

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HOLMES, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 14-1243 (RMC)
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	ANSWER
)	
Defendant.)	
)	

DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint for Declaratory Relief filed by plaintiffs Laura Holmes and Paul Jost. Any allegation not specifically responded to below is DENIED. The Commission answers as follows:

1. This first sentence of this paragraph summarizes plaintiffs’ complaint, the allegations of which speak for themselves, and requires no response. The remainder of this paragraph purports to paraphrase and characterize specific provisions of the Federal Election Campaign Act (“FECA”), which speak for themselves, and does not require a response.

2. ADMIT that plaintiffs purport to challenge certain provisions of FECA under the First Amendment to the United States Constitution.

3. ADMIT that plaintiffs purport to challenge certain provisions of FECA under the Fifth Amendment’s Due Process Clause. This paragraph also includes citations to, and characterizations of, certain judicial decisions, which speak for themselves, and require no response.

4. DENY.

5. ADMIT that 2 U.S.C. § 437h (recently recodified at 52 U.S.C. § 30110), provides the Court with jurisdiction to make necessary findings of fact and to screen to determine whether any substantial constitutional questions should be certified to the United States Court of Appeals for the District of Columbia *en banc*, but DENY that this case presents any substantial constitutional questions that warrant certification under that provision.

6. DENY. *See Wagner v. FEC*, 717 F.3d 1007 (D.C. Cir. 2013) (per curiam).

7. ADMIT.

8. The Commission lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

9. ADMIT this paragraph to the extent that it alleges that the Commission has exclusive civil jurisdiction with respect to administration and civil enforcement of the FECA. 52 U.S.C. § 30106(b)(1) (formerly 2 U.S.C. § 437c(b)(1)).

10. This paragraph purports to quote and characterize a specific provision of FECA, which speaks for itself, and does not require a response. To the extent a response is required, DENY that “FECA splits the candidate contribution limits.”

11. ADMIT that the cited statutory and regulatory provisions set forth and explain the definition of “election,” which includes general, special, primary, and runoff contests. DENY that this paragraph sets forth the complete statutory or regulatory definition of “election.”

12. ADMIT that the limits on contributions to candidates set forth in 2 U.S.C. § 441a(a)(6) (recently recodified at 52 U.S.C. § 30116(a)(6)) apply separately with respect to each election; DENY this paragraph to the extent it alleges that FECA only defines “election” in terms of “primary and general elections.”

13. ADMIT that the Commission has promulgated regulations pursuant to its authority under FECA, including 11 C.F.R. § 110.1(b), and ADMIT that 11 C.F.R. § 110.1(b) provides, *inter alia*, the rules for determining for which election a particular contribution is made, and otherwise DENY the remainder of this paragraph.

14. ADMIT that Commission regulations provide for a contributor to designate a contribution for a particular election and that absent a proper designation, a contribution is deemed to have been made for the next election for federal office. To the extent this paragraph purports to paraphrase specific Commission regulations, those provisions speak for themselves and require no response.

15. ADMIT that Commission regulations define the circumstances in which a contribution designated for an election that has already occurred may be used, ADMIT that Commission regulations define what constitutes net debts outstanding from a particular election, and otherwise DENY the remainder of this paragraph.

16. DENY.

17. ADMIT that Commission regulations permit a contribution to be redesignated for another election; otherwise DENY that this paragraph accurately or completely describes the redesignation process.

18. The Commission lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph regarding the wishes of the plaintiffs; DENY that FECA or its amendments contain any “artificial distinction between primary and general elections.”

19. The Commission lacks knowledge or information sufficient to admit or deny the allegations contained in the first sentence of this paragraph, regarding Plaintiff Holmes’s desire to support a certain candidate. The Commission ADMITS that candidate Carl DeMaio finished

second in the Congressional primary election for the 52nd District in California, and that this ensures his placement on the ballot for the November 4, 2014 general election.

20. ADMIT that Carl DeMaio and incumbent Scott Peters will compete in the November 4, 2014 general election to represent California's 52nd District and ADMIT that Congressman Peters was the only member of the Democratic Party on the June 3, 2014 primary ballot, and that this paragraph correctly identifies his FEC candidate ID number. The Commission lacks knowledge or information sufficient to admit or deny the allegations contained in the second sentence of this paragraph to the extent they depend on plaintiffs' subjective meaning of "significant primary challengers," but DENY this sentence to the extent it alleges that Congressman Peters's status as the only member of the Democratic Party deprived him of primary challengers under California's "top two" primary system.

21. ADMIT that plaintiff Holmes contributed \$2,600 to DeMaio after the California primary election. The Commission lacks knowledge or information sufficient to admit or deny the allegations in the second sentence of this paragraph.

