

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONGRESSMAN RON PAUL, <i>et al.</i>,	)	CIVIL ACTION NO. 02-CV-781
Plaintiffs,	)	(CKK, KLH, RJL)
)	
v.	)	Consolidated with
	)	CIVIL ACTION NOS.
	)	02-CV-582 (CKK, KLH, RJL) (Lead)
FEDERAL ELECTION COMMISSION, <i>et al.</i>,	)	02-CV-581 (CKK, KLH, RJL)
Defendants.	)	02-CV-633 (CKK, KLH, RJL)
	)	02-CV-751 (CKK, KLH, RJL)
	)	02-CV-753 (CKK, KLH, RJL)
	)	02-CV-754 (CKK, KLH, RJL)
	)	02-CV-874 (CKK, KLH, RJL)
	)	02-CV-875 (CKK, KLH, RJL)
	)	02-CV-877 (CKK, KLH, RJL)
	)	02-CV-881 (CKK, KLH, RJL)

**DECLARATION OF JAMES H. BABKA, JR.
ON BEHALF OF REALCAMPAIGNREFORM.ORG, INC.**

James H. Babka, Jr., President of RealCampaignReform.org, Inc., a plaintiff in the above-captioned matter, declares pursuant to 28 U.S.C. Section 1746 as follows:

1. I am President of RealCampaignReform.org, Inc. (“RealCampaignReform”), and, as such, am its chief executive officer, with responsibility, *inter alia*, for the day-to-day operations of the organization. I have served RealCampaignReform in that capacity since it was established in 2001.

2. This Declaration is being submitted in support of the causes of action alleged against the defendants in the above-captioned action by plaintiff RealCampaignReform, which is a not-for-profit, non-stock corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business in Alexandria, Virginia. The Internal Revenue Service (“IRS”) has determined RealCampaignReform to be exempt from federal income taxes under 26 U.S.C. Section 501(c)(4). True copies of RealCampaignReform’s Articles of

Incorporation, Certificate of Incorporation, Certificate of Good Standing, and IRS determination letter are attached hereto as Babka RCR Declaration Exhibit A.

3. RealCampaignReform is a nonpartisan organization, dedicated primarily to education and advocacy of policies relating to rights related to the free conduct of election campaigns and campaign finance, under federal and state constitutions and statutes, and, as a principal function, the dissemination of information concerning such rights. Its functions include attempting to provide balance to establishment media coverage in educating the public on the campaign finance and election issues with which it is fundamentally concerned, and advocating needed change with respect to election and campaign finance laws that limit Constitutional rights and protect incumbency. RealCampaignReform accepts contributions from individuals and business entities, including corporations, and represents its views and the views of its Board of Directors and supporters on legislative and public policy issues before federal, state and local officials and the general public, and it engages in, including spending funds for, communications on such issues during campaigns for election to federal office, utilizing broadcast, cable and satellite facilities. True copies of documents representing a sampling of RealCampaignReform's communications on legislative and public policy issues, including communications during the 2002 federal election cycle, are attached hereto as Babka RCR Declaration Exhibit B.

4. To date, RealCampaignReform's activities and communications have been somewhat limited in number because the organization, which was established in 2001, is still just beginning to grow, but the organization has stayed true to its mission of communicating with the general public, and propounding and promoting ideas relevant to public policy issues, for

purposes of educating the public. To date, it has made known its views on such issues primarily by e-mail communications to individuals and organizations throughout the United States. It maintains a web site, www.RealCampaignReform.org, which, *inter alia*, contains articles and essays on important policy issues, it regularly distributes educational communications by e-mail to a subscriber list that is currently 15,000, and growing, and it also has engaged in developing communications to the public by radio broadcast that would constitute “electioneering communications” as defined by the Bipartisan Campaign Reform Act of 2002 (“BCRA”), which amended the Federal Election Campaign Act (2 U.S.C. Section 431, *et seq.*) (“FECA”).

5. At all times, to the best of my knowledge, RealCampaignReform has refrained from engaging in “express advocacy” under the BCRA/FECA because of the prohibition against such communications by certain corporations under the BCRA/FECA. RealCampaignReform is aware that provisions of the BCRA/FECA discriminate against it and restrict it — as a corporation that accepts corporate contributions — from engaging in express advocacy communications, although other corporations accepting corporate funds are permitted to engage in such communications if they are considered to be qualifying news organizations.

