No. 02-1740

In the Supreme Court of the United States

VICTORIA JACKSON GRAY ADAMS, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

LAWRENCE H. NORTON
General Counsel

RICHARD B. BADER
Associate General Counsel

STEPHEN E. HERSHKOWITZ
DAVID KOLKER
Assistant General Counsels
Federal Election Commission
Washington, D.C. 20463

THEODORE B. OLSON
Solicitor General
Counsel of Record

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

PAUL D. CLEMENT
Deputy Solicitor General

MALCOLM L. STEWART
GREGORY G. GARRE
Assistants to the Solicitor General

DOUGLAS N. LETTER
JAMES J. GILLIGAN
MICHAEL S. RAAB
DANA J. MARTIN
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514–2217

QUESTIONS PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The questions presented by this appeal are as follows:

1. Whether appellants have standing to challenge the increased contribution limits established by Sections 304, 307, and 319 of BCRA.

2. Whether the increased contribution limits established by BCRA are constitutional.

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OPINIONS BELOW

The opinions of the district court are not yet reported.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notice of appeal (J.S. App. 1a-2a) was filed on May 5, 2003. Appellants' jurisdictional statement was filed on May 29, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign

[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676.

Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. The district court also held that the plaintiffs' challenges to certain BCRA provisions are not justiciable in this suit. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

Appellants Victoria Jackson Gray Adams, et al., challenged certain BCRA provisions that *increased* the pre-existing limits on individual contributions to candidates for federal office. Before BCRA was enacted, individuals were permitted to contribute up to $1000 per election to any candidate for federal office. 2 U.S.C. 441a(a)(1) (2000). BCRA increased that limit to $2000 per election to any federal candidate. See BCRA § 307(a)(1) (116 Stat. 102). That limit is indexed for inflation. See BCRA § 307(d) (116 Stat. 103); Henderson op. 339. In addition, Sections 304 and 319 of BCRA establish increased contribution limits when a candidate faces an opponent who expends substantial personal funds, beyond a statutory threshold amount, on his own campaign. See 116 Stat. 97-100, 109-112.

In the district court, appellants contended that the increased contribution limits established by Sections 304, 307, and 319 of BCRA violate the equal protection component of the Fifth Amendment by preventing non-

wealthy voters and candidates from participating on an equal basis in the electoral process. See Henderson op. 339. The district court dismissed those claims, holding that appellants lack standing to sue. See Per Curiam op. 10-11, 15; Henderson op. 338-342. Appellants now challenge that ruling. As of this date, 11 other jurisdictional statements arising out of the same district court judgment are pending before this Court. See *Mitch McConnell, United States Senator* v. *Federal Election Commission*, No. 02-1674; *National Rifle Association* v. *Federal Election Commission*, No. 02-1675; *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676 (see note 1, *supra*); *John McCain, United States Senator* v. *Mitch McConnell, United States Senator*, No. 02-1702; *Republican National Committee* v. *Federal Election Commission*, No. 02-1727; *National Right to Life Committee, Inc.* v. *Federal Election Commission*, No. 02-1733; *American Civil Liberties Union* v. *Federal Election Commission*, No. 02-1734; *Congressman Ron Paul* v. *Federal Election Commission*, No. 02-1747; *California Democratic Party* v. *Federal Election Commission*, No. 02-1753; *AFL-CIO* v. *Federal Election Commission*, No. 02-1755; *Chamber of Commerce* v. *Federal Election Commission*, No. 02-1756.

DISCUSSION

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4) of BCRA, this Court is directed "to advance on the docket and to expedite to the greatest possible extent the disposition of the * * * appeal." 116 Stat. 114. In addition to filing our own jurisdictional statement (see

note 1, *supra*) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were the subject of appellants' constitutional challenge. Essentially for the reasons stated by Judge Henderson (see Henderson op. 340-342), appellants clearly lack standing to challenge the BCRA provisions that increase the pre-existing limits on individual contributions to candidates for federal office. In order to facilitate expeditious resolution of this case in accordance with the statutory mandate, however, appellees do not seek dismissal of the appeal, or summary affirmance of the district court's judgment, with respect to the court's disposition of appellants' claims.[2]

[2] On May 23, 2003, appellees filed a motion for expedited briefing schedule applicable to all then-pending appeals (see p. 3, *supra*) from the district court's judgment in this case. That briefing schedule should also be made applicable to the instant appeal.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

PAUL D. CLEMENT
Deputy Solicitor General

MALCOLM L. STEWART
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