UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Senator Mitch McConnell, *et al.*, Plaintiffs, v. Federal Election Commission, *et al.*, Defendants.	)	Case No. 02-0582 (CKK, KLH, RJL) **ALL CONSOLIDATED CASES**

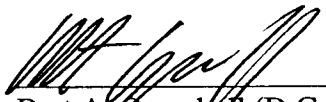
MOTION BY PROPOSED PRESS INTERVENORS TO MAKE PUBLIC THE FULL RECORD ON THE MOTIONS FOR JUDGMENT

Pursuant to Fed. R.Civ. P. Rule 24(b), and for the reasons set forth in the accompanying Affidavit of David A. Schulz and Memorandum of Law, The Associated Press, ABC, Inc., The Baltimore Sun Company, Daily News, L.P., Dow Jones & Company, Inc., Los Angeles Times Communications, L.L.C., National Broadcasting Company, Inc., Newsday, Inc., The New York Times Company, U.S. News & World Report, and The Washington Post Company (collectively, the "Press Intervenors"), hereby respectfully move (1) to intervene for the limited purpose of enforcing the right of public access, (2) to compel public access to inspect and copy the complete record on the motions for judgment, including all affidavits, exhibits, documents and other evidentiary submissions, together with unredacted copies of all proposed findings of fact, briefs and other materials submitted to the Court in these consolidated cases, and (3) for such other and further relief as the Court deems just and proper.

In accordance with LCvR 7.1 (c) the proposed Press Intervenors attach a Proposed Order granting this motion.

Dated this 17th day of December, 2002.

Respectfully submitted,



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Senator Mitch McConnell, *et al.*, Plaintiffs, v. Federal Election Commission, *et al.* Defendants.	)	Case No. 02-0582 (CKK, KLH, RJL) **ALL CONSOLIDATED CASES**

MEMORANDUM IN SUPPORT OF PRESS INTERVENORS' MOTION TO MAKE PUBLIC THE FULL RECORD ON THE MOTIONS FOR JUDGMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes & Other Authorities

PRELIMINARY STATEMENT

The Associated Press, ABC, Inc., The Baltimore Sun Company, Daily News, L.P., Dow Jones & Company, Inc., Los Angeles Times Communications L.L.C., National Broadcasting Company, Inc., Newsday, Inc., The New York Times Company, U.S. News & World Report, and The Washington Post Company (collectively, the "Press Intervenors") move to intervene for the limited purpose of enforcing the public's right of access to judicial records. The Press Intervenors seek to compel public access to the full, complete and unredacted record submitted to the Court on the pending motions for judgment, including all sealed evidentiary submissions filed with the Court, and unredacted copies of all proposed findings of fact and briefs (the "Judgment Record" or "Record").

The public's right of access to court records extends to all documents filed with a court in civil cases. This right is particularly compelling when access is sought to documents that become the predicate for judicial action, whether or not ultimately "relied upon" or cited in a court's order. The public's right of access can be overcome only upon the demonstration that some overriding interest demands secrecy. Thus, the greater the public interest in a case, the greater the burden to establish the need for any secrecy.

That burden must be applied with exceptional rigor to those who seek to seal evidence in this case of overwhelming significance. This is an historic lawsuit, attacking the constitutionality of the first major legislative reform of our Nation's campaign finance procedures since the Watergate era, nearly thirty years ago. The challenged legislation was enacted only after years of congressional investigations, hearings and debates, and it was attacked as unconstitutional the moment it became law.

The significant issues raised in these lawsuits are to be decided entirely on motions, supported by volumes of evidence submitted to the Court. There will be no trial or other development of the facts beyond the written submissions. Any party seeking to maintain the secrecy of evidence, in this context, should be held to the very highest standard in justifying the need to deny information to the public.

BACKGROUND

The Bipartisan Campaign Finance Reform Act of 2002 (the "Act") is the culmination of more than a decade of hearings, reports, speeches and debates.[1] Questions about campaign finance reform figured prominently in the last two Presidential elections, and in scores of Senate and House elections. An extensive public record was developed on the widespread claims of abuse and appearance of abuse under the existing law, and the reasons cited for congressional action have been widely reported in the press.[2]

The public interest in the campaign finance reform legislation did not end when the Act was adopted, as opponents immediately initiated lawsuits to declare the Act unconstitutional.[3] In conducting discovery and preparing these cases for disposition by the Court, however, the parties entered into an "Agreed Protective Order" that allowed non-public information produced during

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[1] In 1997, four years before legislation finally was enacted, Senator Reid detailed the time and effort already invested by the Senate in campaign finance reform: "Congress has produced almost 6,800 pages of hearings. There have been 3,361 floor speeches. I guess because of this one, it is 3,362 floor speeches. There have been 1,060 pages of committee reports, 113 Senate votes on campaign finance reform, and one bipartisan Federal commission." 143 Cong. Rec. S3743-01 (1997).

[2] See, e.g., John Lancaster and Juliet Eilperin, Grass-Roots Effort Given Key Boost by Enron Scandal, Wash. Post, Feb. 14, 2002, at A6; Campaign Finance Reform Law Takes Effect, APWIRES, Nov. 6, 2002, 08:08:00; David Espo, Political Spending Rules Won't Be Changed Before This Fall's Elections, APWIRES, Feb. 12, 2002, 23:10:00; Richard Perez-Pena, A Federal Soft-Money Ban Could Benefit State Parties, N.Y. Times, Mar. 22, 2002, at B.

