No. 07-_____

In the Supreme Court of the United States

CITIZENS UNITED, ***Appellant***
v.
FEDERAL ELECTION COMMISSION, ***Appellee***

Appeal from Civil No. 07-2240 (ARR, RCL, RWR) in the
United States District Court for the District of Columbia

Motion To Expedite And Advance On Docket

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Citizens United moves this Court to expedite consideration of its appeal of the district court's denial of Citizens United's motion for preliminary injunction. Citizens United has contemporaneously filed its *Jurisdictional Statement*, and as more fully shown therein, absent timely judicial relief Citizens United will not broadcast three advertisements ("Ads") promoting its latest documentary *Hillary: The Movie* ("*Hillary*") where they qualify as "electioneering communications" under the Bipartisan Campaign Reform Act of 2002 ("BCRA"). Citizens United has released DVD's of *Hillary* for sale to the public and has shown the film in selected theaters. In order to maximize revenue from *Hillary,* Citizens United wants to broadcast the Ads throughout the election season when public interest in the film will be heightened. Am. Ver. Complaint ¶ 20 (Doc. No. 22).

Expedition is Consistent with the Statute and *WRTL II*.

BCRA § 403(a)(4) requires advancement on the docket and expedition "to the greatest possible extent," as to any "final decision" by a trial court.[1] While that provision does not

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[1]Sec. 403. Judicial Review

(a) Special Rules for Actions Brought on Constitutional Grounds. –

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:

(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.

(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

require expedition of interlocutory appeals,[2] Citizens United respectfully requests the same expedition in appealing the denial of its preliminary injunction motion. Just like a "final decision" under the BCRA, the First Amendment interests at stake in this appeal require advancement on the docket and expedition. Absent timely judicial relief, Citizens United will forever lose the opportunity to broadcast its Ads in the most effective times and places. Thus, the denial of the preliminary injunction is the equivalent of a final judgment and expedition is appropriate.[3]

In *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007) ("*WRTL II*"), this Court set out guidelines for as-applied challenges to the BCRA. The petitioners in *WRTL II* were only able to obtain judicial relief after the effective opportunity to run their ads had long passed. *Brief for Appellee* at i, 62, 65-70, *WRTL II*, 127 S. Ct. 2652. In response, this Court stated that future

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> to expedite to the greatest possible extent the disposition of the action and appeal.

[2]Citizens United elected as provided in BCRA § 403(d)(2) that the provisions of § 403 apply to its challenge. Interlocutory appeals from a three judge court 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*, a substantially similar case, the United States Court of Appeals for the District of Columbia Circuit, the only other court that arguably has jurisdiction over this appeal, held that it did not have jurisdiction over the interlocutory appeal on the basis of the jurisdictional provisions of the BCRA and 28 U.S.C. § 1253. No. 04-5292, slip op at 1-2 (DC Cir. Sept. 1, 2004) (per curiam), Accordingly, the District of Columbia Circuit dismissed that appeal. *Id.*

[3]In construing the meaning of 28 U.S.C. § 1291, this Court stated that "final decisions" should be given a "'practical rather than technical construction.'" *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152 (1964) (quoting *Cohen v. Beneficial Loan Corp*., 337 U.S. 541, 546 (1949)) . *Gillespie* went on to say that when considering finality courts must weigh the costs of "piecemeal review" against "the danger of denying justice by delay." *Id.* at 152-53.

challenges must "focus on the substance of the communication" and must "allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation." *WRTL II,* 127 S. Ct. at 2666. Only expedited relief can ensure that Citizens United will not be forever deprived of its First Amendment liberty as was WRTL.

Guidance from this Court is Needed to Prevent a 'Chill' on Speech.

In the wake of *WRTL II,* Citizens United and similarly situated speakers across the country need guidance from this Court as to whether their ads may be properly subject to the "electioneering communications" disclosure requirements of the BCRA. Absent clear direction from this Court, Citizens United and numerous other speakers will be chilled from broadcasting genuine issue ads.

While Citizens United has already lost the vital opportunity to coordinate broadcasting the Ads with the initial release of *Hillary*, they still intend to broadcast the Ads throughout the remainder of the primary season and in the days leading up to the national party conventions and general election. Citizens United is also planning to release a new documentary on Senator Barack Obama for which it will also want to broadcast advertisements. *See* Robert Stacey McCain, *'Hillary' Producer is Ready for Obama, Too*, Wash. Times, (Jan. 15, 2008), *at* www.washingtontimes.com/article/20080115/NATION/513973288. Thus, absent direction from this Court, Citizens United could again be chilled from exercising their First Amendment rights.

Proposed Schedule to Ensure Expeditious Resolution.

In order to accommodate this Court's consideration of this matter at its February 15 conference, Citizens United respectfully proposes that, in lieu of the schedule contained in Rules 18.6 and 18.7, the Defendant file any Motion to Affirm or Dismiss by 5:00 p.m. on Friday,

February 1. Because the issues presented are purely legal questions that have already been throughly briefed below, this expedited schedule should not be burdensome to the FEC.

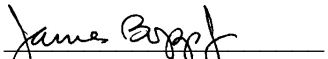
Additionally, Citizens United respectfully requests an expedited briefing schedule to accommodate an oral argument before the expiration of the current Court term. In lieu of the schedule contained in Rule 25(1)-(3), Citizens United proposes the following schedule:

- Citizens United's brief on the merits be filed by noon on March 3, 2008.
- FEC's brief on the merits be filed no later than noon on April 2, 2008.
- Citizens United's reply be filed by 2:00 p.m. on April 11, 2008.

Citizens United respectfully requests that the Court expedite this matter on the docket.

In accordance with Rule 29.6, Citizens United states that it has no parent company or publicly held company owning ten percent or more of its stock.

Respectfully submitted,



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