Campaign Finance / McCain-Feingold
Summary of Decision of 3-Judge Panel

Title I: 'Soft Money' Ban

- National political parties (and their officers/agents) *can* raise and spend 'non-federal' dollars for:
  - state and local party purposes (including contributions and transfers to state/local parties)
  - 'mixed use' federal/non-federal activities of national parties, including
  - voter registration
  - voter identification / get out the vote
  - employees of state/district/local party committee

. . . but not for:

- ' a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)
  - Note: a public communication includes electronic and print ads, direct mail, phone banks, etc. (but not the Internet)

- State and local political parties can solicit and spend non-federal dollars for purposes *other than* a public communication that refers to a clearly identified federal candidate. . . promotes, supports, attacks, opposes the federal candidate for that office (regardless of whether communication is express advocacy)
  - Any "federal-candidate-specific" public communication will necessarily require expenditure of 100% federal dollars

- National political parties (and their officers/agents) *can* raise money for and contribute to 501(c) organizations and §527 committees

- State and local candidates can not spend 'nonfederal funds' on a public communication that refers to a clearly identified federal candidate and 'supports', 'promotes', 'attacks' or 'opposes' a candidate for that office.

- Levin Funds: still may be used as provided in BCRA, although role may be altered significantly; unclear whether previous ballot composition ratios for mixed use federal and non-federal expenditures will be applicable

Title I: Federal Officeholders (unchanged by decision of 3-judge panel)

- Federal officeholders (and candidates for federal offices) (defined as members of Congress, President and Vice-President but *not* appointees of the President such as

Cabinet Secretaries, etc.) can not solicit non-federal dollars for the national political party committees or state/local party committees

- Federal officeholders may solicit funds for state and local candidates and committees pursuant to *state* law, provided that the funds are within the limits and from sources permissible under federal law, even though not required to be *reported* to FEC

- Federal officeholders may solicit 'hard dollars' for a state / local party committees' 'federal account'

- Federal officeholders may solicit funds for 501(c) organizations as follows:
  - if the 501(c) organization does *not* have 'federal election activities' as a primary purpose, federal officeholder may solicit funds from any source in *any* amount; FEC regulations further provide that if the 501(c) organization furnishes to the federal officeholder a 'safe harbor' letter regarding its non-involvement in federal election activities, the federal officeholder may rely on that representation
  - if the 501(c) organization is involved in federal election activities, the federal officeholder may solicit contributions from individuals only up to $20,000 p/calendar year

- The FEC issued an Advisory Opinion (AO 2003-03) which details more specifically what federal officeholders may do with respect to state/local candidates and parties:
  - Essentially, federal officeholders and candidates may participate with state and local candidates and political parties in political activities, so long as the federal officeholder / candidate is careful not to 'solicit' non-federal funds

- Federal officeholders and candidates may speak at a state or local party fundraiser at which non-federal funds are raised, provided that the federal officeholder / candidate is not a 'host' of the event and does not solicit funds from prohibited sources in amounts that exceed the federal limits

Title II: Electioneering Communications by Corporations and Labor Unions

- The court invalidate the primary definition of 'electioneering communications' (which was "an electronic advertisement that references a clearly identified federal candidate within 30 days of a primary / 60 days of a general election")
- Judge Leon upheld the provisions relating to 'electioneering communications' by severing the last clause of the 'fall-back' definition, saving the statute by revising it. The court's new definition of 'electioneering communication' now reads:

> "The term 'electioneering communication means any broadcast, cable or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)."

- There is no time limit, such that the definition applies at *any* time the communication is made; the language that was stricken by Judge Leon was the clause at the end of the definition which stated "and which also is suggestive or no plausible meaning other than an exhortation to vote for or against a specific candidate"

- The disclosure requirements were upheld but in accordance with FEC regulations which provide that no disclosure is required until 48-hours after the advertisement is aired, rather than the statutory language which required disclosure within 48 hours after entering into a 'contract' to air

- Wellstone amendment was upheld, requiring electioneering communications to be paid for with PAC dollars, rather than an organization's / labor unions' treasury funds, *except* for MCFL-qualified non-profit organizations which can pay for such communications with treasury funds (essentially, the organization cannot receive any funds from corporations or labor unions in order to qualify for MCFL status)

- Court's upholding of Wellstone provision renders the Snowe-Jeffords provision of BCRA moot; Snowe-Jeffords is the section which allows a corporation or labor union to make electioneering communications provided there is a separate fund to which only individuals may contribute which funds the communications – and any who contribute $1,000 or more are disclosed to the FEC, along with the other disclosures regarding electioneering communications

Title II – Coordinated Communications and Expenditures

- Definition of coordination upheld as constitutional despite absence of clear statutory language and specific directive that the definition promulgated by FEC cannot require agreement or formal collaboration in order to constitute 'coordination'

- Political parties cannot be required to choose between 'coordinated expenditures' on behalf of candidates and 'independent expenditures' authorized by the Supreme Court in *Colorado Republican Party* cases

- Additional reporting / disclosure for 'independent' expenditures by any entity or individual

Miscellaneous Provisions

Invalidated:

- Minors cannot be prohibited from making contributions to federal candidates

- Broadcasters cannot be required to make available for public inspection 'attempts' to purchase broadcast time on 'issues of national importance'

Upheld:

- Identification of sponsors of broadcast advertising – notice in public file of broadcasters detailing information about sponsors of advertising

Didn't Review or Decide:

- Millionaires' provision – no party had standing to challenge
- Lowest unit rate – non-justiciable
- Increased contribution limits – no party had standing to challenge

NEXT STEPS:

- FEC and McConnell plaintiffs filed Notices of Appeal on Friday, May 2
- Other parties (including NRA) filing Notices of Appeal on Monday, May 5
- Some parties (including NRA) may seek to stay the court's order pending appeal
- The Supreme Court will issue a briefing schedule which will also indicate date of oral arguments, possibly in September, surely by October