

SCHEDULED FOR ORAL ARGUMENT ON APRIL 14, 2016

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

True the Vote, Inc.,

Plaintiff-Appellant,

v.

Internal Revenue Service, *et al.*,

Defendants-Appellees.

Case No. 14-5316

**JOINT MOTION BY ALL DEFENDANTS-APPELLEES
TO DIVIDE ORAL ARGUMENT TIME**

Pursuant to Rule 34 of the Rules of this Court, Defendants-Appellees move for divided argument in this case. True the Vote does not oppose this motion. The United States and the Internal Revenue Service (collectively, “IRS”) are represented in this case by the Department of Justice. The Individual Defendants¹ are represented by private counsel because the Department of Justice found it inappropriate to simultaneously represent both the official interests of the United States and the personal interests of the Individual Defendants. *See* 28 C.F.R. § 50.15(a)(10).

¹ The Individual Defendants are: Steven Grodnitzky, Lois Lerner, Steven Miller, Holly Paz, David Fish, Michael Seto, Douglas Shulman, Cindy Thomas, William Wilkins, Ronald Bell, Faye Ng, Janine L. Estes, and Susan Maloney.

The issues before the Court in connection with the IRS and the Individual Defendants are distinct. For example, the IRS confronts issues regarding the district court's determination that True the Vote's claims for declaratory and injunctive relief under the First Amendment and the APA were moot, as well as whether True the Vote stated a damages claim for violations of 26 U.S.C. § 6103. By contrast, the issue relevant to the Individual Defendants concerns whether *Bivens* extends to this context, exposing them to potential individual damages liability.

By Order dated April 4, 2016, this Court granted ten minutes of oral argument per side and directed that only one counsel per side present argument. Under the circumstances here, good cause is present for divided argument that allows both the Department of Justice to argue on behalf of the IRS and private counsel to argue on behalf of the Individual Defendants.

First, the IRS and the Individual Defendants face distinct issues on appeal, and they briefed those issues separately. The issues confronted by the IRS and the Individual Defendants do not overlap. Thus, this Court would benefit from hearing argument on those distinct issues by the counsel who briefed the issues and is most familiar with them. *Second*, the Department of Justice retained private counsel for the Individual Defendants because it concluded the Department could not

appropriately represent both the IRS and the Individual Defendants. *See* 28 C.F.R. § 50.15(a)(10). That, too, provides good cause for allowing divided argument.

Granting this motion would not require the Court to enlarge the time for argument. Defendants-Appellees propose that, of the ten minutes of argument time currently allotted to them, seven minutes be allocated to the Department of Justice to argue on behalf of the IRS and three minutes be allocated to private counsel to argue on behalf of the Individual Defendants. Only one counsel will present argument on behalf of all Individual Defendants in this case.

CONCLUSION

The motion for divided argument should be granted.

April 5, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 5, 2016, I caused one copy of the foregoing Joint Motion by All Defendants-Appellees To Divide Oral Argument Time to be filed with the Clerk of Court and served on all parties using the CM/ECF System.

/s/ Jeffrey A. Lamken
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