



# United States District Court

For the District of Columbia

Notice of Orders or Judgments  
Fed. R. Civ. P. 77(d)

Date: 01/16/03

To: Randolph D. Moss  
2445 M Street, NW  
Washington, DC 20037

Re: Case Number: 1:02-cv-00582

Instrument Number: 292

This fax will be attempted five times. If you have not received a complete fax on that attempt it will be automatically printed and mailed to you. For questions concerning faxing problems, please call (202) 354-3190.

Number of pages including cover sheet: 8

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

---

SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

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

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

---

---

**FILED** ✓

JAN 16 2003

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

---

---

NATIONAL RIFLE ASSOCIATION, *et al.*,

Plaintiffs,

v.

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

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

---

---

---

---

EMILY ECHOLS, *et al.*,

Plaintiffs,

v.

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

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

---

---

(N)

---

---

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

Plaintiffs,

v.

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

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

Defendants.

---

---

---

---

NATIONAL ASSOCIATION OF  
BROADCASTERS,

Plaintiff,

v.

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

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

Defendants.

---

---

---

---

AFL-CIO, *et al.*,

Plaintiffs,

v.

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

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

Defendants.

---

---

---

---

CONGRESSMAN RON PAUL, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

---

---

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

---

---

REPUBLICAN NATIONAL COMMITTEE,  
*et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

---

---

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

---

---

CALIFORNIA DEMOCRATIC PARTY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

---

---

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

---

---

VICTORIA JACKSON GRAY ADAMS, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

---

---

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

---

---

BENNIE G. THOMPSON, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

---

---

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

**ORDER REMANDING TO A SINGLE-JUDGE DISTRICT COURT**  
**MATTERS OF CONFIDENTIALITY AND THE PROPOSED PRESS INTERVENORS'**  
**MOTION TO MAKE PUBLIC THE FULL RECORD**

(January \_\_, 2003)

This three-judge court was originally convened pursuant to the statutory grants of authority found in section 403 of the Bipartisan Campaign Reform Act of 2002 (BCRA) and 28 U.S.C. § 2284. *See* Order of 3/28/02, *NRA v. FEC*, Civ. No. 02-CV-0581

(CKK). Assuming the panel has jurisdiction over the proposed press intervenors' motion to make public the full record and other related confidentiality matters, it retains discretion—and herein exercises that discretion—to remand such matters to a single district judge. *See Adams v. Clinton*, 40 F. Supp. 2d 1, 5 (D.D.C. 1999) (three-judge panel) (“[E]ven when [a] three-judge court has jurisdiction over an ancillary claim, ‘the most appropriate course’ may be to remand it to [a] single district judge.” (quoting *Hagans v. Lavine*, 415 U.S. 528, 544 (1974))); *Turner Broadcasting System, Inc. v. FCC*, 810 F. Supp. 1308, 1314 (D.D.C. 1992) (three-judge panel) (exercising discretion to decline three-judge jurisdiction).

\* \* \*

BCRA section 403 provides that “[i]f any action is brought for declaratory or injunctive relief to challenge the *constitutionality* of any provision of this Act . . . [t]he action . . . shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.” BCRA § 403(a) (emphasis added). The Supreme Court has repeatedly stressed—and the courts of this circuit have frequently recognized—that the Congress’s grant of three-judge court jurisdiction “is not a measure of broad social policy to be construed with great liberality,” *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 98 (1974) (quotations omitted), but “is rather an enactment technical in the strict sense of the term and to be applied as such,” *Mitchell v. Donovan*, 398 U.S. 427, 431 (1970); *see, e.g., Nixon v. Richey*, 513 F.2d 430, 446 (D.C. Cir. 1975) (“[T]he

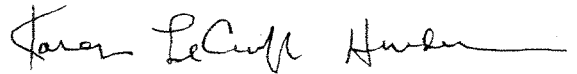
three-judge apparatus is not to be utilized freely, but only and strictly as Congress has prescribed.”); *Adams v. Clinton*, 90 F. Supp. 2d 35, 39 (D.D.C. 2000) (remanding to single district judge claims not involving apportionment under section 2284 because they “would take [the court] far afield from the core of the original jurisdictional grant” of three-judge authority). Because this panel sits to decide the constitutionality of BCRA’s challenged provisions, the proposed intervenors’ motion and other matters of confidentiality fall beyond the scope of the panel’s statutory charge.

The primary justification for convening a three-judge panel in lieu of a single-judge court is “as a means of accelerating a final determination on the merits” *via* direct Supreme Court review. *Swift & Co. v. Wickham*, 382 U.S. 111, 119-20 (1965); *see* BCRA § 403(a)(3), (4) (providing, respectively, for direct review and expedition); 147 CONG. REC. S3189 (daily ed. Mar. 30, 2001) (statement of Sen. Hatch) (proposing section 403 because constitutional issues raised by BCRA are “of such imperative public importance as to justify deviation from normal appellate practice”). A panel decision on satellite confidentiality matters—a decision that “would take us far afield from the core of the original jurisdictional grant” of BCRA section 403, *Adams*, 90 F. Supp. 2d at 39—would not serve this purpose with respect to the constitutional issues raised by BCRA. Even if the panel’s charge under the text of section 403 could be read plausibly to extend to the press’s motion and related matters, relevant case law cautions abstention where direct review would lie in the Supreme Court rather than in the Court of Appeals. *See, e.g.*,


*Phillips v. United States*, 312 U.S. 246, 250 (1941) (“[I]nasmuch as this [three-judge] procedure also brings direct review of a district court to [the Supreme] Court, any loose construction of the requirements . . . would defeat the purposes of Congress . . . to keep within narrow confines [the Court’s] appellate docket.”).

Accordingly, and on the court’s own motion, it is hereby **ORDERED** that the proposed press intervenors’ motion to make public the full record and all other matters relating to confidentiality are **REMANDED** to Judge Colleen Kollar-Kotelly sitting as a single-judge district court.


**SO ORDERED.**



KAREN LECRAFT HENDERSON  
United States Circuit Judge



COLLEEN KOLLAR-KOTELLY  
United States District Judge



RICHARD J. LEON  
United States District Judge