

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Senator Mitch McConnell, *et al.*,

Plaintiffs,

v.

Federal Election Commission, *et al.*,

Defendants,

and

Senator John McCain,
United States Senate
Washington, D.C. 20510

Senator Russell Feingold
United States Senate
Washington, D.C. 20510

Representative Christopher Shays
United States House of Representatives
Washington, D.C. 20515

Representative Martin Meehan
United States House of Representatives
Washington, D.C. 20515

Senator Olympia Snowe
United States Senate
Washington, D.C. 20510

Senator James Jeffords
United States Senate
Washington, D.C. 20510

Intervening Defendants.

Civ. No. 02-582 (CKK, KLH, RJL)
(lead case)

**ANSWER AND AFFIRMATIVE DEFENSES OF
INTERVENING DEFENDANTS
SENATOR JOHN McCAIN, SENATOR RUSSELL FEINGOLD,
REPRESENTATIVE CHRISTOPHER SHAYS,
REPRESENTATIVE MARTIN MEEHAN,
SENATOR OLYMPIA SNOWE, AND SENATOR JAMES JEFFORDS**

The intervening defendants Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and Senator James Jeffords, by their undersigned counsel, for their answer and affirmative defenses to the plaintiffs' Second Amended complaint for Declaratory and Injunctive Relief, respectfully answer, allege, and state as follows:

ANSWER

Introduction

1. Admit that this is an action challenging numerous provisions of the Bipartisan Campaign Reform Act of 2002 (the "Reform Act" or "Act") on constitutional grounds, but otherwise deny the allegations in this paragraph and deny that the Reform Act is unconstitutional in any manner. Furthermore, this paragraph contains conclusions of law, to which no answer is required.
2. This paragraph, like others, contains tendentious characterizations of the Reform Act, the provisions of which speak for themselves, and conclusions of law, to which no response is required. In all other respects, the allegations are denied.
3. This paragraph contains conclusions of law, to which no response is required. In all other respects, the allegations are denied.

4. This paragraph, like others, contains tendentious characterizations of the Reform Act, the provisions of which speak for themselves, and conclusions of law, to which no response is required. In all other respects, the allegations are denied.

5. Denied.

6. Admit that the Reform Act's supporters have given careful consideration to constitutional issues raised during the legislative consideration of the Reform Act, that Congress passed and the President signed an Act carefully drafted to address these concerns, and that the federal courts stand as guardians of the Constitution and the Bill of Rights; but deny that the Reform Act is unconstitutional in any manner, and otherwise deny the allegations in this paragraph.

Background

7. Admitted.

8. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

9. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. Furthermore, this paragraph contains conclusions of law, to which no response is required.

10. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

11. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

12. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

13. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. In further response to this paragraph, the intervening defendants note that section 403(b) provides that any Member of Congress “shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of” the Act. The intervening defendants fall within the scope of section 403(b) and have been granted intervention by the Court.

Jurisdiction and Venue

14. Admitted, except to the extent: (a) that certain claims--such as those depending on regulations not yet issued--may not be ripe for adjudication; (b) that plaintiffs may not have standing to bring certain of their claims; (c) that plaintiffs may have failed to exhaust adequate and available administrative remedies; (d) that plaintiffs are challenging matters that are being addressed in a pending FEC rulemaking that is not yet final; or (e) that such rules are not subject to review under § 403 of the Reform Act, and thus are not subject to the jurisdiction of this Court.

Parties

15. Admit that Senator McConnell is the senior United States Senator from the Commonwealth of Kentucky. State that many members of the United States Congress, including the intervening defendants, are strong advocates of First Amendment values. Admit the second and third sentences, and admit that Senator McConnell has served as Chairman of the National Republican Senatorial Committee, which supports the campaigns of Republican candidates. Admit that Senator McConnell is “a United States citizen, member of Congress, candidate, voter, . . . , recipient, fundraiser, and party member,” and that his interests in these capacities will or may be directly affected by certain provisions of the Act. The intervening defendants are

without knowledge or information sufficient to form a belief about whether Senator McConnell is also a donor. In all other respects, the allegations are denied.

