

**THOMPSON PLAINTIFFS
ARGUMENT: TITLE THREE**

**I. SECTION 318 OF THE BIPARTISAN CAMPAIGN REFORM ACT OF 2002
IS UNCONSTITUTIONAL IN THAT IT
VIOLATES THE FIRST AMENDMENT RIGHTS OF ALL MINORS**

The BCRA prohibits all individuals 17 years old or younger from making contributions or donations to a candidate or a committee of a political party. This law, if enacted, in one fell swoop eradicates the opportunity of many working and contributing young Americans from financially participating in the political process. As many American parents and educators work to promote interest and involvement in our government, Congress has unilaterally decided that the only way to ensure that contributions made by minors are authentically made is to abrogate the opportunity for them to give altogether.

Currently, under the FEC's current regulations at 11 C.F.R. Sec. 110.1(i)(2) children under the age of 18 may make contributions to political candidates and committees as long as the child knowingly and voluntarily makes the decision to contribute. Additionally, the child must make the contribution out of his or her own funds, which the child is in control of, such as the proceeds of a trust or money in a savings account in the child's own name.³⁹

Congress, by the enactment of The BCRA of 2002, is attempting to prevent wealthy individuals from circumventing contribution limits to both political candidates and parties, where in some instances, contributions were purportedly being made by their children. On March 20, 2002, while considering the contributions by minors issue of the

³⁹ Congressional Record, March 20, 2002, Page 2145. (See THOMPSON Appendix Tab 2).

BCRA while on the House floor, Senator John McCain stated “[u]nfortunately, not withstanding these regulations, we believe that wealthy individuals are easily circumventing contribution limits to both political candidates and parties by directing their children’s contribution.”⁴⁰ Although there may be instances where parents do make contributions in the name of their children this is not the behavior of all wealthy individuals nor do all children who make contributions make them unknowingly and at the behest of their parents. To prohibit all American minors under the age of eighteen from giving their money to the candidate or committee of their choice, violates and silences their First Amendment Right of free speech. The First Amendment states that “Congress shall make no law [a]bridging the freedom of speech.” This provision embodies “our profound commitment to the free exchange of ideas.”⁴¹ When a minor makes a contribution to the political candidate of his or her choice this is an expression of their support of the political ideas that this candidate embraces. The BCRA reacts to a Los Angeles Times study⁴², which stated that individuals who listed their occupation as student, contributed \$7.5 million to candidates and parties between 1991 and 1998. Upon further investigation it was determined, that some of these contributions were made by infants and toddlers (emphasis added). Senator McCain on the house floor, further states “ [I]n our view , this provision simply restores the integrity of the individual contribution limits by preventing parents from funneling contributions through their children, many of whom are simply too young to make such contributions knowingly”.⁴³

⁴⁰ *Ibid.*

⁴¹ *Ashcroft v. American Civil Liberties Union*, 122 U.S.1700,9 (2002) (See THOMPSON Appendix Tab 2)..

⁴² Congressional Record, March 20, 2002, Page 2145 (quoting a *New York Times* article that was incorporated into and made a part of the record).

⁴³ Congressional Record, March 20, 2002, Page 2145.

If the BCRA is enforced as enacted it clearly will be an action taken by Congress to wipe out the rights of all to address the illegal behavior of a few⁴⁴ It is inherently illegal to take away from all minors because of the alleged actions of the parents of a few minors. The Supreme Court has firmly established that minors “ are ‘persons’ under our Constitution ... possessed of fundamental rights which the state must respect....”⁴⁵. Congress must also respect the rights of minors.

The electoral process benefits from the involvement of minors. Congressman Thompson, like many other elected officials benefits from having minors contribute to his campaign with both their time and money. There is no evidence that any minor from his district made contributions illegally. Thus, the question must be asked why are the fundamental rights of the minors in Mississippi, some of whom are enrolled in one of the five universities in the Congressman’s district¹, some of whom are members of Congressman Thompson’s fraternity , Kappa Alpha Psi, being abrogated because of the incorrect actions of others?

II. THE CURRENT LAW SHOULD NOT BE CHANGED, RATHER THE FEC SHOULD BETTER MONITOR THE EXISTING LAW AND PUNISH VIOLATORS

The FEC’s current regulations at 11 C.F.R. Sec. 110.1(i)(2), adequately provide for the protection of the electoral process from the parents of minors who want to give in their children’s name to the political committee or candidate of their personal choice. However the FEC does not have in place adequate mechanisms to ensure that through proper policing, the current law is followed.

