

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

MARK T. ESPER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

v.

MARK T. ESPER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO FILE
UNDER SEAL EXHIBITS A-C, E AND F FILED SIMULTANEOUSLY WITH
PLAINTIFFS' SUPPLEMENTAL BRIEF
IN OPPOSITION TO DEFENDANTS' RENEWED
MOTIONS TO DISMISS PLAINTIFF OUTSERVE-SLDN**

Plaintiffs respectfully request that Exhibits A-C, E and F to Plaintiffs' Supplemental Brief in Opposition to Defendants' Renewed Motions to Dismiss Plaintiff OutServe-SLDN be filed under seal pursuant to Local Civil Rule 5. Plaintiffs will also file redacted versions of these Exhibits. In support of this request, Plaintiffs state as follows:

1. Plaintiffs have moved the Court to file under seal interrogatory responses, a deposition, as well as confidential, proprietary, and sensitive organizational documents in support of their Supplemental Brief in Opposition to Defendants' Renewed Motions to Dismiss Plaintiff OutServe-SLDN.

2. Exhibit A is Plaintiffs' Second Supplemental Response to Defendants' First Set of Interrogatories. This response contains information disclosing the LGBTQ identity and/or HIV status of multiple of Plaintiff OutServe-SLDN's members.

3. Exhibit B is Plaintiffs' Response to Defendants' Second Set of Interrogatories. This response contains confidential, proprietary, and sensitive information about Plaintiff OutServe-SLDN.

4. Exhibit C is the deposition of Anthony Blevins, Executive Director of Plaintiff OutServe-SLDN. The deposition contains discussion of the LGBTQ identity and/or HIV status of multiple of Plaintiff OutServe's members.

5. Exhibit E is the OutServe-SLDN Military Advisory Council's Mission and Responsibilities document. This response contains confidential, proprietary, and sensitive information about Plaintiff OutServe-SLDN.

6. Exhibit F is the results of a 2014 OutServe-SLDN membership survey. This response contains confidential, proprietary, and sensitive information about Plaintiff OutServe-SLDN.

7. With this Memorandum in Support of Plaintiffs' Motion to File Under Seal, Plaintiffs have also filed a Notice of Motion to File Under Seal, Motion to File Under Seal, and a Proposed Order to seal the materials pursuant to Local Rule 5.

8. Under established Fourth Circuit precedent, there are three requirements for sealing court filings: (1) public notice of the request to seal with an opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings supporting a decision to seal and rejecting alternatives to seal. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000). Plaintiffs have complied with these requirements.

9. Plaintiffs are requesting to file these exhibits under seal primarily so that the Court and Defendants in this matter have access to the identifying information provided in the exhibits for their own use, without subjecting the individuals discussed herein to the very real risk of stigma and discrimination that those living openly with HIV and those living openly as LGBTQ face. Although Plaintiffs are requesting the Court's permission to file under seal, Plaintiffs are willing to provide redacted exhibits to ensure compliance with the second *Ashcraft* factor.

10. Considering the identities revealed in the responses and deposition and the confidential, proprietary, and sensitive information revealed in the responses and internal organizational documents, and declaration, the decision to seal is supported by existing Fourth Circuit precedent and numerous previous orders from this Court in the present litigation, including, most recently, the Court's May 21st Order, ECF No. 136, that ordered a number of the same documents to be sealed.

11. Accordingly, Plaintiffs respectfully request that the Court enter an order sealing the unredacted versions of Exhibits A-C, E and F and allowing Plaintiffs to publicly file redacted versions by July 19, 2019.

Dated: July 12, 2019

/s/ Scott Schoettes
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on the 12th day of July, 2019, I caused this document to be filed electronically through the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: July 12, 2019

Respectfully submitted,

/s/ John W. H. Harding
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