

Exhibit B

Kahn, Aaron

From: Kahn, Aaron
Sent: Thursday, October 15, 2009 12:45 PM
To: 'Freeborne, Paul (CIV)'
Cc: Woods, Dan; Hunnius, Patrick
Subject: RE: LCR: Motion for Interlocutory Appeal and Stay of Proceedings Pending Consideration of Motion

Paul,

Log Cabin Republicans will oppose the government's motion for interlocutory appeal under 28 U.S.C. § 1292(b) and will oppose the government's motion for a stay of proceedings.

First, the government's 11th-hour notice of a filing you intend to make later today is procedurally deficient as it does not comply with L.R. 7-3, which requires both that you discuss thoroughly the grounds for your motion with opposing counsel and that such conference take place 20 days prior to filing.

Second, the Court's June 9, 2009, ruling on the government's motion to dismiss does not meet the statutory criteria for certification for several reasons. Most importantly, certification for appeal would not materially advance the ultimate termination of the litigation because the government has waited over four months to make this motion. Trial is set for June 2010. It would likely be June or later before the District Court considers your § 1292(b) application, the Ninth Circuit considers your application, the parties brief the actual appeal, and the Ninth Circuit resolves the appeal. Even if the statutory requirements are met, it is highly unlikely that both Courts would exercise discretion to grant the government's application, particularly given the government's delay. As Judge Posner commented, "[C]elerity was to be the touchstone of appealability under [28 U.S.C. § 1292 (b)]. ... [T]he parties ought to know at the earliest possible opportunity whether such an interruption is going to occur." *Weir v. Propst*, 915 F.2d 283, 286 (7th Cir. 1990).

If the government does nevertheless proceed with its proposed filing, please indicate that Log Cabin Republicans will oppose the motion and attach a copy of this correspondence.

Best Regards,

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11/2/2009

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From: Freeborne, Paul (CIV) [<mailto:Paul.Freeborne@usdoj.gov>]
Sent: Thursday, October 15, 2009 7:41 AM
To: Kahn, Aaron
Cc: Woods, Dan; Hunnius, Patrick
Subject: RE: LCR: Motion for Interlocutory Appeal and Stay of Proceedings Pending Consideration of Motion

Counsel,

The government will be filing a motion for interlocutory appeal regarding the Court's June 9th order and a stay of proceedings, including discovery, pending the consideration of the 1292(b) motion and appeal. Pursuant to L.R. 7-3, please advise as to whether plaintiff will oppose the motion.

We intend to file today, so a prompt reply is appreciated.

Paul