

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONGRESSMAN RON PAUL, <i>et al.</i> ,)	
	)	CIVIL ACTION NO. 02-CV-781
	)	Plaintiffs,
	)	(CKK, KLH, RJL)
)	
v.	)	Consolidated with
	)	CIVIL ACTION NOS.
FEDERAL ELECTION COMMISSION, <i>et al.</i>,	)	02-CV-582 (CKK, KLH, RJL) (Lead)
	)	02-CV-581 (CKK, KLH, RJL)
Defendants.	)	02-CV-633 (CKK, KLH, RJL)
	)	02-CV-751 (CKK, KLH, RJL)
	)	02-CV-753 (CKK, KLH, RJL)
	)	02-CV-754 (CKK, KLH, RJL)
	)	02-CV-874 (CKK, KLH, RJL)
	)	02-CV-875 (CKK, KLH, RJL)
	)	02-CV-877 (CKK, KLH, RJL)
	)	02-CV-881 (CKK, KLH, RJL)

DECLARATION OF MICHAEL CLOUD

Michael Cloud, a plaintiff in the above-referenced action, pursuant to 28 U.S.C. § 1746, declares the following:

INTRODUCTION

1. I am Michael Cloud. I am a plaintiff in this action in my capacity as an aggrieved citizen of the United States of America and the Commonwealth of Massachusetts. I am eligible to vote in all federal elections, including any election for the office of President , and I am a registered voter in the Commonwealth of Massachusetts. The federal election law wrongly limits my right to participate in elections both as a candidate and as a supporter of candidates by, among other things, restraining me from participating freely in the marketplace of ideas.

2. I am a plaintiff in this action because I am an aggrieved candidate for federal office, being the Libertarian Party's candidate for the United States Senate from the Commonwealth of Massachusetts in the 2002 election that will be held this November. I am the only challenger in this election facing an incumbent member of the Democrat Party, who enjoys not only the advantage of affiliation with his well-funded "major" party whose vast resources are not threatened by complying with federal election laws, but also the benefit of the selective attention of commercial media corporations. My campaign for federal office as the representative of the Libertarian Party is focused on promoting and educating the public about various policy issues and ideas, particularly the need to restore personal responsibility while reducing dependence upon the federal government. My campaign agenda is not merely to win office, but also, to promote the Libertarian Party's philosophy to the public so that others who share this philosophy can be elected to federal office and/or inspired to work towards instituting Libertarian principles. The pernicious effects of the Federal Election Campaign Act of 1971 ("FECA"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA") (collectively "FECA/BCRA"), undermine my candidacy and impinge on my constitutional rights to communicate with the public about my ideas for a limited government that respects the sovereignty of the people. Instead of being able to speak my conscience and to maximize the limited resources at my disposal to get my message out to the public for debate and consideration, the FECA/BCRA dictates the content of what I must say to the public, how I must say it, and when I must say it.

3. I am a plaintiff in this action because I demand the right to think, to speak and to exchange ideas with my fellow citizens according to my conscience, free from the arbitrary dictates of the government. “Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” John Milton, *Areopagitica* at 44.

4. I am a plaintiff in this action because my constitutional right to Freedom of the Press has been, is, and will continue to be, trampled and abridged by FECA/BCRA. The guarantee of Freedom of the Press belongs to me and every other citizen of the United States so that we can place our opinions before the public. “Every freeman has the undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the press.” (See IV W. Blackstone, *Commentaries on the Laws of England*, 151-152 (1769)). The FECA/BCRA steals the Freedom of Press from me and perverts it into a special privilege for the commercial media corporations. Having secured that special privilege, the commercial media corporations are then free, by action and omission, to promote the candidates of their choice and attack the candidates they dislike. Conversely, I risk imprisonment for up to five years if I knowingly violate certain of FECA/BCRA’s provisions. (See FECA/BCRA, 2 U.S.C. Section 437g(d)). The FECA/BCRA achieves the ignominious distinction of being a law that grants special privileges to a group (*i.e.*, commercial media corporations) that are denied to individuals.

