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November 14, 2007

Ms. Thomasenia Duncan
General Counsel
FEDERAL ELECTION COMMISSION
999 E. Street, N.W.
Washington, DC 20463

AOR 2007-32

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Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971, as amended ("Act"), the undersigned counsel submit the following advisory opinion request on behalf of our client, SpeechNow.org.

I. Introduction

SpeechNow.org is an independent speech organization whose purpose is to expressly advocate the election or defeat of candidates to federal office in the 2008, 2010, and future election cycles. SpeechNow.org is an unincorporated association organized under section 527 of the Internal Revenue Code that will only make independent expenditures financed by individuals. SpeechNow.org needs to know whether it is required to register with the Commission as a political committee, and whether certain other provisions of the Federal Election Campaign Act apply to it and to its donors. SpeechNow.org has commitments from several individuals who wish to donate in excess of \$5000 to the organization, but to date it has not accepted aggregate funds in excess of \$1000 because it is concerned that doing so may trigger the political committee thresholds for "contributions" received and "expenditures" made, as set forth in 2 U.S.C. § 431(4).

SpeechNow.org believes the Act requires SpeechNow.org to place disclaimers on its solicitations and independent-expenditure communications, and to report its independent expenditures when and as it makes them, pursuant to 2 U.S.C. § 434(c). But SpeechNow.org requests the Commission's guidance as to whether it is required to register with the Commission as a political committee, whether it is subject to the contribution limits of 2 U.S.C. § 441a(a)(1)(C), and whether donors to SpeechNow.org

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must count their donations to SpeechNow.org against individual biennial aggregate limits described in 2 U.S.C. § 441a(a)(3). SpeechNow.org believes that each of these questions should be answered by the Commission in the negative, for the reasons that follow.

II. Factual Statement

SpeechNow.org is an independent group of individuals dedicated to promoting and protecting Americans' First Amendment rights to free speech, association, and assembly. See Bylaws of SpeechNow.org ("Bylaws"), Article II, Mission, attached as Exhibit A. Its mission and major purpose is to advocate the election of candidates -- in the 2008, 2010, and future federal election cycles -- who favor returning America to a state of political freedom and advocating the defeat of candidates who favor speech restrictions in the name of campaign finance reform. *Id.* This includes advocating the election of candidates who favor repealing the electioneering communication provision of the so-called "McCain-Feingold" legislation of 2002. *Id.*; see also, 107 Pub. Law. 155 (Mar. 27, 2002).

SpeechNow.org is an unincorporated association under the laws of the District of Columbia, and is registered as a "political organization" under Internal Revenue Code section 527. See Articles of Organization, attached as Exhibit B; Statement of Appointment of Registered Agent for Service of Process, attached as Exhibit C; Internal Revenue Form 8871 of SpeechNow.org, attached as Exhibit D; and Notice of Business Tax Registration, attached as Exhibit N. Because SpeechNow.org is not incorporated and has the sole purpose of electing or defeating candidates to federal office, it believes that it is not an exempt organization under *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), and regulations promulgated by the Commission. See 11 CFR 114.10.

SpeechNow.org is comprised of the following Members of its governing board: David Keating, President and Treasurer; Jon Coupal, Vice President and Secretary; Edward H. Crane III, Member; Richard A. Marder, Member; and Daniel J. Shapiro, Member. See Member Action by Written Consent in Lieu of an Organizational Meeting of SpeechNow.org (Oct. 24, 2007), attached as Exhibit E.

SpeechNow.org will solicit donors for funds to buy public political advertising and for administrative purposes. These donors will be informed that the public political advertising will advocate the election of candidates to federal office that are respectful of free speech and the defeat of candidates to federal office who favor campaign finance regulation and other speech restrictions. SpeechNow.org will run such advertisements -- independent expenditures as defined at 2 U.S.C. §431(17) and 11 C.F.R. 100.16 -- in the districts of voters able to elect or defeat those officeholders.

SpeechNow.org will operate wholly independently of candidates, political party committees, and any other political committees. See Exhibit A, Bylaws, Article X,

Member and Association Rules. SpeechNow.org will make no contributions (or donations) of any kind to any FEC-regulated political committee. See Exhibit A, Bylaws, Article VI, § 10, Certain Expenditures Prohibited. SpeechNow.org will not "coordinate" its activities, as defined in 2 U.S.C §§ 441a(a)(7)(B) & (C) and 11 CFR Part 109, with any candidates, national, State, district or local political party committees, other political committees, or their agents. See Exhibit A, Bylaws, Article X, Member and Association Rules, §§ 2-10.

SpeechNow.org was not established by any political committee or any other organization, nor will it be financed, maintained or controlled by any political committee or any other organization.

SpeechNow.org will not directly or indirectly accept donations or anything of value from business corporations, labor organizations, national banks, federal government contractors, foreign nationals, or political committees. See Exhibit A, Bylaws, Article VI, § 9, Certain Contributions Prohibited. Nor will it accept donations or contributions from other political organizations or political committees, but will only accept donations from individuals. *Id.* It will keep records to demonstrate that it has not accepted such donations. *Id.*

SpeechNow.org will not engage in business activities including any provision of goods or services that results in income to SpeechNow.org or advertising or promotional activity that results in income to SpeechNow.org, other than in the form of membership dues or donations. See Exhibit A, Bylaws, Article VI, § 6, Business Activities Prohibited. SpeechNow.org will not offer to any donors or members any benefit that is a disincentive for them to disassociate themselves with SpeechNow.org on the basis of SpeechNow.org's position on a political issue. See Bylaws, Article VI, § 8, Benefits of Support for the Association. SpeechNow.org will not offer its donors credit cards, insurance policies or savings plans, nor will it offer training, education, business information, or any other benefits other than that which is necessary to enable recipients to engage in promotion of SpeechNow.org's political ideas. *Id.*

Donors to SpeechNow.org will be advised that their donations are not tax deductible and will be used for political purposes such as supporting or opposing the election of candidates. See Exhibit A, Bylaws, Article VI, § 11, Disclosures to Supporters.

SpeechNow.org will run political advertisements over television in the 2008 and 2010 election cycles. It has prepared scripts for two ads to be run in 2008, "Burton" and "Landrieu," see Burton Script, attached as Exhibit F; Landrieu Script, attached as Exhibit G, and has retained The Traz Group to produce the ads and reserve airtime, see Bid of Mr. Ed Traz on behalf of The Traz Group, attached as Exhibit H. SpeechNow.org would already have produced these ads except that the production costs exceed the \$1000 limit for expenditures counting toward political committee status under 2 U.S.C. § 431(4). See Bid of Mr. Ed Traz on behalf of The Traz Group, attached as Exhibit H.

The following individuals are willing and able to donate more than \$5000 per calendar year to SpeechNow.org contingent only upon a favorable ruling from the Commission. David L. Keating will donate \$5500. *See* declaration of David L. Keating, attached as Exhibit I. Edward H. Crane III will donate \$6000. *See* declaration of Edward H. Crane III, attached as Exhibit J. Fred M. Young, Jr. will donate \$110,000. *See* affidavit of Fred M. Young, Jr., attached as Exhibit K. Richard A. Marder will donate \$5500. *See* declaration of Richard A. Marder, attached as Exhibit L. SpeechNow.org would already have accepted these donations, but each donation, if deemed a "contribution" by the Commission, exceeds the \$1000 threshold for contributions counting toward political committee status under 2 U.S.C. § 431(4). Each donation would also exceed applicable contribution limits to SpeechNow.org (\$5000), *see* 2 U.S.C. § 441a(a)(1)(C), should the Commission determine that SpeechNow.org must register with the Commission as a political committee, and would place both SpeechNow.org and these donors in legal jeopardy under Federal law.

SpeechNow.org is prepared to make independent expenditures, as defined at 2 U.S.C. § 431(17), paid for with funds raised solely from these and other individuals. It is prepared to place disclaimers on its written solicitations in compliance with 2 U.S.C. § 441d(a), and to place disclaimers on its independent expenditures in compliance with 2 U.S.C. § 441d(d)(2). SpeechNow.org is prepared to report its independent expenditures according to the provisions for organizations "other than political committees" in 2 U.S.C. § 434(c). Before proceeding, SpeechNow.org must ask the Commission for guidance on several questions.

III. Questions

SpeechNow.org asks the Commission the following questions:

- 1) Must SpeechNow.org register as a political committee as defined at 2 U.S.C. § 431(4)? Specifically:
 - a) Must SpeechNow.org register as a political committee before accepting contributions, as the term is defined in the Act, in excess of \$1000, or making expenditures, as that term is defined in the Act and in *Buckley v. Valeo*, 424 U.S. 1 (1976), in excess of \$1000, because its major purpose is to influence the election or defeat of candidates for Federal office?
 - b) Must SpeechNow.org register as a political committee after it has received donations in excess of \$1000 from donors who are informed that the purpose of SpeechNow.org is to influence elections through advocacy for or against the election of clearly identified candidates, but before it has made expenditures in excess of \$1000?
 - c) Must SpeechNow.org register as a political committee after making expenditures in excess of \$1000?

- 2) Are donations to SpeechNow.org "contributions" (as defined at 2 U.S.C. § 431(8)) subject to the limits described at 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 individual biennial aggregate contribution limit described at 2 U.S.C. § 441a(a)(3)?

IV. Discussion

Overview

The Federal Election Campaign Act of 1971, as amended, operates "in an area of the most fundamental First Amendment activities," *Buckley v. Valeo*, 424 U.S. 1, 14 (1976), and is constitutional only insofar as it furthers three purposes:

- 1) To prevent the corruption that stems from "large contributions [that may] secure political *quid pro quo*'s from current and potential office holders", or the "appearance of [such] corruption." *Buckley, supra*, at 27-28;
- 2) To prevent the "corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and ... have little or no correlation to the public's support for the corporation's political ideas" *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990); or
- 3) To "provide the electorate with information ... to aid the voters in evaluating those who seek federal office"; "deter actual corruption and [its] appearance ... by exposing large contributions and expenditures to the light of publicity," and "gather[] the data necessary to detect violations of the contribution limitations." *Buckley* at 66-68.

Because SpeechNow.org would not make contributions to, nor coordinate its activities or communications with, candidates, political committees, or their agents, SpeechNow.org does not believe that registering as a political committee and subjecting itself to contribution limits would further any interest in preventing *quid pro quo* corruption or its appearance.

Because SpeechNow.org is not incorporated, does not accept anything of value from corporations or labor unions, and is not established, financed, maintained, or controlled by any corporation or labor organization, SpeechNow.org does not believe that registering as a political committee would stem corruption arising from the "corrosive ... effects of ... wealth that are accumulated with the help of the corporate form."

The informational interests recognized in *Buckley* are satisfied by SpeechNow.org placing disclaimers on its written solicitations in compliance with 2 U.S.C. § 441d(a), and disclaimers on its independent expenditures in compliance with 2 U.S.C. § 441d(d)(2); and by SpeechNow.org reporting its independent expenditures in excess of \$250 and the

names of those individuals who help SpeechNow.org finance independent expenditures through donations in excess of \$200. The reporting requirements of 2 U.S.C. § 434(c) are sufficient to further these interests without subjecting SpeechNow.org to the burdens associated with organizing, registering and administering a political committee.

For these reasons, SpeechNow.org asks whether it is required to organize as a political committee under 2 U.S.C. § 432, register with the Commission as a political committee pursuant to 2 U.S.C. § 433, or report as a political committee under 2 U.S.C. § 434(a). SpeechNow.org also asks whether the donations it receives from individuals are subject to the contribution limits of 2 U.S.C. § 441a(a)(1)(C), and whether the individuals who donate to SpeechNow.org must count those donations against their individual biennial aggregate contribution limit found at 2 U.S.C. § 441a(a)(3).

1. *Must SpeechNow.org register as a political committee as defined at 2 U.S.C. § 431(4)?*

A “political committee” means any committee, club, association, or other group of persons which receives *contributions* aggregating in excess of \$1000, or makes *expenditures* aggregating in excess of \$1000 during a calendar year. 2 U.S.C. § 431(4). But “[t]o fulfill the purposes of the Act [political committees] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *Buckley v. Valeo*, 424 U.S. 1, 79-80 (1976). SpeechNow.org is not under the control of any candidate, but its major purpose is to expressly advocate the election of candidates who respect free speech, and the defeat of candidates who do not.

a) *Must SpeechNow.org register as a political committee before accepting contributions, as the term is defined in the Act, in excess of \$1000, or making expenditures, as that term is defined in the Act, in excess of \$1000, because its major purpose is to influence the election or defeat of candidates for Federal office?*

If the Commission determines that SpeechNow.org must register as a political committee, when must it register? Must it register as a political committee, before making expenditures or receiving contributions, solely on the basis of its major purpose?

Longstanding precedent suggests that major purpose alone is insufficient to require SpeechNow.org to register as a political committee. The statute itself makes no reference to “major purpose” as triggering political committee status. The Federal District Court for the District of Columbia has held that “[t]he major purpose test treats an organization as a ‘political committee’ if it receives contributions and/or makes expenditures of \$1000 or more *and* its ‘major purpose’ is the nomination or election of a particular candidate or candidates for federal office. *FEC v. GOPAC, Inc.*, 917 F. Supp.

