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

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS, et al. *Plaintiffs*, v. FEDERAL ELECTION COMMISSION, *Defendant*.	)	Civ. No. 1:14-397 (AJT-IDD)

MOTION OF PLAINTIFFS AND PUTATIVE PLAINTIFF-INTERVENOR AMERICAN FUTURE PAC SEEKING LEAVE FOR AMERICAN FUTURE PAC TO JOIN THE SUIT PURSUANT TO FED. R. CIV. P. 21

Plaintiffs and putative Plaintiff-Intervenor American Future PAC ("American Future") respectfully move that this Court permit American Future to join this suit pursuant to Rule 21, or in the alternative to intervene in this suit pursuant to Rule 24(b)(1)(B).

American Future wishes to join Stop PAC's pending constitutional challenge to the six-month waiting period that certain political committees face before they may contribute the full statutory amount of $5,000 to a candidate. *See* 2 U.S.C. § 441a(a)(1)(A), (a)(2)(A), (a)(4). Plaintiffs seek to permit such joinder due to the FEC's repeated contention that, once Stop PAC has been registered for six months and this waiting period no longer applies to it (which will occur on September 11, 2014), it will lose its standing to maintain its challenge.

American Future has expressed and hereby memorializes its unconditional commitment to:

- ***immediately*** begin accepting and responding to discovery requests as if it were a party;

- accept service of all documents, filings, and discovery requests by e-mail to its undersigned counsel, and to waive until the close of discovery the additional three-day extension to the deadline for responding to materials that are not personally served; and

- provide objections, written responses, ***and*** responsive documents to all written discovery within 6 days of receiving them.

American Future also has submitted as exhibits to this motion their initial discovery responses under Fed. R. Civ. P. 26(a)(1), as well as responses to the FEC's discovery requests to Stop PAC—including interrogatories, requests for admission, and request for production—as those requests would apply to American Future.

Plaintiffs met and conferred by telephone on August 19, 2014. Defendant Federal Election Commission has refused to consent to this motion, unless all parties agree to extend the deadline for discovery and summary judgment motions by ***128 days*** (over four months—the period between the filing of the complaint and the filing of the instant motion).

Plaintiffs and American Future do not believe that extending the discovery schedule is necessary, but would agree to an extension of no more than 7 days. Waiting ***over four months*** before joining American Future would defeat the point of its joinder, because only a few weeks would remain before its six-month waiting period expired and its claims, too, became moot in the FEC's view. Likewise, requiring American Future to re-file Stop PAC's constitutional challenge in its own name in an independent suit would be wasteful and duplicative; unnecessarily delay resolution of this issue; and ultimately leave American Future in the same position in which Stop PAC now finds itself—nearing the end of its six-month waiting period before dispositive briefs are due.

Dated this 27th day of August 2014.

Respectfully submitted,

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*Motion for *pro hac vice* admission forthcoming

CERTIFICATE OF SERVICE

I, Dan Backer, hereby certify that on this 27th day of August 2014, I did cause a true and complete copy of the foregoing Motion of Plaintiffs and Putative Plaintiff-Intervenor American Future PAC Seeking Leave for American Future PAC to Join the suit Pursuant to Fed. R. Civ. P. 21, supporting memorandum, exhibits, waiver of hearing, and proposed order to be electronically

filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel for the plaintiff:

Kevin Deeley
Harry J. Summers
Holly J. Baker
Kevin P. Hancock
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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
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This same day, I also have caused a copy of those documents to be delivered to counsel for defendant at the address below, to be either handed to counsel, left with a clerk at counsel's office or, if no one is in charge, left in a conspicuous place at the office:

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

/s/ Dan Backer
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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,	)	
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' AND PUTATIVE PLAINTIFF-INTERVENOR AMERICAN FUTURE PAC'S MOTION SEEKING LEAVE FOR AMERICAN FUTURE PAC TO JOIN THE SUIT PURSUANT TO FED. R. CIV. P. 21

Introduction

Plaintiff Stop PAC is challenging the statutory six-month waiting period that certain political committees face before being able to fully exercise their fundamental First Amendment rights of speech and association by making contributions to federal candidates. On September 11, 2014, Stop PAC's six-month waiting period will be over, and the FEC repeatedly has contended that Stop PAC's constitutional challenge to the waiting period will be moot at that point.