16. Admit that Representative Barr is a Representative from the Seventh Congressional District of the State of Georgia. Admit the second and third sentences. Admit that Representative Barr is “a United States citizen, member of Congress, candidate, voter, . . . , recipient, fundraiser, and party member,” and that his interests in these capacities will or may be directly affected by certain provisions of the Act. The intervening defendants are without knowledge or information sufficient to form a belief about whether Representative Barr is also a donor. In all other respects, the allegations are denied.

17. Admit that Representative Pence is a Representative from the Second Congressional District of the State of Indiana. Admit the second and third sentences of this paragraph. Intervening defendants are without knowledge or information sufficient to form a belief about the truth of the allegations in the fourth sentence. Admit that Representative Pence is “a United States citizen, member of Congress, candidate, voter, recipient, fundraiser, and party member,” and that his interests in these capacities will or may be directly affected by certain provisions of the Act. In all other respects, the allegations are denied.

18. Admit that Attorney General Pryor is presently the Attorney General of the State of Alabama. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second, third, fourth, fifth and sixth sentences in this paragraph. Admit that Attorney General Pryor will or may be directly affected by certain provisions of the Act. In all other respects, the allegations are denied.

19. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

a. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

b. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

c. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

d. Intervening defendants are without knowledge or information sufficient to form a belief as to the allegations contained in the first four and sixth sentences of this paragraph. As to the remaining sentences, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. Furthermore, this paragraph contains conclusions of law, to which no response is required.

e. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

f. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

g. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. As to the remaining sentences of this paragraph, the provisions of the Reform Act speak for themselves and therefore no further answer is required of these intervening defendants.

h. Intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the Libertarian Party's membership structure or the allegations regarding the participation of minors in the Libertarian Party.

Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

i. Denied.

20. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

a. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

b. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

c. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

d. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

e. Denied.

21. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

a. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the

Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

b. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

c. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

d. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

e. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

f. Denied.

22. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

a. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

b. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

c. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

d. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

e. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

f. Denied.

23. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

a. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

b. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

c. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

d. Denied.

24. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

a. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first five sentences, as well as the seventh and ninth sentences of this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. This paragraph also contains conclusions of law to which no response is required. In all other respects the allegations are denied.

b. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

c. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

d. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

25. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph.

26. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. In all other respects the allegations are denied.

27. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first five sentences of this paragraph. In all other respects, the allegations are denied.

28. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. This paragraph also contains conclusions of law to which no response is required. In all other respects, the allegations are denied.

29. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these

intervening defendants. This paragraph also contains conclusions of law to which no response is required. In all other respects, the allegations are denied.

30. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. This paragraph also contains conclusions of law to which no response is required. In all other respects, the allegations are denied.

31. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. This paragraph also contains conclusions of law to which no response is required. In all other respects, the allegations are denied.

32. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. This paragraph also contains conclusions of law to which no response is required. In all other respects, the allegations are denied.

33. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first three sentences of this paragraph. The intervening defendants are also without knowledge or information sufficient to form a belief as to whether National Right to Life Political Action Committee intends to continue making independent expenditures. In all other respects, the allegations are denied.

34. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first six sentences of this paragraph. In all other respects, the allegations are denied.

35. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first five sentences of this paragraph. The final sentence of this paragraph is denied.

36. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first five sentences of this paragraph. The final sentence of this paragraph is denied.

37. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first six sentences of this paragraph. The final sentence of this paragraph is denied.

38. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Furthermore, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

39. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first four sentences of this paragraph. The final sentence of this paragraph is denied.

40. This paragraph contains conclusions of law, to which no response is required. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph. Additionally, the provisions of the Reform Act speak

for themselves, and therefore no further answer is required of these intervening defendants. In all other respects, the allegations are denied.

41. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first three sentences of this paragraph. The intervening defendants are also without knowledge or information sufficient to form a belief as to truth of the allegations in this paragraph regarding the membership requirements of the national Libertarian party. Additionally, the provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. This paragraph also contains conclusions of law to which no response is required. The final sentence of this paragraph is denied.

42. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations. The final sentence of this paragraph is denied.

43. Admit that the Federal Election Commission and Federal Communications Commission, along with the Attorney General, are charged with enforcing provisions of the Reform Act.

