

IN THE SUPREME COURT OF THE UNITED STATES

SENATOR MITCH McCONNELL et al.,
Appellants,

v.

FEDERAL ELECTION COMMISSION et al.,
Appellees.

On Appeal From The United States
District Court For The District Of Columbia

MOTION FOR DIVIDED ARGUMENT

In response to the Clerk's letter to counsel of June 19, seven of the eleven groups of plaintiffs in this litigation (appellants in No. 02-1674, McConnell v. FEC; No. 02-1727, RNC v. FEC; No. 02-1733, National Right to Life Comm. v. FEC; No. 02-1734, ACLU v. FEC; No. 02-1753, California Democratic Party v. FEC; No. 02-1755, AFL-CIO v. FEC; and No. 02-1756, Chamber of Commerce v. FEC) come before the Court and state as follows:

1. These consolidated appeals present various challenges to the constitutionality of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). On June 5, this Court ordered that four hours be allotted for oral argument in these cases.

2. As is clear from the jurisdictional statements and opening briefs, the primary challenges to BCRA's constitutionality are the challenges to the "non-federal funds" provision (section 101) and the "electioneering communications" provisions (sections

201, 203, 204, and 311). Virtually all of the plaintiffs are challenging some of these provisions, and some are challenging all of them. In addition, the intervenor defendants have indicated that they intend to focus almost entirely on these provisions in their brief.

Consequently, the above-listed plaintiffs propose that oral argument be structured around these provisions, with two hours allotted in total (60 minutes per side) for argument on the "non-federal funds" provision, and two hours for argument on the "electioneering communications" provisions. As for the challenges to other provisions, all of which present substantial constitutional issues, appellants propose that the challenge to the "forced choice" provision of BCRA (section 213) be addressed in tandem with the closely related challenge to the "non-federal funds" provision, and that challenges to the "advance notice" provisions (sections 201 and 212), the "coordination" provisions (sections 202 and 214), the "attack ad" provision (section 305), and the "broadcaster records" provision (section 504) be addressed in tandem with the challenge to the "electioneering communications" provision.

3. Over the last few weeks, counsel for plaintiffs have consulted with each other in order to reach a global agreement for the division of argument time. Counsel for the above-listed

plaintiffs have reached the following agreement as to the allocation of time:

Kenneth W. Starr, on behalf of the McConnell appellants, 20 minutes (to address the "non-federal funds" and "forced choice" provisions).

Bobby R. Burchfield, on behalf of the political party appellants, 40 minutes (to address the "non-federal funds" and "forced choice" provisions).

Floyd Abrams, on behalf of the McConnell appellants, 40 minutes (to address the "electioneering communications," "attack ad," and "broadcaster records" provisions).

Laurence E. Gold, on behalf of the AFL-CIO appellants, 20 minutes (to address the "electioneering communications," "coordination," and "advance disclosure" provisions).

4. Three groups of appellants -- in No. 02-1675, NRA v. FEC; No. 02-1740, Adams v. FEC; and No. 02-1747, Paul v. FEC -- have indicated that they will seek time separately. The three motions by appellants should be denied. To the extent that those plaintiffs have distinctive theories or claims, they have been sufficiently aired in the briefs on the merits.

5. The Echols appellees in No. 02-1676, FEC v. McConnell, have also requested argument time to address the "minors" provision, which the district court unanimously invalidated. Our review of the transcript of the oral argument in Buckley v. Valeo,

424 U.S. 1 (1976), indicates that the Buckley Court actually allowed the advocates four and a half hours, not four hours. If this Court were to extend the four hours already granted for argument in this case by up to twenty minutes, that would permit argument on any additional issues presented in this appeal that the Court deemed necessary, including argument on the ``minors'' provision.*

* Counsel for appellants in No. 02-1733, National Right to Life Comm. v. FEC, also represent a minor who is an appellee in No. 02-1676, FEC v. McConnell, who has joined in the Echols plaintiffs' request for argument time. The NRLC appellants support that request.

Respectfully submitted,

Kenneth W. Starr /KSS

FLOYD ABRAMS
SUSAN BUCKLEY
BRIAN MARKLEY
CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, NY 10005
(212) 701-3000

Attorneys for Senator Mitch
McConnell and National
Association of Broadcasters

KATHLEEN M. SULLIVAN
559 Nathan Abbott Way
Stanford, CA 94305
(650) 725-9875

Attorney for Senator Mitch
McConnell

JAN WITOLD BARAN
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

Attorney for Senator Mitch
McConnell; California
Republican Party; Shawn Steel;
Timothy Morgan; Barbara Alby;
Santa Cruz Republican Central
Committee; Douglas R. Boyd,
Sr.; Associated Builders and
Contractors, Inc.; Associated
Builders and Contractors
Political Action Committee;
Chamber of Commerce of the
United States; National
Association of Manufacturers;
and U.S. Chamber Political
Action Committee

KENNETH W. STARR
EDWARD W. WARREN
KANNON K. SHANMUGAM
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5000

Attorneys for Senator Mitch
McConnell; Southeastern Legal
Foundation, Inc.;
Representative Bob Barr; Center
for Individual Freedom;
National Right to Work
Committee; 60 Plus Association,
Inc.; and U.S. d/b/a Pro
English

