

IN THE SUPREME COURT OF THE UNITED STATES

CONGRESSMAN RON PAUL, GUN OWNERS OF AMERICA, INC.,
GUN OWNERS OF AMERICA POLITICAL VICTORY FUND,
REALCAMPAIGNREFORM.ORG, CITIZENS UNITED,
CITIZENS UNITED POLITICAL VICTORY FUND,
MICHAEL CLOUD, AND CARLA HOWELL,
APPELLANTS,

v.

FEDERAL ELECTION COMMISSION, ET AL.,
APPELLEES.

On Appeal from the United States District Court
For the District of Columbia

RESPONSE OF APPELLANTS CONGRESSMAN RON PAUL, ET AL.
TO THE GOVERNMENT'S MOTION FOR EXPEDITED BRIEFING SCHEDULE

The Jurisdictional Statement of Congressman Ron Paul and seven other plaintiffs (known in the district court as the "Paul Plaintiffs") was filed on Friday, May 30, 2003. The challenge to the Bipartisan Campaign Reform Act of 2002 ("BCRA") brought by the Paul Plaintiffs is related to several other appeals now pending before this Court, including McConnell, et al. v. Federal Election Commission, et al., No. 02-1674.

The Solicitor General, on behalf of the Federal Election Commission, et al., has moved this Court in the McConnell (and other) appeals to establish an expedited briefing schedule (Motion of the Appellees/Cross-Appellants Federal Election Commission, et

al., for Expedited Briefing Schedule, filed May 23, 2003). In view of the possibility that this Court could act on that motion and establish a procedural schedule that would apply to all of the BCRA appeals, even though they have not as of this date been consolidated, these comments are being submitted in response to that motion.

Generally, the Paul Plaintiffs support the positions advanced by the McConnell appellants in their May 27, 2003 Response to the Solicitor General's motion. Late September 2003 oral argument, preceded by three rounds of simultaneous briefs, appears to the Paul Plaintiffs be the best way to present these important and complex issues to the Court. Brief lengths proposed by the McConnell Plaintiffs of appellants' opening brief of 60 pages, cross-appellees' opening brief of 60 pages, and appellants' reply brief of 20 pages for each set of parties below are adequate for the Paul Plaintiffs, but the Paul Plaintiffs would have no objection to the government being allowed additional pages in that they are required to deal with the separate arguments of several sets of appellants.

The principal concern of the Paul Plaintiffs is that they be allowed the opportunity to separately brief and argue their distinct appeal to this court. This appears to be the request of the McConnell Appellants, and the Solicitor General's Motion

appeared to have no problem with this, as it anticipated separate briefs by "each set of plaintiffs."

The district court litigation revealed several reasons that the Paul Plaintiffs case should be presented separately. Differences between the position of the Paul Plaintiffs and the other appellants are numerous and substantial. The legal claims of the Paul Plaintiffs are based on the freedom of the press, not freedom of speech and association, equal protection, and due process on which all other plaintiffs relied. The Paul Plaintiffs also challenge sections of Federal Election Campaign Act of 1971 ("FECA"), as amended by BCRA, including contribution limitations and contribution disclosure requirements, which others do not. In fact, the Paul Plaintiffs seek the overruling of Buckley v. Valeo, while it does not appear the other appellants have done so.

The Paul Plaintiffs' case below relied on the testimony of three expert witnesses and eleven fact witnesses demonstrating the falsity of the ostensible Congressional purpose for BCRA, and the real intention and effect of the law being anti-competitive, anti-minor party, and anti-challenger. Beyond this, the Paul Plaintiffs demonstrated how BCRA imposed prior restraints on their press activities through a licensing scheme, imposed improper editorial controls, and imposed discriminatory economic burdens. These issues were not focused upon by any of the other plaintiffs below.

These differences prompted the Paul Plaintiffs to seek, and receive, three rounds of separate briefing and separate oral argument on BCRA Title I, Title II, and Title III in the district court. In granting this motion, the district court noted that the "type of challenges and focus" of the Paul Plaintiffs justified the separate treatment. (U.S. District Court for the District of Columbia, Case No. 02-781, Order dated October 15, 2002, at 8.)

Moreover, the district court's *per curium* opinion treated the Paul Plaintiffs' press arguments as the threshold issue in its analysis of constitutional issues. (Per Curium Opinion, at 106 - 109.) The Paul Plaintiffs' Jurisdictional Statement discusses at length how their arguments were considered by the district court as "discrete," and were clearly "distinct" from the other constitutional theories advanced by all other plaintiffs, requiring separate analysis. (Paul Plaintiffs' Jurisdictional Statement at 15-20.)

Accordingly, the Paul Plaintiffs respectfully request that they be allowed to file their own briefs at each round of 60, 60, and 20 pages, as well as adequate time to make their own oral argument to the Court.

Respectfully submitted,

HERBERT W. TITUS
TROY A. TITUS, P.C.
5221 Indian River Road
Virginia Beach, VA 23464
(757) 467-0616

RICHARD O. WOLF
MOORE & LEE, LLP
1750 Tysons Boulevard
Suite 1450
McLean, VA 22102
(703) 506-2050

Attorneys for Appellants
**Counsel of Record*
June 2, 2003

WILLIAM J. OLSON*
JOHN S. MILES
WILLIAM J. OLSON, P.C.
Suite 1070
8180 Greensboro Drive
McLean, VA 22102
(703) 356-5070

GARY G. KREEP
U.S. JUSTICE FOUNDATION
Suite 1-C
2091 E. Valley Parkway
Escondido, CA 92027
(760) 741-8086