5. I am a plaintiff in this action because, as a matter of conscience, I cannot sit idly by and accept the wrongful usurpation of my constitutional rights by the FECA/BCRA knowing that this statute does not mark a “reform” as its proponents assert, but rather, is an assault on liberty that has protected and will continue to protect incumbents and commercial media

corporate interests while muting, if not outright silencing, the voices of persons such as myself who are not members of the major parties and commercial media corporations and who advocate changing the status quo by returning to the limited government principles upon which the United States was founded.

THE HARM INFLICTED BY THE FECA/BCRA

6. I have been a member of the Libertarian Party for 27 years, and have been active in federal and state elections both as a candidate and as an active supporter of candidates. During approximately the last 11 years, I have personally raised over \$8 million for Libertarian candidates and the Libertarian Party. As noted above, I am presently the Libertarian Party's candidate for the United States Senate from the Commonwealth of Massachusetts. Previously, I ran as a Libertarian Party candidate for the United States Senate and the United States House of Representatives. I intend to participate in federal elections in the future as a candidate and/or as an active supporter of a candidate. I have accepted, do accept, and intend to continue to accept campaign contributions. In short, I have an abundance of first-hand experience in dealing with the "real world" impact that the FECA/BCRA causes and will cause to challenger candidates for federal office who, like me, represent a "third party."

7. As a "third party" challenger candidate, I face burdens and restrictions that the "major parties" and their candidates do not, and which make the time and cost burdens imposed by the FECA more regressive, onerous, and discriminatory. The time and costs spent complying with the FECA sap the limited resources available to get my ideas before the public in a

campaign. Furthermore, I do not receive the media exposure accorded incumbents or candidates from the “major” parties.

8. The FECA/BCRA is the equivalent of a double-barreled shotgun blast aimed at third-party challenger candidates such as me who advocate change, because it codifies the advantages of incumbency and fosters a “government by media.” Rather than creating a “level playing field” for candidates and encouraging free and open debate, the FECA/BCRA protects incumbents by restraining my right to engage in “electioneering communications” and “express advocacy.” The FECA/BCRA also empowers commercial media corporations with special privileges to express views about candidates and issues I cannot, and then immunizes the commercial media corporations from criminal prosecution for making statements about a candidate that could be a felony if my supporters uttered them.

9. To understand how truly harmful the FECA/BCRA is to me, a Libertarian candidate, it is necessary to appreciate how the FECA/BCRA severely exacerbates the difficulties that challengers such as me already face just to participate in a federal election. Some of these problems are addressed in the Report of Perry Willis, as an expert witness for the plaintiffs in this action. I have read, and I agree with, Mr. Willis’ Report. As I discuss in this Declaration, my personal experience as a candidate for federal office and as an active supporter of other candidates for federal office (and state office) confirms Mr. Willis’ conclusion that the federal campaign finance laws, despite their oft-stated good intentions, do not improve the electoral process, but instead, worsen it by further enhancing the advantages of incumbents and the

unchecked power of the established corporate media to make or break the candidate as they see fit.

10. The FECA/BCRA is part of a legislative pattern that continually adds more of what economists refer to as “barriers to entry” for new candidates who seek federal office. Among the major barriers to entry that impact me and other third-party candidates for federal office, and will continue to do so, are (i) having the funds needed to get on the ballot for election, and (ii) having the funds needed to comply with the FECA/BCRA after getting on the ballot for election. Even without the cost of complying with the FECA/BCRA, a campaign for federal office is very expensive. I was co-organizer, fundraiser, and CEO for Libertarian Party candidate Carla Howell’s campaign for the United States Senate in 2000. It cost approximately \$60,000 just to qualify her so that her name appeared on the ballot.

11. I make every effort to maximize my limited resources so that my campaign can participate actively in the marketplace of political ideas. Like many third-party candidates whom I know and have worked for, my home also serves as my campaign headquarters. This allows me to avoid the expense of renting a separate office and hiring security to protect ballot signatures, contributor lists, and other vital campaign information.

