

IN THE SUPREME COURT OF THE UNITED STATES

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MITCH McCONNELL et al.,  
Appellants,

v.

FEDERAL ELECTION COMMISSION et al.,  
Appellees.

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

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MEMORANDUM CONCERNING CONSOLIDATED BRIEFING  
AND APPLICATION FOR LEAVE TO EXCEED PAGE LIMITS

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In response to the Clerk's letter to counsel of June 5, appellants in No. 02-1674 (Mitch McConnell; Southeastern Legal Foundation, Inc.; 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. Appellants, who were plaintiffs in two of the eleven cases consolidated in the district court, have mounted the most comprehensive of the various challenges to the constitutionality of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). Uniquely among the plaintiffs, appellants intend to file an "omnibus" brief in this Court which will address virtually all of the issues presented in these consolidated appeals, including the constitutional challenges to Titles I, II, III, and V of BCRA. Appellants hope that such an integrated brief will be of value to

the Court in resolving the many issues presented in these appeals. As we noted in our response to the Government's motion for expedited briefing, appellants believe that even our comprehensive position can be briefed with at most a modest increase over the traditional page limits. See Response of McConnell Plaintiffs to Mot. for Expedited Briefing Schedule 7. Appellants therefore respectfully request leave to file a 75-page opening brief and a 30-page reply brief.

2. Such an approach, under which appellants would file a modestly longer "omnibus" brief, is consistent with the briefing practice followed in the district court. In recognition of the global nature of appellants' challenge, the district court specifically directed appellants to file an "omnibus" brief together with the plaintiffs in eight of the other ten lawsuits pending below. See D. Ct. Briefing Order, Oct. 15, 2002, at 4-5 (attached as Exhibit A).<sup>1</sup> That "omnibus" brief, to which the court allocated a plurality of pages, was prepared by the undersigned

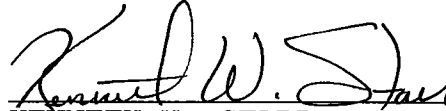
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<sup>1</sup> Those plaintiffs correspond to the appellants in eight of the ten jurisdictional statements filed in this Court by plaintiffs below, see No. 02-1674, McConnell v. FEC; No. 02-1675, NRA v. FEC; No. 02-1727, Republican Nat'l Committee v. FEC; No. 02-1733, National Right To Life v. FEC; No. 02-1734, ACLU v. FEC; No. 02-1753, California Democratic Party v. FEC; No. 02-1755, AFL-CIO v. FEC; No. 02-1756, Chamber of Commerce v. FEC, and also include one set of plaintiffs, the Echols plaintiffs, who are participating in this Court solely as appellees in No. 02-1676, FEC v. McConnell.

counsel for appellants. The court allowed some of the plaintiffs to file separate, shorter briefs, which were appended to the "omnibus" brief, to the extent that those plaintiffs had distinctive positions and wished to present "additional arguments advancing different legal theories or [challenging] different provisions of BCRA." See id. at 5.

3. In order to alleviate the burden on this Court of reading multiple and potentially repetitive briefs, appellants have consulted with counsel for other plaintiffs below to ascertain whether they would be willing to join in all or part of appellants' submission. Although it is obviously difficult for counsel to make a firm commitment at this early stage, we have received preliminary indications from the American Civil Liberties Union (appellant in No. 02-1734), the Chamber of Commerce plaintiffs (appellants in No. 02-1756), the National Rifle Association plaintiffs (appellants in No. 02-1675), the AFL-CIO plaintiffs (appellants in No. 02-1755), and the Echols plaintiffs (appellees in No. 02-1676) that they may be able to join in, or at least incorporate by reference, some significant portion of our "omnibus" brief, and/or that they consent to our request for a modest increase in the page limits for our submission.

Respectfully submitted,



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English

**ATTACHMENT A**

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 15 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, RJL)

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

Defendants.

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**REPUBLICAN NATIONAL COMMITTEE, et al.,**

Plaintiffs,

v.

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

**FEDERAL ELECTION COMMISSION,**

Defendant.

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**CALIFORNIA DEMOCRATIC PARTY, et al.,**

Plaintiffs,

v.

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

**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)

**Briefing Order**  
(October 15, 2002)

**ORDERED** that the plaintiffs in 8<sup>1</sup> of the 11 actions (collectively, the McConnell group) shall file together one opening brief of no more than 335 pages, one opposition brief of no more than 205 pages, and one reply brief of no more than 160 pages. All legal

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<sup>1</sup> *National Rifle Association* (Civ. No. 02-581), *McConnell* (Civ. No. 02-582), *Echols v. FEC* (Civ. No. 02-633), *Chamber of Commerce* (02-751), *National Association of Broadcasters* (Civ. No. 02-753), *AFL-CIO v. FEC* (02-754), *Republican National Committee* (Civ. No. 02-874), and *California Democratic Party* (Civ. No. 02-875). The Court subtracted the Paul plaintiffs from the McConnell group in order to treat the description of their brief separately.

arguments shall be presented on a title-by-title basis, with a discrete section of each brief devoted to each title. Within each section, the omnibus arguments for or against that title shall be presented first, followed by a separate subsection for those additional arguments advancing different legal theories or different provisions of BCRA by each of the individual plaintiffs.

