



U.S. Department of Justice  
Office of the Solicitor General

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Washington, D.C. 20530

June 10, 2003

Honorable William K. Suter, Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

Re: Mitch McConnell, Senator, et al. v. Federal Election  
Commission, et al., Nos. 02-1674, et al.

Dear Mr. Suter:

These cases arise out of constitutional challenges to the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No 107-155, 116 Stat. 81. On June 5, 2003, this Court issued an order noting probable jurisdiction in these cases and consolidating the cases for briefing and argument. On that same day, the Merits Case Clerk distributed a memorandum to counsel regarding page limits for the briefs in the consolidated cases. That memorandum requested that counsel for the various parties file a "coordinated briefing proposal" that would suggest appropriate page limits for individual briefs and would identify issues on which two or more parties can present a common position. In response to the Merits Case Clerk's memorandum, plaintiffs have filed eight separate proposals regarding the briefing of the various plaintiffs' claims. In the aggregate, plaintiffs have requested leave to file eight separate opening briefs totaling 475 pages, and eight separate reply briefs totaling 200 pages.

The brief for the Executive Branch defendants (appellants in No. 02-1676) will address each of the constitutional challenges raised by the plaintiffs. In light of the number and variety of statutory provisions that are at issue in these cases, and the large number of briefs to which the Executive Branch parties will be required to respond, adequate presentation of the Executive Branch parties' defense of the statute will require a significant increase over the 50-page limit established by Rule 33.1 of the Rules of this Court. The Executive Branch parties therefore request leave to file a brief not to exceed 140 pages. Intervenor-defendants Senator John McCain, et al. (appellants in No. 02-1702), are requesting leave to file a

brief of the same length, and we support that request. If those requests are granted, the combined pages allowed for the defendants' briefs (280 pages) will still be less than half the number of the combined pages requested for the opening and reply briefs of the plaintiffs (675 pages).

The Executive Branch parties have conferred with the intervenor-defendants regarding appropriate brief lengths in these cases, and we will attempt to avoid unnecessary duplication between our brief and that of the intervenors. We do not consider it feasible, however, to file a joint brief with those parties. The Executive Branch defendants are charged by statute with the duty to enforce and administer BCRA. The intervenor-defendants, by contrast, are individual Members of Congress who do not (and, in light of constitutional separation-of-powers principles, could not) share responsibility for enforcement of the statute. The intervenors' perspective on the constitutional questions presented here is an important one, and their interest in suits such as these is specifically recognized in BCRA itself. See BCRA § 403(b), 116 Stat. 114 (granting Members of Congress a right to intervene in any suit in which the constitutionality of the Act is challenged). Their perspective is not, however, the same as that of the Executive Branch parties, and it would accordingly be inappropriate for the two sets of defendants to file a joint brief in this case.

Sincerely,

Theodore B. Olson  
Solicitor General

cc: see attached service list