UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIBERTARIAN NATIONAL COMMITTEE, INC.,	)	Civ. No. 11-562 (RLW-MG-RBW)
Plaintiff,	)	THREE-JUDGE COURT
v.	)	
FEDERAL ELECTION COMMISSION,	)	MOTION FOR A MORE DEFINITE STATEMENT
Defendant.	)	

DEFENDANT FEDERAL ELECTION COMMISSION'S
MOTION FOR A MORE DEFINITE STATEMENT

Pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, Defendant Federal Election Commission ("FEC") respectfully moves this Court for an order requiring Plaintiff Libertarian National Committee, Inc. to provide a more definite statement of its complaint. A Memorandum of Points and Authorities in support of the FEC's motion and a Proposed Order are submitted along with this motion, as required by LCvR 7.

Respectfully submitted,

Phillip Christopher Hughey
Acting General Counsel
chughey@fec.gov

David Kolker (D.C. Bar No. 394558)
Associate General Counsel
dkolker@fec.gov

Harry Summers
Assistant General Counsel
hsummers@fec.gov

/s/ Kevin P. Hancock
Kevin P. Hancock
Attorney
khancock@fec.gov

FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
(202) 694-1650

May 3, 2011

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIBERTARIAN NATIONAL COMMITTEE, INC.,	)	Civ. No. 11-562 (RLW-MG-RBW)
Plaintiff,	)	THREE-JUDGE COURT
v.	)	
FEDERAL ELECTION COMMISSION,	)	MEMORANDUM
Defendant.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT FEDERAL ELECTION COMMISSION'S MOTION FOR A MORE DEFINITE STATEMENT

Pursuant to Federal Rule of Civil Procedure 12(e), defendant Federal Election Commission ("FEC" or "Commission") requests that this Court order plaintiff Libertarian National Committee, Inc. ("LNC") to provide a more definite statement of its Complaint, because it contains ambiguities that prevent the FEC from reasonably addressing whether LNC has standing and whether the three-judge Court has jurisdiction to hear this case.

In its Complaint, LNC asserts that it has a constitutional right to accept unlimited contributions made by bequest from testamentary estates. LNC claims that it is challenging *only* a provision of the Bipartisan Campaign Reform Act ("BCRA"), 2 U.S.C. § 441i, that bars national political parties like LNC from soliciting or receiving "soft money" (funds to be used for non-federal purposes) — and LNC based its request to convene this three-judge Court on that limited claim. But much of the Complaint reads as if LNC were challenging the "hard money" (federal) contribution limits of the Federal Election Campaign Act ("FECA") in 2 U.S.C. § 441a that pre-date BCRA — a claim this three-judge Court would not have jurisdiction to hear. The

Complaint suggests that LNC wants to accept unlimited bequests to influence *federal* elections, which FECA has long barred, as opposed to seeking funds above FECA's contribution limits to use for non-federal election purposes, which only BCRA bars national party committees like LNC from doing.

The FEC cannot reasonably respond to the Complaint without clarity on these issues. If LNC seeks unlimited funds to influence federal elections but does not challenge section 441a, LNC may lack standing, because a ruling striking down only section 441i would leave intact the contribution limits in section 441a and thus would not redress LNC's alleged harm. If LNC's claim amounts to a challenge to section 441a, this case may be inappropriate for a three-judge court. Accordingly, the Court should order LNC to provide a more definite statement of whether it seeks federal money and challenges FECA's contribution limits in section 441a.

BACKGROUND

LNC is the national political committee of the Libertarian Party of the United States. (Compl. ¶ 4.) It filed its Complaint against the FEC on March 17, 2011. (Docket No. 1.) The FEC is an independent agency of the United States government with exclusive civil jurisdiction over the administration, interpretation, and enforcement of FECA, 2 U.S.C. §§ 431-57. *See id.* §§ 437c(b)(1), 437d(a), and 437g. LNC served the United States Attorney for the District of Columbia with the Complaint on March 23, 2011, and thus, the FEC's responsive pleading is due on May 23, 2011. *See* Fed. R. Civ. P. 6(a)(1) and 12(a)(2).

