

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CHRISTOPHER SHAYS and MARTIN MEEHAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 02-1984 (CKK)
	)	
FEDERAL ELECTION COMMISSION,	)	
	)	ANSWER
Defendant.	)	

**ANSWER AND AFFIRMATIVE DEFENSES OF  
DEFENDANT FEDERAL ELECTION COMMISSION  
TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant Federal Election Commission (“FEC” or the “Commission”), through its undersigned counsel, responds as follows to the plaintiffs' First Amended Complaint (“Complaint”) in this litigation.

Defendant FEC specifically denies that any of the regulations promulgated to implement the provisions of Title I and Title II of the Bipartisan Campaign Finance Reform Act of 2002 (“BCRA”) are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “in excess of [the Commission’s] statutory jurisdiction, authority or limitations,” or were adopted “without observance of procedure required by law,” 5 U.S.C. §§ 706(2)(a), (c), and (d), and answering the numbered paragraphs of the Complaint, responds as follows, denying everything not specifically given a response:

1. This paragraph purports to describe the contents of the Complaint, a document that speaks for itself, and therefore no response is required.

2. ADMIT that BCRA was passed by the United States House of Representatives and by the United States Senate in February and March 2002, and was signed into law by President George W. Bush on March 27, 2002. The remaining allegations in paragraph 2 contain plaintiffs' characterization of Congress' purposes for enacting BCRA for which no response is required.

3. The allegations in paragraph 3 contain plaintiffs' characterization of Congress' purposes for enacting BCRA for which no response is required.

4. The allegations in paragraph 4 contain plaintiffs' characterization Congress' purposes for enacting BCRA for which no response is required.

5. The first three sentences in paragraph 5 purport to describe provisions of BCRA which speak for themselves, thus no response by the FEC is required. ADMIT the last three sentences of paragraph 5.

6. Paragraph 6 contains plaintiffs' characterizations regarding the matters complained of, and plaintiffs' speculation regarding future events, for which no response is required. DENY that the Commission's regulations are contrary to law.

7. This paragraph contains a prayer for relief to which no answer is required, but insofar as an answer may be deemed necessary, the Commission DENIES the allegations in this paragraph.

8. ADMIT.

9. ADMIT.

10. ADMIT the allegations of the first, second, and fourth sentences of paragraph 7. As to the third sentence of paragraph 10, the assertion that plaintiff Shays “intends to seek re-election in November 2004” is a matter as to which the Commission is without knowledge or information sufficient to admit or deny its truth.

11. ADMIT the allegations of the first, second, and fourth sentences of paragraph 11. As to the third sentence of paragraph 11, the assertion that plaintiff Meehan “intends to seek re-election in November 2004” is a matter as to which the Commission is without knowledge or information sufficient to admit or deny its truth.

12. The Commission is without knowledge sufficient to admit or deny the allegation in the first sentence that plaintiffs are “intended candidates for re-election to Congress.” ADMIT the remaining allegations of the first sentence of paragraph 12. DENY the allegations of the second sentence of paragraph 12.

13. ADMIT the allegations of the first sentence of paragraph 13. The second sentence of paragraph 13 either purports to describe the contents of BCRA, a document that speaks for itself, and therefore no response is required, or reports plaintiffs' characterizations of Congress' intent in passing BCRA, for which no response is required. Additionally, to the extent the second sentence contains a conclusion of law about plaintiffs' legally protected interest under BCRA, no response is required. DENY the allegations of the third and fourth sentences of paragraph 13.

14. The first sentence of paragraph 14 contains a conclusory assertion about BCRA's effect on plaintiffs, which the Commission lacks sufficient information to admit or deny. DENY the implication in the second sentence of paragraph 14 that the FEC's regulations do not “faithfully implement[]” “[t]he BCRA Title I bans on the raising and spending of soft money by

the national political parties and on the solicitation of soft money by federal candidates and officeholders[.]” The second sentence of paragraph 14 also contains speculation on the effect on plaintiffs of possible actions by third parties, as to which no response is required.

