

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

EMILY ECHOLS , a minor child, by and through)	Civil Action No.
her next friends, TIM AND WINDY ECHOLS ;)	02-cv-633-KLH-CKK-RJL
HANNAH MCDOW , a minor child, by and)	
through her next friends, TIM AND DONNA)	<i>consolidated with</i>
MCDOW ; ISAAC MCDOW , a minor child, by)	Civil Action No.
and through his next friends,)	02-cv-582-KLH-CKK-RJL (lead case)
TIM AND DONNA MCDOW ;)	02-cv-581-KLH-CKK-RJL
JESSICA MITCHELL , a minor child, by and)	02-cv-751-KLH-CKK-RJL
through her next friends, CHUCK AND PAM)	02-cv-753-KLH-CKK-RJL
MITCHELL ; DANIEL SOLID , a minor child,)	02-cv-754-KLH-CKK-RJL
by and through his next friends, KEVIN AND)	02-cv-781-KLH-CKK-RJL
BONNIE SOLID ; ZACHARY C. WHITE ,)	
a minor child, by and through his next friends,)	
JOHN AND CYNTHIA WHITE)	
)	
<i>Plaintiffs,</i>)	
)	
-vs-)	
)	AMENDED COMPLAINT
FEDERAL ELECTIONS COMMISSION ;)	FOR DECLARATORY AND
DAVID W. MASON, KARL J.)	INJUNCTIVE RELIEF
SANDSTROM, DANNY L. MCDONALD,)	
BRADLEY A. SMITH, SCOTT E. THOMAS,)	
and DARRYL R. WOLD , in their official)	
capacities as Commissioners of the FEC; and,)	
HON. JOHN ASHCROFT, ATTORNEY)	
GENERAL OF THE UNITED STATES,)	
)	
<i>Defendants.</i>)	

Plaintiffs, by undersigned counsel, herein state their Amended Complaint and Causes of Action against the Federal Elections Commission, the members thereof, and against the Attorney General of the United States of America:

INTRODUCTION

1. Emily Echols, Hannah McDow, Isaac McDow, Jessica Mitchell, Daniel Solid, and Zachary

White, are minors who are active participants in politics, and whose right to freedom of speech – in the form of financial support for, and monetary contributions to, political candidates and committees of political parties – is subject to entire prohibition under the Federal Elections Campaign Act (“FECA”), as amended by the Bipartisan Campaign Reform Act of 2002 (“BCRA 2002”).

2. These minors seek a declaratory judgment that the challenged provision of BCRA 2002 is unconstitutional.

3. These minors seek permanent injunctive relief against enforcement of the challenged provision of the Act.

4. Finally, because the challenged provision of the Act was unreasonable when enacted and because any attempt to defend that provision against a constitutional challenge is not a reasonable litigation position, these minors seek an award of costs, including attorneys fees, in accordance with the provisions of the Equal Access to Justice Act.

JURISDICTION AND VENUE

5. This is an action under the Declaratory Judgment Act seeking equitable and declaratory relief to cure threatened deprivations of the federal rights of the Plaintiffs, all of which are threatened to be inflicted by conduct taken by the defendants and those in concert with the defendants.

6. Jurisdiction is proper in the United States District Court for the District of Columbia in accordance with the provisions of BCRA 2002, which requires that challenges to the provisions of that legislation on constitutional grounds be filed in this Court, and which requires that such challenges be decided by a three-judge district court in accordance with Title 28 U.S.C. § 2284.

7. Additionally, the jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331, 1343(a)(4), 2201 and 2202.

8. As expressly provided in BCRA 2002, § 403, the District of Columbia is the appropriate venue for this facial challenge asserting constitutional grounds for the invalidation of the challenged provisions.

PARTIES

9. Emily Echols is a citizen of the United States, a resident of Georgia, and a minor child, whose interests in this litigation are brought to the Court by and through her next friends, her parents, Timothy and Windy Echols.