[3] Mike Allen, Bush Signs Campaign Bill, Hits Road to Raise Money, Wash. Post, Mar. 28, 2002, at A1.

discovery to be unilaterally designated "confidential" on a mere claim that it was "sensitive" and likely to cause embarrassment.[4] By designating a document "Confidential" or "Highly Confidential," the producing party could force it to be kept under seal in any court filings, absent a further order by this Court.[5]

Mindful of the public's right of access, and the obvious inability of the standard contained in the Agreed Protective Order to safeguard that right adequately, the Court on December 5, 2002 orally ordered the parties to submit written justification for continued sealing of documents within the Judgment Record. The Press Intervenors separately move to compel full access to that Record, including unredacted copies of all affidavits and briefs, in order to underscore the substantial public interest in the release of this information, and to enforce strictly the public's common law right to copy and inspect all materials before the Court on the motions for judgment.

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[4] Paragraph 2 of the Agreed Protective Order (attached as Exhibit A to Declaration of David A. Schulz ("Schulz Decl."), attached hereto as Exhibit 1) provides:

> A producing entity may designate as 'Confidential' any Document or any portion thereof that contains or reflects trade secrets or other sensitive non-public information, including information for which the producing entity reasonably believes confidentiality is necessary to protect a party or person from embarrassment, oppression, or undue burden or expense.

Paragraph 6 of the Agreed Protective Order provides:

> A producing entity may additionally designate Confidential Information as 'Counsel Only' if it contains or reflects trade secrets or other sensitive non-public information, including information for which the producing entity reasonably believes confidentiality is necessary to protect a party or person from competitive or political injury, embarrassment, oppression, or undue burden or expense, and which is of such a sensitive nature that it cannot be seen by other parties to the litigation.

[5] The Agreed Protective Order provides that it "shall not preclude any party from seeking a ruling from the Court regarding the validity or propriety of any claim of confidentiality asserted by a producing entity" (Agreed Protective Order at ¶ 12) nor "prevent or in any way limit or impair the right of counsel for the parties to file a motion to unseal any portions of the record for purposes of this litigation." Id. at ¶ 13.

As a result of unilaterally imposed confidentiality designations, an unknown volume of evidence has been submitted under seal in connection with the motions now before this Court. (See Schulz Decl., ¶ 5.) Affidavits, proposed findings of fact, briefs and other documents made available to the public have all references to "confidential" evidence completely removed. E.g., Redacted Proposed Findings of Fact of the Republican National Committee, et al., dated Nov. 20, 2002 at ¶¶ 65, 82, 84, 85, 105, 116, 118, 119, 138; Redacted Opposition Brief of Defendants, dated Nov. 20, 2002 at pp. 91, 101-104, 106. ("Defs. Redacted Br.") These redactions make some sections of the public versions of briefs difficult to follow, and the public repeatedly is denied an understanding of the evidentiary support for the parties' positions. For example, the defendants' joint brief in opposition deletes evidence cited to support such claims as:

- Large donations to national parties are "usually made" with full knowledge of those who control the legislative machinery (Defs. Redacted Br. at 91);
- Senate candidates in 2000 set up joint committees to raise unlimited amounts of soft money donations that were transferred to state parties and spent on "issue ads" (Defs. Redacted Br. at 101); and
- National parties "launder" soft money through state parties which are allowed to spend a larger portion of it on federal campaign activity (Defs. Redacted Br. at 102).

Evidentiary support is even withheld on the critical assertion that the "impact of such activities on federal elections is manifest." (Defs. Redacted Br. at 105-06.)

There can be no proper grounds for withholding from the public record the evidence presented to the Court on such fundamental propositions. The Act and the need for action were debated in public, and citizens have the right to a full public airing of the evidence presented to this Court, which is being asked to nullify the deliberated decision of Congress.

ARGUMENT

I.
THE PUBLIC HAS A COMMON LAW RIGHT TO INSPECT THE FULL RECORD SUPPORTING THE PARTIES' MOTIONS FOR JUDGMENT

The public has a common law right to inspect court records, particularly the evidence that forms the basis of judicial action. No justification exists for denying this right here.

1. The public's common law right to inspect court records is beyond dispute. The Court of Appeals for the District of Columbia described this right as "fundamental to a democratic state" in United States v. Hubbard, observing:

> As James Madison warned, "A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy: or perhaps both ... A people who mean to be their own Governors, must arm themselves with the power which knowledge gives." Like the First Amendment, then, the right of inspection serves to produce "an informed and enlightened public opinion." Like the public trial guarantee of the Sixth Amendment, the right serves to "safeguard against any attempt to employ our courts as instruments of persecution," to promote the search for truth, and to assure "confidence in... judicial remedies."

650 F.2d 293, 315 n. 79 (D.C. Cir. 1980) (quoting United States v. Mitchell, 551 F.2d 1252, 1258 (D.C. Cir. 1976)); accord Johnson v. Greater S.E. Cmty. Hosp. Corp., 951 F.2d 1268, 1277 (D.C. Cir. 1991) (there exists a "strong presumption in favor of public access to judicial proceedings"). Public access to court records serves several important interests. It promotes informed discussion of governmental affairs, serves as a check on the integrity of the judicial process, and promotes the public perception of fairness. E.g., Bank of America v. Hotel Rittenhouse Assocs., 800 F.2d 339, 345 (3d Cir. 1986).

2. As the Court has already recognized, the confidentiality designations made by the parties under the stipulated protective order do not justify a denial of the public right of access. The stipulated order allows information to be withheld from the public, without prior judicial

review, simply because it allegedly is sensitive and embarrassing. While such stipulated agreements may be appropriate in some circumstances to facilitate the discovery process, they cannot properly be used to defeat the public's right of access to the full evidentiary record that forms the basis for judicial action. E.g., Procter & Gamble Co. v. Bankers Trust Co., 78 F. 3d 219, 227 (6th Cir. 1996) (court cannot abdicate its responsibility to determine whether filings should be made public); Resolution Trust Corp. v. Dean, 23 Media L. Rep. 1143 (D. Ariz. 1994) (documents filed in support of summary judgment become subject to common law right of access even though filed under seal); cf., United States v. El-Sayegh, 131 F.3d 158, 160 (D.C. Cir. 1997).