851, 859 (D. D.C. 1996) (emphasis added). And “[c]ircuit precedent indicates ... that even if the organization’s major purpose is the election of a federal candidate or candidates, the organization does not become a ‘political committee’ unless or until it makes expenditures in cash or in kind to support a ‘person who has decided to become a candidate’ for federal office.” *Id.*, quoting *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 392 (D.C. Cir. 1981) (emphasis added).

Nevertheless, some doubt about this apparently clear provision of the law has been cast by certain commentators,³ courts,⁴ and even the Commission itself.⁵ In particular, in *Shays v. FEC*, Civ. No. 04-1597, 2007, U.S. Dist. LEXIS 63688, at *14 (D. D.C. August, 30, 2007) (*Shays II*), the Federal District Court for the District of Columbia stated in *dicta* that that it is error, and a misreading of *Buckley, supra*, for the “FEC [to] believe[] that there is an ‘express advocacy requirement for expenditures on communications made independently of a candidate,’ which applies to all organizations regardless of whether they satisfy the ‘major purpose’ test.” *Shays II, supra*, at 12. This *dicta* is directly contrary to the holdings in *GOPAC* and *Machinists*, which imposed an express-advocacy requirement -- a requirement that independent organizations engage in speech that expressly advocates the election or defeat of a clearly identified candidate or candidates to federal office -- to meet the Act’s definition of “expenditure.” This is why the *GOPAC* court held that “[a]s a matter of law, the Commission [at that time] failed to demonstrate that GOPAC became a ‘political committee’ within the meaning of the Act by spending or receiving \$1000 or more and engaging in ‘partisan politics’ and ‘electioneering’ [rather than engage in express advocacy].” *GOPAC, supra*, at 861-62. As a result, it is not clear to SpeechNow.org what standard the Commission is using in determining when an organization becomes a political committee.

SpeechNow.org believes that a proper interpretation of the law requires an organization to make expenditures or receive contributions in excess of \$1000 before it can be required to register as a political committee, regardless of the organization’s major purpose. SpeechNow.org seeks clarification that, having not made \$1000 in expenditures or received \$1000 in contributions, it is not at this time required to register as a political committee. Therefore, we ask the Commission to conclude that SpeechNow.org, by virtue of its major purpose alone, is not at this time required to register with the Commission as a political committee.

³ See Edward B. Foley and Donald Tobin, *The New Loophole: 527s, Political Committees, and McCain-Feingold*, BNA Money & Politics Report, Jan. 7, 2004.

⁴ *Shays v. FEC*, Civ. No. 04-1597, 2007, U.S. Dist. LEXIS 63688 (D. D.C. August, 30, 2007) (*Shays II*).

⁵ See e.g. MURs 5511 & 5525 (Swift Boat Veterans for Truth); MUR 5753 (League of Conservation Voters); MUR 5754 (MoveOn.org Voter Fund); and MUR 5487 (Progress for America Voter Fund). In each of these and other recently released MURs, SpeechNow.org submits that the released documents do not make clear whether the basis for the Commission’s determination that the organizations involved should have registered as political committees.

b) *Must SpeechNow.org register as a political committee after it has received donations in excess of \$1000 from donors who are informed that the purpose of SpeechNow.org is to influence elections through advocacy for or against the election of clearly identified candidates, but before it has made expenditures in excess of \$1000?*

SpeechNow.org intends to solicit and receive donations aggregating in excess of \$1000, and has submitted affidavits and declarations from individuals who intend to contribute such amounts. However, SpeechNow.org may hold and accumulate funds in excess of \$1000 for some time, without making expenditures that would trigger political committee status. Thus, SpeechNow.org seeks guidance on whether the receipt of funds solicited for the eventual purpose of advocacy for or against candidates to Federal office triggers political committee status that would require SpeechNow.org to register before making any expenditure relative to a clearly identified candidate.

Under the Act, a "contribution" means a gift, subscription, loan, advance or anything of value made for the purpose of:

- (A) influencing the nomination for election, or election, of any person to Federal office or for the purpose influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party, or
- (B) influencing the results of an election held for the expression of a preference for the nomination of persons for election to the office President of the United States.

2 U.S.C. § 431(8).

For many years the Commission determined that only if funds were spent as "expenditures" could they in turn be deemed to be "contributions" under the Act. In its 2004 rulemaking on political committee status, 69 FR 68056 (Nov. 23, 2004), the Commission adopted an additional definition of "contribution" at 11 CFR 100.57. According to the accompanying explanation and justification (E&J), the regulation "classifies all funds provided in response to a communication as contributions under FECA if the communication indicates that any portion of the funds will be used to support or oppose the election of a clearly identified candidate." *Id.* at 68057. The E&J claims as support for this interpretation *FEC v. Survival Education Fund*, 65 F.3d 285 (2d Cir. 1994) ("*SEF*"). The Second Circuit holding in *SEF*, however, applies only to prevent the corruption (or its appearance) of candidates and officeholders, and did not apply to organizations that operate independently of political party committees and candidates. Therefore, SpeechNow.org asks whether it must register as a political committee after it receives donations in excess of \$1000 from donors who are informed that the purpose of SpeechNow.org is to influence elections by advocating either the election or defeat of clearly identified candidates, even though it has not made "expenditures" as defined in the Act.

The Survival Education Fund was an independent, not-for-profit corporation founded in 1978 to educate the public regarding nuclear and alternative sources of energy. *SEF* at 287. At the time of the 1984 Presidential election cycle, Survival Education Fund used its treasury funds to co-sponsor a fund-raising letter to the general public that opposed the reelection of then-President Ronald Reagan. The mailer sought "help", saying it was "urgent" that the public "respond to this message as soon as possible ... as a favor to [SEF] and for the future of the country." *SEF* at 288.

As party to the case in the early 1990s, the Commission alleged that Survival Education Fund violated 2 U.S.C. § 441d(a), which requires a disclaimer on any public mailing that expressly advocates the election or defeat of a clearly identified candidate or solicits a contribution. The disclaimer, if made, would have disclosed who paid for the mailing and whether it was authorized by, or made independently of, a candidate or candidate's committee. *Id.* The Second Circuit had to determine whether the mailer solicited a "contribution,"⁶ and looked to *Buckley* in making its determination. In *Buckley*, the Supreme Court identified three types of contributions regulable under FECA: 1) "contributions made directly or indirectly to a candidate, political party, or campaign committee;" 2) "contributions made to other organizations or individuals but earmarked for political purposes;" and 3) "expenditures [coordinated] with a candidate, his agents, or an authorized committee of the candidate." *Buckley*, 424 U.S. at 78. It was the second type of contribution that intrigued the Second Circuit; funds "earmarked for political purposes."

The Second Circuit reasoned that "*Buckley's* definition of independent expenditures ... provides a limiting principle for the definition of contribution in 431(8)(A)(i), as applied to groups acting independently of any candidate or his agents and which are not political committees under FECA." *Id.* at 295. It then interpreted the phrase "earmarked for political purposes" to include those funds "that will be converted to expenditures subject to regulation under FECA". *SEF* at 295.

The Second Circuit then held that "[e]ven if a communication does not itself constitute express advocacy, it may still fall within the reach of § 441d(a) [FECA's disclaimer provisions] if it contains solicitations clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *Id.* The Second Circuit held nothing more than that "[t]he July 24, 1984 mailing was a solicitation of *contributions* within the meaning of §441d(a) as we construe that section." *SEF* at 295 (emphasis added). In short, the Second Circuit determined nothing more than that Survival Education Fund's solicitation must carry a disclaimer.

⁶ The Second Circuit did not determine whether the mailer expressly advocated President Ronald Reagan's defeat. Instead, the Second Circuit held that Survival Education Fund had a right to finance the mailer using its treasury funds, whether or not it contained express advocacy, because Survival Education Fund was exempt from FECA's corporate source prohibition by operation of the Supreme Court's opinion in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986). As noted, because SpeechNow.org not a corporation, it does not appear to qualify for the *MCFL* exemption.

The E&J's explanation of the new rule is inconsistent with *SEF* on which it relies. See *Supplemental Explanation and Justification, Political Committee Status*, 72 FR 5595 (Feb. 7, 2007). The E&J seems to suggest, contrary to *SEF*, that if funds given in response to a solicitation can be regulated constitutionally as a "contribution" for purposes of the disclaimer provisions of § 441d(a)(3), then those same funds can be regulated constitutionally as a "contribution" for all parts of FECA. This would mean that funds provided in response to a solicitation that indicates that any portion of the funds will be used to support or oppose the election of a clearly identified candidate are "contributions" not just under the disclaimer provisions of § 441d(a) or the reporting provisions of § 434(c), but also under the contribution limits of § 441a(a)(1)(C), the individual biennial aggregate limit of § 441a(a)(3), and even the definition of political committee at 2 U.S.C. § 431(4). Further, the E&J suggests this reading whether or not regulation of the funds in each application would advance a constitutional governmental interest in FECA.

The Second Circuit did determine that "[a] communication ... may still fall within the reach of § 441d(a)(3) if it contains solicitations clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *SEF* at 295. But the Second Circuit said that its reasoning applies only to those instances that address a corrupting nexus to candidates and officeholders:

[Our] interpretation limits the application of §441d(a) to Congress's core purpose: [i]nforming the public whether ostensibly unaffiliated organizations taking positions in an election or beseeching contributions from the public are doing so *at the behest of candidates*."

Potential contributors are entitled to know that they are supporting independent critics of a candidate and not a group that may be in league *with that candidate's opponent*."

By requiring disclosure of who has paid for the solicitation and that it is not being made on behalf of a candidate, *the statute deters clandestine corruption of candidates*, an interest that the Supreme Court has repeatedly found compelling.

SEF at 295-297 (emphasis added).

Indeed, the Second Circuit was concerned about proceeding in the absence of a nexus to candidates or officeholders, and specified the limits of its holding by noting that "[s]ection 441d(a)(3) ... does not require direct disclosure of what an individual or group contributes or spends [the very essence, by the way, of political committee reporting] but

only disclosure of who paid for the particular communication at issue and that it was *not authorized by a candidate or his agents.*" *SEF*, *supra*, at 297. (Emphasis added).⁷

The Second Circuit's opinion in *SEF* teaches that funds solicited or received are "contributions" for purposes of the Act only where the application of the Act to the funds or solicitation of funds would further one of the three compelling governmental interests enunciated in *Buckley*, *supra*, and discussed above. Each of those interests is either inapplicable to SpeechNow.org or is addressed by other, less burdensome provisions within the Act and therefore they do not, individually or collectively, require SpeechNow.org to register as a political committee.⁹

⁷ Further, because a group may make independent expenditures in unlimited amounts, and because 2 U.S.C. § 434 (c) provides a separate reporting mechanism for groups "other than political committees" that make such expenditures, it cannot be that a group soliciting funds necessary to make independent expenditures and operating other than as a political committee is somehow converted into a political committee. The statute clearly anticipates that a group can raise money for expressly advocating the defeat of candidates, through independent expenditures, without becoming a political committee. See footnotes 14-15 and accompanying text, *infra*.

⁹ First, requiring SpeechNow.org to register as a political committee would further no governmental interest in preventing *quid pro quo* corruption because SpeechNow.org operates wholly independently of candidates and political committees. Second, requiring SpeechNow.org to register as a political committee would further no governmental interest in preventing corruption by aggregations of wealth amassed by benefit of the corporate form because SpeechNow.org is unincorporated, has no ties to corporations or labor organizations, and engages in no business activities. The third interest in requiring an organization to register as a political committee is comprised of three sub-interests. One sub-interest is to "provide the electorate with information ... to aid the voters in evaluating those who seek federal office." *Buckley*, at 66-68. Another sub-interest is to "deter actual corruption and [its] appearance ... by exposing large contributions and expenditures to the light of publicity." *Id.* These sub-interests are adequately addressed by the disclaimer and disclosure provisions of 2 U.S.C. §§ 441d(a), 441d(d)(2) and 434(c). The third sub-interest is to "gather[] the data necessary to detect violations of the contribution limitations." *Buckley* at 66-68. This last sub-interest in disclosure (and by extension, in political committee registration and reporting) is inapplicable to SpeechNow.org because SpeechNow.org makes no contributions and operates independently of candidates. Moreover, as discussed fully below, donations from individuals to SpeechNow.org cannot be subject to contribution limits without violating the rights of speech and association of the individual donors and SpeechNow.org. Public monitoring of SpeechNow.org's receipts and disbursements, see 2 U.S.C. § 434(a), therefore, will not detect violations of the contribution limits of 2 U.S.C. § 441a(a)(1)(C) or the contribution limits of 2 U.S.C. § 441a(a)(3). In short, no governmental interest is served by requiring SpeechNow.org to register as a political committee. Therefore, FECA's independent-expenditure-reporting provisions for organizations other than political committees (2 U.S.C. § 434(c)), and not its political-committee organization, registration, and reporting provisions (2 U.S.C. §§ 432, 433, and 434(a)), are both the method of disclosure contemplated by FECA and the method that is sufficiently tailored to the compelling interests Congress sought to advance.

