

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE CHRISTOPHER SHAYS,
et al.,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

No. 1:04-CV-01597 (EGS)

Answer

**DEFENDANT FEDERAL ELECTION COMMISSION'S
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Federal Election Commission ("FEC" or the "Commission"), through its undersigned counsel, responds as follows to the numbered paragraphs of plaintiffs' complaint in this litigation. The Commission responses do not reflect any review of information that might be contained in a pending investigative file, since 2 U.S.C. 437g(a)(12)(A) prohibits the Commission making public "[a]ny notification or investigation . . . without the written consent of the person seeking such notification or the person with respect to whom such investigation is made." The Commission DENIES everything not specifically given a response:

1. Paragraph 1 contains plaintiffs' characterizations of the matters complained of, and plaintiffs' conclusions of law. Therefore, no response is required.

2. Paragraph 2 contains plaintiffs' conclusions of law. The Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), speaks for itself. Therefore, no response is required.

3. Paragraph 3 contains plaintiffs' characterizations of the matters complained of and plaintiffs' conclusions of law. The Bipartisan Campaign Reform Act of 2002 ("BCRA") and the

Supreme Court's decision in McConnell v. FEC, 124 S.Ct. 619 (2003), speak for themselves. Therefore, no response is required.

4. The Supreme Court's decision in McConnell v. FEC, 124 S.Ct. 619 (2003), speaks for itself. The second sentence of paragraph 4 contains plaintiff's characterization of matters complained of, and plaintiffs' conclusions of law. Therefore, no response to paragraph 4 is required.

5. Paragraph 5 contains plaintiffs' characterization of matters complained of and plaintiffs' conclusions of law; therefore no response is required.

6. Paragraph 6 contains plaintiffs' conclusions of law. The provisions of the Act cited by plaintiffs speak for themselves. Therefore, no response to paragraph 6 is required.

7. ADMIT that, on March 7, 2001, the Commission published an Advance Notice of Proposed Rulemaking (“ANPR”) seeking comment on the definitions of “political committee,” “contribution” and “expenditure.” 66 FR 13681 (Mar. 7, 2001). After receiving comments on the ANPR, the Commission voted on September 27, 2001, to hold that rulemaking in abeyance pending changes in legislation, future judicial decisions, or other action. ADMIT that, on March 11, 2004, the Commission published a Notice of Proposed Rulemaking seeking comment, inter alia, on whether to amend the definition of "political committee" applicable to groups not connected to a political party or candidate. 69 FR 11736 (Mar. 11, 2004). The Federal Register notices speak for themselves. The remainder of paragraph 7 contains plaintiffs' characterization of matters complained of; therefore no further response is required.

8. Paragraph 8 contains plaintiffs' characterization of matters complained of, and FEC Agenda Document 04-48 speaks for itself; therefore no response is required. Actions taken

at the Commission's May 13, 2004 open meeting are reflected in the minutes of that meeting; those minutes also speak for themselves, therefore no response is required.

9. DENY that the Commission took any final agency action with respect to this rulemaking in August 2004. Actions taken at the Commission's August 19, 2004 open meeting are reflected in the minutes of that meeting; those minutes speak for themselves, therefore no response is required. ADMIT that on October 28, 2004, the Commission approved an Explanation and Justification and revised Final Rules for publication in the Federal Register and transmittal to Congress.

10. DENY the first sentence of paragraph 10. ADMIT that administrative complaints have been filed with the Commission alleging violations of the FECA by 527 groups. ADMIT the third sentence of paragraph 10, but only because 2 U.S.C. 437g(a)(12)(A) prohibits the Commission from making public “[a]ny notification or investigation . . . without the written consent of the person seeking such notification or the person with respect to whom such investigation is made.”

11. Paragraph 11 contains plaintiffs' characterization of matters complained of, and plaintiffs' conclusions of law. Therefore, no response is required. DENY that the Commission's current regulations defining the term "political committee" is "legally inadequate" or "fails to properly implement the law." DENY that the Commission's actions in the challenged rulemaking "undermin[e] the FECA by permitting massive evasion, circumvention, subversion and violations of it provisions." DENY the third sentence of paragraph 11.