Stop PAC contends that the mootness doctrine does not apply, because its claims are capable of repetition, yet will evade review; it will demonstrate that this exception to the mootness doctrine applies in constitutional challenges to election-related laws such as this, even when the plaintiff does not assert that it personally will face the challenged restrictions again. *See, e.g.*, *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974); *Rosario v. Rockefeller*, 410 U.S. 752,

756 n.5 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972); *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969); *see also Lawrence v. Blackwell*, 430 F.3d 368, 372 (6th Cir 2005). Based on these well-established, binding Supreme Court precedents, Stop PAC's challenge to the election-related statutes at issue here will remain justiciable, despite the expiration of its six-month waiting period. Indeed, the Fifth Circuit recently held that a similar challenge to a state campaign finance law that imposed a comparable waiting period on newly formed political committees remained justiciable, even though the plaintiff's waiting period had elapsed, precisely because other entities remained subject to the law. It held, "[I]n election law cases such as this one, where (1) the state plans on continuing to enforce the challenged provision, and (2) that provision will affect other members of the public, the exception [to the mootness doctrine] is met," even if the plaintiff itself will never again be subject to the law. *Catholic Leadership Coalition of Tex. v. Reisman*, No. L3-50582, 2014 U.S. App. LEXIS 15558, at *29-30 (5th Cir. Aug. 12, 2014).

The FEC has not agreed with Plaintiffs' interpretation of the mootness doctrine. And either this Court, or a higher court, ultimately may reject Plaintiffs' position. Consequently, Putative Plaintiff-Intervenor American Future PAC seeks to join this litigation to pursue the exact same constitutional challenges that have been pending since the inception of this suit.

During the parties' meet-and-confer session on this motion, the FEC refused to consent to American Future's joinder unless the Plaintiffs and American Future agreed to ***extend the deadlines for discovery and filing summary judgment motions by 128 days***—the amount of time that had then elapsed since the filing of this suit. American Future registered with the FEC on August 5, 2014, and has existed for about three weeks. The FEC contends that it needs to take discovery concerning American Future for roughly ***six times as long*** as American Future

has existed. American Future was formed by two people (identified in its Rule 26(a)(1)(A) disclosures, attached as an exhibit to this motion), and has had less than $10,000 in assets throughout its entire existence. There is hardly any basis for extending the discovery period at all, much less granting a ***four month extension*** that literally would double the length of this suit.

Anticipating the FEC's recurring claims of prejudice and limitless appetite for information, American Future has unilaterally and unconditionally declared that it will:

- immediately begin accepting and responding to any discovery requests, as it if were a party;
- waive the customary three-day extension to response deadlines for materials served by e-mail, until the close of discovery;
- provide objections, written responses, ***and*** documents in response to discovery requests within 6 days (or less, if required by this Court) of receiving them, rather than staggering the provision of objections and responses, as permitted by local rules;
- immediately provide Rule 26(a)(1)(A) disclosures (attached as an exhibit to this Motion); and
- immediately respond to all outstanding discovery requests that the FEC has served on Plaintiff Stop PAC, as they would apply to American Future (responses also attached as an exhibit to this Motion).

If this Court chooses to extend the discovery period in this case, it should be for no more than a week. As the instant motion demonstrates, Stop PAC's challenge to the six-month waiting period, which American Future seeks to pursue, is inherently time-sensitive. If this Court extends the deadlines for discovery and summary briefing by 128 or more days, as the FEC requests, American Future will be near the end of its six-month waiting period by the time discovery closes. It will occupy basically the same position as that in which Stop PAC presently

finds itself. Its claim (in the FEC's view) will be nearly moot, Plaintiffs will have to attempt to find and join yet another newly formed PAC, and the cycle will simply recur.[1]

This case presents pure questions of constitutional law that turn on legislative facts, and does not depend on anything specific to the particular plaintiffs raising the challenges. Indeed, particularly because campaign finance laws operate in a constitutionally sensitive area, the FEC already should be well aware of its factual basis for limiting the exercise of newly formed committees' constitutional rights. Its justification for the six-month waiting period cannot turn on any facts regarding these particular plaintiffs or American Future, which were not even formed until years after that waiting period was enacted.