6. As indicated in paragraph 42 of its Amended Complaint in this action, RealCampaignReform will be injured by the system of prior restraints and discriminatory regulations imposed by and under the BCRA/FECA. Such prior restraints and regulations will impose discriminatory economic burdens and penalties upon the communicative activity of RealCampaignReform, by threat of injunctive, and other restraining, action, and by threat of civil and criminal penalties, as enhanced by BCRA, from engaging in the quality and quantity

of political communications that RealCampaignReform would choose in its editorial discretion, but for the licensing power, editorial control and discriminatory economic burdens and penalties placed upon it by the BCRA/FECA. Specifically, as to “electioneering communications,” RealCampaignReform will be discriminated against by licensing requirements, editorial controls, and economic burdens not imposed upon broadcasting facilities, newspapers, magazines, and other periodical publications not owned or controlled by any political party, political committee, or candidate, and which are not subject to the power of the FEC to threaten injunctive, or other restraining, action and civil and criminal penalties.

7. RealCampaignReform plans in the future to continue to enter the marketplace of ideas related to federal election campaigns, engaging in “electioneering communications,” as defined by the BCRA/FECA, and thereby will be subject to the reporting and disclosure requirements of the Federal Election Commission (“FEC”) which, by design and effect, transfer to the FEC significant licensing power, editorial control and economic limitations upon Plaintiff RealCampaignReform’s continued participation in that marketplace of ideas. Such “electioneering communications” will be made through various modes, including, but not limited to, “electioneering communications” distributed by a radio broadcast station. And such “electioneering communications” will include certain “targeted communications” as that term is defined in BCRA Sections 201 and 204. RealCampaignReform’s activities to date, involving communications that would be characterized as “electioneering communications” under the BCRA, have to do with its “Operation Free Press” program during the period beginning in August, 2002, and the development of a radio broadcast for public consumption addressing the very campaign finance laws at issue in this litigation. Total costs for the production and airing

of such radio communications in 2002 are not yet known, but production costs alone are approximately \$1,500, and total costs are expected to exceed \$5,000. A draft copy of the script of the radio broadcast, which has not yet aired, but is expected to be aired in October and November, 2002, is included in Babka RCR Declaration Exhibit B.

8. Although RealCampaignReform does not engage in communications constituting or containing “express advocacy” under BCRA/FECA — because such communications are considered illegal contributions under the BCRA/FECA, although not for certain news organizations — the very mission of the organization is to explore and take positions on public policy questions, and by communicating its views, to educate and inspire Americans on some of the most important issues facing the country. Making such communications is important at all times, including those times within 30 days of federal primaries and within 60 days of federal general elections, when candidates for office are taking (or refusing to take) their own positions on such issues, and American citizens are paying particular attention to what is being said. The provisions in the BCRA/FECA restricting such communications, by labeling them “electioneering communications” and prohibiting them prior to certain elections, is a severe, unjustifiable infringement on RealCampaignReform’s communications.

9. RealCampaignReform exists because of voluntary contributions from the public, which is the means of its continued support. Although not currently a membership organization, *per se*, it represents and speaks for its supporters, who not only rely on the organization to keep them abreast of developments, but also expect the organization to advocate their views. RealCampaignReform is constantly in need of financial support from the public, and, although it has not received the assistance of any federal office holder in this

endeavor, it would like to do so in the future. However, BCRA Section 323 would prohibit federal office holders from signing solicitation letters on behalf of RealCampaignReform, despite the fact that it does not expressly advocate the election or defeat of candidates for federal office, because it engages in "electioneering communications" as defined by the BCRA. This would severely impinge upon RealCampaignReform's communications to its members and to the general public, including its ability to raise funds to support its programs. It could not be represented, as BCRA Section 323 requires, that the proceeds from any such appeal would not be used for expenditures or disbursements "in connection with a federal election." BCRA Section 323's broad definition of "expenditures or disbursements in connection with a federal election" could encompass a large segment of RealCampaignReform's expenditures for so-called "electioneering communications." These provisions in the BCRA/FECA prohibiting federal office holders from signing RealCampaignReform's fundraising solicitations is a severe, unjustifiable infringement on RealCampaignReform's First Amendment activities, communications and rights.

I declare, under penalty of perjury, that the foregoing is true and correct.


JAMES H. BABKA, JR.

Executed on: 10/3/02