

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VICTORIA JACKSON GRAY ADAMS)
312 South Dunlop Street)
Petersburg, VA 23803,)

CARRIE BOLTON)
2726 Alston Chapel Road)
Pittsboro, NC 27312,)

CYNTHIA BROWN)
1920 Ward Street)
Durham, NC 27707,)

DEREK CRESSMAN)
2417 D Street)
Sacramento, CA 95816,)

VICTORIA FITZGERALD)
3639 6th Street SE #3)
Washington, DC 20032,)

ANURADA JOSHI)
2490 Channing Way)
Berkeley, CA 94703,)

PETER KOSTMAYER)
64 Golf Club Drive)
Langhorne, PA 19047,)

NANCY RUSSELL)
1310 Albright Drive)
Yardley, PA 19067,)

KATE SEELY-KIRK)
2535 College Avenue #302)
Berkeley, CA 94704,)

ROSE TAYLOR)
211 East North Avenue)
Baltimore, MD 21202-5909,)

Civil Action No. _____

COMPLAINT

STEPHANIE L. WILSON
1521 Ojibra Trail
Kalamazoo, MI 49006,

CALIFORNIA PUBLIC INTEREST RESEARCH
GROUP
1129 State Street
Suite 10B
Santa Barbara, CA 92101,

MASSACHUSETTS PUBLIC INTEREST
RESEARCH GROUP
29 Temple Place
Boston, MA 02111,

NEW JERSEY PUBLIC INTEREST RESEARCH
GROUP
119 Somerset Street
New Brunswick, NJ 08901,

UNITED STATES PUBLIC INTEREST
RESEARCH GROUP
218 D Street, SE
Washington, DC 20003,

THE FANNIE LOU HAMER PROJECT
729 Academy Street
Kalamazoo, MI 49007,

ASSOCIATION OF COMMUNITY
ORGANIZERS FOR REFORM NOW
739 8th Street, SE
Washington, DC 20003,

Plaintiffs,

v.

THE FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

Defendant.

INTRODUCTION

1. A fundamental principle of democracy -- rule by “the people”-- is that all of “the people” must have the equal opportunity to participate in the electoral process. The multiple provisions of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. No. 107-155, § 403, 116 Stat. 113 (2002), that increase hard money contribution limits threaten to undermine this fundamental principle of democracy, as guaranteed by the equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment to the United States Constitution.

2. By dramatically increasing the maximum hard-money contributions that donors may make, the BCRA allows the voices of the few to drown out the voices of the many, thereby precluding a large segment of the voting populace from commanding candidates’ attention to issues that concern them, rendering them voiceless and without influence in the political process, and denying their right to equal participation in the electoral process. Similarly, the “Millionaire Amendment” denies the right to equal participation to candidates with high levels of grassroots support but without access to large contributors.

3. By creating these economic obstacles to equal participation in the political process, the multiple BCRA provisions that increase hard-money contribution limits violate the

4. equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment to the United States Constitution.

NATURE OF THIS ACTION

5. This complaint alleges that sections 304, 307, and 319 of BCRA, which provide for various increases in hard money contribution limits in federal election campaigns, violate the equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment

to the United States Constitution by denying plaintiffs the equal opportunity to participate in all integral aspects of the electoral process.

6. Fundraising has become an integral part of the federal elective process. Because the amount of money raised by candidates in a federal election campaign often determines the winner of an election, politicians' electoral success depends in large measure upon those voters who are able to (and do) contribute at or near the maximum contribution limits allowed by federal law. As a result, wealthy contributors enjoy greater political access and influence in the political process than do low- or moderate-income voters. Moreover, regardless of grassroots support, candidates who are able to amass large contributions enjoy a significant competitive advantage over those candidates without access to such wealthy contributors. In raising the contribution limits, therefore, BCRA amplifies the voices of the few to drown out the voices of the many.

7. As voting citizens lacking access to substantial wealth, the voter plaintiffs are unable to make large contributions. The increased contribution limits of the BCRA, by enhancing the influence of the largest donors, will deny the voter plaintiffs an equal opportunity to command the attention of candidates to their concerns, and to have an equal voice with those candidates who are elected. In addition, the candidates preferred by the voter plaintiffs, representing the interests of non-affluent communities, will be hindered or prevented from mounting successful campaigns by the BCRA's increased contribution limits. The challenged provisions of BCRA thus render the voter plaintiffs politically powerless and deprive them of the equal opportunity to participate in an integral aspect of the electoral process.

