No. _____

In the Supreme Court of the United States

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS; TEA PARTY LEADERSHIP FUND; AND ALEXANDRIA REPUBLICAN CITY COMMITTEE,

Petitioners,

and

AMERICAN FUTURE PAC,

Petitioner – Intervenor,

v.

FEDERAL ELECTION COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. When a case is moot, a federal court may nevertheless adjudicate the merits of the underlying issue only if it is "capable of repetition, yet evading review." Generally, the issue must be "capable of repetition" with regard to the same plaintiff. Justices Scalia and O'Connor, however, noted that this Court's "election law decisions . . . dispens[e] with the same-plaintiff requirement entirely." *Honig v. Doe*, 484 U.S. 305, 335-36 (1988) (Scalia, J., dissenting). The Fifth, Sixth, Seventh, and Ninth Circuits, following that approach, have held that the "same plaintiff" requirement does not apply in election-law cases. The First, Second, and Eighth Circuits, as well as the Fourth Circuit in the instant case, have refused to recognize an exception to the "same plaintiff" requirement for election-law cases.

When a plaintiff's constitutional challenge to an election-related statute becomes moot, but the challenged provision will be applied to other people or entities and is likely to evade review, may the court adjudicate the merits of the plaintiffs' claim? In other words, is there an "election law" exception to the same-plaintiff requirement of the "capable of repetition, yet evading review" doctrine?

II. This Court has held that limits on political contributions are constitutional only if they are reasonably tailored to combatting actual or apparent *quid pro quo* corruption. Under the Bipartisan Campaign Reform Act, after certain political committees have been registered with the FEC for six

months, the amount they may contribute to political parties is automatically slashed in half—even when there is no reason to believe they have done anything wrong—while at the same time the amount they may contribute to candidates nearly doubles. The question presented is:

May the Government categorically cut in half the amount that political committees may contribute to political parties once they have been registered with the FEC for six months, solely on the grounds that it simultaneously (and inconsistently) increases the limit on contributions to candidates at that point, when neither the FEC nor the court contends that such a blanket reduction furthers the Government's interest in combatting corruption?

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PETITION FOR WRIT OF CERTIORARI

This case presents a compelling jurisdictional issue for certiorari that has caused a split among eight different circuits and fostered rifts within this Court's jurisprudence. This case also presents a second, substantive constitutional issue, because the Fourth Circuit's holding on the merits conflicts with fundamental principles of campaign finance jurisprudence.

First, when a case becomes moot, a federal court may nevertheless adjudicate the matter if the underlying issue remains "capable of repetition, yet evading review." *S. Pac. Term. Co. v. ICC*, 219 U.S. 498, 515 (1911). Generally, for this exception to the mootness doctrine to apply, the issue must be capable of repetition with regard to the same plaintiff. *See, e.g.*, *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975).

In a series of constitutional challenges to election-related statutes, however, this Court adjudicated the merits of the plaintiffs' claims, even though the cases had become moot as to those plaintiffs and there was no indication that the challenged provisions would ever again be applied to them. This Court held that the cases remained justiciable because the challenged provisions would continue to be applied to other candidates, voters, and political parties in subsequent elections. *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 Anderson v. Celebrezze*, 460 U.S. 780, 784 n.3 (1983); *Mandel v. Bradley*, 432 U.S. 173,

175 n.1 (1977); *Am. Party of Texas v. White*, 415 U.S. 767, 770 n.1 (1974).

Many of these cases led Justices Scalia and O'Connor to declare that this Court's "election law decisions differ from the body of [its] mootness jurisprudence . . . in dispensing with the same-party requirement entirely, focusing instead upon the great likelihood that the issue will recur between the defendant and the other members of the public at large." *Honig v. Doe*, 484 U.S. 305, 335 (1988) (Scalia, J., dissenting).

Numerous circuits, following Justice Scalia's opinion in *Honig* and this Court's precedents, have recognized that the same-plaintiff requirement of the "capable of repetition, yet evading review" doctrine does not apply in election law cases. *See, e.g.*, *Catholic Leadership Coalition of Tex. v. Reisman*, 764 F.3d 409, 424 (5th Cir. 2014); *Lawrence v. Blackwell*, 430 F.3d 368, 372 (6th Cir. 2005); *Majors v. Abell*, 317 F.3d 719, 723 (7th Cir. 2003); *Caruso v. Yamhill Cnty.*, 422 F.3d 848, 853-54 (9th Cir. 2005); *see also Fulani v. Brady*, 935 F.2d 1324, 1336 (D.C. Cir. 1991) (Mikva, C.J., dissenting).

Several other circuits, including the panel below, A-19 to A-21, have reached the opposite conclusion, declining to recognize the exception to the same-plaintiff requirement for election law cases. *See, e.g.*, *Barr v. Galvin*, 626 F.3d 99, 105-06 (1st Cir. 2010); *Van Wie v. Pataki*, 267 F.3d 109, 114 (2d Cir. 2001); *Van Bergen v. Minnesota*, 59 F.3d 1541, 1546 (8th Cir. 1995). The panel opinion expressly recognized that circuits have split on this issue. A-18. It concluded that the same-plaintiff requirement applies, even in election law cases, because this

Court's rulings in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 457-60 (2007), and *Davis v. FEC*, 554 U.S. 724, 735-36 (2008), reject its earlier precedents *sub silentio*. A-19 to A-21.

This case presents an important issue concerning the subject-matter jurisdiction of the federal judiciary and the ability of plaintiffs to challenge unconstitutional laws regulating elections. The longstanding circuit split is causing indefensible disparities between plaintiffs in different jurisdictions. Whereas the court below held that Petitioners' constitutional challenge to a waiting period concerning political contribution limits became moot and nonjusticiable after the waiting period expired, A-21, the Fifth Circuit held that a challenge to a materially identical waiting period remained justiciable, even after its expiration, because other entities would be subject to it. *Catholic Leadership Coalition*, 764 F.3d at 424. The time has come for this Court to definitively confirm that the "same plaintiff" requirement of the "capable of repetition, yet evading review" doctrine does not apply to election law cases.

Second, this case also presents a substantive issue of First Amendment law. The Bipartisan Campaign Reform Act cuts in half the amount that certain political committees may contribute ***to political parties*** once those committees have been registered with the FEC for six months. *See* 52 U.S.C. § 30116(a)(1)-(a)(4). The Fourth Circuit upheld this reduction in contribution limits on the grounds that BCRA also increases the amount that such committees may contribute ***to candidates*** upon reaching that six-month mark. A-27 to A-29.

This Court has repeatedly admonished that "'preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.'" *Davis v. FEC*, 554 U.S. 724, 741 (2008) (quoting *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-497 (1985)); *accord McCutcheon v. FEC*, 134 S. Ct. 1434, 1441 (2014). The Fourth Circuit, however, did not even attempt to explain how reducing the amount that established political committees may contribute to political parties after they have been registered for six months furthers the Government's interest in combatting actual or apparent corruption. Moreover, the Fourth Circuit's reasoning—that Congress may decrease limits on contributions to political parties because it simultaneously increased limits on contributions to candidates—is inconsistent with this Court's holding in *McCutcheon*, 134 S. Ct. at 1449, that contributors cannot be subjected to such tradeoffs among constitutionally protected activities. *See also Davis*, 554 U.S. at 738-40.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fourth Circuit is published at 814 F.3d 221 and reproduced at A-1 to A-29. The opinion of the U.S. District Court for the Eastern District of Virginia is published at 93 F. Supp. 3d 466, and is reproduced at A-33 to A-55.

JURISDICTIONAL STATEMENT

The Fourth Circuit issued its opinion and entered judgment on February 23, 2016. A-1 to A-2. That court refused rehearing and rehearing *en banc* on April 22, 2016. A-58. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST., amend. I

"Congress shall make no law . . . abridging the freedom of speech . . . ."

U.S. Const., art. III, § 2

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, [and] the laws of the United States . . . ."

52 U.S.C. § 30116—Limitations on contributions and expenditures

(a) Dollar limits on contributions

(1) Except as provided in subsection (i) and section 30117 of this title, no person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $25,000 * * *;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed $5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(2) No multicandidate political committee shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000 * * *; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

* * *

(4) * * * For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 30103 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

STATEMENT OF THE CASE

A. Conflicting Changes in Contribution Limits for Political Committees

1. "[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process." *Citizens Against Rent Cont. / Coal. for Fair Hous. v. Berkeley*, 454 U.S. 290, 294 (1981). When people wish to join together to collectively make political contributions or spend money in connection with federal elections, the law requires them to do so through a "political committee." 52 U.S.C. § 30101(4). Political committees exist on all sides of the political spectrum, from the NRDC Action Fund Inc. PAC to the National Rifle Association of America Political Victory Fund.

Political committees that are not created or operated by a candidate, officeholder, or political party are often referred to as "political action committees" or "PACs." When a PAC first registers with the FEC, it is treated as a "person" under

campaign finance law, and is subject to the following contribution limits:

- $2,700 per election limit on contributions to candidates, 52 U.S.C. § 30116(a)(1)(A);[1]

- $33,400 annual limit on contributions to a national political party committee, 52 U.S.C. § 30116(a)(1)(B);[2]

- $10,000 annual limit on contributions to a state or local political party committee, 52 U.S.C. § 30116(a)(1)(D).

A PAC that satisfies the following three requirements is deemed a "multicandidate PAC":

i. it received contributions from more than 50 persons [hereafter, "Receipt Requirement"];

ii. it made contributions "to 5 or more candidates for Federal office" [hereafter, "Contribution Requirement"]; and

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[1] This figure is subject to adjustment for inflation. FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 80 FED. REG. 5,750, 5,752 (Feb. 3, 2015).

[2] This figure is also subject to adjustment for inflation. 80 FED. REG. at 5,752. In addition to the general contribution limit of $33,400 in unrestricted funds, a "person" also may contribute $100,200 annually to each of a national party committee's three special segregated funds. 52 U.S.C. § 30116(a)(1)(B), (a)(9)(A)-(C).

iii. it has been registered with the FEC for six or more months.

52 U.S.C. § 30116(a)(4). Even if a committee satisfies the Receipt and Contribution Requirements, it cannot qualify for Multicandidate PAC status until it has been registered with the FEC for six months. Conversely, once such a committee has been registered for six months, it has no choice but to accept multicandidate PAC status.

Multicandidate PACs are subject to the following contribution limits:

- $5,000 per election limit on contributions to a candidate, 52 U.S.C. § 30116(a)(2)(A);

- $15,000 annual limit on contributions to a national political party committee, *id.* § 30116(a)(2)(B);[3]

- $5,000 annual limit on contributions to a state or local political party committee, *id.* § 30116(a)(2)(C).

2. As the chart below shows, the contribution limits that apply to political committees that satisfy § 30116(a)(4)'s Receipt and Contribution Requirements depend solely on whether those committees have been registered for six months:

[3] A multicandidate PAC also may contribute $45,000 annually to each of the national party's three segregated funds, as well. 52 U.S.C. § 30116(a)(2)(B).

Contribution Recipient	**Identity of Contributor**	
	Political committee that has been registered for **less than six (6) months**	Political committee that has been registered for **six (6) or more months**
Candidate	$2,700 per election	$5,000 per election
State or Local Political Party Committee	$10,000 annually	$5,000 annually
National Political Party Committee	$33,400 annually	$15,000 annually
Special Segregated Fund of National Political Party	$100,200 annually per fund	$45,000 annually per fund

This chart demonstrates an irrational feature of the current scheme: once a political committee that satisfies § 30116(a)(4)'s Receipt and Contribution Requirements has been registered for six months, the amount it may contribute to candidates nearly

doubles, while the amount it may contribute to political parties is slashed by nearly half. Thus, the law treats such committees inconsistently once they reach that six-month mark.

