

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

REPUBLICAN NATIONAL COMMITTEE,)	
<i>et al.</i> ,)	
Plaintiffs,)	Civ. No. 14-853 (CRC)
v.)	
FEDERAL ELECTION COMMISSION,)	ANSWER
Defendant.)	

**DEFENDANT FEDERAL ELECTION COMMISSION'S
ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to plaintiffs’ Verified Complaint for Declaratory and Injunctive Relief (Docket No. 1). Any allegation not specifically responded to below, including allegations that appear in headings, is DENIED. The Commission responds as follows:

1. This paragraph contains plaintiffs’ characterizations of legal claims in their own Complaint, to which no response is required.
2. This paragraph contains plaintiffs’ characterizations of legal claims in their own Complaint and conclusions of law, to which no response is required. To the extent a response is required: Admit that the provisions of law challenged by plaintiffs prohibit activities that they indicate they wish to do, but deny that there is “no cognizable anti-corruption interest” for those provisions.
3. This paragraph contains plaintiffs’ characterizations of legal claims in their own Complaint, conclusions of law, and a judicial decision, to which no response is required. To the extent a response is required: Admit that this paragraph accurately quotes the majority opinion

in *Citizens United v. FEC*, 558 U.S. 310, 357 (2010), with the words “including those made by corporations” omitted and replaced by ellipses.

4. This paragraph contains plaintiffs’ characterizations of legal claims in their own Complaint, conclusions of law, and judicial decisions, to which no response is required. To the extent a response is required: Admit that this first sentence of this paragraph appears to characterize the holding in *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996) (“*Colorado I*”), which speaks for itself. Admit that the sentence following the first *Colorado I* citation accurately quotes the plurality opinion in that case, with an alteration to capitalization in brackets, and the words “present equally in both instances” omitted and replaced by ellipses. Admit that the plurality opinion in *Colorado I* states the holding, pursuant to *Marks v. United States*, 430 U.S. 188, 193 (1977), which speaks for itself. Admit that the last sentence of the paragraph accurately quotes the plurality opinion in *Colorado I*.

5. This paragraph contains plaintiffs’ characterizations of legal claims in their own Complaint, conclusions of law, an FEC press release, and statutes and regulations, to which no response is required. To the extent a response is required: Admit that the first sentence of this paragraph appears to characterize a portion of the *FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account*, which speaks for itself. Admit that the language of the press release refers only to “nonconnected political committees.” Admit that 2 U.S.C. § 441i(b) generally prohibits state and local party committees from engaging in any federal election activity using funds that are raised outside of the limits in 2 U.S.C. § 441a(a)(1)(D), with a limited exception for certain federal election activity, 2 U.S.C. § 441i(b)(2). Admit that the third sentence of this paragraph accurately quotes 11 C.F.R. § 300.2(g). Admit that the fourth sentence of this paragraph accurately quotes 11 C.F.R.

§ 300.2(k). Admit that 11 C.F.R. § 300.2(k) defines certain funds as “non-Federal funds,” and that such funds may be regulated by the states, including Louisiana.

6. Deny that this Court has jurisdiction under the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. No. 107-155, § 403(a)(1), 116 Stat. 81, 113-14, because plaintiffs’ claims are neither substantial nor justiciable under that special review provision. Deny that BCRA §§ 403(a)(4) and (d)(2) are applicable. Admit that the paragraph accurately quotes from the statute, with an alteration to capitalization in brackets, except that plaintiffs have substituted the word “this” for the word “the” in the fourth-to-last word in the quotation.

7. Deny that this Court has jurisdiction under BCRA § 403 because plaintiffs’ claims are neither substantial nor justiciable under that special review provision. Admit that the paragraph accurately quotes BCRA § 403, with certain provisions omitted and replaced by ellipses.

8. Admit that this Court has jurisdiction over the claims of the Republican Party of Louisiana (“LAGOP”), Jefferson Parish Republican Parish Executive Committee (“JPGOP”), and Orleans Parish Republican Executive Committee (“OPGOP”) pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201-02. Pursuant to *Wagner v. FEC*, 717 F.3d 1007 (D.C. Cir. 2013), jurisdiction over the claims of plaintiff Republican National Committee (“RNC”) and the two individual plaintiffs exists only to the extent provided in 2 U.S.C. § 437h.

9. Deny that this Court has jurisdiction under BCRA § 403 because plaintiffs’ claims are neither substantial nor justiciable under that special review provision. Admit that the paragraph accurately quotes BCRA § 403, with the word “is” omitted and replaced with ellipses, the words “this Act” omitted twice and replaced with “[BCRA],” and the word “elects” altered as

“elect[.]” Admit that BCRA § 403 does, in applicable cases, provide for a three-judge court and direct appeal to the United States Supreme Court.

10. Admit that venue is proper under 28 U.S.C. § 1391(e)(1). Deny that this Court has jurisdiction under BCRA § 403 because plaintiffs’ claims are neither substantial nor justiciable under that special review provision.

11. Admit the first, second, and third sentences of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the fourth and fifth sentences of this paragraph.

12. Admit the first two sentences of the paragraph. The Commission is without knowledge or information sufficient to admit or deny the third and fourth sentences of this paragraph.

13. Admit the first and second sentences of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the remainder of this paragraph.

14. Admit the first two sentences of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the remainder of this paragraph.

15. Admit the first sentence of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the second and third sentences of this paragraph.

16. Admit the first sentence of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the second and third sentences of this paragraph.

17. Admit that the Commission is the independent agency of the United States government with statutory authority over the administration, interpretation, and civil

enforcement of the Federal Election Campaign Act, 2 U.S.C. §§ 431-57 (“FECA”), including BCRA. *See* 2 U.S.C. §§ 437c(b)(1), 437d(a)(7)-(8), 437g, 438(a)(8).

18. This paragraph and its footnote contain plaintiffs’ characterizations of a judicial decision, to which no response is required. To the extent a response is required: Admit that this paragraph appears to characterize the holding in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*), which speaks for itself. Admit that the block quote accurately quotes language from the opinion in *SpeechNow*, with an alteration to capitalization in brackets.

19. This paragraph contains plaintiffs’ characterizations of an FEC Advisory Opinion, to which no response is required. To the extent a response is required: Admit that this paragraph appears to characterize the Commission’s Advisory Opinion 2010-09 (Club for Growth), which speaks for itself. Admit that the block quote accurately quotes the language of the attachment to the Commission’s opinion, except that “*SpeechNow v. FEC*” was italicized in the original.

20. This paragraph contains plaintiffs’ characterizations of an FEC Advisory Opinion, to which no response is required. To the extent a response is required: Admit that this paragraph appears to characterize the Commission’s Advisory Opinion 2010-11 (Commonsense Ten), which speaks for itself.

21. This paragraph contains plaintiffs’ characterizations of a judicial decision, conclusions of law, and a stipulated order and consent judgment, to which no response is required. To the extent a response is required: Admit that the first sentence of this paragraph appears to characterize the holding in *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011), which speaks for itself. Admit that the second sentence of this paragraph appears to characterize the stipulated order and consent judgment entered in that case, which speaks for itself.

22. This paragraph and its footnote contains plaintiffs' characterizations of provisions of FECA, a judicial decision, and an FEC press release, to which no response is required. To the extent a response is required: Admit that this paragraph appears to characterize a portion of the *FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account*, which speaks for itself. Admit that the block quote accurately quotes from that press release, with emphasis and a footnote reference added. Admit that the footnote appears to characterize 2 U.S.C. §§ 441a(a)(1), 441a(a)(3), and *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), which speak for themselves.

23. This paragraph contains plaintiffs' characterizations of a judicial decision and conclusions of law, to which no response is required. To the extent a response is required: Admit that this paragraph generally appears to characterize a portion of the opinion in *McConnell v. FEC*, 540 U.S. 93 (2003), which speaks for itself. Deny that the opinion discusses separate accounts for making independent expenditures and contributions to candidates.

24. The Commission is without knowledge or information sufficient to admit or deny this paragraph.

25. This paragraph contains conclusions of law and plaintiffs' characterizations of an FEC press release and campaign guide, to which no response is required. To the extent a response is required: Admit that the portion of the first sentence before the colon appears to characterize portions of both the *FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* and the *Federal Election Commission Campaign Guide for Nonconnected Committees*, which speak for themselves. Admit that the paragraph accurately quotes from the cited *Campaign Guide*. Admit that the last

sentence appears to draw legal conclusions from these two documents, which speak for themselves.

