UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Wisconsin Right to Life, Inc.,	)	
Plaintiff,	)	
v.	)	**Case No. 04-1260 (DBS, RWR, RJL)**
	)	**THREE-JUDGE COURT**
Federal Election Commission,	)	
Defendant	)	

REPLY OF SENATOR JOHN MCCAIN AND REPRESENTATIVES TAMMY BALDWIN, CHRISTOPHER SHAYS, AND MARTIN MEEHAN IN SUPPORT OF THEIR MOTION TO INTERVENE AS DEFENDANTS

1. Plaintiff concedes that movants, as Members of Congress, have a statutory right to intervene under Fed. R. Civ. P. 24(a)(1) and Section 403 of the Bipartisan Campaign Reform Act ("BCRA"). Plaintiff still opposes intervention, saying the motion is untimely. Plaintiff also seeks to "preserve[] . . . for possible argument before the Supreme Court" a challenge to movants' Article III standing. Plaintiff's Memorandum in Opposition to Motion of Senator McCain et al. to Intervene ("Opp.") at 6. Both arguments lack merit.

2. Plaintiff's timeliness argument fails for want of any tangible prejudice. Plaintiff's argument depends on the dubious proposition that the case is now ready for summary disposition based on motions filed prior to the appeal. Although the Court might well conclude that the case is not now ready for summary disposition and that the parties should develop a

factual record to assist the court, the time that effort will take (1) does not prejudice the plaintiff and, in any event (2) would not be a consequence of granting this motion to intervene. The FEC has already stated its position that some factual development is necessary and desirable, *see* Defendant Federal Election Commission's Opposition to Plaintiff's Motion to Reinstate, Order Supplemental Briefing on, and Expedite Cross-Motions for Summary Judgment at 3; and movants have already committed to avoid duplication of efforts. If the Court permits intervention, movants will of course abide by the schedule the Court sets, as well as meet all other deadlines established in this case.

3. Plaintiff's reliance on *United States v. British American Tobacco Australia Services, Ltd. ("BATAS")*, Nos. 04-5358, 05-5129, 2006 U.S. App. LEXIS 3794 (D.C. Cir. Feb. 17, 2006), is misplaced. *BATAS* did not involve proposed intervention post-remand, before any discovery, by movants who had a statutory right to intervene; and, unlike *BATAS*, this case is not on the eve of trial.

4. As to standing, plaintiff candidly suggests that it merely wishes to "preserve[] this issue for possible argument before the Supreme Court in this case." Opp. at 6. Plaintiff also acknowledges that movants and other members of Congress "were granted intervention in this Court in *McConnell* [*v. FEC*, Nos. 02-582 et al., 2004 U.S. Dist. LEXIS 22496 (D.D.C. May 3, 2002),] and in *Shays v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004), based on reasons that arguably apply here." Opp. at 5. Those reasons do apply here, as set forth in movants' opening memorandum. *See, e.g.*, *McConnell*, 2004 U.S. Dist. LEXIS 22496, at *7-8 (concluding that movants satisfied the requirements of *Lujan*); *Shays v. FEC*, 414 F.3d 76, 92 (D.C. Cir. 2005) (same); *Buchanan v. FEC*, 112 F. Supp. 2d 58, 65 (D.D.C. 2000) (analyzing the elements of *Lujan* and concluding that plaintiffs satisfied each, specifying that "it is relatively self-evident

that the people who have the most to gain and lose from the criteria governing [the electoral process] are the candidates themselves").

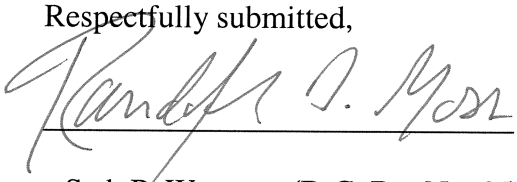
5. The court should reject plaintiff's suggestion that "[t]he fact that Representative Baldwin is from Wisconsin adds nothing to her Article III standing." Opp. at 8. As set forth in movants' opening memorandum, Representative Baldwin does not rely simply on her Wisconsin residence. Plaintiff has endorsed Representative Baldwin's opponent in the past. It has also pleaded its intention to run ads in the future in Wisconsin directed at candidates' stands on a broad range of issues. Amended Verified Complaint for Declaratory and Injunctive Relief ¶ 16.

6. Plaintiff suggests in the alternative that "intervention be permitted only to the extent of expeditiously participating in briefing the cross-motions for summary judgment, by filing a single supplemental brief." Opp. at 9. This would essentially reduce movants' role in the district court to that of amici; in effect, it would be a denial of intervention. BCRA § 403 does not countenance any such restriction.

7. For these reason and those previously offered, movants respectfully request that the court grant their motion to intervene as defendants as of right.

Dated this 6th day of March, 2006.

Respectfully submitted,



Roger M. Witten (D.C. Bar No. 163261)
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
(212) 230-8800

Seth P. Waxman (D.C. Bar No. 257337)
Counsel of Record
Randolph D. Moss (D.C. Bar No. 417749)
WILMER CUTLER PICKERING
HALE AND DORR LLP
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

Donald J. Simon (D.C. Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLC
1425 K Street, N.W.
Suite 600
Washington, DC 20005
(202) 682-0240

J. Gerald Hebert (D.C. Bar No. 447676)
CAMPAIGN LEGAL CENTER
1640 Rhode Island Avenue, N.W.
Suite 650
Washington, DC 20036
(202) 736-2200

Fred Wertheimer (D.C. Bar No. 154211)
DEMOCRACY 21
1875 I Street, N.W.
Suite 500
Washington, DC 20006
(202) 429-2008

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Wisconsin Right to Life, Inc., Plaintiff,	
v.	**Case No. 04-1260 (DBS, RWR, RJL)** **THREE-JUDGE COURT**
Federal Election Commission, Defendant	

CERTIFICATE OF SERVICE

I, Randolph D. Moss, a member of the bar of this Court, certify that on March 6, 2006, I caused a true and correct copy of the Reply of Senator John McCain, Representative Tammy Baldwin, Representative Christopher Shays, and Representative Martin Meehan in Support of Their Motion To Intervene as Defendants to be served electronically and by overnight courier on:

Counsel for Plaintiff

David Brett Kolker
FEDERAL ELECTION COMMISSION
Litigation Division
999 E Street, N.W.
Washington, DC 20463-0002
Tel: (202) 694-1650
Fax: (202) 219-0260
Email: dkolker@fec.gov

Counsel for Plaintiff

James Bopp
BOPP COLESON & BOSTROM
1 South Sixth Street
Terra Haute, IN 47807-3510
Tel: (812) 232-2434
Email: jboppjr@aol.com

Respectfully submitted,

Seth P. Waxman (D.C. Bar No. 257337)
Counsel of Record
Randolph D. Moss (D.C. Bar No. 417749)
WILMER CUTLER PICKERING
HALE AND DORR LLP
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

Roger M. Witten (D.C. Bar No. 163261)
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
(212) 230-8800

Fred Wertheimer (D.C. Bar No. 154211)
DEMOCRACY 21
1875 I Street, N.W.
Suite 500
Washington, DC 20006
(202) 429-2008

Donald J. Simon (D.C. Bar No. 256388)
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLC
1425 K Street, N.W.
Suite 600
Washington, DC 20005
(202) 682-0240

J. Gerald Hebert (D.C. Bar No. 447676)
CAMPAIGN LEGAL CENTER
1640 Rhode Island Avenue, N.W.
Suite 650
Washington, DC 20036
(202) 736-2200