Nothing in the legislative history of either the Federal Election Campaign Act, Pub. L. No. 92-225, 86 Stat. 3 (Feb. 7, 1972), or the Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81 (Nov. 6, 2002), suggests any reason why a committee which satisfies the Receipt and Contribution Requirements may contribute only half as much to a national, state, or local political party once it has been registered with the FEC for six months. The record below is likewise devoid of evidence to suggest that such committees pose a greater risk of corruption concerning political parties once they have been registered for six months (and yet pose a correspondingly reduced risk of corruption concerning federal candidates).

B. Lower Court Proceedings

1. Petitioners filed this lawsuit to challenge the arbitrary and internally inconsistent limits that apply to contributions from political committees. At the time the Complaint was filed, Petitioner Stop Reckless Economic Instability Caused by Democrats ("Stop REID") was a recently formed committee that had satisfied the Receipt and Contribution Requirements, but had not yet been registered for six months. It wished to immediately make contributions of $5,000 to each of several federal candidates, but 52 U.S.C. § 30116(a)(1)(A) permitted it to contribute only about half as much. A-8 to A-9. Stop REID

argued that the statutory six-month waiting period before it could fully associate with the candidates of its choice by contributing the maximum statutory amount of $5,000 per election violated the First Amendment. A-9 to A-10. It also claimed that the statutory scheme violated the Equal Protection component of the Fifth Amendment's Due Process Clause. Materially identical PACs—that is, committees that satisfied the Receipt and Contribution Requirements—are subject to substantially different limits on contributions to candidates based solely on whether they have been registered with the FEC for six months. A-10.

Petitioner Tea Party Leadership Fund ("TPLF") was a political committee that also satisfied the Receipt and Contribution Requirements, but had been registered for more than six months, thereby triggering Multicandidate PAC status. It wished to contribute $10,000 to Petitioner Alexandria Republican City Committee ("ARCC"), a local political party committee, and $32,400 to the National Republican Senatorial Committee, a national political party committee. A-10. Federal law, however, allowed it to contribute only half as much to political parties. 52 U.S.C. § 30116(a)(2)(B)-(C).

Although TPLF had been permitted to contribute $32,400 to national political parties (the inflation-adjusted limit at the time) and $10,000 to state and local political parties throughout the first six months of its existence, 52 U.S.C. § 30116(a)(1)(B), (D), once it was registered with the FEC for six months, those amounts were halved to $15,000 and $5,000, respectively, *id.* § 30116(a)(2)(B)-(C). TPLF argued

that these discriminatory contribution limits violated the Equal Protection component of the Fifth Amendment's Due Process Clause. Similarly situated entities—that is, committees that satisfied the Receipt and Contribution Requirements—are subject to substantially different limits on contributions to political parties based solely on whether they have been registered with the FEC for six months. A-10.

2. Throughout the lawsuit, the FEC took every opportunity to delay and extend the proceedings to ensure Stop REID's claim would be mooted. Petitioners filed their three-count Complaint on April 14, 2014, in the U.S. District Court for the Eastern District of Virginia, A-8, and filed a Motion for Summary Judgment approximately three weeks later, on May 6, 2014. D.E. #6 (May 6, 2004).[4] The FEC filed a Rule 56(d) motion in response, arguing that immediate summary judgment was inappropriate because it needed discovery to demonstrate the constitutionality of the law it has been enforcing for the past half-century. *See* D.E. #26, at 3 (May 23, 2014).[5] The district court denied

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[4] "D.E." refers to Docket Entries on the Civil Docket for case #1:14-cv-00397-AJT-IDD (E.D. Va.).

[5] This was not the FEC's first attempt to prevent the federal courts from adjudicating the constitutionality of 52 U.S.C. § 50116(a)'s six-month waiting period by dragging out the proceedings until they became moot. Shortly after TPLF was formed, it satisfied the Receipt and Contribution Requirements and filed a lawsuit in the U.S. District Court for the District of Columbia, raising essentially the same constitutional challenge to the six-month waiting period that Stop REID attempted to pursue here. *Tea Party Leadership Fund v. FEC*, No. 12-1707 (D.D.C. Oct. 18, 2012).

Petitioners' summary judgment motion without prejudice and granted the FEC's Rule 56(d) motion, ordering that discovery proceed. A-31. Neither the district court nor the Fourth Circuit wound up citing any evidence developed in discovery in adjudicating this case.

In its proposed scheduling order to the district court, filed on July 2, 2014, the FEC argued that dispositive briefing should not conclude until mid-November—after the expiration of Stop REID's six-month waiting period. D.E. #34, at 17 (setting forth FEC's position). The court instead required that summary judgment motions be filed by September 19, 2014—less than a month before the waiting period expired.

Due to potential mootness issues with Stop REID's claims, on August 27, 2014, Petitioner American Future PAC moved to join or intervene in the lawsuit and adopt Stop REID's causes of action. D.E. #50 (Aug. 27, 2014). American Future had

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TPLF immediately moved for a preliminary injunction. The FEC, however, argued that a preliminary injunction was a "particularly inappropriate" vehicle through which to challenge the waiting period, because an injunction would "upend the status quo by preventing the Commission from enforcing statutory provisions that have been in place for almost 40 years." FEC Opposition to Plaintiffs' Motion for Preliminary Injunction, *Tea Party Leadership Fund v. FEC*, No. 12-1707, D.E. #8 (D.D.C. Nov. 1, 2012). On November 2, the district court consolidated the preliminary injunction motion with cross-motions for summary judgment, and set a briefing deadline ending five months later, on March 29, 2013, after TPLF's waiting period expired. *Tea Party Leadership Fund v. FEC*, No. 12-1707, D.E. #10 (D.D.C. Nov. 2, 2012). Faced with such delay, TPLF voluntarily dismissed its claims. *Tea Party Leadership Fund v. FEC*, No. 12-1707, D.E. #50 (D.D.C. Nov. 7, 2013).

formed on August 5, 2014, D.E. #50-4, at 3, and satisfied the Receipt and Contribution Requirements over the following three weeks, D.E. #50-3, at 1-2. Along with its motion, American Future enclosed Rule 26(a)(1) disclosures, *see* D.E. #50-6, as well as complete responses to all discovery requests that the FEC had served upon Stop REID, as those requests would have applied to American Future, *see* D.E. #50-5.

The FEC nevertheless opposed the motion, claiming at one point that it would need to extend the discovery schedule by 128 days to take discovery from this newly-formed entity. See D.E. #50, at 2 (discussing meet-and-confer with FEC concerning joinder motion). The Court denied American Future PAC's motion for joinder but granted its request for intervention, and allowed until October 31, 2014 to allow the FEC to take discovery from it. D.E. #62 (Oct. 6, 2014). Again, neither the district court nor the Fourth Circuit wound up relying on any evidence developed in discovery from American Future PAC in adjudicating this case.

3. Petitioners and the FEC cross-moved for summary judgment on September 19, 2014. D.E. #56-57 (Sept. 19, 2014). On February 27, 2015—following the expiration of both Stop REID's and American Future's six-month waiting periods—the district court denied Petitioners' motion and granted the FEC's motion, entering judgment for the FEC. D.E. #76-78 (Feb. 27, 2015).

The district court began by considering whether Stop REID's and American Future's claims were moot, since their six-month waiting periods had expired and they were no longer subject to the

reduced limit on candidate contributions. It recognized that an exception to the mootness doctrine exists where "the underlying dispute is capable of repetition, yet evading review." A-45. It noted that this exception generally applies only where "'the same complaining party will be subject to the same action again.'" *Id.* (quoting *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007)). Neither Stop REID nor American Future can again be subject to the six-month waiting period, since it is triggered only when a political committee first registers with the FEC.

The court then suggested, however, that under *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974), and the Fifth Circuit's ruling in a highly analogous case, *Catholic Leadership Coalition of Texas v. Reisman*, 764 F.2d 409, 422-23 (5th Cir. 2014), this "same plaintiff" requirement might not apply in the context of an election-related case such as this. A-45 to A-46. The court concluded, "Given the election law context, the Court assumes, without deciding, that the circumstances presented here satisfy both prongs of the mootness exception." A-46.

Turning to the merits of Stop REID's and American Future's challenges, the Court rejected their First Amendment claim. It began by holding that contribution limits impose only "'marginal restrictions'" on First Amendment rights, because they "'involve little restraint' on contributors' ability to express their own political views." A-48 (quoting *Buckley v. Valeo*, 424 U.S. 1, 20-21 (1976) (per curiam)). The court further opined that, because Stop REID and American Future are groups, they have only "limited rights" and "receive less First

Amendment protection" than "individual contributor[s]" wishing to make "direct contributions to candidates." A-50 to A-51.

Based on this cramped and misguided conception of the First Amendment interests at stake, the Court held that § 30116(a)(1)(A)'s $2,700 candidate contribution limit could not be unconstitutional, since it was higher than the limits upheld in *Buckley*. A-49. Likewise, the six-month waiting period on contributing the full statutory amount of $5,000 to candidates did not raise First Amendment concerns, because numerous other ways existed for entities such as Stop REID and American Future to engage in "independent political expression." A-50.

The court also rejected all of the Petitioners' Equal Protection claims. It began by declaring that, because Stop REID is a "'grassroots organization,'" it "is precisely the type of instrumentality that lends itself to a circumvention of the contribution limits applicable to individuals." A-53. It did not cite any evidence to support this assertion.

Then, rather than comparing the ***statutory categories*** the law creates, the court went on to compare Stop REID ***itself*** with the Fund. Because Stop REID had received only 150 contributions, with most of its resources coming from two contributors, while the Fund "had over 100,000 contributors," the court concluded that the two committees were not "similarly situated" for Equal Protection purposes. A-53.

The court further noted that, "[e]ven if the PACs were similarly situated," it would reject the Equal Protection claims "under either rational basis or intermediate scrutiny." A-54. Combining its rational

basis and intermediate scrutiny analyses, the court conclusorily declared—again, without citing any evidence—that the challenged contribution limits serve the government's interest in reducing the risk of corruption and circumvention of other restrictions. A-54 to A-55. The court did not address the second prong of an intermediate scrutiny analysis, by examining whether basing contribution limits on the length of time a committee has been registered with the FEC is an "appropriately tailored" means of achieving the Government's goals. *McCutcheon*, 134 S. Ct. at 1457.

Most notably, as mentioned above, the court emphasized the purported threat of circumvention that new, small, grassroots organizations such as Stop REID supposedly pose. A-53. It did not explain why, once a committee that satisfies § 30116(a)'s Receipt and Contribution Limits has been registered for six months, the Government has a valid interest in slashing the amount it may contribute to local, state, and national party committees in half.

4. The Fourth Circuit affirmed the grant of judgment to the FEC, but on different grounds. It began by holding that, rather than simply assuming Stop REID's and American Future's claims remained justiciable, the district court should have ruled on that issue first, before adjudicating the claims on their merits. A-14 (citing *Steel Co. v. Citizens for a Better Env't.*, 523 U.S. 83, 94 (1998)).

The court recognized that Stop PAC's and American Future's challenges to the six-month waiting period became moot once that waiting period expired. A-16. Stop PAC and American Future argued that the issue was nevertheless capable of

repetition, yet evading review. *Id.* Although neither PAC would ever again be subject to the six-month waiting period, the statute remained on the books and would continue to apply to other newly formed entities that typically would lack the resources to mount a legal challenge. *Id.*

The Fourth Circuit recognized that, in their dissenting opinion in *Honig v. Doe*, Justice Scalia (joined by Justice O'Connor) recognized that this Court's opinions in election law cases "dispens[e] with the same-party requirement" and "focus[] instead upon the great likelihood that the issue will recur between the defendant and the other members of the public at large." A-17 (quoting *Honig v. Doe*, 484 U.S. 305, 336-36 (1988) (Scalia, J., dissenting)). The court also noted that various circuits "have taken different views regarding whether the cases cited in Justice Scalia's dissent indicate[] a deliberate decision by the Supreme Court not to apply the same-complaining-party requirement in election cases." A-17. It went on to observe that "courts have reached different results when considering arguments like the one Appellants now raise." A-18. The Fourth Circuit further noted that this Court "applied the same-complaining-plaintiff rule in two relatively recent election cases." A-19 (citing *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 457-60 (2007); *Davis v. FEC*, 554 U.S. 724, 731-32 (2008)). As discussed below, neither of those cases even discussed the election-law exception to the same-plaintiff rule; it was unnecessary to do so, since this Court concluded that the plaintiffs in both cases would be subject to the challenged provision again in the future.