With its Complaint, LNC filed an application to convene a three-judge court pursuant to section 403(a) of BCRA, Pub. L. No. 107-155, 116 Stat. 81, 113-14. (Docket No. 3.) BCRA, which amended FECA in 2002, *see McConnell v. FEC*, 540 U.S. 93, 114 (2003), contains a special judicial review provision in section 403(a) that allows a party challenging the

constitutionality of any BCRA provision to elect to have the action heard by a three-judge court under 28 U.S.C. § 2284. Three-judge court review is not available, however, for challenges to provisions of FECA that existed before BCRA. *See, e.g.*, *McConnell*, 540 U.S. at 229. The Court granted LNC's application on March 24, 2011. (Docket No. 4.)

In April, Commission counsel sought clarification from LNC as to the nature of its claims, and on Monday, May 2, 2011, discussed this motion with counsel for LNC by telephone as required by Local Civil Rule 7(m). Opposing counsel indicated that LNC will oppose this motion.

ARGUMENT

I. A More Definite Statement Is Appropriate When The Defendant Cannot Reasonably Prepare A Response Because The Complaint Is Ambiguous

Under Federal Rule of Civil Procedure 12(e), "[a] party may move for a more definite statement of a pleading . . . which is so vague or ambiguous that the party cannot reasonably prepare a response." When a "'defendant is unclear about the meaning of a particular allegation in the complaint, the proper course of action is not to move to dismiss but to move for a more definite statement.'" *Potts v. Howard University*, 269 F.R.D. 40, 42 (D.D.C. 2010) (quoting *Am. Nurses' Ass'n v. Illinois*, 783 F.2d 716, 725 (7th Cir. 1986)). Although Rule 8(a) "requires only a 'short and plain statement of the claim showing that the pleader is entitled to relief,' the complaint must be detailed enough to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests[.]'" *Dorsey v. American Express Co.*, 499 F. Supp. 2d 1, 3 (D.D.C. 2007) (alteration in original) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotation marks omitted)); *see, e.g.*, *Fraternal Order of Police v. Library of Congress*, 692 F. Supp. 2d 9, 20 (D.D.C. 2010) ("Because the Court cannot ascertain what the [plaintiff]'s promotion-related claim is, it cannot find that defendants are able to respond to it.").

II. LNC's Complaint Is Ambiguous About Whether It Challenges The Constitutionality Of The Limits On Contributions Of Federal Funds In 2 U.S.C. § 441a

The Complaint states that LNC seeks declaratory and injunctive relief regarding only 2 U.S.C. § 441i. (Compl. ¶ 3 and Prayer for Relief at p. 8.) However, other portions of the Complaint suggest that LNC also disputes the constitutionality of parts of 2 U.S.C. § 441a, creating confusion and ambiguity about the exact nature of LNC's claim.

A. Long Before BCRA, Section 441a Set Limits On Contributions Of Federal Funds

In 2 U.S.C. § 441a, FECA limits, *inter alia*, the amount of money a person can contribute to a political party for the purpose of influencing a *federal* election. *See id.* § 431(8)(A)(i) (defining "contribution" to include money given "for the purpose of influencing any election for Federal office"). This money is known as "federal" or "hard" money. *See McConnell*, 540 U.S. at 122. Specifically, section 441a(a)(1)(B) currently prevents persons from contributing more than $30,800 a year in federal money to a national political party.[1] Correspondingly, section 441a(f) prevents political committees, including national party committees like LNC, from knowingly accepting a contribution of federal money above the applicable limits.

Before Congress amended FECA with BCRA in 2002, FECA did not prevent political parties from accepting unlimited donations of so-called "non-federal" or "soft" money — that is, money donated for the purpose of influencing state or local elections or for other non-federal purposes. *See McConnell*, 540 U.S. at 122-23. However, Congress determined that political parties used non-federal money to circumvent section 441a's contribution limits. *See id.* at 124-26. To close this loophole, Congress enacted BCRA, which, *inter alia*, amended FECA by

[1] The original limit of $25,000 in section 441a(a)(1)(B) is adjusted for inflation in odd-numbered years, *see* 2 U.S.C. § 441a(c), and now stands at $30,800, *see* http://www.fec.gov/pages/brochures/contriblimits.shtml (last visited May 3, 2011).

adding section 441i to Title 2. *See id.* at 133. Section 441i states in relevant part that the "national committee of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of [FECA]." 2 U.S.C. § 441i(a)(1).