Furthermore, the funds received from individuals responding to a solicitation from SpeechNow.org are more similar to a political expenditure than to a political contribution. Such gifts differ from the making of a contribution to a candidate; donations to SpeechNow.org foster speech, a particularized message with which the donor agrees and which he has decided to finance, and is more than just the undifferentiated symbolic act of giving. *Cf. Buckley, supra*, at 21 (contributions to candidates are a kind of speech by proxy; rest solely on the undifferentiated, symbolic act of giving). Paraphrasing the Supreme Court in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 258 (1986), “[t]he resources available to *this* fund ... in fact reflect popular support for the political positions of the committee.” As the Court noted, donors to ideological organizations know precisely why they participate in and finance ideological organizations:

Individuals who contribute to [the ideological organization] are fully aware of its political purposes, and in fact contribute precisely because they support those purposes. It is true that a contributor may not be aware of the exact use to which his or her money ultimately may be put, or the specific candidate that it may be used to support. However, individuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction. Any contribution therefore necessarily involves at least some degree of delegation of authority to use such funds in a manner that best serves the shared political purposes of the organization and contributor.

Id. at 261-62.

In accordance with *SEF*, SpeechNow.org believes that its solicitations of funds for independent expenditures are required by the Act to carry disclaimers in conformity with 2 U.S.C. § 441d(a), which applies both to political committees and organizations other than political committees, so the public may know that SpeechNow.org operates independently of candidates. However, because these funds are not contributions for purposes of 2 U.S.C. § 434(c), SpeechNow.org is not required to register as a political committee merely by virtue of accepting donations, even if those donations were made to SpeechNow.org in response to a written solicitation that indicated the funds would be used to run independent expenditures, that is, express advocacy to the general public.

c) *Must SpeechNow.org register as a political committee after making expenditures in excess of \$1000?*

SpeechNow.org will also make "expenditures,"¹⁰ specifically, "independent expenditures,"¹¹ and asks whether it must register as a political committee after making "expenditures" in excess of \$1000.

An independent expenditure is a "communication by a person expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents."¹² 2 U.S.C. § 431(17).

SpeechNow.org concedes that its express advocacy communications and solicitations of funds for independent expenditures should carry disclaimers in conformity with 2 U.S.C. §§ 441d(a) and 441d(d)(2) so the public may know that SpeechNow.org operates independently of candidates.¹³ Similarly, SpeechNow.org concedes that the amounts spent on its independent-expenditure communications, as well as the names of "contributors", see 2 U.S.C. §434(c), and the amount of their "contributions" must be reported under 2 U.S.C. § 434(c) to "provide the electorate with

¹⁰ "Expenditure" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of:

- (A) influencing the nomination for election, or the election, of any person to Federal office, or to the office of presidential and vice-presidential elector; or influencing the results of a primary election held for the selection of delegates to a national nominating convention of political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States.

¹¹ Independent expenditures constitute expression "at the core of our electoral process and of the First Amendment freedoms." *Buckley*, 424 U.S., at 39 (quoting *Williams v. Rhodes*, 393 U.S. 23, 32 (1968)). See also *FEC v. National Conservative Political Action Committee*, 470 U.S. 480, 493 (1985) (NCPAC) (independent expenditures "produce speech at the core of the First Amendment").

¹² The Commission notes in its latest political committee explanation and justification, see *Supplemental Explanation and Justification, Political Committee Status*, 72 FR 5595 (Feb. 7, 2007) that "[n]either BCRA [nor] *McConnell* has eliminated ... the Supreme Court's express advocacy requirement for expenditures on communications made independently of a candidate."

¹³ The Act requires a disclaimer for any communication that expressly advocates the election or defeat of a candidate, or solicits a contribution:

[W]henever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any ... general public political advertising ... such communication—

- (3) if not authorized by a candidate ... or its agents, shall clearly state the name and permanent street address, telephone number or ... Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

2 U.S.C. § 441d(a)(3).

information ... to aid the voters in evaluating those who seek federal office” and to “deter actual corruption and [its] appearance ... by exposing large ... expenditures to the light of publicity.” *Buckley* at 66-68. But the Act furthers those interests by requiring disclaimers and disclosure for independent organizations without requiring those organizations to register as political committees. See 2 U.S.C. §§ 434(c) (reporting of independent expenditures by “persons ... other than political committees”); 441d(a) (disclaimers on express advocacy communications or solicitations by “any person”), and 441d(d)(2) (disclaimers on communications by “other person[s]”).

SpeechNow.org’s wish to associate with fellow citizens to make expenditures independently of any candidate or political committee should not, under a proper interpretation of the Act, convert SpeechNow.org into a fully regulated political committee. Organizations have a right to engage in unlimited independent expenditures. *Buckley*, *supra*, at 51. FECA provides a method for the reporting of independent expenditures by persons “other than political committees”, 2 U.S.C. § 434(c).¹⁴ If the Commission were to require SpeechNow.org to register as a political committee on the basis of its expenditures in excess of \$1000, the effect would be to render 2 U.S.C. § 434 (c), which provides for reporting by persons “other than political committees” that make independent expenditures in excess of \$250, a virtual nullity. Surely Congress did not intend that 2 U.S.C. § 434(c) would only capture and provide reporting requirements for independent expenditure organizations that spend more than \$250 but less than \$1000 on independent expenditures.¹⁵ In that instance, Congress could not have intended that political committee status automatically follows, thus thrusting the independent organization into the organizational, registration, and reporting requirements of 2 U.S.C §§ 432, 433, and 434(a). Such an interpretation would render § 434(c) an absurdity.

Moreover, there are constitutional problems in requiring independent speech organizations to comply with FECA’s political committee provisions, and therefore suggest, under a proper statutory reading, that SpeechNow.org’s activities do not require

¹⁴ “Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of \$250 in a calendar year shall file a statement containing ... information ... for all contributions received by such person.” 2 U.S.C. § 434(c)(1).

The term “person” in 2 U.S.C. § 434(c) applies to organizations such as SpeechNow.org no less than to individuals. “The term ‘person’ includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal government.” 2 U.S.C. § 431(11).

¹⁵ Similarly, Congress could not have intended that every independent organization that solicits more than \$1000 for independent expenditure communications (a necessary predicate to spending \$1000) becomes a political committee merely because the solicitation indicates that the funds “will be used to support or oppose the election of a clearly identified candidate.” See 11 CFR 100.57. See discussion *supra*, part III. 1. b). Note also that other organizations cannot engage in independent expenditures at all — corporations and unions are prohibited from making such communications under 2 U.S.C. § 441b; other unincorporated organizations, operating under Internal Revenue Code § 501(c), are generally limited in such activities by their tax status. To suggest that 2 U.S.C. § 434 (c) exists for the benefit of partnerships and Indian Tribes seeking to make independent expenditures strains all credulity.

it to register as a political committee. As stated by the Supreme Court, "[t]he administrative costs of complying with [the] increased responsibilities [of organizing, registering, and reporting as a political committee] may create a disincentive for the organization itself to speak." *MCFL*, *supra*, 255, n.7.¹⁶

As stated by Justice O'Connor, the *Buckley* Court "was concerned not only with the chilling effect of reporting and disclosure requirements on an organization's contributors, 424 U.S., at 66-68, but also with the potential burden of disclosure requirements on a group's own speech. *Id.*, at 74-82." *MCFL* at 265, J. O'Connor, concurring). Justice O'Connor noted that the requirements of administering a political committee can deter organizations like SpeechNow.org from speaking, and must only be required where registering as a political committee would further some governmental interest.

In my view, the significant burden on MCFL [if it were required to register with the Commission] in this case comes *not from the disclosure requirements that it must satisfy, but from the additional organizational restraints imposed upon it by the Act*. [E]ngaging in campaign speech requires MCFL to assume a more formalized organizational form... . These additional requirements do not further the Government's informational interest in campaign disclosure, and, for the reasons given by the Court, cannot be justified by any of the other interests identified by the Federal Election Commission. Although the organizational ... restrictions are not invariably an insurmountable burden on speech, *see, e. g., FEC v. National Right to Work Committee*, 459 U.S. 197 (1982), in this case the Government has failed to show that groups such as MCFL pose any danger that would justify infringement of its core political expression.

MCFL, at 266 (J. O'Connor, concurring).

¹⁶ The Court in *MCFL* also stated that:

Furthermore, should MCFL's independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee. *See Buckley*, 424 U.S. 1 at 79. As such, it would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns.

MCFL, at 262.

First, the statement is *dicta* as the Court did not decide the question of whether there are constitutional problems in regulating an organization with no ties to candidates, and no ties to corporations or labor organizations, but whose major purpose is independent campaign activity. Second, the *MCFL* opinion is a corporate-form corruption case of the kind discussed in *Austin v. Michigan Chamber of Commerce*. Unlike, MCFL, SpeechNow.org is unincorporated, and implicates no corrupting basis recognized by the Courts -- no nexus to officeholders or candidates, and no ties to labor organizations or corporations, and no business activity -- that would require SpeechNow.org to register as a political committee and be subject to contribution limits.

Any and all interests the Commission could legitimately assert for requiring SpeechNow.org to register as a political committee are either inapplicable or addressed by other less burdensome provisions of the Act. Therefore, a proper reading of FECA would not require SpeechNow.org to organize as a political committee under 2 U.S.C. § 432, to register as a political committee under 2 U.S.C. § 433, or file as a political committee under 2 U.S.C. § 434(a).

2. *Are donations to SpeechNow.org "contributions" (as defined at 2 U.S.C. § 431(8)) subject to the limits described at 2 U.S.C. § 441a(a)(1)(C)?*

Adhering to the contribution limits of 2 U.S.C. §§ 441a(a)(1)(C) is among the obligations of registered political committees. SpeechNow.org believes, however, that whether or not the Commission determines that SpeechNow.org is a political committee, donations to SpeechNow.org cannot be subject to contribution limits as described in 2 U.S.C. § 441a(a)(1)(C) without violating the Constitution because there is no governmental interest in limiting donations to wholly independent organizations; that is, organizations that operate independently of candidates, political party committees, other political committees, or their agents.

The distinction between governmental regulation of candidate-controlled speech and purely independent speech harkens back to *Buckley v. Valeo*, 424 U.S. 1 (1976). In *Buckley*, the Supreme Court held that both contribution and expenditure limits implicate First Amendment concerns. It subjected the expenditure limits to a higher degree of scrutiny, however, because they "impose significantly more severe restrictions on protected freedoms of political expression and association than [did] limitations on financial contributions" to candidates. *Id.* at 23. Expenditure limits "necessarily reduce[] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Id.* at 19.

By contrast, contribution limits to candidates are thought to impose a less significant burden on free expression and are permissible "as long as the Government demonstrates that the limits are 'closely drawn' to match a 'sufficiently important government interest.'" *Randall v. Sorrell*, __ U.S. __, __, 126 S. Ct. 2479, 2491 (2006) (quoting *Buckley*, 424 U.S. at 25). This "less rigorous scrutiny" has also been invoked in the context of contribution limits to political party committees, which are comprised of candidates and inherently involved with candidates. *McConnell v. FEC*, 540 U.S. 93, 136 n.39 (2003).

However, the Court has only applied this "less rigorous scrutiny" in the context of contributions to candidates and groups that have direct contact with candidates, such as multicandidate PACs and party committees. The Court has been clear that strict scrutiny applies to contribution limits outside of those contexts. In *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley* ("CARC"), the Court considered whether a limitation on contributions to support or defeat a ballot measure could withstand constitutional scrutiny. 454 U.S. 290 (1981). The Court applied "exacting judicial scrutiny" to the regulation, *Id.* at 294, which it has elsewhere defined to mean

“strict scrutiny.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995) (defining “exacting scrutiny” to mean that a restriction can be upheld “only if it is narrowly tailored to serve an overriding state interest.”) In reaching this conclusion, the Court noted that freedom of association “is diluted if it does not include the right to pool money through contributions, for funds are often essential if ‘advocacy’ is to be truly or optimally ‘effective.’” *Id.* at 296. (citing *Buckley*, 424 U.S., at 65-66). Like the potential regulation here, the regulation in *CARC* was triggered “only when contributions are made in concert with one or more others in the exercise of the right of association.” *Id.* The Court was clear that “[t]o 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 on individuals acting alone, is clearly a restraint on the right of association.” *CARC*, 454 U.S. at 296. To interpret FECA as allowing sole individuals to make unlimited independent expenditures without registering as committees, while requiring groups of individuals to register, would be to interpret the statute in a manner directly contrary to *CARC*.