The Fourth Circuit ultimately decided to enforce the same-plaintiff requirement against Stop REID and American Future and expressly left "to the Supreme Court the decision of whether it wishes to create an exception to, or otherwise limit, that rule." A-21. It ordered the district court to dismiss Stop REID's and American Future's claims for lack of subject-matter jurisdiction. *Id*.

The court held that TPLF's challenge to the reduction in limits on contributions to political parties that occurs at the six-month mark remained justiciable, A-21 to A-24, but rejected it on the merits. It held that TPLF could not show that the statutory scheme places a greater "overall burden[]" on the rights of groups that have satisfied the Receipt and Contribution Requirements and have been registered for six months, than groups that have satisfied those requirements but have been registered for less time. It explained:

> [T]he ***decrease*** in the amount of contributions that political committees, once they become [multicandidate PACs], can make annually to state party committees or their local affiliates (from $10,000 to $5,000) and to national party committees (from $32,400 to $15,000) is more than counteracted by the ***increase*** in the limits in the amount of contributions that [multicandidate PACs] can make to individual candidates (from $2,600 to $5,000).

A-28 (emphasis added). The court affirmed the district court's grant of summary judgment on this claim to the FEC.

Petitioners moved for rehearing and rehearing *en banc*, but the Fourth Circuit denied the motion on April 22, 2016. A-58.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD RESOLVE THE DEEP CIRCUIT SPLIT AND TENSION AMONG ITS OWN PRECEDENTS OVER WHETHER AN "ELECTION LAW" EXCEPTION TO THE SAME-PLAINTIFF REQUIREMENT EXISTS

This Court should grant certiorari to resolve the conflict among the circuits—and its own precedents—on whether the "same plaintiff" requirement of the "capable of repetition, yet evading review" doctrine applies in election law cases.

A. This Court's Precedents Recognize an "Election Law" Exception to the Same-Plaintiff Requirement

When a case becomes moot, a federal court may nevertheless adjudicate the matter if the underlying issue remains "capable of repetition, yet evading review." *S. Pac. Term. Co. v. ICC*, 219 U.S. 498, 515 (1911). Generally, for this exception to the mootness doctrine to apply, the issue must be capable of repetition with regard to the same plaintiff. *See, e.g.*, *Weinstein v. Bradford*, 423 U.S. 147 (1975).

In a series of constitutional challenges to statutes governing various aspects of elections, however, this

Court adjudicated the plaintiffs' claims, even after they became moot, despite the absence of any indication that those plaintiffs would ever again be subject to the challenged provisions. For example, in *Moore v Ogilvie*, 394 U.S. 814, 815 (1969) (Douglas, J.)—which was not a class-action suit—the petitioners were independent candidates for the office of presidential elector from the State of Illinois. They argued that the State had unconstitutionally rejected their petition to appear on the ballot in the 1968 election. While the case was pending, the state election board moved to dismiss; the board argued that, since the "election has been held, there is no possibility of granting any relief to appellants." *Id.* at 816.

This Court nevertheless concluded that the case remained justiciable. It explained that, "while the 1968 election is over, the burden" which the challenged legal provision "placed on the nomination of candidates for statewide offices remains and controls future elections . . . . The problem is therefore 'capable of repetition, yet evading review.'" *Id.* (quoting *S. Pac. Term. Co.*, 219 U.S. at 515). The Court continued, "The need for its resolution thus reflects a continuing controversy in the federal-state area where our 'one man, one vote' decisions have thrust." *Id.*

The *Ogilvie* Court did not even attempt to consider whether the plaintiffs in the suit would ever again be subject to the challenged provisions. Indeed, two Justices specifically insisted in dissent that, "[i]n the absence of any assertion that the appellants intend to participate as candidates in any future election, the Court's reference to cases

involving 'continuing controversy between the parties' is wide of the mark." *Id.* at 819 (Stewart, J., dissenting). Nevertheless, the majority held that the case remained justiciable solely because the challenged provision would continue to apply in future elections. *See id.* at 816.[6]

Likewise, in *Storer v. Brown*, 415 U.S. 724, 727 (1974)—also not a class-action—the plaintiffs challenged certain restrictions on independent candidates seeking ballot access. This Court held that the case remained justiciable, even after the election occurred, stating:

> The 1972 election is long over, and no effective relief can be provided to the candidates or voters, but this case is not moot, since the issues properly presented, and their effects on independent candidacies, will persist as the California statutes are applied in future elections. This is, therefore, a case where the controversy is "capable of repetition, yet evading review."

Id. at 737 n.8.

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[6] In *Dunn v. Blumstein*, 405 U.S. 330, 331 (1972), the plaintiff brought a class action challenging a residency requirement for registering to vote. This Court held that the plaintiff's claim remained justiciable, even after he had lived in the jurisdiction long enough to satisfy the residency requirement. *Id.* at 332 n.2. It explained, "Although appellee can now vote, the problem to voters posed by the Tennessee residence requirements is 'capable of repetition, yet evading review,'" because the "laws in question remain on the books." *Id.*; *see also Rosario v. Rockefeller*, 410 U.S. 752, 756 n.5 (1973).

The *Storer* Court added that, "in the context of election cases," it was "appropriate" to apply the "capable of repetition, yet evading review" doctrine regardless of whether the plaintiff was pursuing a facial or as-applied challenge. *Id.* "[P]ossible constitutional limits" on a statute's application "will have the effect of simplifying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held." *Id.*

In subsequent election law cases, this Court cited these precedents in applying the "capable of repetition, yet evading review" doctrine, without engaging in any analysis of whether the same plaintiffs might again be affected by the challenged provisions. *See, e.g.*, *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.3 (1983) ("Even though the 1980 election is over, the case is not moot."); *Mandel v. Bradley*, 432 U.S. 173, 175 n.1 (1977) ("Bradley successfully gathered the requisite number of signatures, obtained a place on the ballot, ran, and lost. This case is nonetheless not moot."); *Am. Party of Texas v. White*, 415 U.S. 767, 770 n.1 (1974) ("Although the November 1972 election has been completed and this Court may not grant retrospective relief that would affect the outcome, this case is not moot.").

This Court has invoked the election-law exception to the same-plaintiff requirement in numerous types of cases, including challenges to deadlines for ballot access petitions, *Anderson*, 460 U.S. at 784 n.3; *Mandel*, 432 U.S. at 175 n.1; signature requirements for ballot access petitions, *Storer*, 415 U.S. at 726-27; *White*, 415 U.S. at 770 n.1; *Moore*, 394 U.S. at 815; residency requirements for voter registration, *Dunn*, 405 U.S. at 331; and party membership requirements

for voting in primary elections, *Rosario*, 410 U.S. at 756.

Most of the election-law cases in which this Court dispensed with the same-plaintiff requirement were not class actions. *Storer*, 415 U.S. at 726-27; *Moore*, 394 U.S. at 815; *see also Anderson*, 460 U.S. at 784 n.3; *Mandel*, 432 U.S. at 175 n.1; *White*, 415 U.S. at 770 n.1; *cf. Morial v. Judicial Comm. of La.*, 565 F.2d 295, 297 n.3 (5th Cir. 1977) ("In none of these cases was the suit brought as a formal class action . . . ."). Even in class actions challenging election laws, the Court never mentioned their class-action status in concluding that the claims remained justiciable. *Rosario*, 410 U.S. at 756 n.5 ("Although the June primary election has been completed and the petitioners will be eligible to vote in the next scheduled New York primary, this case is not moot, since the question the petitioners raise is 'capable of repetition, yet evading review.'"); *cf. Dunn* 405 U.S. at 331.

Precedents such as these led Justices Scalia and O'Connor to declare in their opinion in *Honig v. Doe* that this Court's "election law decisions differ from the body of [its] mootness jurisprudence . . . in dispensing with the same-party requirement entirely, focusing instead upon the great likelihood that the issue will recur between the defendant and the other members of the public at large." 484 U.S. 305, 335 (1988) (Scalia, J., dissenting); *see also* Martin H. Redish, *Exceptions to the Mootness Doctrine*, *in* 15-101 MOORE'S FEDERAL PRACTICE – CIVIL § 101.99[1] (recognizing that the "capable of repetition, yet evading review" exception to the mootness doctrine "has been held to apply even when it was clear from

the nature of the law or the conduct that the exact same plaintiff would not suffer the same harm in the future; it was enough that other voters or candidates would suffer the same harm").

The Fourth Circuit refused to follow these precedents, however, on the grounds that more recent election law cases applied the same-plaintiff requirement. *See* A-19 to A-20. In both cases the Fourth Circuit cited, however, this Court concluded that the challenged provision ***would*** apply to the same plaintiffs again. *Davis v. FEC*, 554 U.S. 724, 731-32 (2008); *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 457-60 (2007). It therefore was unnecessary to decide whether an exception existed to the same-plaintiff requirement; applying the requirement did not lead the Court to deny relief to the plaintiffs due to lack of justiciability. In any event, neither *Wisconsin Right to Life* nor *Davis* cited, distinguished, or overturned any of the precedents in the line of cases discussed above. *See Moore v. Hoseman*, 591 F.3d 741, 744-45 (5th Cir. 2009) (holding that neither *Wisconsin Right to Life* nor *Davis* eliminated the election law exception to the same-plaintiff requirement); *Kucinich v. Texas Democratic Party*, 563 F.3d 161, 164-65 (5th Cir. 2009) (same). This Court should grant certiorari to overturn the Fourth Circuit's error and remove any doubt about the existence of an election-law exception to the same-plaintiff requirement of the "capable of repetition, yet evading review" doctrine.

B. Circuits Have Adopted Conflicting Positions on Whether an "Election Law" Exception to the Same-Plaintiff Requirement Exists

1. As the Fourth Circuit itself recognized, "courts have reached different results when considering" whether the same-plaintiff requirement applies in election law cases. A-18; *see also Wilson v. Birnberg*, 667 F.3d 591, 596 (5th Cir. 2012) (recognizing circuit split). Numerous circuits, following precedents such as *Moore*, *Storer*, and Justice Scalia's opinion in *Honig*, have recognized that constitutional issues in election-law cases are capable of repetition, yet evading review, so long as the challenged provisions will continue to be applied to other voters, candidates, or contributors in the future.