Congress intended BCRA to put an absolute limit on the amount of money any one person could contribute to a national political party, regardless of the purported use of the money. *See McConnell*, 540 U.S. at 154-56. As a result, section 441i(a)(1)'s broad language not only bars national political parties, like LNC, from accepting any non-federal money, but also reinforces section 441a's contribution limits, since federal money contributions above those limits are, by definition, "not subject to the limitations . . . of [FECA]." Section 441i(a)(1) does not, however, create any federal money limits of its own, but instead relies on the longstanding FECA limits in sections 441a(a)(1)(B) and 441a(f); section 441i(a)(1)'s unique addition to FECA is its bar on a national political party accepting any non-federal money.

B. Despite Stating That LNC Is Challenging Only Section 441i, The Complaint Suggests That LNC Seeks Federal Money And Challenges Section 441a

The Complaint states that LNC challenges the constitutionality of only section 441i. (Compl. ¶ 3 and Prayer for Relief at p. 8.). However, it also indicates that LNC would use the unlimited contributions by bequest to influence federal elections. LNC states that its purpose is in part to "field national Presidential tickets" (*id.* ¶ 4), and it laments that it "has yet to elect a federal office holder" due to a claimed lack of adequate financial resources for campaigning (*id.* ¶ 14), which would be remedied if LNC could accept unlimited bequests (*id.* ¶¶ 24-25 (alleging that its inability to accept unlimited bequests "hampers the LNC in its ability to attract and advocate for its candidates" and that accepting unlimited bequests "would substantially improve

its ability to advocate and achieve electoral success")).[2] LNC's apparent intent to solicit and accept federal money is consistent with its apparent recent history of spending the vast majority of its campaign funds in support of candidates for federal office.[3]

Because LNC apparently seeks unlimited *federal* money from bequests, sections 441a(a)(1)(B) and 441a(f) stand in its way. Indeed, LNC seems to recognize this, as its Complaint suggests that it also challenges section 441a by repeatedly questioning the validity of the "contribution limits" (which are found in section 441a) as applied to bequests, not just section 441i (which LNC distinctly calls the "Party Limit"). (*See, e.g.*, Compl. ¶¶ 1, 16, 17 (explaining that LNC entered an agreement specifying that "LNC may challenge the legal validity of the contribution limit in federal court, and demand payment of the full amount remaining in the account should its challenge succeed"); 26 (alleging that "[e]ven were the federal contribution limits constitutionally valid as applied to bequests," LNC should be able to solicit bequests that comply with those limits).)

LNC's recitation of the fact that the Commission has interpreted the term "person" in FECA to include testamentary estates also suggests that LNC is challenging section 441a. (*See* Compl. ¶¶ 12-13.) This interpretation is relevant *only* if LNC is challenging FECA's contribution limits in section 441a, and is irrelevant to a challenge to BCRA's prohibition in section 441i. While section 441a(a)(1)(B) limits the contributions a "person" (including a testamentary estate under the FEC's interpretation) can make to a national political party, section

---

2 Indeed, during the parties' May 2, 2011, telephone call pursuant to Local Civil Rule 7(m), counsel for LNC stated that LNC reserves the right to use the unlimited contributions it seeks to influence federal elections in addition to using such donations for non-federal purposes. However, counsel declined the Commission's request to amend the Complaint with a more definite statement of this fact.

3 *See* http://query.nictusa.com/cgi-bin/com_supopp/C00255695/ (summary of the committees and candidates LNC has spent campaign money to support and oppose) (last visited May 3, 2011).

441i(a)(1) limits donations to such parties *regardless of their source*. The language of section 441i(a)(1) focuses on the receiving entity, and does not state that prohibited money would come from "persons" or any other defined source. As a result, section 441i(a)(1) bars LNC from accepting above-limit contributions from testamentary estates, or anyone else, regardless of FECA's definition of "person."

