U.S. Department of Justice

Civil Division

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August 16, 2002

FACSIMILE TRANSMISSION

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THERE ARE A TOTAL OF 24 PAGES INCLUDING THE COVER PAGE IN THIS TRANSMISSION.

MESSAGE: Kevin,

Here's the Court's Order on contention interrogatories.

JG

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

FILED
AUG 15 2002
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

NATIONAL RIFLE ASSOCIATION, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

EMILY ECHOLS, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

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

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

NATIONAL ASSOCIATION OF BROADCASTERS,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

AFL-CIO, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

CONGRESSMAN RON PAUL, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

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

CALIFORNIA DEMOCRATIC PARTY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

VICTORIA JACKSON GRAY ADAMS, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

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

BENNIE G. THOMPSON, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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

ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFFS' MOTIONS TO COMPEL INTERROGATORY RESPONSES
(August 15, 2002)

Before this Court are five separate motions to compel defendants and intervenors—Federal Election Commission ("FEC"), the Federal Communications Commission ("FCC"), the United States, Senators McCain, Feingold, Snowe, and Jeffords, and Representatives Shays and Meehan—to respond to interrogatories and document

requests propounded by plaintiffs National Rifle Association ("NRA"), Republican National Committee ("RNC"), National Association of Broadcasters ("NAB"), California Democratic Party ("CDC"), and Senator McConnell. At the hearing on July 25, 2002, the Court issued a ruling on the identification interrogatories and document requests, setting a schedule for exchanging that information,[1] and also ordered that defendants need not respond further to interrogatories requiring answers based solely on the legislative record.[2] We now consider the contention interrogatories.

The defendants argue that the Court should not compel plaintiffs' contention interrogatories because they are overbroad, unduly burdensome, and prejudicial. *See, e.g.*, Resp. and Objections of Def. FEC to First Set of Interrogs. and Req. for Prod. of Doc by RNC ("FEC Objections to RNC Interrogs.") at 7-8. Alternatively, they argue, the contention interrogatories are premature and the Court should at least defer responding to them to the

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[1] *See* Tr. of Hr'g, July 25, 2002, at 6-7; Order of July 26, 2002.

[2] *See* Tr. of Hr'g, July 25, 2002, at 7, lines 6-11. While we believe the defendants must identify persons and nonpublic documents with discoverable information, they need not provide detailed responses to inquiries regarding the legislative record. Like the defendants, the plaintiffs have access to the legislative record, and each party is undoubtedly drawing its own conclusions from the evidence. It would be unduly burdensome for the defendants to identify with particularity each and every argument in the legislative record that supports their contentions. Since the plaintiffs have equal access to the record, they too can review the record and will not be waylaid by undisclosed evidence. Our ruling is not inconsistent with decisions denying motions to compel discovery for publicly available information. *See Dushkin Publishing Group v. Kinko's Service Corp.*, 136 F.R.D. 334 (D.D.C. 1991) (quoting *Securities and Exchange Commission v. Samuel H. Sloan & Co.*, 369 F.Supp. 994, 995 (S.D.N.Y. 1973) ("It is well established that discovery need not be required of documents of public record which are equally accessible to all parties.")).

end of the discovery process. *See, e.g.*, FEC Obj. to RNC Interrogs. at 9. Upon reviewing the various contention interrogatories, we agree that many of the interrogatories should not be compelled because they are unduly burdensome. Some, however, serve a substantial purpose, and we believe that defendants should answer those by September 16, 2002, the deadline for answering interrogatories under the orders of April 24, 2002, and July 26, 2002. Accordingly, and for the following reasons, the motions to compel are granted in part and denied in part.

I.

