UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

THE REAL TRUTH ABOUT OBAMA, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:08-cv-00483-JRS
	)	
FEDERAL ELECTION COMMISSION and UNITED STATES DEPARTMENT OF JUSTICE,	)	OPPOSITION TO INJUNCTION PENDING APPEAL
	)	
Defendants.	)	

DEFENDANT FEDERAL ELECTION COMMISSION'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTION PENDING APPEAL

Defendant Federal Election Commission ("Commission") respectfully submits this memorandum in opposition to Plaintiff The Real Truth About Obama, Inc.'s ("RTAO's") Motion for Injunction Pending Appeal. On September 11, 2008, this Court denied, *inter alia*, RTAO's motions for preliminary injunctions against the Commission's enforcement of certain campaign finance regulations and policies. On September 12, RTAO filed a notice of appeal of the Court's decision, as well as a motion for an injunction during the pendency of that appeal. Because RTAO has failed to meet its heavy burden to justify an injunction pending appeal of a determination that it is not entitled to a preliminary injunction, RTAO's motion should be denied.

Although RTAO's motion refers only to Fed. R. App. P. 8(a)(1)(C), it appears to be made under Fed. R. Civ. P. 62(c), which governs injunctions pending appeals "from an interlocutory order . . . that . . . grants, dissolves, or denies an injunction." District courts within the Fourth Circuit apply the following standard in resolving such motions to grant or stay injunctive relief pending appeal:

> [A] party seeking a stay must show (1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay.

Long v. Robinson, 432 F.2d 977, 979 (4th Cir. 1970); *see Hodges v. Shalala*, 127 F. Supp. 2d 790, 791-92 (D.S.C. 2001) (quoting *Long*); *St. Agnes Hosp. v. Riddick*, 751 F. Supp. 75, 76 (D. Md. 1990) (same); *Mowbray v. Kozlowski*, 725 F. Supp. 888, 889 (W.D. Va. 1989) (same). "As with any other motion, the burden is upon the movants . . . to support their request for the desired relief." *Hodges*, 127 F. Supp. 2d at 791-92. Where the issue to be decided on appeal is the grant or denial of a preliminary injunction, "[t]he burden on a party requesting a stay is a heavy one, since the party seeking a stay has already lost the initial determination resulting in the preliminary injunction and the factors are similar." *O'Brien v. Appomattox County*, Civ. No. 02-0043, 2002 WL 31663226, at *1 (W.D. Va. Nov. 15, 2002).

RTAO's cursory motion fails to meet this high standard. In denying RTAO's preliminary injunction motions, this Court determined that RTAO failed to demonstrate (1) a likelihood of success on the merits, (2) "an irreparable harm greater than that of Defendants," and (3) "that public policy would be served by granting these injunctions." *Real Truth About Obama, Inc. v. FEC*, Civ. No. 3:08-483 (E.D. Va. Sept. 11, 2008). Under the similar *Long* factors, these holdings are dispositive of RTAO's present motion.

Accordingly, RTAO's motion for an injunction pending appeal should be denied.

Respectfully submitted,

/s/

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September 19, 2008

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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