SUPREME COURT OF THE UNITED STATES

Nos. 02–1674, 02–1675, 02–1676, 02–1702, 02–1727, 02–1733, 02–1734, 02–1740, 02–1747, 02–1753, 02–1755, AND 02–1756

MITCH MCCONNELL, UNITED STATES SENATOR, ET AL., APPELLANTS
02–1674 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS
02–1675 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

FEDERAL ELECTION COMMISSION, ET AL., APPELLANTS
02–1676 *v.*
MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.;

JOHN MCCAIN, UNITED STATES SENATOR, ET AL., APPELLANTS
02–1702 *v.*
MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.;

REPUBLICAN NATIONAL COMMITTEE, ET AL., APPELLANTS
02–1727 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

NATIONAL RIGHT TO LIFE COMMITTEE, INC., ET AL., APPELLANTS
02–1733 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

AMERICAN CIVIL LIBERTIES UNION, APPELLANTS
02–1734 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

VICTORIA JACKSON GRAY ADAMS, ET AL., APPELLANTS
02–1740 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

RON PAUL, UNITED STATES CONGRESSMAN, ET AL., APPELLANTS
02–1747 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

CALIFORNIA DEMOCRATIC PARTY, ET AL., APPELLANTS
02–1753 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL., APPELLANTS
02–1755 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., APPELLANTS
02–1756 *v.*
FEDERAL ELECTION COMMISSION, ET AL.

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

[December 10, 2003]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court with respect to BCRA Titles III and IV.*

This opinion addresses issues involving miscellaneous Title III and IV provisions of the Bipartisan Campaign

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*JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE SOUTER join this opinion in its entirety. JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER join this opinion, except with respect to BCRA §305. JUSTICE THOMAS joins this opinion with respect to BCRA §§304, 305, 307, 316, 319, and 403(b).

Reform Act of 2002 (BCRA), 116 Stat. 81. For the reasons discussed below, we affirm the judgment of the District Court with respect to these provisions.

BCRA §305

BCRA §305 amends the federal Communications Act of 1934 (Communications Act) §315(b), 48 Stat. 1088, as amended, 86 Stat. 4, which requires that, 45 days before a primary or 60 days before a general election, broadcast stations must sell a qualified candidate the "lowest unit charge of the station for the same class and amount of time for the same period," 47 U. S. C. §315(b). Section 305's amendment, in turn, denies a candidate the benefit of that lowest unit charge unless the candidate "provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office," or the candidate, in the manner prescribed in BCRA §305(a)(3), clearly identifies herself at the end of the broadcast and states that she approves of the broadcast. 47 U. S. C. A. §§315(b)(2)(A), (C) (Supp. 2003).

The McConnell plaintiffs challenge §305. They argue that Senator McConnell's testimony that he plans to run advertisements critical of his opponents in the future and that he had run them in the past is sufficient to establish standing. We think not.

Article III of the Constitution limits the "judicial power" to the resolution of "cases" and "controversies." One element of the "bedrock" case-or-controversy requirement is that plaintiffs must establish that they have standing to sue. *Raines* v. *Byrd,* 521 U. S. 811, 818 (1997). On many occasions, we have reiterated the three requirements that constitute the "'irreducible constitutional minimum'" of standing. *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens,* 529 U. S. 765, 771 (2000). First, a

plaintiff must demonstrate an "injury in fact," which is "concrete," "distinct and palpable," and "actual or imminent." *Whitmore* v. *Arkansas,* 495 U. S. 149, 155 (1990) (internal quotation marks and citation omitted). Second, a plaintiff must establish "a causal connection between the injury and the conduct complained of—the injury has to be 'fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] some third party not before the court.'" *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 560–561 (1992) (quoting *Simon* v. *Eastern Ky. Welfare Rights Organization,* 426 U. S. 26, 41–42 (1976)). Third, a plaintiff must show the "'substantial likelihood' that the requested relief will remedy the alleged injury in fact." *Stevens, supra,* at 771.

