UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER BERNEGGER,
Plaintiff,

v.

Civil Action No. 1:26-cv-00213-TSC

FEDERAL ELECTION COMMISSION,
Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND THE JUNE 10, 2026 AND JULY 6, 2026 MINUTE ORDERS TO INCLUDE CERTIFICATION FOR INTERLOCUTORY APPEAL UNDER 28 U.S.C. § 1292(b)

I. INTRODUCTION

1. This is a citizen-suit action under the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30109(a)(8), seeking a declaration that the Federal Election Commission's ("FEC" or "Commission") failure to act on Plaintiff's sworn administrative complaint concerning Elissa Slotkin for Michigan (FEC ID C00834218), Slotkin Victory Fund (FEC ID C00834226), Josie Olsen, as treasurer, and the terminated Elissa Slotkin for Congress committee (FEC ID C00650150) is contrary to law.

2. On June 10, 2026, the Court entered a Minute Order denying without prejudice Plaintiff's Motion for Entry of Default and Default Judgment (ECF No. 8) "as premature for failure to effectuate proper service," stating that a plaintiff suing a federal agency "is required to supply a summons for each defendant and two additional summonses for the U.S. Attorney and U.S. Attorney General," and directing Plaintiff to provide separate summonses for the United States

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Attorney and the Attorney General and to serve them in accordance with Federal Rule of Civil Procedure 4(i) on or before July 10, 2026.

3. On June 12, 2026, Plaintiff moved for reconsideration of the June 10, 2026 Minute Order (ECF No. 10). On July 6, 2026, the Court entered a Minute Order denying that motion. The July 6, 2026 Minute Order states in relevant part:

> MINUTE ORDER: Plaintiff's [10] Motion for Reconsideration of the court's June 10, 2026 Minute Order is DENIED. Even assuming that Plaintiff is correct in his assertion that Federal Rule of Civil Procedure 4(i) does not explicitly require individual summonses for the U.S. Attorney and the U.S. Attorney General, but see Min. Ord., Bernegger v. Fed. Election Commission, No. 25-cv-4559 (D.D.C. June 24, 2026) . . . ; Wine v. U.S. Dep't of the Interior, No. 21-cv-03349, 2022 WL 888197, at *3 (D.D.C. Mar. 25, 2022) . . . , Plaintiff has not submitted proof of service upon the U.S. Attorney General, see ECF No. [5], as required under Federal Rule of Civil Procedure 4(i). As a result, Plaintiff's [10] Motion is DENIED. The court will nonetheless grant Plaintiff an extension of time to effectuate proper service, through and including July 17, 2026. If Plaintiff fails to do so or request an extension of time, the court may dismiss this action. See Fed. R. Civ. P. 4(m). Signed by Judge Tanya S. Chutkan on 7/6/2026.

4. The Minute Orders rest on a discrete and dispositive question of law concerning the interpretation of Federal Rule of Civil Procedure 4: whether Rule 4(i) requires separately issued summonses directed to the United States Attorney and the Attorney General of the United States, neither of whom is a party to this action, or whether the Rule is satisfied by delivery, by registered or certified mail, to those officers of copies of the Clerk-issued summons directed to the sole defendant, the Commission, together with copies of the complaint. That question satisfies each element of 28 U.S.C. § 1292(b), and the Court should amend the Minute Orders to include the statutory certification so that Plaintiff may petition the United States Court of Appeals for the District of Columbia Circuit for permission to appeal. See Fed. R. App. P. 5(a)(3).

II. FACTUAL AND PROCEDURAL BACKGROUND

5. January 23, 2026. Plaintiff filed the Complaint for Declaratory and Injunctive Relief under 52 U.S.C. § 30109(a)(8) (ECF No. 1), naming a single defendant, the Federal Election Commission. That same day, the Clerk of Court signed, sealed, and issued a summons on form AO 440 directed to the Commission (ECF No. 2). The Court-approved form reads: "To: (Defendant's name and address)."

6. February 11, 2026. The court-stamped summons and Complaint were delivered to the Commission by United States Postal Service certified mail, return receipt requested, tracking no. 7022 2410 0000 8096 4887, at 10:48 a.m. (ECF No. 3 ¶ 1.a; ECF No. 5 ¶¶ 4–6 & Ex. A.)

