

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE BENNIE G. THOMPSON  
United States House of Representatives,  
Washington, D.C. 20515;

REPRESENTATIVE EARL F. HILLIARD  
United States House of Representatives  
Washington, D.C. 20515

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

and

JOHN ASHCROFT  
in his official capacity as Attorney General  
of the United States  
DEPARTMENT OF JUSTICE  
10<sup>th</sup> and Constitution Avenue, N.W.  
Washington, D.C. 20530-0001

Defendants.

CASE NUMBER 1:02CV00881

JUDGE: Colleen Kollar-Kotelly

DECK TYPE: 3-Judge Court

DATE STAMP: 05/07/2002

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COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

COME NOW the Plaintiffs, Representative Bennie G. Thompson and Representative Earl F. Hilliard, by and through counsel, and respectfully bring this action seeking declaratory and permanent injunctive relief. As grounds therefore, and in support of their position, they allege as follows:

INTRODUCTION

1. The framers of our Constitution, our founding forefathers, carefully constructed and meticulously worded its contents and each Amendment thereto, The Bill of Rights, in an effort to provide us with guidelines and safeguards with which we could fairly and effectively

run a democracy. It was their belief that these United States should consist of a government run by the people, for the people and of the people.

2. In order to effectuate these basic principles we have comprised a seemingly just system for the election of public officers. And pursuant to the First and Fifth Amendments of the Constitution, every citizen has been granted specific rights - freedom of speech, freedom of association, freedom from deprivation of life, liberty and property, and the guarantee of due process and equal protection of the laws.

3. Such protection, as afforded in the Bill of Rights, should go undaunted as every citizen, whether seeking a political office or supporting a designated candidate, exercises his or her right to contribute to and/or raise and solicit campaign funds and ultimately participate in our political election process.

4. The Bipartisan Campaign Reform Act ("BCRA"), signed into law by President George W. Bush on March 27, 2002, circumvents these fundamental rights. Its sublime intent is to refine and amend the Federal Election Campaign Act, 2 U.S.C. Sections 431 *et seq.*, ("FECA"). However, to implement the provisions of the BCRA on November 6, 2002 as it presently reads, would be to abridge the rights of every citizen of these United States, especially minorities, and deprive both political candidates seeking office and their supporters of very fundamental rights that the Plaintiffs, as elected public officials, have sworn an oath to protect zealously.

5. This action challenges the constitutionality of the provisions of the BCRA as they tend to regulate core political speech, prevent freedom of association with organizations, corporations, labor unions, advocacy groups, officeholders, candidates, private citizens and the like through issue advocacy restrictions and limitations, as it places far-reaching restrictions on spending, and imposes burdensome reporting requirements.

6. Furthermore, the BCRA unconstitutionally prevents minority officeholders, such as Plaintiffs, from effectively raising much needed funds in and outside their poorer districts in

order to enable state and local party organizations and nonpartisan, nonprofit organizations effectively to register minority citizens to vote and to encourage them to enable state and local party organizations and nonpartisan, nonprofit organizations effectively to register minority citizens to vote and to encourage them to exercise their right to vote. In this way, BCRA prevents Plaintiffs from competing in the political process against majority candidates who are better able to use their personal funds and/or have more financially capable supporters. Such provisions circumvent the Fifth Amendment guarantee of equal protection for minorities.

7. Although mention is made of a "Millionaire's Provision" in the BCRA Section, 315, which allows the \$2,000.00 per election limit to be increased to \$6,000.00 if the "opposition's personal funds" are in excess of \$350,000.00, there is no "Pauper's Exception" for people who are at the other end of the spectrum.

8. The Constitution guarantees the right for any person, no matter what race, creed or color to attempt to be a member of Congress. However, the BCRA circumvents the Constitution by making it financially impossible for persons such as Plaintiffs, to be able to compete through advertisements, brochures, radio and television time, in order to get their message out and thus, give the voter an intelligent opportunity to vote for him.