The Fifth Circuit, in a challenge to a waiting period in a campaign finance statute remarkably similar to this case, *see infra* Part I.C, held, "[T]his court 'dispens[es] with the same-party requirement' in election law cases, and 'focus[es] instead upon the great likelihood that the issue will recur between the defendant and other members of the public at large.'" *Catholic Leadership Coalition of Texas v. Reisman*, 764 F.3d 409, 424 (5th Cir. 2014) (quoting *Kucinich*, 563 F.3d at 165 (5th Cir. 2009)). It explained, "[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 [capable of repetition,

yet evading review] exception is met." *Id.* (emphasis added).[7]

The Sixth Circuit similarly has declared, "Even if the court could not reasonably expect that the controversy would recur with respect to [the plaintiffs], the fact that the controversy almost invariably will recur with respect to ***some future potential candidate or voter*** in Ohio is sufficient to meet the [capable of repetition] prong because it is somewhat relaxed in election cases." *Lawrence v. Blackwell*, 430 F.3d 368, 372 (6th Cir. 2005) (emphasis added). The court explained that the "capable of repetition, yet evading review" doctrine applies in "challenges to election laws even when the nature of the law made it clear that the plaintiff would not suffer the same harm in the future." *Id.*[8] The Sixth Circuit was concerned that applying the

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[7] *Moore*, 591 F.3d at 744-45 (5th Cir. 2009); *Kucinich*, 563 F.3d at 164-65 ("[W]e are unwilling to dismiss the case as moot when 'the issues properly presented, and their effects [], will persist as the [restrictions] are applied in future elections.'" (quoting *Storer*, 415 U.S. at 737 n.8)); *Morial v. Judicial Comm'n of La.*, 565 F.2d 295, 297 n.3 (5th Cir. 1977) ("In none of these cases was the suit brought as a formal class action; nor did the Court pause to consider whether the particular plaintiff would be subject to future harm."); *see also Wilson v. Birnberg*, 667 F.3d 591, 596-97 (5th Cir. 2012); *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 662 (5th Cir. 2006) (holding that, in election law cases, "the Court does not always focus on whether a particular plaintiff is likely to incur the same injury"); *Hatten v. Rains*, 854 F.2d 687, 690 n.4 (5th Cir. 1988); *Dart v. Brown*, 717 F.2d 1491, 1493 n.3 (5th Cir. 1983).

[8] *See also Libertarian Party of Michigan v. Johnson*, 714 F.3d 929, 932 (6th Cir. 2013); *Corrigan v. City of Newaygo*, 55 F.3d 1211, 1213-14 (6th Cir. 1995).

same-plaintiff requirement in election law cases would allow a government entity to "repeatedly apply" the challenged provision to "different candidates"—or voters, parties, and PACs, for that matter—"none of whom could ever challenge it in court." *Corrigan*, 55 F.3d at 1214.

Likewise, the Seventh Circuit has noted:

> [W]hile canonical statements of the exception to mootness for cases capable of repetition but evading review require that the dispute giving rise to the case be capable of repetition by the same plaintiff, the courts, perhaps to avoid complicating lawsuits with incessant interruptions to assure the continued existence of a live controversy, do not interpret the requirement literally, at least in abortion and election cases . . . .

Majors v. Abell, 317 F.3d 719, 723 (7th Cir. 2003).

The Ninth Circuit has reached the same conclusion. *Caruso v. Yamhill Cnty.*, 422 F.3d 848, 853-54 (9th Cir. 2005) (holding that the constitutional challenge of a plaintiff in a non-class case remained justiciable, even though "there is no evidence in the record" that the plaintiff would be subject to the challenged statute again).[9] It explained:

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[9] *See also Schaefer v. Townsend*, 215 F.3d 1031, 1033 (9th Cir. 2000); *Joyner v. Molford*, 706 F.2d 1523, 1527 (9th Cir. 1983).

> Appellate courts are frequently too slow to process appeals before an election determines the fate of a candidate. If such cases were rendered moot by the occurrence of an election, many constitutionally suspect election laws—including the one under consideration here—could never reach appellate review. This is enough to escape the brand of "mootness."

Joyner v. Molford, 706 F.2d 1523, 1527 (9th Cir. 1983) (citations omitted); *see also Fulani v. Brady*, 935 F.2d 1324, 1336 (D.C. Cir. 1991) (Mikva, C.J., dissenting) ("[T]he Supreme Court and this court often have ignored the same-party requirement in the election context").

2. In contrast, several other circuits, including the Fourth Circuit below, A-20 to A-21, have refused to recognize the election law exception to the same-plaintiff requirement.[10] *See Barr v. Galvin*, 626 F.3d 99, 105-06 (1st Cir. 2010) (choosing to "abide by the 'same complaining party' requirement"); *Stop REID*, A-17 to A-19 (rejecting Justice Scalia's analysis from *Honig* and enforcing the "same-complaining-plaintiff rule" in "election cases"); *Van Wie v. Pataki*, 267 F.3d 109, 114-15 (2d Cir. 2001) (declining to follow the *Storer* line of cases and holding that, in election law

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[10] *See* Redish, 15-101 MOORE'S FEDERAL PRACTICE, *supra* at § 101.99[1] (recognizing that, while some circuits apply the "capable of repetition, yet evading review" exception even when "the exact same plaintiff would not suffer the same harm in the future," other circuits hold that "there must be a reasonable expectation that the same complaining party will encounter the challenged action in the future").

cases, "in the absence of a class action, there must be a reasonable expectation that the same complaining party would encounter the challenged action in the future"); *Van Bergen v. Minnesota*, 59 F.3d 1541, 1546 (8th Cir. 1995) (same).

These rulings are based primarily on recent precedents—*Wisconsin Right to Life*, 551 U.S. at 462, and *Davis*, 554 U.S. at 728-30—that do not expressly consider or address whether the same-plaintiff requirement applies in election law cases, and did not deny relief to any plaintiffs on the grounds that they would not face the challenged provisions again in the future. *Cf. Barr*, 626 F.3d at 105-06; *Stop REID*, A-19 to A-20. This Court should grant certiorari to resolve the circuit split and end the widespread confusion about its precedents.

C. The Fourth Circuit's Ruling is Squarely Contrary to the Fifth Circuit's Holding That Materially Identical Constitutional Claims Remained Justiciable

Beyond presenting a circuit split over the broad issue of whether an "election law" exception applies to the same-plaintiff requirement, this case involves a direct conflict between the Fourth and Fifth Circuits concerning the continued justiciability of materially identical constitutional challenges.

In *Catholic Leadership Coalition of Tex. v. Reisman*, 764 F.3d 409 (5th Cir. 2014), the plaintiff challenged a state law imposing waiting periods on certain political committees that wished to make political contributions and expenditures. Despite the fact that the plaintiff's waiting period had elapsed,

and the plaintiff could never again be subject to it, the Fifth Circuit reached the merits of its claim because the underlying issue was capable of repetition, yet evading review. *Id*. at 423.

The Fifth Circuit "dispense[d] with the same party requirement" of that doctrine, because the plaintiffs' challenge to campaign finance laws was deemed to be an "election case[]." *Id*. The court "focus[ed] instead upon the great likelihood that the issue will recur between the defendant and the other members of the public at large." *Id*. (quotation marks omitted). The Fifth Circuit explained, "[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 same-party requirement] is met." *Id*. at 424.

Petitioners Stop REID and American Future likewise challenged the constitutionality of a waiting period for making political contributions to candidates. A-9 to A-10. Like the plaintiffs in *Catholic Leadership Coalition*, their waiting period expired, and they argued that the underlying constitutional questions were capable of repetition, yet evading review. The Fourth Circuit refused to follow *Catholic Leadership Coalition*, however, *see* A-18, and instead held that their challenges were irrevocably moot because they could never again be subject to the waiting period. This Court cannot continue to tolerate such disparities in plaintiffs' ability to enforce their First Amendment rights, particularly in the sensitive area of election-related litigation.

D. There Are Compelling Reasons to Grant Certiorari

This Court should grant certiorari to determine whether a plaintiff's constitutional challenge to an election-related statute remains justiciable when his own claim becomes moot, but the issue is capable of repetition, yet evading review in subsequent elections for other people or groups. This important issue concerns the scope of the federal judiciary's Article III jurisdiction. It directly impacts plaintiffs' ability to enforce fundamental constitutional rights, specifically in the critical context of election law. Allowing unconstitutional statutes to persist in regulating federal and state elections is intolerable in a democracy such as ours. Moreover, recognizing the exception is necessary to prevent government entities like the FEC from needlessly delaying proceedings as a way of preserving unconstitutional provisions and precluding adjudications on the merits. *See supra* pp. 13-16 & n.5.

This issue has caused a longstanding split among eight circuits that the circuits themselves have expressly recognized. A-18; *Wilson*, 667 F.3d at 596. This circuit split has led to fundamental unfairness of plaintiffs in some jurisdictions being able to invalidate unconstitutional election laws, *Catholic Leadership Coalition*, 764 F.3d at 423-24, while the substantially identical claims of plaintiffs in other jurisdictions are dismissed as non-justiciable, *Stop REID*, A-20 to A-21. This case also involves tension between this Court's longstanding line of *Storer-Moore* precedents applying the election law exception to the same-plaintiff requirement, and more recent

cases that neither mention nor contradict it. For all these reasons, certiorari is warranted.

II. THE FOURTH CIRCUIT'S RULING DIRECTLY CONTRADICTS *MCCUTCHEON V. FEC*

BCRA's system for regulating political contributions from political committees is arbitrary, internally inconsistent, and fundamentally irrational. For a committee that has satisfied 52 U.S.C. § 30116(a)(4)'s Receipt and Contribution Requirements, *see supra* pp. 8-9, once it has been registered with the FEC for six months, the amount it may contribute to candidates nearly doubles, while the amount it may contribute to local, state, and national political parties gets slashed in half. A committee, however, cannot become simultaneously both more and less likely to engage in corruption after six months, warranting such internally inconsistent changes in contribution limits.

The Fourth Circuit nevertheless upheld the dramatic and inexplicable drop in the limit on contributions to political parties. Its ruling conflicts with *McCutcheon v. FEC*, 134 S. Ct. 1434, 1441 (2014), because the court did not even attempt to explain how that reduction furthers the Government's interest in combatting actual or apparent *quid pro quo* corruption. *See infra* Part II.A. The Fourth Circuit's only explanation was that the decrease in the limit on contributions to political parties is constitutionally valid, because it is accompanied by an increase on the limit to contributions to candidates. This embrace of tradeoffs

among First Amendment rights is directly contrary to *McCutcheon*, 134 S. Ct. at 1448-49, and *Davis v. FEC*, 554 U.S. 724, 739 (2008). *See infra* Part II.B. This Court should grant certiorari to resolve this conflict between the Fourth Circuit's ruling and its campaign finance jurisprudence.

A. The Fourth Circuit Did Not Even Attempt to Explain How Prohibiting Political Committees From Making Contributions That Were Fully Legal Throughout the First Six Months of Their Existence Is a Reasonably Tailored Means of Fighting Corruption

The Fourth Circuit's ruling is directly contrary to this Court's precedents. The court impermissibly relieved the Government of its obligation to articulate a constitutionally valid purpose for reducing the amount that political committees may contribute to political parties after they have been registered for six months. *McCutcheon* held that "Congress may regulate campaign contributions to protect against corruption or the appearance of corruption. . . . ***Any regulation must . . . target*** what we have called 'quid pro quo' corruption or its appearance." *McCutcheon*, 134 S. Ct. at 1441 (emphasis added); *accord Davis*, 554 U.S. at 741 ("'[P]reventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances'" (quoting *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-497 (1985))).

The panel below did not identify any anti-corruption interest that is served by slashing the amount that a political committee may contribute to political parties after it has been registered for six months. *Cf.* A-28 to A-29. Instead, the panel upheld that reduction because the amount the committee may contribute to candidates simultaneously increases at that point. *Id.* This Court has never held, however, that a group's First Amendment right to make political contributions to certain recipients may be curtailed simply because Congress has chosen to expand its ability to contribute to other recipients. Indeed, as discussed below, such tradeoffs run counter to *McCutcheon* and *Davis*. *See infra* Part II.B.

Moreover, Congress chose to allow political committees that satisfy the Receipt and Contribution Requirements to contribute $10,000 to local and state political parties, and $33,400 to national parties, throughout the first six months of their existence. The panel did not explain how such contributions become more corrupting, and therefore may be prohibited, once those committees have been registered for six months. This Court has consistently rejected such selective prohibitions.

