

In the United States District Court for the District of Columbia

Plaintiffs, by undersigned counsel, herein state their Complaint and Causes of Action against the Federal Elections Commission, the members thereof, and against the Attorney General of the United States of America:

-VS-

FEDERAL ELECTIONS COMMISSION
999 E Street, NW
Washington, DC 20463

DAVID W. MASON, KARL J.
SANDSTROM, DANNY L. MCDONALD,
BRADLEY A. SMITH, SCOTT E. THOMAS,
and DARRYL R. WOLD, in their official
capacities as Commissioners of the FEC,
999 E Street, NW
Washington, DC 20463

and

HON. JOHN ASHCROFT
ATTORNEY GENERAL OF
THE UNITED STATES,
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

INTRODUCTION

1. Plaintiffs are minors who are active participants in politics, and whose right to freedom of speech, in the form of financial support for, and monetary contributions to, political candidates and campaigns is subject to entire prohibition under the Federal Elections Campaign Act ("FECA"), as amended by the Bipartisan Campaign

Reform Act of 2002 ("BCRA 2002").

2. Reverend Patrick Mahoney was a candidate for the Democratic nomination for President in the 1996 election cycle, and has been and is a contributor to such groups as National Right to Life and the Susan B. Anthony List, whose contributions to such organizations, for the purpose of supporting the funding of communications is frustrated or prevented entirely by FECA, as amended by BCRA 2002, and whose freedom of association with such organizations is, also, therefore unduly burdened thereby.

3. The Plaintiffs seek a declaratory judgment that the challenged provisions of BCRA 2002 are unconstitutional.

4. The Plaintiffs seek permanent injunctive relief against enforcement of the challenged provisions of the Act.

5. Finally, because the challenged provisions of the Act were unreasonable when enacted and because any attempt to defend those provisions against a constitutional challenge is not a reasonable litigation position, the Plaintiffs seek an award of costs, including attorneys fees, in accordance with the provisions of the Equal Access to Justice Act.

JURISDICTION AND VENUE

6. This is an action under the Declaratory Judgment Act seeking equitable and declaratory relief to cure threatened deprivations of the federal rights of the Plaintiffs, all of which are threatened to be inflicted by conduct taken by the defendant and those in concert with the defendant.

7. Jurisdiction is proper in the United States District Court for the District of Columbia in accordance with the provisions of BCRA 2002, which requires that challenge to the provisions of that legislation on constitutional grounds be filed in this Court, and which requires that such a challenge be decided by a three-judge district court in accordance with Title 28 U.S.C. § 2284.

8. Additionally, the jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331, 1343(a)(4), 2201 and 2202.

9. As expressly provided in BCRA 2002, § 403, the District of Columbia is the appropriate venue for this facial challenge asserting constitutional grounds for the invalidation of the challenged provisions.

PARTIES

Parties 10-15 are minors.

16. Reverend Patrick Mahoney is a citizen of the United States and a resident of the Commonwealth of Virginia.

17. Defendant Federal Elections Commission is established by 2 U.S.C. § 437(c) and is an independent agency with regulatory authority over federal elections and campaigns of candidates for federal office. Its duties include the repository, review, and audit of disclosures of campaign finance information by regulated entities, the enforcement of the provisions of federal elections laws, as amended by BCRA 2002, and oversight of the public funding of Presidential elections. The Federal Elections Commission has exclusive jurisdiction with respect to civil enforcement of FECA.

18. Defendant David M. Mason is a Commissioner and the Chairman of the Federal Elections Commission. As a Commissioner, he is responsible for administering and enforcing FECA, as amended by BCRA 2002. He is sued in his official capacity.

19. Defendant Karl J. Sandstrom is a Commissioner and the Vice Chairman of the Federal Elections Commission. As a Commissioner, he is responsible for administering and enforcing FECA, as amended by BCRA 2002. He is sued in his official capacity.

20. Defendants Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold are Commissioners of the Federal Elections Commission. As such, they are

responsible for administering and enforcing FECA, as amended by BCRA 2002. Each is sued in his official capacity.