12. ADMIT.

13. ADMIT.

14. ADMIT the first and second sentences of paragraph 14. DENY that Representative Shays "next faces re-election in November 2004," but ADMIT that Representative Shays sought re-election and was reelected to the United States House of Representatives in 2004. The Commission is without knowledge or information sufficient to admit or deny the allegation in paragraph 14 that, "if re-elected," Representative Shays "intends to seek re-election in November 2006." ADMIT the fourth and fifth sentences of paragraph 14.

15. ADMIT the first and second sentences of paragraph 15. DENY that Representative Meehan "next faces re-election in November 2004," but ADMIT that Representative Meehan sought re-election and was reelected to the United States House of Representatives in 2004. The Commission is without knowledge or information sufficient to admit or deny the allegation in paragraph 15 that, "if re-elected," Representative Meehan "intends to seek re-election in November 2006." ADMIT the fourth and fifth sentences of paragraph 15.

16. The Commission is without knowledge or information sufficient to admit or deny the allegation in the first sentence of paragraph 16 that plaintiffs are "candidates for re-election to Congress." ADMIT the remaining allegations in the first sentence of paragraph 16. DENY the allegations in the second sentence of paragraph 16.

17. ADMIT the first sentence of paragraph 17. The second sentence of paragraph 17 either purports to describe the contents of FECA, a document that speaks for itself, or contains plaintiffs' characterizations of Congress' intent in enacting FECA; therefore, no response is required. Additionally, to the extent that the second sentence contains conclusions of law about plaintiffs' legal interests under FECA, no response is required. DENY the third and fourth sentences of paragraph 17.

18. Paragraph 18 includes plaintiffs' conclusions of law, as to which no response is required. DENY the remainder of paragraph 18.

19. ADMIT the first sentence of paragraph 19. The second sentence of paragraph 19 contains plaintiffs' conclusions of law. Therefore, no further response is required.

20. Paragraph 20 contains plaintiffs' conclusions of law. The cited provisions of the Act and Commission speak for themselves; therefore, no response is required.

21. Paragraph 21 contains plaintiffs' conclusions of law. The cited provisions of the Act and regulations speak for themselves; therefore, no response is required.

22. Paragraph 22 contains plaintiffs' conclusions of law. The Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), speaks for itself; therefore, no response is required.

23. ADMIT the first sentence of paragraph 23. The second and third sentences of paragraph 23 contain plaintiffs' conclusions of law. The cited regulation speaks for itself; therefore, no further response is required.

24. ADMIT that, on March 7, 2001, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR"). 66 FR 13681 (Mar. 7, 2001). The ANPR speaks for itself; therefore, no further response is required. The fifth sentence of paragraph 24 contains plaintiffs' conclusions of law; no further response is required. ADMIT, that after receiving comments on the ANPR, the Commission voted on September 27, 2001, to hold that rulemaking in abeyance pending changes in legislation, future judicial decisions, or other action.

25. The first sentence of paragraph 25 contains plaintiffs' characterizations of Congress' intent in enacting BCRA; therefore, no response is required. The second and third

sentences of paragraph 25 contain plaintiffs' conclusions of law; therefore, no response is required. The Supreme Court's decision in McConnell and BCRA speak for themselves.

26. The Commission is without knowledge or information sufficient to admit or deny the allegations in paragraph 26.

27. The first sentence of paragraph 27 contains plaintiffs' characterization of matters complained of, and plaintiffs' conclusions of law. The Commission is without knowledge or information sufficient to admit or deny the allegations in the second, third, fourth and fifth sentences of paragraph 27. The documents cited or quoted in paragraph 27 speak for themselves; therefore, no response is required.

28. The documents cited or quoted in paragraph 28 speak for themselves; therefore, no further response is required.

29. The documents cited or quoted in paragraph 29 speak for themselves; therefore, no further response is required.

30. Paragraph 30 contains plaintiffs' characterization of matters complained of, and plaintiffs' conclusions of law. Therefore, no response is required.

31. The first, second and third sentences of paragraph 31 contain plaintiffs conclusions of law; therefore, no response is required. The statutory provisions and the Supreme Court's decision in McConnell cited and quoted in paragraph 31 speak for themselves. Therefore, no further response is required.

