

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

CHRIS VAN HOLLEN,)	
)	
)	
Plaintiff,)	
)	
v.)	
)	Civ. A. No. 1:11-cv-00766 (ABJ)
FEDERAL ELECTION COMMISSION,)	
)	
Defendant.)	
)	
and)	
)	
CENTER FOR INDIVIDUAL)	
FREEDOM,)	
917-B King Street)	
Alexandria, Virginia 22314)	
)	
Intervenor-Defendant.)	

**ANSWER OF INTERVENOR/DEFENDANT
CENTER FOR INDIVIDUAL FREEDOM**

By leave of the Court, the Center for Individual Freedom (“CFIF”) intervenes in this action as a party Defendant, and submits this Answer:

1. Admitted that Plaintiff is challenging the validity of a regulation of the Federal Election Commission (“FEC”), 11 C.F.R. § 104.20(c)(9), that implements § 201 of the Bipartisan Campaign Reform Act (“BCRA”), codified at 2 U.S.C. § 434(f). Admitted that the regulation is important to the ability of corporations to engage freely in electioneering communications. Otherwise denied.

2. Admitted that BCRA § 201 only requires disclosure of “contributors who contributed.” “Contribution” is defined by statute. 2 U.S.C. § 431(8). Otherwise, the provision speaks for itself and Plaintiff’s characterizations are denied.

3. Admitted that the challenged FEC regulation speaks of “contributors” and “contributions,” as does BCRA § 201. Neither the regulation nor the statute requires disclosure of all “donors” or “donations.” Otherwise, the provision speaks for itself and Plaintiff’s characterizations are denied.

4. Denied.

5. Denied.

6. Admitted that corporations such as CFIF spent millions of dollars on electioneering communications during the 2010 congressional campaign and did not disclose donors or donations. Otherwise, denied.

JURISDICTION AND VENUE

7. – 8. Admitted.

PARTIES

9. Admitted.

10. The first sentence describing Plaintiff is admitted. Otherwise, denied.

11. The first sentence is admitted. Otherwise denied.

12. Admitted.

12.1 CFIF avers that it is a nonpartisan, nonprofit corporation organized under the laws of the Commonwealth of Virginia and tax-exempt under § 501(c)(4) of the Internal Revenue Code. Its headquarters address is 917-B King Street, Alexandria, Virginia 22314. CFIF’s mission is to protect and defend individual freedoms and rights guaranteed by the U.S.

Constitution. Its goals, principles, and activities are more fully described at its Internet website <http://www.cfif.org>.

a. During the 2010 congressional elections, CFIF spent approximately \$2.5 million on ads that were “electioneering communications.” CFIF expects to spend money on similar ads during future elections.

b. During 2010, CFIF disclosed its spending on such ads but, as authorized by the challenged regulation, did not disclose the sources of its funding.

c. CFIF receives a substantial portion of its funds on condition that the donors will not be identified. CFIF does not engage in speech that requires it to disclose its donors. If the price of engaging in electioneering communications were disclosing its donors, CFIF would stand silent and refrain from such speech.

FACTS

13. – 14. Admitted.

15. The statutory definition of “electioneering communication” speaks for itself.

16. – 17. The statutory provisions and cases cited speak for themselves.

18. Admitted that *WRTL* held that the First Amendment protects the right of corporations to engage in electioneering communications and precluded a ban on such communications unless they are “express advocacy” or its “functional equivalent.” Averred that *Citizens United* expands the First Amendment right of corporations to engage in electioneering communications.

19. Admitted that the FEC issued the Notice of Proposed Rulemaking on August 31, 2007. It speaks for itself. Otherwise denied.

20. Admitted that the FEC promulgated revised regulations on December 26, 2007. The quoted language is included in the regulations. The regulations speak for themselves. Otherwise denied.

21. – 22. Admitted that the December 26, 2007, Explanation and Justification included the quoted language. It speaks for itself. Otherwise denied.

23. Admitted that limiting burden on speakers and speech was a stated purpose of the December 26 regulations. Otherwise denied.

24. Denied. Averred that the challenged regulation is consistent with and reasonably implements the statute, and that its avoidance of unnecessary burden was required by the First Amendment.

25. – 28. Denied.

29. – 31. Admitted that the challenged regulation has facilitated core First Amendment speech by corporations by protecting them from needless and unlawful disclosure burden. In particular, admitted that CFIF spent approximately \$2.5 million on electioneering communications and did not disclose its donors. Averred that CFIF would not have engaged in that speech if the law had required the disclosures now asserted by Plaintiff. Admitted that other nonprofit corporations spent substantial sums and did not disclose their donors as a result of the challenged regulation. Otherwise denied.

32. CFIF lacks information sufficient to admit or deny and therefore denies.

COUNT I: DECLARATORY JUDGMENT

33. – 36. The foregoing responses are incorporated by reference. Denied that the challenged regulation is arbitrary, capricious, or contrary to BCRA. Otherwise denied.

REQUESTED RELIEF

37. Denied that Plaintiff should receive any relief. The Complaint should be dismissed with prejudice.

June 16, 2011

Respectfully submitted,

/s/ Thomas W. Kirby

Jan Witold Baran (D.C. Bar No. 233486)

E-mail: jbaran@wileyrein.com

Thomas W. Kirby (D.C. Bar No. 915231)

E-mail: tkirby@wileyrein.com

Caleb P. Burns (D.C. Bar No. 474923)

E-mail: cburns@wileyrein.com

Andrew G. Woodson (D.C. Bar No. 494062)

E-mail: awoodson@wileyrein.com

WILEY REIN LLP

1776 K St. NW

Washington, D.C. 20006

202.719.7000

Counsel for Center for Individual Freedom