12. The pay and perquisites for a U.S. Senator are enormous. In truth, a challenger must overcome not just the campaign war chest of a U.S. Senator and his superior fund raising advantages; he or she must also overcome the benefits that an incumbent enjoys courtesy of the federal government, which is to say, courtesy of the taxpayer whose assistance is not voluntary,

in that the taxpayer may oppose everything that the incumbent stands for. Here are some of the taxpayer subsidies to a U.S. Senator:

- Annual salary of \$150,000 for most Senators (majority and minority leaders receive \$166,700)
- Tax deduction for living expenses while away from home state
- Health insurance
- Life insurance
- Retirement system
- Administrative and clerical assistance allowance
- Legislative assistance allowance
- Telecommunications equipment and service for Washington, D.C. and home state
- Stationery and other office supplies as well as use of Senate copying equipment
- Preparation of required official reports, acquisition of mailing lists to be used for official purposes, and the mailing, delivery, and transmittal of matters relating to official business
- Annual expenditure for mass mailings
- Official office expenses incurred for an office in home state other than equipment or furniture
- Expenditures for publications printed or recorded for auditory and visual use, including subscriptions and purchases of books and other publications, and fees to access computer databanks
- Travel expenses for Senator and employees while on official business
- Additional office equipment and related services for Washington, D.C. and home state
- Recording and photographic services and products obtained through the Senate recording and photographic studios

- Other official expenses as a Senator determines are necessary, such as conference fees, expenses for town meetings, and procurement of non-standard equipment, among other expenses
- Franked mail allotment
- Senate interns
- Paper, letterhead, and envelope allowance
- Public document envelope allowance
- Office space in states
- Mobile office space
- Furniture and furnishings in Washington, D.C. and home state offices
- Office equipment in Washington, D.C. and home state offices

According to the Congressional Research Service, in 1999, for U.S. Senators, (i) the administrative and clerical assistance allowance, (2) the legislative assistance allowance, and (3) the office expense allowance combined, ranged from **\$1,823,086 to \$3,144,999**. Over a six Senate year term, this amounts to between \$11-19 million (approximately), without any time or cost whatsoever incurred for fund-raising. CRS Report for Congress, RL30064, Salaries and Allowances: The Congress, and “Salaries and Benefits of U.S. Congress Members,” <http://www.house.gov/rules/RL30064.pdf> (page CRS-5); “Salaries and Benefits of U.S. Congress Members,” <http://usgovinfo.miningco.com/library/weekly/aa031200a.htm>; and “Pay and Perquisites of Members of Congress” <http://thecapitol.net/GAQ/payandperqs.htm>.

13. In my current campaign against Senator John F. Kerry, I face an incumbent who is in his third term, meaning that he is completing 18 years in office. In his last election in 1996,

he spent over \$10 million dollars to make himself even better known to the voters of Massachusetts. He receives extensive coverage from the Massachusetts, particularly Boston, press. He is a favorite guest of many of the national television “news” shows which invite him on the air to give his views on domestic and foreign policy matters of all kinds. When pork barrel spending occurs in Massachusetts, it provides him with more opportunities for lavish press coverage. The cash value to his campaign of this media promotion is enormous.

He has government paid state offices in Boston, Fall River, Springfield, and Worcester, in addition to his office in Washington, D.C.. He has a complete staff in Washington, including a scheduler and a press secretary which, of course, provide services which would appear virtually impossible not to overlap into campaign activities. He is provided a web site by the federal government, <http://kerry.senate.gov/>. This web site details how internships, flags that have flown over the Capitol building, and academy nominations can be obtained from Senator Kerry’s office. The web site has information about facts, tourism, culture, education, sports, and even a kids’ page. He has the ability to send out franked letters and newsletters, which is worth millions. He has a complete legislative staff to advise him about legislation, doing at government expense what we must use hard dollars to replicate even to a small degree.

Senator Kerry has an entire staff of people to handle constituent services, acting as an ombudsman with federal government agencies which handle problems that citizens have with receiving benefits due to inefficient government. The more government handout programs, the more citizens that can be benefited by Senator Kerry’s assistance. Curiously, the more bureaucratic and inefficient executive branch agencies are allowed to be, the more work that

members of Congress have to look good with the constituents for whom they have done favors.