21. Defendant John Ashcroft, the Attorney General of the United States, is the chief law enforcement officer of the United States government. As such, he is charged with the enforcement of criminal sanctions against violations of the United States Code. He is also empowered to receive from the Defendant Federal Elections Commission and/or its supervisory officers notifications of apparent violations of FECA and BCRA 2002, and at the request of the Federal Elections Commission and/or its supervisory officers, to institute civil actions for relief or any other appropriate order. Whenever the Federal Elections Commission refers an apparent violation to Defendant Ashcroft, he must report to the Commission with respect to any action taken by him regarding the apparent violation.

AVERMENT OF FACTS

The Bipartisan Campaign Reform Act of 2002

22. On February 14, 2002, and March 20, 2002, the House and Senate passed BCRA 2002.

23. On March 27, 2002, the President signed BCRA 2002 into law.

24. BCRA 2002 includes five separate Titles.

25. Title I of BCRA 2002

a. is styled "Reduction of Special Interest Influence;"

b. includes a ban on so-called "soft money;"

c. requires that state, district, and local political party committees pay for what BCRA 2002 defines as "federal election activity" only with money raised subject to FECA's restrictions;

d. carves out a narrow exception for certain types of "federal election activity," including some voter registration, voter identification, and get-out-the-vote activity, for which, state, district, and local political party committees may use funds that are not raised subject to FECA's restrictions, as long as the funds used for the state share of such activities are raised in amounts no greater than \$10,000, are segregated from

the party committee's other funds, and are fully reported to the federal authorities;

- e. generally prohibits federal officeholders and candidates from participating in raising or spending any funds, for themselves or others, for "federal election activity" if those funds are not raised subject to FECA's restrictions; and,
- f. bars state candidates from spending funds on communications that promote or support candidates for federal office, even if those communications do not expressly advocate a vote for or against a candidate.

26. Title II of BCRA 2002:

- a. is styled "Noncandidate Campaign Expenditures;"
- b. prohibits corporations and labor unions from using funds not raised subject to FECA's limitations to pay for so-called "electioneering communications;"
- c. provides a "fall-back" definition of "electioneering communications" in the event that the primary definition is held to be unconstitutional;
- d. regulates communications containing issue advocacy, which does not expressly advocate the election or defeat of clearly identified federal candidates
- e. requires, over and above the limitations on corporations and labor organizations, that any person who makes "electioneering communications" is subject to stringent new disclosure requirements, including disclosure of names and addresses of contributors of as little as \$1,000 to an organization that engages in "electioneering communications;"
- f. treats any disbursements for "electioneering communications" that are coordinated with candidates or their political parties as contributions to the candidates, and subjects such disbursements the source-and-amount limitations of FECA;
- g. requires political party committees to choose between making independent expenditures on behalf of that candidate and making coordinated expenditures with that candidate; and,
- h. directs the Federal Elections Commission broadly to define the term "coordinated activity."

27. Title III of BCRA 2002:

- a. is styled "Miscellaneous;"
- b. sets revised limits on contributions by individuals to candidates for federal office

and to national party committees

- c. sets an aggregate limit on an individual's total contributions to candidates, political action committees, and political parties;
- d. dramatically enhances the criminal penalties for violations of FECA;
- e. increases the maximum prison sentence from one to five years and eliminates language capping the amount of any fine;
- f. lengthens the limitations period;
- g. orders the United States Sentencing Commission to promulgate sentencing guidelines for Federal Election Campaign Act violations;
- h. prohibits persons aged seventeen years and younger from donating to the campaigns of candidates; and,
- i. creates a whole new standard for campaign funding calculations in elections involving the participation of self-funded candidates, known as the "Millionaires' Provisions."

28. Title IV of BCRA 2002:

- a. is styled "Severability; Effective Date;"
- b. states the intent of the Congress that partial invalidation of the Act result in severing and survival of other portions of the Act;
- c. provides the effective dates for the provisions of the Act; and,
- d. provides a provision for judicial review of constitutional challenges to the Act.