Contention interrogatories ask producing parties to reveal opinions or contentions, and, as such, they often involve mixed questions of law and fact. Fed. R. Civ. P. 33(c); *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328, 332 (N.D. Cal. 1985). They differ from identification interrogatories that, following the mandate set forth in Fed. R. Civ. P. Rule 26(a)(1), merely ask the producing party to disclose documents and persons with discoverable information. *See Fisher and Porter Company v. Tolson*, 143 F.R.D. 93, 95 (E.D. Pa. 1992). Contention interrogatories differ from identification interrogatories because they ask the producing party for a specific contention,[3] or even a request that the

[3] For example, RNC Interrogatory No. 7 states:

> Do you contend that national political party donations of non-federally regulated funds to state or local political parties are being used either to circumvent the Federal Election Campaign Act or in a manner that creates corruption or the appearance of corruption of federal candidates or

defendants provide evidence upon which a contention depends.[4] *See In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328, 332 (N.D.Cal. 1985). With these distinctions in mind, we reviewed the various interrogatories which are the subject of the motions to compel discovery, and identified thirty-seven contention interrogatories[5] and twelve identification interrogatories that are dependent on responses to the contention interrogatories.[6]

Contention interrogatories are "not necessarily objectionable" under Fed. R. Civ. P. Rule 33(c),[7] which suggests that some contention interrogatories are objectionable if they

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officials?
RNC's First Set of Interrogs. Propounded on Defs. FEC and DOJ ("RNC Interrogs.") at 7.

[4] For example, NAB Interrogatory No. 4 states:

> Describe in detail the basis of your contention that BCRA's restrictions on electioneering communication so as to apply to "broadcast, cable or satellite communication" but not to apply to communication such as newspapers and magazines will advance the purposes or interests identified in response to Interrogatory No. 2.

Resp. and Objections of Def. FEC to the First Set of Interrogs. by Pl. NAB ("FEC's Objections to NAB Interrogs.") at 7.

[5] NRA Interrog. Nos. 1-4; RNC Interrog. Nos. 2-5, 6-14; McConnell Interrog. Nos. 1, 4, 8-11, 13-16, 17; NAB Interrog. Nos. 1, 2, 4, 6, 8, 10, 12; CDP Interrog. Nos. 1, 3-4, 7-8, 10.

[6] *See* McConnell Interrog. Nos. 2-3, 5-6; NAB Interrog. Nos. 3, 5, 7, 9, 11, 13; CDP Interrog. Nos. 2, 5.

[7] FRCP Rule 33(c) provides the authority for contention interrogatories. It states:

> An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until

exceed certain bounds. Some interrogatories, for example, may be so "tedious, time-consuming and expensive" that they unduly burden the producing party. *See Cahela v. Bernard*, 155 F.R.D. 221, 227-28 (N.D. Ga 1994) (finding burdensome interrogatory that required producing party to review each and every statement in a deposition and then determine whether to dispute each contention). Other interrogatories may require the producing party to apply so much law to the facts that they prejudicially divulge their legal strategy and opinions before they are ready.[8] Nevertheless, many contention interrogatories can and do serve a substantial purpose by narrowing the scope of the issues, leading to evidence, or avoiding wasteful preparation. *See* Fed. R. Civ. P. Rule 33 advisory committee's notes; *Stabilus*, 144 F.R.D. at 263; *McClain v. Mack Trucks*, 85 F.R.D. 53, 59 (E.D. Pa 1979); *Leumi Financial Corp. v. Hartford Accident & Indemnity* Co., 295 F. Supp. 539 (S.D.N.Y. 1969) (describing purposes of interrogatories). For this reason, the Court should not rely on a "'rigid rule' . . . barring opinion answers to interrogatories." *Stabilus v. Haynsworth*, 144 F.R.D. 258, 263 (E.D. Pa. 1992). Instead, in determining whether a particular contention interrogatory should be compelled, the Court should weigh the potential benefit of the interrogatory against how burdensome and prejudicial the

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after designated discovery has been completed or until a pre-trial conference or other later time.