15. The first sentence of paragraph 15 contains a conclusory assertion about BCRA's effect on plaintiffs, which the Commission lacks sufficient information to admit or deny. DENY the implication in the second and third sentences of paragraph 15 that the FEC's regulations do not “faithfully implement[.]” “the requirement in Title I of BCRA that state parties not spend unregulated soft money on state and local activities that affect federal elections[.]” The second, third and fourth sentences of paragraph 15 also contain conclusions of law about BCRA's speculative effect on plaintiffs as to which no response is required. The assertions contained in these sentences are matters as to which the Commission is without knowledge or information sufficient to admit or deny their truth; to the extent these sentences contains a conclusion of law about BCRA's speculative effect on plaintiffs, no response is required.

16. The first sentence of paragraph 16 contains a conclusory assertion about BCRA's effect on plaintiffs, which the Commission lacks sufficient information to admit or deny. DENY the implication in the second and third sentences of paragraph 16 that the FEC's regulations do not “faithfully implement[.]” Title II of BCRA. The second and third sentences of paragraph 16 also contain conclusions of law about BCRA's speculative effect on plaintiffs as to which no response is required. The assertions contained in these sentences are matters as to which the Commission is without knowledge or information sufficient to admit or deny their truth, but to the extent these sentences contain a conclusion of law about BCRA's speculative effect on plaintiffs, no response is required.

17. The first sentence of paragraph 17 contains a conclusory assertion about BCRA's effect on plaintiffs, which the Commission lacks sufficient information to admit or deny. DENY the implication in the second and third sentences of paragraph 17 that the FEC's regulations do not "faithfully implement[]" Title II of BCRA. The second and third sentences of paragraph 17 also contain conclusions of law about BCRA's speculative effect on plaintiffs as to which no response is required. The assertions contained in these sentences are matters as to which the Commission is without knowledge or information sufficient to admit or deny their truth, but to the extent these sentences contain a conclusion of law about BCRA's speculative effect on plaintiffs, no response is required.

18. ADMIT, except that the proper title of the defendant is the Federal Election Commission.

19. ADMIT the allegations of the first, second, and third sentences, and the parenthetical sentence of paragraph 19. ADMIT the allegations of the fifth sentence of paragraph 19, except to DENY the phrase "in disregard of these laws." Insofar as the sixth sentence of paragraph 19 purports to describe Congress' intent in passing BCRA, no response is required. ADMIT the allegations of the seventh sentence of paragraph 19.

20. ADMIT.

21. Each of the allegations in paragraph 21 either purports to describe the contents of BCRA, a document that speaks for itself, and therefore no response is required, or reports plaintiffs' characterizations of Congress' intent in passing BCRA, for which no response is required.

22. ADMIT that Section 402(c) of BCRA requires the FEC to "promulgate regulations to carry out title I of this Act and the amendments made by such title" "not later than

90 days after the date of enactment of this Act.” The remainder of the first sentence of paragraph 22 purports to describe Congress’ intent in passing BCRA, and therefore no response is required. ADMIT the allegations of the second, third and fourth sentences of paragraph 22. ADMIT that the Commission adopted amendments to the proposed regulations, and that adoption required the favorable vote of at least four Commissioners; DENY that any such amendments “undermined the letter and purpose of the BCRA.” The allegations in the sixth sentence of paragraph 22 purport to characterize unspecified amendments to the draft regulations, the factual accuracy of which may be determined by examination of documents that speak for themselves, and therefore no response by the FEC is required. The sixth sentence also contains a legal conclusion about whether unidentified regulations are “in direct conflict with” other unidentified legal interpretations, to which no response is required. With respect to the seventh sentence, DENY that interested persons were deprived of the opportunity to comment on all matters addressed in the final regulations. The allegations in the eighth sentence of paragraph 22 purport to characterize the contents of the final regulations transmitted to Congress and published in the Federal Register, or to characterize the contents of the draft regulations published in the Federal Register, or to distinguish those documents from “past positions taken by the FEC.” None of these are identified but, if they were, the factual accuracy of this statement could be determined by examination of documents that speak for themselves, and therefore no response is required. The eighth sentence also contains a legal conclusion about whether the final regulations “were substantially different” from the proposed regulations, to which no response is required.

