

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHRISTIAN CIVIC LEAGUE OF MAINE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 06-0614 (JWR, LFO, CKK)
)	
FEDERAL ELECTION COMMISSION,)	THREE-JUDGE COURT
)	
Defendant,)	
)	
<i>and</i>)	
)	
SEN. JOHN MCCAIN, <i>et al.</i> ,)	
)	
Intervening Defendants)	

INTERVENOR-DEFENDANTS' MEMORANDUM OF LAW
ON ISSUE OF MOOTNESS IN RESPONSE TO ORDER

In the Order issued June 23, 2006, this Court noted that the portion of this case that involves the "Crossroads" advertisement "appears moot unless the 'capable of repetition yet evading review' exception applies." The Court further noted that this exception "may not apply because the 'Crossroads' portion of the case—particularly in this fact-centered, as-applied challenge—may not be 'capable of repetition.'" Accordingly, the Court ordered, *inter alia*, that the Defendant and Intervenor-Defendants "file papers addressing the mootness of the 'Crossroads' portion of the case." Order at 2.

Intervenor-Defendants respectfully submit that the “Crossroads” portion of the case does indeed appear moot. Neither injunctive nor declaratory relief could have any practical effect on the parties, and any decision on the merits would therefore constitute an impermissible advisory opinion. Although the “capable of repetition, yet evading review” exception might in theory apply, Plaintiff bears the burden of establishing the conditions necessary for application of that doctrine. On the record before this Court—in which Plaintiff has represented that it has no intent to air “Crossroads” or a materially similar ad in the future—this dispute does not appear capable of repetition.

I. No Relief That This Court Could Issue With Respect To The “Crossroads” Advertisement Would Have Any Effect On The Rights Or Obligations Of The Parties.

In its complaint, Plaintiff Christian Civic League of Maine (“CCL”) sought two forms of relief with respect to the “Crossroads” advertisement. First, Plaintiff requested an injunction barring application of the Bipartisan Campaign Reform Act (“BCRA” or “Act”) to prohibit broadcast of “Crossroads” from May 13, 2006, when the ad became an “electioneering communication” under BCRA, until June 5, 2006, the scheduled date of a Senate vote on the federal Marriage Protection Amendment. Second, CCL sought a declaratory judgment holding BCRA unconstitutional as applied to the specific text of that contemplated broadcast advertisement during that time period. Verified Compl., at 13. Because neither injunctive nor declaratory relief would have any effect at this stage of the proceedings, there is no live controversy regarding the application of BCRA to the proposed “Crossroads” advertisement. *See, e.g., Calderon v. Moore*, 518 U.S. 149, 150 (1996) (case must be dismissed as moot when