This Court chose to give the FEC a chance to take discovery to develop "an adequate factual record" to facilitate "proper consideration of plaintiff's constitutional claims." Order, Doc. #33, at 1 (June 18, 2014). The FEC has received documents, interrogatory responses, and admissions from each plaintiff, as well as documents from Niger Innis and Niger Innis for Congress. It also has noticed six depositions. This Court should not permit the FEC to abuse the discovery process by twisting it into a tool for preventing adjudication on the merits of this constitutional challenge. This Court should permit American Future to join this suit to eliminate any possible threat to its continued justiciability and reject the FEC's attempts to extend the deadlines for discovery and summary judgment.

American Future Wishes to Join Stop PAC's Challenge to the Six-Month Waiting Period on Contributing the Maximum Statutory Amount to Candidates

[1] Even if the FEC were to come to its senses, and request a less shocking extension of only 30 or 60 days as an ostensible "compromise," that would still substantially undermine this Court's ability to adjudicate American Future's challenge to its six-month waiting period before its expiration, and unnecessarily hasten the need to join yet another new plaintiff.

Federal law permits a political committee that has received 51 or more contributions, contributed to five or more candidates, and been registered with the FEC for at least six months, *see* 2 U.S.C. § 441a(a)(4), to contribute $5,000 per election to a federal candidate, *id*. § 441a(a)(2)(A). In contrast, a materially identical committee that also has received 51 or more contributions and contributed to five or more candidates, but has been registered for ***less*** than six months, may contribute only $2,600 per election to a federal candidate. *Id*. § 441a(a)(1)(A); *see also* 78 Fed. Reg. 8,530, 8,532 (Feb. 6, 2013) (adjusting statutory limit for inflation). Thus, federal law imposes a six-month waiting period before political committees that have received 51 or more contributions and contributed to five or more candidates may fully exercise their First Amendment rights by contributing the maximum, statutorily authorized amount to candidates.[2]

Stop PAC has received contributions from more than 51 persons and has contributed to five candidates, but has been registered for less than six months. *See* Am. Compl., ¶ 19. Thus, Stop PAC may contribute no more than $2,600 per election to each candidate. Stop PAC has contributed $2,600 to Congressman Joe Heck in connection with the upcoming November 2014 general election, and wishes to be able to contribute to him additional funds from its account in connection with that race, *id*. ¶¶ 28-33. The only thing preventing Stop PAC from being able to legally do so is the six-month waiting period.

[2] The illogic of this waiting period is underscored by the fact that, throughout the first six months of such a committee's existence, it may contribute $32,400 to a national political party committee and $10,000 to a state political party committee and its local affiliates. *See* 2 U.S.C. § 441a(a)(1)(B), (D); *see also* 78 Fed. Reg. at 8,532 (adjusting national party limit for inflation). Once that committee has existed for six months, however, the amount it may contribute to national parties is slashed to $15,000, *see* 2 U.S.C. § 441a(a)(2)(B), while the amount it may contribute to state and local parties is cut to $5,000, *id*. § 441a(a)(2)(C). Thus, while such a committee must wait six months before being able to fully exercise its right to contribute to candidates, its ability to contribute to local, state, and national parties is immediately reduced at that point.

Stop PAC has challenged the constitutionality of this waiting period, on the grounds that imposing differing limits on materially identical committees, based solely on how long they have been registered with the FEC, violates the Equal Protection Clause, *id*. ¶¶ 44-50, and that imposing a six-month waiting period on the full exercise of speech and associational rights violates the First Amendment, *id*. ¶¶ 52-55. Stop PAC's waiting period will expire on September 11, 2014, however, and the FEC repeatedly has contended that Stop PAC's claims will be moot and non-justiciable at that point.[3]