10. Hannah McDow is a citizen of the United States, a resident of Alabama, and a minor child, whose interests in this litigation are brought to the Court by and through her next friends, her parents, Tim and Donna McDow.

11. Isaac McDow is a citizen of the United States, a resident of Alabama, and a minor child, whose interests in this litigation are brought to the Court by and through his next friends, his parents, Tim and Donna McDow.

12. Jessica Mitchell is a citizen of the United States, a resident of Florida, and a minor child, whose interests in this litigation are brought to the Court by and through her next friends, her parents, Charles and Pamela Mitchell.

13. Daniel Solid is a citizen of the United States, a resident of Georgia, and a minor child, whose interests in this litigation are brought to the Court by and through his next friends, his parents, Kevin and Bonnie Solid.

14. Zachary White is a citizen of the United States, a resident of Georgia, and a minor child, whose interests in this litigation are brought to the Court by and through his next friends, his parents, John and Cynthia White.

15. Defendant Federal Elections Commission is established by 2 U.S.C. § 437(c) and is an independent agency with regulatory authority over federal elections and campaigns of candidates for federal office. Its duties include the repository, review, and audit of disclosures of campaign finance information by regulated entities, the enforcement of the provisions of federal elections laws, as amended by BCRA 2002, and oversight of the public funding of Presidential elections. The Federal Elections Commission has exclusive jurisdiction with respect to civil enforcement of FECA.

16. Defendant David M. Mason is a Commissioner and the Chairman of the Federal Elections Commission. As a Commissioner, he is responsible for administering and enforcing FECA, as amended by BCRA 2002. He is sued in his official capacity.

17. Defendant Karl J. Sandstrom is a Commissioner and the Vice Chairman of the Federal Elections Commission. As a Commissioner, he is responsible for administering and enforcing FECA, as amended by BCRA 2002. He is sued in his official capacity.

18. Defendants Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold are Commissioners of the Federal Elections Commission. As such, they are responsible for administering and enforcing FECA, as amended by BCRA 2002. Each is sued in his official capacity.

19. Defendant John Ashcroft, the Attorney General of the United States, is the chief law enforcement officer of the United States government. As such, he is charged with the enforcement of criminal sanctions against violations of the United States Code. He is also empowered to receive from the Defendant Federal Elections Commission and/or its supervisory officers notifications of apparent violations of FECA and BCRA 2002, and at the request of the Federal Elections Commission and/or its supervisory officers, to institute civil actions for relief or any other

appropriate order. Whenever the Federal Elections Commission refers an apparent violation to Defendant Ashcroft, he must report to the Commission with respect to any action taken by him regarding the apparent violation.

AVERMENT OF FACTS

The Bipartisan Campaign Reform Act of 2002

20. On February 14, 2002, and March 20, 2002, the House and Senate passed BCRA 2002.
21. On March 27, 2002, the President signed BCRA 2002 into law.
22. BCRA 2002 includes five separate Titles.
23. Title I of BCRA 2002 is styled “Reduction of Special Interest Influence” and includes a ban on so-called “soft money.”
24. Title II of BCRA 2002 is “Noncandidate Campaign Expenditures” and prohibits corporations and labor unions from using funds not raised subject to FECA’s limitations to pay for so-called “electioneering communications.”
25. Title III of BCRA 2002:
 - a. is styled “Miscellaneous;”
 - b. sets revised limits on contributions by individuals to candidates for federal office and to national party committees
 - c. sets an aggregate limit on an individual’s total contributions to candidates, political action committees, and political parties;
 - d. dramatically enhances the criminal penalties for violations of FECA;
 - e. increases the maximum prison sentence from one to five years and eliminates language capping the amount of any fine;

- f. lengthens the statute of limitations period;
- g. orders the United States Sentencing Commission to promulgate sentencing guidelines for Federal Election Campaign Act violations;
- h. prohibits persons aged seventeen years and younger from contributing to a candidate and from contributing or donating to any committee of a political party; and,
- i. creates a whole new standard for campaign funding calculations in elections involving the participation of self-funded candidates, known as the “Millionaires’ Provisions.”