29. Title V of BCRA 2002:

- a. is styled "Additional Disclosure Provisions;"
- b. imposes additional disclosure obligations;
- c. compels the maintenance of internet access to relevant records;
- d. compels the maintenance of a website, by the Federal Elections Commission, from which the public can have continuous and ready access to campaign financing report information; and,
- e. imposes significant disclosure obligations on broadcasters with respect to political advertisements.

30. BCRA 2002 takes effect on November 6, 2002.

Minors Participating in Campaigning

31. Parties are minors, under the age of eighteen years (hereinafter collectively referred to as "the minors").

32. The minors are, each of them, deeply and seriously interested in electoral politics and campaigning.

33. The minors have already demonstrated their serious interest in electoral politics and campaigning by participating as volunteers in such electoral campaigns.

34. In the case of certain of the minors, the commitment to participation has been evidenced by traveling great distances without compensation in order to campaign door-to-door for selected candidates.

35. In these and many other ways, the minors have demonstrated their commitment to using their constitutional freedoms of expression and association in order to effect political change in accord with their beliefs and opinions.

36. The minors consider the donation of money to political candidates and their campaigns as a form of expression of support for those candidates.

37. The minors consider withholding the donation of money to political candidates and their campaigns as a form of expression of opposition to those candidates.

38. The minors consider the donation of money to political candidates and their campaigns as a form of association in support of those candidates.

39. The minors want to, and intend to, exercise their constitutional rights of expression by making campaign and candidate donations in the future, during their minority.

Contributors/Donors to Issue Advocacy and/or Political Groups
and Associational Rights

40. Reverend Patrick Mahoney ("Mahoney") is an evangelical Christian.

41. Mahoney is the director of the Christian Defense Coalition, an unincorporated association of pro-life, Christian activists.

42. Mahoney has a deep, abiding, and well-tested commitment both to his Christian faith and to his opposition to human abortion.

43. Mahoney has given financial donations to numerous pro-life advocacy organizations and causes in the past, including organizations whose education and advocacy activities fall within the restrictions on electioneering communications.

44. Among the recipients of his donations are such groups as National Right to Life, Rock for Life, and the Susan B. Anthony List.

45. Mahoney lacks the financial resources to operate a major metropolitan daily newspaper or electronic media outlet by which he could directly communicate to the public his views on the issues of faith and of abortion.

46. Because he can communicate effectively by combining with thousands and sometimes millions of others who also donate to such groups as the National Right to Life, Rock for Life, and the Susan B. Anthony List, Mahoney makes the deliberate and conscious decision to join with such groups and associate with them by donating funds to allow for their educational and advocacy activities to occur.

47. In order to compete in the marketplace of ideas, Mahoney associates with such groups as National Right to Life, Rock for Life, and the Susan B. Anthony List for the purpose of having the combining effect of such associations lead to the ability of such groups to engage in communications about various political, moral, religious and social issues.

48. Although Mahoney is still able to make donations, as a technical matter of fact, to such organizations, he is unable to do so in a way that results in continued communications that fall within the "electioneering communications" restrictions of

BCRA 2002.

49. Mahoney desires and intends to express his views in the future by the donation of funds to, and association with such issue advocacy organizations.

AVERMENTS OF LAW

50. The First Amendment to the United States Constitution protects from governmental infringement the right to freedom of speech, the right associational freedom and expression, the right to peaceably assemble and petition for redress of grievances.

51. The Fifth Amendment guarantees that life, liberty and property will not be deprived without due process of law.

52. By implication, the Fifth Amendment guarantees the right to equal protection of the law.

53. Each of these constitutional rights and privileges is clearly established and well-defined.

54. The defendants, therefore, know or should know that enforcement of the challenged provisions of FECA, as amended by BCRA 2002, will violate the federal constitutional rights of the Plaintiffs.

55. The denial, even momentarily, of rights guaranteed to the Plaintiffs, by the First and Fifth Amendments of the United States Constitution inflicts an irreparable injury to the Plaintiffs.