[8] While courts may permit contention interrogatories that ask the producing party to apply law to facts, courts cannot allow contention interrogatories based on "pure law." Fed. R. Civ. P. Rule 33 advisory committee's notes; *Kendrick v. Sullivan*, 125 F.R.D. 1, 3 (D.D.C. 1989) (finding impermissible interrogatories requiring responses involving issues of "pure law").

interrogatories are to the producing party. *See McClain*, 85 F.R.D. at 59-60 (finding that a contention interrogatory "must be considered on its own merits and by 'practical considerations of whether the need for the information outweighs the prejudice and burden to the interrogated party in divulging it'") (quoting *Roberson v. Great American Insurance Companies of New Hampshire*, 48 F.R.D. 404, 414 (N.D. Ga. 1969); *Pulsecard v. Discover Card Services*, 168 F.R.D. 295, 304 (D. Kan. 1996) (finding that "a court should balance the burden on the interrogated party against the benefit to the discovering party of having the information") (quoting *Hoffman v. United Telecommunications, Inc.*, 117 F.R.D. 436, 438 (D. Kan.1987)).

II.

In making the following determinations, we were mindful of Congress's charge that we "expedite to the greatest possible extent the disposition" of this matter. Bipartisan Campaign Reform Act of 2002 ("BCRA") § 403(a)(4). Our decisions on whether or not to compel certain interrogatories in no way alter the schedule that reflects this case's need for expedition.

A. Category 1: Interrogatories Seeking Identification of BCRA's Purposes

Seven interrogatories fall within this category, in which the plaintiffs ask the defendants to identify government or congressional purposes for specific provisions in the

Bipartisan Campaign Reform Act of 2002 ("BCRA").[9] The defendants have already answered many of the interrogatories in this category, describing various governmental interests,[10] and accordingly the remaining burden is not very great.

On the other hand, identifying the purposes behind the statute will help both sides narrow the focus of this litigation. The defendants submit that they will have to demonstrate that BCRA advances important interests and that it "will in fact alleviate . . . harms in a direct and material way." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) (plurality opinion); Defs.' Report in Resp. to the Ct.'s Order of April 16, 2002, at 9 ("[R]ecent Supreme Court jurisprudence makes clear that, even in the context of a facial

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[9]NRA Interrog. No. 1, NRA Interrog. No. 4, McConnell Interrog. No. 1, NAB Interrog. No. 2, NAB Inter. No. 8, NAB Interrog. No. 10, CDP Interrog. No. 1. For example, NRA Interrogatory No. 1 states in part:

> Identify in detail each governmental purpose or interest that Congress sought to advance in enacting BCRA's restrictions on electioneering communications.

NRA Pls.' First Set of Interrogs. and First Req. for Produc. of Docs. at 4 ("NRA Interrogs"). NAB Interrogatory No. 2 states:

> Identify in detail each governmental purpose or interest that Congress sought to advance in enacting BCRA's restrictions on electioneering communications so as to apply to "broadcast, cable or satellite communication" but not to apply to communications in print such as newspapers and magazines.

FEC's Objections to NAB Interrogs. at 6.

[10] The FEC, United States, and the intervenors provided an answer to NRA Interrogatory No. 1. *See, e.g.*, Resp. of the Attorney General to NRA Pls.' First Set of Interrogs and First Req. for Produc. of Docs. at 7-8, 10-11. The FEC, United States, and the intervenors provided answers to McConnell Interrogatory No. 1. With regard to the NAB interrogatories, the United States provided an answer to NAB Interrogatory No. 10, and the intervenors provided answers to NAB Interrogatory Nos. 2 and 10. The United States provided answers to CDP Interrogatory No. 1.

challenge, the Court will look to the record of the case for evidence substantiating the governmental interests asserted in support of the legislation said to violate the First Amendment."). Thus these interrogatories potentially serve a substantial purpose: if the plaintiffs will have to establish that Congress cannot demonstrate that the statute furthers the government's interests, it is important for plaintiffs to be aware of what interests the government alleges the statute is designed to further.

Because answering the remaining interrogatories will not be a significant burden, the Court, to the extent that purposes of the legislation are not outlined in the legislative record or already provided by the defendants in their responses, orders the defendants to disclose purposes and interests served by the legislation.