26. Title IV of BCRA 2002:

- a. is style “Severability; Effective Date;”
- b. states the intent of the Congress that partial invalidation of the Act result in severing and survival of other portions of the Act;
- c. provides the effective dates for the provisions of the Act; and,
- d. provides a provision for judicial review of constitutional challenges to the Act.

27. Title V of BCRA 2002:

- a. is styled “Additional Disclosure Provisions;”
- b. imposes additional disclosure obligations;
- c. compels the maintenance of internet access to relevant records;
- d. compels the maintenance of a website, by the Federal Elections Commission, from which the public can have continuous and ready access to campaign financing report information; and,
- e. imposes significant disclosure obligations on broadcasters with respect to political advertisements.

28. BCRA 2002 takes effect on November 6, 2002.

Minors Participating in Campaigning

29. Emily Echols, Hannah McDow, Isaac McDow, Jessica Mitchell, Daniel Solid, and Zachary White, are minors, under the age of eighteen years (hereinafter collectively referred to as “the minors”).

30. The minors are, each of them, deeply and seriously interested in electoral politics and campaigning.

31. The minors have already demonstrated their serious interest in electoral politics and campaigning by participating as volunteers in such electoral campaigns.

32. In the case of certain of the minors, the commitment to participation has been evidenced by traveling great distances without compensation in order to campaign door-to-door for selected candidates.

33. In these and many other ways, the minors have demonstrated their commitment to using their constitutional freedoms of expression and association in order to effect political change in accord with their beliefs and opinions.

34. The minors consider the contribution of money to candidates and to committees of political parties a form of expression of support for those candidates and committees.

35. The minors consider withholding the contribution of money from candidates and from committees of political parties a form of expression of opposition to those candidates and committees.

36. The minors consider the contribution of money to candidates and to committees of political parties a form of association in support of those candidates and committees.

37. The minors want to, and intend to, exercise their constitutional rights of expression by making candidate and committee contributions in the future, during their minority.

AVERMENTS OF LAW

38. The First Amendment to the United States Constitution protects from governmental infringement the right to freedom of speech, the right associational freedom and expression, the right to peaceably assemble and petition for redress of grievances.

39. The Fifth Amendment guarantees that life, liberty and property will not be deprived without due process of law.

40. By implication, the Fifth Amendment guarantees the right to equal protection of the law.

41. Each of these constitutional rights and privileges is clearly established and well-defined.

42. The defendants, therefore, know or should know that enforcement of the challenged provisions of FECA, as amended by BCRA 2002, will violate the federal constitutional rights of the Plaintiffs.

43. The denial, even momentarily, of rights guaranteed to the Plaintiffs, by the First and Fifth Amendments of the United States Constitution inflicts an irreparable injury to the Plaintiffs.

44. There is no adequate remedy at law for the injuries threatened against the Plaintiffs.

CLAIMS OF INJURY

COUNT ONE: VIOLATION OF RIGHTS GUARANTEED BY THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

45. The facts stated hereinabove are incorporated herein by reference as though fully set out.

46. BCRA 2002 completely prohibits minors aged seventeen and younger from contributing to candidates and from donating or contributing to committees of political parties.

47. The complete prohibition on a kind of speech, such as candidate contributions and donations or contributions to committees of political parties, cannot be justified under the First Amendment in the absence of a compelling government interest served by means narrowly tailored to that interest.

48. No unique compelling governmental interest exists related to the prohibition of candidate contributions or donations or contributions to committees of political parties by minors.

49. The interest in suppressing the channeled donations is not uniquely related to minority, as many other circumstances of abuse of donations restrictions exist.

50. There is no serious or substantial deformation of federal elections that occurs because of contributions and donations by minors to candidates or to committees of political parties.

51. Federal election laws already bar channeling of contributions and donations as a means of directing funds to federal candidates.

52. Numerous less restrictive alternatives exist, short of a complete prohibition on minors' rights to contribute or donate at all, to insure that candidates and committees of political parties are not the targets of channeled giving.