3. The right of access to court records can only be overcome on a specific factual showing that a legitimate and overriding need for privacy clearly outweighs the public interest in disclosure of specific information. Nixon v. Warner Communications, Inc., 435 U.S. 589, 602 (1978). The Press Intervenors do not dispute the right of parties to protect truly private information that is irrelevant to issues before the Court, the release of which could inflict specific damage. (E.g. credit card numbers, bank account numbers, and the like.) But, any restriction of public access must be essential to protect a compelling interest, and must be narrowly tailored.

The Court of Appeals has identified a number of factors that are relevant to a decision to unseal records, when the parties themselves dispute the need for confidentiality. Johnson, 951 F.2d at 1277. Although these factors were not developed in the context of a direct claim for access by the press, the factors do demonstrate the absence of a proper basis for continuing to seal large sections of the Judgment Record:

The Need For Access Is Of The Highest Order. The Record addresses issues of intense public importance – the regulation of campaign speech and finance. As the

Supreme Court observed in Monitor Patriot v. Roy, 401 U.S. 265, 272 (1971), the First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office." It is difficult to imagine a case where the public's right to know the arguments being advanced and the evidence presented to the court could be more compelling than in a case governing regulation of the election process.

Prior Use Of Documents.[6] While it is impossible to know whether the sealed materials are of the same type and kind previously presented to Congress, at least some of the material designated "confidential" under the Protective Order reveals the very same types of behavior and abuse that caused Congress to act. For example, a recent AP news report (Schulz Decl., Ex. B) reveals that claims of confidentiality were used during discovery to avoid public disclosure of such "sensitive" information as:

- a letter from a Republican Party fundraiser to the chief executive of telecommunications start-up Global Crossing, reminding of an agreement "to upgrade your Team 100 membership to the Regent Program ($250,000) when the merger was approved," and adding "thankfully this has now been approved, so I am taking the liberty of enclosing an invoice for the additional upgrade."

- a 1995 memo from the Democratic Party chairman urging that a prominent donor, Denise Rich, be solicited for $80,000 "for lunch with the President."

- a letter from the Republican National Committee chairman to the chief executive of Bristol-Myers-Squibb at a time when the Republicans controlled both houses of Congress, proposing a "coalition" to keep the lines of communication open in order to "continue passing legislation that will benefit your industry," while in the next paragraph requesting a $250,000 contribution.

- a 1995 Democratic National Committee callsheet scheduling a solicitation of a Texaco lobbyist for $350,000 and noting that "[t]he President helped out the Oil Industry by supporting them on drilling issues in the Gulf of Mexico."

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[6] The consideration of prior access to disputed records appears to have grown out of the unique facts of the litigation for access to the Watergate tapes, where the portions of the tapes sought by the media had already been publicly played in Judge Sirica's courtroom. See Hubbard, 650 F.2d at 318 n. 97.

The Court should not countenance claims of confidentiality whose only purpose is to shield embarrassing practices that reflect the very potential for abuse that the Act seeks to address.

The Parties' Objection To Disclosure And Their Interest In The Documents. The parties to this case include our nation's largest political parties, state political parties and special interest groups that exist to lobby and influence the behavior of elected officials. Their conduct is of obvious and legitimate interest to the public, and it is their conduct that must change under the Act. In this context, any claim of adverse consequences from disclosure that may be advanced by the parties must be assessed with an appropriate degree of skepticism. Potential "embarrassment" or "oppression" that may have justified the designation of information as "confidential" under the Agreed Protective Order is not likely to justify the exclusion of such information from the public record. Claims of "trade secrets," adverse "competitive consequences" and "privacy" must be strictly scrutinized to avoid withholdings of information relevant to the issues before the Court.

Prejudice From Disclosure. Again, the parties' concerns about disclosure must be weighed against the strong public interest in this litigation, as well as the public policy favoring full disclosure of political fundraising activities. In creating the existing election law regime, Congress made plain that its objective was "to achieve 'total disclosure' by reaching 'every kind of political activity.'" Buckley v. Valeo, 424 U.S. 1, 76 (1976) (quoting S. Rep No. 92-229, at 57 (1971)). The congressional policy is to "promote full disclosure of campaign-oriented spending to insure both the reality and the appearance of the purity and openness of the federal election process." Id. at 663. See also NRCC v. Legi-Tech Corp., 795 F.2d 190, 192 (D.C. Cir. 1986) (quoting same).

Purpose For Filing The Documents. The Record for which public access is sought consists of evidence and arguments submitted on the pending motions for judgment. Because these records will be the predicate for court action, full enforcement of the public's right of access is critical.

Indeed, two factors underscore the strength of the right of access that attaches to the Judgment Record in this case, and compel its full disclosure. First, the right is particularly to be enforced when documents are submitted as evidence, because the public has a right to know the basis upon which judicial action is taken. El-Sayegh, 131 F.3d at 162. When documents substitute for an entire trial, they should be treated as equivalent to a trial, where the right of public access is indisputable. Id. at 160-61. See also, Leucadia, Inc. v. Applied Extrusion Tech. Inc., 998 F. 2d 157, 161 (3d Cir. 1993) (common law right of access extends to all non-discovery motions); Rushford v. New Yorker Mag., Inc., 846 F.2d 249, 252 (4th Cir. 1988) (public has a First Amendment right of access to documents submitted to the court on summary judgment).[7] All evidence submitted to the Court is subject to the right of access, and not just that which is later cited or relied upon by the Court. Public confidence in our judicial processes depends upon a full understanding of the facts presented, not just those ultimately deemed important.

