UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WISCONSIN RIGHT TO LIFE, INC.,	)	
	)	
Plaintiff,	)	No. 1:04cv01260 (DBS, RWR, RJL)
	)	(Three-Judge Court)
v.	)	
	)	
FEDERAL ELECTION COMMISSION,	)	OPPOSITION
	)	
Defendant,	)	
	)	
and	)	
	)	
SEN. JOHN McCAIN, et al.,	)	
	)	
Intervenor-Defendants.	)	

DEFENDANT FEDERAL ELECTION COMMISSION'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE A REPLY SUPPORTING ITS MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Defendant Federal Election Commission ("Commission") opposes the request of plaintiff Wisconsin Right to Life, Inc. ("WRTL") for leave to file a reply brief in support of its "Motion for Temporary Restraining Order and Preliminary Injunction" on the day before the hearing on that motion. At the telephonic hearing this Court conducted with counsel on August 26, counsel for the Commission explained that the applicable rules contemplate no reply brief in this expedited setting. Plaintiff's counsel made no argument to the contrary, and the Court ruled that there would be no reply brief.[1]

[1] Contrary to plaintiff's suggestions (Br. 1), the Commission's counsel did not argue at this hearing that this Court is without power to allow a reply, but noted only that the rules do not provide for one.

Despite plaintiff's failure to object on August 26, it now asks the Court to revise its ruling. Local Civil Rule 65.1, which governs applications for such extraordinary relief, provides for no reply, and WRTL fails to justify its request that this Court reverse its earlier ruling and grant WRTL leave to file one here.

Local Rule 65.1(c) provides for "applications" for preliminary injunctions and for oppositions, but it does not provide for reply memoranda, nor does any other part of Rule 65.1. By contrast, Local Rule 7, which governs "motions" generally, specifically provides that moving parties may file a "reply memorandum." LCvR 7(d). The obvious import of this disparate treatment is that replies are not generally appropriate in applications for preliminary relief. See Independent Ins. Agents of America, Inc. v. Hawke, 211 F.3d 638, 644 (D.C. Cir. 2000) (canon of statutory construction expressio unius est exclusio alterius is useful where drafter's mention of one thing reasonably implies the preclusion of alternatives). Moreover, Local Rule 65.1, like Fed. R. Civ. P. 65, does not characterize a request for such relief as a "motion," but as an "application," underlining that it sets out a different, more expedited procedure than Local Rule 7(d) provides for ordinary motions. WRTL chose to invoke this special procedure—a choice whose timing was controlled only by plaintiff's own decision-making.

Plaintiff states (Br. 2) that it wishes to address "questions" the Court raised at the August 26 hearing, but it does not claim to have been surprised by those questions. On the contrary, plaintiff suggests that it consciously omitted discussion of those issues from its brief "in the interest of expedition." Id. However, the fundamental questions concerning the Court's jurisdiction over WRTL's latest request and the nature of irreparable harm allegedly at stake certainly should have been addressed in WRTL's

brief, and not saved for presentation after defendants filed their responses. WRTL's supposed desire to promote "expedition" is no justification for omitting from its brief a demonstration that it meets the basic requirements for the relief it seeks, particularly where the timing of that brief's filing is entirely within the control of WRTL. It is also no reason for the Court to relieve plaintiff of the consequences of its tactical decisions. In any event, plaintiff will have ample time to address those issues at the hearing scheduled for September 6, 2006.

Accordingly, there is no reason to modify the briefing schedule already provided by this Court pursuant to LCvR 65, and WRTL's motion for leave to file a reply should be denied.

Respectfully submitted,

/s/
Lawrence H. Norton
General Counsel

/s/
Richard B. Bader
Associate General Counsel
(D.C. Bar # 911073)

/s/

David Kolker
Assistant General Counsel
(D.C. Bar # 394558)

Harry J. Summers
Greg J. Mueller
Kevin Deeley
Steve N. Hajjar
Attorneys

FOR THE DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
(202) 694-1650
(202) 219-0260 (FAX)

August 29, 2006