9. Under the provisions of the BCRA, Plaintiffs would face criminal penalties for going outside their respective districts, (the district represented by Plaintiff Thompson being the third (3<sup>rd</sup>) poorest in the county and that represented by Plaintiff Hilliard being similarly situated), to solicit for party committees and nonprofit organizations engaged in voter registration and get out the vote activity, contributions that are lawful under state law and lawful for any person to solicit, other than a federal officeholder or political party committee officer or agent. Without the ability to solicit such funds to finance voter registration and get out the vote activity, Plaintiffs and other minority candidates for federal office will have a burden cast upon them that is insurmountable in their quest to be Members of Congress, imposed by restrictions that are in violation of the Constitution and thus may lose a race before the first ballot is cast.

10. It was in this vein that the founding fathers chose to level the playing field for all political party candidates and thus, Plaintiffs respectfully request declaratory and injunctive relief to have all political issues, political principals and political speech that would be affected by the BCRA as it currently stands, shielded from its unconstitutionally overbearing, disparate and sweeping effect and to prevent its enforcement by the Defendants.

### JURISDICTION AND VENUE

11. Section 403 of the BCRA confers jurisdiction on The United States District Court for the District of Columbia due to the nature of its constitutional challenges.

12. Section 403(b) of the BCRA specifically grants Plaintiffs the right to intervene as members of Congress..

13. Title 28 U.S.C. Section 2284 mandates that such constitutional challenges be brought before a three-judge Court and disposed of in an expeditious manner .

14. Title 28 U.S.C. Sections 1331, 1343(a)(4), 2201 and 2202 additionally confer jurisdiction with this Court.

### PARTIES

15. Plaintiff Bennie G. Thompson is a member of Congress representing the 2<sup>nd</sup> Congressional District for the State of Mississippi. He was first elected in 1993 , is currently serving his 5<sup>th</sup> term, and is a candidate for re-election.

16. Plaintiff Thompson serves on the Agriculture Committee and the Budget Committee.

17. Plaintiff Thompson is an African- American and a member of the Congressional Black Caucus.

18. Plaintiff Thompson is a United States citizen, a voter, a candidate, a donor, a campaign fund recipient (using both "hard" and "soft" money), a member of the Democratic National Party, a member of Kappa Alpha Psi Fraternity (whose membership is open to college students, some of whom may are under the age of majority and currently donates to his campaign), and a fundraiser who would be irreparably harmed if the provisions of the BCRA

as it was signed into law, are allowed to be enforced by the Defendants on November 6, 2002.

19. Plaintiff Earl F. Hilliard is a member of Congress representing the 7<sup>th</sup> Congressional District for the State of Alabama. He was first elected in 1992, is currently serving his 5<sup>th</sup> term, and is a candidate for re-election.

20. Plaintiff Hilliard serves on the Agriculture Committee and the International Relations Committee and "has worked on legislation, projects, and at times, become involved in controversial issues in an effort to improve the quality of life for [his] constituents". His involvement, as an African-American, in the House Committee on Agriculture has helped to promote awareness on issues such as the recently passed Farm Bill, whereby he was able to increase the authorization for the 2501 Program from \$10 million to \$25 million dollars. This money will help benefit minority and 1890 land grant colleges, providing assistance to minority farmers, both technically and in the use of governmental programs.

21. Plaintiff Hilliard is an African-American and a member of the Congressional Black Caucus.

22. Plaintiff Hilliard is a United States citizen, a voter, a candidate, a donor, a campaign fund recipient (using both "hard" and "soft" money), a member of the Democratic National Party, a member of Alpha Phi Alpha Fraternity (whose membership is open to college students, some of whom may be under the age of majority and currently donates to his campaign), and a fundraiser who would be irreparably harmed if the provisions of the BCRA as it was signed into law, are allowed to be enforced on November 6, 2002.

23. Defendant Federal Election Commission ("FEC") is an independent governmental agency, established under 2 U.S.C. Section 437(c) which has authority to regulate federal elections and the campaigns of those who run for federal office. By law, they would be required to implement and enforce the challenged provisions of the BCRA.

24. Defendant John Ashcroft, in his official capacity as Attorney General of the United States, is responsible for the enforcement of criminal sanctions against violations of the

United States Code. His responsibilities include the receipt from Defendant Federal Election Commission and/or its supervisory officers, notification of apparent violations of the FECA and the BCRA of 2002, to institute civil actions for relief or any other appropriate order. Under circumstances where the Federal Election Commission refers an apparent violation to Defendant Ashcroft, he must report to the Commission with respect to any action taken by him regarding said violation.