56. There is no adequate remedy at law for the injuries threatened against the Plaintiffs.

CLAIMS OF INJURY

COUNT ONE: VIOLATION OF RIGHTS GUARANTEED
BY THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT
TO THE UNITED STATES CONSTITUTION

57. The facts stated hereinabove are incorporated herein by reference as though fully set out.

58. FECA, as amended by BCRA 2002, bans corporate expenditures for express advocacy and "electioneering communications."

59. Express advocacy and "electioneering communications" are the kind of core, political speech that the First Amendment Free Speech Clause places beyond the reach of the Congress.

60. BCRA 2002's prohibition on electioneering communications is an unconstitutional abridgement of the Plaintiffs' First Amendment rights of free speech because the speech of such organizations, funded in part by the donations of Mahoney, is, in legal fact, his speech.

61. BCRA 2002 also completely prohibits minors aged seventeen and younger from donating to candidates or campaigns.

62. No government interest justifies this sweeping restriction on the Plaintiffs' First Amendment right to freedom of speech that is effected by FECA, as amended by BCRA 2002.

63. By frustrating Mahoney's expression by the means of barring recipients organizations from engaging in electioneering communications as well as express advocacy, FECA, as amended by BCRA 2002, unconstitutionally abridges the First Amendment right of free speech.

WHEREFORE the Plaintiffs respectfully pray that this Court grant the relief set out below in the demand for judgment.

COUNT TWO: VIOLATION OF ASSOCIATIONAL FREEDOM AND EXPRESSION RIGHTS
GUARANTEED BY THE FIRST AMENDMENT
TO THE UNITED STATES CONSTITUTION

64. The facts stated hereinabove are incorporated herein by reference as though fully set out.

65. The groups to which Mahoney gives funds for the purpose of engaging in electioneering communications are constitutionally entitled to engage in electioneering communications on his behalf.

66. BCRA 2002 prohibits such groups as Mahoney supports from engaging in electioneering communications.

67. Congress contemplated that BCRA 2002's prohibition against engaging in electioneering communications by issue advocacy organizations and corporations might be held unconstitutional.

68. Consequently, BCRA 2002 will still require that groups that Mahoney supports disclose its contributors, such as Mahoney, and their addresses if it engages in electioneering communications.

69. This disclosure requirement will burden the associational freedoms of Mahoney, the groups to which he contributes, and their affiliates, and other contributors.

70. The burdensome of that disclosure requirement is exacerbated by the timeliness of disclosure requirements, that require the Federal Elections Commission to publish such disclosures over the internet within 48 hours of their receipt, for free access by the public.

71. Accordingly, BCRA 2002's disclosure and reporting requirements violate the First Amendment by unconstitutionally burdening and chilling the freedom of association and free speech.

WHEREFORE the Plaintiffs respectfully pray that this Court grant the relief set out below in the demand for judgment.

COUNT THREE: VIOLATION OF RIGHTS GUARANTEED BY THE ASSEMBLY AND PETITION CLAUSES OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

72. The facts stated hereinabove are incorporated herein by reference as though fully set out.

73. Together, the Assembly and Petition Clauses of the First Amendment guarantee to all, including the Plaintiffs, the right to peaceably assemble and to petition the government for a redress of grievances.

74. The challenged provisions of FECA, as amended by BCRA 2002, unduly burden and restrain the right of the Plaintiffs to join together with others of like mind and views to peaceably pursue redress of wrongs.

75. Under FECA and its implementing regulations, expenditures made "in cooperation, consultation, or concert with, or at the request or suggestion of," a candidate are treated as contributions to the candidate.

76. BCRA 2002 further provides that not only expenditures, but also disbursements for electioneering communications that are coordinated with a candidate or political party committee will be treated as contributions to that candidate or political party committee, respectively.

77. BCRA 2002 requires the Federal Elections Commission to promulgate new regulations concerning "coordinated communications," which regulations "shall not

require agreement or formal collaboration to establish coordination."

78. Such regulations, if they do not require an "agreement or formal collaboration," will suffer from unconstitutional overbreadth, thus violating the rights of the Plaintiffs to petition the government for redress of grievances.