23. DENY the allegations of the first sentence of paragraph 23. ADMIT that some of the amendments adopted by the Commission following the public comment period were adopted by a 4-2 vote. As to the allegations that some of the amendments adopted were “often contrary

to the proposals and recommendations of the General Counsel,” the factual accuracy of such allegations may be determined by examination of the draft regulations presented by the General Counsel’s Office to the Commission for consideration, a document that speaks for itself, and therefore no response is required. The third sentence of paragraph 23 contains plaintiffs’ characterizations of unidentified statements and actions by unspecified members of the Commission, which are too vague and indefinite for the Commission to admit or deny. The fourth sentence contains what purports to be a quotation from an unidentified source quoting an unnamed Commissioner, so the Commission is without knowledge or information sufficient to admit or deny the truth of the allegations in this sentence.

24. DENY.

25. The allegations of paragraph 25 purport to describe provisions of BCRA, a document that speaks for itself, and therefore no response by the FEC is required.

26. The allegations of paragraph 26 purport to describe provisions of the Commission’s regulations, a document that speaks for itself, and therefore no response from the FEC is required. DENY that the regulation promulgated at 11 C.F.R. 300.2(c)(3) is “without any basis in the statute” or is otherwise contrary to law.

27. The allegations of paragraph 27 purport to describe provisions of 11 C.F.R. 300.2(c)(3), a document that speaks for itself, and therefore no response by the FEC is required. DENY that the regulation is “in contravention of the BCRA” or is otherwise contrary to law. Additionally, this paragraph speculates about future events, to which no response is required.

28. To the extent that the allegations of paragraph 28 relate to allegations contained in paragraphs 32 through 37, the Commission incorporates by reference its responses to paragraphs 32 through 37. The allegations of paragraph 28 purport to describe 11 C.F.R. 300.2(c), a

document that speaks for itself, and therefore no response by the FEC is required. Additionally, this paragraph speculates about future events, to which no response is required. DENY that the definitions of the terms “solicit” or “direct” in the Commission's regulations are “improper” or otherwise contrary to law.

29. DENY that the Commission has created a “loophole.” As to the allegations in the first, second, third, fourth and fifth sentences of paragraph 29 concerning activities of persons and entities, the Commission is without knowledge or information sufficient to admit or deny their truth. The remaining allegations of paragraph 29 purport to describe the contents of various documents that speak for themselves, and therefore no response is required.

30. The first sentence of paragraph 30 purports to describe the contents of sections of BCRA, a document that speaks for itself, and therefore no response is required. The second sentence of paragraph 30 contains conclusory assertions about future events for which no response is required. The second sentence also contains a legal conclusion about and conclusory characterization of possible events relating to whether or how BCRA might be "circumvented," all of which requires no response.

31. The first sentence of paragraph 31 describes 11 C.F.R. 300.2(c), a document that speaks for itself, or describes the contents of BCRA, a document that also speaks for itself, and therefore no response is required. To the extent the remaining sentences contain allegations regarding third persons or entities, the Commission is without knowledge or information sufficient to admit or deny their truth. To the extent that the remaining allegations characterize the contents of various documents, including press reports, those documents speak for themselves and therefore no response is required. DENY that the Commission’s regulation is “in contravention of the BCRA” or otherwise contrary to law.

32. The allegations of paragraph 32 purport to describe the contents of various documents that speak for themselves, characterize the intent of Congress in enacting BCRA, and contain legal conclusions about prior Commission interpretation; therefore no response is required.

33. The allegations of the first, second and third sentences of paragraph 33 purport to describe the contents of various documents that speak for themselves, and therefore no response is required. The fourth sentence contains plaintiffs' characterizations of a statement attributed to an unnamed Commissioner from unknown source; therefore the Commission is without knowledge or information sufficient to admit or deny the truth of this allegation.

