UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS, *et al.*,	)	Civ. No. 1:14-397 (AJT-IDD)
Plaintiffs,	)	Judge Anthony John Trenga
v.	)	Magistrate Judge Ivan D. Davis
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Stop Reckless Economic Instability Caused by Democrats ("Stop PAC"), Tea Party Leadership Fund ("the Fund"), and Alexandria Republican City Committee ("ARCC")—as well as Putative Plaintiff-Intervenor American Future PAC, if this Court grants its pending motion to join in Stop PAC's claims—respectfully move that this Court grant them summary judgment on all Counts in the Complaint, and issue an injunction and declaratory judgment. A Memorandum in Support of Plaintiffs' Motion for Summary Judgment, supporting declarations, Proposed Order, Proposed Injunction and Notice of Hearing are attached.

Dated this 19th day of September, 2014.

Respectfully submitted,

/s/ Michael T. Morley
Michael T. Morley, Esq.
Virginia State Bar # 65762
COOLIDGE-REAGAN FOUNDATION
1629 K Street, Suite 300

Washington, DC 20006
Phone: (202) 603-5397
Fax: (202) 331-3759
E-mail: Morley@coolidgereagan.org
Attorney for Plaintiffs and Putative Plaintiff-Intervenor American Future PAC

/s/ Dan Backer
Dan Backer, Esq.
Virginia State Bar # 78256
DB CAPITOL STRATEGIES PLLC
203 South Union Street, Suite 300
Alexandria, VA 22314
Phone: (202) 210-5431
Fax: (202) 478-0750
E-mail: DBacker@DBCapitolStrategies.com
Attorneys for Plaintiffs Stop PAC, Tea Party Leadership Fund, and ARCC

/s/ Jerad Najvar*
Jerad Najvar
NAJVAR LAW FIRM
4151 Southwest Freeway, Suite 625
Houston, TX 77027
Phone: (281) 404-4696
E-mail: jerad@najvarlaw.com
Attorney for Putative Plaintiff-Intervenor American Future PAC
*Motion for *pro hac vice* admission forthcoming upon joinder

CERTIFICATE OF SERVICE

I, Dan Backer, hereby certify that on this 19th day of September 2014, I did cause a true and complete copy of the foregoing Plaintiffs' Motion for Summary Judgment, Memorandum in Support of Plaintiffs' Motion for Summary Judgment, supporting declarations, Proposed Order, Proposed Injunction and Notice of Hearing to be served via electronic mail on:

/s/ Dan Backer
Dan Backer
Virginia State Bar # 78256
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS, *et al.*,	)	Civ. No. 1:14-397 (AJT-IDD)
Plaintiffs,	)	Judge Anthony John Trenga
v.	)	Magistrate Judge Ivan D. Davis
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

/s/ Michael T. Morley
Michael T. Morley, Esq.
Virginia State Bar # 65762
COOLIDGE-REAGAN FOUNDATION
1629 K Street, Suite 300
Washington, DC 20006
Phone: (202) 603-5397
Fax: (202) 331-3759
E-mail: Morley@coolidgereagan.org
Attorney for Plaintiffs and Putative Plaintiff-Intervenor American Future PAC

/s/ Jerad Najvar*
Jerad Najvar
NAJVAR LAW FIRM
4151 Southwest Freeway, Suite 625
Houston, TX 77027
Phone: (281) 404-4696
E-mail: jerad@najvarlaw.com
Attorney for Putative Plaintiff-Intervenor American Future PAC
*Motion for *pro hac vice* admission forthcoming upon joinder

/s/ Dan Backer
Dan Backer, Esq.
Virginia State Bar # 78256
DB CAPITOL STRATEGIES PLLC
203 South Union Street, Suite 300
Alexandria, VA 22314
Phone: (202) 210-5431
Fax: (202) 478-0750
E-mail: DBacker@DBCapitolStrategies.com
Attorneys for Plaintiffs Stop PAC, Tea Party Leadership Fund, and ARCC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Other Authorities

INTRODUCTION

Federal law imposes unconstitutionally discriminatory limits on the amount that certain identically situated political committees may contribute to the candidates and political parties they support, based solely on whether those committees have been registered with the FEC for six or more months. Once a committee that has more than 50 contributors and has contributed to more than five candidates has been registered for more than six months, the amount that it may contribute to a candidate nearly ***doubles***, while the amount it may contribute to a local, state, or national political party committee gets just about ***cut in half***. Thus, two committees that are identical in every way, except for the length of time they have been registered with the FEC, are subject to two very different sets of limits on contributions to candidates and political parties.

These disparate limits, based solely on whether the committee has existed for more than six months, violate the equal protection component of the Fifth Amendment's Due Process Clause. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). The Supreme Court has long recognized that campaign contribution limits burden the fundamental First Amendment right of association, regardless of whether other potential means of associating with a candidate exist. *Buckley v. Valeo*, 424 U.S. 1, 22, 24-25 (1976). The challenged framework cannot survive heightened Equal Protection scrutiny because it imposes disparate burdens on different committees' First Amendment rights without furthering a substantial government interest or being reasonably tailored to achieve any such interest. *Id.*; *see also Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 200 (1981) ("*CalMed*"). Indeed, any interest the Government might assert in limiting political committees' contributions to candidates during the first six months of their existence is discredited by the fact that such newer committees may contribute ***greater*** amounts to local, state, and national political parties than committees that have reached the six-month mark.

Additionally, delays and "waiting periods" for political association and speech are highly suspect under the First Amendment. *Fw/Pbs, Inc. v. Dallas*, 493 U.S. 215, 228 (1990) (opinion of O'Connor, J.). Requiring recently formed committees that have received over 50 contributions and contributed to five or more candidates to wait six months before being able to contribute the full statutory amount to the candidates they support directly burdens those groups' First Amendment rights, as well.

The current statutory framework is internally incoherent and cannot survive constitutional scrutiny. There is no basis for doubling the amount which certain political committees may contribute to candidates once their six-month waiting periods expire, while simultaneously slashing in half the amount they may contribute to local, state, and national party committees at that time. This Court should invalidate the six-month waiting period to which certain political committees are subject before they may contribute $5,000 to candidates. It also should protect political committees that have been registered for more than six months from reductions in the amounts they may contribute to local, state, and national political party committees.[1]

LISTING OF UNDISPUTED FACTS

A. Stop PAC and Discriminatory Limits on Contributions to Candidates

1. Plaintiff STOP Reckless Economic Insanity Caused By Democrats ("Stop PAC") is a "political committee" under the FECA. *See* Declaration of Gregory Campbell, ¶ 3 ("Ex. A").

