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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF WYOMING

FREE SPEECH,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 2:12-127-SWS
)	
FEDERAL ELECTION COMMISSION,)	
)	OPPOSITION
Defendant.)	
_____)	

**DEFENDANT FEDERAL ELECTION COMMISSION’S OPPOSITION TO
 PLAINTIFF’S MOTION FOR INJUNCTION PENDING APPEAL**

Pursuant to the Court's Order of October 19, 2012 (Docket No. 48), defendant Federal Election Commission respectfully submits this memorandum in opposition to plaintiff's Motion for Injunction Pending Appeal (Docket No. 46). On October 3, 2012, this Court denied plaintiff's motion for a preliminary injunction against the Commission's enforcement of certain campaign-finance regulations and policies. (Docket Nos. 41-42.) On October 19, plaintiff filed (1) a notice of appeal regarding the Court's decision, and (2) the instant motion seeking an injunction during the pendency of that appeal. The motion should be denied because plaintiff has failed to meet the heavy burden required to justify an injunction pending an appeal of the denial of a preliminary injunction.

Plaintiff correctly notes that "the standards for an injunction on appeal are the same as those for preliminary injunctions." (Pl.'s Mot. for Inj. Pending Appeal at 1.) Although plaintiff's motion cites Federal Rule of Appellate Procedure 8(a)(1)(C), it appears to be made under Federal Rule of Civil Procedure 62(c), which governs any injunction pending an appeal "from an interlocutory order . . . that . . . grants, dissolves, or denies an injunction" — *i.e.*, the relief sought here. District courts within the Tenth Circuit apply a four-part test for motions under Rule 62(c):

To obtain such an injunction, the Plaintiff must show: (i) a strong position on the merits of the appeal; (ii) irreparable injury if an injunction pending appeal is denied; (iii) that an injunction would not substantially harm the Defendant; and (iv) that an injunction is not adverse to the public interest.

Malone v. Mukasey, Civ. No. 08-01795, 2009 WL 4268057, at *1 (D. Colo. Nov. 20, 2009) (citing *Secs. Investor Prot. Corp. v. Blinder, Robinson & Co.*, 962 F.2d 960, 968 (10th Cir.

1992)); *see also, e.g., In re Adoption of C.D.K.*, Civ. No. 2:08-490, 2009 WL 1743765, at *3 (D. Utah June 18, 2009) (same); *Sisters of Mercy Health Sys. v. Kula*, Civ. No. 05-115, 2006 WL 2090090, at *2 (W.D. Okla. July 25, 2006) (same); *Waste Connections of Kan., Inc. v. City of Bel Aire*, 191 F. Supp. 2d 1253, 1254 (D. Kan. 2002) (same). This is identical to the preliminary injunction standard. *Hillsdale Env'tl. Loss Prevention, Inc v. U.S. Army Corps of Engineers*, Civ. Nos. 10-2008, 10-2068, 2011 WL 3847383, at *1 (D. Kan. Aug. 26, 2011) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Thus, where the issue to be decided on appeal is the grant or denial of a preliminary injunction, the burden on a party seeking an injunction pending appeal is a heavy one because the party “has already lost the initial determination [regarding a] preliminary injunction and the factors are similar.” *O’Brien v. Appomattox Cnty.*, Civ. No. 02-43, 2002 WL 31663226, at *1 (W.D. Va. Nov. 15, 2002) (citing 11 Wright, Miller & Kane, *Federal Practice and Procedure* § 2904 at 503-04, 513-14 (1995)).

Plaintiff’s cursory motion fails to meet this high standard. In denying plaintiff’s motion for a preliminary injunction, this Court necessarily determined that plaintiff failed to meet its burden under the four-part *Winter* test. The Court specifically held that plaintiff had not demonstrated a likelihood of success on the merits of its case under the first prong of that test, and plaintiff offers no new support here but instead merely incorporates by reference the arguments this Court has already rejected. Because the Rule 62(c) factors are identical to the preliminary injunction standard, the Court’s prior ruling is dispositive of plaintiff’s present motion.

For the foregoing reasons, plaintiff's motion for an injunction pending appeal should be denied.

Respectfully submitted,

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Dated: October 23, 2012

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2012, the foregoing will be filed electronically with the Clerk of Court through the Court's ECF system and served by electronic filing on the following recipients:

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