34. Paragraph 34 purports to quote a statement attributed to the Commission's General Counsel, from an unidentified source at an unspecified time, so the Commission lacks sufficient information to admit or deny this paragraph.

35. The allegations of the first and second sentences of paragraph 35 purport to describe 11 C.F.R. 300.2(m), a document that speaks for itself, or to describe the contents of BCRA, a document that speaks for itself, and therefore no response is required. This paragraph also speculates about future events, for which no response is required. DENY that the Commission's regulation provides a method for circumvention of BCRA.

36. The allegations of paragraph 36 purport to describe 11 C.F.R. 300.2(n), a document that speaks for itself, or to describe the contents of BCRA, a document that speaks for itself, and therefore no response is required. The third sentence also speculates about future events, for which no response is required.

37. The allegations of paragraph 37 purport to describe 11 C.F.R. 300.2(m) and (n), documents that speak for themselves, or to describe the contents of BCRA, a document that

speaks for itself, and therefore no response is required. To the extent that the allegations of paragraph 37 relate to allegations contained in paragraphs 25 through 31, the Commission incorporates by reference its responses to paragraphs 25 through 31. DENY that the regulatory definitions of “solicit” and “direct” are in contravention of BCRA or otherwise contrary to law.

38. The allegations of paragraph 38 purport to describe the contents of BCRA, a document that speaks for itself, and therefore no response by the FEC is required.

39. The allegations of the first, third and fourth sentences of paragraph 39 purport to describe either 11 C.F.R. 300.64, a document that speaks for itself; the contents of BCRA, a document that speaks for itself; and/or Congress’ intent in passing BCRA, and therefore no response by the FEC is required. The second sentence contains plaintiffs' characterization of a statement attributed to an unnamed Commissioner, from an unknown source, so the Commission is without knowledge or information sufficient to admit or deny the truth of the allegations in this sentence. DENY that the Commission’s regulations are “in contravention of” BCRA or otherwise contrary to law.

40. The allegations of paragraph 40 purport to describe the contents of documents that speak for themselves, or to state conclusions of law, and therefore no response is required.

41. The allegations of the first and second sentences of paragraph 41 purport to describe 11 C.F.R. 300.2(b), a document that speaks for itself, and state plaintiffs' legal conclusion that it is inconsistent with other unidentified provisions of the regulations, and therefore no response is required. The allegations of the third sentence of paragraph 41 state legal conclusions about 11 C.F.R. 300.2(b), a document that speaks for itself, and BCRA, a document that speaks for itself, and therefore no response is required. DENY that the Commission’s regulations permit circumvention of BCRA.

42. The allegations of paragraph 42 stated legal conclusions about 11 C.F.R. 300.2(b), a document that speaks for itself, and BCRA, a document that speaks for itself, and therefore no response is required. DENY that there is a “problem” with the Commission’s definition of “agent,” or that the regulation permits activities prohibited by BCRA or is “in contravention of the statute” or otherwise contrary to law.

43. The allegations of paragraph 43 purport to describe the contents of BCRA, a document that speaks for itself, or to state conclusions of law, and therefore no response is required.

44. The allegations of the first sentence of paragraph 44 purport to describe the contents of documents that speak for themselves, or to state conclusions of law, and therefore no response is required. The second sentence of paragraph 44 states a legal conclusion about "leadership PACs" to which no response is required.

45. The allegations of paragraph 45 purport to describe the contents of BCRA, a document that speaks for itself, or to state conclusions of law, and therefore no response is required.

46. The allegations of paragraph 46 purport to describe the contents of BCRA, 11 C.F.R. 300.2(c)(2), and 11 C.F.R. 100.5(g)(4), documents that speak for themselves, or to state conclusions of law, and therefore no response by the FEC is required. The Commission DENIES any implication in this paragraph that the Commission’s new regulation is in contravention of BCRA.

