

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Republican National Committee, et al.,

Plaintiffs,

v.

Federal Election Commission,

Defendant,

and

The Democratic National Committee, 430 South
Capitol Street SE, Washington, D.C., 20003,

Intervening Defendant.

Civ. No. 08-1953 (BMK, RJL, RMC)

THREE-JUDGE COURT

**INTERVENING DEFENDANT DEMOCRATIC NATIONAL COMMITTEE'S
[PROPOSED] ANSWER AND AFFIRMATIVE DEFENSES**

The [proposed] intervening defendant, the Democratic National Committee (the "DNC"), by its undersigned counsel, answers each numbered paragraph of the plaintiffs' complaint as follows:

ANSWER

Introduction

1. The DNC 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 challenged provisions 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 response is required.

2. Plaintiffs' contention that this action constitutes an as-applied challenge is a conclusion of law or legal characterization, to which no response is required. The DNC admits the allegations of this paragraph in all other respects.

3. The provisions of BCRA and FECA speak for themselves, and therefore no response is required.

4. The provisions of BCRA and FECA speak for themselves, and therefore no response is required.

5. The Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), speaks for itself. This paragraph otherwise contains characterizations of that decision and conclusions of law, to which no response is required.

6. This paragraph contains 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; it also contains conclusions of law, to which no response is required.

7. This paragraph contains characterizations of legal precedent from other jurisdictions. That precedent speaks for itself and requires no response. The paragraph also contains conclusions of law, to which no response is required.

8. The first sentence of this paragraph contains conclusions of law, to which no response is required. With respect to the remainder of the first sentence and with respect to the second sentence, the DNC 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. The DNC otherwise denies the allegations in this paragraph.

Jurisdiction and Venue

9. Admitted.

10. Admitted.

Parties

11. The DNC admits that the RNC “ha[s] the general management of the Republican Party, subject to direction from the national convention.” The second sentence of this paragraph contains conclusions of law, to which no response is required.

12. The DNC admits that Plaintiff California Republican Party is the state Republican Party of California. The second sentence of this paragraph contains conclusions of law, to which no response is required.

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

14. The DNC admits that Robert M. (Mike) Duncan is the National Committeeman of the Kentucky Republican Party and the Chairman of the Republican National Committee (“RNC”), in which capacity he is the RNC’s chief executive officer.

15. Admitted.

Facts

16. Plaintiffs’ contentions that the activities alleged in this paragraph are criminal under BCRA but not “unambiguously related to the campaign of a particular federal candidate,” are conclusions of law, to which no response is required. The DNC admits that there are no federal candidates on the 2009 ballot in New Jersey. In all other respects, the DNC is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17. Plaintiffs' contentions that the activities alleged in this paragraph are criminal under BCRA but not "unambiguously related to the campaign of a particular federal candidate," are conclusions of law, to which no response is required. The DNC admits that there are no federal candidates on the 2009 ballot in Virginia. In all other respects, the DNC 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 activities alleged in this paragraph are criminal under BCRA but not "unambiguously related to the campaign of a particular federal candidate," are conclusions of law, to which no response is required. In all other respects, the DNC 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 activities alleged in this paragraph are criminal under BCRA but not "unambiguously related to the campaign of a particular federal candidate," are conclusions of law, to which no response is required. In all other respects, the DNC 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 activities alleged in this paragraph are criminal under BCRA but not "unambiguously related to the campaign of a particular federal candidate," are conclusions of law, to which no response is required. In all other respects, the DNC 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 activities alleged in this paragraph are criminal under BCRA and not "unambiguously related to the campaign of a particular federal

candidate,” are conclusions of law, to which no response is required. In all other respects, the DNC 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 activities alleged in this paragraph are criminal under BCRA but not “unambiguously related to the campaign of a particular federal candidate,” are conclusions of law, to which no response is required. In all other respects, the DNC is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

23. The DNC 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 criminal under BCRA but not “unambiguously related to the campaign of a particular federal candidate,” are conclusions of law, to which no response is required. In all other respects, the DNC 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 criminal under BCRA but not “unambiguously related to the campaign of a particular federal candidate,” are conclusions of law, to which no response is required. In all other respects, the DNC is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

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

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

28. The DNC 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 DNC denies the allegations in this paragraph.

Count 1

RNC & Duncan—New Jersey Account

29. In response to this paragraph, the DNC incorporates its responses contained in all of the preceding paragraphs of this answer.

30. Denied.

31. Denied.

Count 2

RNC & Duncan—Virginia Account

32. In response to this paragraph, the DNC incorporates its responses contained in all of the preceding paragraphs of this answer.

33. Denied.

34. Denied.

Count 3

RNC & Duncan—Redistricting Account

35. In response to this paragraph, the DNC incorporates its responses contained in all of the preceding paragraphs of this answer.

36. Denied.

37. Denied.

Count 4

RNC & Duncan—Grassroots Lobbying Account

38. In response to this paragraph, the DNC incorporates its responses contained in all of the preceding paragraphs of this answer.

39. Denied.

40. Denied.

Count 5

RNC & Duncan—State Elections Accounts

41. Denied.

42. Denied.

Count 6

RNC & Duncan—Litigation Account

43. In response to this paragraph, the DNC incorporates its responses contained in all of the preceding paragraphs of this answer.

44. Denied.

45. Denied.

Count 7

Duncan—Solicitation for State Candidates and Parties

46. In response to this paragraph, the DNC incorporates its responses contained in all of the preceding paragraphs of this answer.

47. Denied.

48. Denied.

Count 8

CRP—PASO Activities for California Initiatives

49. In response to this paragraph, the DNC incorporates its responses contained in all of the preceding paragraphs of this answer.

50. Denied.

51. Denied.

Count 9

CRP—Non-targeted “Federal Election Activity”

52. In response to this paragraph, the DNC incorporates its responses contained in all of the preceding paragraphs of this answer.

53. Denied.

54. Denied.

Finally, the DNC denies any and all allegations of the Complaint not expressly admitted herein to which a response is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. Principles of claim preclusion bar the plaintiffs from asserting any of the claims set forth in the complaint.

Second Affirmative Defense

2. Principles of issue preclusion bar 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

3. Some or all of plaintiffs' claims are not currently ripe for adjudication.

Fourth Affirmative Defense

4. Some or all of plaintiffs' complaint fails to state a claim on which relief can be granted.

REQUEST FOR RELIEF

Based upon these answers and affirmative defenses, the DNC respectfully requests that the Court enter a judgment:

- (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: January 29, 2009.

Respectfully submitted,

PERKINS COIE LLP

By: /s/ Robert F. Bauer

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*Of Counsel to the Democratic National
Committee*

* *Application for admission to the District Court for the District of Columbia pending.*