7. February 12, 2026. A copy of the court-stamped summons and Complaint was delivered to the Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, by certified mail, article no. ending 4894. (ECF No. 3 ¶ 1.b; ECF No. 5 ¶ 7.)

8. February 12, 2026. A copy of the court-stamped summons and Complaint was delivered to the United States Attorney for the District of Columbia, c/o Civil Process Clerk, 601 D Street NW, Washington, DC 20530, the address designated in the U.S. Attorney's Office's published guidance for service under Rule 4(i)(1)(A)(ii), by certified mail, article no. ending 4900. (ECF No. 3 ¶ 1.c; ECF No. 5 ¶ 8.)

9. March 9, 2026. Plaintiff filed a sworn Declaration of Service (ECF No. 3), followed by further sworn proofs of service (ECF Nos. 4, 5, 6), including the summons returned executed (ECF No. 5).

10. The Commission appeared through its Office of General Counsel and filed a Notice of Lack of Quorum (ECF No. 7). The Commission has never contested service, moved to quash, answered, or moved under Rule 12.

11. On April 3, 2026, Plaintiff moved for entry of default and default judgment (ECF No. 8). The June 10, 2026 Minute Order denied that motion without prejudice in the terms described above. On June 12, 2026, Plaintiff moved for reconsideration (ECF No. 10). On or about July 3, 2026, Plaintiff also submitted a motion to amend the June 10, 2026 Minute Order to include § 1292(b) certification, which remains pending. The July 6, 2026 Minute Order denied reconsideration in the terms quoted above and extended the service deadline through July 17, 2026. On July 7, 2026, Plaintiff submitted a letter to the Court respectfully addressing why *Wine v. U.S. Department of the Interior* does not control the question presented.

12. July 8, 2026. Two days after the July 6, 2026 Minute Order in this case, the Clerk of this Court entered default against the same defendant, the Federal Election Commission, in *Seegers v. Federal Election Commission,* No. 1:26-cv-00276-JMC (D.D.C.) (ECF No. 13), on the Court's standard form CO 40 ("Default – Rule 55A"), declaring that the Commission "failed to plead or otherwise defend this action though duly served with summons and copy of the complaint on February 24, 2026." A true and correct copy of the Clerk's Entry of Default is attached as Exhibit A. In Seegers, service upon the Commission of the summons and a copy of the complaint was accepted as "duly served" for purposes of Rule 55(a); no separately issued summonses naming the United States Attorney or the Attorney General were required as a precondition to the entry of default.

III. LEGAL STANDARD

13. A district court may certify an otherwise non-appealable interlocutory order for immediate appeal when the order (1) "involves a controlling question of law," (2) presents "substantial ground for difference of opinion" as to that question, and (3) "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); see *Coopers & Lybrand v. Livesay,* 437 U.S. 463, 474–75 (1978); *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 110–11 (2009) (identifying § 1292(b) as the appropriate avenue for immediate review of important, unsettled legal questions); *Judicial Watch, Inc. v. Nat'l Energy Policy Dev. Grp.*, 233 F. Supp. 2d 16, 19–20 (D.D.C. 2002).

14. Where, as here, the order to be appealed did not originally contain the § 1292(b) statement, the district court may amend the order to include the required certification, and the ten-day period in which to petition the court of appeals runs from entry of the amended order. Fed. R. App. P. 5(a)(3); 28 U.S.C. § 1292(b).

IV. ARGUMENT

A. The Minute Orders Involve a Controlling Question of Law.

15. The question presented is purely legal: whether Federal Rule of Civil Procedure 4(i) requires a plaintiff suing a United States agency to obtain from the Clerk separately issued summonses directed to the United States Attorney and to the Attorney General, neither of whom is a defendant, or whether Rule 4(i) is satisfied by delivering to those officers, by registered or certified mail, a copy of the Clerk-issued summons directed to the defendant agency together with a copy of the complaint. Resolution requires no factual development; the service record is documented by sworn declarations and certified-mail records and is undisputed (ECF Nos. 3, 4, 5, 6).

16. The text of Rule 4(i) speaks of copies, not of separately issued summonses. Rule 4(i)(1)(A)(i) provides that to serve the United States a party must "deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought," or under Rule 4(i)(1)(A)(ii) "send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office." Rule 4(i)(1)(B) requires the party to "send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C." - "a copy of each" referring back to the summons and the complaint. Rule 4(i)(2) provides that to serve a United States agency a party "must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency."

