

**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 plaintiff's complaint, 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.
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. 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.

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 moved to intervene pursuant to that provision and Federal Rule of Civil Procedure 24.

Jurisdiction and Venue

14. Admitted, except to the extent that certain claims - such as those depending on regulations not yet issued - may not be ripe for adjudication, or that plaintiff may not have standing to bring certain of his claims, or that plaintiff may have failed to exhaust adequate and available administrative remedies.

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. In all other respects, the allegations are denied.

16. 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.

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

18. 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

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

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

21. 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 deny that section 201(a) of the Reform Act “[a]nticipat[es]” that the definition in question “may be declared unconstitutional.”

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

23. Denied.

24. Denied.

25. Denied.

26. Denied.

Count II

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

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

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

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

31. Denied.

Count III

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

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

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

35. Denied.

36. Denied.

Count IV

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

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

39. 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.

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

41. Denied.

42. Denied.

Count V

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

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

45. Denied.

46. Denied.

Count VI

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

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

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

50. Denied.

51. Denied.

Count VII

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

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

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

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

Count VIII

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

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

62. Denied.

Count IX

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

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

65. Denied.

Count X

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

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.

70. Denied.

71. Denied.

72. Denied.

Count XI

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

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

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.

78. Denied.

79. Denied.

80. Denied.

Count XII

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

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

83. Denied.

84. Denied.

85. Denied.

Count XIII

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

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

88. Denied.

89. Denied.

Count XIV

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

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

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

93. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

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

Second Affirmative Defense

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

Fifth Affirmative Defense

In that the plaintiff has not sought to enjoin the Attorney General from enforcing the criminal prohibitions contained in FECA and the Reform Act, the complaint does not seek redress consistent with the asserted injury and is not consistent with joinder requirements, and should thus be dismissed.

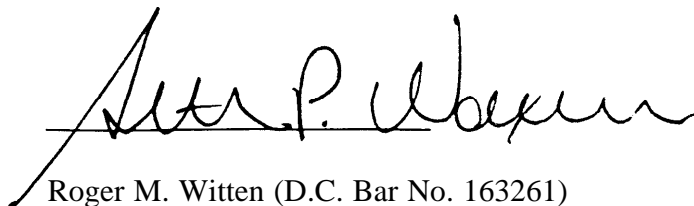
REQUEST FOR RELIEF

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

- (a) Dismissing the plaintiff's 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 2nd day of April, 2002.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Seth P. Waxman", written over a horizontal line. The signature is fluid and cursive.

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