American Future PAC is a materially identical political committee that wishes to continue pursuing Stop PAC's claims. It seeks to challenge the same provisions of federal law, under the same constitutional amendments, on the same grounds. As the attached exhibits demonstrate, it has existed for about three weeks, has handled less than $10,000 in assets, and is run by two people. There is no need to either prolong this case with extensive further discovery, or delay adjudication of these constitutional challenges, by allowing Stop PAC's standing to (in the FEC's view) evaporate, and require American Future to initiate a whole new suit. "[R]efusing to allow the intervenors to continue [the case] would lead to senseless delay, because a new suit would inevitably bring the parties, at a much later date, to the point where they are now." *Benavidez v. Eu*, 34 F.3d 825, 830-31 (9th Cir 1994); *see also Fuller v. Volk*, 351 F.2d 323, 329 (3d Cir. 1965) ("By allowing the suit to continue with respect to the intervening party, the court can avoid the senseless 'delay and expense of a new suit, which at long last will merely bring the parties to the point where they now are.'") (quoting *Hackney v. Guaranty Trust Co.*, 117 F.2d 95, 98 (2d Cir. 1941)).

[3] *See, e.g.*, Joint Proposed Discovery Plan, Doc. #34, at 18 ("It is the FEC's position that Claims 1 and 2 of the Complaint will become moot when Stop PAC becomes a multicandidate PAC on September 11, 2014.") (July 2, 2014); *see also* FEC Amended Answer, Doc. #49, at 12 (July 24, 2014) ("Plaintiffs' claims are moot.").

Courts Routinely Allow New Parties to Join Suits to Prevent Mootness and Maintain Their Justiciability

This Court should allow American Future to join the suit to prevent it from becoming moot (in the FEC's view), and alleviate the need for American Future to effectively reprise these proceedings from scratch by filing an independent suit (which, like this one, the FEC will seek to dismiss after a few months). When a litigant's initially justiciable claim is at risk of becoming non-justiciable due to a potential loss of standing or mootness, a court generally should permit a new plaintiff, seeking to raise the same claim based on the same arguments, to continue the litigation to reach a judgment on the merits. In *Mullaney v. Anderson*, 342 U.S. 415, 416 (1952), a union and its Secretary-Treasurer sued to enjoin the Alaska Territorial Tax Commissioner from charging higher fees for fishing licenses to non-residents than resident fishermen. When the case reached the Supreme Court, the Commissioner challenged "the standing of the union and its Secretary Treasurer to maintain th[e] suit." *Id.*

Attempting to alleviate the justiciability concern, the union moved to add two of its non-resident members as plaintiffs under Rule 21 to continue pursuing the same claims. *Id.* at 416-17. The Court granted the motion because the new plaintiffs' joinder "can in no wise embarrass the defendant," and their joinder earlier in the suit would not have "affected the course of the litigation." *Id.* at 417. It concluded, "To dismiss the present petition and require the new plaintiffs to start over in the District Court would entail needless waste and runs counter to effective judicial administration." *Id.*

The Government itself has joined suits in order to preserve their justiciability and allow them to be adjudicated on the merits, despite jurisdictional deficiencies in the plaintiffs' claims. In *California Credit Union League v. City of Anaheim*, 95 F.3d 30 (9th Cir. 1996) ("*Anaheim I*"), *vacated sub nom. City of Anaheim v. Cal. Credit Union League*, 520 U.S. 1261 (1997)

("*Anaheim II*"), the plaintiff credit union prevailed both at trial and on appeal on its claim that federal law protected its employees from having to pay California's transient occupancy tax. The Supreme Court vacated the judgment for reconsideration in light of its holding in another case that the Tax Injunction Act prohibited such entities from suing to enjoin a state tax unless the Government itself joined the suit as a plaintiff. *See Anaheim II*, 520 U.S. at 1261 (citing *Arkansas v. Farm Credit Servs. of Cent. Ark.*, 520 U.S. 821 (1997)).

