

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-582  
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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**FILED** ✓

OCT - 8 2002

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

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NATIONAL RIFLE ASSOCIATION, *et al.*,

Plaintiffs,

v.

Civ. No. 02-581  
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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EMILY ECHOLS, *et al.*,

Plaintiffs,

v.

Civ. No. 02-633  
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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CHAMBER OF COMMERCE OF THE  
UNITED STATES, *et al.*,

Plaintiffs,

v.

Civ. No. 02-751  
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et*  
*al.*,

Defendants.

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NATIONAL ASSOCIATION OF  
BROADCASTERS,

Plaintiff,

v.

Civ. No. 02-753  
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et*  
*al.*,

Defendants.

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AFL-CIO, *et al.*,

Plaintiffs,

v.

Civ. No. 02-754  
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et*  
*al.*,

Defendants.

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CONGRESSMAN RON PAUL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-781  
(CKK, KLH, RJI)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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REPUBLICAN NATIONAL COMMITTEE,  
*et al.*,

Plaintiffs,

v.

Civ. No. 02-874  
(CKK, KLH, RJI)

FEDERAL ELECTION COMMISSION,

Defendant.

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CALIFORNIA DEMOCRATIC PARTY, *et al.*,

Plaintiffs,

v.

Civ. No. 02-875  
(CKK, KLH, RJI)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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VICTORIA JACKSON GRAY ADAMS, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

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Civ. No. 02-877  
(CKK, KLH, RJL)

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BENNIE G. THOMPSON, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

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Civ. No. 02-881  
(CKK, KLH, RJL)

**ORDER DENYING RNC PLAINTIFFS' MOTION TO STRIKE  
CERTAIN WITNESSES OR FOR CERTIFICATION OF COUNSEL**

(October 8, 2002)

The plaintiffs in Civ. No. 02-874 (collectively, RNC) have moved the Court to strike 42 fact witnesses and five expert witnesses upon whose testimony the defendants intend to rely at trial. On September 16, 2002 the defendants served on the RNC and the other parties their final witness lists, which designated the challenged witnesses for the first

time and more than tripled the number of defense fact witnesses from 17 to 59. On September 18 the RNC objected to the final witness lists, stating that “[t]he scope of these new disclosures is outrageous” and urging the defendants to “withdraw their untimely designation.” Mem. in Supp. of Mot., Ex. 3. The defendants responded that same day, pointing out that our April 24 scheduling order sets September 16 as the “deadline to exchange final lists of affirmative fact and expert witnesses that the parties intend to use at trial.” Sched. Order of 4/24/02. In opposing the instant motion, the defendants make the same point and argue simply that (1) they have complied with our scheduling order, *see* Opp’n at 3-4; (2) “the relief proposed by the RNC is draconian,” *id.* at 4; and (3) the RNC’s failure to meet and confer with the defendants about its objections is fatal to the motion to strike, *see id.* We agree and therefore deny the motion.


We note at the outset that a last-minute introduction of 42 fact witnesses and five expert witnesses is a substantial increase; as the defendants emphasize in their surreply, however, it is not inconsistent with the letter of our scheduling order, which plainly contemplates that the parties would disclose new fact and expert witnesses as late as the “[d]eadline” for “final lists” on September 16. Sched. Order of 4/24/02; *see* Surreply at 2, 4-5. Moreover, striking the witnesses would be an extreme measure even had the defendants run afoul of our order for, as they contend, “[t]he RNC has not claimed that it was unfairly surprised by any of the witnesses.” Opp’n at 4. We would be reluctant in any event—and we therefore decline here—to deprive ourselves and the United States

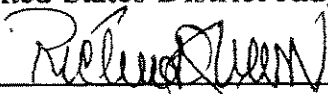
Supreme Court of a fully developed factual record in consolidated actions of this magnitude. We admonish the parties to concentrate their efforts now on that record and on the task of presenting the case on the merits rather than sparring with each other about scheduling burdens, hefty as they might be.

For the foregoing reasons it is this 8<sup>th</sup> day of October, 2002 hereby ORDERED that the motion to strike certain witnesses or for certification of counsel\* [ #54 ] is DENIED.

SO ORDERED.

  
KAREN LECRAFT HENDERSON  
United States Circuit Judge

  
COLLEEN KOLLAR-KOTELLY  
United States District Judge

  
RICHARD J. LEON  
United States District Judge

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\* We agree with the defendants that it would be a “fruitless exercise”—and, more importantly, a distracting one—to require defense counsel to certify that each witness first designated on September 16 was discovered only after the September 6 date for supplementing witness lists. Opp’n at 5.