

No. 02-1674

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 2002

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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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**REPLY BRIEF  
IN SUPPORT OF JURISDICTIONAL STATEMENT**

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May 29, 2003

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## INTRODUCTION

Consistent with the congressional mandate that the appeals in the campaign finance litigation be “advance[d] on the docket and expedite[d] to the greatest possible extent,” BCRA § 403(a)(4), appellants filed their jurisdictional statement within hours of the decision below. Appellants did so because they believed that this Court should note probable jurisdiction on all of the questions presented in an expedited manner, thereby leaving the Court as much time as possible to consider the case on the merits. The Executive Branch appellees share this view, having urged this Court to note probable jurisdiction on all of the questions presented “[i]n order to facilitate expeditious resolution of this case in accordance with the statutory mandate,” Executive Branch Resp. 7, and having further proposed that this Court note probable jurisdiction on an expedited basis, *see* Mot. of Executive Branch Defendants for Expedited Briefing Schedule 2.

The Intervenor appellees, however, have taken a dramatically different approach. While agreeing on the one hand that this Court should note probable jurisdiction within a matter of days, *see id.* at 1, they suggest on the other, in a voluminous and at times belligerent filing, that this Court should “summarily dispose of appellants’ challenges” to certain statutory provisions, Intervenor Resp. 13. Leaving aside the curious fact that the intervenors repeatedly stop short of asking this Court to *affirm* the district court’s decision as to those provisions — which is the appropriate course where a party believes that this Court should not set issues in an appeal for briefing and oral argument, *see* S. Ct. R. 18.6 — intervenors’ attempt to put points on the board is both imprudent and unwise. Intervenor’s arguments regarding the justiciability of appellants’ challenges to certain provisions of BCRA go directly to the *merits* of the district court’s rulings on those provisions — rulings on which the three members of the district court did not even agree. Those justiciability rulings themselves present substantial

