

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Republican National Committee, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 08-1953 (BMK, RJL, RMC)
)	
Federal Election Commission,)	THREE-JUDGE COURT
)	
Defendant,)	
)	
and)	
)	
Representative Christopher Van Hollen, Jr.)	
United States House of Representatives)	
Washington, D.C. 20515,)	
)	
Proposed Defendant-Intervenor.)	

**[PROPOSED] ANSWER AND AFFIRMATIVE DEFENSES OF
INTERVENING DEFENDANT
REPRESENTATIVE CHRISTOPHER VAN HOLLEN, JR.**

The [proposed] intervening defendant Representative Christopher Van Hollen, Jr., by his undersigned counsel, answers each numbered paragraph of the plaintiffs' complaint as follows:

ANSWER

Introduction

1. Admits that this is an action challenging § 101 of the Bipartisan Campaign Reform Act of 2002 ("BCRA" or "Act") on constitutional grounds, that BCRA § 101 added a new § 323 to the Federal Election Campaign Act ("FECA"), and that the provisions challenged in this action are codified at 2 U.S.C. § 441i. Plaintiffs' contention that this action constitutes an as-

applied challenge is a conclusion of law or legal characterization, to which no responsive pleading is required. Denies that BCRA is unconstitutional in any manner.

2. Plaintiffs' contention that this action constitutes an as-applied challenge is a conclusion of law or legal characterization, to which no responsive pleading is required. Admitted in all other respects.

3. The provisions of BCRA and FECA speak for themselves, and therefore no further answer is required of this intervening defendant.

4. The provisions of BCRA and FECA speak for themselves, and therefore no further answer is required of this intervening defendant.

5. This paragraph contains tendentious characterizations of the Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), which speaks for itself, and conclusions of law, to which no responsive pleading is required. Therefore, no further answer is required of this intervening defendant.

6. This paragraph contains tendentious characterizations of the Supreme Court's decisions in *McConnell v. FEC*, 540 U.S. 93 (2003), and *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007), which speak for themselves, and conclusions of law, to which no responsive pleading is required. Therefore, no further answer is required of this intervening defendant.

7. This paragraph contains tendentious characterizations of legal precedent from other jurisdictions, which speaks for itself, and conclusions of law, to which no responsive pleading is required. Therefore, no further answer is required of this intervening defendant.

8. The intervening defendant is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that they plan to engage in certain activities and that they will not proceed as planned without the relief requested in the complaint. This paragraph

also contains conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant denies the allegations in this paragraph and denies that the Act is unconstitutional in any manner.

Jurisdiction and Venue

9. Admitted.

10. Admitted.

Parties

11. The intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. The second sentence contains conclusions of law, to which no responsive pleading is required.

12. Admits the allegations in the first sentence of this paragraph. The second sentence contains conclusions of law, to which no responsive pleading is required.

13. This paragraph contains only conclusions of law, to which no responsive pleading is required.

14. Admits that Robert M. (Mike) Duncan is the Chairman of the Republican National Committee. The intervening defendant is without knowledge or information sufficient to form a belief as to the truth of all other allegations contained in this paragraph.

15. Admitted.

Facts

16. Admits that there are currently no federal candidates scheduled to appear on the 2009 ballot in New Jersey. The intervening defendant is without knowledge or information sufficient to form a belief whether there will be any federal candidates on the 2009 ballot in New Jersey at the time of that election. Plaintiffs' contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not "unambiguously related to the campaign of

a particular federal candidate,” *Buckley v. Valeo*, 424 U.S. 1, 80 (1976), are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17. Admits that there are currently no federal candidates scheduled to appear on the 2009 ballot in Virginia. The intervening defendant is without knowledge or information sufficient to form a belief whether there will be any federal candidates on the 2009 ballot in Virginia at the time of that election. Plaintiffs’ contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not “unambiguously related to the campaign of a particular federal candidate,” *Buckley*, 424 U.S. at 80, are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

18. Plaintiffs’ contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not “unambiguously related to the campaign of a particular federal candidate,” *Buckley*, 424 U.S. at 80, are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

19. Plaintiffs’ contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not “unambiguously related to the campaign of a particular federal candidate,” *Buckley*, 424 U.S. at 80, are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

20. Plaintiffs' contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not "unambiguously related to the campaign of a particular federal candidate," *Buckley*, 424 U.S. at 80, are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

