

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**NATIONAL ORGANIZATION FOR)
MARRIAGE AND AMERICAN)
PRINCIPLES IN ACTION,)**

PLAINTIFFS)

v.)

CIVIL No. 09-538-B-H

**WALTER F. McKEE, in his official)
capacity as member of the)
Commission on Governmental Ethics)
and Election Practices, ET AL.,)**

DEFENDANTS)

**ORDER ON PLAINTIFFS' MOTION FOR SEALED EVIDENCE TO REMAIN
SEALED AND FOR SEALED EVIDENCE NOT TO BE CONSIDERED ON
SUMMARY JUDGMENT**

I heard oral argument on the plaintiffs' motion regarding sealed evidence on January 24, 2011. The plaintiffs' motion "to order that certain materials . . . remain permanently under seal"¹ is **DENIED WITHOUT PREJUDICE** because it is premature.

When, as a result of pretrial proceedings and in accordance with this Court's Local Rule 7A, documents are filed under seal, they remain under seal until someone files a motion to unseal them, or the Court, on its own motion, issues an order to show cause why they should remain sealed. Neither of those events has occurred.

¹ Pls.' Mot. for Sealed Evidence to Remain Sealed and for Sealed Evidence not to be Considered on Summ. J. at 1 (Docket Item 203).

I understand that the plaintiffs may have filed this motion because I refused to seal portions of the trial record in a separate segment of this case that proceeded to bench trial. Bench Trial Decision and Order on Mot. for Injunctive Relief at 2 n.4 (Docket Item 164). A trial is presumed to be public, however, and there the parties jointly stipulated and filed the trial record without seeking advance court approval that portions of the trial record be sealed. That is an important distinction.²

The request not to consider the materials in determining the summary judgment cross-motions also is **DENIED**. As I determine the cross-motions for summary judgment under Fed. R. Civ. P. 56, I will determine what are the material facts and whether they are disputed. There is no need for a separate motion or a separate order.

SO ORDERED.

DATED THIS 26TH DAY OF JANUARY, 2011

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

² The First Circuit has stayed my refusal to seal that bench trial record pending further order or its decision on appeal of the merits of the bench trial decision. Nat'l Org. for Marriage v. McKee, No. 10-2000 (1st Cir. Sept. 2, 2010).

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE (BANGOR)
CIVIL DOCKET NO. 1:09cv538 (DBH)

National Organization for Marriage

and

American Principles in Action,

Plaintiffs

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v.

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all in their official capacity as members of
the Commission on Government Ethics
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and

Attorney General, State of Maine,

Defendants