

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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|------------------------------|---|-------------------------------|
| STOP HILARY PAC, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 1:15-cv-1208-GBL-IDD |
| |) | |
| FEDERAL ELECTION COMMISSION, |) | |
| |) | |
| Defendants. |) | |

ORDER

THIS MATTER is before the Court on Plaintiff Dan Backer’s Motion to Certify Constitutional Questions to *En Banc* Court of Appeals (Doc. 4). This motion concerns Plaintiff Dan Backer’s request to, pursuant to 52 U.S.C. § 30110, have the constitutional questions raised in Counts II and IV of the Complaint, *immediately* certified to the U.S. Court of Appeals. *Id.* However, having reviewed the pleadings and relevant case law, it is clear that in this case, a fact finding must take place before this Court orders certification. *See California Med. Ass’n v. Fed. Elec. Comm’n*, 453 U.S. 182, 192 (1981) (“*Cal. Med.*”). Though § 30110s plain language indicates that certification is to be immediate, this Court follows the Supreme Court’s affirmation in *Cal. Med.* that “immediate adjudication of constitutional claims through a [§ 30110] proceeding *would be improper* in cases where the resolution of such questions required *a fully developed factual record.*” 453 U.S. 182, 192 n.14 (1981) (emphasis added).

Thus, this Court, in order to fully develop a factual record, DENIES Plaintiff Dan Backer’s Motion to Certify Constitutional Questions to *En Banc* Court of Appeals and instead, orders the parties to conduct discovery, pursuant to the timelines indicated in the Scheduling Order to follow this Order. As indicated in the Scheduling Order, following discovery, the

parties must submit proposed findings of fact to the Court by April 21, 2016. After this, the Court will conduct a hearing to address both sides' proposed findings of fact on May 4, 2016. Once this is complete the Court will then be able to develop a full factual record for appellate review. Using this record, the Court will determine whether the constitutional challenges expressed in Counts II and IV are frivolous or involve settled questions of law. If the constitutional questions are neither frivolous or nor turn on clear and settled questions of law, this Court will then certify the factual record and both constitutional questions to the Court of Appeals. Therefore, it is hereby,

ORDERED that Plaintiff Dan Backer's Motion to Certify Constitutional Questions to *En Banc* Court of Appeals (Doc. 4) is **DENIED**.

IT IS FURTHER ORDERED that the parties conduct discovery, pursuant to the timelines indicated in the Scheduling Order to follow this Order.

IT IS FURTHER ORDERED that parties submit their respective proposed findings of fact to the Court by April 21, 2016.

ENTERED this 16th day of December, 2015.

Alexandria, Virginia
12 / 16 / 15

/s/
Gerald Bruce Lee
United States District Judge