2. The Federal Election Commission contends, and Stop PAC agrees for purposes of this litigation, that it was registered with the FEC on March 11, 2014.

3. As of April 10, 2014, Stop PAC had over 150 contributors and had contributed to five (5) candidates for federal office, including Niger Innis. Campbell Decl. ¶¶ 8, 9.

[1] Summary judgment is appropriate because there is no dispute of material facts, and Plaintiffs are entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56.

4. As of April 10, 2014, federal law permitted Stop PAC to contribute no more than $2,600 per election to a candidate, because it has been registered with the FEC for less than six months. Campbell Decl. ¶¶ 10-11; 2 U.S.C. § 441a(a)(1)(A).

5. As of April 10, 2014, Stop PAC had contributed $2,600 to Niger Innis, who had been a candidate in Nevada's June 10, 2014 primary election for the Republican nomination for Congress ("Nevada Primary"). Campbell Decl., ¶ 15.

6. Stop PAC had an additional $2,400 in its account which it immediately wished to contribute to Innis in connection with the Nevada Primary, but federal law prohibited it from doing so, because Stop PAC had not been registered for six months. Campbell Decl., ¶¶ 16-19.

7. The Nevada Primary occurred before Stop PAC's six-month waiting period expired, and so Stop PAC was permanently deprived of the opportunity to fully exercise its First Amendment rights by contributing a total of $5,000 to Innis in connection with that race. Campbell Decl. ¶ 18. The $2,600 contribution limit, as well as the threats of civil and criminal enforcement by the Government, were the only factors that chilled Stop PAC from contributing $5,000 to Innis in connection with the Nevada Primary as a way of more closely associating itself with Innis, demonstrating its support for him, subsidizing his political speech, and assisting his campaign. Campbell Decl. ¶¶ 11, 14, 19-20.

8. On or about June 16, 2014, Stop PAC contributed the statutory maximum of $2,600 to Dan Sullivan, a candidate for the Republican nomination for Senate in Alaska's August 19, 2014 primary election (hereafter, "Alaska Primary"). Campbell Decl. ¶ 23.

9. Stop PAC had an additional $2,400 in its account which it immediately wished to contribute to Sullivan in connection with the Alaska Primary, but federal law prohibited it from doing so, because Stop PAC had not been registered for six months. Campbell Decl., ¶¶ 24-25.

10. The Alaska Primary occurred before Stop PAC's six-month waiting period expired, and so Stop PAC was permanently deprived of the opportunity to fully exercise its First Amendment rights by contributing a total of $5,000 to Sullivan in connection with that race. The $2,600 contribution limit and threat of civil and criminal enforcement by the Government were the only factors that chilled Stop PAC from contributing $5,000 to Sullivan in connection with the Alaska Primary to more closely associate itself with him, demonstrate its support for him, subsidize his political speech, and assist his campaign. Campbell Decl. ¶¶ 11, 14, 26-28.

11. On or about July 7, 2014, Stop PAC contributed $2,600 to Congressman Joe Heck in connection with his candidacy in the 2014 general election. Campbell Decl. ¶ 31.

12. At that time, Stop PAC had an additional $1,800 in its account, and wished to immediately contribute those funds to Heck, for a total of $4,400 in connection with the general election. Federal law prohibited it from doing so until its six-month waiting period expired on September 11, 2014. Campbell Decl. ¶¶ 33-34.

13. The $2,600 contribution limit and threat of civil and criminal enforcement by the Government were the only factors that chilled Stop PAC on July 7, 2014, from contributing $4,400 to Heck in connection with the general election, to more closely associate itself with him, demonstrate its support for him, subsidize his political speech, and assist his campaign. Campbell Decl. ¶¶ 11, 14, 33, 35, 37.

14. Now that Stop PAC's six-month waiting period is over, it has filed a Form 1-M with the FEC to be recognized as a multicandidate PAC. As soon as the FEC approves that form, it will contribute its additional $1,800 to Heck. Campbell Decl. ¶ 36.

15. Stop PAC is registered and based in Virginia. It has no offices in Nevada or Alaska, and few contributors from those states. Campbell Decl. ¶¶ 5, 21-22, 29-30.

16. Stop PAC lacks the staff and funds needed for independent expenditures, *id*. ¶ 12.

17. Stop PAC's website attracts very few visitors. Campbell Decl. ¶ 13.

B. The Fund and Discriminatory Limits on Contributions to National Political Party Committees

18. Plaintiff Tea Party Leadership Fund ("Fund") is a "political committee" under the FECA registered in Alexandria, Virginia. *See* Declaration of Michael Gruccio, ¶¶ 3, 4 ("Ex. B").

19. The Fund registered with the FEC on May 9, 2012. As of September 19, 2014, it has been registered with the FEC for over two years, had over 100,000 contributors, and has contributed to dozens of federal candidates. Gruccio Decl. ¶¶ 6-8.

20. Because the Fund has more than 50 contributors, contributed to at least 5 candidates, and has been registered with the FEC for more than six months, the maximum amount that federal law permits it to contribute to a national political party committee is $15,000 annually. Gruccio Decl. ¶ 9; 2 U.S.C. §§ 441a(a)(2)(B), 441a(a)(4).

21. If the Fund had been registered with the FEC for less than six months, it would have qualified as a "person" rather than a "multicandidate political committee," and been permitted to contribute up to $32,400 each year to a national political party committee. Gruccio Decl. ¶ 9; 2 U.S.C. §§ 441a(a)(1)(B), 441a(a)(4).

22. The National Republican Senatorial Committee ("NRSC") is a national political party committee. Gruccio Decl. ¶ 12.

23. Since April 10, 2014, the Fund has held over $37,400 in its account. *Id*. ¶ 11.

24. The Fund wishes to contribute $32,400 to the NRSC in 2014. Gruccio Decl. ¶ 13.

25. If federal law permitted the Fund to contribute $32,400 to the NRSC each year, the Fund already would have done so. The $15,000 contribution limit and threat of civil or criminal

enforcement are the only factors chilling the Fund's full exercise of its First Amendment rights. Gruccio Decl. ¶¶ 10, 13.

C. The Fund and Discriminatory Limits on Contributions to State and Local Political Party Committees

26. Because the Fund has more than 50 contributors, contributed to at least 5 federal candidates, and has been registered with the FEC for more than six months, the maximum amount that it may contribute to a state political party committee and its affiliated local political party committees is $5,000 each year. Gruccio Decl. ¶ 14; 2 U.S.C. § 441a(a)(2)(C), (a)(4).

