

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

National Rifle Association of America, *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.

---

Case No. 02-0581 (CKK)

**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' complaint, respectfully answer, allege, and state as follows:

**ANSWER**

**Preliminary Statement**

1. This paragraph contains conclusions of law to which no response is required. In further response to this paragraph, the intervening defendants deny any allegation that the Bipartisan Campaign Reform Act of 2002 (the "Reform Act" or "Act") in any way violates the First Amendment or any other constitutional guarantee.

2. Denied.

3. The intervening defendants are without knowledge or information sufficient to form a belief as to truth of the allegations in the first sentence of this paragraph. The second and fifth sentences of this paragraph contain conclusions of law to which no response is required. In all other respects, the allegations contained in this paragraph are denied.

4. Denied.

**Nature Of This Action**

5. Admit that this is an action for declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act, 2 U.S.C. §§ 431 *et seq.* ("FECA"), as amended

by the Reform Act, and against their enforcement by the defendants, on the grounds alleged, but deny that the Reform Act is unconstitutional in any manner.

6. Admit that the President signed the Reform Act into law on March 27, 2002, but otherwise deny the allegations in this paragraph.

7. Admit that the plaintiffs seek declaratory and injunctive relief, but deny that the plaintiffs are entitled to the relief they seek.

### **Parties To This Action**

8. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, but admit that the NRA purports to bring this action “on its own behalf and on behalf of its individual members.”

9. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, but admit that the Victory Fund purports to bring this action “on its own behalf and on behalf of its contributors.”

10. This paragraph contains conclusions of law to which no response is required.

11. Admit that David M. Mason is a Commissioner and the Chairman of the FEC and that plaintiffs have instituted this action against him in his official capacity. In all other respects, this paragraph contains conclusions of law to which no response is required.

12. Admit that Karl J. Sandstrom is a Commissioner of the FEC and that plaintiffs have instituted this action against him in his official capacity. In all other respects, this paragraph contains conclusions of law to which no response is required.

13. Admit that Danny L. McDonald is a Commissioner of the FEC and that plaintiffs have instituted this action against him in his official capacity. In all other respects, this paragraph contains conclusions of law to which no response is required.

14. Admit that Bradley A. Smith is a Commissioner of the FEC and that plaintiffs have instituted this action against him in his official capacity. In all other respects, this paragraph contains conclusions of law to which no response is required.

15. Admit that Scott E. Thomas is a Commissioner of the FEC and that plaintiffs have instituted this action against him in his official capacity. In all other respects, this paragraph contains conclusions of law to which no response is required.

16. Admit that plaintiffs instituted this action against Darryl R. Wold in his official capacity. In all other respects, the allegations contained in this paragraph are denied. The intervening defendants note that President George W. Bush appointed Michael E. Toner to the Federal Election Commission on Friday, March 29, 2002.

17. Admit that John Ashcroft is the Attorney General of the United States. In all other respects, this paragraph contains conclusions of law to which no response is required.

#### **Jurisdiction and Venue**

18. 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 plaintiffs may not have standing to bring certain of their claims, or that plaintiffs may have failed to exhaust adequate and available administrative remedies.

19. The intervening defendants agree that a three-judge court should be convened pursuant to 28 U.S.C. § 2284 and § 403(a) of the Reform Act.

20. Admitted.

#### **Factual Basis For Claims**

21. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants. Additionally, this paragraph contains conclusions of law to which no response is required.

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

23. Denied.

24. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants.

25. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants.

26. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants.

27. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants. Additionally, this paragraph contains conclusions of law to which no response is required.

28. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants. Additionally, this paragraph contains conclusions of law to which no response is required.

29. Denied.

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

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

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

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, and therefore no further answer is required of these intervening defendants.

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

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

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

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

39. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants.

40. The provisions of the Reform Act speak for themselves, and therefore no further answer is required of these intervening defendants. Additionally, 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 regarding the precise structure of ownership of the identified corporations.

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

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

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

44. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants. Additionally, this paragraph contains conclusions of law to which no response is required.

45. The provisions of any relevant FEC regulations 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.

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

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

51. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants. Additionally, this paragraph contains conclusions of law to which no response is required.

52. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants. Additionally, this paragraph contains conclusions of law to which no response is required.

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

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

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

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

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

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

59. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. The intervening defendants deny that “the NRA’s political speech and communications in the 2004 election cycle and beyond will be severely chilled should [the Reform Act] become effective.”

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



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

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

63. This paragraph contains conclusions of law to which no response is required.

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

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

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

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

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

### **Count I**

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

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

71. Denied.

## **Count II**

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

73. Denied.

74. Denied.

## **Count III**

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

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

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

78. Denied.

79. Denied.

## **Count IV**

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

81. The provisions of FECA speak for themselves, and therefore no further answer is required of these intervening defendants.

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

83. Denied.

### **Count V**

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

85. Denied.

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

87. Denied.

88. Denied.

### **Count VI**

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

90. The provisions of FECA and its implementing regulations speak for themselves, and therefore no further answer is required of these intervening defendants.

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. In further response to this paragraph, intervening defendants note that this claim depends on regulations that have not yet been promulgated and whose content has not yet been determined.

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

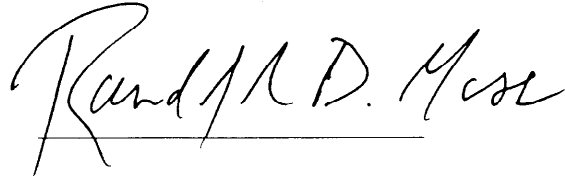
## **REQUEST FOR RELIEF**

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

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Randolph D. Moss". The signature is written in black ink and is positioned above a horizontal line.

Roger M. Witten (D.C. Bar No. 163261)  
Seth P. Waxman (D.C. Bar No. 257337)  
Randolph D. Moss (D.C. Bar No. 417749)  
WILMER, CUTLER & PICKERING  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
(202) 663-6000

David J. Harth  
Charles G. Curtis, Jr.  
Monica P. Medina  
HELLER EHRMAN WHITE &  
MCAULIFFE LLP  
One East Main Street, Suite 201  
Madison, WI 53703

Prof. Burt Neuborne  
Frederick A.O. Schwarz, Jr.  
E. Joshua Rosenkranz  
BRENNAN CENTER FOR JUSTICE  
161 Avenue of the Americas, 12th Floor  
New York, NY 10013

Trevor Potter  
THE CAMPAIGN AND MEDIA LEGAL CENTER  
1101 Connecticut Ave., N.W.,  
Suite 330  
Washington, DC 20036

*Counsel for the Intervening Defendants*

Bradley S. Phillips  
MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071

Fred Wertheimer  
DEMOCRACY 21  
1825 Eye Street, N.W., Suite 400  
Washington, DC 20006