⁴⁴ Title 2 U.S.C. §441f, prohibits giving covered political contribution in the name of another (See THOMPSON Appendix Tab 1)..

⁴⁵ *Tinker v. Des Moines School District*, 393 U.S. 503, 511(1969) (See THOMPSON Appendix Tab 2)..

⁴⁶ Thompson Deposition at 50.

The Los Angeles Times reported:

Youthful donors attract little scrutiny from the FEC, which is responsible for civil enforcement of U.S. election laws. The agency rarely investigates allegations arising from donations by minors: Since 1975, it has been investigated and closed only four such cases, levying one \$ 4,000.00 fine against a parent for donating money through a child.⁴⁷

Thus, it is not the law that needs changing, it is the lackluster enforcement by the FEC that needs to be changed. Congress should enact guidelines to promote proper implementation of the current law, rather than change it.

III. THE ABILITY OF A MINOR TO CONTRIBUTE FINANCIALLY TO THE POLITICAL COMMITTEE OR CANDIDATE OF THEIR CHOICE SHOULD BE ASSESSED IN TERMS OF MATURITY, EDUCATIONIAL LEVEL AND THE LEGAL AUTHORITY TO MAKE INFORMED DECISIONS IN OTHER AREAS OF THEIR LIVES

There is little argument that there are vast differences between the reasoning ability and the comprehension level of a one month old child and a seventeen year old minor. Yet, with Section 318 of the BCRA, both the one month old and the teenager, who has almost reached the age of majority, are treated one and the same. This section of the Act *completely fails* to take into consideration the developmental process that minors experience (emphasis added). Granted, for an infant to contribute to a political candidate violates 11 C.F.R. §110.1(i)(2). However, if a seventeen year old minor contributes, nothing on its face screams illegality, thus Section 318 of the BCRA is a unjustified response.

The attainment of a certain level of education by the minor should be taken into consideration before their right to financially contribute to a political campaign, candidate

⁴⁷ Congressional Record, March 20, 2002, Page 2145 (quoting a *Los Angeles Times* article that was incorporated into and made a part of the record).

or committee is taken away *in its entirety* (emphasis added). A person over the age of eighteen, who has completed the sixth grade can vote in elections in this country.⁴⁸ It is fair to say that if a person needs only a sixth grade education to vote for the candidate of their choice, it does not seem just that in order to contribute financially to the candidate of their choice a minor would need to be the same age as many eleventh and twelfth graders, and many students who are freshmen in college.

The Courts on other occasions have been asked to consider the rights of the 'mature minor' balanced against the rights of younger minors. Similarly, the health care profession has had to acknowledge that not all minors can be considered the same. On a daily basis, health care professionals have to balance the wishes of older minors, who understand the medical issues that confront them and who have the capacity to make informed decisions in regard to their own health care, even if such decisions go against the wishes of their parent(s). The Supreme Court has enhanced the minor's authority over health care issues by extending the right to privacy to a minors' decision to obtain contraceptives⁴⁹ and to terminate an unwanted pregnancy.⁵⁰ It is reasonable that if the Supreme Court acknowledges the ability of minors to make important decisions about their health, that this Court, by ruling Title III of the BCRA unconstitutional on its face, should allow minors to participate financially to the political campaigns and parties of their choice.

In the past, many young Americans across the country gave of their time, labor, ideas and money to political campaigns and committees. Unless and until it is proven by

⁴⁸ § 4 (e) of the Voting Rights Act of 1965.

⁴⁹ *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976) (See THOMPSON Appendix Tab 2)..

⁵⁰ *Hodgson v. Minnesota*, 497 U.S. 417 (1990) (See THOMPSON Appendix Tab 2).

and through substantive factual evidence by the defendants in this case that an overwhelming amount of contributions made by minors are done in violation of the current law then their right to participate in the selection of this country's leaders should not be taken away from them. It is the actions of the parents that should be addressed and penalized not the minors.

CONCLUSION

For the foregoing reasons, the Thompson plaintiffs respectfully request that this Honorable Court grant judgment in their favor by the striking down of Title III of the BCRA in its entirety.