B. Category 2: Interrogatories Seeking the Basis for the Stated Governmental Purposes

Four interrogatories seek to learn the basis for governmental purposes in category one and comprise the second category of interrogatories.[11] In each case, the plaintiffs seek to

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[11] NRA Interrog. No. 2, NAB Interrog. No. 4, NAB Interrog. No. 12, CDP 1. For example, NRA Interrogatory No. 2 states in part:

> Describe in detail the basis for your contention that BCRA's restrictions on electioneering communications will advance the purposes or interests identified in response to interrogatory number 1.

NRA Interrogs. at 8-9. CDP Interrogatory No. 1 asks the defendants to identify the governmental interest that justifies the specific provision listed, like the interrogatories in category one, but it also asks that the defendants detail "exactly how you believe such provision achieves" the interests. Pls. CDP and CRP's First Set of Interrogs. to Defs.' FEC and DOJ ("CDP Interrogs") at 4-8.

know how specific BCRA provisions will actually advance governmental interests.

Providing the evidentiary basis for these contentions in this case would be unduly burdensome because it would force the defendants to prematurely assemble their evidence. Even if the Court concludes that the defendants have the burden of providing a factual record that defends Congress's efforts, *see Turner*, 512 U.S. at 664, they do not assume that burden until they submit their briefs. Answering these interrogatories would give the plaintiffs, in effect, a preview of defendants' arguments because it is not possible for defendants to justify the statute without prematurely revealing their legal defense. While it is appropriate for the defendants to disclose persons and documents with information regarding the location of the evidence, as required through the identification categories, it is unduly burdensome and invasive to ask them during the discovery stage to marshal the evidence and formulate their legal justifications for the statute. This is especially true considering how extensive the legislative record is in this case. Reply Mem. in Supp. of Pl. RNC's Mot. to Compel Defs. FEC and DOJ to Produc. Docs and Answer Interrogs. ("RNC Reply") at 10 (acknowledging "massive quantity of documents").

Equally important, perhaps, is the Court's belief that unlike the cateogory-one interrogatories, providing the evidentiary basis for each government purpose will do little to narrow the issues. At the discovery stage, plaintiffs need not necessarily know how their opponents will defend the statute prior to assembling their own evidence to challenge it. Contrary to the plaintiffs' assertion that they "can do nothing with this

discovery period except *wait*," Consolidated Reply Br. of NRA and McConnell Pls. in Supp. of Mot. to Compel Produc. of Docs. and Identification of Individuals on Whom the Defs. May Rely at 3 (emphasis in original), the plaintiffs can sift through the legislative record to marshal their own evidence. It is a course they have undoubtedly already undertaken.

C. Category 3: Interrogatories Seeking Evidence in Legislative Records

The two interrogatories that comprise category three both ask defendants to identify portions of the legislative record that justify BCRA. Pursuant to the Court's bench order on July 25, 2002, the defendants need not respond to these interrogatories.

D. Category 4: Interrogatories Asking Yes or No Questions Regarding the Statute's Purposes

With these ten interrogatories, the plaintiffs ask the defendants to answer a specific contention with a yes or no answer and to subsequently identify persons and documents with discoverable information to each answer.[12] The plaintiffs also ask the defendants to

[12] RNC Interrog. Nos. 6-14. For example, RNC Interrogatory No. 6 asks:
> Do you contend that national political party donations of non-federally regulated funds to non-federal candidates are being used either to circumvent the Federal Election Campaign Act or in a manner that creates corruption or the appearance of corruption of federal candidates or officials? Unless your response is an unqualified negative, identify all persons who have knowledge, information, or evidence supporting the proposition, all documents and studies relating to and supporting the

list all specific instances they may rely on to support their answers.

Like the interrogatories in category one, these interrogatories can help narrow the issues in this case. Each one of the RNC interrogatories asks the defendants whether nonfederally regulated funds are being used in a way that circumvents the Federal Election Campaign Act ("FECA") or causes corruption. Seeking a more specific understanding of why Congress enacted the legislation, the plaintiffs are simply using these interrogatories to delve deeper into defendants' understanding of the purpose of the statute, as described in category-one interrogatories.

