

**United States District Court  
Eastern District of Virginia  
Richmond Division**

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<b>The Real Truth About Obama, Inc.</b>  v. <b>Federal Election Commission and United States Department of Justice,</b>	<i>Plaintiff,</i>	<b>Case No. 3:08-cv-00483-JRS</b>
	<i>Defendants.</i>	

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**Second Preliminary Injunction Motion**

The Real Truth About Obama, Inc. (“RTAO”) moves for a preliminary injunction against Defendants to enjoin them from enforcing (a) 11 C.F.R. § 100.22(b) (“expressly advocating”), (b) the FEC’s PAC status enforcement policy, including the major-purpose test; and (c) 11 C.F.R. § 114.15 (*WRTL II* appeal-to-vote test) facially and as applied to RTAO’s proposed radio and internet advertisement “Survivors.”

**Brief in Support**

In addition to the activities described in its *Verified Complaint*, (Doc. 1), RTAO has developed this similar new advertisement “Survivors” for which it also seeks judicial relief to broadcast and place on its website. “Survivors” is in response to a controversy arising just last week over whether Senator Obama has lied about his voting record as an Illinois State Senator on a state equivalent to the federal Born-Alive Infants Protection Act (which requires that any child born alive, even after an attempted abortion, be protected as any born child), and in turn Senator Obama has now said that National Right to Life Committee has lied about his voting record on this issue. See <http://www.nrlc.org/ObamaBAIPA/Obamacoveruponbornalive.htm>. The script of

“Survivors” is as follows:

**NURSE:** The abortion was supposed to kill him, but he was born alive. I couldn’t bear to follow hospital policy and leave him on a cold counter to die, so I held and rocked him for 45 minutes until he took his last breath.

**MALE VOICE:** As an Illinois Democratic State Senator, Barack Obama voted three times to deny lifesaving medical treatment to living, breathing babies who survive abortions. For four years, Obama has tried to cover-up his horrendous votes by saying the bills didn’t have clarifying language he favored. Obama has been lying. Illinois documents from the very committee Obama chaired show he voted against a bill that did contain the clarifying language he says he favors.

Obama’s callousness in denying lifesaving treatment to tiny babies who survive abortions reveals a lack of character and compassion that should give everyone pause.

Paid for by The Real Truth About Obama, Inc.

RTAO fears that because “Survivors” attacks the character and policy positions of a politician, who happens to be a candidate for president, it will be deemed “express advocacy” under the FEC’s vague and overbroad definition at 11 C.F.R § 100.22(b), or may be deemed an electioneering communication under the FEC’s vague and overbroad regulation at 11 C.F.R. § 114.15. RTAO’s fear is further reinforced by statements made by the FEC in its opposition to RTAO’s first motion for preliminary injunction, (Doc. 31), where it looked to whether an ad questions a candidate’s “leadership qualities or patriotism” to determine whether it contains express advocacy. *FEC’s Memorandum in Opposition to Plaintiff’s Motion for Preliminary Injunction* (Doc. 31) at 12 n.5.

Just as with the “Change” ad, the challenged provisions are unconstitutional as applied to “Survivors” for the reasons stated in RTAO’s complaint, (Doc. 1), and memorandum in support of its first motion for preliminary injunction. (Doc. 4). Rather than reproduce RTAO’s memorandum in support of its first preliminary injunction, (Doc. 4), RTAO incorporates that document by

reference and the Court is respectfully directed to the legal arguments and analysis therein which apply equally to RTAO's ad "Survivors."

RTAO requests that the hearing for this motion be combined with the hearing on the first motion for preliminary injunction scheduled for September 10, 2008, at 1:00 P.M. RTAO respectfully moves that a preliminary injunction should issue and no security should be required, or it should be nominal, since Defendants have no monetary stake.

Respectfully submitted,

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## Certificate of Service

I hereby certify that on August 20, 2008, I served upon the below listed persons copies of this document by electronically filing this document for electronic transmission.

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