On remand, the Ninth Circuit allowed the Government to join the case as a plaintiff under Rule 21 to preserve its justiciability and allow entry of judgment on the merits. *Cal. Credit Union League v. City of Anaheim*, 190 F.3d 997, 999 (9th Cir. 1999) ("*Anaheim III*"). The court held that joinder under Rule 21 was appropriate "when the party seeking joinder requests the same remedy as the original party and offers the same reasons for that remedy and earlier joinder would not have affected the course of the litigation." *Id*. It permitted the Government to join as a plaintiff, "because it is requesting the same remedy as the [original plaintiff] and offers the same reasons for that remedy and because earlier joinder by the United States would not have affected the course of this litigation." *Id*. Critically, *Anaheim* was not a class action, and the court's reasoning did not turn on the fact that it was the Government (as opposed to a private litigant) which sought to intervene. *Cf. Atkins v. State Board of Education*, 418 F.2d 874, 875 (4th Cir. 1969) (per curiam) (remanding dismissed lawsuit so that the district court could allow plaintiffs with standing to intervene to litigate constitutional claims brought by the original plaintiff, who was found to lack standing).

Consistent with these precedents, Wright & Miller urges courts to allow the substitution of "plaintiffs with live claims for former plaintiffs whose claims have been mooted" to "preserve the energy invested in the original action" while ***avoiding*** the "burdensome procedures of class

actions." 13C Wright & Miller, *Federal Practice & Procedure*, Civil § 3533.9 (3d ed.). Elsewhere, the treatise reemphasizes that "a court may cooperate in thwarting mootness by such devices as allowing intervention or taking other steps to preserve an important question for present decision." 13B *id*. § 3533.1.

These authorities squarely support permitting American Future to join in Plaintiff Stop PAC's claims in this suit. American Future seeks to challenge the same provisions of federal law as Stop PAC, under the same constitutional provisions, based on the same arguments, and seeks the same remedy. *See Anaheim III*, 190 F.3d at 999. Like Stop PAC, it has received contributions from at least 51 people and contributed to at least five candidates. *See* Declaration of Jerad Najvar, ¶¶ 4, 6, 9 (attached as an Exhibit). It has contributed the maximum statutorily permitted amount of $2,600 to a candidate in connection with the upcoming November general election, and possesses additional funds that it wishes to contribute to that candidate. *Id*. ¶¶ 4, 7-8. But for 2 U.S.C. § 441a(a)(4)'s six-month waiting period, American Future would have contributed those additional funds. *Id*. ¶ 8. Because American Future seeks only to continue litigating Stop PAC's claims, its joinder will neither "embarrass" the Government nor materially alter the course of the litigation. *Mullaney*, 342 U.S. at 416; *Anaheim III*. 190 F.3d at 999.

Requiring American Future to initiate a separate suit is an inadequate substitute for joinder. The FEC has taken the position that the as-applied challenge to the disparate contribution limits, *see id*. § 441a(a)(1)(A), (a)(2)(A), and six-month waiting period, *id*. § 441a(a)(4), at issue here will become moot once a plaintiff committee has existed for six months, *see supra* note 3. If American Future files a new suit, the FEC will have 60 days to file an Answer, Fed. R. Civ. P. 12(a)(2), and additional time will pass before a scheduling order is entered and the discovery that the FEC inevitably will demand will be complete. After several

months of unnecessary and duplicative litigation, American Future will find itself in the same position in which Stop PAC now stands—approaching the end of its six-month waiting period and needing to introduce yet another new plaintiff (over the FEC's likely objection) to preclude any challenges (however misguided) to the justiciability of its suit and obtain an adjudication on the merits. This Court should not countenance such a wasteful and futile course of action. *Mullaney*, 342 U.S. at 416 (permitting joinder of new plaintiffs to prevent "needless waste," promote "effective judicial administration," and alleviate the need to re-litigate the same claims in a different suit); Wright & Miller, *supra* § 3533.9.

American Future Satisfies the Requirements for Joinder Under Rule 21

Rule 21 provides, "On motion or on its own, the court may at any time, on just terms, add . . . a party." Fed. R. Civ. P. 21. Rule 20 further specifies that persons "may join in one action as plaintiffs" if: [1] they "assert any right to relief jointly, severally, or in the alternative with respect to . . . the same transaction, occurrence, or series of transactions or occurrences," and [2] the case involves "any question of law or fact common to all plaintiffs." *Id.* R. 20(a)(1)(A)-(B). Regarding the first element, the "transaction or occurrence test. . . permit[s] all reasonably related claims for relief by . . . different parties to be tried in a single proceeding. Absolute identity of all events is unnecessary." *Saval v. BL Ltd.*, 710 F.2d 1027, 1031 (4th Cir. 1983) (per curiam) (quotation marks omitted). Claims are sufficiently "related" if there is a "logical relationship" between them. *Sanford v. Virginia*, No. 3:08-CV-835, 2009 U.S. Dist. LEXIS 52777, at *8 (E.D. Va. June 22, 2009).