It is further **ORDERED** that the government defendants (the Federal Election Commission and the Department of Justice, jointly) and intervening Members of Congress (intervenor) shall file together one opening brief of no more than 395 pages, one opposition brief of no more than 245 pages, and one reply brief of no more than 180 pages. As with the McConnell group, all arguments shall be presented on a title-by-title basis, with a discrete section of each brief devoted to each title.

It is further **ORDERED** that the McConnell group's opening brief be divided as follows:

- The McConnell group's omnibus portion of the brief shall be divided on a title-by-title basis and shall not exceed 100 pages in the aggregate.
- The RNC plaintiffs' challenges to Titles I & III of BCRA shall be addressed on a title-by-title basis and shall not exceed 75 pages in the aggregate.
- The California Democratic Party ("CDP") plaintiffs shall address their challenges to Title I in no more than 50 pages.
- The NRA plaintiffs shall address their challenges to Title II in no more than

50 pages.

- The Chamber of Commerce plaintiffs shall address their challenges to Title II in no more than 20 pages.
- The AFL-CIO plaintiffs shall address their challenges to Title II in no more than 20 pages.
- The ACLU shall address its challenges to Title II in no more than 20 pages.

It is further **ORDERED** that the defendants' opening brief be divided as follows:

- The Federal Election Commission and the Department of Justice shall address, jointly, the plaintiffs' constitutional challenges to BCRA on a title-by-title basis and their arguments shall not exceed 225 pages in the aggregate.
- The intervenors shall address the plaintiffs' constitutional challenges to BCRA on a title-by-title basis and their arguments shall not exceed 170 pages in the aggregate.

It is further **ORDERED** that the McConnell group's opposition brief be divided as follows:

- The McConnell group's omnibus opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 75 pages in the aggregate.
- The RNC plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 50 pages in the aggregate.

- The CDP plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 25 pages in the aggregate.
- The NRA plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 25 pages in the aggregate.
- The Chamber of Commerce plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.
- The AFL-CIO plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.
- The ACLU's opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.

It is further **ORDERED** that the defendants' opposition brief be divided as follows:

- The FEC and the DOJ's opposition to the plaintiffs' opening briefs shall be presented on a title-by-title basis and not exceed 135 pages in the aggregate.
- The intervenors' opposition to the plaintiffs' opening briefs shall be presented on a title-by-title basis and not exceed 110 pages in the aggregate.

It is further **ORDERED** that the McConnell group's reply brief be divided as follows:

- The McConnell group's joint omnibus response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 50 pages in the aggregate.

- The RNC plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 30 pages in the aggregate.
- The CDP plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 25 pages in the aggregate.
- The NRA plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 25 pages in the aggregate.
- The Chamber of Commerce plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.
- The AFL-CIO plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.
- The ACLU's response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.

It is further **ORDERED** that the defendants' reply brief be divided as follows:

- The FEC and DOJ's joint response to the plaintiffs' opposition briefs shall be presented on a title-by-title basis and not exceed 100 pages in the aggregate.
- The intervenors' response to the plaintiffs' opposition briefs shall be presented on a title-by-title basis and not exceed 80 pages in the aggregate.

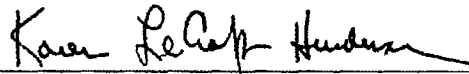
It is further **ORDERED** that because of the type of challenges and focus of the Thompson, Adams, and Paul plaintiffs, it is the decision of the Court that the plaintiffs in

Paul (Civ No. 02-781) and the plaintiffs collectively in the Adams (Civ. No. 02-877) and Thompson plaintiffs (Civ. No. 02-811) (collectively, the Adams group) shall both address their challenges to BCRA in an opening brief consisting of no more than 30 pages, an opposing brief of no more than 20 pages, and a reply brief of no more than 10 pages. As with the other parties, both of these briefs shall present all arguments on a title-by-title basis in discrete sections of the brief.

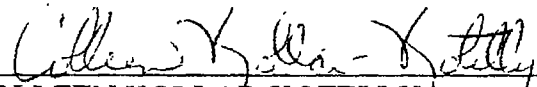
It is further **ORDERED** that the deadline for the filing of the opening briefs, accompanied by fact witnesses and expert testimony and documentary evidence, is November 6, 2002, opposition briefs are to be filed on November 20, 2002, and reply briefs are to be filed on November 27, 2002.

The parties' proposals as to the submission of proposed findings of fact and conclusions of law are taken under advisement and the Court will issue a separate order.

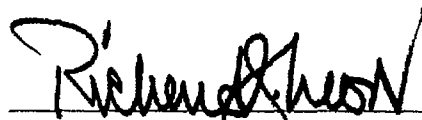
**SO ORDERED.**



KAREN LeCRAFT HENDERSON  
United States Circuit Judge



COLLEEN KOLLAR-KOTELLY  
United States Circuit Judge



RICHARD J. LEON  
United States District Judge