Second, the public right of access is at its zenith here, because this lawsuit addresses constitutional issues of extreme urgency to our system of elections. The greater this public's interest in a case, the less acceptable are restraints on the public's right of access. United States v. General Motors Corp., 99 F.R.D. 610, 612 (D.D.C. 1983) (refusing to seal records submitted in case seeking to compel a recall of GM automobiles).

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[7] The Court of Appeals for this Circuit has characterized the public right of access to court records as a "common law" right rather than a First Amendment right, but also has noted that the common law

For all the foregoing reasons, the complete Record on Judgment should be made available for public inspection. The issues in this case are of extraordinary importance, and only the most extreme prejudice could possibly warrant continued secrecy for the evidence and arguments presented in this proceeding.

II.
THE PRESS INTERVENORS HAVE STANDING TO ENFORCE THE PUBLIC RIGHT OF ACCESS

1. The right of access to court records is an affirmative, enforceable public right. See E.E.O.C. v. National Children's Ctr., Inc., 146 F.3d 1042, 1046 (D.C. Cir. 1998); In re Matter of New York Times Co. v. Biaggi, 828 F.2d 110, 114 (2d Cir. 1987), cert. denied. 485 U.S. 977 (1988); Globe Newspaper Co. v. Pokaski, 868 F.2d 497, 502, 505 (1st Cir. 1989); United States v. Smith, 776 F.2d 1104, 1111 (3d Cir. 1985); Associated Press v. District Court, 705 F.2d 1143, 1145 (9th Cir. 1983). The standing of the press to enforce this right is well settled. See E.E.O.C., 146 F.3d at 1046; In re Application of The Herald Co. v. Klepfer, 734 F.2d 93, 101-02 (2d Cir. 1984); U.S. v. Brooklier, 685 F.2d 1162, 1168 (9th Cir. 1982). In Globe Newspaper Co. v. Superior Ct., Norfolk Cty., 457 U.S. 596, 609 n.25 (1982), the Supreme Court recognized that the press and public must be afforded an opportunity to be heard when an attempt is made to expel them from judicial proceedings, and the same is true when access is denied to judicial records. See, e.g., In re New York Times, 828 F.2d at 114.

2. A motion to intervene under FRCP 24(b) is the proper procedure for a third party to gain access to documents sealed pursuant to protective orders. As the Court of Appeals stated in E.E.O.C.:

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right may well "go beyond constitutional prescriptions." In re Reporters Comm. for Freedom of the Press, 773 F.2d 1325, 1340 (D.C. Cir. 1985).

> [D]espite the lack of a clear fit with the literal terms of Rule 24(b), every circuit court that has considered the question has come to the conclusion that nonparties may permissively intervene for the purpose of challenging confidentiality orders ... Accordingly, we hold that third parties may be allowed to permissively intervene under Rule 24(b) for the limited purpose of seeking access to materials that have been shielded from public view either by seal or by a protective order.

E.E.O.C. 146 F.3d at 1045-46. See also New York v. Microsoft Corp., 206 F.R.D. 19, 21-22 (D.D.C. 2002) (motion by media defendants to intervene for purpose of gaining access to sealed materials was appropriately brought under Fed. R. Civ. P. 24(b)). The Press Intervenors should thus be permitted to intervene pursuant to FRCP 24(b) for the limited purpose of securing public access to the full Judgment Record.

CONCLUSION

For each of the foregoing reasons, the motion by the Press Intervenors should be granted, and the public should be provided access to the full, complete, and unredacted Judgment Record, together with such other and further relief as the Court deems just and proper.

Dated: December 17, 2002

Respectfully submitted,

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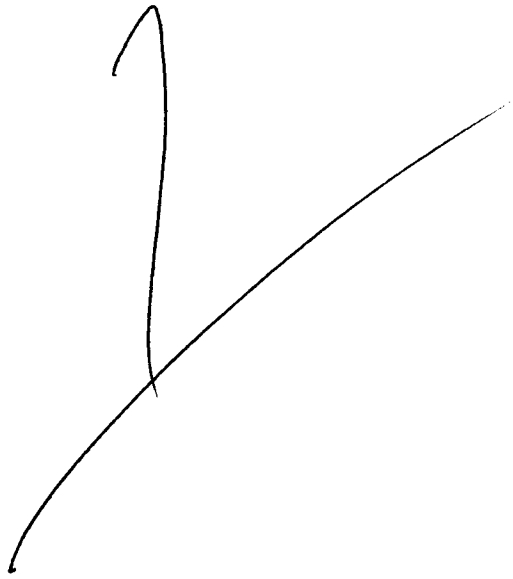


UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Senator Mitch McConnell, et al., Plaintiffs, v. Federal Election Commission, et al. Defendants.	Case No. 02-0582 (CKK, KLH, RJL) **ALL CONSOLIDATED CASES**

DECLARATION OF DAVID A. SCHULZ

David A. Schulz, being duly sworn, deposes and says:

1. I am an attorney at law and a member of Clifford Chance US LLP, counsel to the Press Intervenors herein. I am fully familiar with the facts set forth, and I submit this affidavit in support of the Press Intervenors' motion to intervene for the limited purpose of enforcing the public's right of access to judicial records, and to compel public access to the a full, complete and unredacted evidence and arguments submitted to the Court in support of and in opposition to the pending motions for judgment ("Judgment Record" or the "Record").

2. The Press Intervenors' sole interest is to enforce the public's right to inspect and copy judicial records, so they may fully report on the dispute concerning the constitutionality of the Bipartisan Campaign Reform Act of 2002.