Actually, I have little concern about how much money Senator Kerry has to spend. Senator Kerry's name identification and public presence in Massachusetts is so ubiquitous that I doubt it would be noticed if Senator Kerry had an additional \$10 million to spend on his election. On the other hand, I care greatly about how much money I have to spend on my campaign to overcome the many advantages that Senator Kerry has before the election even begins. If I had only a fraction of that \$10 million to spend on my election, I could reach the type of name identification and presence that would make my candidacy real to the voters of Massachusetts, and give them a real choice.

Senator Kerry can raise money from business PACs due to his Committee assignments, and I do not begrudge him this ability. But I do object when the federal laws that he helped write virtually ensure that he will not have serious campaign opposition for the rest of his life, due to the restrictions that they place on fund raising by challengers such as myself.

Since there is no Republican in this race, Senator Kerry may choose to save substantial money in his campaign, thereby having a war chest to carry over to the next election to cause any potential challenger to think twice before challenging him.

14. The financial and reporting burdens imposed by complying with the FECA strain my already limited resources to the breaking point. The FECA's financial and reporting burdens include (i) the burden to register an authorized campaign committee with the Federal Election Commission ("FEC") (*see* 2 U.S.C. Section 433); (ii) the burden to file periodic reports with the FEC of receipts and disbursements that are then subject to inspection by the public (*see* 2 U.S.C.

Section 433); (iii) the burden to adhere to limitations on the amount of individual contributions (*see* 2 U.S.C. Sections 441a, 441d, 441f, and 441g); and (iv) the burden to report the names, addresses and occupations of contributors who give certain amounts (*see* 2 U.S.C. Section 434).

15. The FECA/BCRA denies me financial support from individuals who share my views, but who, for fear of having their support disclosed publicly or violating the FECA, cannot contribute as fully to my campaign as they would otherwise if their privacy could be protected. There are at least 46 contributors to my U.S. Senate campaign that have given the maximum amount permitted by the FECA and who would, but for the limits imposed by the FECA, contribute even more to my campaign. As a seasoned, professional political fundraiser, I estimate that these 46 contributors would donate between \$350,000 and \$700,000 in net, spendable funds.

16. There are also at least 261 contributors to my campaign who have contributed in amounts below that which triggers the FECA's mandatory contributor disclosure requirements (more than \$200 in a calendar year per election), probably so that their anonymity can be maintained. The reasons for maintaining anonymity are sundry, and often range between genuine fear of injury from others to strong personal beliefs that disclosure is inappropriate. Some contributors do not want their identity disclosed because, as a matter of principle, they believe that the government has no right to know who they support for a particular office. This creates a "catch 22" in that these contributors want to elect me because of my Libertarian commitment to protecting individual privacy, but to do that, they will have to surrender their privacy. As a seasoned political fundraiser, I estimate that these 261-plus individuals would contribute between \$100,000 and \$300,000. It is incongruous that our system demands that anonymity be

maintained when we vote, so that each of us is free to vote for the candidate of our choice without fear of retribution, but affirmatively prohibits anonymity in the campaign process that culminates in the actual voting. I strongly believe that contributors to a campaign are entitled to the same anonymity as voters, not less.

17. Other contributors want their anonymity maintained because they fear reprisals by the government and/or the incumbent party or candidate. Their fear is justified. In 2001, for example, Richard Egan was being considered by President Bush for the appointment as the Ambassador to Ireland. Mr. Egan had previously donated \$2,000 to Carla Howell during her campaign for the United States Senate against the incumbent, Edward Kennedy. Senator Kennedy cited to Mr. Egan's donation as a basis for questioning Mr. Egan's fitness to serve as ambassador.

18. I utterly reject the contention that avoidance of the appearance of corruption is a sufficient basis for mandating disclosures about contributors. I believe that each person can decide for himself/herself whether a candidate is worthy of support without the government forcing candidates to disclose the identities of their donors.