32. Paragraph 32 contains plaintiffs' conclusions of law; therefore, no response is required.

33. ADMIT that administrative complaints have been filed with the Commission alleging violations of the FECA by 527 groups. DENY the second sentence of paragraph 33, but

only because 2 U.S.C. 437g(a)(12)(A) prohibits the Commission making public “[a]ny notification or investigation . . . without the written consent of the person seeking such notification or the person with respect to whom such investigation is made.” DENY that the question has been properly presented to the Commission for decision in any advisory opinion requests, including Advisory Opinion Request 2003-37, as alleged in the third sentence of paragraph 33. The document cited in the fourth sentence of paragraph 33 speaks for itself; therefore, no response is required.

34. ADMIT that, on March 11, 2004, the Commission published a Notice of Proposed Rulemaking seeking comment on whether to amend the definition of “political committee” applicable to nonconnected committees. 69 FR 11736 (Mar. 11, 2004). The Federal Register notice speaks for itself; therefore no response is required.

35. ADMIT that, on March 11, 2004, the Commission published a Notice of Proposed Rulemaking seeking comment on whether to amend the definition of “political committee” applicable to nonconnected committees. 69 FR 11736 (Mar. 11, 2004). The Federal Register notice speaks for itself; therefore no response is required.

36. ADMIT that the Commission received a large volume of comment on the NPRM and ADMIT that Representatives Shays and Meehan and Senators John McCain and Russell Feingold, the four principal sponsors of BCRA, participated in the rulemaking by filing joint comments. Those comments speak for themselves; therefore, no further response is required. ADMIT that, on April 14 and 15, 2004, the Commission held public hearings in connection with the rulemaking and heard testimony from more than two dozen witnesses.

37. ADMIT that the Commission's General Counsel forwarded a memorandum dated May 13, 2004 to the Commission, FEC Agenda Document 04-48. That document speaks for itself; therefore no response is required.

38. Actions taken by the Commission at its May 13, 2004 open meeting are reflected in the minutes of that meeting, a document that speaks for itself; therefore no response is required. To the extent that plaintiffs characterize the rule proposed by Commissioners Thomas and Toner, paragraph 38 contains plaintiffs' conclusions of law. That proposal also speaks for itself; therefore, no further response is required.

39. ADMIT that the Commission's General Counsel forwarded a memorandum dated August 12, 2004 to the Commission, FEC Agenda Document No. 04-74. That document speaks for itself; therefore, no further response is required. ADMIT that Commissioners Thomas and Toner circulated a proposal, FEC Agenda Document No. 04-75, that speaks for itself. Actions taken by the Commission at its August 19, 2004 open meeting are reflected in the minutes of that meeting, a document that speaks for itself, therefore no further response is required. DENY that the Commission "terminated the rulemaking proceeding" on August 12, 2004.

40. Paragraph 40 contains plaintiffs' characterization of matters complained of, and plaintiffs' conclusions of law. DENY that the rulemaking concluded on or before the date plaintiffs filed this suit against the Commission. The document cited and quoted by plaintiffs speaks for itself; therefore, no further response is required.

41. The Commission is without knowledge or information sufficient to admit or deny the allegations in the first sentence of paragraph 41. DENY the second sentence of paragraph 41.

42. The decisions by the Supreme Court and the United States District Court of the District of Columbia in McConnell speak for themselves; therefore, no further response is required.

43. DENY.

44. Paragraph 44 contains plaintiffs' conclusions of law; therefore, no further response is required.

45. DENY.

46. DENY.

47. The Notice of Proposed Rulemaking speaks for itself; therefore, no further response to the first sentence of paragraph 47 is required. DENY the second, third and fourth sentences of paragraph 47.

48. Plaintiffs' prayer for relief does not require a response, but insofar as an answer is deemed necessary, the Commission DENIES that plaintiff is entitled to the requested relief or to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiffs' complaint, in whole or part, fails to state a claim upon which relief can be granted.

2. Plaintiffs lack standing to maintain this suit.

3. Plaintiffs' suit was premature, since this suit was filed before the conclusion of the challenged rulemaking.

Respectfully Submitted,

/s/

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/s/

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November 15, 2004

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