

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

CHRISTOPHER SHAYS and MARTIN MEEHAN	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Civil Action No. 06-CV-1247 (CKK)
FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	

**MOTION AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES OF  
U.S. SENATORS JOHN MCCAIN AND  
RUSSELL D. FEINGOLD TO PARTICIPATE AS AMICI CURIAE**

U.S. Senators John McCain and Russell D. Feingold, by their undersigned counsel, respectfully move this Court for leave to participate in this case as *amici curiae* in support of Plaintiffs in the above-captioned matter and to file the attached Memorandum Opposing Defendant Federal Election Commission’s (FEC) Motion for Summary Judgment.

*Amici* propose to limit their participation to filing briefs and making arguments on issues before the Court. Counsel for *amici* has spoken with Mr. Charles G. Curtis, counsel for Plaintiffs, who has consented to the *amici* participation of Senators McCain and Feingold in this proceeding; Defendant FEC has not consented.

As grounds for this motion, *amici* would show unto the Court that:

1. Proposed *amicus* John McCain is a U.S. Senator, representing the state of Arizona. Senator McCain was first elected to the U.S. Senate in November of 1986 and was re-elected every subsequent six years. Proposed *amicus* Russell D.

Feingold is a U.S. Senator, representing the state of Wisconsin. Senator Feingold was first elected to the U.S. Senate in November of 1992 and re-elected in November of 1998. Senators McCain and Feingold were each re-elected to the Senate in November of 2004.

2. Senators McCain and Feingold were the principal U.S. Senate sponsors of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. No. 107–155, 116 Stat. 81. They worked together over seven years to secure passage of BCRA, to rid politics of the corrupting influence of soft money and enhance the public’s confidence in the workings of its governing institutions.
3. The present case is a “related case” to an earlier case in which Senators McCain and Feingold participated as *amici curiae* with the FEC’s consent at both the district court and Circuit Court levels, *Shays v. FEC* (“*Shays I*”), 337 F. Supp. 2d 28 (D.D.C. 2004), *motion for stay denied*, 340 F. Supp. 2d 39 (D.D.C. 2004), *aff’d*, 414 F.3d 76 (D.C. Cir. 2005), *reh’g denied*, Oct. 21, 2005.
4. In *Shays I*, this Court invalidated fifteen of nineteen challenged FEC regulations to implement the Bipartisan Campaign Reform Act of 2002 (BCRA), legislation co-sponsored by Senators McCain and Feingold. The present “related case” is a challenge to multiple rules re-promulgated by the FEC in response to this Court’s order in *Shays I*, specifically, those pertaining to “coordinated communication,” “federal election activity,” and federal candidate and officeholder soft money solicitation at state party fundraising events. Senators McCain and Feingold strongly support the efforts of plaintiffs to challenge these recently re-promulgated FEC regulations, which undermine the purposes and intent of BCRA

and violate the Administrative Procedures Act (APA), codified at 5 U.S.C. §§ 551 *et seq.*

5. In addition to participating as *amici curiae* in the related *Shays I* case, Senators McCain and Feingold participated as *amici curiae* with the FEC's consent in *Shays v. FEC* ("*Shays II*"), 424 F. Supp. 2d 100 (D.D.C. 2006) (challenge to the FEC's failure to promulgate a rule regulating so-called "527" organizations).
6. Moreover, Senators McCain and Feingold participated as parties before this Court and the United States Supreme Court in the landmark *McConnell* case, defending the constitutionality of BCRA. *McConnell v. FEC*, 251 F. Supp. 2d 176, 260-64 (D.D.C. 2003) (three-judge court) (*per curiam*), *aff'd*, 540 U.S. 93 (2003) (defendant-intervenors).
7. This motion is timely in that the enclosed Memorandum Opposing Defendant FEC's Motion for Summary Judgment is being submitted within the time limits set forth in this Court's scheduling order for a reply to Defendant FEC's Motion for Summary Judgment. Moreover, participation by *amici* will not delay these proceedings in any way or burden any party.

WHEREFORE, premises considered, Senators John McCain and Russell D. Feingold respectfully pray that this Court will grant this motion and permit them to participate in this case as *amici curiae*.

Respectfully submitted,

/s/ J. Gerald Hebert

J. GERALD HEBERT

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Senators John McCain and Russ Feingold

**Dated: Feb. 16, 2007**

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

CHRISTOPHER SHAYS and	)	
MARTIN MEEHAN	)	
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FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	
	)	

**ORDER**

Pending before the Court is a motion by United States Senators JOHN McCAIN and RUSSELL D. FEINGOLD for leave to appear in this cause as *amici curiae* and to file a Memorandum Opposing the Defendant FEC’s Motion for Summary Judgment. For good cause shown, the motion for leave to participate as *amici curiae* by Senators McCain and Feingold is hereby GRANTED and the Memorandum of *Amici Curiae* shall be filed in this case.

This \_\_\_\_ day of February, 2007.

\_\_\_\_\_  
United States District Judge

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion with supporting memorandum of points and authorities and proposed order have been filed via email, pursuant to Part I(II)(F) of the “Clerk’s Office General Information & Civil Filing Procedures” (Documents Exempt From the CM/ECF System), on this 16<sup>th</sup> day of February, 2007. In addition, the following counsel have been served with copies of the foregoing motion for leave to participate *amici curiae* with supporting memorandum of points and authorities and proposed order via email (where email addresses are available and known) and via first-class mail, postage pre-paid.

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/s/ J. Gerald Hebert  
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