8. As candidates lacking access to large contributors, the candidate plaintiffs suffer a competitive disadvantage from the BCRA's increased hard money contribution limits. This disadvantage is exacerbated by the Millionaire Amendment. Thus, they are denied the equal right to participate in all integral aspects of the electoral process.

9. The increase in contribution limits in the BCRA makes the existing imbalance between wealthy contributors, on the one hand, and low- and moderate-income voters, on the other hand, so great as to amount to a violation of the equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment to the United States Constitution.

10. Similarly, the increase in contribution limits under the Millionaire Amendment makes the existing imbalance between candidates with access to large contributors and candidates without such access so great as to amount to a violation of the equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment to the United States Constitution.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action under 28 U.S.C § 1331 and § 403 of BCRA.

12. Plaintiffs request a three-judge panel to review this action as allowed under 28 U.S.C. § 2284 and § 403 of BCRA.

13. Venue is established by § 403 of BCRA.

PARTIES

14. Plaintiff Victoria Jackson Gray Adams is registered and qualified to vote in Petersburg, Virginia. She is one of the founders, with Fannie Lou Hamer, of the Mississippi Freedom Democratic Party which challenged the seating of the all-white Mississippi delegation

to the Democratic National Convention in 1964. In 1965, Ms. Adams, Ms. Hamer, and another civil rights worker, Annie Devine, became the first African-American women in history to be seated on the floor of the U.S. House of Representatives. Ms. Adams is a life-long political activist, but she does not have the ability to make contributions anywhere near \$2,000.

15. Plaintiff Carrie Bolton is registered and qualified to vote in Pittsboro, North Carolina. She is also the President and Chair of the Board of Plaintiff Fannie Lou Hamer Project. She intends to support Cynthia Brown in her potential campaign for the U.S. Senate in 2004, but she does not have the ability to make contributions anywhere near \$2,000.

16. Plaintiff Cynthia Brown is registered and qualified to vote in Durham, North Carolina and is a Democratic candidate for the U.S. Senate in the upcoming 2002 Democratic primary election in North Carolina. If she does not prevail, she is considering running again in 2004 either in the Democratic primary or as an independent or third-party candidate challenging incumbent U.S. Senator John Edwards of North Carolina.

17. Plaintiff Victoria Fitzgerald is registered and qualified to vote in Washington, D.C. She is a board member and President of the Washington D.C. chapter of Plaintiff ACORN. Although a politically-active voter, she does not have the ability to make contributions anywhere near \$2,000.

18. Anurada Joshi is registered and qualified to vote in Berkeley, California. She is politically active and a member of the University of California-Berkeley PIRG chapter, but does not have the ability to make contributions anywhere near \$2,000.

19. Plaintiff Peter Kostmayer is a former Democratic member of the U.S. House of Representatives from Pennsylvania, serving for 14 years. He is considering running as a

Democrat for a seat in the U.S. House from the 8th Congressional District of Pennsylvania in 2004.

20. Plaintiff Derek Cressman is registered and qualified to vote in Sacramento, California. As the State PIRGs' Democracy Campaign Director, he is politically active, and he does not have the ability to make contributions anywhere near \$2,000.

21. Plaintiff Nancy Russell is registered and qualified to vote in Yardley, Pennsylvania. She resides in the same congressional district as Plaintiff Peter Kostmayer and intends to support his potential candidacy for the U.S. House of Representatives in 2004, but she does not have the ability to make contributions anywhere near \$2,000.

22. Kate Seely-Kirk is registered and qualified to vote in Berkeley, California. She is politically active and a member of the University of California-Berkeley PIRG chapter, but she does not have the ability to make contributions anywhere near \$2,000.

23. Plaintiff Rose Taylor is registered and qualified to vote in Baltimore, Maryland. She is a member and representative from Maryland on the Board of Plaintiff ACORN. Although a politically active voter, she does not have the ability to make contributions anywhere near \$2,000.

24. Plaintiff Stephanie L. Wilson is registered and qualified to vote in Kalamazoo Michigan. She is the executive director of Plaintiff Fannie Lou Hamer Project. Although a politically active voter, she does not have the ability to make contributions anywhere near \$2,000.

25. Plaintiff California Student Public Interest Research Group, Inc. (CALPIRG) is a non-profit, non-partisan organization that conducts research, public education, advocacy, and community service projects on issues that affect the public interest. CALPIRG has

approximately 20,000 college student members who generally are not capable of making contributions anywhere near \$2,000.

26. Plaintiff Massachusetts Student Public Interest Research Group (MASSPIRG) is a non-profit, non-partisan organization that conducts research, public education, advocacy, and community service projects on issues that affect the public interest. MASSPIRG has approximately 25,000 college student members who generally are not capable of making contributions anywhere near \$2,000.