These contention interrogatories are also not particularly burdensome or invasive because they only ask for a yes or no answer. *McClain*, 85 F.R.D. at 59 ("Although an interrogatory which requires formulation of an opinion is not per se impermissible, it must be phrased with particularity.") (citing *Heritage Furniture, Inc. v. American Heritage, Inc.*, 28 F.R.D. 319, 320 (D. Conn. 1961)). If the defendants answer the RNC's questions in the affirmative, then, like an identification interrogatory, we believe they need to disclose the persons and documents with discoverable information related to the particular answer.

While the defendants should answer these interrogatories and identify discoverable

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> proposition, and all specific instances you may rely on to support the proposition in connection with your defense of this action.

RNC Interrogs. at 6-7.

information related to the contention, they need not produce all "specific instances" that support their contention. Doing so would be too burdensome and invasive because, like the category-two interrogatories, it requires that the defendants prematurely marshal evidence for the plaintiffs.

E. Category 5: Interrogatories Seeking what BCRA Alternatives Congress Considered

Three interrogatories ask the defendants to describe alternative approaches to the BCRA that Congress considered, and to include the grounds on which Congress rejected each alternative.[13] A second part of CDP Interrogatory Number Four also asks the defendants whether the alternatives would achieve the governmental interests identified in earlier interrogatories.[14]

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[13] McConnell Interrog. No. 4, CDP Interrog. Nos. 3-4. McConnell Interrogatory No. 4 states:

> State and describe in detail each alternative to the BCRA or any portion thereof for serving the interests that you identify in response to Interrogatory 1 (i.e. each alternative means) that Congress considered and rejected, specifying as to each alternative the provisions of the BCRA for which it was considered as an alternative and the grounds on which Congress rejected the alternative.

McConnell Interrogs. at 2.

[14] CDP Inter. No. 4 states:

> State and describe in detail each item of information relevant to whether and to what extent the alternatives that you identify in response to Interrogatory 3 would achieve the interest that the corresponding provision of the BCRA seeks to achieve, being specific as to the alternatives to which each such item relates.

CDP Interrogs. at 8.

All of this information is available in the legislative record, and the Court believes, as discussed during the July 25 hearing, that the defendants need not further canvas it for the plaintiffs' benefit.

F. Category 6: Interrogatories Involving the Relationship Between the Statute and Regulations

Three of the five interrogatories ask what narrowing "construction" of BCRA the defendants recommend,[15] and two others ask the defendants to identify provisions that cannot be enforced until regulations are promulgated.[16]

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[15] *See* McConnell Interrog. No. 8, CDP Interrog. No. 7; NAB Interrog. No. 1. For example, McConnell Interrogatory No. 8 states:

> State and explain in detail each narrowing construction that you advocate with respect to the BCRA or any provision thereof, specifying whether each such narrowing construction is your primary construction or is an alternative to invalidation.

McConnell Interrogs. at 3. NAB Interrogatory No. 1 states:

> State whether you contend that BCRA's restrictions on electioneering communications apply to communications via the Internet. Unless your answer is an unqualified negative, state the basis for your response, identify all persons with knowledge of facts to support your contention and identify all documents that tend to support or refute your contention.

FEC's Objections to NAB Interrogs. at 5.

[16] McConnell Interrog. No. 10, CDP Interrog. No. 8. For example, McConnell Interrogatory No. 10 states:

> Identify each portion of the BCRA that cannot constitutionally be enforced (in whole or in part) until regulations are promulgated, describing in detail why such regulations are necessary to permit enforcement of each such provision.

McConnell Interrogs. at 3.