3. As set forth in the accompanying memorandum of law, the public's common law right of access to court records is beyond dispute, particularly the right to records that will be the predicate for judicial action. While this right of access is not absolute, no proper basis exists to resolve the significant issues raised by these consolidated lawsuits on the basis of evidence that is kept secret from the public. The efforts to bar disclosure of certain evidence should be rejected, and the full, unredacted Judgment Record should be made available for public inspection and copying.

4. The means that has been used to seal portions of the Record is an "Agreed Protective Order," negotiated among the parties and filed August 13, 2002 ("the Agreed Order"). The Agreed Order extends authority to any entity to designate as "confidential" any non-public information that the entity "reasonably believes" would cause "embarrassment, oppression, or undue burden or expense" if disclosed to the public. A true copy of the Agreed Order is attached hereto as Exhibit A.

5. The Court's Docket reveals 16 separate entries reflecting materials submitted in connection with the Motions for Judgment that were either redacted or filed under seal pursuant to the Agreed Order. These include several volumes of exhibits produced to the Court pursuant to its October 18, 2002, Order authorizing submissions of fact materials (Docket entry # 189); 27 declarations and 33 exhibits submitted with the RNC's Notice of Filing (Docket entry dated 10/28/02); depositions and cross-examinations of Title Defense Witnesses (Docket entry # 194); 37 volumes of the 134 volumes of Exhibits filed with Federal Defendants' brief (Docket entry # 197); two volumes of plaintiffs' 12-volume consolidated evidentiary submission (Docket entry # 199); four exhibits submitted in support of Plaintiffs' opening brief (Dicket entry dated 11/6/02); redacted Proposed Findings of Fact and Conclusions of Law by the RNC plaintiffs

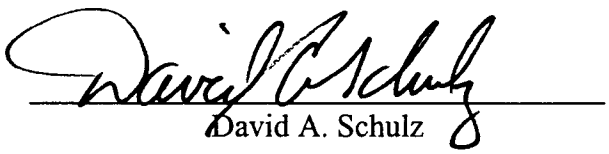
(Docket entry # 260); a completely sealed Proposed Findings of Fact and Conclusions of Law by the Adams plaintiffs (Docket entry # 250); and redacted briefs, exhibits, and affidavits, in support of and opposition to the parties' motions for judgment (Docket entry #'s 206, 208, 220, 234, 240, 243, 245, 236).

6. By this motion, the Press Intervenors seek to enforce the public's right to inspect and copy full and unredacted versions of all these items. Recently disclosed documents suggest that claims of confidentiality have been used to avoid public disclosure of information highly relevant to the issues that this Court will soon decide. (An AP report describing some of the designated documents recently released by the parties is annexed hereto as Exhibit B.) Any potential "embarrassment" or "oppression" that may have justified the designation of information concerning questionable fundraising practices as "confidential" under the Agreed Order fails completely to justify the exclusion of such relevant information from the public record in these consolidated lawsuits.

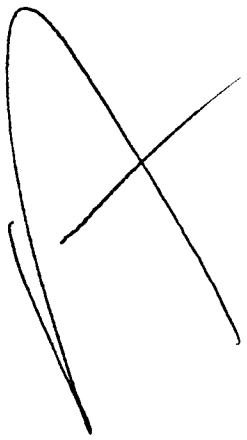
WHEREFORE, it is respectfully submitted that the motion by the Press Intervenors should be granted, and the public should be provided access to the full, complete, and unredacted Judgment Record.

Dated: December 16, 2002

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct.



David A. Schulz



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

McCONNELL, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	)	Civil Action No. 02-0582 (CKK, KLH, RJL)
	)	CONSOLIDATED ACTIONS

AGREED PROTECTIVE ORDER

Upon the consent of certain parties to this action, as evidenced by their signatures below, and for good cause shown, it is hereby ordered that:

1. The term "Documents" as used in this Order shall mean all written, recorded, (including electronically recorded) or graphic matter whatsoever. Such materials shall include, but not be limited to: interrogatory answers; responses to requests for admissions; responses to requests for production of documents, and documents produced or served by any party or non-party in this action, whether pursuant to any rule, subpoena, or agreement; deposition transcripts and exhibits; physical objects or things as may be appropriate for the implementation of the purposes of this Order; and any papers, including court papers, which quote from, summarize or refer to any of the foregoing.

2. A producing entity may designate as "Confidential" any Document or any portion thereof that contains or reflects trade secrets or other sensitive non-public information, including information for which the producing entity reasonably believes confidentiality is necessary to

protect a party or person from embarrassment, oppression, or undue burden or expense ("Confidential Document").

3. All Confidential Documents produced in the course of the proceedings herein, and all information derived therefrom – including, but not limited to, extracts, summaries, memoranda, and correspondence quoting or containing information from Confidential Documents – (collectively "Confidential Information") may be used only for the purpose of preparing for and conducting discovery, pre-trial, trial, and post-trial proceedings in this consolidated action, and for no other purpose.

4. Except as otherwise provided in this Order, no person shall be permitted to have access to Confidential Information, nor shall any person be informed of the substance of the Confidential Information, by any person permitted to have access thereto except as provided in this Order or otherwise agreed upon by the entity producing such material or by order of the Court.

5. Confidential Information shall not be disclosed or distributed to any person or entity other than the following:

(a) the parties and the attorneys for the parties in this action (including in-house counsel; their paralegals, clerical and other assistants) who have a clear need therefor in connection with this action; and outside contractors hired to copy, image, index, sort, or otherwise manage the storage and retrieval of case materials;

(b) persons retained by a party or outside counsel to serve as expert witnesses or otherwise to provide advice to counsel in connection with this action (referred to as "consultants"), provided such persons have signed a

declaration under penalty of perjury in the form annexed hereto attesting to the fact that they have read this Order and agree to be bound by its terms;

(c) witnesses employed or formerly employed by the producing entity in the course of an interview, deposition, or testimony in the reasonable and good faith belief of counsel that examination with respect to the Confidential Material is necessary for legitimate discovery purposes;

(d) stenographers engaged to transcribe depositions conducted in this action; and

(e) the Court and its support personnel.

