

IN THE SUPREME COURT OF THE UNITED STATES

Nos. 02-1674, et al.

MITCH McCONNELL, SENATOR, ET AL., APPELLANTS/CROSS-APPELLEES

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION OF INTERVENOR-DEFENDANTS
SENATOR JOHN McCain, ET AL.,
FOR LEAVE TO FILE BRIEF UNDER SEAL

Pursuant to this Court's Rule 21, the intervenor-defendants (appellants in No. 02-1701 and appellees in the remaining cases) respectfully move for leave to file their brief on the merits under seal, because the brief includes references to materials designated as confidential by other parties in accordance with the protective order entered by the district court, and those parties have declined to lift their designations to allow the filing of an unredacted brief. *See Turner Broadcasting Sys. v. FCC*, 518 U.S. 1032 (1996) (granting motion to file one volume of joint appendix under seal, where documents contained therein were subject to confidentiality order). After consultation with the Office of the Clerk, the intervenor-defendants are filing this motion together with 20 unredacted copies of the page-proof version of our brief, and 40 redacted copies of the brief for the Court's public file.

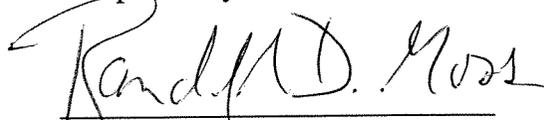
1. On August 13, 2002, the district court entered an Agreed Protective Order permitting parties to designate as confidential certain material produced during discovery. At oral argument on December 5, 2002, the court notified the parties of its intention to unseal the entire record filed with the court, subject to the filing of specific objections. The intervenor-defendants supported a broad unsealing of the record, and did not object to the disclosure of any of the material covered by this motion. Various objections were, however, filed, and the three-judge district court remanded all matters concerning confidentiality to Judge Kollar-Kotelly, sitting as a single-judge court. Order of Jan. 16, 2003. On May 2, 2003, in conjunction with the entry of the district court's judgment, Judge Kollar-Kotelly issued an order unsealing much of the record, including portions quoted or directly cited in the district court's opinions, but permitting certain materials to remain under seal.

2. The record materials that remain under seal include certain documents from plaintiff AFL-CIO that are described in Judge Kollar-Kotelly's May 2 confidentiality order (at 33-34) and in her and Judge Leon's opinions as part of the three-judge district court, Supp. App. to Juris. Stmts. 679sa-680sa (Kollar-Kotelly), 1317sa-1319sa (Leon), and other documents from The Coalition—Americans Working for Real Change (involving plaintiffs the Chamber of Commerce, the National Association of Manufacturers, and the Associated Builders and Contractors (the "Business Plaintiffs")), that are described in the May 2 order at 31-32, and in the opinions below at 686sa-689sa (Kollar-Kotelly), 1321sa-1323sa (Leon). The documents in question "were deemed probative and relevant to the issues in the case by the Three-Judge District Court." *Id.* at 34.

3. Although the May 2 order lifts the parties' confidentiality designations as to portions of these materials actually quoted or directly cited in the opinions below, other portions remain under seal. *See* Order 5-6 & n.3. The intervenor-defendants' brief on the merits quotes and cites portions of these documents that are not quoted or directly cited in the district court's opinions (and a small amount of related testimony). The cited materials speak to a point that is central to the proper resolution of plaintiffs' facial challenge to BCRA. Before filing this motion counsel for the intervenor-defendants contacted counsel for the AFL-CIO and counsel for the Business Plaintiffs, but each declined to lift the pertinent confidentiality designations.

4. Accordingly, the intervenor-defendants respectfully request permission to file their brief on the merits under seal, together with a redacted version for the public record. This approach will permit a full presentation of the evidence to this Court, while depriving the public of information only to the extent necessitated by plaintiffs' confidentiality designations and the district court's May 2 order.

Respectfully submitted,



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