22. The FEC lacks knowledge or information sufficient to admit or deny the allegation in this paragraph regarding plaintiff Jost's support of a particular candidate. ADMIT that Mariannette Miller-Meeks is a candidate to represent Iowa's second Congressional District, that this paragraph correctly identifies her FEC candidate ID number, and that Miller-Meeks won the Republican primary election for that seat on June 3, 2014.

23. ADMIT the allegations contained in this paragraph regarding the candidates who will participate in the November 4, 2014 general election for Iowa's Second Congressional District and ADMIT that Congressman Loeb sack was the only candidate listed on the ballot in the Democratic primary for that seat. The Commission lacks knowledge or information

sufficient to admit or deny the allegations contained in the second sentence of this paragraph to the extent they depend on plaintiffs' subjective meaning of "significant primary challengers," but ADMIT that Congressman Loeb sack was not challenged in the primary by another candidate listed on the Democratic primary ballot.

24. ADMIT that plaintiff Jost did not make a contribution to candidate Miller-Meeks during her primary election campaign and that he has contributed \$2,600 to Miller-Meeks for the general election. The Commission lacks knowledge or information sufficient to admit or deny the allegation regarding plaintiff Jost's wishes to make additional contributions.

25. The FEC lacks knowledge or information sufficient to admit or deny plaintiffs' allegations regarding their wish to exceed FECA's contribution limits. DENY that FECA imposes a "base candidate contribution limit" for "the combined primary and general election periods." To the extent this paragraph purports to paraphrase specific statutory or regulatory provisions or a Federal Register notice, such documents speak for themselves and require no response.

26. The Commission lacks knowledge or information sufficient to admit or deny the allegations in this paragraph concerning plaintiffs' wishes; otherwise DENY this paragraph.

27. The Commission incorporates by reference its responses to paragraphs 1 – 26.

28. ADMIT that the Supreme Court's opinion in *Buckley v. Valeo*, 424 U.S. 1 (1976), describes the extent to which contribution limits implicate the First Amendment.

29. This paragraph purports to characterize and paraphrase part of the Supreme Court's opinion in *Buckley*, which speaks for itself, and requires no response.

30. ADMIT that the Supreme Court's opinion in *Buckley* includes the quoted language, without plaintiffs' alterations.

31. This paragraph purports to paraphrase a legal conclusion in one or more Supreme Court opinions, each of which speaks for itself, and requires no response.

32. This paragraph purports to characterize part of the Supreme Court's opinion in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), which speaks for itself, and requires no response; DENY that the language in quotation marks accurately or completely quotes that opinion.

33. This paragraph purports to characterize and paraphrase part of the Supreme Court's opinion in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000), which speaks for itself, and purports to state a legal conclusion, neither of which requires a response.

34. This paragraph purports to characterize part of the Supreme Court's opinion in *McCutcheon*, which speaks for itself, and purports to state legal conclusions, neither of which requires a response.

35. This paragraph purports to paraphrase part of the Supreme Court's opinion in *Nixon v. Shrink Missouri Government*, which speaks for itself, and purports to state legal conclusions, neither of which requires a response.

36. ADMIT that Supreme Court's opinion in *McCutcheon* uses the term "base limits"; DENY the remainder of this paragraph.

37. DENY the first sentence of this paragraph; ADMIT that the Supreme Court's opinion in *McCutcheon* includes the language that appears in quotation marks, but not the ellipses.

38. DENY the first sentence of this paragraph; ADMIT that the Supreme Court's opinion in *McCutcheon* includes the language that appears in quotation marks, but not plaintiffs' modification.

39. The Commission lacks knowledge or information sufficient to admit or deny plaintiffs' allegations regarding their wishes; DENY the characterization that FECA's contribution limits are "bifurcated."

40. DENY that FECA's contribution limits are "[a]rtificially bifurcat[ed]" and otherwise DENY this paragraph.

41. The Commission lacks knowledge or information sufficient to admit or deny plaintiffs' allegations regarding their "planned contributions." DENY that FECA's contribution limits are "[a]rtificially bifurcate[ed]" and otherwise DENY the remainder of this paragraph.

42. The Commission incorporates by references its responses to paragraphs 1 – 41.

43. ADMIT that the Fifth Amendment's Due Process Clause includes an equal protection guarantee like that guaranteed by the Fourteenth Amendment. To the extent this paragraph purports to summarize the Supreme Court's opinions in *Buckley* or *Bolling v. Sharpe*, 347 U.S. 497 (1954), those opinions speak for themselves and require no response.

44. ADMIT that the Supreme Court in *McCutcheon* struck down FECA's aggregate limits on candidate contributions; otherwise DENY this paragraph including the implication that FECA contains "bifurcated individual candidate contribution limits." To the extent the second sentence of this paragraph purports to characterize or paraphrase part of the Supreme Court's opinion in *McCutcheon*, that opinion speaks for itself and requires no response.