6. A producing entity may additionally designate Confidential Information as "Counsel Only" if it contains or reflects trade secrets or other sensitive non-public information, including information for which the producing entity reasonably believes confidentiality is necessary to protect a party or person from competitive or political injury, embarrassment, oppression, or undue burden or expense, and which is of such a sensitive nature that it cannot be seen by other parties to the litigation. All Documents bearing the designation "Highly Confidential" shall be treated as if they have been designated as "Counsel Only."

7. In addition to the restrictions placed on Confidential Documents, documents which bear the additional Counsel Only designation shall not be disclosed or distributed to any person or entity other than those listed in paragraph 5, *supra*, except that subparagraph 5(a) shall be modified to read as follows:

"(a) the attorneys for the parties in this action (not including in-house counsel); their paralegals, clerical and other assistants who have a clear need therefor in connection with this action; and outside contractors hired to

copy, image, index, sort, or otherwise manage the storage and retrieval of case materials;"

As used in this Agreed Protective Order, the term "in-house counsel" does not include attorneys employed by the Department of Justice or the Federal Election Commission, who shall have access to all documents designated Counsel Only. Notwithstanding any provisions contained herein, nothing shall prohibit the six Commissioners of the Federal Election Commission and their personal staff from reviewing Counsel-Only Documents, subject to the restrictions on the use of such documents.

8. During any deposition noticed in connection with this case, a witness or any counsel may indicate on the record that a question calls for Confidential Information, or that an answer has disclosed Confidential Information. Such Information may be so designated either:

(a) during the deposition, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Confidential Information" or "Counsel Only Information"; or

(b) by written notice to the reporter and to all counsel of record, given within ten (10) calendar days after the date of the reporter's written notice to the deponent or its counsel that the transcript is available for review, in which case the reporter and all counsel receiving notice of the designation shall be responsible for marking the copies of the transcript in their possession or under their control as directed by the designating party.

When a designation is made during a deposition, upon the request of counsel, all persons, except persons entitled to receive the Confidential Information pursuant to this Order, shall leave the

room where the deposition is proceeding until completion of the answer or answers containing Confidential Information.

9. Persons described in paragraphs 5 and 7 above shall be restricted to using Confidential Information only for purposes directly related to this action and not for any other litigation or proceeding or for any business, commercial, competitive, personal or other purpose. Photocopies of documents containing such information shall be made only to the extent necessary to facilitate the permitted use hereunder.

10. Confidential Information shall not be disclosed to any person or persons described under subparagraph 5(a) unless and until the party has become a signatory to this Protective Order. Confidential Information shall not be disclosed to any person or persons described under subparagraphs 5(b), 5(c), or 5(d) unless and until such person has been shown this Protective Order and has agreed in writing to be bound by its terms, by subscribing to a document in the form of the "Acknowledgment" attached hereto as Appendix A. A copy of each executed Acknowledgment shall be kept by counsel for the party on behalf of which disclosure is made pursuant to paragraph 5 until thirty days after the termination of this action, including appeals.

11. All Confidential Information that is filed with the Court, and any pleadings, motions, exhibits, or other papers filed with the Court disclosing Confidential Information, shall be filed under seal and kept under seal until further order of the Court. The parties agree, where practicable, to designate only the confidential portions of filings with the Court to be filed under seal. To facilitate compliance with this Order by the Clerk's office, material filed under the designation "Confidential" or "Confidential – Counsel Only" shall be contained in a sealed envelope bearing such designation on its front face. In addition, the envelope shall bear the caption of the case, shall contain a concise inventory of its contents for docketing purposes that

does not disclose the sensitive information, and shall state thereon that it is filed under the terms of this Order.

12. This Order shall not preclude any party from seeking a ruling from the Court regarding the validity or propriety of any claim of confidentiality asserted by a producing entity.

(a) In the event that the party to whom information is disclosed or produced objects to the designation by the producing entity of any document or discovery materials, or any portion thereof, as "Confidential," or "Counsel Only," that party's counsel shall advise counsel for the producing entity in writing of the objection and identify the document or material with sufficient specificity to permit the other to identify it.

(b) Within three (3) business days of receiving this written objection, the producing entity shall advise in writing whether the "Confidential" or "Counsel Only" designation will be removed. If the producing entity continues to assert the "Confidential" or "Counsel Only" designation, the parties shall meet and confer at 2:00 PM eastern time on the second business day following service of the response to the objections to the designation, unless otherwise agreed by all counsel designated as Points of Contact.

(c) If the appropriate designation cannot be resolved, then the dispute may be presented to the Court by motion or otherwise. Any motion to remove a "Confidential," or "Counsel Only," designation shall be served within three business days of the meet and confer, any opposition within three business days of service of the motion to compel, and any reply within two business days of service of opposition papers. During the pendency of any such dispute, the designated document or material shall continue to be treated as Confidential or Counsel Only Information subject to the provisions of this Order.

13. Nothing in this Order shall prevent or in any way limit or impair the right of counsel for the parties to file a motion to unseal any portions of the record for purposes of this litigation. During the pendency of any such motion, the designated document or material shall continue to be treated as Confidential or Counsel Only Information subject to the provisions of this Order pending a ruling by the Court.

