

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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EMILY's LIST,)
)
Plaintiff,)
)
v.)
	Civil No. 05-00049 (CKK))
)
FEDERAL ELECTION COMMISSION,)
)
Defendant.)
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UNOPPOSED MOTION OF
SENATOR JOHN McCAIN, SENATOR RUSSELL FEINGOLD,
REPRESENTATIVE CHRISTOPHER SHAYS,
DEMOCRACY 21 AND THE CAMPAIGN LEGAL CENTER,
FOR LEAVE TO FILE MEMORANDUM AS AMICI CURIAE

Movants Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Democracy 21 and the Campaign Legal Center respectfully move for leave to file as *amici curiae* the attached Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.

In support of this motion, *amici* movants state:

1. This case seeks to have the Court enjoin certain regulations that were promulgated in 2004 by the Federal Election Commission in order to respond to soft money abuses that took place in the 2004 election, where such abuses served to undermine the effectiveness of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub.L. No. 107-155, 116 Stat. 81.

2. All *amici* movants participated in the rulemaking that led to the promulgation of the challenged rules, and strongly supported the adoption of the challenged rules. All *amici* movants

thus have a significant interest in this action, and can materially contribute to the Court's consideration of plaintiff's claim.

3. Senator John McCain, Senator Russell Feingold and Representative Christopher Shays are all Members of Congress and are three of the four principal sponsors of the Bipartisan Campaign Reform Act.¹ They participated as intervening defendants in *McConnell v. FEC*, 540 U.S. 93 (2003),² and have remained active in other proceedings before the Federal Election Commission involving the interpretation and implementation of BCRA and the federal campaign finance laws generally, including the rulemaking on political committee allocation that is at issue in this case.³

Further, as candidates and officeholders, they have an interest in the effectiveness of the Commission's rules in ensuring that the practice of allocating spending by political committees between their federal and non-federal accounts is not used as a means of allowing soft money to flow into federal elections, thereby undermining the purposes of the Federal Election Campaign Act, as amended by BCRA, to deter corruption and the appearance of corruption.

4. Democracy 21 is a non-profit, non-partisan policy organization that works to eliminate the undue influence of big money in American politics and to ensure the integrity and fairness of our democracy. It supports campaign finance and other political reforms, and conducts public

¹ The fourth principal sponsor, Rep. Martin Meehan, resigned from Congress in July, 2007.

² See Order of May 3, 2002 in Civ. No. 02-582 (D.D.C.) (three-judge court) (Order granting intervention).

³ See Comments of Senator John McCain, Senator Russell Feingold, Representative Christopher Shays and Representative Martin Meehan re Notice 2004-6 (April 9, 2004), which can be found in the record of this rulemaking on the Commission's website at: http://www.fec.gov/pdf/nprm/political_comm_status/comm2/02.pdf; see also *Shays and Meehan v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004) *aff'd* 414 F.3d 76 (D.C. Cir. 2005) (*Shays I*) (challenging various regulations promulgated under BCRA); *Shays and Meehan v. FEC*, 424 F. Supp. 2d 100 (D.D.C. 2007) (challenging failure to issue rules on section 527 groups) (*Shays II*); *Shays and Meehan v. FEC*, 2007 WL 2618869 (D.D.C. Sept. 12, 2007) (challenging various regulations promulgated under BCRA) (*Shays III*).

education efforts to accomplish these goals, participates in litigation involving the constitutionality and interpretation of campaign finance laws and engages in efforts to help ensure that campaign finance laws are effectively and properly enforced and implemented. Democracy 21 filed comments and other correspondence in the rulemaking that is the subject of this action, and testified in the rulemaking.⁴

5. The Campaign Legal Center is a non-profit, non-partisan organization created to represent the public perspective in administrative and legal proceedings interpreting and enforcing the campaign and media laws. It participates in rulemaking and advisory opinion proceedings at the Federal Election Commission to ensure that the agency is properly enforcing federal election laws, and files complaints with the Commission requesting that enforcement actions be taken against individuals or organizations which violate the law. The Campaign Legal Center filed comments and other correspondence in the rulemaking that is the subject of this action, and testified in the rulemaking. *See* n.4.

6. At an earlier stage of this case, the Court granted a motion by all of the same *amici*, plus two others, for leave to file a memorandum in opposition to plaintiff's motion for a preliminary injunction. *See* Minute Order of April 4, 2005. *Amici* movants submit that the attached Memorandum in Opposition to Plaintiff's Motion for Summary Judgment will assist the court in considering the issues presented by plaintiff's motion.

⁴ *See* "Comments on Notice 2004-6: Political Committee Status," by Democracy 21, the Campaign Legal Center and the Center for Responsive Politics (April 5, 2004), which can be found at: http://www.fec.gov/pdf/nprm/political_comm_status/simon_potter_nobel_sanford.pdf; *see also* Letter of February 25, 2004 to FEC Commissioners from Democracy 21, the Campaign Legal Center and the Center for Responsive Politics, which can be found at: http://www.fec.gov/pdf/nprm/political_comm_status/exparte_commissioners.pdf.

7. Pursuant to LCvR 7(m), counsel for *amici* movants consulted with counsel for the parties on this motion. Counsel for defendant Federal Election Commission and counsel for plaintiff EMILY's List both consent to the filing of the attached Memorandum.

Wherefore, movants respectfully request that the Court grant leave to file the attached Memorandum of *Amici Curiae* In Opposition to Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

/s/ Donald J. Simon

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