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,	
v.	SUGGESTION OF MOOTNESS
FEDERAL ELECTION COMMISSION,	
Defendant.	

DEFENDANT FEDERAL ELECTION COMMISSION'S
SUGGESTION OF MOOTNESS

Defendant Federal Election Commission respectfully informs the Court that on February 11, 2015, intervenor-plaintiff American Future PAC's ("AF PAC") claims became moot.

Under the Federal Election Campaign Act ("FECA"), 52 U.S.C. §§ 30101-46 (formerly 2 U.S.C. §§ 431-57), "persons" including newly registered political committees (commonly known as "PACs") may contribute up to $2,700 per election to any federal candidate.[1] *Id.* § 30116(a)(1)(A). Once a PAC has been registered for at least six months, it may qualify as a "multicandidate" PAC, which can contribute up to $5,000 per election to any federal candidate. *Id.* § 30116(a)(2)(A), (a)(4).

AF PAC has claimed that this six-month registration requirement violated its constitutional rights by preventing it from giving more than $2,600 to federal candidates. (*See, e.g.*, Decl. of Jared Najvar ¶¶ 3, 5-7 (Docket No. 72-1).) But as of February 11, 2015, AF PAC

[1] On February 3, 2015, the Commission adjusted this contribution limit from $2,600 to $2,700, and also adjusted certain other limits, to account for inflation. *See Price Index Adjustments for Contribution and Expenditure Limitations*, 80 Fed. Reg. 5750-02, 5751 (Feb. 3, 2015).

may now contribute up to $5,000 to any federal candidate, as it desires.[2] On that date, AF PAC became a multicandidate PAC because six months had passed since it had registered with the FEC. (*See* FEC's Supplemental Factual Submission and Briefing Pertaining to AF PAC in Supp. of FEC's Mot. for Summ. J. ("FEC's Supp'l Br.") at 9, ¶ 51 (Docket No. 68); AF PAC's Resp. to FEC's Supplemental Factual Submission and Briefing at 2, ¶ 51 (Docket No. 72).) As a result, AF PAC's claims are moot because it is "impossible for the court to grant" AF PAC "any effectual relief." *Incumaa v. Ozmint*, 507 F.3d 281, 286 (4th Cir. 2007). And its claims do not qualify for the capable-of-repetition-yet-evading-review mootness exception for the same reasons that the identical claims of plaintiff Stop Reckless Economic Instability Caused by Democrats ("Stop PAC") do not qualify. (*See* FEC's Resp. in Opp'n to Pls.' Mot. for Summ. J. at 7-8 (Docket No. 60); FEC's Rebuttal in Supp. of Mot. for Summ. J. at 3-5 (Docket No. 63).)

Because AF PAC can no longer assert Counts I and II of the Complaint (*see* First Am. Compl. ¶¶ 43-55 (Docket No. 37)), those claims are moot in their entirety. AF PAC intervened in this action on October 6, 2014, in an attempt to save the then-moot claims of the original plaintiff, Stop PAC.[3] (*See* Mem. of Law in Supp. of AF PAC's Mot. Seeking Leave to Join the Suit Pursuant to Fed. R. Civ. P. 21 at 1-2 (Docket No. 50-1); Order, Oct. 6, 2014, at 1-2 (Docket No. 62).) AF PAC recognized at that time that its intervention would, at best, only "remove[] any possible justiciability concerns until February 2015[.]" (Am. Rebuttal Br. of Pls. and Putative Intervenor AF PAC in Supp. of Mot. for Joinder at 6 (Docket No. 54).) Plaintiffs had stated that their plan was to repeatedly "join further plaintiffs as necessary to preserve the case's undisputed justiciability through final judgment." (Joint Proposed Disc. Plan at 5 (Docket No.