The distinction between *Buckley* and *CARC*’s seemingly contradictory holdings is not whether contributions to ballot measure campaigns convey a different type or degree of speech from contributions to candidates or parties. That is the wrong distinction to consider. See John C. Eastman, *Strictly Scrutinizing Campaign Finance Restrictions (and the Courts that Judge Them)*, 50 Cath. U. L. Rev. 13, 35 (2000) (observing that, “[w]hen dealing with independent expenditure committees, drawing the line between the ballot-measure-election and the candidate election simply does not hold analytical water.”). Rather, the critical distinction is between independent expenditures (and the contributions that make them possible), on the one hand, and contributions to candidates, on the other. This distinction makes sense because contributions to candidates and contributions to independent expenditure organizations have qualitatively different expressive value. Contributions to independent expenditure organizations *do* convey “a different type or degree of speech” than contributions to candidates or candidate-controlled groups.

As the *Buckley* Court observed, the expression conveyed by a candidate contribution “rests solely on the undifferentiated, symbolic act of contributing,” *Buckley*, 424 U.S. at 21. By contrast, an independent expenditure committee “is but the medium through which its individual members seek to make more effective the expression of *their own* views.” *NAACP v. Alabama*, 357 U.S. at 459, 78 S. Ct. at 1170 (emphasis added). This distinction, between contributions to independent expenditure organizations and contributions to candidates (or groups associated with candidates), is the difference between citizens banding together at the grassroots to directly fund the expression of their own views, and merely facilitating a candidate’s expression of the candidate’s views. Compare *California Medical Association v. FEC*, 453 U.S. 182, 196 (1981) (upholding contribution limits to multicandidate PACs and suggesting that “‘speech by proxy’ . . . is not the sort of political advocacy . . . entitled to full First Amendment protection”), with *FEC v. Nat’l Conservative PAC (NCPAC)*, 470 U.S. 480, 495 (1985) (“[T]he ‘proxy speech’ approach is not useful in this case [because] 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”) (emphasis added).

In the question posed, Commission regulation would limit contributions to SpeechNow.org, an independent committee that *only* engages in independent expenditures. Neither candidates nor candidate-associated groups are the recipients of these funds. Instead, regulating SpeechNow.org as a political committee subject to contribution limits would directly limit the ability of citizens to pool their resources and amplify their own voices, a right that is “entitled to full First Amendment protection.”¹⁷ *NCPAC*, 470 U.S. at 495. Thus, the question is subject to *CARC*’s “exacting,” or “strict,” scrutiny. See also *Righeimer v. City of Huntington Beach*, No. SACV94-676 (C.D. Cal. Oct. 13, 1994) (denying, on associational freedom grounds, a motion to dismiss in case involving an ordinance that limited a committee’s ability to make independent expenditures if it accepted more than \$300 from an individual in an election cycle); *San Franciscans for Sensible Gov’t v. Renne*, No. 99-02456 (N.D. Cal. Sept. 8 1999) (granting preliminary injunction against ordinance placing contribution limits upon committee making independent expenditures).

Even under “less rigorous review,” contribution limits are permissible only if those limits are “closely drawn,” to match a “sufficiently important government interest.” *Randall v. Sorrell*, ___ U.S. ___, ___, 126 S. Ct. 2479, 2491 (2006) (plurality opinion) (quoting *Buckley*, 424 U.S. at 25). This is not cursory review and, to date, the Supreme Court has identified one, and only one, government interest “sufficiently important” to justify contribution limits: combating corruption of officeholders or the appearance of such corruption. Moreover, since *Buckley*, the Court has repeatedly shown that it will only find corruption or its appearance in situations that involve contributions to candidates or to groups intimately associated with candidates.¹⁸ The Supreme Court has found that these are the only financial contributions that create the likelihood that *quid pro quo* arrangements will take place or that create “the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office.” *Buckley*, 424 U.S. at 25; *id.* at 28 (1976) (“The Act’s \$1,000 contribution limitation focuses precisely on the problem of large *campaign* contributions--the narrow aspect of political association

¹⁷ The Eastern District of North Carolina recently considered the same issue: Can the State place a contribution limit on “NCRLC-FIPE ... an internal PAC established by NCRL whose sole purpose is to make independent expenditures[?]” *North Carolina Right to Life v. Leake*, No. 5:99-CV-798-BO(3) (ED NC Mar. 29, 2007). The district court determined that “NCRLC-FIPE makes no contributions of any kind to candidates,” then held that “it is well established that limiting corruption or the appearance of corruption is a sufficiently important or compelling state interest,” and that the State “failed to present any evidence that the independent expenditures made by [an independent expenditure political action committee] have a tendency to corrupt or create the appearance of corruption.” *Id.*

¹⁸ The one, narrow exception to this statement, so-called “corporate-form corruption,” is not applicable to this case. See, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990) (identifying 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” as “a different type of corruption”).

where the actuality and potential for corruption have been identified--while leaving persons free to engage in independent political expression. . . ." (emphasis added)).

This required candidate nexus was reaffirmed five years after *Buckley* in *California Medical Association v. Federal Election Commission*, 453 U.S. 182 (1981). In that case, the Supreme Court considered the constitutionality of a \$5,000 limit on contributions to a multicandidate political action committee, an organization that, by definition, made candidate contributions. The Court upheld the limit after considering several challenges to the law, but with regard to the First Amendment question, it mustered only a four-member plurality. Justice Blackmun concurred with the result reached by the plurality and provided the fifth vote, but did so on narrower grounds, which control. See *Marks v. United States*, 430 U.S. 188, 193 (1977).

Justice Blackmun accepted, as a matter of *stare decisis*, that the contribution limits in *Buckley v. Valeo* were constitutional. *Id.* at 201-02. He continued, however, that "it does not follow that I must concur in the plurality conclusion today that political contributions are not entitled to full First Amendment protection." Applying the "rigorous standard of review," Justice Blackmun concluded that "contributions to multicandidate political committees may be limited to \$5,000 per year as a means of preventing evasion of the limitations on contributions," though it was a "close[] question." *Id.* at 202. However, he cautioned that "a different result would follow if [the statute] were applied to contributions to a political committee *established for the purpose of making independent expenditures*, rather than contributions to candidates" because "contributions to a committee that makes only independent expenditures pose no such threat [of corruption]." *Id.* at 203; accord, *NCPAC*, 470 U.S. at 498 ("the absence of prearrangement and coordination [with a candidate] . . . alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate").

This required nexus was reaffirmed again in *McConnell v. FEC*. In that case, the Supreme Court upheld contributions to *party* committees because such committees are composed of candidates, and are direct funnels to candidates. 540 U.S. at 156-157 n. 51 (2003) ("Thus . . . we rely not only on the fact that they regulate contributions used to fund activities influencing federal elections, but also that they regulate contributions to, or at the behest of, entities uniquely positioned to act as conduits for corruption). Indeed, the Court explicitly rejected the argument that the majority's holding would allow Congress to restrict the funding of independent activity that merely benefits a candidate. See, *Id.* ("Congress could not regulate financial contributions to political talk show hosts or newspaper editors on the sole basis that their activities conferred a *benefit* on the candidate.") (emphasis in original).¹⁹

¹⁹ That the independent groups addressed were members of the institutional press is of no constitutional significance. "The purpose of the Constitution was not to erect the press into a privileged institution but to protect all persons in their right to print what they will as well as to utter it. ' . . . the liberty of the press is no greater and no less . . . ' than the liberty of every citizen of the Republic. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 802 (1978) (Burger, C.J., concurring) (citing *Pennekamp v. Florida*, 328 U.S. 331, 364 (1946)).

Justice Kennedy's discussion in *McConnell* is also instructive on this point. There, he noted that, quite apart from whether a candidate benefits, a contribution limit could not "withstand constitutional challenge unless it was shown to advance the anticorruption interest." *McConnell v. FEC*, 540 U.S. at 291-292. As Justice Kennedy put it: "To ignore the fact that in *Buckley* the money at issue was given to candidates, creating an obvious *quid pro quo* danger. . . is to ignore the Court's comments in *Buckley* that show *quid pro quo* was of central importance to the analysis." *Id.* at 295-96

As one leading commenter put it, "the Supreme Court has never said that benefit to the candidate, with the inference that the candidate will be grateful for the benefit and will be tempted to provide favors accordingly, is enough to support regulation of campaign money. *McConnell* clearly held that *benefit (even benefit followed by gratitude and temptation) is not sufficient to justify a campaign restriction.*" Richard Briffault, *The 527 Problem...and the Buckley Problem*, 73 Geo. Wash. L. Rev. 1701, 1745 (2005) (emphasis added). Nor would it be sufficient to show that candidates respond to independent expenditures by changing their positions on issues, for "the fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political message . . . can hardly be called corruption." *NCPAC*, 470 U.S. at 498. Indeed, far from being corruption, "the presentation to the electorate of varying points of view" is "one of the essential features of democracy." *Id.*

3. *Must an individual donor to SpeechNow.org count his donations to SpeechNow.org among the "contributions" applicable to his individual biennial aggregate contribution limit described at 2 U.S.C. § 441a(a)(3)?*

As discussed above, SpeechNow.org believes that whether or not the Commission determines that SpeechNow.org must register as a political committee, donations to SpeechNow.org cannot be subject to contribution limits, as described in 2 U.S.C. § 441a(a)(1)(C), without violating the Constitution. If a donation is not a "contribution" for purposes of the limits described in § 441a(a)(1)(C), then individuals who donate to SpeechNow.org need not count those donations among contributions subject to a biennial aggregate limit, as described in 2 U.S.C. § 441a(a)(3).

V. Conclusion

SpeechNow.org will make independent expenditures, as defined at 2 U.S.C. § 431(17), paid for with funds raised solely from individuals. It will place disclaimers on its written solicitations in compliance with 2 U.S.C. § 441d(a), and to place disclaimers on its independent expenditures in compliance with 2 U.S.C. § 441d(d)(2). SpeechNow.org will report its independent expenditures according to the provisions for non-political committees in 2 U.S.C. § 434(c).

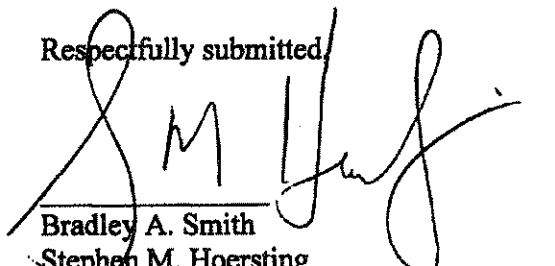
SpeechNow.org seeks the Commission's guidance on whether and if so when it must organize as a political committee under 2 U.S.C. § 432, register as a political

committee under 2 U.S.C. § 433, or report as a political committee under 2 U.S.C. § 434(a).

Further, if the Commission determines that SpeechNow.org must register as a political committee, SpeechNow.org asks whether the donations it receives are subject to the contribution limits described in 2 U.S.C. § 441a(a)(1)(C), and whether individuals who donate to SpeechNow.org must count their donations to SpeechNow.org among the contributions subject to a biennial aggregate limit, as described in 2 U.S.C. § 441a(a)(3).

The undersigned await the Commission's guidance in this matter. Thank you for your consideration of this request. Please direct any further inquiries or requests for additional information to Steve Hoersting or Steve Simpson.

Respectfully submitted,



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The undersigned Members hereby adopt the following bylaws (the "Bylaws") for the creation and governance of the Speech Now.org as of October 24, 2007:

**BYLAWS
OF
SPEECH NOW.ORG
(the "Association")**

ARTICLE I

ORGANIZATION

Section 1. Formation. Each of the undersigned Members hereby acknowledge the formation of the Association as an unincorporated association in accordance with the District of Columbia Uniform Unincorporated Non-Profit Association Act of 2000, D.C. Code Ann. §29-971, et. seq. (the "Act"), and confirms and agrees to such Member's status as a Member of the Association. ("Member" shall have the meaning ascribed to "member" in the Act.)

Section 2. Name. The name of the Association is "Speech Now.org," and it is hereinafter referred to in these Bylaws as the "Association." The business of the Association shall be conducted under that name or such other name or names as the Members shall determine.

Section 3. Mailing Address. The mailing address of the Association shall be P.O. Box 18773, Washington DC 20036 or such other place within the District of Columbia as the Members shall determine. The Association may maintain an office or offices for the transaction of business at such other locations as the Members or the President may deem advisable.

Section 4. Registered Agent. The initial registered agent of the Association in the District of Columbia is Angela Angelovska-Wilson, and the address of the initial registered agent is 4913 43rd St. NW, Washington DC, 20016. The name and address of the registered agent may be filed with the Mayor of Washington, DC as provided in the Act and may be changed to such other agent or office as the Members designate from time to time in the manner provided under the Act.

Section 5. Organization. The Association shall be made up of Members elected to membership by the then-current Members of the Association as set forth in these Bylaws. No person may become a Member by virtue of providing financial or other support to the Association, by declaring themselves a Member of the Association, or by virtue of their membership, participation in or association with any other organization. No dues shall be required of Members, nor shall the payment of any sums to the Association be deemed grounds for Membership herein.

Section 6. Term and Termination. The term of the Association shall commence as of the date of these Bylaws and shall continue until the dissolution of the Association by vote of two-thirds of the then-current elected and serving Members (and not two-thirds of the Members representing a quorum at any meeting of the Members).

Section 7. Powers. In furtherance of its mission, subject to the provisions of these Bylaws and the Act, the Association shall have the power to take any action or incur any obligation as an Association.

Section 8. Limitation on Liability. In accordance with the Act, the debts, obligations

and liabilities of the Association, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Association, and none of the Members, officers or agents of the Association shall be obligated personally for any such debt, obligation or liability of the Association solely by reason of being a Member, officer or agent or otherwise participating in the management of the Association.

ARTICLE II

MISSION

The Association is an independent speech group of individuals who have assembled in order to promote and protect our First Amendment rights to free speech and the freedom to assemble. We operate independently of any candidate and expressly advocate to other people to vote for federal candidates who support these First Amendment rights and to vote against candidates who oppose such rights.

ARTICLE III

MEMBERS

Section 1. General Powers. The property, affairs, and business of the Association shall be managed and controlled by its Members as a body. The Members may by general resolution delegate to officers of the Association and to committees of the Association such powers as provided for in these Bylaws.

Section 2. Number and Qualification. The number of Initial Members shall be five. The Association shall have a set number of Members, which may be changed by a majority vote of the Members. In order to be qualified for membership in the Association, and prior to becoming a Member, each Member shall execute an acknowledgement setting forth the Member's obligations under Section X of these Bylaws. Initial Members shall sign such acknowledgment concurrently with the execution of these Bylaws.

Section 3. Election. Other than the Initial Members, all new and continuing Members shall be elected by then current Members by majority vote. Election of Members shall be held at least once a year. Election of Members can be held at any meeting called for such purpose by the President or a majority of the Members. Any person elected as a Member shall not become a Member until duly qualified as set forth in section 2 of Article III.

Section 4. Terms. Members shall serve terms of one year or less as determined by the Members when electing such Member; provided that no Member shall cease to be a Member until the earlier of such Member's death, resignation, removal or the election and qualification of a successor to such Member. Failure to hold one or more Member meetings or failure to elect and qualify Members in one or more years, or both, will not end the term of any Member, will not cause any vacancy of a Member, and will not affect the powers or the validity of any act of the Members on behalf of the Association. This paragraph does not prevent or restrict the filling of a vacancy of any Member, including a vacancy caused by an increase in the number of Members.

Section 5. Resignation. Any Member may resign at any time by giving written notice to the President or all other Members. If that resignation takes effect before the Member's term is complete, an election called by the President will be held to fill the remainder of such resigning Member's term.

Section 6. Removal. The vote of two-thirds of all of the elected and serving Members (and not two-thirds of the Members representing a quorum at any meeting of the Members) is required to remove a Member from office prior to the expiration of the term for which that Member has been elected. If a Member is removed, an election called by the President will be held to fill the remainder of such removed Member's term.

Section 7. Vacancies. Any vacancy among the Members, whether caused by resignation, death or removal, shall be filled by a majority vote of the remaining Members.

Section 8. Meetings. The annual, special or any other regular meetings of the Members may be called by the President, or a majority of the Members then in office may provide by resolution the time and place, who may fix any place, whether within or without the District of Columbia, as the place for holding any meeting. The Members shall meet at least once a year.

Section 9. Notice. Notice of any special meeting of the Members shall be given at least seven days previous thereto by written notice delivered personally, by phone, by e-mail, by mail or by fax to each Member at such Member's address as shown by the records of the Association, unless waived by each Member. The attendance of a Member at any meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If a special meeting of the Members is convened, the notice shall indicate the business to be transacted at, or the purpose of, the special meeting of the Members.

Section 10. Quorum. The presence in person of a majority of then elected and serving Members (not counting any vacancies of Members) shall constitute a quorum for the transaction of business at any meeting of the Members; but if less than a quorum are present at said meeting, a majority of the Members present may adjourn the meeting.

Section 11. Manner of Acting. The act of a majority of the Members present at a meeting at which a quorum is present shall be the act of the Members, unless the act of a supermajority vote is required by these Bylaws. Members may attend a meeting by telephonic or similar equipment by means of which all persons participating in the meeting can hear each other.

Section 12. Informal Action. Any action permissible or required by these Bylaws to be taken at a meeting of Members may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the Members. Such consent in writing may be by signature of any such member or may be by electronic mail message sent from the electronic mail account for such Member on file with the Association. Any such consent may be executed in one or more counterparts and may be transmitted via facsimile, electronic mail or either, all of which, taken together, shall constitute a single executed original.

Section 13. Compensation. Members shall not receive any stated salaries for their services as such, but by resolution of the Members expenses of attendance may be allowed for attendance at each regular or special meeting of the Members; however, nothing herein contained shall be construed to preclude any Member from serving the Association in any other capacity and receiving reasonable compensation therefor.

Section 14. Access. A copy of these Bylaws and other official documents and records of the Association shall be made available upon request to any Member.

ARTICLE IV

COMMITTEES

Section 1. Committees. The Members may, by resolution, designate one or more committees of the Association. Each committee shall consist of at least two or more Members in addition to any other persons who serve on such committee. Such committees shall have such names as may be determined from time to time by resolution of the Members.

Section 2. Authority of Committees. Each committee of the Association shall have and may exercise all the powers of the Members in the management of the business and affairs of the Association delegated to it by resolution of the Members; provided that no such committee shall have the power or authority to elect Members or take any action that requires more than a simple majority vote of a quorum of the Members.

ARTICLE V

OFFICERS

Section 1. Officers. The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as may be designated by the Members as set forth below. Any two offices may be held by the same person.

Section 2. Selection and Qualification. In order to be qualified to hold any office of the Association, and prior to becoming an officer, each designated officer shall execute an acknowledgement setting forth an officer's obligations under Section X of these Bylaws. The officers of the Association shall be designated annually by the Members at the annual meeting of the Members. If current officers shall not be designated at such meeting, they shall hold office until the next designation of officers by the Members, which designation shall be accomplished as soon thereafter as convenient. Failure to hold one or more Member meetings or failure to designate and qualify officers in one or more years, or both, will not end the term of any officer, will not cause any vacancy, and will not affect the existence or powers of or the validity of any act of such officer on behalf of the Association. New offices may be created and filled at any meeting of the Members.

Section 3. Removal. Any officer may be removed by a majority vote (except the President) of the Members, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. The President shall be removed only upon a two thirds vote of all the Members the elected and serving (and not two-thirds of the Members representing a quorum at any meeting of the Members).

Section 4. Resignation. Any officer may resign at any time by giving written notice to the President, but such resignation shall be without prejudice to the contract rights, if any, of the Association. If that resignation takes effect before the officer's successor is designated, a meeting called by the President will be held to fill such resigning officer's position.

Section 5. Vacancy. A vacancy in any office because of death, resignation, removal or otherwise, may be filled by the Members.

Section 6. President. The President shall be the principal executive officer of the Association and shall exercise general supervision over the affairs of the Association, its officers, and personnel, consistent with policies established by the Members. The President may sign any deeds, mortgages, bonds, contracts, or other instruments, except in cases where the signing and execution thereof shall be expressly delegated by the Members or by these Bylaws or by statute to some other officer or agent of the Association; and in general shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Members. The President may authorize and approve expenditures and take such other steps he or she shall deem necessary to advance the purposes of the Association, provided such steps do not exceed the scope of authority granted the President by these Bylaws or the Members.

Section 7. Vice President. The Vice President shall perform such duties as may be assigned by the President or the Members.

Section 8. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for monies due and payable to the Association from any source whatsoever and deposit all such monies in the name of the Association in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VI of these Bylaws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Members. The Treasurer shall be responsible for the administration and oversight of the Association's financial records, initiation of an annual audit, compliance with statutory reporting requirements, tax returns, and tax payments.

Section 9. Secretary. The Secretary shall keep the minutes of the meetings of the Members and all committees of the Association and shall oversee the keeping, preparation, and filing of all other records required by law or by the policies of the Association; be custodian of the Association records; keep a register of the post office address of each Member and officer which shall be furnished to the Secretary by such Member or officer; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Members.

ARTICLE VI

OPERATIONS, CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Members may authorize any officer or officers, agent, or agents of the Association in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

Section 2. Checks. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent, or agents of the Association and in such manner as shall from time to time be determined by resolution of the Members. In the absence of such determination by the Members, such instruments shall be signed or otherwise authorized by any officer of the Association.

Section 3. Deposits. Except as provided below, all funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust

companies, or other depositories as the Members may select. No funds of \$1,000 or more in aggregate per calendar year shall be solicited, accepted or deposited until it is determined the Association may legally accept such amount of funds.

Section 4. Funds. Except as provided below, the Members may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Association.

Section 5. Books and Records. The Association shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its Members and committees having any of the authority of the Members.

Section 6. Business Activities Prohibited. The Association shall not engage in business activities including: A) Any provision of goods or services that results in income to the corporation; and B) Advertising or promotional activity which results in income to the corporation, other than in the form of donations.

Section 7. Claims Barred. The Association shall have no persons, other than employees and creditors with fair market value contracts, affiliated in any way that could allow them to make a claim on the organization's assets or earnings.

Section 8. Benefits of Support for the Association. The Association shall not offer to any supporters or members any benefit that is a disincentive for them to disassociate themselves with the Association on the basis of the Association's position on a political issue. Such benefits include but are not limited to: A) Credit cards, insurance policies, consumer discounts or savings plans; and B) Training, education, or business information, other than that which is necessary to enable recipients to engage in the promotion of the Association's political ideas.

Section 9. Certain Contributions Prohibited. The Association shall not directly or indirectly accept donations of anything of value from corporations, labor organizations, national banks, federal government contractors, foreign nationals, candidates, political parties or political committees. It shall keep records to demonstrate that it has not accepted such donations.

Section 10. Certain Expenditures Prohibited. The Association shall not make a contribution or directly or indirectly make a donation of anything of value to any candidate for elected public office, any political committee or political party. Such limitations do not apply to independent expenditures.

Section 11. Disclosures to Supporters. Donors to the Association shall be advised that their donations are not tax deductible and may be used for political purposes such as supporting or opposing candidates. Donors to the Association shall also be advised that all donations to the Association will be spent according to the sole discretion of Association.

ARTICLE VII

FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the last day of December.

ARTICLE VIII

INDEMNIFICATION

Any present or former Member or officer of the Association, or such other persons so designated in the discretion of the Members (each, an "Indemnified Person"), or the legal representative of such Indemnified Person, shall be indemnified by the Association against all reasonable costs, expenses, and counsel fees paid or incurred in connection with any action, suit, or proceeding to which any such person or his legal representative may be made a party by reason of his being or having been such a Member or officer serving or having served the Association, except in relation to matters as to which he shall be found guilty of gross negligence or misconduct in respect of the matters in which indemnity is sought and in relation to matters settled or otherwise terminated without a final determination on the merits where such settlement or termination is predicated on the existence of such gross negligence or misconduct.

ARTICLE IX

PROCEDURE

The rules contained in the most recent edition of Robert's Rules of Order shall provide the rules of procedure for the Association where they are not inconsistent with these Bylaws.

ARTICLE X

MEMBER AND ASSOCIATION RULES

Section 1. Prohibited donations. The Association shall not accept donations or other funds from corporations, labor organizations, national banks, federal government contractors, candidates, political parties, political committees, or foreign nationals.

Section 2. Prohibited vendors. The Association shall not use any media, polling, fundraising, public relations, advertising, or political vendor for services in producing or distributing an Association communication featuring a candidate for federal office or in advising the Association about a Congressional or Senate race involving the featured candidate if that vendor is also engaged, or was engaged in the same election cycle, by the candidate featured or mentioned in the Association communication, his or her opponent, or a political party committee.

Section 3. Prohibited employees. The Association shall not employ or otherwise use former employees or independent contractors, in the same election cycle, of any candidate featured or mentioned in an Association communication, his or her opponent, or a political party committee.

Section 4. Ensure independence of speech. Members, officers, employees, and agents of the Association shall ensure the independence of all speech by the Association on any candidate or political party. They shall do this in part by

understanding 11 Code of Federal Regulations 109.21 or successor regulations that define coordinated communications in order to avoid coordination with a candidate, an authorized committee of a candidate, a political party committee, or an agent of any of the foregoing.

Section 5. Prohibited speech. Members, officers, employees, and agents of the Association shall not inquire about the campaign plans, projects, activities, or needs of a candidate featured or mentioned in an Association communication, his or her opponent, or a political party committee.

Section 6. Use of nonpublic information. A Member, officer, employee, and agent of or donor to the Association who possesses nonpublic information about the campaign plans, projects, activities, or needs of a candidate featured or mentioned in an Association communication shall not relay such information to the Association, and a Member or donor shall recuse himself from all decisions about Association deliberations regarding potential communications about a featured candidate or his or her opponent. Such officer, employee or agent of the Association shall not participate in any work of the Association related to the advertisements featuring such a candidate.