26. Admit that RNC and LAGOP regularly receive contributions from individuals and will continue to do so. Admit that RNC regularly makes independent expenditures. The Commission is without knowledge or information sufficient to admit or deny whether RNC will continue to do so and whether it regularly makes or will make “other independent communications that refer to a federal candidate.” Deny that LAGOP regularly makes independent expenditures. The Commission is without knowledge or information sufficient to admit or deny whether LAGOP will do so in the future and whether it regularly makes or will make “other independent communications that refer to a federal candidate.” The third and fourth sentences of this paragraph are conclusions of law to which no response is required. To the extent responses are required: Admit that 2 U.S.C. § 441a(a)(1)(B) limits the amount that persons may contribute annually to national political party committees, the current limit is \$32,400, and independent expenditures must be paid for using those funds. *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 Fed. Reg. 8530-32 (Feb. 6, 2013). Admit that 2 U.S.C. § 441a(a)(1)(D) limits the amount that persons may contribute annually to federal political committees established by state and local political party committees, the limit is \$10,000, the limit is shared in certain circumstances, and independent expenditures must be paid for using those funds. The Commission is without knowledge or information sufficient to admit or deny whether LAGOP’s limit is shared with district and local parties in Louisiana. The Commission is without knowledge or information sufficient to admit or deny the last sentence of this paragraph.

27. The Commission is without knowledge or information sufficient to admit or deny this paragraph.

28. The Commission is without knowledge or information sufficient to admit or deny this paragraph.

29. The Commission is without knowledge or information sufficient to admit or deny the first sentence of this paragraph. The second sentence contains conclusions of law, to which no response is required. To the extent a response is required: Admit that 2 U.S.C. § 441i(b) generally prohibits LAGOP, JPGOP, and OPGOP from using funds for federal election activity that are raised outside of the limit of 2 U.S.C. § 441a(a)(1)(D), with a limited exception for certain federal election activity, 2 U.S.C. § 441i(b)(2). The Commission is without knowledge or information sufficient to admit or deny the remainder of the second sentence.

30. The Commission is without knowledge or information sufficient to admit or deny the first two sentences of this paragraph, except that the Commission admits that U.S. Senator Mary Landrieu is running for re-election in November 2014. The third, fourth, and fifth sentences contain conclusions of law, to which no response is required. To the extent a response is required: Admit that 2 U.S.C. § 441i(b) prohibits LAGOP from engaging in federal election activity similar to the described communication using funds that are raised outside of the limit of 2 U.S.C. § 441a(a)(1)(D). Admit that the block quote accurately quotes 2 U.S.C. § 431(20)(A)(iii), although it cites 2 U.S.C. § 431(20)(A)(iv). Admit that 2 U.S.C. § 441a(a)(1)(D) limits to \$10,000 the amount that persons may contribute annually to federal political committees established by the state and local political committees of each party in each state. The Commission is without knowledge or information sufficient to admit or deny whether LAGOP, JPGOP, and OPGOP must share the base limit.

31. The Commission is without knowledge or information sufficient to admit or deny this paragraph.

32. The Commission is without knowledge or information sufficient to admit or deny the first sentence of this paragraph. Deny the second sentence of this paragraph. The third sentence contains conclusions of law, including speculation about this Court's jurisdiction over this case for several years into the future, to which no response is required. To the extent a response is required: Admit that this sentence appears to characterize a portion of the holding in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 461-63 (2007), which speaks for itself.

33. Admit that plaintiffs will face a credible threat of civil enforcement proceedings if they proceed with activities in violation of FECA. Deny that plaintiffs will face a credible threat of criminal prosecution absent the required knowing and willful intent.

34. The Commission is without knowledge or information sufficient to admit or deny the first sentence of this paragraph. Deny the second and third sentences of this paragraph.

35. This paragraph re-alleges and incorporates by reference the allegations contained in paragraphs 1-34 of plaintiffs' Complaint, and the Commission therefore incorporates by reference its responses to those paragraphs.