The interrogatories asking for a narrowing "construction" are objectionable for two reasons. First, the plaintiffs seek a legal conclusion about how the defendants believe the statutory provisions should be interpreted, and, as such, the interrogatories involve revealing legal opinion without application to the facts. Second, producing a narrowing "construction" now is not particularly useful in the absence of the regulations the FEC ultimately promulgates.[17] However, since regulations for non-Title-I provisions may not be available until after the parties submit their briefs, we will consider whether the FEC's opinion of how the statute should be narrowed is necessary to evaluate the constitutionality of the statute. If the FEC plans to argue that a narrowing "construction" exists for non-Title I provisions, the inquiries into the regulatory "constructions" will serve a substantial purpose in at least two ways. First, such considerations are useful for evaluating whether Congress made reasonable predictive judgments that the statute advances those purported interests,[18] *see Turner*, 512 U.S. at 666-68. Second, any narrowing "construction" is also relevant because only by understanding to what extent the statute, implemented through the regulations, interferes with protected speech can the

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[17] The old regulations governing electioneering communications will be repealed when the FEC promulgates the new regulations. BCRA § 214(b). Under Section 402 of BCRA, the FEC is required to promulgate Title I regulations no later than June 25, 2002 (90 days after the date of enactment) and regulations for the remaining provisions by December 22, 2002 (270 days after enactment). BCRA § 402(c).

[18] On the other hand, the Court need not consider regulatory "constructions" to establish whether Congress identified sufficiently compelling interests.

Court make a determination of whether BCRA "suppress[es] 'substantially more speech than ... necessary.'" *Id.* at 668 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)). For this reason, we believe the Defendant FEC, if it plans to make this argument, should offer its view on narrowing "constructions" for non-Title-I provisions in the absence of proposed regulations, even though they may in fact be somewhat speculative and legal in nature.

The two interrogatories asking which statutory provisions cannot be constitutionally enforced are vague because it is unclear what the plaintiffs mean by "cannot constitutionally be enforced." If the plaintiffs are asking what statutes, absent accompanying regulations, cannot be enforced without violating the constitution, then they are predominantly seeking legal opinion that should not be compelled. On the other hand, if they are seeking a description of what statutes cannot go into effect on November 6, 2002, BCRA § 420(a), the intervenors have already provided an answer to that query: the existing Coordination rules stay in effect until the FEC promulgates new regulations, so long as the FEC issues the regulations before December 22, 2002. Intervenor-Defendants' Objections and Resp. to Pl. McConnell's First Set of Interrogs. at 11-12; BCRA § 214(b). Accordingly, this Court will not compel answers to either question.

G. Category 7: Interrogatories Seeking Identification of Persons Engaged in Activities Prohibited by BCRA that Caused Corruption

The plaintiffs ask the defendants in these four interrogatories to identify by name

each federal official that has engaged in activities, which will be prohibited by BCRA, that caused corruption or appearances of corruption.[19] They also ask for detailed descriptions of the acts of corruption and appearances of corruption.

Here again the usefulness of the interrogatories is not high because the plaintiffs already know that defendants contend that preventing corruption and the appearance of corruption is a purpose of the legislation. Instead of trying to narrow or focus the issues, the plaintiffs here are merely seeking the evidentiary basis for those contentions. However, because it is not particularly burdensome for the FEC and DOJ to disclose the names of former members of Congress and other federal officials who have engaged in corrupt conduct relating to the electoral process, the Court will compel its response. The Court will not, however, require the government to identify all specific instances of corruption or persons who have engaged in corruption. Finally, the government only need disclose information to the extent that it was not outlined in the publicly available legislative history of BCRA.

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[19] McConnell Interrog. Nos. 13-16, CDP Interrog. No. 10. For example, McConnell Interrogatory No. 13 states:

> Identify by name each present member of Congress and other elected federal officer who has engaged in any corrupt act as a result of practices that will be newly forbidden or subjected to greater restriction by the BCRA.

McConnell Interrogs. at 3.