14. If counsel for defendants share any Counsel Only Information produced by a national or state political party with a non-testifying consulting expert who is associated with an opposing political party, then, within three business days, defendants shall notify counsel for the producing entity of the identity of the consulting expert to whom the disclosure was made. For purposes of this paragraph, a "consulting expert who is associated with an opposing political party" shall be defined to mean a person who since January 1, 1998 has performed paid political work for a competing national or state party organization, or who since January 1, 1998 has performed paid political work for a competing party's candidate for federal or statewide office. Notwithstanding the identification of such consulting experts, the plaintiffs in this litigation are prohibited from deposing or otherwise contacting the defendants' identified consulting experts concerning this litigation.

15. Within sixty (60) days of the resolution of this action by settlement or final judgment, and the termination of any appeal therefrom, all Confidential Documents, and any copies thereof, shall be promptly destroyed, provided that the party to whom Confidential Information is disclosed or produced certifies in writing that all designated documents and materials have been destroyed, and further provided that government counsel may retain one complete set of any such materials that were presented in any form to the Court. Any such retained materials shall be placed in an envelope or envelopes marked "Confidential Information Subject to Protective

Order," and to which shall be attached a copy of this Order. Nothing in this Order shall be construed to prevent a producing entity from seeking a determination from this Court as to whether the government is obligated by law to retain a set of the materials that were presented to the Court, and accordingly, whether this paragraph should be modified to require the government as well to destroy all copies of Confidential documents.

16. If defendants, defendants' counsel, or their employing agency are requested to disclose publicly any Confidential Information pursuant to the Freedom of Information Act ("FOIA"), or otherwise, before doing so they will notify counsel for the producing entity (at the telephone and fax numbers listed in Appendix B to this Order, or as amended in writing) in sufficient time to allow that entity a reasonable opportunity to object to, or to take legal action to prevent such disclosure. Defendants shall not disclose documents in response to any such FOIA request, except pursuant to an order of this Court, or a court of competent jurisdiction.

17. The termination of this litigation shall not relieve any person or party provided Confidential Information of his, her or its obligations under this Order.

18. Nothing in this Order shall prevent or in any way limit or impair the right of counsel for the government to seek relief from the constraints of this Order in order to report an apparent criminal violation of the law. In such circumstances, the burden shall be upon the government to demonstrate good cause for relief from the constraints of this order.

19. Nothing in this protective order shall preclude the Federal Election Commission, the Department of Justice, the Federal Communications Commission, or any other federal government agency from independently seeking documents covered by this Protective Order in connection with a separate proceeding. For purposes of this paragraph, the term "independently" shall be construed to prohibit the use, in any manner, of documents covered by this Protective

Order, or information contained in such documents, to determine the nature or scope of the documents sought in a separate proceeding.

20. The inadvertent production of documents containing information protected by the attorney-client privilege, work product doctrine, or other privileges recognized by law shall not be deemed a waiver, in whole or in part, of a party's claim of privilege as to either the document or information disclosed, or to related documents or information.

21. Nothing in this Order shall prevent any entity from using or disclosing its own documents or other information.

22. Nothing in this Order shall affect the right of any person to seek additional protection against the disclosure of any documents or information.

23. The provisions of this Order restricting the use and disclosure of Confidential Information shall not apply to documents or other information which were, are, or become public knowledge not in violation of this Order.

24. Notwithstanding the foregoing provisions of this Order, the Federal Election Commission shall, as appropriate, enter into separate protective orders to comply with 2 U.S.C. 437g(a)(12)(A), as well as pre-existing protective orders in the Colorado Republican litigation.

25. Notwithstanding anything to the contrary that may be set forth herein, the parties understand that the Court shall retain the authority to modify this Order upon good cause shown.

26. This Order shall take effect immediately as between signatories to this Order, and shall apply only as between signatories to this Order. Absent stipulation to this Order as set forth in paragraph 10, a party shall not be entitled to access to Confidential Documents produced subject to this Order by a producing entity. Further, this Order imposes no obligations on parties stipulating to this Order vis-á-vis parties who have not stipulated to this Order.

Dated: July _____, 2002

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Dated: July _____, 2002

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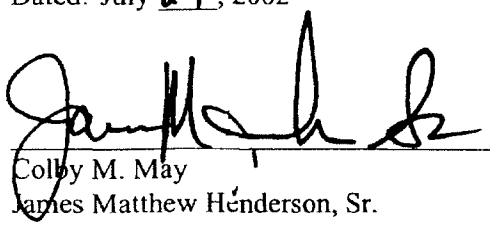

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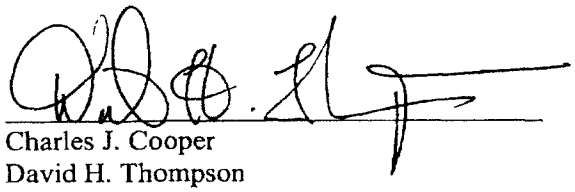
Dated: July 30, 2002



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Counsel for Defendant-Intervenors John McCain, Russell Feingold, Christopher Shays, Martin Meehan, Olympia Snowe, and James Jeffords

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

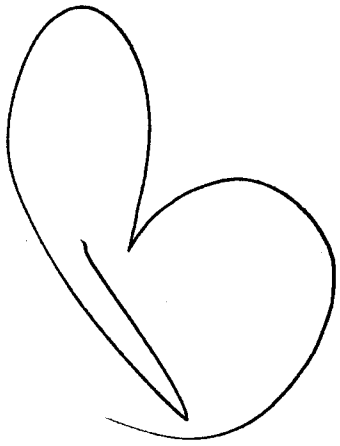
McCONNELL, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	Civil Action No. 02-0582 (CKK, KLH, RJL) CONSOLIDATED ACTIONS

ACKNOWLEDGMENT

The undersigned hereby declares under penalty of perjury that he (she) has read the Agreed Protective Order (the "Order") entered in the United States District Court for the District of Columbia in the above captioned actions, understands its terms and agrees to be bound by each of those terms. Specifically, and without limitation, the undersigned agrees not to use or disclose any confidential information made available to him (her) other than in strict compliance with the Order. The undersigned acknowledges that his (her) duties under the Order shall survive the termination of this case and are permanently binding, and that failure to comply with the terms of the Order may result in the imposition of sanctions by the Court.