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[2] The Commission previously noted that AF PAC's claims appear to have initially become moot after the November 4, 2014 general election. (*See* FEC's Supplemental Factual Submission and Briefing Pertaining to AF PAC in Supp. of FEC's Mot. for Summ. J. at 11 (Docket No. 68).) AF PAC then alleged for the first time that it also wanted contribute in excess of $2,600 to candidates in *future* elections. (AF PAC's Resp. to FEC's Supplemental Factual Submission and Briefing at 9 (Docket No. 72).) AF PAC may now make those contributions.

[3] This attempt failed, however, because AF PAC did not intervene until after Stop PAC's claims had already become moot. (*See* FEC's Supp'l Br. at 10 (Docket No. 68).)

34).) But February 11 has now come and gone and plaintiffs have apparently abandoned that plan. As a result, there is currently no plaintiff in this case with standing to assert Counts I or II of the Complaint. Even if plaintiffs were to now attempt to join another newly created PAC, it would be too late: Another PAC's intervention could not cure the Court's current lack of jurisdiction over Counts I and II. (*Cf.* FEC's Supp'l Br. at 10 (Docket No. 68).)

Despite the passing of the summary judgment motion deadline, it would be appropriate for this Court to consider its jurisdiction and the issue of mootness at this time, pursuant to the Commission's suggestion. *See, e.g.*, *N.C. ex rel. Long v. Warren*, 37 F.3d 1495 (4th Cir. 1994) (*per curiam*) (unpublished table decision) (dismissing case as moot after directing "the Appellee to file a suggestion of mootness" after oral argument); *see also Jennings v. Univ. of N.C. at Chapel Hill*, 240 F. Supp. 2d 492, 499 & n.4 (M.D.N.C. 2002) (dismissing claims as moot after "Defendants filed a Suggestion of Mootness"); *Falwell v. City of Lynchburg*, 198 F. Supp. 2d 765, 771, 785-86 (W.D. Va. 2002) (agreeing with defendant's "suggestion of mootness").

Finally, the Commission notes that on December 16, 2014, Congress amended a provision of FECA that remains at issue in this case. *See* Consolidated and Further Continuing Appropriations Act, 2015, PL 113-235, 128 Stat. 2130, 2772-73 (Dec. 16, 2014) (codified as amended at 52 U.S.C. § 30116(a), (d)) (the "Appropriations Act"). In Count III of the Complaint, plaintiff Tea Party Leadership Fund challenges the constitutionality of FECA's $15,000 annual limit on contributions from multicandidate PACs to a national committee of a political party, alleging specifically that it wished to give $32,400 last year — the amount that other "persons" were permitted to give — to the National Republican Senatorial Committee ("NRSC"). *See* 52 U.S.C. § 30116(a)(2)(B); 80 Fed. Reg. at 5751; First Am. Compl. ¶¶ 39, 56-63 (Docket No. 37). Under the Appropriations Act, multicandidate PACs may now give an additional $45,000 to up to three new "separate, segregated account[s]" that national committees

are allowed to create. *See* 128 Stat. at 2772-73 (codified at 52 U.S.C. § 30116(a)(2)(B), (a)(9)).[4] This money may be used by a national committee only to pay for its building headquarters, legal proceedings, and — for certain national committees — conventions. *Id.* (codified at 52 U.S.C. § 30116(a)(9)). Now, under the Appropriations Act, the Tea Party Leadership Fund can give the NRSC up to $32,400 as it desires, and more, if it gives any amounts above $15,000 to the NRSC's new accounts. Thus, whether Count III is moot to the extent it relates to contributions to national party committees depends on the purpose for which the Tea Party Leadership Fund intended to contribute, which was not specified in its Complaint.

CONCLUSION

For the foregoing reasons, Counts I and II of the Complaint are moot.

Respectfully submitted,

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[4] In addition, the Appropriations Act permits "persons" (including new PACs) to give an additional $100,200, under inflation-adjusted 2015 limits, to each of these new accounts. *See* 128 Stat. at 2772-73 (codified at 52 U.S.C. § 30116(a)(1)(B), (a)(9)).

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February 24, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel for plaintiffs:

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