McCutcheon, for example, holds:

> Congress's selection of a $5,200 base limit indicates its belief that contributions of that amount or less do not create a cognizable risk of corruption. If there is no corruption concern in giving nine candidates up to $5,200 each, it is difficult to understand how a tenth candidate can be regarded as corruptible if

> given $1,801, and all others corruptible if given a dime.

134 S. Ct. at 1452.

Likewise, in *Davis*, the Court held:

> [G]iven Congress' judgment that liberalized limits for non-self-financing candidates do not unduly imperil anticorruption interests, it is hard to imagine how the denial of liberalized limits to self-financing candidates can be regarded as serving anticorruption goals sufficiently to justify the resulting constitutional burden.

554 U.S. at 741.

In this case, Congress's selection of $10,000 and $33,400 as base limits on contributions from newer committees to political parties "indicates its belief that contributions of th[ose] amount[s] or less do not create a cognizable risk of corruption." *McCutcheon*, 134 S. Ct. at 1452. "If there is no corruption concern" in such contributions, "it is difficult to understand how" identical contributions from the very same entities "can be regarded as corruptible" once those entities hit the six-month mark. *Id.* To the contrary, by the time a political committee has existed for six months, it has filed several FEC reports, the public has gained information about it, it has cultivated a reputation, and the FEC has had substantial opportunity to investigate any concerns about it. Response Brief of Appellee Federal Election Commission, D.E. #21, at 38 (Aug. 10, 2015). If

anything, the Government's anti-corruption interest would shrink, not grow.

Even more revealingly, neither the panel nor the FEC has explained why this risk of corruption increases ***with regard to political parties*** after six months, while simultaneously decreasing ***with regard to candidates*** at that point (thereby justifying an increase in limits on contributions from political committees to candidates). In short, because the Fourth Circuit's ruling literally does not even mention the word "corruption," it is flatly inconsistent with fundamental tenets of this Court's campaign finance jurisprudence.

B. The Fourth Circuit Ignored *McCutcheon*'s Invalidation of Aggregate Contribution Limits By Allowing Reductions In Certain Contribution Limits for Political Committees to be "Offset" By Increases in Other Limits

The Fourth Circuit also violated this Court's holding in *McCutcheon* by endorsing precisely the type of tradeoffs among First Amendment rights that *McCutcheon* condemned. In *McCutcheon v. FEC*, 134 S. Ct. 1434, this Court invalidated 52 U.S.C. § 30116(a)(3)'s aggregate contribution limits on the total amount a person may contribute to all candidates, and all political committees, over the course of an election cycle. It recognized that, once a person had contributed the maximum permissible amount to nine candidates, she would hit her aggregate contribution limit and be prohibited from

making any more candidate contributions. *McCutcheon*, 134 S. Ct. at 1448-49.

It explained:

> It is no answer to say that the individual can simply contribute less money to more people. To require one person to contribute at lower levels than others because he wants to support more candidates or causes is to impose a special burden on broader participation in the democratic process. . . . [T]he Government may not penalize an individual for "robustly exercis[ing]" his First Amendment rights.

Id. at 1449 (quoting *Davis*, 554 U.S. at 739).

Thus, *McCutcheon* rejects the notion that the Government can force contributors to make tradeoffs among the recipients of their contributions. In this case, the Fourth Circuit recognized that the law imposes such a tradeoff on certain political committees: although the limit on contributions from those committees to candidates increases after six months, it is only at the cost of having the limit on contributions from those committees to political parties dramatically reduced. A-29 to A-30. *McCutcheon* does not permit the Government to require a committee "to contribute at lower levels" to political parties simply because it has the opportunity to "robustly exercis[e]" its First Amendment rights by giving more to candidates. *McCutcheon*, 134 S. Ct. at 1449 (quotation marks omitted). The panel ruling, however, did not even cite *McCutcheon*.

Because the panel ruling endorses the type of tradeoffs among First Amendment activities that *McCutcheon* emphatically rejects, without even recognizing or addressing these issues, this Court should grant certiorari.

CONCLUSION

For these reasons, this Court should grant the petition and issue a writ of certiorari in this case.

Respectfully submitted,

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JULY 2016

APPENDIX

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Opinion of the U.S. Court of Appeals for the Fourth Circuit Granting Summary Judgment for Defendant (Feb. 23, 2016)

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-1455

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS ("Stop Reid"); TEA PARTY LEADERSHIP FUND; ALEXANDRIA REPUBLICAN CITY COMMITTEE,

Plaintiffs – Appellants,

AMERICAN FUTURE PAC,

Intervenor/Plaintiff – Appellant,

and

NIGER INNIS; NIGER INNIS FOR CONGRESS,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant – Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony J. Trenga, District Judge. (1:14-cv-00397-AJT-IDD)

Argued: December 8, 2015
Decided: February 23, 2016

Before TRAXLER, Chief Judge, SHEDD, Circuit Judge, and Elizabeth K. DILLON, United States District Judge for the Western District of Virginia, sitting by designation.

Affirmed in part; vacated and remanded in part with instructions by published opinion. Chief Judge Traxler wrote the opinion, in which Judge Shedd and Judge Dillon joined.

ARGUED: Michael T. Morley, COOLIDGE-REAGAN FOUNDATION, Washington, D.C., for Appellants. Kevin Paul Hancock, FEDERAL ELECTION COMMISSION, Washington, D.C., for Appellee. ON BRIEF: Dan Backer, DB CAPITOL STRATEGIES, Alexandria, Virginia, for Appellants Stop Reckless Economic Instability Caused by Democrats, Tea Party Leadership Fund, and Alexandria Republican City Committee; Jerad Najvar, NAJVAR LAW FIRM, Houston, Texas, for Intervenor-Appellant American Future PAC. Lisa J. Stevenson, Deputy General Counsel-Law, Kevin Deeley, Acting Associate General Counsel, Harry J.

Summers, Assistant General Counsel, FEDERAL ELECTION COMMISSION, Washington, D.C., for Appellee.

TRAXLER, Chief Judge:

Four political committees – "Stop Reckless Economic Instability Caused By Democrats" ("Stop PAC"), "Tea Party Leadership Fund" ("the Fund"), "Alexandria Republican City Committee" ("ARCC"), and "American Future PAC" ("American Future") (collectively, "Appellants") – appeal a district court order granting summary judgment against them in their claims challenging the constitutionality of certain contribution limits established by the Federal Election Campaign Act of 1971 ("FECA"), see 52 U.S.C. §§ 30101–30146. We conclude that two of the three claims became moot before the district court granted summary judgment, and we therefore vacate the merits judgment on those counts and remand to the district court with instructions to dismiss them for lack of subject-matter jurisdiction. Regarding the third claim, we affirm.

I.

FECA regulates many different types of donors and recipients. See 52 U.S.C. §§ 30116, 30118-19, 30121 (formerly 2 U.S.C. §§ 441a, 441b-441c, 441e). To understand the issues before us in this appeal, it is necessary to understand some of FECA's basic concepts and limits.

To begin, FECA defines a "political committee" as "any committee, club, association, or other group of persons" that, during a calendar year, received contributions or made expenditures in excess of $1,000. 52 U.S.C. § 30101(4)(A) (formerly 2 U.S.C. § 431(4)(A)); see The Real Truth About Abortion, Inc. v. FEC, 681 F.3d 544, 555 (4th Cir. 2012). FECA defines "expenditures" and "contributions" as encompassing spending or fundraising "for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i), (9)(A)(i)); see also Buckley v. Valeo, 424 U.S. 1, 79 (1976) (limiting FECA's political-committee requirements to organizations that are controlled by a candidate or whose "major purpose" is to nominate or elect a candidate); The Real Truth About Abortion, Inc., 681 F.3d at 555. A group that has met the political-committee criteria must register with the Federal Election Commission ("FEC"). See 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)).

There are different types of political committees. Some are associated with a particular candidate or entity. See, e.g., 52 U.S.C. § 30101(14) (providing that a "national committee" is a political committee responsible for the day-to-day operation of a national political party); 52 U.S.C. § 30101(15) (providing that a "State committee" is a political committee that is responsible for the day-to-day operation of a political party at the state level); 52 U.S.C. § 30102(e)(1) (providing that each candidate must designate a political committee to serve as the candidate's "principal campaign committee"). And others are not

associated with any candidate or entity ("non-connected political committees").

FECA sets different contribution limits for different classes of donors and recipients. A contribution made by a non-connected political committee to an individual candidate is governed by the restriction limiting contributions by "persons" generally. 52 U.S.C. § 30116(a)(1)(A). "Persons" include "individual[s], partnership[s], committee[s], association[s], corporation[s], labor organization[s], or any other organization[s] or group[s]" other than the federal government. 52 U.S.C. § 30101(11). In 2014, the inflation-adjusted limit for contributions by "persons" was $2,600 per election, with primaries and general elections counting as separate elections.[1] However, non-connected political committees, unlike other types of persons, qualified for an elevated per-election limit of $5,000 on contributions to individual candidates if and when they satisfied three criteria: They must have "been registered [with the FEC] for a period of not less than 6 months" (the "waiting period"), "received contributions from more than 50 persons," and "made contributions to 5 or more

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[1] 52 U.S.C. § 30116(a)(1)(A) sets the per-election limit at $2,000. However, that amount had been adjusted for inflation to $2,600 by the time the parties filed their memoranda in the district court regarding summary judgment, see Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8,530-02, 8,532 (Feb. 6, 2013), and it was adjusted on February 3, 2015, to $2,700, see Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-02, 5,752 (Feb. 3, 2015). See also 52 U.S.C. § 30116(c) (providing for periodic inflation adjustment of certain limits).

candidates for Federal office." 52 U.S.C. § 30116(a)(4); see 52 U.S.C. § 30116(a)(2)(A). A political committee satisfying these criteria is referred to as a "multicandidate political committee" ("MPC"). Id.

FECA also limits contributions that persons and political committees can make to political party committees. See 52 U.S.C. § 30116(a)(1)(B), (D), (a)(2)(B)-(C). With regard to contributions to these committees, the limits decrease when the non-connected political committee becomes an MPC. When this case was commenced in April 2014, persons (including non-connected political committees that did not qualify as MPCs) could contribute $32,400 per year to national party committees and $10,000 combined to state political party committees and their local affiliates, while the corresponding limits for MPCs were $15,000 and $5,000. See id.; 11 C.F.R. § 110.3(a)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8,530-02, 8,532 (Feb. 6, 2013).

On December 16, 2014, Congress amended FECA to create a new category of limits. Under the amended law, national party committees can create up to three segregated accounts to fund their presidential nominating convention, building headquarters, and election-related legal expenses. See Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, Div. N, § 101, 128 Stat. 2130, 2772-73 (Dec. 16, 2014) (codified as amended at 52 U.S.C. § 30116(a)(1)(B), (a)(2)(B), (a)(9)). The annual limits for contributions

made to such segregated accounts are three times the limits on other contributions to national party committees. See id.

II.

The plaintiffs in this suit, Stop PAC, the Fund, and ARCC, filed their initial complaint against the FEC on April 14, 2014, and filed an amended complaint on July 7, 2014 (the "Amended Complaint"). The Amended Complaint alleged the following facts regarding the parties.

Plaintiff Stop PAC is a non-connected political committee that registered with the FEC on March 11, 2014. As of April 14, 2014, Stop PAC had over 150 contributors and had made contributions to five candidates for federal office. On or around April 4, 2014, Stop PAC contributed the maximum $2,600 to candidate Niger Innis in the Nevada Primary for the Republican nomination for a seat in the U.S. House of Representatives.[2] On or around June 16, 2014, Stop PAC contributed the same amount to candidate Dan Sullivan in the Alaska Primary for the Republican nomination for the U.S. Senate. Stop PAC wished to contribute more to each candidate — as it could have had it been an MPC — but its waiting period would not expire until September 11, 2014, after the primaries were held.