Count I

44. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

45. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

46. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. In all other respects, the allegations are denied.

47. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

Count II

53. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

54. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

55. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

56. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

57. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

58. Denied.

Count III

59. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

60. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

61. The provisions of the Reform Act speak for themselves. In all other respects the allegations are denied.

62. The provisions of the Reform Act speak for themselves. In all other respects the allegations are denied.

63. Denied.

Count IV

64. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

65. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

66. The provisions of the Reform Act speak for themselves, and conclusions of law require no response. The intervening defendants deny the allegations contained in the second sentence. In addition, the intervening defendants note that the regulations called for by the Act do not yet exist.

67. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

68. Denied.

69. Denied.

Count V

70. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

71. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

72. Denied.

73. Denied.

Count VI

74. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

75. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

76. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

77. Denied.

Count VII

78. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

79. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

80. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

81. Denied.

82. Denied.

Count VIII

83. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

84. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

85. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

Count IX

91. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

92. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

93. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

Count X

94. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

95. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

96. Denied.

Count XI

97. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

98. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

99. Denied.

100. The provisions of the Reform Act speak for themselves. In all other respects the allegations are denied.

101. The provisions of the Reform Act speak for themselves. In all other respects the allegations are denied.

102. The provisions of the Reform Act speak for themselves. In all other respects the allegations are denied.

103. Denied.

Count XII

104. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

105. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

106. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

107. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

108. Denied.

109. Denied.

110. The provisions of the Reform Act speak for themselves. In all other respects the allegations are denied.

111. The provisions of the Reform Act speak for themselves. In all other respects the allegations are denied.

Count XIII

112. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

113. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

114. Denied.

115. Denied.

116. Denied.

Count XIV

117. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

118. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

119. Denied.

120. Denied.

Count XV

121. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

122. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

123. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants.

124. The provisions of the Reform Act speak for themselves. In all other respects the allegations are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

To the extent plaintiffs have failed to exhaust administrative remedies with respect to any claim, that claim should be dismissed.

Second Affirmative Defense

To the extent plaintiffs lack standing with respect to any claim, that claim should be dismissed.

Third Affirmative Defense

To the extent any claim is not currently ripe for adjudication, that claim should be dismissed.

Fourth Affirmative Defense

To the extent that any claim pertains to matters currently the subject of FEC rulemaking, that claim is barred because of the absence of any final agency action, and should be dismissed.

Fifth Affirmative Defense

To the extent that any claim pertains to matters currently the subject of FEC rulemaking, this Court lacks subject matter jurisdiction over that claim because the FEC's final rules will be subject to review under the Reform Act.

Sixth Affirmative Defense

To the extent the plaintiffs' complaint fails to state a claim on which relief can be granted, it should be dismissed.

Seventh Affirmative Defense

Plaintiffs O'Brock and Southerland, as alleged minors, lack capacity to sue.

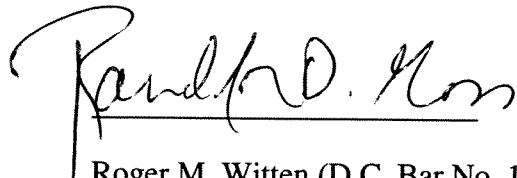
REQUEST FOR RELIEF

Based upon these answers and affirmative defenses, the intervening defendants respectfully request that the Court enter a judgment as follows:

- (a) Dismissing the plaintiffs' complaint in its entirety, on the merits, and with prejudice;
- (b) Denying the plaintiffs' requests for declaratory and injunctive relief in their entirety; and
- (c) Awarding such other and further relief as the Court may find to be just and equitable.

Dated this 27 day of May, 2002.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Stacy E. Beck, hereby certify that on May 27, 2002, I caused a true and accurate copy of the foregoing to be served upon the following individuals via first class mail.

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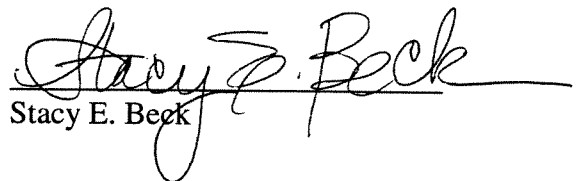
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