As noted above, §305 amended the Communication Act's requirements with respect to the lowest unit charge for broadcasting time. But this price is not available to qualified candidates until 45 days before a primary election or 60 days before a general election. Because Senator McConnell's current term does not expire until 2009, the earliest day he could be affected by §305 is 45 days before the Republican primary election in 2008. This alleged injury in fact is too remote temporally to satisfy Article III standing. See *Whitmore, supra,* at 158 ("A threatened injury must be *certainly impending* to constitute injury in fact" (internal quotation marks and citations omitted)); see also *Los Angeles* v. *Lyons,* 461 U. S. 95, 102 (1983) (A plaintiff seeking injunctive relief must show he is "'immediately in danger of sustaining some direct injury' as [a] result" of the challenged conduct). Because we hold that the McConnell plaintiffs lack standing to challenge §305, we affirm the District Court's dismissal of the challenge to BCRA §305.

BCRA §307

BCRA §307, which amends §315(a)(1) of the Federal

Election Campaign Act of 1971 (FECA), 86 Stat. 3, as added, 90 Stat. 487, increases and indexes for inflation certain FECA contribution limits. The Adams and Paul plaintiffs challenge §307 in this Court. Both groups contend that they have standing to sue. Again, we disagree.

The Adams plaintiffs, a group consisting of voters, organizations representing voters, and candidates, allege two injuries, and argue each is legally cognizable, "as established by case law outlawing electoral discrimination based on economic status . . . and upholding the right to an equally meaningful vote . . . ." Brief for Appellants Adams et al. in No. 02–1740, p. 31.

First, they assert that the increases in hard money limits enacted by §307 deprive them of an equal ability to participate in the election process based on their economic status. But, to satisfy our standing requirements, a plaintiff's alleged injury must be an invasion of a concrete and particularized legally protected interest. *Lujan, supra*, at 560. We have noted that "[a]lthough standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal, . . . it often turns on the nature and source of the claim asserted." *Warth* v. *Seldin,* 422 U. S. 490, 500 (1975) (internal quotation marks and citations omitted). We have never recognized a legal right comparable to the broad and diffuse injury asserted by the Adams plaintiffs. Their reliance on this Court's voting rights cases is misplaced. They rely on cases requiring nondiscriminatory access to the ballot and a single, equal vote for each voter. See, *e.g.*, *Lubin* v. *Panish,* 415 U. S. 709 (1974) (invalidating a statute requiring a ballot-access fee fixed at a percentage of the salary for the office sought because it unconstitutionally burdened the right to vote); *Harper* v. *Virginia Bd. of Elections,* 383 U. S. 663, 666–668 (1966) (invalidating a state poll tax because it effectively denied the right to vote).

None of these plaintiffs claims a denial of equal access

to the ballot or the right to vote. Instead, the plaintiffs allege a curtailment of the scope of their participation in the electoral process. But we have noted that "[p]olitical 'free trade' does not necessarily require that all who participate in the political marketplace do so with exactly equal resources." *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.,* 479 U. S. 238, 257 (1986); see also *Buckley* v. *Valeo,* 424 U. S. 1, 48 (1976) *(per curiam)* (rejecting the asserted government interest of "equalizing the relative ability of individuals and groups to influence the outcome of elections" to justify the burden on speech presented by expenditure limits). This claim of injury by the Adams plaintiffs is, therefore, not to a legally cognizable right.

Second, the Adams plaintiffs-candidates contend that they have suffered a competitive injury. Their candidates "do not wish to solicit or accept large campaign contributions as permitted by BCRA" because "[t]hey believe such contributions create the appearance of unequal access and influence." Adams Complaint ¶53. As a result, they claim that BCRA §307 puts them at a "fundraising disadvantage," making it more difficult for them to compete in elections. See *id.*, ¶56.

The second claimed injury is based on the same premise as the first: BCRA §307's increased hard money limits allow plaintiffs-candidates' opponents to raise more money, and, consequently, the plaintiffs-candidates' ability to compete or participate in the electoral process is diminished. But they cannot show that their alleged injury is "fairly traceable" to BCRA §307. See *Lujan, supra,* at 562. Their alleged inability to compete stems not from the operation of §307, but from their own personal "wish" not to solicit or accept large contributions, *i.e.*, their personal choice. Accordingly, the Adams plaintiffs fail here to allege an injury in fact that is "fairly traceable" to BCRA.

