

IN THE SUPREME COURT OF THE UNITED STATES

SENATOR MITCH McCONNELL et al.,
Appellants/Cross-Appellees,

v. .

FEDERAL ELECTION COMMISSION et al.,
Appellees/Cross-Appellants.

On Appeal From The United States
District Court For The District Of Columbia

RESPONSE TO MOTION BY NATIONAL RIFLE ASSOCIATION ET AL.
FOR RECONSIDERATION OF ORDER CONCERNING DIVIDED ARGUMENT

Appellants in No. 02-1674 (Senator Mitch McConnell; Southeastern Legal Foundation, Inc.; Representative Bob Barr; Center for Individual Freedom; National Right to Work Committee; 60 Plus Association, Inc.; U.S. d/b/a Pro English; Thomas E. McInerney; and the National Association of Broadcasters) come before the Court and state as follows:

1. A mere four days after this Court denied their motion for divided oral argument, appellants in No. 02-1675, NRA v. FEC, have moved for reconsideration. See Motion for Reconsideration of Order Concerning Oral Argument, August 8, 2003. That concededly "extraordinary" motion, see id. at 1, should be denied.

The sole basis the NRA appellants advance for reconsideration is that the federal defendants frequently cite the NRA appellants' opening brief in their own brief. See id. at 2-3. To the extent that those citations relate to essentially factual issues distinct

to the NRA -- such as the question whether half-hour "infomercials" such as the NRA's would be covered by BCRA's "electioneering communications" provisions, see id. at 3 -- those matters can be adequately addressed in the NRA appellants' reply brief, and need not be the subject of separate oral argument.

To the extent that those citations relate to supposedly distinct legal issues presented by the NRA appellants, we have already demonstrated, in our response to the NRA appellants' initial motion for divided argument, see Response to Mots. for Divided Argument 4, that the only truly distinct argument presented by the NRA appellants is their equal protection challenge to the statutory exception for news stories and editorials -- to which the federal defendants devote barely one page of their 135-page brief, see Fed. Defts. Br. 115-16. Even if other legal arguments presented by the NRA were distinctive, the NRA appellants cite only nine pages of the federal defendants' brief that address those arguments. See Mot. for Reconsideration 2-3. Surely the NRA appellants can adequately respond to those citations in their twenty-page reply brief.

2. Granting argument time to the NRA appellants at this late date would be both imprudent and inappropriate. In its order concerning oral argument, this Court allowed five lawyers to argue on the plaintiffs' side -- one more, in fact, than was allowed in

Buckley v. Valeo. Further, the Court reduced the amount of time we proposed be allotted to plaintiffs for argument on BCRA's "electioneering communications" provisions (and a host of miscellaneous provisions) from 60 minutes to 50 minutes. Allowing a sixth lawyer to argue for plaintiffs, and a third lawyer in the limited time allocated to plaintiffs for argument on the BCRA's "electioneering communications" provisions, would disserve the plaintiffs' interest in an orderly, coherent, and non-repetitive presentation of the many issues in these appeals. Similarly, it would be inappropriate to substitute counsel for the NRA plaintiffs at this eleventh hour for counsel for the AFL-CIO, whose request for oral argument was supported by seven of the eleven groups of plaintiffs in this litigation.

* * *

For the reasons stated herein, the NRA plaintiffs' motion for reconsideration should be denied.

Respectfully submitted,

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No. 02-1674 et al.

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CERTIFICATE OF SERVICE

I, Kenneth W. Starr, a member of the Supreme Court Bar, hereby certify that one copy of the foregoing Response to Motion for Reconsideration of Order Concerning Oral Argument was served on all parties required to be served. Service was made by electronic mail and Federal Express on August 11, 2003, to:

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