

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

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

RICHARD V. SPENCER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

v.

RICHARD V. SPENCER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO FILE  
UNDER SEAL EXHIBIT B FILED SIMULTANEOUSLY WITH  
PLAINTIFFS' SUPPLEMENTAL RESPONSE BRIEF  
IN OPPOSITION TO DEFENDANTS' RENEWED  
MOTIONS TO DISMISS PLAINTIFF OUTSERVE-SLDN**

Plaintiffs respectfully request that Exhibit B to Plaintiffs' Supplemental Response 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 a redacted version of this Exhibit. In support of this request, Plaintiffs state as follows:

1. Plaintiffs have moved the Court to file under seal deposition excerpts in support of their Supplemental Response Brief in Opposition to Defendants' Renewed Motions to Dismiss Plaintiff OutServe-SLDN.

2. Exhibit B is an excerpt from 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.

3. 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.

4. 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.

5. Plaintiffs are requesting to file this exhibit under seal primarily so that the Court and Defendants in this matter have access to the identifying information provided in the exhibit, 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 will file a redacted exhibit to ensure compliance with the second *Ashcraft* factor.

6. Considering the identities revealed in the responses, 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 July 15th Order, *Roe* ECF No. 198, that ordered a number of similar documents to be sealed.

7. Accordingly, Plaintiffs respectfully request that the Court enter an order sealing the unredacted versions of Exhibit B, and allowing Plaintiffs to publicly file a redacted version by July 26, 2019.

Dated: July 19, 2019

/s/ Scott Schoettes

Scott Schoettes\*  
SSchoettes@lambdalegal.org  
Kara Ingelhart\*  
KIngelhart@lambdalegal.org  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
105 W. Adams St., Suite 2600  
Chicago, IL 60603  
T: (312) 663-4413

Anthony Pinggera\*  
APinggera@lambdalegal.org  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
4221 Wiltshire Blvd., Suite 280  
Los Angeles, CA 90010  
T: (213) 382-7600

Peter E. Perkowski\*  
PeterP@outserve.org  
OUTSERVE-SLDN, INC.  
P.O. Box 65301  
Washington, DC 20035-5301  
T: (800) 538-7418

*Attorneys for Plaintiffs*  
*\*pro hac vice*

Respectfully submitted,

/s/ John W. H. Harding

John W.H. Harding  
Virginia State Bar No. 87602  
JWHarding@winston.com  
Lauren Gailey\*  
LGailey@winston.com  
Laura Cooley  
Virginia State Bar No. 93446  
LCooley@winston.com  
Alexandra J. Hemmings\*  
AHemmings@winston.com  
WINSTON & STRAWN LLP  
1700 K St., NW  
Washington, DC 20006  
T: (202) 282-5000  
Julie A. Bauer\*  
JBauer@winston.com  
WINSTON & STRAWN LLP  
35 W. Wacker Dr.  
Chicago, IL 60601  
T: (312) 558-560  
Andrew R. Sommer  
Virginia State Bar No. 70304  
Sommera@gtlaw.com  
GREENBERG TRAURIG, LLP  
1750 Tysons Boulevard  
Suite 1000  
McLean, VA 22102  
T: (703) 749-1370

### **CERTIFICATE OF SERVICE**

I certify that, on the 19th 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 19, 2019

Respectfully submitted,

/s/ John W. H. Harding

John W.H. Harding