27. If the Fund had been registered with the FEC for less than six months, it would have qualified as a "person" rather than a "multicandidate political committee," and been permitted to contribute up to $10,000 each year to a state political party committee and its affiliated local party committees. Gruccio Decl. ¶ 14; 2 U.S.C. § 441a(a)(1)(D), (a)(4).

28. The Arlington Republican City Committee ("ARCC") is a local political party committee. It is affiliated with the Virginia Republican State Committee, a state political party committee. Gruccio Decl. ¶ 15.

29. In 2014, the Fund has contributed $5,000 to the ARCC. Gruccio Decl. ¶ 16.

30. The Fund wishes to immediately contribute an additional $5,000 to the ARCC, for a total of $10,000 in 2014. Gruccio Decl. ¶ 17.

31. If federal law permitted the Fund to contribute $10,000 to the ARCC in a single year, the Fund already would have done so. The $5,000 contribution limit and threats of civil and criminal enforcement are the only factors that chilled the Fund's full exercise of its First Amendment rights. Gruccio Decl. ¶¶ 17-18.

32. The Fund shares the ARCC's commitment to federalism and devolving governmental responsibility to local governments, lower taxes, and respecting fundamental

constitutional rights. The Fund wishes to contribute a total of $10,000 to the ARCC in 2014 as a way of associating itself and its members with the ARCC, demonstrating its support for the ARCC, and furthering the ARCC's mission. Gruccio Decl. ¶ 19.

D. American Future and Discriminatory Limits on Contributions to Candidates[2]

33. American Future PAC ("American Future") is a political committee that registered with the FEC on August 11, 2014. *See* Najvar Decl., ¶ 3, Ex. 1 (registration form).[3]

34. As of August 27, 2014, American Future received more than 51 contributions. Najvar Decl., ¶¶ 6, 9 & Ex. 3.

35. As of August 27, 2014, American Future had contributed to five candidates. Najvar Decl., ¶ 4 & Ex. 2.

36. As of August 27, 2014, federal law permitted American Future to contribute no more than $2,600 per election to a candidate, because it has been registered with the FEC for less than six months. 2 U.S.C. § 441a(a)(1)(A); *see also* Najvar Decl., ¶ 8.

37. As of August 27, 2014, American Future had contributed $2,600 to Congressman Tom Cotton in connection with his 2014 general election campaign. Najvar Decl., ¶ 4 & Ex. 2.

38. American Future had, and is retaining, an additional $2,000 which it immediately wished to contribute, and continues to wish to contribute, to Cotton in connection with the 2014 general election. Federal law prohibits it from doing so because it has not been registered for six months. Najvar Decl., ¶¶ 6-8.

---

[2] Plaintiffs respectfully include these facts in case this Court grants their pending motion to join American Future PAC as a Plaintiff. In the event this Court denies that motion, these facts would not be material for summary judgment.

[3] Declaration of Attorney Jerad Najvar in Support of Motion of Plaintiffs and Putative Plaintiff-Intervenor American Future PAC Seeking Leave for American Future PAC to Join the Lawsuit Pursuant to Fed. R. Civ. P. 21, Doc. #50-3 (Aug. 27, 2014).

39. The 2014 general election will occur before American Future has been registered for more than six months, so it will be permanently deprived of the opportunity to fully exercise its First Amendment rights by contributing a total of $5,000 to Cotton in connection with that race. The $2,600 contribution limit, as well as the threats of civil and criminal enforcement by the Government, were the only factors that chilled American Future from contributing $5,000 to Cotton in connection with the 2014 general election. Najvar Decl., ¶ 8.

STATEMENT OF THE CASE

When it is initially formed, a political committee—including a committee that has more than 50 contributors and has made contributions to 5 or more candidates—is treated as a "person." *See* 2 U.S.C. § 431(11). Such a recently formed political committee may contribute:

- $2,600 per election to each candidate, 2 U.S.C. § 441a(a)(1)(A), with primary and general elections treated as separate elections, *id*. § 431(1)(A);
- a total of $10,000 annually to a state political party committee and its affiliated local political party committees, *id*. § 441a(a)(1)(D); and
- $32,400 annually to a national political party committee, *id*. § 441a(a)(1)(B).

See also FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 FED. REG. 8,530, 8,532 (Feb. 6, 2013) (adjusting certain limits for inflation).

Political committees that have more than 50 contributors and contributed to at least five candidates are treated as "multicandidate political committees," rather than "persons," once they have been registered with the FEC for six months. 2 U.S.C. § 441a(a)(4). This redesignation changes the limits that apply to the committee in conflicting ways:

- the limit for contributions to a candidate is ***raised*** to $5,000 per election, *id*. § 441a(a)(2)(A), resulting in a maximum of $10,000 per candidate, including both the primary and general elections;

- the limit for contributions to state political party committees and their local party committee affiliates is ***lowered*** to $5,000 each year, *id*. § 441a(a)(2)(C); and

- the limit for contributions to national political party committees is ***lowered*** to $15,000 each year, *id*. § 441a(a)(2)(B).

The following chart summarizes current contribution limits:

Recipient of Contribution:	Political Committee Making Contribution Has Existed for ***Less*** Than Six (6) Months	Political Committee Making Contribution Has Existed for ***Six (6) or More*** Months
Candidate	$2,600	$5,000
State political party committee and local committee affiliates (combined limit)	$10,000	$5,000
National political party committee	$32,400	$15,000

ARGUMENT

I. IMPOSING DIFFERENT CONTRIBUTION LIMITS ON SIMILARLY SITUATED POLITICAL COMMITTEES, BASED ON HOW LONG THEY HAVE BEEN REGISTERED WITH THE FEC, VIOLATES THE EQUAL PROTECTION COMPONENT OF THE DUE PROCESS CLAUSE.

The disparities in contribution limits for similarly situated political committees violate the equal protection component of the Fifth Amendment's Due Process Clause. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). Under Equal Protection principles, a court must "treat[] as presumptively invidious those classifications that . . . impinge upon the exercise of a fundamental right." *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quotation marks omitted); *Att'y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 906 n.6 (1986) (opinion of Brennan, J.) (holding that a law that disparately "infringes constitutionally protected rights" for different groups is subject to "heightened scrutiny").

In *Buckley v. Valeo*, 424 U.S. 1, 22, 24 (1976), the Court held that contributing to candidates and political parties is an important aspect of the freedom of association protected by the First Amendment. "The right to join together 'for the advancement of beliefs and ideas' is diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally 'effective.'" *Id*. at 65-66 (quoting *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958)). Moreover, "[m]aking a contribution, like joining a political party, serves to affiliate a person with a candidate" and "enables like-minded persons to pool their resources in furtherance of common political goals." *Id*. at 22. Because contribution limits substantially burden the right to associate with candidates and political parties without completely cutting off other potential means of doing so, *id*. at 22, they are subject to heightened or "close[]" scrutiny, rather than strict scrutiny, *id*. at 25 (quotation marks omitted).