The Paul plaintiffs maintain that BCRA §307 violates the Freedom of Press Clause of the First Amendment. They contend that their political campaigns and public interest advocacy involve traditional press activities and that, therefore, they are protected by the First Amendment's guarantee of the freedom of press. The Paul plaintiffs argue that the contribution limits imposed by BCRA §307, together with the individual and political action committee contribution limitations of FECA §315, impose unconstitutional editorial control upon candidates and their campaigns. The Paul plaintiffs argue that by imposing economic burdens upon them, but not upon the institutional media, see 2 U. S. C. §431(9)(B)(i) (exempting "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate" from the definition of expenditure), BCRA §307 and FECA §315 violate the freedom of the press.

The Paul plaintiffs cannot show the "'substantial likelihood' that the requested relief will remedy [their] alleged injury in fact," *Stevens*, 529 U. S., at 771. The relief the Paul plaintiffs seek is for this Court to strike down the contribution limits, removing the alleged disparate editorial controls and economic burdens imposed on them. But §307 merely increased and indexed for inflation certain FECA contribution limits. This Court has no power to adjudicate a challenge to the FECA limits in this case because challenges to the constitutionality of FECA provisions are subject to direct review before an appropriate en banc court of appeals, as provided in 2 U. S. C. §437h, not in the three-judge District Court convened pursuant to BCRA §403(a). Although the Court has jurisdiction to hear a challenge to §307, if the Court were to strike down the increases and indexes established by BCRA §307, it

would not remedy the Paul plaintiffs' alleged injury because both the limitations imposed by FECA and the exemption for news media would remain unchanged. A ruling in the Paul plaintiffs' favor, therefore, would not redress their alleged injury, and they accordingly lack standing. See *Steel Co.* v. *Citizens for Better Environment,* 523 U. S. 83, 105–110 (1998).

For the reasons above, we affirm the District Court's dismissal of the Adams and Paul plaintiffs' challenges to BCRA §307 for lack of standing.

BCRA §§304, 316, and 319

BCRA §§304 and 316, which amend FECA §315, and BCRA §319, which adds FECA §315A, collectively known as the "millionaire provisions," provide for a series of staggered increases in otherwise applicable contribution-to-candidate limits if the candidate's opponent spends a triggering amount of his personal funds.[1] The provisions also eliminate the coordinated expenditure limits in certain circumstances.[2]

In their challenge to the millionaire provisions, the Adams plaintiffs allege the same injuries that they alleged with regard to BCRA §307. For the reasons discussed above, they fail to allege a cognizable injury that is "fairly traceable" to BCRA. Additionally, as the District Court noted, "none of the Adams plaintiffs is a candidate in an election affected by the millionaire provisions—*i.e.,* one in which an opponent chooses to spend the triggering amount

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[1] To qualify for increased candidate contribution limits, the "opposition personal funds amount," which depends on expenditures by a candidate and her self-financed opponent, must exceed a "threshold amount." 2 U. S. C. A. §§441a(i)(1)(D), 441a–1(a)(2)(A) (Supp. 2003).

[2] If the "opposition personal funds amount" is at least 10 times the "threshold amount" in a Senate race, or exceeds $350,000 in a House of Representatives race, the coordinated party expenditure limits do not apply. §§441a(i)(1)(C)(iii), 441a–1(a)(1)(C).

in his own funds—and it would be purely 'conjectural' for the court to assume that any plaintiff ever will be." 251 F. Supp. 2d 176, 431 (DC 2003) (case below) (Henderson, J., concurring in judgment in part and dissenting in part) (quoting *Lujan*, 504 U. S., at 560). We affirm the District Court's dismissal of the Adams plaintiffs' challenge to the millionaire provisions for lack of standing.

BCRA §311

FECA §318 requires that certain communications "authorized" by a candidate or his political committee clearly identify the candidate or committee or, if not so authorized, identify the payor and announce the lack of authorization. 2 U. S. C. A. §441d (main ed. and Supp. 2003). BCRA §311 makes several amendments to FECA §318, among them the expansion of this identification regime to include disbursements for "electioneering communications" as defined in BCRA §201.