47. The allegations of paragraph 47 characterize the contents of BCRA and of the Commission’s regulations, documents that speak for themselves, or state conclusions of law, and

therefore no response is required. DENY that the Commission's regulations are "in contravention of the language and purpose of BCRA."

48. The allegations of paragraph 48 purport to describe the contents of BCRA, a document that speaks for itself, and therefore no response is required.

49. The allegations of paragraph 49 purport to describe the contents of BCRA, a document that speaks for itself, and/or Congress' collective knowledge and intent in passing BCRA, and therefore no response is required.

50. DENY.

51. The allegations of paragraph 51 purport to describe the contents of BCRA and a draft document submitted by the Commission's Office of the General Counsel for the Commission's consideration, which speak for themselves, or state conclusions of law, and therefore no response is required.

52. Paragraph omitted from the Complaint.

53. Paragraph omitted from the Complaint.

54. The allegations of paragraph 54 purport to describe either 11 C.F.R. 100.24(a)(3), a document that speaks for itself, or the contents of various other documents that speak for themselves, and therefore no response is required. DENY that 11 C.F.R. 100.24(a)(3) is in "contravention of BCRA" or otherwise contrary to law.

55. The allegations of paragraph 55 purport to describe provisions of FECA and BCRA and the contents of draft documents submitted for the Commission's consideration by the Commission's Office of General Counsel that speak for themselves, and therefore no response is required. The remainder of this paragraph, including the last sentence, states plaintiffs' legal conclusions as to which no response is required.

56. The allegations of paragraph 56 purport to describe either 11 C.F.R. 100.24(a)(4), a document that speaks for itself, or the contents of various other documents that speak for themselves, and therefore no response is required. The last sentence also states plaintiffs' legal conclusions, to which no response is required.

57. DENY.

58. Paragraph 58 purports to describe provisions of FECA, BCRA and draft documents submitted for the Commission's consideration by the Commission's Office of General Counsel, all of which speak for themselves, and therefore no response is required. The last sentence also states plaintiffs' legal conclusions, to which no response is required.

59. Paragraph 59 contains plaintiffs' characterizations of Commission regulations that speak for themselves, and plaintiffs' legal conclusions, to which no response is required. DENY that the Commission's regulations are "in contravention of BCRA."

60. Paragraph 60 purports to describe provisions of FECA, BCRA and documents authored by the Commission's Office of General Counsel which speak for themselves, and therefore no response is required. The last sentence also states plaintiffs' legal conclusions, to which no response is required.

61. Paragraph 61 contains plaintiffs' characterization of, and legal conclusions about, 11 C.F.R. 100.24(a)(2), a document that speaks for itself, and therefore no response is required. DENY that the Commissions' regulations are "in contravention of BCRA."

62. See response to Paragraph 61.

63. The allegations of paragraph 63 purport to describe either BCRA or 11 C.F.R. 100.24(a)(1), documents that speak for themselves, and therefore no response is required. DENY that this regulation is arbitrary or contrary to law.

64. The first, second, and fourth sentences in paragraph 64 describe, characterize, and state legal conclusions about 11 C.F.R. 100.24(a)(1), a document that speaks for itself; therefore, no response is required. DENY that this regulation is arbitrary, without statutory basis, or otherwise contrary to law. The third sentence of paragraph 64 purports to describe state election statutes which speak for themselves, thus no response is required.

65. The allegations of paragraph 65 purport to describe either BCRA or 11 C.F.R. 100.26, documents that speak for themselves, and therefore no response is required. The last sentence also states a legal conclusion as to which no response is required.

66. The allegations of the first sentence of paragraph 66 characterize various unidentified documents that speak for themselves, and therefore no response is required. The second sentence of paragraph 66 purports to quote a statement attributed to the Commission's General Counsel, from an unidentified source at an unspecified time, so the Commission lacks sufficient information to admit or deny this sentence. The third sentence of paragraph 66 states plaintiffs' legal conclusions about 11 C.F.R. 100.26, a document that speaks for itself, to which no response is required. DENY that this regulation is in “contravention of BCRA” or otherwise contrary to law.

