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]

JUSTICE STEVENS, dissenting with respect to §305.*

THE CHIEF JUSTICE, writing for the Court, concludes that the McConnell plaintiffs lack standing to challenge §305 of BCRA because Senator McConnell cannot be affected by the provision until "45 days before the Republican primary election in 2008." *Ante*, at 4. I am not persuaded that Article III's case-or-controversy requirement imposes such a strict temporal limit on our jurisdiction. By asserting that he has run attack ads in the past, that

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*JUSTICE GINSBURG and JUSTICE BREYER join this opinion in its entirety.

he plans to run such ads in his next campaign, and that §305 will adversely affect his campaign strategy, Senator McConnell has identified a "concrete," "'distinct,'" and "'actual'" injury, *Whitmore* v. *Arkansas,* 495 U. S. 149, 155 (1990). That the injury is distant in time does not make it illusory.

The second prong of the standing inquiry—whether the alleged injury is fairly traceable to the defendants' challenged action and not the result of a third party's independent choices†—poses a closer question. Section 305 does not *require* broadcast stations to charge a candidate higher rates for unsigned ads that mention the candidate's opponent. Rather, the provision simply permits stations to charge their normal rates for such ads. Some stations may take advantage of this regulatory gap and adopt pricing schemes that discriminate between the kind of ads that Senator McConnell has run in the past and those that strictly comply with §305. It is also possible, however, that instead of incurring the transaction costs of policing candidates' compliance with §305, stations will continue to charge the same rates for attack ads as for all other campaign ads. In the absence of any record evidence that stations will uniformly choose to charge Senator McConnell higher rates for the attack ads he proposes to run in 2008, it is at least arguable that his alleged injury is not traceable to BCRA §305.

Nevertheless, I would entertain plaintiffs' challenge to §305 on the merits and uphold the section. Like BCRA §§201, 212, and 311, §305 serves an important—and constitutionally sufficient—informational purpose. Moreover, §305's disclosure requirements largely overlap those of §311, and plaintiffs identify no reason why any candidate already in compliance with §311 will be harmed by the

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† *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 560–561 (1992).

marginal additional burden of complying with §305. Indeed, I am convinced that "the important governmental interest of 'shed[ding] the light of publicity' on campaign financing," invoked above in connection with §311, *ante*, at 9 (opinion of REHNQUIST, C. J.), would suffice to support a legislative provision expressly requiring all sponsors of attack ads to identify themselves in their ads. That §305 seeks to achieve the same purpose indirectly, by withdrawing a statutory benefit, does not render the provision any less sound.

Finally, I do not regard §305 as a constitutionally suspect "viewpoint-based regulation." Brief for Appellants/Cross-Appellees Senator Mitch McConnell et al. in No. 02–1674 et al., p. 67. Like BCRA's other disclosure requirements, §305 evenhandedly regulates speech based on its electioneering content. Although the section reaches only ads that mention opposing candidates, it applies equally to all such ads. Disagreement with one's opponent obviously expresses a "viewpoint," but §305 treats that expression exactly like the opponent's response.

In sum, I would uphold §305.