27. The Public Interest Research Group of New Jersey, Inc. (NJPIRG Student Chapters) is a non-profit, non-partisan organization that conducts research, public education, and community service projects on issues that affect the public interest. The New Jersey PIRG Student Chapters have approximately 25,000 student members who generally are not capable of making contributions anywhere near \$2,000.

28. Plaintiff United States Public Interest Research Groups (U.S. PIRG) is a non-profit organization with its principal place of business in Washington D.C., which represents individual state PIRGs on matters of federal policy. The board of directors of U.S. PIRG consists of Executive Directors and student Board Chairs of state PIRGs.

29. Plaintiff Fannie Lou Hamer Project (FLHP) is a non-profit organization that has its main office located at 9 Gammon Avenue, SW, Atlanta, GA 30315 and operating offices at 729 Academy Street, Kalamazoo MI, 49007. FLHP, named after the legendary civil rights worker from Mississippi, fights for political equality for low and moderate-income communities of color across the country. The project seeks to address inequities in the campaign finance system which restrict civic and political participation based on socioeconomic status and which result in a disparate impact on communities of color.

30. Plaintiff Association of Community Organizations for Reform Now (ACORN) is the nation's largest community organization of low and moderate-income families, with over 120,000 member families organized into 600 neighborhood chapters in 45 cities across the country. ACORN's effort to advance the interests of low and moderate-income families is severely undermined by a system in which vast sums of money are required to engage in political participation.

31. Defendant Federal Election Commission (FEC) is an agency established by 2 U.S.C. § 437(c), which enforces the provisions of FECA and generally regulates the campaigns of candidates for federal office. As such, the FEC is charged with administering the campaign finance system in federal elections.

FACTUAL ALLEGATIONS

Radical Increases In Individual Contributions Under The Bipartisan Campaign Reform Act

32. The Bipartisan Campaign Reform Act of 2002 (BCRA) will radically increase the amount of money that individual donors are permitted to contribute to candidates in federal campaigns. Section 307(a) amends the Federal Election Campaign Act to raise the limit on individual contributions to candidates from \$1,000 to \$2,000 per election, and from \$2,000 to \$4,000 per election cycle. Section 307 (b) raises the aggregate limit that a donor may give to all candidates from \$25,000 to \$37,500.

33. In addition to raising the contribution levels, section 307 (d) of the BCRA provides that the contribution caps will be indexed for inflation.

34. In addition to the increased contribution limits described above, sections 304 and 319 of the BCRA further raise the contribution limits in races where one candidate is self-financed and spends over a certain threshold. Section 304 permits increased contributions in

Senate races where a candidate spends over a threshold amount in personal funds. If the candidate spends over two, but less than four, times the threshold amount of personal funds, then the opposing candidates may accept contributions of \$6,000 per donor per election, or \$12,000 per cycle. If the candidate spends from four to ten times the threshold amount in personal funds, the other candidates may accept contributions of \$12,000 per election, or \$24,000 per cycle, from an individual. If the candidate spends over ten times the threshold amount in personal funds, then the restrictions on spending by political parties in coordination with the other candidate are lifted.

35. Similarly, Section 319 permits candidates for the House of Representatives to accept individual contributions of \$6,000 when an opposing candidate spends over \$350,000 in personal funds.

The Exclusionary Effect Of Increasing Campaign Contributions In Federal Elections

36. Only a small percentage of donors are able to make large campaign contributions. Less than one eighth of one percent of the voting age population will be able to contribute the maximum individual contributions permitted by the BCRA.

37. The tiny fragment of the population making large contributions is entirely unrepresentative of the U.S. population as a whole. A 1997 national survey of congressional campaign contributors who gave \$200 or more found that 95% of such donors were white and 4/5 were male. The study also found that 81% had annual incomes of \$100,000 or more. A 1998 study examining campaign contributions by zip code found that a single, wealthy, ninety percent white district in Manhattan, with roughly 107,000 people, gave over \$9.3 million to federal candidates, while 9.5 million persons in 483 communities of color gave a combined total of \$5.5 million.

38. Large contributions determine electoral outcomes. Candidates who raised the most money won 93 percent of the seats up for election in Congress in 2000. Winners of seats in the U.S. House out-raised and out-spent their opponents by almost 3-to-1, as winners raised an average of \$916,629 million and losers on average raised \$309,213. In the Senate, winners raised \$7,307,402 on average while losers raised \$3,594,447.