21. Plaintiffs' contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not "unambiguously related to the campaign of a particular federal candidate," *Buckley*, 424 U.S. at 80, are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

22. Plaintiffs' contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not "unambiguously related to the campaign of a particular federal candidate," *Buckley*, 424 U.S. at 80, are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

23. The intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

24. Plaintiffs' contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not "unambiguously related to the campaign of a particular federal candidate," *Buckley*, 424 U.S. at 80, are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

25. Plaintiffs' contentions that the intended activities alleged in this paragraph are (a) unlawful under BCRA and (b) not "unambiguously related to the campaign of a particular federal candidate," *Buckley*, 424 U.S. at 80, are conclusions of law, to which no responsive pleading is required. In all other respects, the intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26. The intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

27. The intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

28. The intervening defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence. In all other respects, the intervening defendant denies the allegations in this paragraph and denies that application of BCRA to plaintiffs' alleged intended activities would deprive them of their constitutional rights in any manner.

Count 1

29. In response to this paragraph, the intervening defendant incorporates his responses contained in all of the preceding paragraphs of this answer.

30. Denied.

31. Denied.

Count 2

32. In response to this paragraph, the intervening defendant incorporates his responses contained in all of the preceding paragraphs of this answer.

33. Denied.

34. Denied.

Count 3

35. In response to this paragraph, the intervening defendant incorporates his responses contained in all of the preceding paragraphs of this answer.

36. Denied.

37. Denied.

Count 4

38. In response to this paragraph, the intervening defendant incorporates his responses contained in all of the preceding paragraphs of this answer.

39. Denied.

40. Denied.

Count 5

41. Denied.

42. Denied.

Count 6

43. In response to this paragraph, the intervening defendant incorporates his responses contained in all of the preceding paragraphs of this answer.

44. Denied.

45. Denied.

Count 7

46. In response to this paragraph, the intervening defendant incorporates his responses contained in all of the preceding paragraphs of this answer.

47. Denied.

48. Denied.

Count 8

49. In response to this paragraph, the intervening defendant incorporates his responses contained in all of the preceding paragraphs of this answer.

50. Denied.

51. Denied.

Count 9

52. In response to this paragraph, the intervening defendant incorporates his responses contained in all of the preceding paragraphs of this answer.

53. Denied.

54. Denied.

The intervening defendant denies any and all allegations of the complaint not expressly admitted herein to which a response is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense

To the extent principles of res judicata preclude the plaintiffs from asserting any of the claims set forth in the complaint, those claims should be dismissed.

Second Affirmative Defense

To the extent principles of collateral estoppel preclude the plaintiffs from re-litigating any factual or legal issues relevant to the claims set forth in the complaint, those factual and legal issues should be deemed conclusively adjudicated for purposes of this action.

Third Affirmative Defense

To the extent plaintiffs lack standing with respect to any claim, that claim should be dismissed.

Fourth Affirmative Defense

To the extent any claim is not currently ripe for adjudication, that claim should be dismissed.

Fifth Affirmative Defense

To the extent 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 defendant respectfully requests that the Court enter a judgment as follows:

- (a) Dismissing plaintiffs' complaint in its entirety, on the merits, and with prejudice;
- (b) Denying plaintiffs' requests for declaratory and injunctive relief in their entirety;
- (c) Awarding such other and further relief as the Court may find to be just and equitable.

Dated this 28th day of January, 2009.

Respectfully submitted,


Seth P. Waxman

Roger M. Witten (D.C. Bar No. 163261)
Shane T. Stansbury
Lauren E. Baer
WILMER CUTLER PICKERING HALE
AND DORR LLP
399 Park Avenue
New York, NY 10022
Tel.: (212) 230-8800
Fax: (212) 230-8888
E-mail: roger.witten@wilmerhale.com

Seth P. Waxman (D.C. Bar No. 257337)
Randolph D. Moss (D.C. Bar No. 417749)
WILMER CUTLER PICKERING HALE
AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
Tel.: (202) 663-6000
Fax: (202) 663-6363
E-mail: seth.waxman@wilmerhale.com

Fred Wertheimer (D.C. Bar No. 154211)
DEMOCRACY 21
1875 I Street, N.W.
Suite 500
Washington, D.C. 20006
Tel.: (202) 429-2008
Fax: (202) 293-2660
E-mail: FWertheimer@democracy21.org

*Counsel for proposed intervening defendant
Representative Christopher Van Hollen, Jr.*