A contribution limit therefore "violates the equal protection component of the Fifth Amendment," if it "burdens the First Amendment rights of [some] persons . . . to a greater extent than it burdens the same rights" of comparable entities, and "such differential treatment is not justified." *CalMed*, 453 U.S. at 200. To survive heightened or close scrutiny, disparate contribution limits for similarly situated entities must further "a sufficiently important interest and employ[] means closely drawn to avoid unnecessary abridgement of associational freedoms." *Buckley*, 424 U.S. at 25; *accord Wagner v. FEC*, 854 F. Supp. 2d 83, 96 (D.D.C. 2012) ("[T]o survive an equal protection challenge, § 441c's ban on contributions by federal contractors must be closely drawn to match a sufficiently important interest.") (quotation marks omitted), *vacated on jurisdictional grounds*, 717 F.3d 1007 (D.C. Cir. 2013); *see also Police Dep't of the City of Chicago v. Mosley*, 408 U.S. 92, 102 (1972) (holding that, under the Equal Protection Clause, a court must determine whether a "selective restriction on expressive conduct" is "far greater than

is essential to the furtherance of [a substantial] interest"). The disparate contribution limits for similarly situated political committees, based on whether they have been registered for six months, cannot satisfy heightened constitutional scrutiny.

A. The Disparate Limits for Contributions from Political Committees to *Candidates* Violate the Equal Protection Clause

Section 2 U.S.C. § 441a(a)(4)'s six-month waiting period violates the Equal Protection component of the Fifth Amendment's Due Process Clause, as applied to political committees that have received contributions from more than 50 contributors and contributed to at least five candidates. A committee with more than 50 contributors that has contributed to five or more candidates, but has been registered for less than 6 months, may contribute only $2,600 per election to each candidate. 2 U.S.C. § 441a(a)(1)(A). An identically situated committee—one that engages in the same activities, contributes to the same number of candidates, has the same number of contributors, and seeks to impact the same elections—that has been registered for more than 6 months may contribute $5,000 per election to each candidate. *Id*. § 441a(a)(2)(A). The Equal Protection Clause prohibits Congress from imposing disparate burdens on the First Amendment right of association of similarly situated groups by subjecting them to different contribution limits. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 793-94 (1983) ("A burden that falls unequally on new or small political parties . . . impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against . . . those voters whose political preferences lie outside the existing political parties.").

1. Political committees that have been registered for less than six months are materially indistinguishable from such committees that have been registered for more than six months.

Congress does not have a legitimate interest in allowing an established committee that has existed for more than six months to contribute nearly twice as much to the candidates it supports

as a newer committee that has existed for less than six months. In *CalMed*, 453 U.S. at 200, the plaintiff was an unincorporated association that brought an equal protection challenge to contribution limits that allegedly discriminated between unincorporated associations and corporations. Federal law permitted such associations to contribute only $5,000 to their affiliated PACs, *id*. at 195 (citing 2 U.S.C. § 441a(a)(1)(C)), whereas corporations could contribute an unlimited amount to their affiliated "segregated funds," *CalMed*, 453 U.S. at 200 (citing 2 U.S.C. §§ 431(8)(B)(vi), 441b(b)(2)(C)). The Court held that these different limits were permissible under the Equal Protection Clause because unincorporated associations and corporations "have differing structures and purposes," and therefore "may require different forms of regulation in order to protect the integrity of the electoral process." *Id*. at 201.

This case, in contrast, is an as-applied Equal Protection challenge to the disparate limits on candidate contributions that federal law imposes on different sub-groups of political committees with more than 50 contributors that have contributed to at least 5 candidates. Such committees that have been registered for less than six months may contribute only $2,600 per election to each candidate; that limit increases to $5,000 for otherwise identical committees that have been registered for more than six months. Unlike in *CalMed*, it is impossible to contend that the two groups of committees "have differing structures and purposes" and therefore "require different forms of regulation." *Id*. "[D]ifferential treatment" of candidate contributions from materially identical political committees "is not justified." *Id*.

2. Section 441a(a)(4)'s six-month waiting period for contributing the maximum statutory amount to candidates does not further <u>any important interests underlying campaign finance law.</u>

The Supreme Court has held that there are only three "constitutionally sufficient justification[s]" for contribution limits: preventing *quid pro quo* corruption, *McConnell v. FEC*,

540 U.S. 93, 297 (2003) (opinion of Kennedy, J.); avoiding the appearance of such *quid pro quo* corruption, *Buckley*, 424 U.S. at 26; and preventing circumvention of other constitutionally proper limits, *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001) (hereafter, "*Colorado II*"). Subjecting committees with more than 50 contributors and that have contributed to at least five candidates to a $2,600 candidate contribution limit, while allowing identical committees that have existed for more than 6 months to contribute up to $5,000, neither achieves any of these ends, nor is reasonably tailored to do so.

Congress has already determined that allowing most political committees to contribute $5,000 to a candidate does not pose enough of a threat of *quid pro quo* corruption to prohibit. 2 U.S.C. § 441a(a)(2)(A); *see McCutcheon v. FEC*, 134 S. Ct. 1434, 1452 (2014) ("Congress's selection of a $5,200 base limit [including both primary and general elections] indicates its belief that contributions of that amount or less do not create a cognizable risk of corruption."). There is no reason to believe that a $5,000 contribution would be more likely to have such a corrupting effect, simply because it came from a committee that has not yet existed for six months. *Cf. McCutcheon*, 134 S. Ct. at 1452 (holding that, "[i]f there is no corruption concern" in allowing individuals to make $5,200 contributions to nine different candidates, "it is difficult to understand" how a tenth such contribution would be potentially corrupting).

Similarly, there is no basis for concluding that the public would view a $5,000 contribution to a candidate as more likely to lead to *quid pro quo* corruption because it came from a political committee that has not yet been registered with the FEC for six months. *See id.* at 1451 ("[T]he Government's interest in preventing the appearance of corruption is . . . confined to the appearance of *quid pro quo* corruption."). Extending the $5,000 contribution limit to recently formed committees that otherwise are materially identical to those already permitted to contribute $5,000

to candidates will "not cause the electorate to lose faith in our democracy." *Citizens United v. FEC*, 558 U.S. 310, 360 (2010). To the contrary, the current discriminatory limits dull the impact of spontaneous grassroots democracy.