The McConnell and Chamber of Commerce plaintiffs challenge BCRA §311 by simply noting that §311, along with all of the "electioneering communications" provisions of BCRA, is unconstitutional. We disagree. We think BCRA §311's inclusion of electioneering communications in the FECA §318 disclosure regime bears a sufficient relationship to the important governmental interest of "shed[ding] the light of publicity" on campaign financing. *Buckley*, 424 U. S., at 81. Assuming as we must that FECA §318 is valid to begin with, and that FECA §318 is valid as amended by BCRA §311's amendments other than the inclusion of electioneering communications, the challenged inclusion of electioneering communications is not itself unconstitutional. We affirm the District Court's decision upholding §311's expansion of FECA §318(a) to include disclosure of disbursements for electioneering communications.

BCRA §318

BCRA §318, which adds FECA §324, prohibits individuals "17 years old or younger" from making contributions to candidates and contributions or donations to political parties. 2 U. S. C. A. §441k (Supp. 2003). The McConnell and Echols plaintiffs challenge the provision; they argue that §318 violates the First Amendment rights of minors. We agree.

Minors enjoy the protection of the First Amendment. See, *e.g.*, *Tinker* v. *Des Moines Independent Community School Dist.,* 393 U. S. 503, 511–513 (1969). Limitations on the amount that an individual may contribute to a candidate or political committee impinge on the protected freedoms of expression and association. See *Buckley, supra,* at 20–22. When the Government burdens the right to contribute, we apply heightened scrutiny. See *ante*, at 25–26 (joint opinion of STEVENS and O'CONNOR, JJ.) ("[A] contribution limit involving even 'significant interference' with associational rights is nevertheless valid if it satisfies the 'lesser demand' of being 'closely drawn' to match a 'sufficiently important interest.'" (quoting *Federal Election Comm'n* v. *Beaumont,* 539 U. S. ___, ___ (2003) (slip op., at 15)). We ask whether there is a "sufficiently important interest" and whether the statute is "closely drawn" to avoid unnecessary abridgment of First Amendment freedoms. *Ante,* at 25–26; *Buckley*, 424 U. S., at 25. The Government asserts that the provision protects against corruption by conduit; that is, donations by parents through their minor children to circumvent contribution limits applicable to the parents. But the Government offers scant evidence of this form of evasion.[3] Perhaps the Gov-

[3] Although some examples were presented to the District Court, 251 F. Supp. 2d 176, 588–590 (2003) (Kollar-Kotelly, J.), none were offered to this Court.

ernment's slim evidence results from sufficient deterrence of such activities by §320 of FECA, which prohibits any person from "mak[ing] a contribution in the name of another person" or "knowingly accept[ing] a contribution made by one person in the name of another," 2 U. S. C. §441f. Absent a more convincing case of the claimed evil, this interest is simply too attenuated for §318 to withstand heightened scrutiny. See *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 391 (2000) ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised").

Even assuming, *arguendo*, the Government advances an important interest, the provision is overinclusive. The States have adopted a variety of more tailored approaches—*e.g.,* counting contributions by minors against the total permitted for a parent or family unit, imposing a lower cap on contributions by minors, and prohibiting contributions by very young children. Without deciding whether any of these alternatives is sufficiently tailored, we hold that the provision here sweeps too broadly. We therefore affirm the District Court's decision striking down §318 as unconstitutional.

BCRA §403(b)

The National Right to Life plaintiffs argue that the District Court's grant of intervention to the intervenor-defendants, pursuant to Federal Rule of Civil Procedure 24(a) and BCRA §403(b), must be reversed because the intervenor-defendants lack Article III standing. It is clear, however, that the Federal Election Commission (FEC) has standing, and therefore we need not address the standing of the intervenor-defendants, whose position here is identical to the FEC's. See, *e.g.*, *Clinton* v. *City of New York,* 524 U. S. 417, 431–432, n. 19 (1998); *Bowsher* v. *Synar,*

478 U. S. 714, 721 (1986). Cf. *Diamond* v. *Charles,* 476 U. S. 54, 68–69, n. 21 (1986) (reserving the question for another day).

For the foregoing reasons, we affirm the District Court's judgment finding the plaintiffs' challenges to BCRA §305, §307, and the millionaire provisions nonjusticiable, striking down as unconstitutional BCRA §318, and upholding BCRA §311. The judgment of the District Court is

Affirmed.