IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Virginia James,	)	
	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	**Civil No. 1:12-cv-01451**
Federal Election Commission,	)	
	)	**Three-Judge Court Requested**
	)	
Defendant.	)	
	)	
	)	

APPLICATION FOR THREE-JUDGE COURT AND MEMORANDUM IN SUPPORT

Plaintiff moves for the convening of a three-judge court to adjudicate this challenge, pursuant to §§ 403(a)(1) and (d)(2) of the Bipartisan Campaign Reform Act of 2002 ("BCRA").[1] Plaintiff submits this motion in accordance with LCvR 9.1 of this Court.

[1] In relevant part, BCRA § 403, Pub. L. No. 107-155 (2002), 116 Stat. 81, 113-14, provides for "**JUDICIAL REVIEW**" as follows:

> (a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:
>
> (1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.
> (2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.
> (3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

I. This case qualifies for a three-judge court because it satisfies the requirements of § 403(a).

BCRA provides "[s]pecial rules for actions brought on constitutional grounds. If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act…[t]he action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court." BCRA § 403(a), 116 Stat. at 113-14 (emphasis added).

BCRA § 403(a) permits plaintiffs to elect three-judge review when they "challenge the constitutionality of any provision of [BCRA] or any amendment made by [BCRA]." *Id.* In other words, BCRA creates a two-part test for plaintiffs who wish to elect such review: Plaintiff must (1) make a constitutional challenge (2) to a BCRA provision or an amendment BCRA made.

a. This case is a constitutional challenge.

Ms. James' challenge to 2 U.S.C. § 441a(a)(3)'s sub-aggregate limit on individual candidate contributions is based on that limit's violation of her First Amendment right to

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(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) . . .

(c) . . .

(d) APPLICABILITY.—

(1) INITIAL CLAIMS.— . . . .

(2) SUBSEQUENT ACTIONS.—With respect to any action initially filed after December 31, 2006, the provisions of subsection (a) shall not apply to any action described in such section unless the person filing such action elects such provisions to apply to the action.

associate with candidates for federal office whose views she supports. *See* V. Compl. ¶¶ 13, 25, and 38. Thus, BCRA's "constitutional challenge" requirement is satisfied.

b. This challenge arises under a provision of BCRA.

2 U.S.C. § 441a(a)(3)(A)'s sub-aggregate limit on contributions to individual candidates is wholly a BCRA provision. FECA, BCRA's predecessor, contained an aggregate cap on total contributions to candidates, parties and PACs. FECA § 608(b)(3). BCRA, however, introduced a novel statutory restriction by way of an additional sub-aggregate limit on total contributions to individual candidates. 2 U.S.C. § 441a(a)(3)(A) (indexed for inflation per 11 C.F.R. §§ 110.5(b)(3)-(4) at 76 Fed. Reg. 8368 (Feb. 14, 2011)). This limit is lower than BCRA's limit on total contributions. Thus, BCRA effectively forces contributors to contribute to parties and/or PACs if they wish to associate to the maximum amount allowed by law (currently $117,000). 2 U.S.C. § 441a(a)(3) (indexed for inflation per 11 C.F.R. §§ 110.5(b)(3)-(4) at 76 Fed. Reg. 8368 (Feb. 14, 2011)).

FECA did not contain a similar restriction, and instead only contained § 608(b)(3)'s aggregate cap. Contributors could give up to this full amount and, if they so desired, could do so only through contributions to various individual candidates. In effect, the relief Plaintiff ultimately seeks is a *return* to a FECA-style aggregate scheme, lending her associational rights the same legitimacy as those of contributors who wish to associate with parties and PACs as well as candidates.

Pursuant to LCvR 7(m) of this Court, Plaintiff has conferred with opposing counsel, and Defendant does not oppose this motion.

Respectfully submitted this 5th day of September, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2012, I caused the foregoing document to be served on the following, via electronic and first class mail:

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