
VICTORIA JACKSON GRAY ADAMS, *et al.*,

Plaintiffs,

Civ. No. 02-877 (CKK, KLH, RJL)

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

REPRESENTATIVE BENNIE G.
THOMPSON,
et al.,

Plaintiffs,

Civ. No. 02-881 (CKK, KLH, RJL)

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

ORDER

For the reasons provided in the accompanying Memorandum Opinion, it is this 29th day
of April, 2003, hereby

ORDERED that Defendants' Motion to File Response to Plaintiffs' Untimely

Supplemental Rebuttal Expert Report is GRANTED.

SO ORDERED.

KLH

KAREN LeCRAFT HENDERSON
United States Circuit Judge

Colleen Kollar-Kotelly

COLLEEN KOLLAR-KOTELLY
United States District Judge

Richard J. Leon

RICHARD J. LEON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-582 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

FILED ✓

APR 29 2003

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

NATIONAL RIFLE ASSOCIATION OF
AMERICA, *et al.*,

Plaintiffs,

v.

Civ. No. 02-581 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

EMILY ECHOLS, a minor child, by and
through her next friends, TIM AND WINDY
ECHOLS, *et al.*,

Plaintiffs,

v.

Civ. No. 02-633 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

(N)

CHAMBER OF COMMERCE OF THE
UNITED STATES, *et al.*,

Plaintiffs,

Civ. No. 02-751 (CKK, KLH, RJL)

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

NATIONAL ASSOCIATION OF
BROADCASTERS,

Plaintiff,

Civ. No. 02-753 (CKK, KLH, RJL)

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS, *et al.*,

Plaintiffs,

Civ. No. 02-754 (CKK, KLH, RJL)

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

CONGRESSMAN RON PAUL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-781 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

REPUBLICAN NATIONAL COMMITTEE,
et al.,

Plaintiffs,

v.

Civ. No. 02-874 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*

Defendants.

CALIFORNIA DEMOCRATIC PARTY, *et al.*,

Plaintiffs,

v.

Civ. No. 02-875 (CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

VICTORIA JACKSON GRAY ADAMS, *et al.*,

Plaintiffs,

Civ. No. 02-877 (CKK, KLH, RJJ)

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

REPRESENTATIVE BENNIE G.
THOMPSON,
et al.,

Plaintiffs,

Civ. No. 02-881 (CKK, KLH, RJJ)

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

MEMORANDUM OPINION
(_____, 2003)

Presently before this Court is Defendants' Motion to File Response to Plaintiffs' Untimely Supplemental Rebuttal Expert Report ("Defs.' Mot."). Defendants have moved to introduce a supplemental report by their expert, Dr. Jonathan Krasno, in response to the

Plaintiffs' submission of a supplemental report by their expert, Dr. James L. Gibson, filed on November 6, 2002. Defendants claim that Plaintiffs' submission was late, as this Court had ordered rebuttal reports to be filed by October 6, 2002. Plaintiffs oppose the request in their Memorandum in Opposition to Defendants' Motion to File a Third Expert Report of Dr. Jonathan Krasno ("Pls.' Opp'n"). In their opposition, Plaintiffs argue that their tardiness was due to Dr. Krasno's failure to provide materials, which they claim was in violation of a subpoena, upon which Dr. Gibson's Supplemental Report was based, Pls.' Opp'n at 7, and that Dr. Krasno's supplemental report is not responsive to that of Dr. Gibson, *id.* at 8. They also argue that Defendants were not prejudiced by the inclusion of Dr. Gibson's Supplemental Report in the evidentiary record of this case, *id.* at 8-9.

As the Court notes, both sides in this litigation devoted a considerable amount of effort into criticizing and bolstering the *Buying Time* studies produced by the Brennan Center and relied on by Members of Congress when they considered the Bipartisan Campaign Reform Act (BCRA). The *Buying Time* reports examined television campaign advertising in the 1998 and 2000 campaigns and contained highly contested statistics regarding the impact of BCRA on "genuine issue advocacy." The efforts of the parties to support or oppose the studies were made less useful to the Court because of the inability of Dr. Gibson to determine, due to the number of data sets and the nature of the litigation process, which data set was relied upon by the *Buying Time* authors. Dr. Gibson's Supplemental Report responds to additional data provided after his initial and rebuttal reports had been filed,

which included data sets closer to the original 1998 data set, affecting some of his calculations related to the findings of the *Buying Time 1998* study. See Dr. James L. Gibson, Supplement to Rebuttal Expert Report of Oct. 7, 2002, 1998 Data (Nov. 5, 2002) (“Gibson Suppl. Report”).¹

Plaintiffs claim that Dr. Krasno’s Supplemental Report does not respond to Dr. Gibson’s Supplemental Report, but instead rebuts arguments raised in Dr. Gibson’s initial report. Pls.’ Opp’n at 8. Defendants respond that Dr. Gibson’s initial criticism of the re-coding of eight advertisements was directed at Dr. Goldstein (another researcher on the project) and that Dr. Krasno had no reason to respond until Dr. Gibson questioned Dr. Krasno’s academic integrity in his Supplemental Report. Defendants’ Reply Memorandum in Support of Motion to File Response to Plaintiffs’ Untimely Supplemental Rebuttal Expert Report (“Defs.’ Reply”) at 5-6. The Court finds that Dr. Krasno’s Supplemental Report responds to Dr. Gibson’s arguments made in Dr. Gibson’s Supplemental Report, specifically Dr. Gibson’s calculations involving the eight advertisements that were re-coded. It is clear that in Dr. Gibson’s initial report his criticism of the recoding of the advertisements was aimed at Dr. Goldstein. Dr. James L. Gibson, *An Analysis of the 1998 and 2000 Buying Time Reports* at 15 (Sept. 30, 2002) [1 PCS]. Dr. Gibson does not refer to Dr. Goldstein in his Supplemental Report, only to Dr. Krasno, and claims that “this latest episode of

¹ Whether or not Dr. Krasno’s submission of the materials which prompted Dr. Gibson’s Supplemental Report violated a subpoena is not before this Court and no Motion to Compel Production was filed by Plaintiffs in this or any other court. Therefore, the Court declines to deny Defendants’ Motion on this ground.


manipulated data and additional data bases” does not change his opinion that the *Buying Time* studies’ “methodologies and procedures . . . fall far below the standards of accepted scientific analysis.” Gibson Suppl. Report at 6.

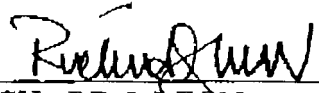
Given the confusion between the experts concerning the appropriate data sets, the sophistication of the arguments made in favor of, and in opposition to the validity of the studies, the importance of the *Buying Time* reports to the passage of the legislation under review, and the significance of the studies’ findings, it is essential that the Court have as complete a record as possible for its consideration of these disputed documents. Dr. Krasno’s Report provides further explanation of a critical aspect of the criticism leveled at *Buying Time 1998*; namely, the eight re-coded advertisements. Moreover, Plaintiffs do not allege any prejudice that would arise by including the report in the record. Therefore, having considered Defendants’ Motion, Plaintiffs’ Opposition thereto, Defendants’ Reply, the Court’s own interest in a complete record, and the fact Plaintiffs’ do not claim prejudice will result, Defendants’ Motion to File Response to Plaintiffs’ Untimely Supplemental Rebuttal Expert Report shall be granted.

_____, 2003



KAREN LeCRAFT HENDERSON
United States Circuit Judge


COLLEEN KOLLAR-KOTELLY
United States District Judge


RICHARD J. LEON
United States District Judge