Section 7. Other prohibited speech. Members, officers, employees, and agents of and donors to the Association shall not inform any candidate featured or mentioned in an Association communication, his or her opponent, a political party committee, or agents of any of the foregoing about the Association's plans, projects, activities, or needs—especially as it relates to advertising.

Section 8. Actions by candidates. No candidate featured or mentioned in an Association communication, his or her opponent, political party committee, or agent of any of the foregoing shall be involved in any way whatsoever in making decisions about the Association's activities or in the creation or distribution of Association advertisements.

Section 9. Requests by candidates. The Association and its Members, officers, agents, employees and donors shall not make any communications featuring or mentioning a candidate at the request of the featured candidate, his or her opponent, a political party, or an agent of any of the foregoing. The Association and its agents and donors shall not seek the assent, directly or indirectly, of any communication from any candidate featured or mentioned in the communication, his or her opponent, a political party committee, or a agent of any of the foregoing.

Section 10. Speech by donors. Any donor to the Association who has any connection with any candidate featured or mentioned in an Association communication shall not communicate in any way with the candidate, his or her opponent, a political party committee, or agents of any of the foregoing regarding any details of Association advertisements.

Section 11. Communication of Obligations. The Members and officers shall cause all employees and agents of and donors to the Association to be notified of their duties under this Article 10; and each employee and agent of the Association shall be required to sign an acknowledgment of such employee's or agent's duties under this Article 10 as a condition to such person's participation in Association activities.

ARTICLE XI

AMENDMENTS TO BYLAWS


These Bylaws may only be altered, amended, or repealed and new Bylaws may be adopted by a majority of the then elected and serving Members (and not a majority of the Members representing a quorum at any meeting of the Members) at any regular meeting or at any special meeting, if at least seven days written notice is given of intention to alter, amend, or repeal, or to adopt new Bylaws at such meeting.

[Signature Page Follows]

SIGNATURE PAGE TO THE
Bylaws of
Speech Now.org

IN WITNESS WHEREOF, the undersigned have duly executed these Bylaws as of date first written above.

MEMBERS:



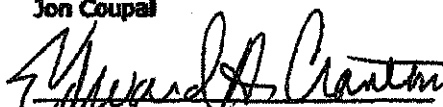
David Keating



Jon Coupal



Richard Marder



Edward H. Crane, III

Daniel J. Shapiro

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David Keating

Jon Coupal

Richard Marder

Edward H. Crane, III



Daniel J. Shapiro

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[Signature Page Follows]

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Bylaws of
Speech Now.org**

IN WITNESS WHEREOF, the undersigned have duly executed these Bylaws as of date first written above.

MEMBERS:

David Keating



Jon Coupal

Richard Marder

Edward H. Crane, III

Daniel J. Shapiro

Speech Now.org Affirmation

As an Officer of, Member of, consultant to and/or employee of Speech Now.org ("Association") and in accordance with Articles III, V, and X of the Association's Bylaws, I do hereby affirm that I will abide by my obligations under Section X of the Association's Bylaws as follows:

MEMBER AND ASSOCIATION RULES

Section 1. Prohibited donations. The Association shall not accept donations or other funds from corporations, labor organizations, national banks, federal government contractors, candidates, political parties, political committees, or foreign nationals.

Section 2. Prohibited vendors. The Association shall not use any media, polling, fundraising, public relations, advertising, or political vendor for services in producing or distributing an Association communication featuring a candidate for federal office or in advising the Association about a Congressional or Senate race involving the featured candidate if that vendor is also engaged, or was engaged in the same election cycle, by the candidate featured or mentioned in the Association communication, his or her opponent, or a political party committee.

Section 3. Prohibited employees. The Association shall not employ or otherwise use former employees or independent contractors, in the same election cycle, of any candidate featured or mentioned in an Association communication, his or her opponent, or a political party committee.

Section 4. Ensure independence of speech. Members, officers, employees, and agents of the Association shall ensure the independence of all speech by the Association on any candidate or political party. They shall do this in part by understanding 11 Code of Federal Regulations 109.21 or successor regulations that define coordinated communications in order to avoid coordination with a candidate, an authorized committee of a candidate, a political party committee, or an agent of any of the foregoing.

Section 5. Prohibited speech. Members, officers, employees, and agents of the Association shall not inquire about the campaign plans, projects, activities, or needs of a candidate featured or mentioned in an Association communication, his or her opponent, or a political party committee.

Section 6. Use of nonpublic information. A Member, officer, employee, and agent of or donor to the Association who possesses nonpublic information about the campaign plans, projects, activities, or needs of a candidate featured or mentioned in an Association communication shall not relay such information to the Association, and a Member or donor shall recuse himself from all decisions about Association deliberations regarding potential communications about a featured candidate or his or her opponent. Such officer, employee or agent of the Association shall not participate in any work of the Association related to the advertisements featuring such a candidate.

Section 7. Other prohibited speech. Members, officers, employees, and agents of and donors to the Association shall not inform any candidate featured or mentioned in an Association communication, his or her opponent, a political party committee, or agents of any of the foregoing about the Association's plans, projects, activities, or needs—especially as it relates to advertising.


Section 8. Actions by candidates. No candidate featured or mentioned in an Association communication, his or her opponent, political party committee, or agent of any of the foregoing shall be involved in any way whatsoever in making decisions about the Association's activities or in the creation or distribution of Association advertisements.

Section 9. Requests by candidates. The Association and its Members, officers, agents, employees and donors shall not make any communications featuring or mentioning a candidate at the request of the featured candidate, his or her opponent, a political party, or an agent of any of the foregoing. The Association and its agents and donors shall not seek the assent, directly or indirectly, of any communication from any candidate featured or mentioned in the communication, his or her opponent, a political party committee, or an agent of any of the foregoing.

Section 10. Speech by donors. Any donor to the Association who has any connection with any candidate featured or mentioned in an Association communication shall not communicate in any way with the candidate, his or her opponent, a political party committee, or agents of any of the foregoing regarding any details of Association advertisements.

Section 11. Communication of Obligations. The Members and officers shall cause all employees and agents of and donors to the Association to be notified of their duties under this Article 10; and each employee and agent of the Association shall be required to sign an acknowledgment of such employee's or agent's duties under this Article 10 as a condition to such person's participation in Association activities.

Name (please print): David Keating


Signature

10/30/07
Date

Section 8. Actions by candidates. No candidate featured or mentioned in an Association communication, his or her opponent, political party committee, or agent of any of the foregoing shall be involved in any way whatsoever in making decisions about the Association's activities or in the creation or distribution of Association advertisements.

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Name (please print): EDWARD H. CRANE

Edward H. Crane
Signature

10-19-07
Date

Section 8. Actions by candidates. No candidate featured or mentioned in an Association communication, his or her opponent, political party committee, or agent of any of the foregoing shall be involved in any way whatsoever in making decisions about the Association's activities or in the creation or distribution of Association advertisements.

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Name (please print): Jonathan Cooper


Signature

6/22/07
Date

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Name (please print): Daniel Shapiro

Signature Daniel Shapiro

Date 10/14/07

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Name (please print): RICHARD A. MARDER

Richard A. Marder
Signature

10-16-07
Date

B

ARTICLES OF ORGANIZATION
SPEECH NOW.ORG

The below-named organizers of Speech Now.org, an unincorporated non-profit association under D.C. Code § 29-971 et seq. (the District of Columbia Uniform Unincorporated Non-Profit Association Act of 2000), adopt the following Articles of Organization:

FIRST: The name of this unincorporated association shall be Speech Now.Org.

SECOND: The effective date of these articles shall be October 24, 2007

THIRD: The period of duration of this unincorporated association shall be perpetual.

FOURTH: The purpose for which this unincorporated association has been organized is to assemble an independent speech group of individuals who are dedicated to promoting and protecting our First Amendment rights to free speech and the freedom to assemble. We operate independently of any candidate and expressly advocate to other people to vote for federal candidates who support these First Amendment rights and to vote against candidates who oppose such rights.

FIFTH: The name and address of the unincorporated association's registered agent in the District of Columbia is Angela Angelovska-Wilson, 4913 43rd St. NW, Washington DC, 20016. This agent's consent to act as registered agent for the company is evidenced in the attached executed "Written Consent to Act as Registered Agent."

SIXTH: This unincorporated association's address is P.O. Box 18773, Washington DC 20036.

SEVENTH: The number of organizers of this unincorporated association is five. The name and address of the organizers are David Keating, P.O. Box 18773, Washington DC 20036; Edward H. Crane, III, P.O. Box 18773, Washington DC 20036; Richard Marder, P.O. Box 18773, Washington DC 20036; Jon Coupal, P.O. Box 18773, Washington DC 20036; and Daniel J. Shapiro, P.O. Box 18773, Washington DC 20036.

DATE: October 24, 2007

Speech Now.Org

[Signature]

David Keating

Mark A. Mander

Richard Marder

Jon Coupal

General H. C. Christ

Edward H. Crane, III

Daniel J. Shapiro

**ARTICLES OF ORGANIZATION
SPEECH NOW.ORG**

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DATE: October 14 2007

Speech Now.Org

David Keating

Jon Coupal

Richard Marder

Edward H. Crane, III


Daniel J. Shapiro

**ARTICLES OF ORGANIZATION
SPEECH NOW.ORG**

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DATE: 10/24/07

Speech Now.Org

David Keating

Jon Coupal

Richard Marder

Edward H. Crane, III

Daniel J. Shapiro

c

STATEMENT OF APPOINTMENT

TO: The Mayor of the District of Columbia

Pursuant to D.C. Code Title 29, Chapter 971.10, this statement is to inform the Mayor that Speech Now.Org, an unincorporated nonprofit association, has appointed Angela Angelovska-Wilson, a bona fide resident of the District of Columbia, as an agent authorized to receive service of process.

- Name and address of the nonprofit association:

Speech Now.Org
P.O. Box 18773
Washington, DC 20036

- Federal tax identification number: 26-1288587

- D.C. business tax identification number: Pending

- Name and address of registered agent for service of process:

Angela Angelovska-Wilson
4913 43rd St. NW
Washington, DC 20016

- Statement of Appointment:

I, David Keating, President of Speech Now.org, appoint Angela Angelovska-Wilson as an agent of Speech Now.org authorized to receive service of process in the District of Columbia. By signing this statement, Angela Angelovska-Wilson acknowledges and accepts this appointment.

SIGNATURE: _____

David Keating,
President, Speech Now.org

DATE: _____

11/2/07

SIGNATURE: _____

Angela Angelovska-Wilson,
Registered Agent for Service of Process

DATE: _____

10/30/07

D

**Political Organization
Notice of Section 527 Status**

OMB No. 1545-1693

Part I General Information

1 Name of organization SPEECH NOW.ORG		Employer identification number 26 - 1288587
2 Mailing address (P.O. box or number, street, and room or suite number) PO BOX 18773		
City or town, state, and ZIP code WASHINGTON, DC 20036		
3 Check applicable box: <input checked="" type="checkbox"/> Initial notice <input type="checkbox"/> Amended notice <input type="checkbox"/> Final notice		
4a Date established 10/24/2007		4b Date of material change
5 E-mail address of organization no@email		
6a Name of custodian of records DAVID KEATING		6b Custodian's address PO BOX 18773 WASHINGTON, DC 20036
7a Name of contact person DAVID KEATING		7b Contact person's address PO BOX 18773 WASHINGTON, DC 20036
8 Business address of organization (if different from mailing address shown above). Number, street, and room or suite number PO BOX 18773		
City or town, state, and ZIP code WASHINGTON, DC 20036		
9a Election authority NONE		9b Election authority identification number

Part II Notification of Claim of Exemption From Filing Certain Forms (see instructions)

10a Is this organization claiming exemption from filing Form 8872, Political Organization Report of Contributions and Expenditures, as a qualified state or local political organization? Yes ☐ No ☒

10b If 'Yes,' list the state where the organization files reports:

11 Is this organization claiming exemption from filing Form 990 (or 990-EZ), Return of Organization Exempt from Income Tax, as a caucus or associations of state or local officials? Yes ☐ No ☒

Part III Purpose

12 Describe the purpose of the organization

The Association is an independent speech group of individuals who have assembled in order to promote and protect our First Amendment rights to free speech and the freedom to assemble. We operate independently of any candidate and expressly advocate to other people to vote for federal candidates who support these First Amendment rights and to vote against candidates who oppose such rights.

Part IV List of All Related Entities (see instructions)

13 Check if the organization has no related entities.....✓

14a Name of related entity	14b Relationship	14c Address
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Part V List of All Officers, Directors, and Highly Compensated Employees (see instructions)

15a Name	15b Title	15c Address
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DANIEL J SHAPIRO	MEMBER	PO BOX 18773 WASHINGTON, DC 20036
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EDWARD H CRANE III	MEMBER	PO BOX 18773 WASHINGTON, DC 20036
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RICHARD MARDER	MEMBER	PO BOX 18773 WASHINGTON, DC 20036
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JON COUPAL	VICE PRESIDENT AND SECRETARY	PO BOX 18773 WASHINGTON, DC 20036
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DAVID KEATING	PRESIDENT AND TREASURER	PO BOX 18773 WASHINGTON, DC 20036
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Under penalties of perjury, I declare that the organization named in Part I is to be treated as a tax-exempt organization described in section 527 of the Internal Revenue Code, and that I have examined this notice, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I am the official authorized to sign this report, and I am signing by entering my name below.

