

IN THE SUPREME COURT OF THE UNITED STATES

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NATIONAL RIFLE ASSOCIATION, *et al*

Appellants

v.

FEDERAL ELECTION COMMISSION, *et al*

Appellees.

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

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**MOTION FOR RECONSIDERATION OF ORDER CONCERNING DIVIDED ARGUMENT**

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In light of the Solicitor General's merits brief filed August 5, 2003, the National Rifle Association the "NRA" hereby respectfully moves for reconsideration of this Court's August 4 Order denying the NRA's motion for divided argument. We fully understand the extraordinary nature of our request, and we re-open this contentious issue reticently. But we believe that the Solicitor General's merits brief, filed one day after this Court's Order denying the NRA's motion for divided argument, brings sharply into focus the important and distinctive nature of the arguments advanced by the NRA against the constitutionality of Title II of the Bipartisan Campaign Reform Act "BCRA"

See Brief of the Federal Election Comm'n (filed Aug. 5, 2003  
"FEC Br." 72-125

The motion for divided argument filed by seven groups of Plaintiffs led by the McConnell Plaintiffs argued that the NRA should be excluded from oral argument on Title II because the NRA's "only truly distinctive argument" is its equal protection challenge to Title II's exception for the electioneering communications of media corporations. McConnell Response To Motions For Divided Argument (filed July 18, 2003) at 4. That claim is belied by the Solicitor General's merits brief, which is preoccupied with substantive arguments correctly and pointedly attributed to the NRA. Whereas the Solicitor General specifically references the NRA's brief some 16 times and Senator McConnell's brief 15 times with respect to electioneering communications, he cites that of the AFL-CIO only thrice.

Indeed, the Government singles out arguments in the NRA's opening brief in advancing no fewer than five basic points in defense of Title II: i Title II need exempt only those corporations that are MCFL-qualified in order to satisfy the First Amendment, see id. at 87-88; (ii politicians' gratitude for in-

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\* Compare FEC Br. 87, 89, 97-99, 103, 106, 108-09 & n.44, 112-13, 115 (citing NRA), and id. 97, 99, 103, 106-07, 109, 110-12, 114, 116, 118, 122 (citing McConnell), with id. at 106-07, 116 (citing AFL-CIO). In the remainder of its Title II briefing, the Solicitor General cites the McConnell Plaintiffs three additional times in addressing coordination, see id. at 124-25, and the AFL-CIO not at all.

dependent expenditures implicates a corruption rationale sufficient to justify Title II, see id. at 89; iii) the availability of corporate PACs to fund electioneering communications supplies a constitutionally adequate alternative to use of general corporate treasuries, which Title II proscribes, see id. at 98-99; (iv) the NRA's half-hour news programs that would have run afoul of Title II do not demonstrate unconstitutional overbreadth, see id. at 108-09 & n.44; v) and the media exception of Title II passes constitutional muster, see id. at 115-16. To be sure the Solicitor General also addresses a like number of distinct arguments made by the McConnell Plaintiffs. See id. at 101 (only express advocacy is regulable), 106-07, 109-12 (overbreadth), 114 (underinclusiveness), 116 (vagueness of fallback definition), and 124 n.51 125 (coordination provision).

In stark contrast, the arguments of the AFL-CIO, the only Title II Plaintiff apart from the McConnell Plaintiffs that would be permitted by the current Order to argue before the Court, are largely ignored by the Solicitor General, receiving mention only twice -- in refuting claims of overbreadth with reference to specific ads, and in denying that the fallback definition of "electioneering communications" is unconstitutionally vague -- each time after reference to parallel arguments made by the McConnell Plaintiffs. See id. at 106-07, 116

The NRA respectfully submits that the current division of oral argument risks leaving this Court with a one-sided presentation of issues central to the controversy over Title II. questions the Court may have about the competing Title II arguments of the NRA and the Government will be adequately and knowledgeably answered only by the Government; neither the McConnell Plaintiffs nor the AFL-CIO is positioned to do so, as demonstrated in the NRA's prior submissions. Accordingly, the NRA respectfully requests that the Court reconsider its denial of the NRA's motion for divided argument and that it either substitute the NRA for the AFL-CIO with respect to the division of argument on Title II or otherwise grant the NRA 15 minutes to present argument

Respectfully submitted,



Charles J. Cooper  
Counsel of Record

David H. Thompson  
Hamish P.M. Hume  
Derek L. Shaffer  
COOPER & KIRK, PLLC  
1500 K Street, N.W.  
Suite 200  
Washington, D.C. 20005  
(202) 220-9600

Brian S. Koukoutchos  
COOPER & KIRK, PLLC  
28 Eagle Trace  
Mandeville, LA 70471  
(985) 626-5052

Cleta Mitchell  
FOLEY & LARDNER  
3000 K Street, N.W.  
Suite 500  
Washington, D.C. 20007  
(202) 295-4081

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