IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Christopher Shays and Martin Meehan, Plaintiffs, v. United States Federal Election Commission, Defendant.	Civil Action No. 02-CV-1984 (Judge Kollar-Kotelly)

PLAINTIFFS' MOTION *RE* FILING OF ADMINISTRATIVE RECORD AND FURTHER SCHEDULING

Plaintiffs Christopher Shays and Martin Meehan, by their undersigned counsel, respectfully move this Court to set September 30, 2003, as the date by which the defendant Federal Election Commission must serve and file its administrative record in this case, with the parties to submit a proposed case scheduling order within 21 days after the filing of the record. Plaintiffs respectfully ask the Court to set a scheduling conference as soon after the filing of the proposed scheduling order as the Court's docket will permit.

Plaintiffs have served and filed a Complaint and a First Amended Complaint, and the Commission has served and filed an Answer to the First Amended Complaint. Because this is "an action for review on an administrative record," D.C. Civ. L.R. 16.3(b)(1), it is exempt from the requirements of D.C. Civ. L.R. 16.3 and Fed. R. Civ. P. 16(b), 26(a)(1)(E), and 26(f).

This action challenges various rules promulgated by the Commission to implement the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (BCRA).[1] This same statute is at issue in *McConnell v. FEC,* D.D.C. No. 02-582 CKK, KLH, RJL, and consolidated cases decided on May 2, 2003 by the special three-judge district court convened pursuant to BCRA § 403(a)(1), and now on direct appeal to the Supreme Court of the United States pursuant to BCRA § 403(a)(3). *See* 251 F. Supp. 2d 176 (D.D.C.), *prob. jur. noted,* 123 S. Ct. 2268 (2003). In *McConnell,* a majority of the three-judge district court upheld the constitutionality of many provisions of BCRA that are the subject of implementing rules under challenge in this litigation. Plaintiffs in this case seek to demonstrate that the Commission's challenged rules are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law; contrary to BCRA's language, structure, and purposes, to the agency's own historic practices and interpretations, and to governing judicial precedents; and deeply flawed in a number of other substantive and procedural respects. *See* 5 U.S.C. § 706(2)(a), (c), (d).

Plaintiffs stand ready to proceed with their rulemaking challenge in its entirety. In order to move this litigation along and ensure the early resolution of as many of the rulemaking issues as possible, plaintiffs believe this Court should provide for the

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[1] Specifically, this action challenges portions of the Commission's final Title I regulations governing soft money published at 67 Fed. Reg. 49064 (Jul. 29, 2002); portions of the Commission's final Title II-A regulations governing electioneering communications published at 67 Fed. Reg. 65190 (Oct. 23, 2002); and portions of the Commission's final Title II-B regulations governing coordinated expenditures published at 68 Fed. Reg. 421 (Jan. 3, 2003). *See* First Amended Cpt. ¶¶ 19-100.

expeditious preparation and filing of the administrative record, and then consider further scheduling issues in light of the pendency of *McConnell*. Plaintiffs believe that, at the very least, the Court should consider early briefing of those rulemaking issues that relate to portions of BCRA that have been upheld by the three-judge district court. These rulemaking issues relating to "upheld" statutory provisions include, *inter alia,* all aspects of the Commission's coordination rules promulgated pursuant to BCRA § 214(c); and the new definitions of "agent," "solicit," and "direct," as they relate to BCRA § 323(e)'s nonfederal fund restrictions on federal candidates and officeholders. *See* First Amended Cpt. ¶¶ 32-37, 40-42, 85-100.

Plaintiffs are prepared to demonstrate that the Commission's errant rules on these issues will invite massive circumvention of the BCRA ban on soft money solicitations by federal candidates and officeholders, and will promote massive, open, and unregulated coordination of expenditures between federal candidates and outside spenders, in contravention of the contribution limits, source prohibitions, and disclosure provisions of federal law. Given the impending 2004 elections, it is important that the Court put these issues on a track that ensures they may be addressed and resolved at the earliest feasible opportunity.

This case cannot proceed without the administrative record. No stay of the proceedings in this case has been requested or granted. Accordingly, plaintiffs recommend that the Court require the Commission to serve and file its administrative record on all issues covered in the First Amended Complaint by September 30, 2003, and that the parties submit a proposed case scheduling order 21 days thereafter. Upon receipt

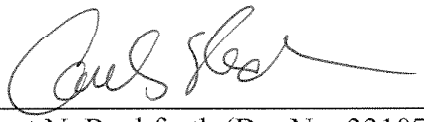
of this proposed scheduling order, the Court will be in a position to set a scheduling conference to determine the further conduct of the litigation.

A proposed order accompanies this motion.

Pursuant to D.C. Civ. L.R. 7.1(m), counsel for plaintiffs have conferred with counsel for the defendant and have shared a draft of this motion and the accompanying proposed order with them. Counsel for the defendant have advised that the Commission will oppose this motion. Plaintiffs reserve their right to reply to the Commission's opposition.

DATED: July 24, 2003

Respectfully submitted,



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHRISTOPHER SHAYS &
MARTIN MEEHAN,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil Action No. 02-1984 (CKK)

MEMORANDUM ORDER

Plaintiffs filed the above-captioned case on October 8, 2002, challenging various rules promulgated by Defendant to implement the Bipartisan Campaign Reform Act of 2002 ("BCRA"). Plaintiffs have moved to have Defendant file the administrative record in this case by September 30, 2003. Defendant opposes the request and asks that the Court stay proceedings in this case until 30 days after the Supreme Court issues its decision in *McConnell v. FEC*, the consolidated cases challenging the constitutionality of BCRA. Plaintiffs oppose Defendant's Motion for a Stay.

After reviewing the parties' briefing and the relevant law, the Court determines that it will exercise its power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants," *Bledsoe v. Crowley*, 849 F.2d 639, 645 (D.C. Cir. 1988) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)), and grant Defendant's Motion for a Stay. However, the stay will not last until 30 days after the Supreme Court's decision in *McConnell v. FEC* as Defendant requests, but will expire on the date of that decision. Moreover, the Court will order the parties to file a joint status report within fourteen

calendar days of the Supreme Court's decision in *McConnell v. FEC*, explaining the impact of that decision on this case and proposing how this case should proceed.

Accordingly, it is this 29th day of September, 2003, hereby

ORDERED that Plaintiffs' Motion *Re* Filing of Administrative Record and Further Scheduling [#9] is DENIED; and it is further

ORDERED that Defendant's Motion to Stay Proceedings [#10] is GRANTED-IN-PART. This case is STAYED until the Supreme Court issues its opinion in *McConnell v. FEC*. Within fourteen (14) calendar days of that decision, the parties in this case shall file a joint-status report as described *supra*.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge