

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Wisconsin Right to Life, Inc.,

Plaintiffs,

v.

Civil Action No. 04-1260

Federal Election Commission,

Defendant,

and

Senator John McCain  
United States Senate  
Washington, DC 20510

Representative Tammy Baldwin  
United States House of Representatives  
Washington, DC 20515

Representative Christopher Shays  
United States House of Representatives  
Washington, DC 20515

Representative Martin Meehan  
United States House of Representatives  
Washington, DC 20515

Proposed Defendant-Intervenors,

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**[PROPOSED] ANSWER AND AFFIRMATIVE DEFENSES OF INTERVENING  
DEFENDANTS SENATOR JOHN McCAIN, REPRESENTATIVE TAMMY BALDWIN,  
REPRESENTATIVE CHRISTOPHER SHAYS, AND REPRESENTATIVE MARTIN  
MEEHAN**

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The [proposed] intervening defendants Senator John McCain, Representative Tammy Baldwin, Representative Christopher Shays, and Representative Martin Meehan, by their undersigned counsel, for their answer and affirmative defenses to the plaintiffs' Amended

Verified Complaint for Declaratory and Injunctive Relief, respectfully answer, allege, and state as follows:

## **ANSWER**

### **Introduction**

1. Admit that this is an action challenging provisions of the Bipartisan Campaign Reform Act of 2002 (the “BCRA” or “Act”) on constitutional grounds. In all other respects, the allegations are denied.
2. This paragraph contains tendentious characterizations of BCRA, the provisions of which speak for themselves, and conclusions of law, to which no response is required. In all other respects, the allegations are denied.
3. The provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.
4. This paragraph contains conclusions of law to which no response is required.
5. This paragraph contains conclusions of law to which no response is required.
6. Admit that this is an action challenging the constitutionality of provisions of BCRA. In all other respects, the allegations are denied.
7. Admit that the FEC considered an exemption for “lobbying” communications but rejected it because “the Commission believe[d] that such communications could be reasonably perceived to promote, support, attack, or oppose a Federal candidate in some manner” and therefore “d[id] not meet the statutory requirement.” 67 Fed. Reg. 65190, 65200-65202.
8. Denied.
9. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

10. Admit that on July 22, 2004, the Senate failed to approve the nominations of Henry W. Saad, Richard A. Griffin, and David W. McKeague. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.
11. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
12. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. Admit that Senator Feingold was a candidate in the 2004 primary and general elections. The remainder of the second sentence contains conclusions of law to which no response is required. In all other respects, the allegations are denied.
13. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
14. This paragraph contains conclusions of law to which no response is required.
15. Admit that this action seeks declaratory and injunctive relief. The remainder of this paragraph contains conclusions of law to which no response is required.
16. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
17. The provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants. In further response to this paragraph, the intervening defendants note that section 403(b) provides that any Member of Congress “shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality” of the Act. The intervening defendants fall within the scope of section 403(b).

### **Jurisdiction and Venue**

18. Admitted, except to the extent: (a) that certain claims—including but not limited to those depending on regulations not yet issued—may not be ripe for adjudication; (b) that certain claims may be moot; or (c) that plaintiffs may lack standing to bring certain of their claims.

19. Admitted.

### **Parties**

20. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

21. Admit that the Federal Election Commission and Federal Communications Commission, along with the Attorney General, are charged with enforcing provisions of BCRA.

### **Additional As-Applied Facts**

22. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

23. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.

24. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.

25. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
26. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.
27. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.
28. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
29. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
30. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.
31. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains

conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.

32. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.

33. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.

34. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.

35. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.

36. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.
37. Admit that this action does not challenge BCRA's reporting and disclaimer requirements.
38. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
39. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
40. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
41. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
42. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
43. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
44. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.

45. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
46. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
47. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
48. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
49. Exhibits A, B, and C speak for themselves, and the intervening defendants deny the self-serving characterizations contained in this paragraph.
50. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. This paragraph also contains conclusions of law to which no response is required. Additionally, the provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.
51. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
52. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence. The final two sentences of this paragraph are denied.

### **Count I**

53. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.



54. The provisions of BCRA speak for themselves, and therefore no further answer is required of these intervening defendants.

55. This paragraph contains conclusions of law to which no response is required.

56. This paragraph contains conclusions of law to which no response is required.

57. Denied.

58. Denied.

59. Denied

60. Denied.

61. Denied.

62. Denied.

63. Denied.

## **Count 2**

64. In response to this paragraph, the intervening defendants incorporate their responses contained in all of the preceding paragraphs of this answer.

65. Denied.

66. This paragraph contains conclusions of law to which no response is required. In addition, the intervening defendants deny that in these circumstances “all concerns about the use of corporate funds will be absent.”

67. The first sentence contains conclusions of law to which no response is required. The second sentence is denied.

68. The intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

69. Denied.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

To the extent plaintiffs lack standing with respect to any claim, that claim should be dismissed.

### **Second Affirmative Defense**

To the extent any claim is moot or not ripe for adjudication, that claim should be dismissed.

### **Third Affirmative Defense**

To the extent that any claim fails to state a claim on which relief can be granted, it should be dismissed.

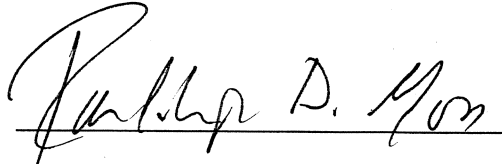
## **REQUEST FOR RELIEF**

Based upon these answers and affirmative defenses, the intervening defendants respectfully request that the Court enter a judgment as follows:

- (a) Dismissing the plaintiffs' claim in its entirety, on the merits, and with prejudice;
- (b) Denying the plaintiffs' request for declaratory and injunctive relief in their entirety; and
- (c) Awarding such other and further relief as the Court may find to be just and equitable.

Dated this \_\_\_\_ day of February, 2006.

Respectfully submitted,



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