352 at 585. In passing BCRA, Congress simply closed the soft money loophole, through

which corporations, labor unions, and individuals have avoided FECA, in order to make the prohibitions and restrictions in FECA more effective. In so doing, Congress created no greater limitation on the rights of corporations, labor unions, or individuals to engage in federal election activity than it did in FECA, which limitations the Court upheld. Moreover, even assuming that the closing of the soft money loophole creates some greater restriction on the rights of corporations, labor unions, and individuals than FECA, there can be no question that unlimited corporate, labor union, and individual soft money contributions create both actual and apparent corruption. *See FEC v. Colorado Republican Campaign Comm.*, 533 U.S. 431, 452 (2001) ("*Colorado Republican II*") (political parties "act as agents for spending on behalf of those who seek to produce obligated officeholders"); *see Shrink Missouri Government PAC*, 528 U.S. at 391 ("*Buckley* demonstrates that the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible").

The regulation of soft money donations to state and local political parties for federal election activities is likewise constitutional. State and local committees have no greater First Amendment rights to participate in federal elections than national committees. The Court in *Buckley* upheld the prohibitions, limitations, and disclosure requirements of FECA with respect to national committees. *Buckley*, 424 U.S. at 68. Thus, there can be no serious First Amendment objection

to applying these same provisions to state and local committees when they engage in federal election activity.

Opponents of BCRA erroneously claim that applying FECA's limitations to state and local committees when they participate in federal elections violates the Tenth Amendment and principles of federalism. The Time, Place and Manner Clause of the Constitution, U.S. Const. Art. 1 § 4, grants Congress broad power to regulate federal elections and provides sufficient authority for congressional regulation of the activities of state and local committees in connection with federal elections. Moreover, Congress correctly determined that its goal of avoiding corruption and the appearance of corruption could be achieved only through regulation of unlimited corporate, labor union, and individual contributions to state and local committees, which are at the heart of the soft money problem. *See Colorado Republican II*, 533 U.S. at 453 (2001) (recognizing that state political parties are "in a position to be used to circumvent contribution limits that apply to individuals and PACs"). BCRA's extension of FECA's prohibitions, limitations, and disclosure requirements to state and local committees when such committees engage in federal election activity is clearly constitutional.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully submit that the electioneering and soft money provisions of BCRA, Sections 101-103, 201-204, are constitutional.

Dated: New York, New York
November 6, 2002

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel for *Amici* hereby certifies that *Amici*'s brief is proportionally spaced, has a typeface of 14 points, and contains 4,007 words as calculated by Microsoft Word 2002. *Cf.* Fed. R. App. P. 32(a)(5), 32(a)(7)(B) and (C), 32(a)(7)(B)(iii) and D.C. Cir. Rules 29 and 32.

Dated: November 6, 2002

/s/ Roger Bearden
ROGER BEARDEN

Amici state that no counsel for any party has authored this brief in whole or in part, and no person or entity other than *Amici* made a financial contribution to the preparation or submission of this brief.

I state under penalty of perjury that the foregoing is true and correct. Executed on November 6, 2002.

/s/ Roger Bearden
ROGER BEARDEN

SENATOR MITCH McCONNELL, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 02-0582 (CKK, KLH, RJL)
FEDERAL ELECTION COMMISSION, *et al.*,	)	
Defendants.	)	**CONSOLIDATED ACTIONS**

CONSENTED MOTION OF PROPOSED *AMICI CURIAE*, FORMER LEADERSHIP OF THE AMERICAN CIVIL LIBERTIES UNION, FOR LEAVE TO FILE BRIEF IN SUPPORT OF DEFENDANTS FEDERAL ELECTION COMMISSION, *ET AL.*

The below-identified Former Leadership of the American Civil Liberties Union move this Court for leave to file an *amici curiae* brief in support of defendants Federal Election Commission, *et al.* in the above-captioned consolidated actions, a copy of which is submitted herewit. Consent to the filing of an *amici* brief has been obtained on behalf of the lead plaintiffs through telephone conversations with each of the following attorneys: Floyd Abrams; Jan Witold Baran; John C. Bonifaz; James Bopp, Jr.; Bobby R. Burchfield; Charles J. Cooper; Laurence E. Gold; James M. Henderson, Sr.; William J. Olson; Joseph E. Sandler; Kenneth W. Starr; and Sherri L. Wyatt. Consent from all defendants has been obtained from Randolph D. Moss.