Stop PAC also contributed $2,600 to Congressman Joe Heck, Republican nominee for Congress from

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[2] Innis and his campaign committee were plaintiffs in the original complaint, but the district court granted a motion to voluntarily dismiss them.

Nevada's 3rd Congressional District, in connection with his 2014 general election. Stop PAC wished to contribute more to Heck immediately, but it was prohibited from doing so until its waiting period expired.

The Fund is a non-connected MPC that registered with the FEC in 2012, has over 100,000 contributors, and has contributed to dozens of federal candidates. Because the Fund was an MPC, the maximum amounts it could contribute annually to a state political party committee and its local affiliates and to a national party committee each year were $5,000 and $15,000, respectively. See 52 U.S.C. § 30116(a)(2)(B)-(C); 11 C.F.R. § 110.3(a)(1).

Plaintiff ARCC is a local political party committee affiliated with the Virginia Republican State Committee, which is a state political party committee. The Fund contributed the statutory maximum of $5,000 to ARCC on April 4, 2014. For the year 2014, the Fund wished to contribute an additional $5,000 to ARCC and $32,400 to the National Republican Senatorial Committee ("NRSC"), both of which FECA would have allowed had the Fund not yet become an MPC. See 52 U.S.C. § 30116(a)(1)(B), (D), (a)(2)(B)-(C); see 78 Fed. Reg. at 8,532.

The Amended Complaint contains three claims, each of which seeks declaratory and injunctive relief. Counts I and II pertain to FECA's $2,600-per-election limit on contributions made to individual candidates by political committees that have not yet become MPCs. See 52 U.S.C. § 30116(a)(1)(A). In Count I, Stop PAC alleges that that limit, as applied to Stop PAC, violates the equal protection component of the

Fifth Amendment's Due Process Clause because FECA applies a higher limit to MPCs than it does to political committees that have not completed the waiting period but have satisfied the other MPC criteria. In Count II, Stop PAC alleges that the waiting period, as applied to Stop PAC, violates its First Amendment rights to free speech and free association. In Count III, ARCC and the Fund allege that FECA's annual limits on contributions made by MPCs to national party committees ($15,000), see 52 U.S.C. § 30116(a)(2)(B), and to state party committees ($5,000), see 52 U.S.C. § 30116(a)(2)(C), violate the equal protection component of the Fifth Amendment's Due Process Clause insofar as political committees that have not yet completed the waiting period but that have satisfied the other MPC criteria enjoy the higher limits of $32,400 and $10,000, respectively.

On August 27, 2014, the plaintiffs moved to join American Future in the suit as an intervening plaintiff concerning Counts I and II. American Future is a non-connected political committee that registered with the FEC on August 11, 2014. As of August 22, 2014, American Future had raised $5,473 from 54 contributors. It contributed $2,600 to candidate Tom Cotton's general election campaign in Arkansas for the U.S. Senate, and $100 each to four other candidates. American Future wished to contribute $2,000 more to Cotton for the 2014 general election, but FECA prevented it from doing so since American Future's waiting period was not due to expire before the November 2014 election. American Future also wished to contribute more than $2,600 to Cotton immediately but could not do so until he filed

paperwork concerning the 2016 primary election. Finally, American Future desired to contribute more than $2,600 as soon as possible to other candidates for their 2016 primaries. On October 6, 2014, the district court entered an order allowing American Future to intervene pursuant to Federal Rule 24. See Fed. R. Civ. P. 24.

On September 19, 2014, before the district court ruled on the plaintiffs' joinder motion, the parties filed cross-motions for summary judgment. In support of its motion, the FEC, in addition to arguing that none of the challenged limitations were unconstitutional, asserted that the district court lacked subject-matter jurisdiction over Stop PAC's claims (Counts I and II). In particular, it argued that Stop PAC's claims should be dismissed for lack of standing since it caused its own injury by not registering as early as November 2013, in time to become an MPC before the three elections concerning which it wished to make additional contributions. The FEC also argued that Stop PAC's claims were moot because it became an MPC on September 11, 2014, and was thus no longer subject to the limit that it challenged, and never would be again.

In response, the plaintiffs contended that Stop PAC established standing. In that regard, they objected to the FEC's attempt to "effectively blame Stop PAC for failing to organize itself more than six months before the primaries," when in fact "[m]ost ordinary people are not especially interested in becoming involved in the political process until shortly before an election." Memo. in Opp'n to FEC's Mot. for Summ. J. 3. As for the FEC's suggestion that Stop PAC's claims were moot, the plaintiffs

invoked the exception for claims that are "capable of repetition, yet evading review." Southern Pac. Term. Co. v. ICC, 219 U.S. 498, 515 (1911). Although the plaintiffs acknowledged that this exception is generally applied only when the plaintiff itself faces a risk that it will be subject to the same challenged provisions in the future, the plaintiffs argued that the same-plaintiff requirement need not be met in election-related cases.

On February 24, 2015, as the parties waited for the district court to rule on their summary judgment motions, the FEC filed a notice with the district court raising additional arguments regarding mootness. In the notice, the FEC informed the district court that on February 11, 2015, American Future had become an MPC. As it had argued regarding Stop PAC, the FEC contended that American Future, as an MPC, was no longer affected by the limit it was challenging and never would be again. The FEC's filing also informed the court of the December 16, 2014 change in the law allowing contributions to the specified segregated accounts of national parties of three times the limits on other contributions to national party committees. The FEC maintained that that change mooted the Fund's challenge to the limits on an MPC's contributions to national party committees.

The district court subsequently granted summary judgment to the FEC on all claims. See Stop Reckless Econ. Instability Caused By Democrats v. FEC, 93 F. Supp. 3d 466 (E.D. Va. 2015) ("Stop"). Regarding each of the three claims, the district court assumed that the FEC's arguments regarding standing and mootness failed, see id. at 472-73, and ruled that the FEC was entitled to summary

judgment on the merits, see id. at 473-77. As for Count II, alleging a First Amendment violation, the district court concluded that "Stop PAC and American Future cannot show that they have suffered a cognizable constitutional injury as a result of the waiting period, even if they would have made a higher contribution, had they been permitted to do so." Id. at 474 (citing Buckley v. Valeo, 424 U.S. 1 (1976), and California Med. Ass'n v. FEC, 453 U.S. 182 (1981)). Regarding Counts I and III, alleging violation of the plaintiffs' equal protection rights under the Fifth Amendment, the district court concluded that Stop PAC and the Fund were not similarly situated to each other, and thus that "FECA does not improperly discriminate among such committees" and "does not violate the plaintiffs' rights under the Fifth Amendment." Id. at 477. The district court alternatively ruled that any discrimination was justified under either rational-basis or intermediate scrutiny. See id.

III.

With regard to each of the three counts, Appellants argue that the district court erred in granting summary judgment against them. In response, the FEC maintains that the district court should never have addressed the merits of the claims because it lacked subject-matter jurisdiction over them. See Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Alternatively, the FEC argues that the district court's decision regarding the merits was correct.

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 74 U.S. 506, 514 (1868). Accordingly, the Supreme Court has stated in no uncertain terms that federal courts are not free to simply assume that they possess subject-matter jurisdiction and then proceed to decide the merits of the issues before them when their jurisdiction remains in doubt. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998). Rather, federal courts must determine whether they have subject-matter jurisdiction over a claim before proceeding to address its merits. See id. The district court erred in failing to follow this course in this case.

We therefore begin our analysis by addressing the FEC's contentions that the district court did not have subject-matter jurisdiction when it granted summary judgment to the FEC.

Article III gives federal courts jurisdiction only over "[c]ases" and "[c]ontroversies." U.S. Const. art. III, § 2, cl. 1. "One essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so," which "requires the litigant to prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." Hollingsworth v. Perry, 133 S. Ct. 2652, 2661 (2013).

"To qualify as a case fit for federal-court adjudication, an actual controversy must be extant at

all stages of review, not merely at the time the complaint is filed." Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997) (internal quotation marks omitted). Accordingly, a case is moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Chafin v. Chafin, 133 S. Ct. 1017, 1023 (2013) (some internal quotation marks omitted).

A case that would otherwise be moot is not so if the underlying dispute is "capable of repetition, yet evading review." Southern Pac. Term. Co., 219 U.S. at 515. The Supreme Court has explained

> that in the absence of a class action, the "capable of repetition, yet evading review" doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.

Weinstein v. Bradford, 423 U.S. 147, 149 (1975) (per curiam); see id. (holding that doctrine did not prevent the case from being moot because the "case, not a class action, clearly does not satisfy the latter element").

A.

Regarding Counts I and II, the FEC repeats its argument presented below that Stop PAC lacked standing to prosecute Counts I and II. The FEC also

repeats its alternative contention that Counts I and II became moot once Stop PAC and Intervenor American Future became MPCs, since that change in status ensured that they would never again be bound by the limit they are challenging. We agree with this latter argument. See United States v. Juvenile Male, 131 S. Ct. 2860, 2865 (2011) (per curiam) (holding that exception's same-complaining-party requirement was not met when plaintiff challenging special conditions of juvenile supervision had turned 21 and thus would "never again be subject to an order imposing [such] special conditions"). Because we conclude that Counts I and II became moot before the district court granted summary judgment, we do not address the FEC's contention that Stop PAC never established standing to assert these claims in the first place. See Arizonans for Official English, 520 U.S. at 66-67 (declining to decide standing issue when claim was moot).

Appellants do not deny that once Stop PAC and American Future became MPCs and the contribution limit they are challenging therefore ceased to apply to them, the district court was no longer in position to prevent any threatened injury (or provide redress for any past injury). Nevertheless, Appellants argue that the "capable of repetition, yet evading review" doctrine applied to prevent Counts I and II from becoming moot. In this regard, Appellants do not dispute the fact that there was no longer any reasonable expectation that they would be subject to the same limit again. Rather, they maintain that in election-related cases, the same-complaining-party element need not be satisfied. We disagree.

In support of their argument, Appellants rely primarily on Justice Scalia's dissent in Honig v. Doe, 484 U.S. 305, 335-36 (1988) (Scalia, J., dissenting). In the dissent, Justice Scalia cited abortion and election cases in which he argued the Court had "dispens[ed] with the same-party requirement" and "focus[ed] instead upon the great likelihood that the issue will recur between the defendant and the other members of the public at large." Id. (emphasis in original).[3]

Since Honig was decided, courts have taken different views regarding whether the cases cited in Justice Scalia's dissent indicated a deliberate decision by the Supreme Court not to apply the same-complaining-party requirement in election cases.

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[3] Justice Scalia acknowledged that those cases may "have been limited to their facts, or to the narrow areas of abortion and election rights, by [the Court's] more recent insistence that, at least in the absence of a class action, the 'capable of repetition' doctrine applies only where 'there [is] a "reasonable expectation"' that the 'same complaining party' would be subjected to the same action again." Honig v. Doe, 484 U.S. 305, 336 (1988) (Scalia, J., dissenting) (emphasis in original). In class actions, at least when the class is certified while the case remains live for the named plaintiff, a reasonable expectation that someone in the represented class will be subject to the same action may be sufficient to satisfy the "capable of repetition" prong of the exception. See Genesis Healthcare Corp. v. Symczyk, 133 S. Ct. 1523, 1530-31 (2013); Sosna v. Iowa, 419 U.S. 393, 401-02 (1975).

Partially as a result of this disagreement, courts have reached different results when considering arguments like the ones Appellants now raise. Compare Van Wie v. Pataki, 267 F.3d 109, 114-15 (2d Cir. 2001) (applying same-plaintiff requirement in an election case), and Barilla v. Ervin, 886 F.2d 1514, 1519-20 & n.3 (9th Cir. 1989) (same), with Catholic Leadership Coal. of Tex. v. Reisman, 764 F.3d 409, 423-24 (5th Cir. 2014) (concluding that same-plaintiff requirement need not be met in election cases), Lawrence v. Blackwell, 430 F.3d 368, 372 (6th Cir. 2005) (same), and Majors v. Abell, 317 F.3d 719, 723 (7th Cir. 2003) (same).