Although LNC claims to be challenging only section 441i, it remains unclear in the Complaint whether LNC seeks excessive federal funds and whether it also challenges the constitutionality of section 441a.

III. LNC's Ambiguous Complaint Prevents The FEC From Reasonably Addressing Plaintiff's Standing And Whether A Three-Judge Court Can Hear This Case

A party challenging the constitutionality of any BCRA provision may elect to have the action heard by a three-judge court pursuant to 28 U.S.C. § 2284. *See* BCRA § 403(a); 116 Stat. at 113-14. However, three-judge court review is *not* available for challenges to provisions of FECA that existed before BCRA, such as the contribution limits of section 441a. *See McConnell*, 540 U.S. at 229. Therefore, a plaintiff whose claimed injury can be remedied only by a ruling striking down provisions of section 441a cannot invoke a three-judge court by simply styling the complaint as a BCRA challenge. *See id.*

In *McConnell*, a set of plaintiffs raised an ostensible challenge to the constitutionality of BCRA section 307, which increased FECA's contribution limits and indexed them for inflation. *Id.* at 226. However, the relief the plaintiffs sought was for the "Court to strike down the contribution limits." *Id.* at 229. On direct appeal from a three-judge district court under BCRA section 403(a), the Supreme Court recognized that it "ha[d] no power to adjudicate a challenge to the FECA limits," and as a result, held that the plaintiffs lacked standing. *Id.* The Court explained that "[a]lthough [it] ha[d] jurisdiction to hear a challenge to [BCRA] § 307, if the

Court were to strike down the increases and indexes established by BCRA § 307, it would not remedy the . . . plaintiffs' alleged injury because . . . *the limitations imposed by FECA . . . would remain unchanged*." *Id.* (emphasis added).

Similarly here, LNC ostensibly challenges only a provision of BCRA — 2 U.S.C. § 441i. However, if LNC seeks to raise *federal* funds from bequests over $30,800, it can obtain relief only if the Court also strikes down the contribution limit of section 441a(a)(1)(B) and the ban in section 441a(f) on political committees' accepting above-limit contributions as they apply to bequests. And this three-judge Court has no power to adjudicate a challenge to FECA's limits in section 441a. *See McConnell*, 540 U.S. at 229.

If LNC does not challenge section 441a, then LNC may lack standing because its alleged injury could not be redressed; a ruling by this three-judge Court striking down only section 441i would not invalidate FECA's contribution limits. *Cf. McConnell*, 540 U.S. at 229. In other words, section 441a(a)(1)(B) would still bar testamentary estates from contributing bequests above $30,800 annually to LNC for the purpose of influencing federal elections. And section 441a(f) would still bar LNC from knowingly accepting a contribution-bequest from a testamentary estate above $30,800 annually for the purpose of influencing federal elections.[4]

---

[4] LNC's Complaint (*see, e.g.*, ¶¶ 2, 25) also challenges BCRA's ban on the *solicitation* of funds in excess of FECA's limits. *See* § 441i(a)(1). This provision has no overlapping counterpart in FECA. Nevertheless, it appears that this aspect of LNC's claim would also not provide LNC standing if LNC does not challenge section 441a. A ruling striking down the solicitation ban as applied to bequests of federal money would not redress LNC's alleged harm unless the Court also struck down FECA's contribution limit, as LNC would suffer no cognizable harm if it could not solicit contributions that it could not legally accept.

CONCLUSION

Because the Complaint is ambiguous regarding whether LNC seeks federal money above FECA's contribution limits, and whether LNC challenges section 441a, the FEC cannot reasonably respond to the important threshold questions about the appropriateness of the three-judge Court and whether LNC has standing. Thus, a more definite statement is necessary.

Respectfully submitted,

Phillip Christopher Hughey
Acting General Counsel
chughey@fec.gov

David Kolker (D.C. Bar No. 394558)
Associate General Counsel
dkolker@fec.gov

Harry Summers
Assistant General Counsel
hsummers@fec.gov

/s/ Kevin P. Hancock
Kevin P. Hancock
Attorney
khancock@fec.gov

FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
(202) 694-1650

May 3, 2011