### **FACTUAL BASIS UPON WHICH CLAIMS ARE BASED**

25. The First Amendment to the United States Constitution states in pertinent part that "Congress shall make no law ...abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the government for a redress of grievances,"

26. The Fifth Amendment to the United States Constitution states in pertinent part that "[n]o person shall ... be deprived of life, liberty or property, without due process of law;..."

27. The 1971 Federal Election Campaign Act (FECA), as amended in 1974, 1976, and 1979, imposed restrictions by limiting campaign contributions, requiring the disclosure of campaign receipts and expenditures, and set up the Defendant Federal Election Commission as the central administrative enforcement agency for its regulations.

28. The FECA Amendment of 1974 imposed certain limits on expenditures, which were struck down by the U.S. Supreme Court in the landmark decision Buckley v. Valeo, 424 U.S. 1 (1976). The Act's limitations on independent expenditures, candidate expenditures from personal funds and on overall campaign expenditures were invalidated, the Court stating that such limitations placed a direct and substantial restriction on the ability of candidates, citizens and associations to engage in free speech as guaranteed by the First Amendment to the Constitution.

29. On February 14, 2002 and March 20, 2002 respectively, the U.S. House of Representatives and the Senate passed the BCRA of 2002.

30. On March 27, 2002 the BCRA of 2002 was signed by President George W. Bush

and became Public Law No: 107-155

31. The BCRA of 2002 places a ban on raising "soft money" by national parties and federal candidates.

32. Under new section 323(e) of FECA, added by section 101(a) of BCRA, Members of Congress and candidates for federal office are prohibited from soliciting, receiving, directing, transferring or spending contributions to state and local party committees that do not meet the limitations and prohibitions of FECA, even if such contributions are used exclusively for voter registration and get out the vote activities.

33. Under new section 323(e)(1) & (4) of FECA, as added by section 101(a) of BCRA, federal officeholders and candidates for federal office are prohibited from soliciting, receiving, directing, transferring or spending contributions to nonprofit organizations whose principal purpose is voter registration and/or get out the vote activity, or contributions to any other nonprofit organization with any purpose whatsoever if the contributions are specifically earmarked for voter registration or get out the vote activity, unless such contributions are solicited solely from individuals, do not exceed \$20,000 per calendar year from any one individual, and do not cause such individual to exceed complex aggregate limits on contributions to all federal candidates and committees as set forth in section 441a(a)(3) as amended by section 307 of BCRA.

34. The BCRA of 2002 forbids state parties from spending any funds, other than contributions meeting the limitations and prohibitions of FECA, on voter registration activity within 120 days of an election or get out the vote activity.

35. The BCRA of 2002 prohibits all contributions from persons 17 years or younger to any political candidate or to a committee of any political party.

CLAIMS OF INJURY FOR WHICH  
FOR RELIEF IS SOUGHT

COUNT I

THE BCRA'S REDUCTION OF SPECIAL INTEREST INFLUENCE  
BY PLACING RESTRICTIONS ON THE SOLICITATION AND USE  
OF SOFT MONEY IS VIOLATIVE OF PLAINTIFFS' FIRST AND  
FIFTH AMENDMENT RIGHTS

36. Plaintiffs hereby reallege and incorporate by reference each and every fact and allegation as stated above as if set forth herein.

37. Plaintiffs are federal office holders. Pursuant to the restrictions as set forth in the BCRA of 2002 they would be prohibited as federal officials and candidates for re-election from participating in raising or spending any funds from any source other than an individual, up to \$10,000 per year to any state party committee, or up to \$5,000 to any local party committee, or up to \$20,000 to any nonprofit organization, for use by such entities in voter registration or get out the vote activity.

38. The district represented by Plaintiff Thompson is the third (3<sup>rd</sup>) poorest district in the country and that represented by Plaintiff Hilliard is similarly situated. The average individual political contribution given by an African-American to Plaintiff Thompson's political campaign is \$150. The median income in Plaintiff Thompson's district is \$16,000.