In the end, we need not decide whether we believe the Supreme Court has sub silentio limited, or created an exception to, the requirements of the "capable of repetition, yet evading review" doctrine. That is so because even were we to conclude that the Supreme Court has actually sub silentio excused compliance with the rule in some election cases, we would be obligated to follow the rule that the Court has actually articulated. See, e.g., Shalala v. Illinois Council on Long Term Care, Inc., 529 U.S. 1, 18 (2000) ("This Court does not normally overturn, or so dramatically limit, earlier authority sub silentio."); Hohn v. United States, 524 U.S. 236, 252–53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."); Agostini v. Felton, 521 U.S. 203, 237 (1997) (explaining that if a Supreme Court precedent directly controls, "yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which

directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions" (internal quotation marks omitted)); id. (explaining that lower courts should not conclude that the Supreme Court's "more recent cases have, by implication, overruled [its] earlier precedent"); Mackall v. Angelone, 131 F.3d 442, 445–49 (4th Cir. 1997) (en banc) (applying Agostini and refusing to create an exception to a general rule articulated by the Supreme Court even though a subsequent Supreme Court case had noted that in a future case the Court might adopt the exception we were considering).

Moreover, the Supreme Court has actually applied the same-complaining-plaintiff rule in two relatively recent election cases. FEC v. Wisconsin Right To Life, Inc., 551 U.S. 449 (2007), concerned an as-applied challenge to a federal prohibition on the use of corporate funds to finance "electioneering communications" during a 60-day pre-election black-out period. See id. at 457-60. With the black-out period long over, the Supreme Court considered whether the case met the requirements of the "capable of repetition, yet evading review" doctrine. The Court explained that "[t]he second prong . . . requires a 'reasonable expectation' or a 'demonstrated probability' that 'the same controversy will recur involving the same complaining party.'" Id. at 463 (emphasis added). The Court concluded that the requirement was met in that case because the plaintiff "credibly claimed that it planned on running materially similar future targeted broadcast ads mentioning a candidate within the blackout period, and there is no reason to believe that the FEC will refrain from prosecuting violations of" the

challenged statute. Id. (citation and internal quotation marks omitted).

In Davis v. FEC, 554 U.S. 724 (2008), the Supreme Court reviewed a challenge from a self-financed candidate to certain campaign-finance-disclosure requirements to which he was subject. See id. at 731-32. With the litigation having continued after the election occurred, the Court again considered whether the "capable of repetition, yet evading review" doctrine applied. The Court again applied the same-complaining-party requirement, and determined it was satisfied because the candidate had publicly announced that he intended to run again as a self-financed candidate. See id. at 735-36.

Like the Supreme Court, we have also applied the same-complaining-plaintiff requirement in recent election cases. Most recently, in Lux v. Judd, 651 F.3d 396 (4th Cir. 2011), we reviewed a constitutional challenge to a state's requirement that each signature on a petition for ballot placement by an independent candidate for Congress be witnessed by a district resident. See id. at 398. In considering whether the case satisfied the requirements of the "capable of repetition, yet evading review" doctrine, we noted that "[e]lection-related disputes qualify as 'capable of repetition' when 'there is a reasonable expectation that the challenged provisions will be applied against the plaintiffs again during future election cycles.'" Id. at 401. We concluded that that requirement was satisfied in that case. See id.

For all of these reasons, we conclude that we are bound to apply the doctrine that we and the Supreme Court have articulated — and recently applied — and

we must leave to the Supreme Court the decision of whether it wishes to create an exception to, or otherwise limit, that rule. Accordingly, because Appellants cannot satisfy the same-complaining-party requirement, the "capable of repetition, yet evading review" doctrine does not apply, and the district court erred in not dismissing Counts I and II for lack of subject-matter jurisdiction. We therefore vacate the district court's merits ruling regarding the claims and remand them to the district court for dismissal in accordance with Rule 12(h)(3).

B.

The FEC contends that the district court erred in declining to dismiss Count III on mootness grounds as well. We disagree.

In Count III the Fund and ARCC challenge the constitutionality of the annual $5,000 limit that applies to contributions from MPCs to state political party committees and their local affiliates, and the Fund challenges the constitutionality of the annual $15,000 limit on contributions from MPCs to national party committees. See 52 U.S.C. § 30116(a)(2)(B)-(C). The FEC advances distinct mootness arguments concerning each of these two challenges.

Regarding the challenge to the limit on contributions to state party committees and their local affiliates, the FEC notes that the Amended Complaint alleges that the Fund wished to "immediately contribute an additional $5,000 to . . . ARCC, which would bring its total contributions to . . . ARCC for the year 2014 to $10,000." J.A. 59. The FEC argues that, once 2014 ended, this

challenge was moot because the district court could not grant the Fund the right to contribute additional amounts to ARCC in 2014.

We conclude, however, that this challenge, unlike those presented in Counts I and II, easily fits into the "capable of repetition, yet evading review" exception. It is undisputed that the election cycle is too short in duration for election disputes to be fully litigated within a single cycle. See Moore v. Ogilvie, 394 U.S. 814, 816 (1969). And the Fund very well may wish to contribute more than $5,000 to the ARCC in future years. To invoke the exception, Appellants are not required to forecast evidence that they were so inclined. See North Carolina Right to Life Comm. Fund for Indep. Political Expenditures v. Leake, 524 F.3d 427, 435 (4th Cir. 2008) (holding that constitutional challenges to system of public financing for judicial elections, brought by two political committees and a candidate, were not mooted by the election even though neither the political committees nor the candidate had specifically alleged an intent to participate in future election cycles; concluding that "there is a reasonable expectation that the challenged provisions will be applied against the plaintiffs again during future election cycles"; rejecting "the argument that an ex-candidate's claims may be 'capable of repetition yet evading review' only if the ex-candidate specifically alleges an intent to run again in a future election"); see also Honig, 484 U.S. at 318-19 n.6 ("Our concern in these cases, as in all others involving potentially moot claims, was whether the controversy was capable of repetition and not . . . whether the claimant had demonstrated that a recurrence of the

dispute was more probable than not." (emphasis in original)).

As for the Fund's challenge to the annual $15,000 limit on contributions from MPCs to national party committees, the FEC contends that that challenge was mooted by the December 2014 change in the law referenced earlier. The Fund had alleged in its 2014 Amended Complaint that it wanted to "immediately contribute $32,400 to the" NRSC. J.A. 59. The December 2014 amendment authorized the NRSC to create a segregated account to fund their building-headquarters expenses and another to fund their election-related legal expenses.[4] See Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, Div. N, § 101, 128 Stat. 2130, 2772-73 (Dec. 16, 2014) (codified as amended at 52 U.S.C. § 30116(a)(1)(B), (a)(2)(B), (a)(9)). Under the new law, donors may make contributions to each of these new accounts in amounts up to three times the amounts they could previously contribute to a national party committee. See id. In this way, if the NRSC created such segregated accounts, the Fund would have been free to contribute $32,400 to the building-fund account or legal-fund account were it so inclined. We conclude, however, that the possible availability of this new option did not moot the challenge here. Nothing in the record indicates that the Fund had or has any interest in donating to such specialized accounts. Because the $15,000 limit that the Fund is challenging remains in place, we

[4] The provision pertaining to accounts for the expenses concerning presidential nominating conventions does not apply to national congressional campaign committees. See 52 U.S.C. § 30116(a)(9)(A).

conclude that this challenge, like the challenge to the $5,000 annual limit on MPC contributions to state and local political committees, fits into the "capable of repetition, yet evading review" exception.

IV.

Having determined that the district court possessed subject-matter jurisdiction over Count III, and that we continue to possess jurisdiction as well, we turn to Appellants' contention that the district court erred in granting summary judgment to the FEC on the merits on that claim. We conclude that the district court was correct to grant summary judgment.

"We review a district court's decision to grant summary judgment de novo, applying the same legal standards as the district court, and viewing all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party." T–Mobile Ne. LLC v. City Council of Newport News, 674 F.3d 380, 384–85 (4th Cir. 2012) (internal quotation marks omitted). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Although the Fourteenth Amendment's Equal Protection Clause does not apply to the federal government, the Fifth Amendment's Due Process Clause contains an equal protection component. See Bolling v. Sharpe, 347 U.S. 497, 499 (1954). Indeed, the Supreme Court has explained that "the equal protection obligations imposed by the Fifth and the Fourteenth Amendments [are] indistinguishable."

Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 217 (1995).

"To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001). "Once this showing is made, the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny." Id.

Count III alleges that the challenged limits violate the Fifth Amendment's equal protection component by discriminating against MPCs and in favor of political committees that have satisfied the other MPC criteria but have yet to complete the waiting period. The critical case governing this claim is California Medical Ass'n v. FEC, 453 U.S. 182 (1981) ("CMA"). In that case, an unincorporated association of California doctors, along with other plaintiffs, brought a declaratory judgment action challenging the constitutionality of a FECA provision prohibiting individuals and unincorporated associations from contributing more than $5,000 to any MPC in a calendar year. See id. at 185-86. One basis for the challenge was that the provision violated the equal protection component of the Fifth Amendment's Due Process Clause. See id. at 200. The plaintiffs' position was that even though unincorporated associations were similarly situated to corporations and labor unions, the provision treated unincorporated associations more harshly since corporations and labor unions were not subject

to a similar limit.[5] See id. The district court certified the constitutional questions in the case to the Ninth Circuit, which upheld the provision. See id. at 186. The plaintiffs then sought review of that decision in the Supreme Court. See id. at 186-87.

Like the Ninth Circuit, the Supreme Court concluded that the challenged limit did not violate the Fifth Amendment. The Court reasoned as follows:

> In order to conclude that [the restriction] . . . violates the equal protection component of the Fifth Amendment, we would have to find that because of this provision [FECA] burdens the First Amendment rights of persons subject to [the challenged restriction] to a greater extent than it burdens the same rights of corporations and unions, and that such differential treatment is not justified. We need not consider this second question — whether the discrimination alleged by appellants is justified — because we find no such discrimination. Appellants' claim of unfair treatment ignores the plain fact that the

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[5] FECA allowed corporations and labor unions to pay for the establishment, administration, and solicitation of a "'separate segregated fund to be utilized for political purposes.'" California Med. Ass'n v. FEC, 453 U.S. 182, 200 (1981) (quoting 2 U.S.C. § 441b(b)(2)(C) (now 52 U.S.C. § 30118(b)(2)(C))). There was no statutory limitation on the amount these groups could spend on such funds. See id. And, the plaintiffs claimed that the contributions of a corporation or labor union to its segregated political fund should be considered to be directly analogous to the contributions of an unincorporated association to an MPC. See id.

> statute as a whole imposes far fewer restrictions on individuals and unincorporated associations than it does on corporations and unions. Persons subject to the [challenged restriction] may make unlimited expenditures on political speech; corporations and unions, however, may make only the limited contributions authorized by § 441b(b)(2) [now 52 U.S.C. § 30118(b)(2)]. Furthermore, individuals and unincorporated associations may contribute to candidates, to candidates' committees, to national party committees, and to all other political committees while corporations and unions are absolutely barred from making any such contributions. In addition, [MPCs] are generally unrestricted in the manner and scope of their solicitations; the segregated funds that unions and corporations may establish pursuant to §441b(b)(2)(C) [now 52 U.S.C. § 30118(b)(2)(C)] are carefully limited in this regard.

Id. at 200-01 (emphasis in original).

