

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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

**DECLARATION OF ANTHONY D. ROMERO**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the executive director of the American Civil Liberties Union (“ACLU”), a position I have held since September 2001. In that capacity, I am responsible for managing the operations of the entire organization – including its legislative activities. My responsibilities also include raising funds for the organization through membership and other fundraising activities.

2. The ACLU is a nationwide, non-profit, non-partisan organization with approximately 400,000 members dedicated to the principles of liberty and equality embodied in the Constitution. It is also a tax-exempt organization under § 510(c)(4) of the Internal Revenue Code. Membership dues finance the organization's activities. The ACLU is incorporated in Washington, D.C.

3. I have previously submitted a sworn declaration in this case that is included in the record. Romero Declaration 3 PCS: ACLU 3. In addition to providing membership and organizational information about the ACLU in that declaration, I described the mission and work of the ACLU, including its extensive public education and legislative

program. As our membership has grown, from 275,000 to over 400,000 members since 9/11/01, our program has greatly expanded. Thus, while our activities have historically been dependent on earned media coverage of the positions staked out by the ACLU, our growing membership has allowed the organization to increase its paid advertising significantly. Accordingly, we have re-deployed our resources to allow for print and broadcast advertising. The reasons for this reallocation of resources are explained in my earlier statement. Romero Declaration ¶ 8: 3 PCS, ACLU 3.

4. The adoption of Title II of the Bipartisan Reform Act threatened to constrict the ability of the ACLU to participate in the public debate about numerous issues that are critical to the organization and its constituents. The broad sweep of the 30/60 day rule prohibiting broadcast communications that merely refer to a candidate virtually foreclosed any discussion of public issues that sought to hold federal candidates accountable for their actions. The adoption of the fall back definition as modified by this Court in its decision of May 2, 2003 potentially restricts even more speech than the provision that was enjoined by the Court. The new definition of electioneering upheld by the Court prohibits any broadcast communication by the ACLU *at any time* that can be construed as promoting, supporting, opposing, or attacking a candidate. I am concerned that any ACLU advertisement which is critical of a member of Congress, or can be construed as critical of a member of Congress, may provide the basis for federal prosecution. Yet, it is more important now than ever that issues involving the unprecedented assault on civil liberties following the 9/11 tragedy be fully discussed and that candidates be held accountable for their actions. The rush to adopt regressive post 9/11 legislation poses the single greatest threat to civil liberties since the McCarthy Era

and it is not possible to discuss these issues or influence legislation in a meaningful way without identifying candidate positions.

5. Congress passed the USA PATRIOT Act immediately after September 11, 2001. The Act gave new sweeping powers to the federal government to conduct investigations and surveillance inside the United States. The Act was passed with almost no debate and before the ACLU and others could organize any effective opposition.

6. According to published reports, the Justice Department is now contemplating new legislation, the Domestic Security Enhancement Act (Patriot Act II), that would further expand the government's surveillance powers and further diminish the constitutional checks and balances on law enforcement. The ACLU has already expressed its determination to oppose Patriot Act II if it is introduced. Because of the critical civil liberties issues at stake, it is vital that the ACLU remain free to use all the advocacy tools at its disposal. This may well include, if we deem it appropriate as part of our legislative strategy, radio and broadcast ads targeted at key legislative figures.

7. While it is impossible to predict the timing or course of that legislative debate, it is certainly possible, and perhaps even probable, that it will take place before the Supreme Court can render a final decision on the constitutionality of the B.C.R.A. In the interim, the ACLU is facing the prospect of criminal penalties if the content of any ad we choose to broadcast is construed as supporting, opposing, promoting, or attacking a candidate for federal office. Given that risk, the ability of the ACLU to speak out on matters that go to the very core of the ACLU's mission will necessarily be hampered unless the stay is granted.

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

Executed on this 9th day of May 2003.

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Anthony D. Romero