No. 05-_____

In the Supreme Court of the United States

THE CHRISTIAN CIVIC LEAGUE OF MAINE, INC., ***Appellant***
v.
FEDERAL ELECTION COMMISSION, ***Appellee***
and
JOHN MCCAIN, RUSSELL FEINGOLD, CHRISTOPHER SHAYS, MARTIN MEEHAN, AND TOM ALLEN, ***Intervenor-Appellees.***

Appeal from Civil No. 06-0614 (JWR, LFO, CKK) in the
United States District Court for the District of Columbia

Motion To Expedite And Consolidate Briefing

The Christian Civic League of Maine, Inc. (the "League") moves this Court to expedite consideration of its appeal of the district court's denial of the League's motion for preliminary injunction and to consolidate the *Jurisdictional Statement* and *Opposition* thereto with the briefs on the merits. The League has contemporaneously filed its *Jurisdictional Statement*, and as more fully shown therein, the League will be deprived, beginning May 14, 2006, of its ability to broadcast grassroots lobbying communications urging Maine's citizens to call their two Senators and ask them to support the federal Marriage Protection Amendment. A vote on the federal Marriage Protection Amendment is anticipated on June 5, 2006.

In *McConnell v. FEC*, 540 U.S. 93 (2003), this Court facially upheld § 203 of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), entitled "prohibition of corporate and labor union disbursements for electioneering communications" ("the prohibition"). In *Wisconsin Right to Life v. FEC* ("*WRTL"*), 126 S. Ct. 1016 (2006) (per curiam), this Court held that the prohibition may be challenged as applied to grassroots lobbying communications and remanded the case to the district court to consider the constitutional challenge "in the first instance." *Id.* at 1018. Instead of deciding *WRTL* on existing cross-motions for summary judgment, the district court set a schedule for discovery and new summary judgment briefing, with oral argument scheduled for mid-September, 2006.

The present case also presents a challenge to the prohibition as applied to grassroots lobbying. The League has been running an advertisement on a constitutional amendment pending in the U.S. Senate, which the League believes will receive a Senate vote on or about June 5, 2006. The ad asks hearers to contact their Senators to support the amendment and mentions the names of both Senators. One of them, Sen. Snowe, is running unopposed in a June 13, 2006 primary, so an electioneering communication prohibition period begins on May 14. The League only wants to run the ad until the vote occurs and not thereafter.

BCRA § 403(a)(4) requires as to any "final decision" by a trial court, advancement on the docket and expedition "to the greatest possible extent."[1] While that

[1]Sec. 403. Judicial Review
(a) Special Rules for Actions Brought on Constitutional Grounds. –

provision does not require expedition of interlocutory appeals,[2] the League respectfully requests the same expedition as to the appeal of the denial of the preliminary injunction motion. Advancement on the docket and expedition are vitally important in this matter because with regard to the League's advertisement, which is subject to the prohibition

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> If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:
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> (1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.
>
> (2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and to the Secretary of the Senate.
>
> (3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by filing a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.
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> (4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

[2]The 3-judge panel required by BCRA § 403(a)(1) has been convened pursuant to 28 U.S.C. § 2284 and rendered the decision the League is appealing. BCRA § 403(a)(3) provides for appeals of "final decision(s)" of the 3-judge panel. However, interlocutory appeals are governed by 28 U.S.C. § 1253 which provides:

> Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and a hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by an Act of Congress to be heard by a district court of three judges.

In *Wisconsin Right to Life, Inc., v. FEC*, No. 04-5292, slip op at 1-2 (DC Cir. Sept. 1, 2004) (per curiam), the United States District Court for the District of Columbia Circuit, the only other court that arguably has jurisdiction over this appeal, held, in a substantially similar case, that it did not have jurisdiction on the basis of the jurisdictional provisions of the BCRA and 28 U.S.C. § 1253. Accordingly, the District of Columbia Circuit dismissed that interlocutory appeal. *Id.*

beginning May 14, 2006, through the date of the anticipated vote, the denial of the preliminary injunction is the equivalent of a final judgment.

The League has been attempting to obtain the requested injunctive relief since April 3, 2006. The grassroots lobbying advertisement the League is funding becomes prohibited on May 14, 2006, and remains prohibited through the Senate's anticipated vote on or about June 5, 2006.[3] Without the protection of a preliminary injunction barring enforcement of 2 U.S.C. § 441b(a)-(b) as applied to the advertisement, the League will lose its opportunity to broadcast ads in the days leading up to the Senate's anticipated June 5, 2006 vote on the federal Marriage Protection Amendment. The League has only a limited time to lobby its fellow citizens to join it in encouraging Maine's Senators to vote in favor of the passage of the federal Marriage Protection Amendment. A lost opportunity now is an opportunity lost forever.

This Court is the only court in the United States that can address the matter with certainty and its guidance on this issue is greatly needed. This Court is familiar with the issues raised in this case as they are substantially similar to those raised in *WRTL* and in *McConnell*. The important issue of whether BCRA's electioneering communications prohibition may be constitutionally applied to grassroots lobbying advertisements is one

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[3]The advertisement is actually prohibited through the date of Maine's primary election, June 13, 2006. However, since the Senate's vote on the federal Marriage Protection Amendment is anticipated to be held on June 5, 2006, there is no need to run the grassroots lobbying advertisement after that date unless the vote is postponed or a successive vote is scheduled immediately thereafter.

crying out for resolution. Further, it is important that this Court act quickly because we are in the midst of the 2006 primary election season and the general election is fast approaching.

Because of the short period of time in which to act, the League respectfully requests that the Court consider its *Jurisdictional Statement* and the Defendants' *Opposition* thereto as briefs on the merits.

Further, in light of the expedition that this matter requires, the League respectfully proposes the following schedule in lieu of that contained in Rules 18.6 and 18.7:

- Upon the placing of this case on this Court's docket, the FEC will have until noon on Wednesday, May 17, 2006, in which to file and serve its *Opposition*.
- The League will file its reply by close of business on Friday, May 19, 2006.

Finally, the League respectfully requests that the Court set this matter for oral argument as expeditiously as possible.

Because the issues in this case are straightforward and have been thoroughly briefed below, this briefing schedule followed by an expeditious oral argument should not be burdensome to the FEC.

Dated May 12, 2006

Respectfully submitted,

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