An anticircumvention rationale similarly is inapplicable here. It is unclear why a $5,000 contribution to a candidate from a political committee that has been registered for less than six months would facilitate circumvention of other contribution limits, while that same contribution would be unobjectionable if the committee satisfied the six-month threshold. Likewise, the six-month restriction plays no role in preventing individuals—*i.e.*, the political committee's donors—from circumventing contribution limits. Under current law, an individual is not deemed to "circumvent" limits on contributions to a candidate if he contributes to a political committee that, in turn, makes a $5,000 contribution to that candidate—so long as that committee existed for more than six months. *McCutcheon*, 134 S. Ct. at 1452 ("When an individual contributes to a . . . PAC, the individual must by law cede control over the funds. . . . [I]f the funds are subsequently re-routed to a particular candidate, such action occurs at the initial recipient's discretion—not the donor's.") (citing 2 U.S.C. § 441a(a)(8)).

There is no basis for concluding that an identical contribution made to a similarly situated political committee that has existed for fewer than six months nevertheless constitutes "circumvention." In any event, *McCutcheon* reaffirms that contributions to political committees do not raise substantial circumvention concerns because such contributions cannot be expressly or implicitly "earmarked" for the benefit of particular candidates, *see* 2 U.S.C. § 441a(a)(1)(C); 11 C.F.R. § 110.1(h)(3), 110.6(b)(1), and the decision to re-contribute any such funds lies with the committee itself, rather than the individual donor, *McCutcheon*, 134 S. Ct. at 1452.

Consistent with this nation's longstanding traditions, *see Citizens Against Rent Cont. / Coal. for Fair Hous. v. Berkeley*, 454 U.S. 290, 294 (1981), Congress has permitted citizens to band together to collectively participate in the political system by contributing to candidates through political committees. Within the universe of committees that satisfy § 441a(a)(4)'s other requirements, the Government does not have a substantial interest in favoring entrenched institutions over more recently established upstarts.

3. Even assuming that § 441a(a)(4)'s six-month waiting period furthers an important interest, it is not sufficiently tailored.

Section 441a(a)(4)'s six-month waiting period also is not a "closely drawn" means of furthering any valid interest the Government may have in preventing *quid pro quo* corruption, the appearance of *quid pro quo* corruption, or circumvention of contribution limits. *Buckley*, 424 U.S. at 25. The *McCutcheon* Court recently emphasized that, in determining whether a campaign finance restriction is adequately tailored, "[i]t is worth keeping in mind that the base limits themselves are a prophylactic measure." *McCutcheon*, 134 S. Ct. at 1458; *Citizens United*, 558 U.S. at 357 ("[R]estrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements."). Here, the six-month restriction is "layered on top" of the base contribution limits in a "'prophylaxis-upon-prophylaxis approach'" that the court must be "particularly diligent in scrutinizing." *McCutcheon*, 134 S. Ct. at 1458 (quoting *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 479 (2007)).

Under *Buckley*'s "closely drawn" standard, the Government may not seek to advance its goals through overbroad means that "unnecessar[ily] abridg[e]" First Amendment rights. *Buckley*, 424 U.S. at 25. A campaign finance restriction must be invalidated when only an "attenuated" relationship exists between the actual or apparent *quid pro quo* corruption the Government constitutionally may prevent, and the specific conduct it wishes to prohibit. *Colorado Republican*

Fed. Campaign Comm. v. FEC, 518 U.S. 604, 616 (1996) ("*Colorado I*"). Moreover, the Government may not prohibit a broad range of constitutionally protected conduct in order to reach a narrow sliver of conduct that raises the specter of *quid pro quo* corruption. *See, e.g.*, *Citizens United*, 558 U.S. at 362 (holding that the Government may not prohibit independent expenditures from all corporations as a means of "preventing foreign individuals or associations from influencing our Nation's political process"); *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 498 (1985) ("*NCPAC*") (invalidating prohibition on independent expenditures by PACs because, "[e]ven were we to determine that the large pooling of financial resources [by PACs] did pose the potential for corruption or the appearance of corruption," the challenged statute was "not limited to multimillion dollar war chests," but rather "appl[ied] equally to informal discussion groups that solicit neighborhood contributions").

Prohibiting all recently formed committees that have more than 50 contributors and contributed to five or more candidates from taking advantage of the $5,000 candidate contribution limit is a clumsy, blunderbuss strategy that prohibits far more protected First Amendment conduct than the small sliver that conceivably might raise legitimate circumvention concerns. *Cf. McCutcheon*, 134 S. Ct. at 1457 ("[B]ecause [the aggregate contribution limit is] poorly tailored to the Government's interest in preventing circumvention of the base limits, it impermissibly restricts participation in the political process."); *NCPAC*, 470 U.S. at 498 ("Even were we to determine that the large pooling of financial resources by [political committees] did pose a potential for corruption or the appearance of corruption, § 9012(f) is a fatally overbroad response to that evil."). There is no reason to believe that a newly formed political group with the requisite number of contributors, and that makes the requisite number of contributions, is any more likely than a group which has been registered for six months to engage in corruption.

4. Plaintiffs' Equal Protection challenge is consistent with *Buckley v. Valeo*.

Plaintiffs' claim is consistent with *Buckley v. Valeo*. In *Buckley*, 424 U.S. at 35-36, the plaintiffs had raised a much broader, generalized equal protection challenge to FECA's various limits on contributions from different types of entities. They argued that § 441a(a)(4)'s requirements for qualifying as a multicandidate political committee—including the minimum number of contributors, minimum number of contributions to candidates, and time since registration—"unconstitutionally discriminate" against unspecified "ad hoc organizations in favor of established interest groups and impermissibly burden free association." *Id*. at 35. The Court rejected this argument in a single sentence in its 144-page opinion, stating, "Rather than undermining freedom of association, the basic provision enhances the opportunity of bona fide groups to participate in the election process, and the registration, contribution, and candidate conditions serve the permissible purpose of preventing individuals from evading the applicable contribution limitations by labeling themselves committees." *Id*. at 35-36.

The Plaintiffs' facial Equal Protection challenge in *Buckley* attempted to compare an entity that qualified as a multicandidate political committee under § 441a(a)(4) and other unspecified "ad hoc organizations," *Buckley*, 424 U.S. at 35, including groups that might have been a front for a single contributor or sought to funnel all of their funds to a single candidate. The instant suit, in contrast, involves a narrower, as-applied challenge to § 441a(a)(4)'s six-month waiting period, specifically as it applies to political committees that satisfy § 441a(a)(4)'s other requirements for being recognized as a multicandidate committee (*i.e.*, they have more than 50 contributors and contribute to at least 5 candidates).