45. ADMIT that the Supreme Court in *Buckley* upheld FECA's contribution limits on their face and that the opinion includes the language in quotation marks but not plaintiffs' alteration; DENY the first sentence of this paragraph to the extent that it alleges the *Buckley* opinion was limited to that holding.

46. ADMIT that the Supreme Court's opinion in *Buckley* includes the quoted language, but not plaintiffs' alterations. To the extent this paragraph purports to characterize or summarize part of the Supreme Court's opinion in *Buckley*, that opinion speaks for itself and requires no response.

47. DENY.

48. ADMIT.

49. ADMIT.

50. DENY that FECA's contribution limits are "bifurcated" and ADMIT that some plaintiffs in *McConnell v. FEC*, 540 U.S. 93 (2003), challenged BCRA's amendment to the amount of FECA's contribution limits and that the Court declined to address that challenge.

51. ADMIT that *Davis v. FEC*, 554 U.S. 724 (2008) concerned a candidate's challenge to asymmetrical contribution limits.

52. ADMIT that *Davis* concerned a provision of BCRA known as the "millionaire's amendment" that would permit certain candidates opposing a self-financing opponent to raise amounts up to a higher contribution limit under certain circumstances. The Commission lacks knowledge or information regarding other unspecified "substantive changes to law" plaintiffs intend to reference in this paragraph sufficient to admit or deny such vague allegations.

53. DENY.

54. ADMIT that the Supreme Court's opinion in *Davis* contains the language in quotation marks but not plaintiffs' alteration.

55. ADMIT that the Court in *Davis* found the asymmetrical contribution limits established by the millionaire's amendment to be unconstitutional under the First Amendment.

56. ADMIT.

57. The Commission lacks knowledge or information regarding what plaintiffs mean by “this reasoning” sufficient to admit or deny the allegations in the first sentence of this paragraph. ADMIT the second sentence of this paragraph.

58. DENY that *McCutcheon* and *Riddle v. Hickenlooper* address “a similar problem” and DENY that *Riddle v. Hickenlooper* purports to address any “problem of bifurcated limits.” The second sentence of this paragraph purports to characterize the Colorado statute at issue in *Riddle v. Hickenlooper*, 742 F.3d 922, 924 (10th Cir. 2014), which speaks for itself and requires no response.

59. ADMIT that the language in this paragraph is a quote from the cited part of the Tenth Circuit Court of Appeals’ opinion in *Riddle*.

60. DENY that this paragraph accurately describes the nature and scope of law at issue in *Riddle*.

61. DENY that this paragraph accurately describes the scope of the case before the Tenth Circuit in *Riddle*.

62. ADMIT that the language in quotation marks, but not plaintiffs’ alterations, appears in *Riddle* and that the Court of Appeals focused on whether two groups of contributors were “similarly situated.”

63. ADMIT that the language in quotation marks, but not plaintiffs’ alterations, appears in *Riddle*.

64. ADMIT that the language in quotation marks, but not plaintiffs’ alterations, appears in *Riddle*.

65. ADMIT that the language in this paragraph is a quote from the cited part of the Tenth Circuit Court of Appeals’ opinion in *Riddle*.

66. DENY the first and third sentences of this paragraph. DENY the second sentence of this paragraph to the extent it alleges that under “the federal system,” only certain candidates that participate in a primary election “can use the ‘primary’ contributions to run advertisements promoting his campaign or attacking candidates of the opposing party.”

67. The Commission lacks knowledge or information sufficient to admit or deny the allegations contained in the first sentence of this paragraph. DENY the remainder of this paragraph.

68. ADMIT.

69. DENY.

70. DENY that this case is similar to *Riddle*, that the government makes any “artificial” decisions regarding “how money is contributed,” and otherwise DENY the allegations in this paragraph.

71. The first sentence of this paragraph is vague and purports to state a generalized legal conclusion that requires no response; DENY that FECA “allow[s] for ‘extra’ contributions” by anyone, DENY that the challenged contribution limits impose any “asymmetry,” and otherwise DENY the remainder of this paragraph.

PRAYERS FOR RELIEF

The Court should deny plaintiffs’ requested relief.

AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action on which relief can be granted.

Respectfully submitted,

Lisa J. Stevenson (D.C. Bar No. 457628)
Deputy General Counsel

Kevin Deeley
Acting Associate General Counsel

/s/ Erin Chlopak
Erin Chlopak (D.C. Bar No. 496370)
Acting Assistant General Counsel

Steve Hajjar
Benjamin A. Streeter III
Attorneys

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
(202) 694-1650

September 29, 2014