67. The allegations of paragraph 67 either purport to describe the contents of BCRA, a document that speaks for itself, and therefore no response is required, or purport to describe Congress' intent in passing BCRA, for which no response is required.

68. The allegations of paragraph 68 purport to describe BCRA, 11 C.F.R. 100.24(a)(3) and (4), and the Office of General Counsel's proposals, all of which are documents that speak for themselves, and state legal conclusions about those documents; therefore, no

response is required. DENY that 11 C.F.R. 100.24(a)(3) and (4) are “directly contrary to the language of BCRA,” in “contravention of” or otherwise contrary to law.

69. The allegations of paragraph 69 characterize and state legal conclusions about BCRA, or 11 C.F.R. 106.5(c)(2), documents that speak for themselves, and therefore no response is required.

70. The allegations of paragraph 70 characterize and state legal conclusions about BCRA or 11 C.F.R. 300.33(c)(2), documents that speak for themselves; therefore, no response is required. DENY that 11 C.F.R. 300.33(c)(2) is "contrary to BCRA."

71. DENY.

71a. The first and second sentences of paragraph 71a purport to describe the contents of BCRA, a document that speaks for itself, and therefore no response is required. The third and fourth sentences characterize and state legal conclusions about 11 C.F.R. 300.32(c)(4), a document that speaks for itself, and therefore no response is required. DENY that the regulation “re-writes the statute.”

71b. The first sentence of paragraph 71b purports to describe BCRA, a document that speaks for itself, and therefore no response is required. The second and fourth sentences characterize and state legal conclusions about 11 C.F.R. 300.32(a)(4), a document that speaks for itself, and therefore no response is required. DENY that the regulation is “[c]ontrary to the statutory requirement,” is “contrary to the statute,” or “allows ‘Levin’ funds to be used for an impermissible purpose.” The third sentence attributes a statement to an unidentified person, from an unidentified source at an unnamed time or place, so the Commission is without knowledge or information sufficient to admit or deny the truth of the allegations in this sentence.

71c. The first sentence of paragraph 71c purports to describe BCRA, a document that speaks for itself, and therefore no response is required. The second, third, fourth and fifth sentences characterize and state legal conclusions about 11 C.F.R. 300.30(c)(3), a document that speaks for itself, and therefore no response is required. DENY that the Commission's regulations "fail to establish effective safeguards," permit any unlawful "commingl[ing]" of funds, "compound the problem of commingling of funds by failing to require state parties to use accounting procedures in accord with standard industry practice," or "fail to establish effective safeguards and protections to ensure the proper enforcement of BCRA."

71d. The first sentence of paragraph 71d purports to describe 2 U.S.C. 431(8)(b)(viii), which speaks for itself, and therefore no response is required. The second sentence of paragraph 71d purports to describe FEC Advisory Opinion 2001-12, a document that speaks for itself, and therefore no response is required. The third and fourth sentences of paragraph 71d purport to describe the BCRA, which speaks for itself, and therefore no response is required. The fourth sentence of paragraph 71d states plaintiffs' characterization of Congress' intent, which requires no response. The fifth sentence of paragraph 71d states legal conclusions about 11 C.F.R. 300.35, which speaks for itself, and therefore no response is required. DENY that 11 C.F.R. 300.35 is "in contravention of BCRA."

71e. The first sentence of paragraph 71e purports to describe BCRA, a document that speaks for itself, and therefore no response is required. The second and fourth sentences of paragraph 71e purport to describe the contents of 11 C.F.R. 100.14, a document that speaks for itself, and therefore no response is required. DENY that the regulations "improperly define 'state,' 'district,' or 'local' party committees." The third sentence of paragraph 71e purports to describe the contents of the Commission's earlier and revised regulations, documents that speak

for themselves, and therefore no response is required. The fourth sentence states legal conclusions, to which no response is required. DENY that this regulation is “in contravention of BCRA.”