STATEMENT OF INTEREST

Amici curiae have served the American Civil Liberties Union in leadership positions over several decades. Norman Dorsen served as ACLU General Counsel from 1969-76 and as President of the ACLU from 1976-1991. John Pemberton served as Executive Director of the ACLU from 1962-1970 and Aryeh Neier served as Executive Director from 1970-1978. Melvin Wulf served as National Legal Director of the ACLU from 1962-1977 and john powell served as National Legal Director from 1987-1993. John Shattuck served as National Legislative Director of the ACLU from 1976-1984 and Morton Halperin as National Legislative Director from 1984-1992. Together, *amici* constitute every living person to have served as ACLU President, ACLU Executive Director, ACLU Legal Director, or ACLU Legislative Director with the exception of the current leadership and Ira Glasser, who retired as ACLU Executive Director in 2001.[1]

Amici have devoted much of their professional lives to the ACLU, and to the protection of free speech. They are proud of their ACLU service, and they continue

[1] Burt Neuborne, who served as National Legal Director from 1982-1986, represents the intervenor-defendants Senator John McCain *et al.* in defense of the constitutionality of the Bipartisan Campaign Reform Act and is therefore ineligible to appear on this brief. Charles Morgan, Jr., who served as National Legislative Director from 1972-1976, signed a letter to Congress with the other *amici* publicly supporting the constitutionality of the Bipartisan Campaign Reform Act, but he is currently ill and unable to consent to appear on this brief.

to support the ACLU's matchless efforts to preserve the Bill of Rights. They have come to believe, however, that the ACLU's opposition to campaign finance reform in general, and the Bipartisan Campaign Finance Reform Act, Pub. L. 107-155, 116 Stat. 81, in particular is misplaced.

Amici have publicly supported the constitutionality of BCRA and have submitted to Congress a letter in support of its passage. As dedicated defenders of the First Amendment, *amici* seek leave to file this brief to elucidate their view that BCRA serves the First Amendment's democracy-enhancing purposes and is fully consistent with the framework set forth in *Buckley v. Valeo*, 424 U.S. 1 (1976).

WHEREFORE, proposed *amici*, Former Leadership of the American Civil Liberties Union, respectfully request that this Court grant leave to file a brief in support of defendants Federal Election Communications, *et al.*, to defend the constitutionality of BCRA.

Dated: New York, New York
November 6, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2002, the Consented Motion of *Amici Curiae*, Former Leadership of the American Civil Liberties Union, for Leave to File a Brief in Support of Defendants Federal Election Commission, *et al.*; the Brief of *Amici Curiae*, Former Leadership of the American Civil Liberties Union, in Support of Defendants Federal Election Commission, *et al.*; and a proposed Order were served upon the following by U.S. Mail, electronic mail, and facsimile:

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November 6, 2002

Nancy Mayer-Whittington
Clerk of the Court
U.S. District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *McConnell v. FEC*, Civ. No. 02-582 (and Consolidated Cases)

Dear Ms. Mayer-Whittington,

Enclosed for filing please find an original and three (3) copies each of the Consented Motion of *Amici Curiae*, Former Leadership of the American Civil Liberties Union, for Leave to File a Brief in Support of Defendants Federal Election Commission, *et al.*; the Brief of *Amici Curiae*, Former Leadership of the American Civil Liberties Union, in Support of Defendants Federal Election Commission, *et al.*; and a proposed Order.

Respectfully submitted,

Roger Bearden

cc: Service list attached to Motion