DATED: _____ BY: _____
(type or print name)

SIGNED: _____



Documents Show Party Fund-Raisers Promise Donors Access To Politicians.

By SHARON THEIMER
Associated Press Writer

WASHINGTON (AP) Political party officials and the donors they solicit have routinely linked big contributions to government business, from merger approvals to meetings with top officials, according to previously sealed court documents that offer a window into the business of fund raising in Washington.

"As you recall in our conversation some weeks ago, you agreed to upgrade your Team 100 membership to the Regent program ($250,000) when the merger was approved," Republican Party fund-raiser Mel Sembler wrote in 2000 to the chief of the now-bankrupt Global Crossing telecommunications company, which had already given $100,000.

"Thankfully this has now been approved, so I am taking the liberty of enclosing an invoice for the additional upgrade," Sembler added in one of dozens of fund-raising memos the political parties turned over to a court hearing the first legal challenge of the nation's new campaign finance law.

The memos were submitted to the court under seal, but were provided to The Associated Press and other news organizations Friday under an agreement between the national political parties and the lawmakers who sponsored the law.

The documents span from the Clinton years of the 1990s to the beginning of the Bush administration and detail how party officials often cater to donors and lace their pitches for money with promises of meetings with top officials.

"Gave 100K last year and 20K this year. Ask her to give 80K more this year for lunch with Potus on Oct. 27th," said a 1995 memo for then-Democratic Party chairman Don Fowler, urging that prominent donor Denise Rich be solicited for money before attending a lunch with President Clinton. Rich's name later surfaced in both the Clinton fund-raising and pardon controversies.

"These documents show how the game is played in Washington, and you have to be able to pay to play," said Kent Cooper, co-founder of PoliticalMoneyLine, a nonpartisan Web site that tracks campaign finance,

and a former Federal Election Commission official. "We expect these documents will trigger further investigations."

DNC spokeswoman Maria Cardona saw nothing new in the Democratic documents.

"This was part of the thousands and thousands and thousands of documents we dumped during the whole investigation of the 1996 fund-raising," Cardona said. The Democratic committee supports the new law, she said.

The Republican committee refused to comment on specific documents. Party Chairman Marc Racicot said in a written statement the RNC provided more than 400,000 documents to government lawyers and the court, and only a minuscule number are alleged by the law's defenders to be evidence of corruption.

"In most cases, they are nothing. In some cases they may be interesting but amount to nothing in the eyes of the law," Racicot said. The RNC is among those suing to try to overturn the new law.

Drug companies, some of the country's more active political donors, were a frequent subject of party memos.

In a 1999 letter, then-RNC Chairman Jim Nicholson wrote Charles Heimbold, then chief executive of Bristol-Myers Squibb, to discuss the company's plans to form an industry coalition to lobby for issues important to drug companies.

"A coalition will be the perfect vehicle for the Republican Party to reach out to the health care community and discuss their legislative needs," Nicholson wrote. Republicans then controlled both chambers of Congress.

"We must keep the lines of communication open if we want to continue passing legislation that will benefit your industry."

Nicholson enclosed a copy of the RNC's health care proposals and asked Heimbold for his suggestions to improve it. He also included an outline of GOP lawmakers were doing involving health care legislation.

In the next paragraph, Nicholson encouraged Bristol-Myers _ already a GOP donor _ to give $250,000 to join the Republican committee's new "Season Pass" program, which offered donors "premier seating" at the RNC's fund-raising gala and "VIP benefits" at the Republican presidential nominating convention in Philadelphia in 2000.

In all, Bristol-Myers gave $291,200 to the RNC in the 1999-2000 election cycle, according to figures compiled by the nonpartisan Center for Responsive Politics, which tracks political contributions.

Heimbold donated $50,000 to the RNC in October 2000. He was named ambassador to Sweden by President Bush last year.

When Microsoft Corp., a $100,000-plus donor to Republicans, planned to attend the party's major fund-raising gala in 2000, it asked to be seated next to "Sen. (Paul) Coverdell or leadership, Commerce Committee or Judiciary Committee," according to a GOP memo. At the time, the company was battling a major antitrust case that threatened to break the company into two. The memo added Microsoft did not want to sit with Sen. Orrin Hatch, R-Utah, a major critic.

In a note to a Dow Chemical official, the director of the RNC's "Team 100" donor club, Henry Barbour, sent thanks for a contribution and offered to arrange a meeting for Dow executives with House Speaker Newt Gingrich, R-Ga.; Sen. Bob Dole, R-Kan.; and GOP chairman Haley Barbour.

A 1995 Democratic National Committee fund-raising call sheet for Fowler and Sen. Christopher Dodd, D-Conn., scheduled a call to Texaco lobbyist Jim Groninger.

"Reason for call: Please ask Jim to become a Trustee and contribute $35,000. Additional notes: The President helped out the Oil Industry by supporting them on drilling issues in the Gulf of Mexico. The bill passed the House on Tuesday," the call sheet said.

The DNC sought $85,000 from British Petroleum in a November 1995 call: "BP has given $66,000 to Republican committees this year. The Administration helped them out on two major issues this year," the call sheet said.

Spokespeople for Texaco-Chevron, Dow Chemical and Bristol-Myers Squibb declined to comment on the documents....