

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KEAN FOR CONGRESS COMMITTEE,)
)
Plaintiff,)
)
)
v.) Civ. Action No. 1:04CV00007 (JDB)
)
)
FEDERAL ELECTION COMMISSION,)
)
Defendant.)
)
_____)

NOTICE OF RECENT COURT DECISION

Plaintiff respectfully brings to this Court's attention the recent decision handed down in this Court in *Shays and Meehan v. FEC*, No. 02-1984 (D.D.C. September 18, 2004).¹

Shays and Meehan, supra, was a challenge to regulations issued by the FEC implementing Titles I and II of the Bipartisan Campaign Reform Act ("BCRA"). In a 157-page decision, District Judge Colleen Kollar-Kotelly held that many of the regulations the FEC passed to implement BCRA were arbitrary and capricious, and therefore contrary to law. The court characterized one provision as having "no rational basis"; said another would "render the statute largely meaningless"; noted that another "severely undermines FECA" and would "foster corruption"; and observed that another regulation promulgated by the Commission "runs completely afoul" of campaign finance law.

This recent decision in *Shays-Meehan v. FEC, supra*, is merely the latest court decision finding that the FEC has failed to fulfill its statutory duty to enforce the law in a vigorous and

¹ A copy of this decision is available at <http://www.campaignlegalcenter.org/attachment.html/Opinion.pdf?id=1257>. On September 28, 2004, the FEC filed a notice of appeal in the case.

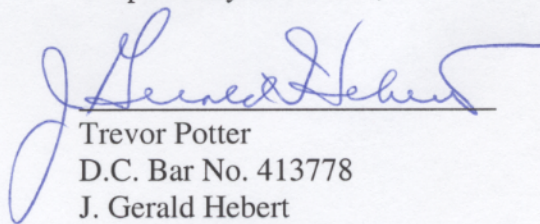
effective way. When the Supreme Court upheld the soft money ban in BCRA late last year in *McConnell v. FEC*, 540 U.S. 93, 124 S.Ct. 619 (2003), the Court majority laid the blame for the corrupting influence of the soft money system squarely at the doorstep of the FEC, saying it was clear that years of erroneous rulings and rulemakings by the agency, calculated to promote either one political party or both at various moments in time, had systematically eroded the longstanding prohibitions on corporate and union money in federal elections. The Court determined that the Commission had “subverted” the law by issuing regulations that “permitted more than Congress . . . had ever intended” in this area, and with its allocation rules, had “invited widespread circumvention of FECA's limits on contributions.”

We bring the recent ruling in *Shays and Meehan, supra*, to the Court's attention because it places in context the case before this Court. In this case, Plaintiff first filed his administrative complaint with the FEC on May 31, 2000. Finally, after more than two years and various *mesne* proceedings, the FEC issued its “decision”. That “decision” was a deadlocked Commission, which failed by a three to three vote to approve the recommendations of its own General Counsel who had found reason to believe that the Council for Responsible Government (“CRG”), a Virginia corporation, had violated the federal election laws by secretly funded mailings which attempted to influence the New Jersey Congressional Seventh District Republican primary. As explained in earlier filings by plaintiff, the FEC controlling group's Statement of Reasons for taking no action in this matter was arbitrary, capricious, an abuse of discretion, and contrary to law—the same claim that had been leveled against the FEC in *Shays, supra and Meehan*.

Like the recent decision in *Shays and Meehan, supra*, plaintiffs has appealed to this Court for relief because, absent an order from this Court, the agency will continue to abdicate its law enforcement duties; and citizens and federal candidates, like plaintiff, will have no protection

against flagrant violations of campaign finance laws.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Trevor Potter", is written over a horizontal line.

Trevor Potter
D.C. Bar No. 413778
J. Gerald Hebert
DC Bar No. 447676
Campaign Legal Center
1640 Rhode Island Avenue, NW
Suite 650
Washington, D.C. 20036
(202) 736-2200

Kimberly N. Brown
D.C. Bar No. 452383
Kirk L. Jowers
D.C. Bar No. 456095
Caplin & Drysdale, Chartered
One Thomas Circle, NW
Washington, D.C. 20005
(202) 862-5000

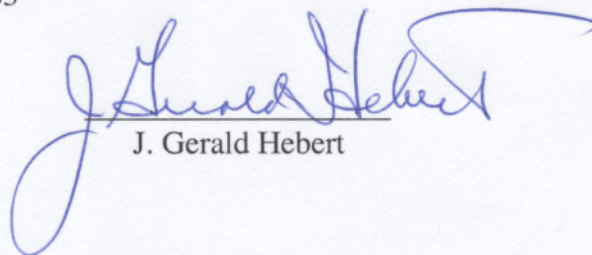
September 29, 2004

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2004, I served a copy of the foregoing Notice of Recent Court Decision on the following counsel of record by placing a true and correct copy of the same, in the United States mail, first class, postage prepaid, and addressed as follows:

Lawrence H. Norton
General Counsel
Richard B. Bader
Associate General Counsel
David Kolker
Assistant General Counsel
Vivien Clair
Attorney
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463



J. Gerald Hebert