Not only is the instant case easily distinguishable from the Equal Protection claim in *Buckley*, but the *Buckley* Court's reasoning is patently inapplicable to this suit. A group that has

more than 50 contributors, by definition, cannot be a façade through which a single individual is attempting to evade other contribution limits. *Cf. id*. at 35-36. Moreover, there is no reason to believe that a recently formed group with more than 50 contributors that has contributed to five or more candidates is any less "bona fide" than a materially identical group that has existed for more than six months. *Cf. id*. at 35.

Additionally, as the Supreme Court recently recognized in *McCutcheon*, campaign finance law has changed dramatically since *Buckley* in ways that already ensure that individuals cannot use PACs to evade contribution limits, making § 441a(a)(4)'s six-month waiting period "particularly heavy-handed." *McCutcheon*, 134 S. Ct. at 1446 ("[S]tatutory safeguards against circumvention have been considerably strengthened since *Buckley* was decided, through both statutory additions and the introduction of a comprehensive regulatory scheme" that establish "more targeted anticircumvention measures"). Unlike pre-*Buckley* FECA, the law now limits the amount that an individual may contribute to a political committee (including multicandidate political committees), 2 U.S.C. § 441a(a)(1)(C), as well as to local, state, and national political party committees, *id*. § 441a(a)(1)(B), (D). "Because a donor's contributions to a political committee are now limited, a donor cannot flood the committee with 'huge' amounts of money so that each contribution the committee makes is perceived as a contribution from him." *McCutcheon*, 134 S. Ct. at 1446.

The law also now limits the amount that political committees can contribute to each other, 2 U.S.C. § 441a(a)(2)(C), thereby preventing people from circumventing the new limit on contributions to a particular political committee by funneling money through other such entities. Additionally, anti-proliferation restrictions ensure that a person cannot circumvent these limits by simply creating a series of committees that will, in turn, contribute to a particular candidate.

McCutcheon, 134 S. Ct. at 1446-47. All contributions from political committees that are established, financed, or controlled by the same corporation, union, or person—including an entity's parents, subsidiaries, branches, divisions, departments, or local units—are now "considered to have been made by a single political committee." 2 U.S.C. § 441a(a)(5).

Finally, anti-earmarking rules prohibit a person from evading contribution limits by channeling contributions through a political committee or party committee to a specific candidate. All contributions that a person makes "either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate" are "treated as contributions from such person to such candidate." *Id*. § 441a(a)(8). The intermediary is required to report to the FEC the contributor and the intended recipient of the contribution. *Id*.; *see also* 2 U.S.C. § 441f (prohibiting contributors from making a contribution in the name of another person or with the funds of another person). "Although the earmarking provision, 2 U. S. C. § 441a(a)(8), was in place when *Buckley* was decided, the FEC has since added regulations that define earmarking broadly." *McCutcheon*, 134 S. Ct. at 1447.

The combination of pre- and post-*Buckley* restrictions eliminates any concerns that may have existed at the time *Buckley* was decided that recently registered committees with more than 50 contributors that have contributed to five or more candidates may be used to evade other contribution limits.

5. The Government cannot adduce sufficient evidence to support the distinction that § 441a(a)(4)'s six-month waiting period establishes among otherwise identical committees

To sustain its burden of establishing the constitutionality of § 441a(a)(4)'s waiting period, the Government must introduce actual evidence to show that political committees that have more

than 50 contributors and have contributed to five or more candidates, but have been registered for less than six months, are more likely to engage in actual or apparent *quid pro quo* corruption, or attempt to circumvent other contribution limits, than such committees that have been registered for six or more months. The Supreme Court has "never accepted mere conjecture as adequate to carry a First Amendment burden," *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 392 (2000); *see also Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) ("When the Government defends a regulation on speech as a means to . . . prevent anticipated harms, it must do more than simply posit the existence of the disease sought to be cured.") (internal citation and quotation marks omitted).

A burden on First Amendment rights cannot rest on "a hypothetical possibility and nothing more." *NCPAC*, 470 U.S. at 498 (invalidating limit on independent expenditures by PACs where the Government failed to introduce any evidence suggesting that "an exchange of political favors for uncoordinated expenditures" was likely to occur). "The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Shrink Missouri*, 528 U.S. at 391. The Court has excused the Government from presenting actual evidence to meet this burden only where "there is little reason to doubt" that the targeted act involves "the evil of potential corruption." *NCPAC*, 470 U.S. at 500; *Shrink Missouri*, 528 U.S. at 395.

There is little actual evidence to suggest that committees with more than 50 contributors and that have contributed to five or more candidates, but have been registered for less than six months, pose any more of a threat of actual or apparent *quid pro quo* corruption than their identically situated counterparts that have been registered for more than a half-year. There is even less reason to fear such committees, due to the range of restrictions on political committees that

Congress has enacted in the decades since *Buckley*, *see, e.g.*, 2 U.S.C. § 441a(a)(1)(C) (limits on contributions to political committees); *id*. § 441a(a)(2)(C) (limits on amounts political committees may contribute to each other); *id*. § 441a(a)(5) (anti-proliferation rules requiring that contributions to, or by, all affiliated committees be treated as involving a single committee); *id*. § 441a(a)(8) (anti-earmarking provisions prohibiting people from funneling contributions through a political committee to a particular candidate); 2 U.S.C. § 441f (prohibiting contributions in the name of another or with the funds of another).

If the Government wishes to establish that newer committees pose a greater risk of actual or apparent *quid pro quo* corruption or circumvention of other contribution limits, it must provide some concrete evidence to support that unlikely contention, and cannot rest upon a mere "hypothetical possibility." *NCPAC*, 470 U.S. at 498; *see also McCutcheon*, 134 S. Ct. at 1457 (inquiring "'whether experience under the present law confirms a serious threat of abuse'") (quoting *Colorado II*, 533 U.S. at 457). The Supreme Court repeatedly has invalidated campaign finance laws where the Government or a State failed to satisfy its burden of proof. In *First National Bank of Boston v. Bellotti*, for example, the Court refused to allow a State to restrict corporate political speech based on "the ***assumption*** that such participation would exert undue influence" over the electorate. 435 U.S. 765, 789 (1978) (emphasis added).