53. Less restrictive alternatives include, for example, enforcing current legal restrictions on channeling of candidate and committee contributions or donations, or employing a presumption regarding the voluntariness of donations made by minors below some defined age, with a provision for overcoming the presumption.

54. In fact, less restrictive alternatives than a complete prohibition have been proposed in the past by the FEC to Congress in its annual reports.

55. No government interest justifies this sweeping restriction on the Plaintiffs' First Amendment

right to freedom of speech that is effected by FECA, as amended by BCRA 2002.

56. By frustrating these minor children's right to express their support for candidates or committees of political parties, FECA, as amended by BCRA 2002, unconstitutionally abridges the First Amendment right of free speech.

57. The ban on contributions or donations by minors to committees of political parties is unconstitutional because it is facially overbroad.

58. The ban on contributions or donations by minors to committees of political parties also violates the right to freedom of speech because its vagueness suppresses expression that is otherwise protected by the First Amendment.

WHEREFORE the Plaintiffs respectfully pray that this Court grant the relief set out below in the demand for judgment.

COUNT TWO: VIOLATION OF ASSOCIATIONAL FREEDOM AND EXPRESSION
RIGHTS GUARANTEED BY THE FIRST AMENDMENT
TO THE UNITED STATES CONSTITUTION

59. The facts stated hereinabove are incorporated herein by reference as though fully set out.

60. BCRA 2002 burdens the right of minors to join together with persons of like mind and purpose in associational activity supporting candidates for federal office and the committees of political parties.

61. The right to join together for such associational purposes is guaranteed against government restrictions.

62. BCRA 2002 unconstitutionally interferes with such associational freedoms of these minors.

WHEREFORE the Plaintiffs respectfully pray that this Court grant the relief set out below in the demand for judgment.

COUNT THREE: VIOLATION OF RIGHTS GUARANTEED
BY THE ASSEMBLY AND PETITION CLAUSES OF THE FIRST AMENDMENT
TO THE UNITED STATES CONSTITUTION

63. The facts stated hereinabove are incorporated herein by reference as though fully set out.

64. Together, the Assembly and Petition Clauses of the First Amendment guarantee to all, including the Plaintiffs, the right to peaceably assemble and to petition the government for a redress of grievances.

65. The challenged provision of FECA, as amended by BCRA 2002, unduly burdens and restrains the right of the minor Plaintiffs to join together with others of like mind and views to peaceably pursue redress of wrongs by supporting through financial donations the candidates for federal office and the committees of political parties that represent their best assessment of how grievances may be redressed.

WHEREFORE the Plaintiffs respectfully pray that this Court grant the relief set out below in the demand for judgment.

PRAYER FOR RELIEF

On the foregoing causes of action, the Plaintiffs respectfully prays that the Court grant it the relief set forth below:

66. The Plaintiffs respectfully pray the entry of a declaratory judgment, that the challenged provisions of FECA, as amended by BCRA 2002, violates the constitutional rights of the Plaintiffs.

67. The Plaintiffs respectfully pray the entry of a permanent injunction against enforcement of the challenged provisions of BCRA 2002 barring the Defendants, their agents, servants, employees, and all persons in active concert with them, from enforcing the challenged provisions of law against the Plaintiffs in violation of their constitutional rights.

68. The Plaintiffs respectfully pray the entry of an order granting to the Plaintiffs their costs, including a reasonable award of attorneys fees, pursuant to Title 28 U.S.C. § 2412, the Equal Access to Justice Act.

69. The Plaintiffs respectfully pray that the Court grant such other and further relief as it deems just in the circumstances.

DATED: May 2, 2002.

Respectfully submitted,

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CERTIFICATE OF SERVICE

James Matthew Henderson, Sr., a member of the bar of this Court hereby certifies that he caused two copies of the foregoing amended complaint on counsel for each party separately represented by causing them to be deposited in the United States mail, sufficient first class postage affixed, on this 2nd day of May, 2002, addressed as follows:

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