17. The question is controlling. If copies of the issued summons suffice under Rule 4(i), then the Commission was served by certified mail delivered February 11, 2026 (ECF No. 3 ¶ 1.a; ECF No. 5), the Attorney General was served by certified mail delivered February 12, 2026 (ECF No. 3 ¶ 1.b; ECF No. 5 ¶ 7), and the United States Attorney was served by certified mail delivered February 12, 2026 (ECF No. 3 ¶ 1.c; ECF No. 5 ¶ 8). The Commission's sixty-day period to respond under Rule 12(a)(2) would have expired in mid-April 2026, and proceedings under Rule 55, subject to the protections of Rule 55(d), would be available. If, instead, separately issued summonses naming the non-party officers are required, the case remains at the service threshold nearly six months after filing. The answer therefore directly governs the further course of the entire litigation.

B. There Is Substantial Ground for Difference of Opinion.

18. Substantial ground for difference of opinion exists because the requirement stated in the Minute Orders is in tension with the governing texts. Rule 4(a)(1)(B) provides that a summons must "be directed to the defendant." Rule 4(b) provides that a summons must be issued "for each defendant to be served." The national form, AO 440, is addressed "To: (Defendant's name and address)."

The Complaint names one defendant. By contrast, Rule 4(i)(1)(A), Rule 4(i)(1)(B), and Rule 4(i)(2) repeatedly use the phrase "a copy of the summons and of the complaint" to describe what must be delivered or mailed to the United States Attorney, the Attorney General, and the agency. Nothing in the text of Rule 4, and nothing in this Court's Local Civil Rules, expressly requires the issuance of additional summonses naming non-party officers. The United States Attorney and the Attorney General are recipients of process under Rule 4(i) so that the United States may defend the agency; they are not defendants. A summons issued in the name of a non-defendant would itself sit uneasily with Rule 4(a)(1)(B), and Plaintiff cannot be faulted for declining to complete an official court form in a manner the form's own text does not contemplate.

19. Notably, the July 6, 2026 Minute Order itself proceeds on the express assumption, without deciding, "that Plaintiff is correct in his assertion that Federal Rule of Civil Procedure 4(i) does not explicitly require individual summonses for the U.S. Attorney and the U.S. Attorney General." An assumption arguendo resolves nothing; it confirms that the question remains open in this District. On the other side of the question, judges of this District have read Rule 4(i) to require separately issued, or at least separately requested, summonses for these officers. See Min. Ord. of June 10, 2026 in this case; *Wine v. U.S. Dep't of the Interior*, No. 21-cv-3349 (TNM), 2022 WL 888197, at *3 (D.D.C. Mar. 25, 2022) (plaintiff "could not have properly served the Attorney General because he never requested summons to issue to the Attorney General"); Min. Ord., *Bernegger v. Fed. Election Comm'n,* No. 25-cv-4559 (JEB) (D.D.C. June 24, 2026). No controlling decision of the United States Court of Appeals for the District of Columbia Circuit resolves the question. A dispositive question of first impression in the Circuit, on which the text of the Rule and the practice of this District stand in tension, supplies substantial ground for

difference of opinion. See *APCC Servs., Inc. v. Sprint Commc'ns Co.*, 297 F. Supp. 2d 90, 97–98 (D.D.C. 2003).

20. Wine itself does not foreclose Plaintiff's reading; it underscores the need for appellate resolution. The statement quoted from Wine - that the plaintiff "could not have properly served the Attorney General because he never requested summons to issue to the Attorney General," 2022 WL 888197, at *3 - on its face addresses a plaintiff who had not established proper delivery of process to the Attorney General at all. That statement does not analyze the distinct textual question presented here: whether the phrase "a copy of the summons and of the complaint" in Rule 4(i)(1)(A), 4(i)(1)(B), and 4(i)(2) is satisfied by delivery of copies of the Clerk-issued summons directed to the defendant agency. The record here is also materially different. Plaintiff filed a sworn Declaration of Service documenting certified-mail delivery of the court-stamped summons and Complaint to the Attorney General on February 12, 2026 (ECF No. 3 ¶ 1.b), together with the summons returned executed (ECF No. 5 ¶ 7). Whatever the precise scope of its holding, Wine is a non-binding district court decision, and it did not purport to construe the "copy of the summons" language on a record of documented delivery like this one. That judges of this District have nonetheless applied a separate-summons requirement confirms that the question is recurring and that substantial ground for difference of opinion exists.