19. The new provisions in BCRA banning "soft money" contributions to political parties have, and will continue to have, a similarly debilitating impact on me and other Libertarians. Although I have not received funds from the national Libertarian Party in my current campaign, in the past I have been involved in Libertarian Presidential campaigns in 1988, 1992, 1996, and 2000, as well as other federal campaigns where the national Libertarian Party has provided support to the Libertarian candidates for federal office. That support was vital in

some instances in enabling the Libertarian candidate to have the wherewithal to get on the ballot and to continue his or her campaign. That type of assistance may be outlawed, however, pursuant to the BCRA's prohibition against national party committees from soliciting, receiving, or directing "soft money." *See* BCRA Section 101(a).

20. In order to maximize my limited resources and take advantage of economies of scale, I have also worked with other Libertarian Party candidates for state and federal office. For example, Carla Howell is the Libertarian Party candidate for Governor of Massachusetts. We have mailed our respective campaign bumper stickers in one envelope and split the cost of the mailing. We have submitted our respective campaign literature for printing as two parts of one large job to get a more favorable large-scale price, with each of us bearing our share of the reduced cost. The BCRA's prohibitions on use of "soft money," including prohibiting state and local candidates from spending "soft money" on communications citing federal candidates, and its limitations on coordinated independent expenditures, may make these types of actions, which were borne out of the necessity for thrift, efficiency, and economy, a civil and criminal violation.

21. I want to be free of the mandatory licensing burdens imposed by the FECA/BCRA. I want to be able to campaign for federal office free from the burden of having to create and register an authorized campaign committee with the FEC. I want to be able to campaign for office free from the mandatory burden of filing periodic reports of receipts and disbursements with the FEC. In my current and likely future campaigns, I want to be free from the mandatory limitations upon individual financial contributions. I want to be free from the

mandatory burden of having to report the names, addresses, occupations, and employers of donors to my campaign.

22. With such freedom, my resources would be less burdened and I would have a greater ability to get my ideas before the public and to compete more effectively against incumbents and major party opponents.

23. The “second barrel” of the FECA/BCRA “shotgun” is the special privileges and immunities it grants to institutional media. The assumption used to justify granting these special privileges and immunities is that such entities are non-partisan. My experience is that commercial media corporations, for example, are highly partisan and that to presume otherwise is an act of ignorance, folly, or both. The FECA/BCRA fosters a scheme of “government by media” by granting institutional media a special exemption from its provisions.

24. In the past, the media were overtly partisan. Parties operated their own newspapers, for example. Today, commercial media corporations might not be operated directly by the major parties, but they are still just as partisan.

25. I am personally familiar with the power of commercial media corporations to make or break a candidacy. The commercial media corporations do this directly by endorsing a particular candidate. But they have even more insidious ways of making or breaking candidates or campaigns. They choose what to report and what not to report. How to report it and how not to report it. When to report it and when not to report it. Or whether to report it at all. The power to edit is the power to editorialize. This is endorsement by other means.

For example, in my 2002 U.S. Senate campaign against three-term U.S. Senator John Kerry, I am Senator Kerry's only opponent. In the 14 months since I began my campaign for the U.S. Senate, WGBH-TV (PBS), WBZ-TV (CBS), WCVB-TV (ABC), and WHDH-TV (NBC) have refused to cover me or my campaign. Refused to send reporters. Refused to allow me to do in-studio interviews. And, on several occasions, these FCC-licensed television stations have announced during newscasts that Senator John Kerry is UNOPPOSED. Their news departments have treated our campaign workers rudely, refused to discuss the matter, and hung up the phone on us. Their 1984-style "Censorship by Media" has held down my name recognition, held back my campaign for U.S. Senate, driven down my donations from supporters, and suppressed coverage of me by other media, e.g., newspapers and radio stations. Then these television stations claim I have no public support and therefore I am not "newsworthy." It has been said "They break my legs and then tell me they don't cover cripples."

To add insult to injury, these television stations widely reported and eagerly covered a novice Republican who failed to collect the required 10,000 signatures to get on the ballot for U.S. Senate. Further, they covered an embarrassing attempt by another Republican candidate to become the Republican U.S. Senate nominee by trying to persuade 10,000 Republican primary voters to write his name in for U.S. Senate. This "write-in campaign" was done by a Republican who was already on the ballot for Massachusetts Secretary of State.

