

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

---

RESPONSE TO MOTIONS FOR DIVIDED ARGUMENT

---

In response to the motions for divided argument filed by other appellants and appellees, 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. The above-listed plaintiffs agree with the defendants that the Court should allocate two hours in total for oral argument on the "non-federal funds" provision (section 101) and "forced choice" provision (section 213), and two hours for oral argument on the remaining provisions of BCRA. We note only that we do not believe that it is necessary for the Court further to subdivide argument time into additional categories. Such a further

subdivision would run the risk of allocating excessive time to certain provisions (such as the 30 minutes proposed for section 213, which the district court unanimously struck down), and insufficient time to others. Allocating the time in two-hour blocks will give the Court greater flexibility to focus on issues of its own choosing.

2. As noted in our motion, over the last few weeks, counsel for plaintiffs have consulted with each other in an attempt to reach agreement on the division of argument time. While some plaintiffs opted to seek time separately, the great majority of plaintiffs were able to agree on a global proposal under which four advocates would address all of the major constitutional issues presented in this litigation. To the extent that plaintiffs who have not joined the global proposal have distinctive theories or claims, they can be sufficiently aired in the briefs on the merits, as is the ordinary practice in cases in this Court involving large numbers of parties. For that reason, and for the more detailed reasons given below, the motions of the Paul, Adams, and NRA appellants should be denied.

a. Appellants in No. 02-1747, Paul v. FEC, have moved for 20 minutes of argument time. The Paul appellants advance a discrete theory: namely, that various provisions of BCRA are unconstitutional because they violate not the First Amendment freedoms of speech and association, but rather the First Amendment

freedom of press. The district court, however, dealt summarily with those claims, holding that, even if the Paul appellants could properly characterize themselves as members of the "press," their Press Clause claims are effectively subsumed within the First Amendment claims of other plaintiffs because the Press Clause provides no greater rights than the Speech Clause. See, e.g., Supp. App. 101sa-104sa (Kollar-Kotelly and Leon). Because the claims of the Paul appellants may readily be resolved on the briefs, oral argument on those claims is not necessary.

b. Appellants in No. 02-1740, Adams v. FEC, have moved for 15 minutes of argument time. The Adams appellants challenge various provisions of BCRA that increase contribution limits, on the theory that higher limits discriminate against poor voters and candidates and thereby violate the equal protection component of the Fifth Amendment. The district court summarily disposed of these claims on the ground that the Adams appellants lacked standing to pursue them. See Supp. App. 8sa (per curiam); id. at 472sa-475sa (Henderson). The claims of the Adams appellants may also be readily resolved on the briefs, without resort to oral argument.

c. Appellants in No. 02-1675, NRA v. FEC, have moved for half of the argument time allotted to Title II of BCRA, including BCRA's "electioneering communications" provisions (the only provisions they challenge). Although the NRA appellants have

claimed that they have advanced "at least four First Amendment arguments" not made by any other plaintiff, NRA Mot. for Divided Argument 2, we respectfully disagree. With respect to most of the NRA appellants' challenge, to the extent that the NRA constitutes an MCFL corporation, defendants have effectively conceded that the NRA would not be subject to BCRA's "electioneering communications" provisions, as the NRA itself acknowledges. See NRA Mot. for Divided Argument 5 n.2. To the extent that the NRA is found not to meet the specific requirements for an MCFL corporation -- either because it engages in business activities or because it receives some funds from corporate sources -- it is no different from some of the above-listed plaintiffs. Indeed, the NRA appellants are similarly situated to, and advance positions consistent with those advanced by, the American Civil Liberties Union and the National Right to Life Committee, two of the Nation's most prominent non-profit advocacy groups (which are among the plaintiffs that join the global proposal). The NRA appellants' only truly distinctive argument is their equal protection challenge to the statutory exception for news stories and editorials, which is fully addressed in their merits brief. See NRA Br. 44-50. In sum, therefore, any "divergences" of interest between the NRA appellants and other plaintiffs are insufficiently substantial to merit separate argument time.

3. The Echols appellees in No. 02-1676, FEC v. McConnell,

have also requested 10 minutes of oral argument time to address the "minors" provision, which the district court unanimously invalidated.\* Should the Court conclude that their request should be granted, the Court should allot additional time to accommodate it. As we noted in our motion, the allocation of a modest amount of additional time would be consistent with the model of Buckley v. Valeo, 424 U.S. 1 (1976).

4. In Buckley, the Court allowed seven lawyers to argue -- four on one side, and three on the other. A similar number of advocates is entirely appropriate in this case. The Court would be disserved if oral argument in this case were to be turned into an "open microphone" session, with a parade of advocates presenting duplicative or unnecessary argument. For that reason, and for the other reasons stated herein, the motions of the Paul, Adams, and NRA appellants should be denied.

---

\* As noted in our motion, appellants in No. 02-1733, National Right to Life Comm. v. FEC, support the request.

Respectfully submitted,



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

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 and National  
Association of Broadcasters

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

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

Attorney for Senator Mitch  
McConnell

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

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

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

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

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. JOSEFIK  
 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 18, 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