72. The first sentence of paragraph 72 describes provisions of FECA which speak for themselves, and no response is required. With respect to the remainder of paragraph 72, ADMIT that corporations and labor unions have used their treasury funds to finance advertisements in the past decade that discuss Federal candidates without using words of “‘express advocacy’ such as ‘vote for’ or ‘vote against.’” ADMIT that some of the disbursements for such advertisements were not required to be reported to the FEC. The remaining allegations in paragraph 72 contain plaintiffs’ conclusions of law about such activities, to which no response is required.

73. The allegations of paragraph 73 characterize and state legal conclusions about BCRA and Congress’ purpose in enacting BCRA, to which no response is required.

74. The first sentence of paragraph 74 characterizes and states legal conclusions about provisions of BCRA which speak for themselves, thus no response is required. As to the second sentence, ADMIT that the Commission approved a notice of proposed rulemaking on August 1, 2002, which was published in the Federal Register on August 7, 2002. ADMIT the third sentence. ADMIT that after the Commission received comments, the Commission’s Office of General Counsel submitted draft regulations to the Commission for its consideration. ADMIT that the Commission subsequently adopted final regulations, which speak for themselves, thus no response is required. DENY that the regulations “undermined the letter and purpose of BCRA.”

75. DENY.

76. Paragraph 76 characterizes provisions of BCRA which speak for themselves, and no response is required.

77. ADMIT that the language quoted in Paragraph 77 appears, in the context of a larger discussion, at 148 Cong. Rec. H411 (daily ed. Feb. 13, 2002) (Remarks of Rep. Shays), but the words “per se” are not italicized in the original.

78. DENY that the quotation in paragraph 77 is an “explicit interpretation” by Congress. Paragraph 78 characterizes and states legal conclusions about 11 C.F.R. 100.29(c)(6), a regulation promulgated by the Commission which speaks for itself, and no response is required.

79. Paragraph 79 purports to describe portions of a regulation promulgated by the Commission, and draft regulations that were prepared by the Office of General Counsel for consideration by the Commission. Because those documents speak for themselves, no response is required. DENY that the Commission adopted regulations that undermined Title I of BCRA.

80. The first, second and fifth sentences of paragraph 80 characterize and state legal conclusions about regulations promulgated by the Commission which speak for themselves, and no response is required. The third sentence states the legal conclusions that certain unspecified activities are an abuse, for which no response is required, and generally alleges that there is a “record of abuse,” but without more specificity, the Commission is without information sufficient to admit or deny this allegation. The third sentence also purports to describe Congress’ purpose for enacting portions of BCRA, to which no response is required. ADMIT that the language quoted in the fourth sentence appears, in the context of a larger discussion, at 148 Cong. Rec. H411 (daily ed. Feb. 13, 2002) (Remarks of Rep. Shays). DENY that the regulation is in “direct contravention of the language and purpose of Title IIA of BCRA.”

81. Paragraph 81 purports to describe portions of regulations promulgated by the Commission which speak for themselves, and thus no response is required.

82. Paragraph 82 states legal conclusions about portions of regulations promulgated by the Commission which speak for themselves, to which no response is required.

83. DENY. To the extent that paragraph 83 purports to describe BCRA and the Commission's regulations, those documents speak for themselves, to which no response is required.

84. The first, fourth, fifth, sixth and seventh sentences of paragraph 84 characterize and state legal conclusions about portions of regulations which speak for themselves, to which no response is required. The Commission is without knowledge sufficient to admit or deny the general factual allegations in the second and third sentences of paragraph 84, which contain conclusory characterizations of unidentified "PSA advertisements" run at some unspecified time "in the post," and no response is required for the legal conclusion in those sentences. DENY that the Commission's regulations "open[] a loophole that will undermine the language and intent of the Title IIA provisions." DENY that the Commission's regulation is "contrary to the language of Title IIA" or that the regulation "undermines the purposes and intent of BCRA."

85. Paragraph 85 contains plaintiffs' characterizations of the law, as contained in the statute, FEC regulations and Supreme Court decisions, all of which speak for themselves. Accordingly, no response is required.