Likewise, in *Citizens Against Rent Control*, the Court struck down a contribution limit on the amount a person could give to committees supporting or opposing ballot measures where "the record . . . [did] not support the [lower court's] conclusion that [the limit was] needed to preserve voters' confidence in the ballot measure process." 454 U.S. at 299; *see also Colorado II*, 533 U.S. at 457 (scouring the evidentiary record to determine whether "adequate evidentiary grounds exist[ed]" to conclude that there was "a serious threat of abuse from unlimited coordinated party

spending"); *Citizens United*, 558 U.S. at 360 (emphasizing the "scant evidence that independent expenditures" by corporations "ingratiate" those corporations to the candidates they support). Because the Government cannot produce sufficient evidence to establish that § 441a(a)(4)'s six-month waiting period actually supports any of its asserted interests, at least as applied to political committees that have more than 50 contributors and have contributed to five or more candidates, the provision is unconstitutional as applied.

For all these reasons, this Court should hold that § 441a(a)(4)'s six-month waiting period is unconstitutional as applied to political committees that have more than 50 contributors and have contributed to five or more candidates. Any committees meeting those contributor and candidate-contribution requirements therefore should be permitted to contribute $5,000 per election to a candidate for federal office, 2 U.S.C. § 441a(a)(2)(A), regardless of how long the committee has been registered with the FEC.

B. The Disparate Limits for Contributions from Political Committees to *State and National Political Party Committees* Also Violate the Equal Protection Clause

The reduced limits that federal law imposes on contributions from longstanding political committees that have received contributions from more than 50 contributors and contributed to five or more candidates (*i.e.*, multicandidate political committees) to local, state, and national political party committees similarly violate the Equal Protection component of the Fifth Amendment's Due Process Clause. A committee with more than 50 contributors, that has contributed to five or more candidates, but that has been registered for ***less*** than six months, may contribute up to $10,000 annually to state political party committees and their local affiliates, and $32,400 each year to a national political party committee. 2 U.S.C. § 441a(a)(1)(B), (D). An identically situated committee—one that engages in the same activities, contributes to the same

number of candidates, has the same number of contributors, and seeks to impact the same elections—but that has been registered for ***more*** than 6 months may contribute only $5,000 annually to state and local parties and $15,000 annually to national parties. *Id*. § 441a(a)(2)(B)-(C). Again, the Equal Protection Clause prohibits Congress from imposing disparate burdens on the First Amendment right of association of materially identical committees by subjecting them to different contribution limits.

All of the arguments discussed above in Section I.A concerning the unconstitutionality of disparate candidate contribution limits apply equally to the discriminatory limits on contributions to local, state, and national political party committees. A political committee with more than 50 contributors and that has contributed to five or more candidates does not pose a greater risk of actual or apparent corruption once it has existed for six months, necessitating a reduction in the limits on its contributions to local, state, and national political party committees. Moreover, to the extent any such risks exist, precipitously slashing the amount that every single multicandidate political committee may contribute to a local, state, or national political party—without regard to any individual committee's track record, whether it has engaged in any suspicious transactions, or any other individualized evidence of *quid pro quo* corruption—is a grossly overbroad categorical response that is not even remotely tailored to achieving the Government's goals.

Indeed, the disparate limits on contributions to local, state, and national political parties underscore the unconstitutionality of the entire framework. In *Buckley*, the Government argued that newer political committees could be subject to lower limits on candidate contributions than established multicandidate political committees due to concerns that new committees may not be "bona fide." *Buckley*, 424 U.S. at 35. It would be antithetical to such reasoning for the Government to claim that such newer committees nevertheless should be permitted to contribute

greater amounts than materially identical multicandidate political committees to local, state, and national political parties. Once a committee hits the six-month mark and qualifies as a "multicandidate political committee," arbitrarily raising some contribution limits to which it is subject while simultaneously cutting others cannot survive heightened constitutional scrutiny.

For all these reasons, this Court should hold that § 441a(a)(2)(B)-(C)'s decreased limits on contributions to local, state, and national political party committees is unconstitutional. Any political committees with more than 50 contributors that have contributed to five or more candidates therefore should be permitted to contribute a combined total of $10,000 each year to a state political party committee and its local political party affiliates, 2 U.S.C. § 441a(a)(1)(D), and $32,400 annually to a national political party committee, *id*. § 441a(a)(1)(B), regardless of how long the committee has been registered with the FEC.

II. THE FIRST AMENDMENT PROHIBITS THE GOVERNMENT FROM REQUIRING POLITICAL COMMITTEES TO WAIT SIX MONTHS BEFORE ASSOCIATING WITH AND EXPRESSING SUPPORT FOR CANDIDATES BY MAKING CONTRIBUTIONS OF $5,000.

Section 441a(a)(4)'s six-month waiting period for being able to contribute the maximum statutorily authorized amount of $5,000 per election to a candidate violates the First Amendment, as applied to political committees that have more than 50 contributors and contributed to at least five federal candidates. Due to that waiting period, such committees may contribute only $2,600 to a candidate within the first six months of their existence, 2 U.S.C. § 441a(a)(1)(A), and $5,000 afterward, *id*. § 441a(a)(2)(A). They must wait six months before being able to associate, through their contributions, with the candidates they support to the fullest legally permissible extent—by which point the election is likely to be over. *See Buckley*, 424 U.S. at 21, 24-25 (recognizing that political contributions are an important means of associating with a candidate).

Courts have repeatedly recognized that delays and waiting periods impose substantial burden on First Amendment rights, particularly in the political realm. "Timing is of the essence in politics. . . . When an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969) (Harlan, J., concurring). "A delay 'of even a day or two' may be intolerable when applied to ''political' speech in which the element of timeliness may be important.'" *NAACP, Western Region v. Richmond*, 743 F.2d 1346, 1356 (9th Cir. 1984) (quoting *Carroll v. Comm'rs of Princess Anne*, 393 U.S. 175, 182 (1968)).

In some cases, delay may "stifle spontaneous expression," *Rosen v. City of Portland*, 641 F.2d 1243, 1247-48 (9th Cir. 1981), and "permanently vitiate the expressive content" of First Amendment activity, *NAACP*, 743 F.2d at 1356. In other cases, "the change in timing will alter the potential impact of the[] speech." *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1046 (9th Cir. 2006). Often, "few observers know the critical issues in an election (and the candidates' position on those issues) until just days before. After all, October Surprises are not called October Surprises because they happen in June." *Catholic Leadership Coalition of Tex. v. Reisman*, No. 13-50582, 2014 U.S. App. LEXIS 15558, at *49 (5th Cir. Aug. 12, 2014). Thus, "undue delay results in the unconstitutional suppression of protected speech." *FW/Pbs, Inc. v. Dallas*, 493 U.S. 215, 228 (1990) (opinion of O'Connor, J.)