DAVID KEATING

10/24/2007

**Sign
Here**

Name of authorized official

Date

3 |

MEMBER ACTION BY WRITTEN CONSENT
IN LIEU OF AN ORGANIZATIONAL MEETING OF
SPEECH NOW.ORG

The undersigned, being the Members of Speech Now.Org (the "Association"), hereby adopt the following resolutions in lieu of a meeting.

BE IT RESOLVED, that the attached Articles of Organization are hereby adopted the Articles of Organization; and

BE IT FURTHER RESOLVED, that the attached bylaws hereby are adopted as the Bylaws of the Association; and

BE IT FURTHER RESOLVED, that the following persons are elected as officers of the Association:

David Keating, President and Treasurer
Jon Coupal, Vice President and Secretary

BE IT FURTHER RESOLVED, that each officer is authorized to obtain a taxpayer identification number from the Internal Revenue Service and use of a post office box from the U.S. Postal Service or a private vendor; and

BE IT FURTHER RESOLVED, that the officers of the Association hereby are authorized, empowered, and directed to establish and maintain accounts with such banks and investment companies as they deem appropriate, and to pay into or deposit therein, subject to the rules of such firms, funds of the Association, consisting of monies, checks, negotiable paper, and other instruments for the payment of money acceptable to the firm or bank; that such funds paid into or deposited in said accounts shall, subject to the rules of such banks, be withdrawn from said account by means of checks, drafts, credit or debit card payments, notes, orders, and receipts issued in the name of the Association and signed as authorized in the Bylaws for the transaction of business in connection with said accounts; and

BE IT FURTHER RESOLVED, that the Secretary of the Association hereby is authorized, empowered, and directed to file a copy of this consent action with the Minutes of proceedings of the Members of the Association; and

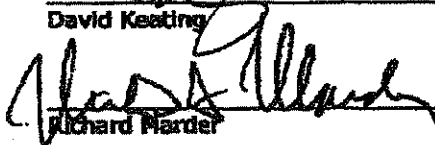
This Consent may be executed in one or more counterparts, all of which, taken together, shall constitute a single executed original.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of this 24th day of October 2007.

MEMBERS:

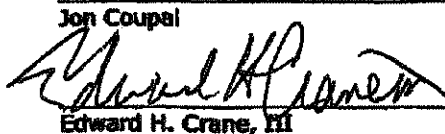


David Keating



Richard Harder

Jon Coupal



Edward H. Crane, III

Daniel J. Shapiro

**MEMBER ACTION BY WRITTEN CONSENT
IN LIEU OF AN ORGANIZATIONAL MEETING OF
SPEECH NOW.ORG**

The undersigned, being the Members of Speech Now.Org (the "Association"), hereby adopt the following resolutions in lieu of a meeting.

BE IT RESOLVED, that the attached Articles of Organization are hereby adopted the Articles of Organization; and

BE IT FURTHER RESOLVED, that the attached bylaws hereby are adopted as the Bylaws of the Association; and

BE IT FURTHER RESOLVED, that the following persons are elected as officers of the Association:

David Keating, President and Treasurer
Jon Coupal, Vice President and Secretary

BE IT FURTHER RESOLVED, that each officer is authorized to obtain a taxpayer identification number from the Internal Revenue Service and use of a post office box from the U.S. Postal Service or a private vendor; and

BE IT FURTHER RESOLVED, that the officers of the Association hereby are authorized, empowered, and directed to establish and maintain accounts with such banks and investment companies as they deem appropriate, and to pay into or deposit therein, subject to the rules of such firms, funds of the Association, consisting of monies, checks, negotiable paper, and other instruments for the payment of money acceptable to the firm or bank; that such funds paid into or deposited in said accounts shall, subject to the rules of such banks, be withdrawn from said account by means of checks, drafts, credit or debit card payments, notes, orders, and receipts issued in the name of the Association and signed as authorized in the Bylaws for the transaction of business in connection with said accounts; and

BE IT FURTHER RESOLVED, that the Secretary of the Association hereby is authorized, empowered, and directed to file a copy of this consent action with the Minutes of proceedings of the Members of the Association; and

This Consent may be executed in one or more counterparts, all of which, taken together, shall constitute a single executed original.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of this 12th day of October 2007.

MEMBERS:

David Keating

Jon Coupal

Richard Marder

Edward H. Crane, III

Daniel J. Shapiro
Daniel J. Shapiro

**MEMBER ACTION BY WRITTEN CONSENT
IN LIEU OF AN ORGANIZATIONAL MEETING OF
SPEECH NOW.ORG**

The undersigned, being the Members of Speech Now.Org (the "Association"), hereby adopt the following resolutions in lieu of a meeting.

BE IT RESOLVED, that the attached Articles of Organization are hereby adopted the Articles of Organization; and

BE IT FURTHER RESOLVED, that the attached bylaws hereby are adopted as the Bylaws of the Association; and

BE IT FURTHER RESOLVED, that the following persons are elected as officers of the Association:

David Keating, President and Treasurer
Jon Coupal, Vice President and Secretary

BE IT FURTHER RESOLVED, that each officer is authorized to obtain a taxpayer identification number from the Internal Revenue Service and use of a post office box from the U.S. Postal Service or a private vendor; and

BE IT FURTHER RESOLVED, that the officers of the Association hereby are authorized, empowered, and directed to establish and maintain accounts with such banks and investment companies as they deem appropriate, and to pay into or deposit therein, subject to the rules of such firms, funds of the Association, consisting of monies, checks, negotiable paper, and other instruments for the payment of money acceptable to the firm or bank; that such funds paid into or deposited in said accounts shall, subject to the rules of such banks, be withdrawn from said account by means of checks, drafts, credit or debit card payments, notes, orders, and receipts issued in the name of the Association and signed as authorized in the Bylaws for the transaction of business in connection with said accounts; and

BE IT FURTHER RESOLVED, that the Secretary of the Association hereby is authorized, empowered, and directed to file a copy of this consent action with the Minutes of proceedings of the Members of the Association; and

This Consent may be executed in one or more counterparts, all of which, taken together, shall constitute a single executed original.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of this 23rd day of October 2007.

MEMBERS:

David Keating



Jon Coupal

Richard Mander

Edward H. Crane, III

Daniel J. Shapiro

F

SPEECHNOW.ORG: BURTON SCRIPT

AUDIO:

Free speech is so important,
it's the First Amendment to the
Constitution.

But politicians like Dan Burton
don't like free speech.

Burton voted for a bill to restrict the speech of
many public interest groups.

Under this bill you could go to jail
for criticizing politicians.

Hey Dan Burton.
This is America, not Russia .

But we still have the right to vote.

Say no to Burton for Congress.

Say no to censorship.

Speech Now.org is responsible for the content
of this advertising.

VIDEO:

Montage of media, TV, newspaper,
fold in video of Constitution
CHYRON: Freedom of Speech

Burton footage slow mo on TV screen
Burning/disappearing Constitution
CHYRON: ID Burton, Opposes Free Speech.

TV screen turns off.
CHYRON: Restricting Free Speech

Focus on handcuffs, being led to cell.
CHYRON: Protecting Politicians.

Cell door closes behind cuffed person.
Burton pic

Voting footage.
CHYRON to chase VO.

Burton pic.
Say no to Burton for Congress
Say no to censorship

NOTE: chyron disclaimer as per regs.
Speech Now.org is responsible for the content
of this advertising. Paid for by Speech
Now.org. Not authorized by any candidate or
candidate's committee. www.Speech Now.org

SPEECHNOW.ORG: ALT: BURTON SCRIPT

AUDIO:

We've all seen the fight for
free speech around the world.

Lately, free speech has come under
attack right here in America.

Thanks to politicians like
Dan Burton.

Burton voted for a bill to
restrict the speech of
many public interest groups.

Under this bill you could go to jail
for criticizing politicians.

Our founding fathers made free speech
the First Amendment to the Constitution.

Dan Burton voted to restrict our rights.

Don't let him do it again.

SpeechNow.org is responsible for
the content of this advertising.

VIDEO:

Footage of Tiananmen Square on TV screen
Footage of Berlin Wall coming down
hold still of each on screen

Chyron: Free Speech Under Attack in
America.

Dissolve to Burton photo.
ID Burton

TV shuts off. Chyron: Silencing Free
Speech

Cuffed hands, led to cell, cell door closes

Show Constitution.

Constitution burns/dissolves. Burton photo, ID
him, CHYRON: Say NO to Burton for
Congress.

CHYRON: Say NO to Censorship

NOTE: chyron disclaimer as per regs.
Speech Now.org is responsible for the content
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Now.org. Not authorized by any candidate or
candidate's committee. www.Speech Now.org

Q

SPEECHNOW.ORG: LANDRIEU SCRIPT

AUDIO:

Free speech is so important,
it's the First Amendment to the
Constitution.

But politicians like Mary Landrieu
don't like free speech.

Landrieu voted for the law restricting
the speech of public interest groups.

People can now go to jail for violating
her law that protects politicians from
criticism.

Hey Mary Landrieu.
This is America, not Russia .

But we still have the right to vote.

Say no to Landrieu for Senate.

Say no to censorship.

Speech Now.org is responsible for the content
of this advertising.

VIDEO:

Montage of media, TV, newspaper,
fold in video of Constitution
CHYRON: Freedom of Speech

Landrieu footage slow mo on TV screen
Burning/disappearing Constitution
CHYRON: ID Landrieu, Opposes Free Speech.

TV screen turns off.
CHYRON: Restricting Free Speech

Focus on handcuffs, being led to cell.
CHYRON: Protecting Politicians.

Cell door closes behind cuffed person.
Landrieu pic

Voting footage.
CHYRON to chase VO.

Landrieu pic.
Say no to Landrieu for Senate
Say no to censorship

NOTE: chyron disclaimer as per regs.
Speech Now.org is responsible for the content
of this advertising. Paid for by Speech
Now.org. Not authorized by any candidate or
candidate's committee.www.Speech Now.org

SPEECHNOW.ORG: ALT: LANDRIEU SCRIPT

AUDIO:

We've all seen the fight for
free speech around the world.

Lately, free speech has come under
attack right here in America.

Thanks to politicians like
Mary Landrieu.

Landrieu helped pass the law restricting
the speech of many public interest groups.

Under this law you could go to jail
for criticizing politicians.

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.

SpeechNow.org is responsible for
the content of this advertising.

VIDEO:

Footage of Tiananmen Square on TV screen
Footage of Berlin Wall coming down
hold still of each on screen

Chyron: Free Speech Under Attack in
America.

Dissolve to Landrieu photo.
ID Landrieu

TV shuts off. Chyron: Silencing Free
Speech

Cuffed hands, led to cell, cell door closes

Show Constitution.

Constitution burns/dissolves. Landrieu photo,
ID her, CHYRON: Say NO to Landrieu for
Senate.

CHYRON: Say NO to Censorship

NOTE: chyron disclaimer as per regs.
Speech Now.org is responsible for the content
of this advertising. Paid for by Speech
Now.org. Not authorized by any candidate or
candidate's committee. www.Speech Now.org

H

thetrazgroup

26 South Maple Avenue * Suite 205
Marlton, New Jersey 08053
856.797.9970
edtraz@thetrazgroup.com

MEMORANDUM

TO: DAVID KEATING
FROM: ED TRAZ
DATE: NOVEMBER 15, 2007
RE: MEDIA COSTS FOR INDIANA & LOUISIANA

The following are costs for planning schedules for Speech Now. We are basing production costs at \$12,000 to produce 2 spots. I believe our actual costs will be closer to \$10,000 or \$11,000. Any savings can be rolled right into the buys.

INDIANA C.D. #5:

- Indianapolis television serves more than 80% of the 5th Congressional District. Costs for Indianapolis TV are:

- \$180 CPP
- \$56,500 will get a schedule of 313 GRPs on Indianapolis TV

LOUISIANA:

- New Orleans (reaches approx. 30% of Louisiana):

- \$150 CPP
- \$54,000 will get a schedule of 376 GRPs on New Orleans TV

- Baton Rouge (reaches approx. 19% of Louisiana-NOTE-I would pour what resource we have into the NO market.):

- \$70 CPP
- \$54,000 will get a schedule of 807 GRPs on Baton Rouge TV.

Declaration of David Keating

County of Montgomery)
)
State of Maryland) SS

I, David Keating, state the following:

1. I am a citizen of the United States, a resident of the State of Maryland, am over the age of 18 years, and am eligible to vote in an election for the office of President of the United States. I make this declaration in support of SpeechNow.org's request to the Federal Election Commission for an advisory opinion. This declaration is based on my personal knowledge of the facts stated herein.

