

**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

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO SEAL
PLAINTIFFS' REPLY AND EXHIBITS A–F IN SUPPORT OF THEIR
MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS AND INFORMATION**

Pursuant to Local Civil Rule 5, Plaintiffs move to seal Plaintiffs' Reply in Support of Their Motion to Compel the Production of Documents and Information, and Exhibits A–F to that reply.

In support of this motion to seal, Plaintiffs state as follows:

1. Exhibit A is a paper showing the outcome of a vote taken on whether to retain Plaintiff Voe in the Air Force. The document contains personal identifying information of Victor Voe.

2. Exhibit B is a memorandum drafted to inform Plaintiff Voe of the outcome of this vote. The document contains personal identifying information of Victor Voe.

3. Exhibit C is an email written by Air Force officials. The email contains personal identifying information of Victor Voe.

4. Exhibit D is an email written by Air Force officials. The email has been marked as confidential by Defendants, and is therefore subject to the Protective Order entered in this case.

5. Exhibit E is a paper showing the outcome of a vote taken on whether to retain Plaintiff Voe in the Air Force. The document contains personal identifying information of Victor Voe.

6. Exhibit F is a memorandum drafted to inform Plaintiff Voe of the outcome of this vote. The document contains personal identifying information of Victor Voe.

7. Plaintiffs' Reply in Support of Their Motion to Compel the Production of Documents and Information quotes the content of these documents.

8. 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.

9. 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.

10. First, as mentioned above, Plaintiffs have filed along with this Motion a Notice of Motion to File Under Seal. Should Defendants or any interested member of the public object to the motion, they may raise their objections with the Court.

11. Second, there are no less drastic alternatives to sealing. Plaintiffs will publicly file redacted versions of these documents so that the public may have the greatest access possible, while still protecting confidential information.

12. Third, a decision to seal these documents would be supported by Fourth Circuit precedent. The Court has already determined in this case, and in the companion case *Harrison, et*

al. v. Esper, et al., No. 18-cv-641, that documents marked as confidential by the Air Force are subject to the Court’s protective order in this case. *See Harrison*, ECF No. 128, 175–76; *Roe*, ECF No. 158. The protective order provides that “Protected Material . . . shall not be filed on the public record,” and “[t]o the extent that Protected Material is relied upon by the Parties in briefs, it should be redacted.” The Court has further already stated that the personal identifying information of Plaintiffs and others living with HIV should be redacted from the public record. *See, e.g.*, Order Granting Mot. to Seal, ECF No. 136. These documents are marked as confidential or contain the personal identifying information of Plaintiffs. Their contents must therefore be redacted prior to being placed on the public record. Plaintiffs seek to file unredacted versions under seal for the benefit of the Court and Defendants.

Accordingly, Plaintiffs respectfully request that the Court enter an order sealing the unredacted version of their Reply in Support of Their Motion to Compel the Production of Documents and Information, and Exhibits A–F to that reply.

Dated: July 18, 2019

/s/ Scott Schoettes

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CERTIFICATE OF SERVICE

I certify that, on the 18th 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 18, 2019

Respectfully submitted,

/s/ John W. H. Harding

John W.H. Harding