86. Paragraph 86 purports to describe provisions of FECA and BCRA, as well as the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), which speak for themselves, to which no response is required.

87. Paragraph 87 contains plaintiffs' characterizations of the law, as contained in the statute, FEC regulations and Supreme Court decisions, all of which speak for themselves.

Accordingly, no response is required. ADMIT that regulation of coordinated expenditures is properly grounded in Congress' intent in avoiding corruption and the appearance of corruption.

88. Paragraph 88 states legal conclusions and characterizes judicial opinions that speak for themselves, to which no response is required.

89. The first sentence of paragraph 89 purports to describe regulations promulgated by the Commission in 2000, which speak for themselves, to which no response is required. The second and third sentences purport to describe criticism of those regulations by unnamed persons or entities; the Commission is without sufficient information to admit or deny the vague allegations in these two sentences. The fourth sentence purports to describe and characterize cited documents which speak for themselves, to which no response is required.

90. Paragraph 90 purports to describe provisions of BCRA which speak for themselves, to which no response is required. To the extent that paragraph 90 purports to characterize Congress' purpose for enacting BCRA, no response is required. ADMIT that the language quoted in the third and fourth sentences appears, in the context of a larger discussion, in 148 Cong. Rec. 2145 (daily ed. Mar. 20, 2002) (Statements of Sen. McCain and Sen. Feingold).

91. ADMIT, except that the coordination rules were adopted by the Commission on December 5, 2002.

92. DENY.

93. Paragraph 93 purports to describe the Commission's prior regulations, advisory opinions and other documents, which speak for themselves, to which no response is required.

94. Paragraph 94 purports to describe 11 C.F.R. 109.21(c)(1)-(4) which speaks for itself, to which no response is required.

95. Paragraph 95 contains plaintiffs' conclusions of law and purports to describe the Commission's regulations, which speak for themselves, to which no response is required.

96. Paragraph 96 contains plaintiffs' conclusions of law regarding the Commission's regulations to which no response is required.

97. Paragraph 97 contains a quotation from the FECA, which speaks for itself, and plaintiffs' legal conclusions regarding the Commission's regulations and Congress' intent in passing BCRA, to which no response is required. In all other respects, the allegations in this paragraph are DENIED.

98. The first sentence of paragraph 98 contains plaintiffs' conclusions of law and purports to describe regulations promulgated by the Commission, which speak for themselves, and thus no response is required. DENY that the regulations are unreasonable or contrary to Federal law.

99. Paragraph 99 contains plaintiffs' conclusions of law and purports to describe regulations promulgated by the Commission, which speak for themselves, and thus no response is required. Insofar as allegations in paragraph 99 incorporate paragraphs 40 through 42, the Commission incorporates herein by reference its responses to those paragraphs. DENY that the regulations create an "opportunity for circumvention of FECA and BCRA."

100. The first and second sentences of paragraph 100 contain plaintiffs' conclusions of law and purport to describe regulations promulgated by the Commission, which speak for themselves, and thus no response is required. Insofar as allegations in paragraph 100 incorporate paragraphs 65 through 66, the Commission incorporates herein by reference its responses to those paragraphs. Paragraph 100 purports to quote a statement attributed to the Commission's General Counsel, from an unidentified source at an unspecified time, so the Commission lacks

sufficient information to admit or deny this paragraph. DENY the last two sentences of paragraph 100.

101. DENY.

102. DENY.

103. DENY.

104. This paragraph contains a prayer for relief to which no answer is required, but insofar as an answer may be deemed necessary, the Commission DENIES plaintiffs are entitled to the requested relief or to any relief whatsoever.

### **AFFIRMATIVE DEFENSES**

#### **First Defense**

Plaintiffs lack standing to pursue some or all of the claims in the Complaint.

#### **Second Defense**

Plaintiffs' Complaint, in whole or part, fails to state a claim on which relief can be granted.

Respectfully submitted,

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