39. The small group of large donors wields disproportionate influence in congressional races. Seventy percent of all money raised on the 2000 federal elections came from the two percent of the voting-age population giving over \$200, and forty-four percent of all funds raised came from the tiny fraction which gave over \$1,000. This will be exacerbated by the BCRA. Projections indicate that under the new limits, the proportion of funds raised in increments less than \$200 would shrink from 30 percent to about 21 percent.

40. Because of their importance to electoral outcomes, large donors have increased access to Members of Congress. A survey found that 61 percent of those giving contributions of \$200 or more reported personally knowing their House member and nearly one third reported knowing both of their U.S. Senators.

41. Congress itself has acknowledged the reality or appearance of unfair influence by large contributors, with the passage of the Tillman Act in 1907, prohibiting corporate campaign contributions; the amendment of the Tillman Act to prohibit contributions from labor unions; and the 1971 passage of the FECA itself. The BCRA itself was enacted largely in order to address the reality or appearance of unfair influence from large contributions made in the form of “soft money.”

42. The influence of large contributors under the BCRA will be magnified by the ability of donors to “bundle” contributions from family members or associates. A husband and

wife, with the requisite financial ability, could contribute \$8,000 per cycle to any federal candidate. The couple could give \$24,000 per cycle to a House candidate facing a self-funded opponent spending over \$350,000, and up to \$48,000 to a Senate candidate with a wealthy, self-funded opponent.

43. Business interests will be able to group together far larger contributions. For example, one senator received \$130,175 for his 2000 re-election effort from MBNA National Bank executives and their families. Under the BCRA, those same donors could have given that senator over \$260,350. The Enron executives who gave \$508,000 in thousand dollar contributions to federal candidates in the 2000 elections could give over a million dollars under the BCRA.

Injury To Voters And Voter Organizations

44. The voter plaintiffs, Victoria Jackson Gray Adams, Carrie Bolton, Derek Cressman, Victoria Fitzgerald, Anurada Joshi, Nancy Russell, Kate Seely-Kirk, Rose Taylor, and Stephanie L. Wilson, do not have high incomes or personal wealth. They cannot afford to make contributions anywhere near \$2,000.

45. The voter plaintiffs wish to have an equal voice with, and influence upon, the Members of Congress who represent them. The BCRA will shrink their voice beneath the level of notice, by forcing successful candidates to rely more heavily on the small segment of the population that makes extremely large contributions.

46. The voter plaintiffs wish to support candidates who do not rely on large campaign contributions, and who represent the interests of non-wealthy segments of the community. Because such candidates lack access to large contributions, they will be unable to successfully

compete for office under the increased contribution limits of the BCRA, as discussed *supra* in paragraphs 35-46.

47. Carrie Bolton wishes to support candidate plaintiff Cynthia Brown in her potential run for the U.S. Senate in North Carolina in 2004. Nancy Russell wishes to support candidate plaintiff Peter Kostmayer in his potential run for the 8th Congressional District of Pennsylvania in 2004. As discussed *infra* in paragraphs 51-58, the BCRA will prevent these voters' preferred candidates from successfully competing for office.

48. ACORN, CALPIRG, MASSPIRG, and NJPIRG Student Chapters represent the interests of non-wealthy voters and communities. The increased contribution limits of the BCRA will prevent the members of these organizations from electing the representatives of their choice and from having an equal voice with those representatives who are elected. The increased contribution limits of the BCRA will injure ACORN, CALPIRG, MASSPIRG, NJPIRG Student Chapters and the members of each organization by exacerbating the racial and economic inequalities of the campaign finance system to the point where the voices of low and moderate-income communities will shrink beneath the level of notice.

49. U.S. PIRG seeks to promote equal political representation for all voters regardless of economic status. U.S. PIRG served as the lead organization lobbying in the U.S. Congress against the increased contribution limits contained in the BCRA. The increased contribution limits of the BCRA will injure U.S. PIRG by exacerbating the racial and economic inequalities of the campaign finance system to the point where the voices of low and moderate-income communities will shrink beneath the level of notice.

50. The Fannie Lou Hamer Project (FLHP) seeks to increase the political representation of non-wealthy communities of color, who are able to make far fewer campaign contributions than wealthy communities, as discussed *supra* in paragraph

51. 36. The increased contribution limits of the BCRA will injure the FLHP by exacerbating the racial and economic inequalities of the campaign finance system to the point where the voices of low income and non-white communities will shrink beneath the level of notice.

52. By increasing the amount of money that the wealthiest portion of the population is able to donate to candidates, the BCRA will exclude the voter plaintiffs and organizations from effective political representation. It will prevent them from having an equal voice with Members of Congress and from electing the candidates of their choice to the U.S. Congress.