2. I am President and Treasurer of SpeechNow.org, an independent speech group of individuals dedicated to promoting and protecting Americans' First Amendment rights to speech, association, and assembly.

3. In addition to my role as an officer and a member of the governing board of SpeechNow.org, I would also like to donate money to the group. I support SpeechNow.org's mission, and I believe that joining with other individuals who wish to support and operate SpeechNow.org will allow me to more effectively communicate my views on free speech with respect to candidates than if I were to attempt to speak alone.


4. I have read and understand SpeechNow.org's Bylaws. I understand that my donations will be used to fund speech, including advertisements that will advocate the election and/or defeat of candidates to federal office based upon their positions on freedom of speech and campaign finance laws. I understand that donations to SpeechNow.org will be spent according to the sole discretion of SpeechNow.org. I understand that SpeechNow.org is an independent group that will not make contributions to candidates, political party committees, or other political committees and will not

coordinate its activities with candidates, political party committees, or other political committees.

5. I would like to make donations totaling \$5500 this calendar year to SpeechNow.org to fund its speech activities but, as I understand it, federal election laws would prohibit me from making donations in this amount if SpeechNow.org were considered a "political committee." I also understand that SpeechNow.org cannot accept any donations of \$1000 or more per calendar year until its status under federal election laws is clear. Accordingly, until I know whether SpeechNow.org will be required to register as a political committee, or is not subject to contribution limits, I cannot make any donations to the organization that would cause its donations to equal or exceed \$1,000 per calendar year.

6. If SpeechNow.org is determined to be a political committee, or subject to contribution limits, I will not be able to donate more than \$5000 during any one year, despite my desire to do so. If it is determined that SpeechNow.org is not a political committee, or is if it is determined that SpeechNow.org is not subject to contribution limits of any kind, I will immediately donate to the organization whatever sum is necessary to raise my total donations to \$5500 for the current calendar year.

I declare under penalty of perjury that the foregoing is true and correct.



David Keating

11-11-07
Date

Declaration of Edward H. Crane, III

City of Washington)
)
District of Columbia) SS

Edward H. Crane, III, deposes and says:

1. I am a citizen of the United States, a resident of the Commonwealth of Virginia and am over the age of 18 years. I make this declaration in support of SpeechNow.org's request to the Federal Election Commission for an advisory opinion.

This affidavit is based on my personal knowledge of the facts stated herein.

2. I am a member of SpeechNow.org, an independent group of individuals dedicated to promoting and protecting Americans' First Amendment rights to speech, association, and assembly.

3. In addition to being a member of SpeechNow.org, I would also like to donate money to the group. I support SpeechNow.org's mission, and I believe that joining with other individuals who wish to support and operate SpeechNow.org will allow me to more effectively communicate my views on free speech and candidates than if I were to attempt to speak alone.

4. I have read and understand SpeechNow.org's Bylaws. I understand that my donations will be used to fund speech, including radio advertisements that will advocate the election and/or defeat of candidates to federal office based upon their positions on freedom of speech and campaign finance laws. I understand that donations to SpeechNow.org will be spent according to the sole discretion of SpeechNow.org. I understand that SpeechNow.org is an independent group that will not make contributions

to political candidates or parties and will not coordinate its activities with political candidates or parties.

5. I would like to make an immediate donation of \$6000 to SpeechNow.org to fund its speech activities, but, as I understand it, federal election laws would prohibit me from making a contribution in this amount if SpeechNow.org were considered a "political committee." I also understand that SpeechNow.org cannot accept any donations that would exceed \$1000 until its status under federal elections laws is clear. Accordingly, until I know whether SpeechNow.org will be required to register as a political committee I cannot make any contributions to the organization.

6. If SpeechNow.org is determined to be a political committee, I will not be able to donate more than \$5000 during any one year, despite my desire to do so. If it is determined that SpeechNow.org is not a political committee, I will donate \$6000 to the organization immediately.

I declare under penalty of perjury that the foregoing is true and correct.


Edward H. Crane III

11-2-07
Date

K

Affidavit of Fred M. Young, Jr.

County of Racine)
) SS
State of Wisconsin)

I, Fred M. Young, Jr., being first duly sworn, state the following:

1. I am a citizen of the United States, a resident of State of Wisconsin and am over the age of 18 years, and am eligible to vote in an election for the office of President of the United States. I make this affidavit in support of SpeechNow.org's request to the Federal Election Commission for an advisory opinion. This affidavit is based on my personal knowledge of the facts stated herein.

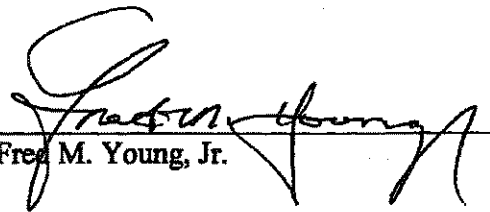
2. I would like to donate money to SpeechNow.org, an independent speech group of individuals dedicated to promoting and protecting Americans' First Amendment rights to speech, association, and assembly. I support SpeechNow.org's mission and believe that joining with other individuals who wish to support and operate SpeechNow.org will allow me to more effectively communicate my views on free speech and candidates than if I were to attempt to speak alone.

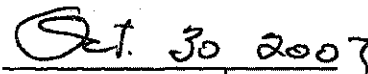
3. I have read and understand SpeechNow.org's Bylaws. I understand that my donations will be used to fund speech, including advertisements that will advocate the election and/or defeat of candidates to federal office based upon their positions on freedom of speech and campaign finance laws. I understand that donations to SpeechNow.org will be spent according to the sole discretion of SpeechNow.org. I understand that SpeechNow.org is an independent group that will not make contributions to candidates, political party committees, or other political committees and will not

coordinate its activities with candidates, political party committees, or other political committees.

4. I would like to make an immediate donation of \$110,000 to SpeechNow.org to fund its speech activities, but, as I understand it, federal election laws would prohibit me from making a contribution in this amount if SpeechNow.org were considered a "political committee." I understand that, if SpeechNow.org were a "political committee," my donation would count against and exceed the individual biennial aggregate limit I am permitted to give to all other political committees. I also understand that SpeechNow.org cannot accept any donations that would exceed \$1000 per calendar year until its status under federal election laws is clear. Accordingly, until I know whether SpeechNow.org will be required to register as a political committee, or is not subject to contribution limits, I cannot make any donations to the organization.

5. If SpeechNow.org is determined to be a political committee, I will not be able to donate more than \$5000 during any one calendar year, despite my desire to do so. If it is determined that SpeechNow.org is not a political committee, or is if it is determined that SpeechNow.org is not subject to contribution limits of any kind, I will donate \$110,000 to the organization immediately.


Fred M. Young, Jr.


Date

Sworn to before me and subscribed in my presence this 30th day of October,
2007, by Fred M. Young, Jr.

Jawa M. Herbert
Notary Public

10-30-2007
Date

My Commission expires: 7-10-2011.

Declaration of Richard A. Marder

County of Sacramento)
)
State of California) SS

I, Richard Marder, state the following:

I am a citizen of the United States, a resident of the State of California, am over the age of 18 years, and am eligible to vote in an election for the office of President of the United States. I make this declaration in support of SpeechNow.org's request to the Federal Election Commission for an advisory opinion. This declaration is based on my personal knowledge of the facts stated herein.

I am a member of the governing board of SpeechNow.org, an independent speech group of individuals dedicated to promoting and protecting Americans' First Amendment rights to speech, association, and assembly.

In addition to being a member of SpeechNow.org, I would also like to donate money to the group. I support SpeechNow.org's mission, and I believe that joining with other individuals who wish to support and operate SpeechNow.org will allow me to more effectively communicate my views on free speech with respect to candidates than if I were to attempt to speak alone.

I have read and understand SpeechNow.org's Bylaws. I understand that my donations will be used to fund speech, including advertisements that will advocate the election and/or

defeat of candidates to federal office based upon their positions on freedom of speech and campaign finance laws. I understand that donations to SpeechNow.org will be spent according to the sole discretion of SpeechNow.org. I understand that SpeechNow.org is an independent group that will not make contributions to candidates, political party committees, or other political committees and will not coordinate its activities with candidates, political party committees, or other political committees.

I would like to make an immediate donation of \$5500 to SpeechNow.org to fund its speech activities but, as I understand it, federal election laws would prohibit me from making a donation in this amount if SpeechNow.org were considered a "political committee." I also understand that SpeechNow.org cannot accept any donations of \$1,000 or more per calendar year until its status under federal elections laws is clear. Accordingly, until I know whether SpeechNow.org will be required to register as a political committee, or is not subject to contribution limits, I cannot make any donations to the organization that would cause its donations to equal or exceed \$1,000 per calendar year.

If SpeechNow.org is determined to be a political committee, or subject to contribution limits, I will not be able to donate more than \$5000 during any one year, despite my desire to do so. If it is determined that SpeechNow.org is not a political committee, or is if it is determined that SpeechNow.org is not subject to contribution limits of any kind, I will donate \$5500 to the organization immediately.

I declare under penalty of perjury that the foregoing is true and correct.

Richard A. Marder

Richard A. Marder

11-15-2007

Date

M

Center for Competitive Politics

STEPHEN M. HOERSTING
VICE PRESIDENT

Institute for Justice

STEVEN M. SIMPSON
SENIOR ATTORNEY

November 27, 2007

Mr. Ron B. Katwan, Assistant General Counsel
Ms. Esa L. Sferra, Attorney
FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

Re: SpeechNow.org Advisory Opinion Request

Dear Mr. Katwan and Ms. Sferra:

In response to your request by telephone yesterday afternoon, I have enclosed a proposed written solicitation for SpeechNow.org.

Mr. Keating of SpeechNow.org asked me to reiterate that the written solicitation is a draft, meaning it will not be used, mailed, or sent until the Commission provides further guidance.

You indicated that your only request was for a sample written solicitation. If, however, you find that you have other questions or seek additional information, please do not hesitate to contact me.

Very truly yours,

/s/ S.M. Hoersting

Steve Hoersting
CENTER for COMPETITIVE POLITICS

cc: Steve Simpson
INSTITUTE FOR JUSTICE

1800 Diagonal Road, Suite 600, Alexandria, Virginia 22314
www.campaignfreedom.org

901 North Glebe Road, Suite 900, Arlington, Virginia 22203
www.ij.org

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2007 NOV 27 A 11:43

Draft Solicitation for Speech Now.org

The First Amendment to the Constitution says "Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble."

What could be clearer than that?

Still, Congress ignores our most precious right. Politicians who wish to restrict pesky citizen groups have passed a thicket of laws suppressing our free speech rights.

Things have gotten so bad that a group of citizens looking to speak out about a politician's voting record should consult a lawyer first.

One example of speech censorship is the McCain Feingold law that made it illegal for most nonprofit groups to mention the name of a candidate in a TV ad within 60 days of an election. A recent Court decision loosened that restriction somewhat, but left a confusing set of regulations to navigate in order to avoid possible criminal charges of illegal speech.

The assault on the First Amendment is bipartisan and it continues.

The real motivation for passage of so-called campaign finance "reforms" was to limit criticism of members of Congress and protect incumbents at reelection time.

House Republicans passed a bill in 2006 that would have extended the McCain Feingold restrictions on TV ads to a year-round ban for some nonprofit groups. As columnist George Will reported, "[Rep.] Candice Miller (R-Mich.) said that [the bill] would combat 'nauseating ugliness, negativity and hyperpartisanship.' Oh, so that is what the First Amendment means: Congress shall make no law abridging freedom of speech unless speech annoys politicians."

Democrats criticized this GOP bill in 2006, but key Democratic leaders now appear to support it.

In the current Congress, the top Republican on the Senate Judiciary Committee teamed up with the Democratic Senatorial Campaign Committee chairman to introduce a constitutional amendment to dismantle the First Amendment and allow unlimited regulation of political speech by Congress and state legislatures.

Political speech censorship by politicians has to stop. We need free speech now.

The best way to stop the censorship is to speak in a language that all politicians understand and to speak out when politicians and the voters are most likely to pay attention. That's election time.

We need to tell our fellow Americans who supports, and who opposes, free speech and the First Amendment. We need to defeat some candidates who are against free speech and elect the ones who support the First Amendment.

That will take money. A lot of it.

Speech Now.org is an independent speech group of individuals dedicated to promoting and protecting our First Amendment rights to free speech and for the freedom to assemble. We operate independently of any candidate and expressly advocate to other people to vote for federal candidates who support these First Amendment rights and to vote against candidates who oppose such rights.

We believe that working together as citizens in an election environment is the best way to liberate speech from the grip of politicians who have successfully passed laws aimed at preserving their power by squelching criticism.

We have adopted rigorous restrictions on our activities to eliminate even the appearance of corruption of candidates. We will never give a cent to politicians and our advertising will be strictly independent. Our charter also guarantees our independence from parties, candidates and special interest money. Finally, our charter also ensures that donors give solely because they believe in what we do, not because of a hotel discount for members.

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