39. For a contributor to give the maximum amount of contribution allowed (\$20,000) to a nonprofit organization for voter registration or get out the vote would mean he or she is to give more than of his or her total yearly income. In Plaintiffs' districts such political contributions almost always are made after an individuals tithe offering of ten percent (10%) of one's income to the church.

40. The Plaintiffs must rely on sources other than individual contributions to effectively compete in the political process. As such, as minorities, Plaintiffs are effectively prevented from disseminating their stances on vital political issues, in violation of their Fifth Amendment right to equal protection of the laws.



41. As Federal office holders and candidates, Plaintiffs are unfairly prejudiced, penalized and prohibited under BCRA from raising contributions not meeting FECA restrictions ("soft" money) for use in voter registration and get out the vote. These restrictions violate Plaintiffs' rights to equal protection of the laws guaranteed by the Fifth Amendment; violate Plaintiffs' rights of free speech and association guaranteed by the First Amendment; and violate the rights of Plaintiffs' constituents to equal protection of the laws, as guaranteed by the Fifth Amendment, because of the disproportionate effect on minority communities of the restrictions on funding available, by reason of BCRA, for voter registration and get out the vote activities.

## COUNT II

### **THE BCRA' PROHIBITION OF MINORS TO CONTRIBUTE TO PLAINTIFFS' POLITICAL CAMPAIGN OR TO THE COMMITTEE OF ANY POLITICAL PARTY IS IN VIOLATION OF PLAINTIFFS' FIRST AND FIFTH AMENDMENT RIGHTS**

42. Plaintiffs hereby reallege and incorporate by reference each and every fact and allegation as stated above as if set forth herein.

43. Plaintiff Thompson is a member of Kappa Alpha Psi Fraternity, whose membership is open to college students, some of whom may are under the age of majority. Plaintiff's fraternity and currently donates to his political campaign through both individual contributions and hosting fund-raising activities.

44. Plaintiff Hilliard is a member of Alpha Phi Alpha Fraternity, whose membership is open to college students, some of whom may are under the age of majority. Plaintiff's fraternity and currently donates to his political campaign through both individual contributions and hosting fund-raising activities.

45. Plaintiff Hilliard, in his official capacity, nominated one of the constituents in his district for Congressional Page, Rodericus Waller, who is currently 17 years of age. Mr. Waller was selected and given a five month stay in Washington, D.C.

46. Pursuant to the prohibition against contributions in the BCRA Mr. Waller would

be prohibited from giving and Plaintiff would be prohibited from accepting campaign contributions of any kind without facing criminal punishment from Defendants.

47. Plaintiff's First Amendment right to freedom of association and his Fifth Amendment right not to be deprived of life, or property are violated by the BCRA's prohibition.

48. Plaintiffs are federal office holders. They have taken an oath to protect the rights of their constituents, including minors such as Mr. Waller. As Plaintiff Hilliard's constituent, Mr. Waller's First Amendment right to freedom of association and his Fifth amendment right not to be deprived of life, liberty or property without due process and equal protection of the laws are also violated by the BCRA's prohibition against contributions by minors.

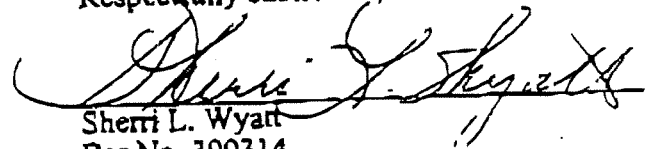
#### PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that a three-judge panel from this Honorable Court convene, hear the instant action and rule as follows:

1. That the challenged provisions of the FECA, as amended by the BCRA of 2002 are violative of Plaintiffs' Constitutional rights under the First and Fifth Amendments;
2. That the Defendants are permanently enjoined and restrained from implementing, enforcing and executing the challenged provisions of the FECA, as amended by the BCRA of 2002 wherein they are violative of Plaintiffs' Constitutional rights under the First and Fifth Amendments; and
3. For such other and further relief as this Honorable Court Deems just and proper, along with the costs and expenses of this action.

May 7, 2002

Respectfully submitted,



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