VALLE SIMMS DUTCHER
L. LYNN HOGUE
SOUTHEASTERN LEGAL FOUNDATION,
INC.
3340 Peachtree Road, N.E.
Suite 3515
Atlanta, GA 30326
(404) 365-8500

Attorneys for Southeastern
Legal Foundation, Inc.;
Representative Bob Barr; Center
for Individual Freedom;
National Right to Work
Committee; 60 Plus Association,
Inc.; and U.S. d/b/a Pro
English

G. HUNTER BATES
 FROST BROWN TODD LLC
 400 West Market Street
 32nd Floor
 Louisville, KY 40202
 (502) 589-5400

Attorney for Senator Mitch
 McConnell and Thomas E.
 McInerney

BOBBY R. BURCHFIELD
 THOMAS O. BARNETT
 ROBERT K. KELNER
 RICHARD W. SMITH
 COVINGTON & BURLING
 1201 Pennsylvania Avenue, N.W.
 Washington, DC 20004
 (202) 662-6000

Attorneys for Republican
 National Committee; Mike
 Duncan; Republican Party of
 Colorado; Republican Party of
 Ohio; Republican Party of New
 Mexico; and Dallas County
 (Iowa) Republican County
 Central Committee

THOMAS J. JOSEFIAK
 CHARLES R. SPIES
 REPUBLICAN NATIONAL COMMITTEE
 310 First Street, S.E.
 Washington, DC 20003
 (202) 863-8500

Attorneys for Republican
 National Committee; Mike
 Duncan; Republican Party of
 Colorado; Republican Party of
 Ohio; Republican Party of New
 Mexico; and Dallas County
 (Iowa) Republican County
 Central Committee

BENJAMIN L. GINSBERG
 PATTON BOGGS LLP
 2550 M Street, N.W.
 Washington, DC 20037
 (202) 457-6000

Attorney for Republican
 National Committee; Mike
 Duncan; Republican Party of
 Colorado; Republican Party of
 Ohio; Republican Party of New
 Mexico; and Dallas County
 (Iowa) Republican County
 Central Committee

MICHAEL A. CARVIN
 JONES DAY REAVIS & POGUE
 51 Louisiana Avenue, N.W.
 Washington, DC 20001
 (202) 879-3939

Attorney for Republican
 National Committee; Mike
 Duncan; Republican Party of
 Colorado; Republican Party of
 Ohio; Republican Party of New
 Mexico; and Dallas County
 (Iowa) Republican County
 Central Committee

JAMES BOPP, JR.
 RICHARD E. COLESON
 THOMAS A. MARZEN
 JAMES MADISON CENTER FOR FREE
 SPEECH
 BOPP COLESON & BOSTROM
 1 South Sixth Street
 Terre Haute, IN 47807
 (812) 232-2434

Attorneys for Representative
 Mike Pence; Alabama Attorney
 General Bill Pryor; National
 Right to Life Committee, Inc.;
 Libertarian National Committee,
 Inc.; Club for Growth, Inc.;
 Indiana Family Institute, Inc.;
 National Right to Life
 Educational Trust Fund;
 National Right to Life
 Political Action Committee

MARK J. LOPEZ
 STEVEN R. SHAPIRO
 AMERICAN CIVIL LIBERTIES UNION
 FOUNDATION, INC.
 125 Broad Street
 New York, NY 10004
 (212) 549-2608

Attorneys for American Civil
 Liberties Union

JOEL M. GORA
 BROOKLYN LAW SCHOOL
 250 Joralemon Street
 Brooklyn, NY 11201
 (718) 780-7926

Attorneys for American Civil
 Liberties Union

LANCE H. OLSON
 DEBORAH B. CAPLAN
 OLSON HAGEL & FISHBURN
 555 Capitol Mall
 Suite 1425
 Sacramento, CA 95814
 (916) 442-2952

Attorneys for California
 Democratic Party; Art Torres;
 and Yolo County Democratic
 Central Committee

JOSEPH E. SANDLER
 NEIL R. REIFF
 JOHN HARDIN YOUNG
 SANDLER, REIFF & YOUNG
 50 E Street, S.E.
 Suite 300
 Washington, DC 20003

Attorneys for California
 Democratic Party; Art Torres;
 and Yolo County Democratic
 Central Committee

CHARLES H. BELL, JR.
 BELL, McANDREWS, HILTACHK &
 DAVIDIAN LLP
 455 Capitol Mall
 Suite 801
 Sacramento, CA 95814

Attorneys for California
 Republican Party; Shawn Steel;
 Timothy Morgan; Barbara Alby;
 Santa Cruz Republican Central
 Committee; and Douglas R. Boyd,
 Sr.

JONATHAN P. HIATT
LAURENCE E. GOLD
AFL-CIO
815 Sixteenth Street, N.W.
Washington, DC 20006
(202) 637-5130

Attorneys for the AFL-CIO and
the AFL-CIO Committee on
Political Education Political
Contributions Committee

July 14, 2003

MICHAEL B. TRISTER
LICHTMAN, TRISTER & ROSS, PLLC
1666 Connecticut Avenue, N.W.
Washington, DC 20009
(202) 328-1666

Attorney for the AFL-CIO and
the AFL-CIO Committee on
Political Education Political
Contributions Committee