Injury To Candidates

53. The candidate plaintiffs Cynthia Brown and Peter Kostmayer are considering seeking federal office in 2004. However, their prospects of success are so reduced by the increased contribution limits of the BCRA that they may be deterred from doing so.

54. These candidate plaintiffs seek to represent the interests of the less affluent segments of their communities. They do not wish to solicit or accept large campaign contributions as permitted by the BCRA. They believe that such contributions create the appearance of unequal access and influence, and they do not wish to create such an appearance. Each of them desires, should he or she be elected to office, that all of his or her constituents feel that they have an equal claim on his or her representation. If these candidates accept the contributions permitted by the BCRA, they believe that their constituents may perceive them to favor the largest donors.

55. Neither do these candidates have contacts with large numbers of potential donors who could contribute the maximum amounts permitted by the BCRA.

56. These candidate plaintiffs expect to face opponents with access to large amounts of money. They expect that their opponents will solicit and accept large numbers of contributions at the maximum levels permitted by the BCRA.

57. If the BCRA's increased contribution limits remain in effect, these candidates expect their opponents to raise such disproportionately large amounts of money that the voices of the candidate plaintiffs will drop beneath the level of notice.

58. The fundraising disadvantage faced by the candidate plaintiffs will be further exacerbated should they face two opponents, one of whom is self-funded and spends sufficient amounts of money to trigger the higher contribution limits of sections 304 and 319 of the BCRA, and the other of whom seeks to take advantage of these further increases in the contribution limits.

59. Plaintiff Cynthia Brown has a particular expectation that this will be the case in her potential race for the U.S. Senate from North Carolina in 2004. Should she run as a Democratic candidate, one of her opponents in the primary election will likely be Senator John Edwards. Should she run as an Independent or third-party candidate, she will likely face Senator Edwards in the general election. In either the primary or general election, Senator Edwards is likely to spend personal funds over the threshold amounts triggering the increased contributions of Section 304 of the BCRA. A trial attorney possessing personal wealth, Senator Edwards spent \$6,150,000 of his personal funds towards his election in 1998.

60. For the above reasons, the increased contribution limits of the BCRA will place the candidate plaintiffs at a competitive disadvantage and will hinder or prevent them from mounting effective campaigns.

**COUNT I
(Equal Protection)**

61. Plaintiffs hereby repeat and re-allege paragraphs 1-58 as if fully set forth herein.

62. By precluding equal participation in the political process on the basis of economic status, §307 of the Bipartisan Campaign Reform Act, 2 U.S.C. § 441a, which doubles the amount individual donors are permitted to contribute to federal election campaigns, violates the equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment to the United States Constitution.

**COUNT II
(Equal Protection)**

63. Plaintiffs hereby repeat and re-allege paragraphs 1-60 as if fully set forth herein.

64. By precluding equal participation in the political process on the basis of economic status, §§ 304(a) and 319 of the Bipartisan Campaign Reform Act, 2 U.S.C. § 441a, which allow for the tripling of the already-increased hard money contribution limits when an opponent self-funds his or her campaign above a threshold amount, violate the equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, relying on the foregoing allegations, Plaintiffs respectfully request that this Court:

A. Declare that sections 304(a), 307, and 319 of BCRA, codified in 2 U.S.C. § 431 *et seq.*, violate the equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment to the United States Constitution;

B. Enter a permanent injunction, restraining Defendant from enforcing or otherwise applying sections 304(a), 307, and 319 of BCRA and ordering Defendant to enforce the provisions of the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 *et seq.*, that were amended by sections 304(a), 307, and 319 of BCRA as such provisions existed prior to the enactment of BCRA;

C. Retain jurisdiction over this case to monitor and ensure full compliance with the injunctive provisions of the Court's decree;

D. Award Plaintiffs' their attorney's fees and reasonable costs in bringing this litigation; and

E. Grant any other relief to Plaintiffs that the Court deems just and proper.

By their attorneys,

Date: May 7, 2002

JOHN C. BONIFAZ (*pro hac vice pending*)
LISA J. DANETZ (D.C. Bar No. 461985)
BONNIE TENNERIELLO (*pro hac vice pending*)
BRENDA WRIGHT (*pro hac vice pending*)
NATIONAL VOTING RIGHTS INSTITUTE
One Bromfield Street
Boston, MA 02108
(617) 368-9100

David A. Wilson (D.C. Bar No. 552388)
HALE AND DORR LLP
1455 Pennsylvania Ave., NW

10th Floor
Washington, DC 20004
(202) 942-8400

Attorneys for Plaintiffs