Under the First Amendment, the Government may not require entities to wait or delay before engaging in constitutionally protected expression and association. *See, e.g., Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 167-68 (2002) (invalidating ordinance that required people to wait until a license was issued before they engaged in door-to-door solicitations, including for political or religious reasons); *Long Beach Area Peace Network*

v. City of Long Beach, 574 F.3d 1011, 1038 (9th Cir. 2009) (invalidating ordinance that required groups to wait at least 24 hours after notifying municipality before holding a "spontaneous" gathering); *Douglas v. Brownell*, 88 F.3d 1511, 1524 (8th Cir. 1996) (invalidating ordinance requiring people to provide at least 5 days' notice before holding a parade); *Rosen*, 641 F.2d at 1244 (invalidating ordinance that required groups to wait at least 24 hours after notifying municipality before distributing literature); *see also Arlington Cnty. Republican Comm. v. Arlington Cnty.*, 790 F. Supp. 618, 629-30 (E.D. Va. 1992) (holding that a thirty-day waiting period for posting political signs violated the First Amendment), *vacated in part as moot*, 983 F.2d 587, 595 (4th Cir. 1993).

The constitutional infirmities of delays on First Amendment activities are exacerbated when they extend to harmless speech and "burden[] substantially more speech than is necessary to further the government's legitimate interests." *Grossman v. City of Portland*, 33 F.3d 1200, 1205 (9th Cir. 1994) (quotation marks omitted). In *Rosen*, 641 F.2d at 1247-48, the court invalidated a one-day waiting period on the distribution of literature at airports because the challenged ordinance "regulates far more than mass conduct that necessarily interferes with the use of public facilities." *See also Douglas*, 88 F.3d at 1524 (invalidating ordinance requiring people to provide at least five days' notice before holding a parade because it "restrict[ed] a substantial amount of speech that does not interfere with the city's asserted goals of protecting pedestrian and vehicle traffic, and minimizing inconvenience to the public"); *Long Beach Area Peace Network*, 574 F.3d at 1038 (invalidating restriction on "spontaneous" assemblies in part because it "is not narrowly tailored to regulate only events in which there is a substantial governmental interest in requiring such advance notice," extending to "places where there is no threat of disruption of the flow of pedestrian or vehicular traffic").

In this case, federal law does not completely prohibit recently formed committees that have more than 50 contributors and have contributed to five or more candidates from associating with candidates by making contributions to them. Rather, it unnecessarily ***limits*** the extent to which such committees may associate with candidates through their contributions, permitting them to contribute only $2,600 per election to each candidate throughout the first six months after the committee registers with the FEC, 2 U.S.C. § 441a(a)(1)(A), and $5,000 per candidate only after the committee has been registered for six months, *id*. § 441a(a)(2)(A). This waiting period cannot survive constitutional scrutiny because there is no reason to believe that it will somehow prevent *quid pro quo* corruption, the appearance of *quid pro quo* corruption, or circumvention of other contribution limits. Indeed, depending on how close to an election such a committee is formed, the committee may ***never*** have the opportunity to contribute the full statutory amount of $5,000, particularly if the candidate that committee supports loses.

The Court has recognized that, although making a contribution is only one way of associating with a candidate, *Buckley*, 424 U.S. at 22, the First Amendment burden of contribution limits "is especially great for individuals who do not have ready access to alternative avenues for supporting their preferred politicians and policies," *McCutcheon*, 134 S. Ct. at 1449. For political committees such as Plaintiffs, means of association other than making contributions generally will be impractical. The whole point of associating as a PAC is to allow people to join together to collectively further a political cause. *Citizens Against Rent Cont.*, 454 U.S. at 294. Most political committees' contributors are spread across the country, far from most of the candidates the committee supports. It would be prohibitively expensive and impractical for a committee's contributors to travel together to associate with a candidate by personally working on her

campaign. *McCutcheon*, 134 S. Ct. at 1449 ("[P]ersonal volunteering is not a realistic alternative for those who wish to support a wide variety of candidates or causes.").

Other traditional methods of association—wearing pins or other apparel, displaying bumper stickers, erecting lawn signs—will be effectively meaningless for most of a PAC's contributors, who live far from the supported candidate in areas where most people are unfamiliar with the referenced race. Committees that lack substantial staffs and war chests will also generally be unable to fund independent expenditures on the radio or television. Thus, contributions to candidates are a crucial means through which most political committees associate with them.

Moreover, the six-month waiting period is a grossly overbroad means of attempting to achieve any interests the government may seek to further. Most of the transactions it will delay are totally innocuous, *cf. Douglas*, 88 F.3d at 1524; *Rosen*, 641 F.2d at 1247-48; *Long Beach Area Peace Network*, 574 F.3d at 1038. Additionally, there is no reason to believe that the risk of actual or apparent *quid pro quo* corruption or circumvention of other contribution limits will somehow diminish once the committee has existed for six months. Thus, this Court should hold that § 441a(a)(4)'s six-month waiting period violates the First Amendment, as applied to political committees that have 50 contributors and have contributed to five or more candidates. Any committees meeting those contributor and candidate-contribution requirements therefore should be permitted to contribute $5,000 per election to each candidate, 2 U.S.C. § 441a(a)(2)(A), regardless of how long the committee has been registered with the FEC.

CONCLUSION

For these reasons, this Court should GRANT Plaintiffs' Motion for Summary Judgment.

Respectfully submitted,

September 19, 2014

/s/ Michael T. Morley
Michael T. Morley, Esq.
Virginia State Bar # 65762
COOLIDGE-REAGAN FOUNDATION
1629 K Street, Suite 300
Washington, DC 20006
Phone: (202) 603-5397
Fax: (202) 331-3759
E-mail: Morley@coolidgereagan.org
Attorney for Plaintiffs and Putative Plaintiff-Intervenor American Future PAC

/s/ Jerad Najvar*
Jerad Najvar
NAJVAR LAW FIRM
4151 Southwest Freeway, Suite 625
Houston, TX 77027
Phone: (281) 404-4696
E-mail: jerad@najvarlaw.com
Attorney for Putative Plaintiff-Intervenor American Future PAC
*Motion for *pro hac vice* admission forthcoming upon joinder

/s/ Dan Backer
Dan Backer, Esq.
Virginia State Bar # 78256
DB CAPITOL STRATEGIES PLLC
203 South Union Street, Suite 300
Alexandria, VA 22314
Phone: (202) 210-5431
Fax: (202) 478-0750
E-mail: DBacker@DBCapitolStrategies.com
Attorneys for Plaintiffs Stop PAC, Tea Party Leadership Fund, and ARCC