Under these rules, courts have "wide discretion concerning the permissive joinder of parties." *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206, 218 n.6 (4th Cir. 2007). "[T]he impulse is toward entertaining the broadest possible scope of action consistent with fairness to

the parties; ***joinder of claims, parties, and remedies is strongly encouraged***." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966) (emphasis added). Joinder helps "promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits." *Saval*, 710 F.2d at 1031 (quotation marks omitted).

American Future satisfies the requirements for joinder. First, it seeks to engage in the same conduct as Stop PAC by contributing more than $2,600 to a candidate in connection with an election, and contends that the same provisions of federal law violate its same constitutional rights in the same ways, for the same reasons. American Future therefore seeks to assert rights arising out of the same series of occurrences as Stop PAC—the FEC's allegedly unconstitutional enforcement of the discriminatory contribution limits set forth in 2 U.S.C. § 441a(a)(1)(A) against newly formed political committees with at least 51 contributors that have contributed to five or more candidates (and Congress' enactment of that unconstitutionally overbroad law). *See Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611, 618 (4th Cir. 2001) (holding that plaintiffs who each allege that the same defendant engaged in "the same or similar types of violations" of their rights could join their claims together under Rule 20(a)).

Moreover, American Future seeks adjudication of the exact same "questions of law" as Stop PAC. Thus, American Future easily satisfies Rule 20(a)'s standards for permissive joinder, and this Court should permit it to join in Stop PAC's claims under Rule 21. Allowing American Future to join this suit will further Rule 20's goals of "avoiding a multiplicity of suits and expediting the final determination of litigation." *Rumbaugh v. Winifrede R. Co.*, 331 F.2d 530, 537 (4th Cir. 1964); *see also Saval*, 710 F.2d at 1031. Even if allowing American Future to join in Stop PAC's claims will somewhat expand the scope of this litigation, "an even greater expenditure of resources, and correspondingly greater inefficiency, would be created if

[American Future's claim] were to be tried separately, as a significant repetition of attorney effort . . . [and] a corresponding increase in the use of court time" would be required. *Sanford*, 2009 U.S. Dist. LEXIS 52777, at *11.

Further Time for Discovery Is Unnecessary

Finally, American Future's motion for joinder is timely, and does not warrant extending the time for discovery and delaying the deadlines for summary judgment briefs by more than a week, if at all. American Future's motion to join this case is timely. The committee itself was formed on August 5, 2014. It collected its 51st contribution and contributed to five federal candidates within the past week or so. Thus, it has not unduly delayed in bringing this motion.

Although several months have passed since the filing of this suit, motions to join new parties have been deemed timely "more than two years after commencement of the action, after trial, and even on appeal." *Gentry v. Smith*, 487 F.2d 571, 580 (5th Cir. 1973); *see also Spring Constr. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980) ("Mere passage of time is but one factor to be considered in light of all the circumstances. The most important consideration is whether the delay has prejudiced the other parties."). The whole point of this motion is to give the Court as much additional time as possible to adjudicate this case on the merits, despite the FEC's contention that an entity's challenge to the six-month waiting period will become moot once that period has elapsed.

Even if Plaintiffs could have found another PAC sooner (before Stop PAC neared the end of its six-month waiting period) that both wished to join the suit and met the necessary requirements—that is, it was recently formed, had at least 51 contributors, and had contributed to five or more candidates—the suit's justiciability (in the FEC's view) would have been extended for a far shorter amount of time, and Plaintiffs would have needed to seek to add yet another new

plaintiff before the end of this year. Adding American Future at this point will extend the uncontested justiciability of this case into next year. Thus, the timing of this motion is not only reasonable, but largely unavoidable given the nature of the challenged waiting period.