Republican failure, incompetence, and humiliation are newsworthy in the U.S. Senate race, but a Libertarian success is not. A candidate who has raised \$8 million in the last 11 years for Libertarian campaigns is not newsworthy. A candidate who champions small government,

individual liberty, and personal responsibility is consigned to Orwell's memory hole. Blacked out. Censored.

In 1997, Ed Rollins was criticized and condemned for suppressing African-American voter turnout for New Jersey Republican gubernatorial candidate Christine Todd Whitman. Mr. Rollins spread around a lot of "walking around money" to African-American preachers and community leaders in New Jersey so that they would discourage and oppose African-American voter turnout. Mr. Rollins' tactic apparently worked. Governor Whitman won re-election by fewer than 27,000 votes. In 2002, WGBH-TV (PBS), WBZ-TV (CBS), WCVB-TV (ABC), and WHDH-TV (NBC) are engaging in a de facto pattern of suppressing voter turnout that is as insidious and destructive to the voting process as the reported actions of Ed Rollins and former Governor Christine Todd Whitman described above.

26. The Libertarian Party is truly a party of ideas and political philosophy that, by choice and necessity, is uniquely integrated with its candidates for federal and state office. The commercial media's refusal to cover Libertarian candidates is not a neutral act; it is tantamount to opposition.

27. For example, in Massachusetts, the *Boston Globe* strongly favors the Democratic Party. The *Boston Globe* has a long-standing record of endorsing almost exclusively Democratic Party candidates for federal office. By any reasonable definition, the *Boston Globe* is a partisan for the Democratic Party. Very liberal Republicans are acceptable if circumstances dictate. Further, the Boston Globe Group owns hundreds of newspapers in Massachusetts. Just as Wal-

Mart headquarters dictates the policies of the Wal-Mart stores, the Boston Globe dictates the coverage and editorial policies of its chain of newspapers.

28. This partisanship is shown directly by its endorsements and commentaries about particular candidates and political parties. It is also manifested indirectly by the lack of attention that mass media outlets give to third party challenger candidates. The reality for my candidacy and of other Libertarians is that the *Boston Globe's* favoring of Democratic Party candidates means that my ideas receive virtually no public exposure in the *Boston Globe*. As a challenger candidate, I am subject to a virtual news blackout by the *Boston Globe*. I have no quarrel *per se* with the *Boston Globe's* right to endorse a particular candidate. I strenuously object, however, to the special privileges and immunities that the FECA/BCRA bestows upon the partisan commercial media corporate outlets such as the *Boston Globe*. The FECA/BCRA allows commercial media corporate outlets such as the *Boston Globe* to make "electioneering communications" under the fiction that its purported news stories, commentaries, and editorials are non-partisan.

29. As part of my candidacy for federal office, and in order to put my ideas and the Libertarian Party's philosophy before the public for its consideration, I frequently make reference to clearly-identified candidates for federal and state office, (*i.e.*, my opponents in the election), and I often criticize their positions and actions.

30. In addition, I frequently refer to other clearly-identified candidates for federal and state offices whose candidacies I support and those whose candidacies I oppose. I do not expressly advocate voting for or against such candidates; rather, I explain my support or

opposition of the particular candidacy based on the candidate's actions and proposals. I fully intend to continue to express my opinions about the actions and positions of clearly-identified candidates for federal and state office in the future as part of my continuing efforts to have the public consider my ideas and the Libertarian Party's philosophy. As a plaintiff in this action, I want to be able to do so without fear of criminal prosecution.

31. I desire to campaign for federal office and to support the campaigns of others free from the editorial control and discriminatory burdens imposed by the FECA/BCRA. In sum, I desire to be free to communicate in an unrestricted manner with the public and to allow the public to judge the extent to which they want to support my candidacy and my ideas without concern that I will be committing a crime for speaking my conscience and, without compromising the privacy of those who support me.

32. For all of the above reasons, I believe that the FECA/BCRA violates my right of Freedom of the Press under the United States Constitution.

I declare under penalty of perjury that the foregoing is true and correct.

Michael Cloud

Executed on: _____