36. Admit that RNC and LAGOP are federal political party committees. The Commission is without knowledge or information sufficient to admit or deny whether they want to form non-contribution accounts. The part of the sentence following the comma appears to contain plaintiffs' characterizations of an FEC press release, to which no response is required. To the extent a response is required: Admit that this portion of the paragraph appears to characterize a portion of the *FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account*, which speaks for itself.

37. This paragraph contains plaintiffs' characterizations of an FEC press release, to which no response is required. To the extent a response is required: Admit that this paragraph appears to characterize a portion of the *FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account*, which speaks for itself.

38. This paragraph contains conclusion of law, to which no response is required. To the extent a response is required: Admit that 2 U.S.C. § 441i(a) prohibits RNC from spending funds raised outside the limits of 2 U.S.C. § 441a(a)(1)(B). Admit that 2 U.S.C. § 441i(b) generally prohibits LAGOP, JPGOP, and OPGOP from spending funds raised outside the limits of 2 U.S.C. § 441a(a)(1)(D) for federal election activity, with a limited exception for certain federal election activity, 2 U.S.C. § 441i(b)(2).

39. This paragraph contains plaintiffs' characterizations of legal claims in their own Complaint, to which no response is required. Deny that 2 U.S.C. § 441i is unconstitutional.

40. Deny the first sentence of this paragraph. The second sentence contains plaintiffs' characterizations of judicial decisions and conclusions of law, to which no response is required. To the extent a response is required: Admit that the second sentence appears to characterize portions of the opinion in *McConnell v. FEC*, 540 U.S. 93 (2003), one of the opinions in *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003), and the dissent in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), which speak for themselves. Admit that the second sentence accurately quotes one of the district court opinions in *McConnell*, with "ha[d]" substituted for "have," and that the quote also appears in an altered form in the *McCutcheon* dissent. The third sentence contains plaintiffs' characterizations of judicial decisions and conclusions of law, to which no response is required. To the extent a response is required: Deny

that this sentence accurately characterizes the holdings in *Citizens United v. FEC*, 558 U.S. 310 (2010), and *McCutcheon*, 134 S. Ct. 1434. Deny the last sentence of the paragraph.

41. This paragraph contains conclusion of law, to which no response is required. To the extent a response is required: Admit that 2 U.S.C. § 441i(a) prohibits RNC from spending funds raised outside the limits of 2 U.S.C. § 441a(a)(1)(B). Admit that 2 U.S.C. § 441i(b) prohibits LAGOP, JPGOP, and OPGOP from spending funds raised outside the limits of 2 U.S.C. § 441a(a)(1)(D) for federal election activity, with a limited exception for certain federal election activity, 2 U.S.C. § 441i(b)(2).

42. The first sentence of this paragraph contains conclusion of law, to which no response is required. To the extent a response is required: Admit that the first sentence appears to characterize the holdings in *SpeechNow.org*, 599 F.3d 686 (D.C. Cir. 2010), and *Carey*, 791 F. Supp. 2d 121 (D.D.C. 2011), which speak for themselves. Deny the second sentence of this paragraph. The third sentence of this paragraph contains plaintiffs' characterizations of legal claims in their own Complaint, to which no response is required. Deny that 2 U.S.C. §§ 441a(a)(1)(B) or (D) are unconstitutional. The first two paragraphs of the footnote accompanying this paragraph contain legal conclusions and plaintiffs' characterizations of statutory provisions, a judicial decision, and claims in plaintiffs' own Complaint, to which no response is required. Plaintiffs' quotations from the statutory provisions and the judicial decision in these first two paragraphs are accurate, with the alterations indicated. The first sentence of the third paragraph of the footnote contains conclusion of law, to which no response is required. The Commission is without knowledge or information sufficient to admit or deny the last sentence of the footnote.

43. This paragraph re-alleges and incorporates by reference the allegations contained in paragraphs 1-42 of plaintiffs' Complaint, and the Commission therefore incorporates by reference its responses to those paragraphs.

44. The first sentence of this paragraph contains conclusion of law, to which no response is required. To the extent a response is required: Admit that 2 U.S.C. § 441i(a) prohibits national party committees and their officers and agents from soliciting, receiving, or directing funds raised outside the limits of 2 U.S.C. § 441a(a)(1)(B). The Commission is without knowledge or information sufficient to admit or deny the remainder of this paragraph.