21. The practice of this District is itself divided, within the same courthouse and within the same week. On July 8, 2026, two days after the July 6, 2026 Minute Order in this case, the Clerk of this Court entered default against the Federal Election Commission - the same defendant, before this same Court - in *Seegers v. Federal Election Commission*, No. 1:26-cv-00276-JMC (D.D.C.) (ECF No. 13) (Exhibit A). The Clerk's Entry of Default, on the Court's own form CO 40, recites that the Commission was "duly served with summons and copy of the complaint on February 24,

2026," and declares the Commission in default under Rule 55(a). No separately issued summonses naming the United States Attorney or the Attorney General were required in *Seegers* as a precondition to default. It cannot be that service of the summons and complaint upon the Commission is "duly served" in one action against the FEC and a nullity in another action against the FEC, in the same District, on materially identical mailings, in the same month. Divergent outcomes on the same legal question, involving the same defendant, within days of one another, are the very definition of substantial ground for difference of opinion.

C. Immediate Appeal May Materially Advance the Ultimate Termination of the Litigation.

22. This is a statutory-deadline case. FECA entitles a complainant to judicial review where the Commission fails to act within 120 days, 52 U.S.C. § 30109(a)(8)(A), and the courts have recognized the informational injury such delay inflicts. See *FEC v. Akins,* 524 U.S. 11, 21 (1998); *Common Cause v. FEC,* 842 F.2d 436, 449 (D.C. Cir. 1988); see also *CREW v. FEC,* 993 F.3d 880, 885–86 (D.C. Cir. 2021) (describing the "contrary to law" standard). Every month consumed by threshold service disputes is inconsistent with the statute's purpose of prompt review of agency inaction.

23. An immediate, definitive answer from the court of appeals would either (a) confirm that service was complete no later than February 12, 2026, restoring the case to its post-service posture, in which the Commission's response time has expired and default proceedings, subject to Rule 55(d), or the merits may be reached at once, as occurred in *Seegers,* or (b) confirm the Minute Orders' reading, in which case Plaintiff will promptly request the additional summonses from the Clerk's Office and serve them as the Minute Orders describe, placing service beyond dispute. Either outcome eliminates the sole issue now obstructing progress, avoids successive rounds of re-service and renewed default practice, and removes any exposure to dismissal and refiling under Rule 4(m).

D. In the Alternative, the Court Should Extend the Time to Effect Service.

24. If the Court declines to certify, Plaintiff respectfully requests, in the alternative and without waiver of any argument, an order under Rules 4(m), 4(i)(4), and 6(b)(1)(B) extending the time to effect service in the manner described in the Minute Orders, nunc pro tunc from July 17, 2026, through a date not less than thirty (30) days after resolution of this Motion or of any timely petition under Federal Rule of Appellate Procedure 5, whichever is later, with a direction that this action not be dismissed under Rule 4(m) during that period.

25. Good cause and excusable neglect support the request. Plaintiff has delivered or mailed the summons and complaint to every recipient identified in Rule 4(i) and filed sworn proofs of service (ECF Nos. 3, 4, 5, 6); Plaintiff has diligently litigated the legal question in good faith through reconsideration, a certification motion, and correspondence with the Court rather than ignoring the Minute Orders; Plaintiff is a pro se litigant proceeding by mail from Wisconsin, and this Motion follows within days of the July 17, 2026 deadline; the Commission has appeared through counsel and has never contested service, so no party is prejudiced; and Rule 4(i)(4) reflects the Rules' policy that technical defects in service on the United States are to be cured, not punished. See Fed. R. Civ. P. 4(m) (court "must extend the time for service for an appropriate period" upon a showing of good cause); Fed. R. Civ. P. 6(b)(1)(B) (court may extend time after expiration for excusable neglect).

V. CONCLUSION

26. For the foregoing reasons, Plaintiff respectfully requests that the Court (1) amend the June 10, 2026 and July 6, 2026 Minute Orders to include the certification described in 28 U.S.C. § 1292(b); (2) in the alternative, extend the time to effect service as set forth above; and (3) grant such other

relief as the Court deems just.

Dated: July 21, 2026

Respectfully submitted,

Peter Bernegger, Plaintiff
1806 Brynnwood Trace
New London, WI 54961
(920) 551-0510
peter@electionwatch.info