

IN THE SUPREME COURT OF THE UNITED STATES

SENATOR MITCH McCONNELL et al.,
Appellants,

v.

FEDERAL ELECTION COMMISSION et al.,
Appellees.

On Appeal From The United States
District Court For The District Of Columbia

MOTION FOR DIVIDED ARGUMENT

In response to the Clerk's letter to counsel of June 19, seven of the eleven groups of plaintiffs in this litigation (appellants in No. 02-1674, McConnell v. FEC; No. 02-1727, RNC v. FEC; No. 02-1733, National Right to Life Comm. v. FEC; No. 02-1734, ACLU v. FEC; No. 02-1753, California Democratic Party v. FEC; No. 02-1755, AFL-CIO v. FEC; and No. 02-1756, Chamber of Commerce v. FEC) come before the Court and state as follows:

1. These consolidated appeals present various challenges to the constitutionality of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). On June 5, this Court ordered that four hours be allotted for oral argument in these cases.

2. As is clear from the jurisdictional statements and opening briefs, the primary challenges to BCRA's constitutionality are the challenges to the "non-federal funds" provision (section 101) and the "electioneering communications" provisions (sections

201, 203, 204, and 311). Virtually all of the plaintiffs are challenging some of these provisions, and some are challenging all of them. In addition, the intervenor defendants have indicated that they intend to focus almost entirely on these provisions in their brief.

Consequently, the above-listed plaintiffs propose that oral argument be structured around these provisions, with two hours allotted in total (60 minutes per side) for argument on the "non-federal funds" provision, and two hours for argument on the "electioneering communications" provisions. As for the challenges to other provisions, all of which present substantial constitutional issues, appellants propose that the challenge to the "forced choice" provision of BCRA (section 213) be addressed in tandem with the closely related challenge to the "non-federal funds" provision, and that challenges to the "advance notice" provisions (sections 201 and 212), the "coordination" provisions (sections 202 and 214), the "attack ad" provision (section 305), and the "broadcaster records" provision (section 504) be addressed in tandem with the challenge to the "electioneering communications" provision.

3. Over the last few weeks, counsel for plaintiffs have consulted with each other in order to reach a global agreement for the division of argument time. Counsel for the above-listed

plaintiffs have reached the following agreement as to the allocation of time:

Kenneth W. Starr, on behalf of the McConnell appellants, 20 minutes (to address the "non-federal funds" and "forced choice" provisions).

Bobby R. Burchfield, on behalf of the political party appellants, 40 minutes (to address the "non-federal funds" and "forced choice" provisions).

Floyd Abrams, on behalf of the McConnell appellants, 40 minutes (to address the "electioneering communications," "attack ad," and "broadcaster records" provisions).

Laurence E. Gold, on behalf of the AFL-CIO appellants, 20 minutes (to address the "electioneering communications," "coordination," and "advance disclosure" provisions).

4. Three groups of appellants -- in No. 02-1675, NRA v. FEC; No. 02-1740, Adams v. FEC; and No. 02-1747, Paul v. FEC -- have indicated that they will seek time separately. The three motions by appellants should be denied. To the extent that those plaintiffs have distinctive theories or claims, they have been sufficiently aired in the briefs on the merits.

5. The Echols appellees in No. 02-1676, FEC v. McConnell, have also requested argument time to address the "minors" provision, which the district court unanimously invalidated. Our review of the transcript of the oral argument in Buckley v. Valeo,

424 U.S. 1 (1976), indicates that the Buckley Court actually allowed the advocates four and a half hours, not four hours. If this Court were to extend the four hours already granted for argument in this case by up to twenty minutes, that would permit argument on any additional issues presented in this appeal that the Court deemed necessary, including argument on the ``minors'' provision.*

* Counsel for appellants in No. 02-1733, National Right to Life Comm. v. FEC, also represent a minor who is an appellee in No. 02-1676, FEC v. McConnell, who has joined in the Echols plaintiffs' request for argument time. The NRLC appellants support that request.

Respectfully submitted,

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