45. The first sentence of this paragraph contains plaintiffs' characterizations of an FEC Advisory Opinion, to which no response is required. To the extent a response is required: Admit that the first sentence of this paragraph appears to characterize the Commission's Advisory Opinion 2011-12 (Majority PAC and House Majority PAC), which speaks for itself. The second sentence of this paragraph contains conclusion of law and characterizations of legal claims in plaintiffs' own Complaint, to which no response is required. To the extent a response is required: Admit that 2 U.S.C. § 441i(a) prohibits officers and agents of national political parties from soliciting funds beyond the limit on contributions by persons to such parties contained in 2 U.S.C. § 441a(a)(1)(B). Deny that this base limit is unconstitutional.

46. Deny.

47. Deny the first sentence of this paragraph. The second sentence contains plaintiffs' characterizations of judicial decisions and conclusions of law, to which no response is required. To the extent a response is required: Admit that the second sentence appears to characterize portions of the opinion in *McConnell v. FEC*, 540 U.S. 93 (2003), one of the opinions in *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003), and the dissent in

McCutcheon v. FEC, 134 S. Ct. 1434 (2014), which speak for themselves. Admit that the second sentence accurately quotes one of the district court opinions in *McConnell*, with “ha[d]” substituted for “have,” and that the quote also appears in an altered form in the *McCutcheon* dissent. The third sentence contains plaintiffs’ characterizations of judicial decisions and conclusions of law, to which no response is required. To the extent a response is required: Deny that this sentence accurately characterizes the holdings in *Citizens United v. FEC*, 558 U.S. 310 (2010), and *McCutcheon*, 134 S. Ct. 1434. Deny the last sentence of the paragraph.

48. This paragraph re-alleges and incorporates by reference the allegations contained in paragraphs 1-47 of plaintiffs’ Complaint, and the Commission therefore incorporates by reference its responses to those paragraphs.

49. The Commission is without knowledge or information sufficient to admit or deny this paragraph.

50. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required: Admit that 2 U.S.C. § 441i(b) generally prohibits state and local party committees from engaging in any federal election activity using funds that are raised outside of the limit of 2 U.S.C. § 441a(a)(1)(D), with a limited exception for certain federal election activity, 2 U.S.C. § 441i(b)(2), and that the paragraph accurately quotes portions of 2 U.S.C. § 441a(a)(1)(D).

51. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required: Admit that the paragraph accurately quotes 2 U.S.C. § 431(20)(A), which speaks for itself.

52. Deny.

53. This paragraph contains conclusions of law and plaintiffs' characterizations of legal claims in their own Complaint, to which no response is required. To the extent a response is required: Admit that 2 U.S.C. § 441i(c) prohibits funds raised outside the Act's limitations, prohibitions and reporting requirements from being spent on fundraising for federal election activity. Deny that 2 U.S.C. § 441i(c) is unconstitutional.

54. Deny the first sentence of this paragraph. The second sentence contains plaintiffs' characterizations of judicial decisions and conclusions of law, to which no response is required. To the extent a response is required: Admit that the second sentence appears to characterize portions of the opinion in *McConnell v. FEC*, 540 U.S. 93 (2003), one of the opinions in *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003), and the dissent in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), which speak for themselves. Admit that the second sentence accurately quotes one of the district court opinions in *McConnell*, with "ha[d]" substituted for "have," and that the quote also appears in an altered form in the *McCutcheon* dissent. The third sentence contains plaintiffs' characterizations of judicial decisions and conclusions of law, to which no response is required. To the extent a response is required: Deny that this sentence accurately characterizes the holdings in *Citizens United v. FEC*, 558 U.S. 310 (2010), and *McCutcheon*, 134 S. Ct. 1434. Deny the last sentence of the paragraph.

THE COMPLAINT'S PRAYER FOR RELIEF

1-12. Plaintiffs are not entitled to the relief requested or to any other relief.

DEFENDANT FEDERAL ELECTION COMMISSION'S AFFIRMATIVE DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

Respectfully submitted,

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