H. Category 8: Interrogatories Seeking Legal Analysis of BCRA Provisions

In the five interrogatories comprising this category, the plaintiffs ask defendants to provide legal analysis of BCRA provisions, including whether or not certain provisions are underinclusive and what portions of the statute are unconstitutional.[20] They also ask defendants questions about ripeness and standing.[21]

These interrogatories need not be answered because they involve questions of "pure law" that are not rooted in the facts of the case. *Kendrick*, 125 F.R.D. at 3. As the court in *Kendrick* noted, "absent a concrete factual record . . . any responses which the [party] might submit would necessarily amount to a free-form legal essay." *Id.* at 3.

III.

For those contention interrogatories we have deemed appropriate for response as set forth above, the defendants need not answer them until later in the discovery process (i.e., September 16, 2002). Rule 33(c) explains that the Court can defer a contention

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[20] NRA Interrog. No. 3, McConnell Interrog. No. 9, NAB Interrog. No. 6. For example, McConnell Interrogatory No. 9 states:

> Identify with particularity each portion of the BCRA that you do not contend is constitutional.

McConnell Interrogs. at 3.

[21] NRA Interrog. No. 3, McConnell Interrog. No. 11, McConnell Interrog. No. 17, NAB 6. For example, McConnell Interrogatory No. 17 states:

> Identify with specificity each "unripe" claim in each of the consolidated complaints explaining in detail why the claim is not yet ripe for judicial review.

McConnell Interrogs. at 4.

interrogatory until late in the discovery process. Fed. R. Civ. P. 33(c); *see McCarthy v. Paine Webber Group*, 168 F.R.D. 448, 450 (D. Conn. 1996); *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328, 333 (N.D. Cal. 1985). The Advisory Committee reiterated the plain language of Rule 33, explaining that "[s]ince interrogatories involving mixed questions of law and fact may create disputes between parties which are best resolved after much or all of the other discovery has been completed, the court is expressly authorized to defer an answer." Fed. R. Civ. P. Rule 33 advisory committee's note. Courts thus often delay contention interrogatories until later in the discovery process so that parties need not "articulate theories of their case not yet fully developed." *Braun Medical Inc. v. Abbott Laboratories*, 155 F.R.D. 525, 527 (E.D. Pa 1994). If a party serves a contention interrogatory before the other party has an opportunity to establish a "reasonable factual predicate, such interrogatories may do more harm than good." *Kendrick v. Sullivan*, 125 F.R.D. 1 (D.D.C. 1989) (*citing In re Convergent Technologies*, 108 F.R.D. 128).

The plaintiffs here have not met their burden of demonstrating that the defendants responding to contention interrogatories before the end of the discovery period will further the goals of discovery. *Fisher and Porter Company v. Tolson*, 143 F.R.D. 93, 96 (E.D. Pa. 1992) (citing *In re Convergent Technologies Securities Litigation*, 108 F.R.D. at 338). While they argue that the discovery period is far enough along to warrant contention interrogatories, the extent of the required discovery suggests otherwise.

Considering the volume of the legislative record and the intricacy of the issues involved in this case, it is understandable that the defendants need additional time to review the evidence before responding to their contentions. Only after conducting their own discovery will the defendants be prepared to respond fully to the plaintiffs' contention interrogatories.

IV.

Accordingly, and as set forth in this order, it is hereby

ORDERED that the motion to compel the contention interrogatories is granted in part and denied in part; and

ORDERED that the defendants answer contention interrogatories as described above[22] by September 16, 2002.

SO ORDERED.

KAREN LeCRAFT HENDERSON
United States Circuit Judge

COLLEEN KOLLAR-KOTELLY
United States Circuit Judge

RICHARD J. LEON
United States District Judge

[22] NRA Interrog. No. 1, NRA Interrog. No. 4, McConnell Interrog. No. 1, NAB Interrog. No. 2, NAB Inter. No. 8, NAB Interrog. No. 10, CDP Interrog. No. 1; RNC Interrog. Nos. 6-14; McConnell Interrog. No. 8 (as related to non-Title-I provisions), CDP Interrog. No. 7 (as related to non-Title-I provisions); NAB Interrog. No. 1 (as related to non-Title-I provisions); McConnell Interrog. Nos. 13-16 (names only), CDP Interrog. No. 10 (names only).