American Future's unprecedented unilateral concessions minimize any potential prejudice its joinder would create for the FEC, as well as any need to extend the discovery period. As noted above, American Future already has made its initial disclosures and responded to the discovery requests the FEC previously served on Stop PAC (as if those questions applied to American Future itself). It is willing to accept any further discovery requests immediately by e-mail, and will serve all responses within 6 days (without claiming the additional three-day period based on manner of service). American Future has existed for about three weeks, has only a few thousand dollars in assets, and has only two officers or employees; it has no evidence, facts, or information necessary to resolving the constitutional claims in this case. Thus, the FEC cannot credibly contend to suffer any prejudice from American Future's joinder; it certainly does not need an additional 128 days of discovery, as it demanded during the meet-and-confer session.[4]

[4] In the alternative, if this Court concludes that permissive intervention under Fed. R. Civ. P. 24(b), rather than joinder under Fed. R. Civ. P. 21, is the appropriate mechanism for allowing American Future to pursue its claims in this suit, movants respectfully request such relief in the alternative. Permissive intervention is appropriate where the putative intervenor "has a claim or defense that shares with the main action a common question or fact," Fed. R. Civ. P. 24(b)(1)(B), and intervention will not "unduly delay or prejudice the adjudication of the original parties' rights," *id*. R. 24(b)(3). American Future easily satisfies the first prong, because it wishes to pursue the same constitutional challenge that Stop PAC has been litigating for the past five months. And, for the reasons discussed in the main text above, American Future's motion is neither untimely nor prejudicial.

The Fourth Circuit has held that new litigants may intervene in a case without satisfying the technical requirements of Fed. R. Civ. P. 24(c), unless prejudice to the opposing parties would result. *See Spring Constr. Co. v. Harris*, 614 F.2d 374, 376-77 (4th Cir. 1980) (holding that, rather than denying intervention "when the moving party fails to comply strictly with the requirements of Rule 24(c), the proper approach is to disregard non-prejudicial technical defects"). This Court may grant American Future's motion, notwithstanding Rule 24(c), because

CONCLUSION

For these reasons, movants respectfully ask that this Court permit American Future to join Stop PAC's claims in this case.

Respectfully submitted,

Dated August 27, 2014

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*Motion for *pro hac vice* admission *forthcoming*

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the FEC has actual notice of both this in-the-alternative request and American Future's proposed claims, and American Future can submit a Second Amended Complaint if this Court so orders. *Id*. at 377.

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,	)	
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MOTION OF PLAINTIFFS AND PUTATIVE PLAINTIFF-INTERVENOR AMERICAN FUTURE PAC SEEKING LEAVE FOR AMERICAN FUTURE PAC TO JOIN THE SUIT PURSUANT TO FED. R. CIV. P. 21

SUPPLEMENT TO CERTIFICATE OF SERVICE

I, Dan Backer, hereby certify that on this 27th day of August 2014, I personally delivered and served a true and complete copy of the Motion of Plaintiffs and Putative Plaintiff-Intervenor American Future PAC Seeking Leave for American Future PAC to Join the Suit Pursuant to Fed. R. Civ. P. 21, supporting memorandum, exhibits, waiver of hearing, and proposed order upon counsel for the plaintiff at the following address:

Kevin Deeley
Harry J. Summers
Holly J. Baker
Kevin P. Hancock
Esther D. Gyory
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

I delivered the specified documents at 3:55 P.M., Eastern Standard Time. Pursuant to FEC policy, the FEC's security officers would not permit me to go upstairs to the Office of General Counsel ("OGC"), and would not call OGC to advise them of my attempt to serve these filings. I called and e-mailed Attorneys Baker and Hancock from the lobby, but did not connect with them and left voicemail messages for Attorney Baker and on the OGC main number. Pursuant to FEC policy, the security guards' directions, and Fed. R. Civ. P. 5(b)(2)(B)(i), I personally delivered the specified documents to Mr. Jim Wilson, a clerk from OGC's mailroom. Attorney Deeley, returning my voicemail to OGC, called and I advised him that the FEC's mailroom was in possession of the documents. Consequently, service has been effected pursuant to Fed. R. Civ. P. 5(b)(1), (b)(2)(B)(i).

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