79. The challenged provisions of law accomplish that unconstitutional result both by the direct prohibition of certain communications, and by the burdensome regulation of others.

WHEREFORE the Plaintiffs respectfully pray that this Court grant the relief set out below in the demand for judgment.

COUNT FOUR: VIOLATION OF DUE PROCESS RIGHTS GUARANTEED BY THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

80. The facts stated hereinabove are incorporated herein by reference as though fully set out.

Vagueness of the Statute

81. BCRA 2002 prohibits, on pain of both civil and criminal penalties, electioneering communications that "refer to" clearly identified federal candidates. The legislation does not define the term "refers to" or otherwise describe the communications that are covered by this term.

82. BCRA 2002's alternative definition of electioneering communications prohibits any communication "which promotes or supports a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate."

83. BCRA 2002 does not define key terms, including "support," "oppose," "suggestive," "plausible," and "exhortation," nor otherwise describe the communications that are covered by these terms.

84. Because the terms "refer to," "support," "oppose," "suggestive," "plausible," and "exhortation" are unclear, BCRA 2002's prohibition on electioneering communication does not adequately inform Mahoney whether the kinds of speech prohibited are the sorts for which he intends to contribute funds, being then either frustrated in his purpose by the ban on such communications or put at risk of his right of associational privacy because the sources of such communications will be identified under threat of sanction.

85. Accordingly, BCRA 2002's provisions governing electioneering communications are unconstitutionally void for vagueness under the First and Fifth Amendments.

Absence of Constitutional Required and Statutorily-Mandated Notice

86. The Due Process Clause of the Fifth Amendment to the United States Constitution requires that persons may not be prosecuted for prohibited conduct when the government has failed to give sufficient notice of the law making such conduct criminal.

87. BCRA 2002, because it fails to define the terms of its restrictions and prohibitions with sufficient clarity, fails to give the kind of constitutionally required notice of conduct that will be subject to investigation and prosecution under law.

WHEREFORE the Plaintiffs respectfully pray that this Court grant the relief set out below in the demand for judgment.

COUNT SIX: VIOLATION OF EQUAL PROTECTION RIGHTS GUARANTEED BY THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

88. The facts stated hereinabove are incorporated herein by reference as though fully set out.

Discrimination in Regulation of Election Communications

89. While FECA prohibits all corporations from making "expenditures" in connection with a federal election campaign, exempted from this definition is any "news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication."

90. Similarly, BCRA 2002 amends FECA to prohibit all corporations from engaging in electioneering communications, but excepts from this prohibition any communication by a broadcast corporation that is made as part of a "news story, commentary, or editorial."

91. Accordingly, FECA, as amended by BCRA 2002, unfairly and unconstitutionally discriminates against the Plaintiffs and in favor of broadcast media corporations, and thereby violates the Plaintiffs' rights of free speech and equal protection under the First and Fifth Amendments.

WHEREFORE the Plaintiffs respectfully pray that this Court grant the relief set out below in the demand for judgment.

PRAYER FOR RELIEF

On the foregoing causes of action, the Plaintiffs respectfully prays that the Court grant it the relief set forth below:

92. The Plaintiffs respectfully pray the entry of a declaratory judgment, that the challenged provisions of FECA, as amended by BCRA 2002, violates the constitutional rights of the Plaintiffs.

93. The Plaintiffs respectfully pray the entry of a permanent injunction against enforcement of the challenged provisions of BCRA 2002 barring the Defendants, their agents, servants, employees, and all persons in active concert with them, from enforcing the challenged provisions of law against the Plaintiffs in violation of their constitutional rights.

94. The Plaintiffs respectfully pray the entry of an order granting to the Plaintiffs

their costs, including a reasonable award of attorneys fees, pursuant to Title 28 U.S.C. § 2412, the Equal Access to Justice Act.

95. The Plaintiffs respectfully pray that the Court grant such other and further relief as it deems just in the circumstances.

DATED: _____, 2002

Respectfully submitted,
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