The FEC argues that the claims here fail for similar reasons in that political committees overall clearly receive more favorable treatment under FECA than do other groups. For that reason, the FEC argues, there is no discrimination by FECA against MPCs that must be justified. We largely agree with the FEC's position, but with one caveat. We believe the FEC is correct to the extent it argues that CMA requires us, in determining whether actionable discrimination has occurred, to compare the treatment the relevant respective groups receive

under FECA overall, not just the treatment the groups receive under the specific provision of FECA that is being challenged. We conclude, however, that the proper comparison is between political committees that have become MPCs and political committees that have not completed the waiting period but have satisfied the other MPC conditions. It is those two groups, after all, that Appellants maintain are similarly situated yet treated differently under FECA.

Nevertheless, in our estimation, Appellants cannot show that FECA overall burdens the First Amendment rights of political committees that have become MPCs more than it burdens the rights of political committees that have satisfied all MPC requirements but the waiting period. That is so because the decrease in the amount of contributions that political committees, once they become MPCs, can make annually to state party committees or their local affiliates (from $10,000 to $5,000) and to national party committees (from $32,400 to $15,000) is more than counteracted by the increase in the limits in the amount of contributions that MPCs can make to individual candidates (from $2,600 to $5,000). To the extent that there is a difference in treatment, it appears to us to favor the MPCs in that the total amount of money MPCs can contribute overall will be substantially greater since there are so many different individual candidates to which the respective entities can contribute. Because Appellants cannot demonstrate that FECA discriminates against MPCs, there is no discrimination to be justified, and we conclude that

the FEC was entitled to summary judgment on Count III.

V.

In sum, we conclude that the district court erred in adjudicating the merits of Counts I and II, as those claims became moot once the political committees challenging them became MPCs and were no longer subject to the limitations they were challenging. Accordingly, we vacate the merits judgment on those claims and remand to the district court with instructions to dismiss them for lack of subject-matter jurisdiction. On the other hand, we conclude the district court properly granted summary judgment to the FEC on Count III, and we therefore affirm the judgment on that claim.

AFFIRMED IN PART;
VACATED AND REMANDED IN PART
WITH INSTRUCTIONS TO DISMISS

Ruling of the U.S. District Court for the Eastern District of Virginia Denying Plaintiffs' Motion for Summary Judgment and Granting Defendant's Rule 56(d) Motion (June 18, 2014)

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.	Case No. 1:14-cv-397 (AJT/IDD)

ORDER

Presently pending are plaintiffs' Motion for Summary Judgment [Doc. No. 6] and defendant Federal Election Commission's Motion to Allow Time for Discovery under Rule 56(d) ("Rule 56(d) Motion") [Doc. No. 27]. Upon consideration of plaintiff s

Motion for Summary Judgment and defendant's Rule 56(d) Motion, the memoranda and exhibits in support thereof and in opposition thereto, and it appearing to the Court that an adequate factual record is necessary for proper consideration of plaintiff s constitutional claims, that the defendant is entitled to a reasonable opportunity to obtain discovery for that purpose, that there are no facts or circumstances that would justify adjudicating plaintiffs' constitutional claims in the absence of such a record and that the plaintiffs Motion for Summary Judgment is therefore premature, it is hereby

ORDERED that defendant's Rule 56(d) Motion [Doc. No. 27] be, and the same hereby is GRANTED; and it is further

ORDERED that plaintiffs Motion for Summary Judgment [Doc. No. 6] be, and the same hereby is, DENIED without prejudice to its being refiled at an appropriate time; and it is further

ORDERED that the hearings on plaintiffs Motion for Summary Judgment and defendant's Rule 56(d) Motion, scheduled for June 20, 2014, be, and the same hereby are, CANCELLED.

The Clerk is directed to forward copies of this Order to all counsel of record.

/s/ Anthony J. Trenga
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
June 18, 2014

Opinion of the U.S. District Court for the Eastern District of Virginia Denying Plaintiffs' Motion for Summary Judgment and Granting Defendant's Cross-Motion for Summary Judgment (Feb. 27, 2015)

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.	Case No. 1:14-cv-397 (AJT/IDD)

MEMORANDUM OPINION

Presently pending are cross-motions for summary judgment with respect to plaintiffs' constitutional challenges to certain statutory contribution limits under the Federal Election Campaign Act ("FECA")

[Doc. Nos. 56 and 57]. Specifically, plaintiffs contend that (1) the six month registration period, 2 U.S.C. § 441a(a)(4), violates the First Amendment as applied to plaintiff Stop Reckless Economic Instability Caused By Democrats ("Stop PAC"); (2) the limit on contributions from persons to candidates, § 441a(a)(l)(A), violates the Fifth Amendment as applied to Stop PAC; and (3) FECA's annual limits on contributions from multicandidate nonconnected political committees ("PACs"), like the Tea Party Leadership Fund (the "Fund"), to national party committees, § 441a(a)(2)(B)($15,000), and to state party committees, § 441a(a)(2)(C) ($5,000) violate the Fifth Amendment. Plaintiffs seek a declaration that these provisions are unconstitutional and also a permanent injunction barring defendant Federal Election Committee ("FEC") from enforcing them against plaintiffs and similarly situated groups. For the reasons stated herein, the Court will assume, without deciding, that plaintiffs have standing to raise their claims and that their claims are not moot, but concludes that the

BACKGROUND

On April 14, 2014, the original plaintiffs filed a complaint against defendant FEC [Doc. No. 1], challenging the constitutionality of certain FECA contribution limits.[1] More specifically, plaintiffs Stop

[1] The original plaintiffs were Stop PAC, Niger Innis, Niger Innis for Congress, Tea Party Leadership Fund, and Alexandria Republican City Committee. On July 3, 2014, plaintiffs filed a motion to voluntarily dismiss plaintiffs Niger Innis and Niger Innis for Congress [Doc. No. 35], which the Court granted [Doc.

PAC, the Fund, and the Alexandria Republican City Committee ("ARCC") and intervenor American Future PAC ("American Future") (referred to collectively as "plaintiffs") allege that FECA, as amended by the Bipartisan Campaign Reform Act ("BRCA"), 52 U.S.C. §§ 30101-46 (formerly 2 U.S.C. §§ 431-57), unconstitutionally and discriminatorily places different contribution limits on materially indistinguishable political committees based on whether a committee has been in existence for six months. FECA requires that newly registered PACs wishing to contribute to candidates comply with a $2,600 limit for six months before earning an increased $5,000 limit reserved for multicandidate PACs. In that regard, Stop PAC and American Future argue that (1) the $2,600 limit on contributions from persons (or new PACs) to candidates, 2 U.S.C. § 441a(a)(1)(A), violates the equal protection component of the Fifth Amendment

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No. 46]. On July 7, 2014, plaintiffs filed an Amended Complaint [Doc. No. 37] ("Am. Compl."), and also sought leave, if necessary, to file the amended complaint pursuant to Fed. R. Civ. P. 15(a)(2) and (d) [Doc. No. 36], which the Magistrate Judge granted on July 24, 2014 [Doc. No. 47]. On August 27, 2014, plaintiffs filed a motion to join American Future PAC [Doc. No. 51]. The Magistrate Judge entered an Order allowing American Future to intervene in this suit pursuant to Fed. R. Civ. P. 24 [Doc. No. 62]. On September 19, 2014, the parties filed cross-motions for summary judgment [Doc. Nos. 56, 57]. On October 31, 2014, the Court heard argument on the parties' cross-motions for summary judgment, following which it took the motions under advisement, with leave to file by November 14, 2014 any supplemental briefs pertaining to intervenor American Future, with responses thereto by November 21, 2014 [Doc. No. 67], all of which the parties timely filed. See Doc. Nos. 68, 69, 71, 72.

as applied to Stop PAC (Count I);[2] and (2) the six-month registration and waiting period for designation as a "multicandidate political committee," 2 U.S.C. § 441a(a)(4), violates the First Amendment as applied to Stop PAC (Count II).[3] In addition, FECA sets a higher limit for contributions made by persons, as opposed to those made by multicandidate PACs, to party committees.[4] In

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[2] 52 U.S.C. §30116 (formerly cited as 2 U.S.C. §441a and changed in September 2014) provides, in relevant part: "[N]o person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000." 52 U.S.C. § 30116(a)(1)(A). At the time of the parties' briefing, the statutory figure had been adjusted for inflation to $2,600. *See* 78 Fed. Reg. 8,530, 8,532 (Feb. 6, 2013). On February 3, 2015, the limit was increased under FECA to $2,700 to account for inflation. *See Price Index Adjustments for Contribution and Expenditure Limitations*, 80 Fed. Reg. 5750-02, 5752 (Feb. 3, 2015).

[3] A "multicandidate political committee" is defined as "a political committee which has been registered under section 30103 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office." 52 U.S.C. §30116(a)(4).

[4] Per 52 U.S.C. §30101(11), a "person" "includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons." A person can contribute $32,400 annually to a national party and $10,000 annually to a state or local party committee. § 30116(a)(1)(A), (B), (D). Section 30116(a)(2)(B) provides: "No multicandidate political committee shall make contributions to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000."

plaintiffs' third claim, ARCC and the Fund argue that FECA's annual limits on contributions made by multicandidate PACs to national party committees under 2 U.S.C. § 441a(a)(2)(B) ($15,000) and to state party committees under § 441a(a)(2)(C) ($5,000) violate the equal protection component of the Fifth Amendment (Count III).

FACTS[5]

Plaintiff Stop PAC is a hybrid non-connected political committee that registered with the FEC on March 11, 2014. Stop PAC is registered and based in Virginia. Of its contributors, 78 contributors reside in Nevada, and its founder and chairman, Greg Campbell, also resides there. As of April 10, 2014, Stop PAC had over 150 contributors and had contributed to five candidates for federal office. Section 441a(a)(1)(A) of FECA limited Stop PAC's contributions to each federal candidate to $2,600 per election until September 11, 2014, when Stop PAC became a multicandidate PAC and was permitted to contribute $5,000.

Former plaintiff Niger Innis was a candidate in the June 10, 2014 primary election for the Republican Party nomination for the U.S. House of Representatives in Nevada ("Nevada Primary"). As of April 10, 2014, Stop PAC had contributed $2,600 to Niger Innis for the Nevada Primary. Stop PAC wished to contribute an additional $2,400 to Innis in

[5] Because this matter comes before the Court on cross-motions for summary judgment, the recited facts are either uncontested or stated most favorably to the plaintiffs and intervenor American Future.

connection with the Nevada Primary, but section 441a(a)(1)(A) prohibited it from doing so because Stop PAC had not been registered with the FEC for more than six months. The Nevada Primary occurred before Stop PAC's six-month waiting period expired.

On June 16, 2014, Stop PAC contributed the statutory maximum of $2,600 to Dan Sullivan, a candidate for the Republican nomination for U.S. Senate in Alaska's August 19, 2014 primary election ("Alaska Primary"). Stop PAC wished to contribute an additional $2,400 to Sullivan in connection with the Alaska Primary, but section 441a(a)(1)(A) prohibited it from doing so because it had not been registered for more than six months before the Alaska Primary. The Alaska Primary occurred before Stop PAC's six-month waiting period expired. On July 7, 2014, Stop PAC contributed $2,600 to Congressman Joe Heck in connection with his candidacy in the 2014 general election. At that time, Stop PAC had an additional $1,800 that it wished to contribute immediately to Heck, but could not until its six-month waiting period expired on September 11, 2014. Thereafter, on October 3, 2014, after acquiring multicandidate status, Stop PAC contributed an additional $1,800 to Heck for the November 2014 general election.

Intervenor American Future is a non-connected political committee that registered with the FEC on August 11, 2014, and qualified as a multicandidate PAC on February 11, 2015. Its purpose is to "stand for veterans who have secured our freedom." By August 22, 2014, American Future had raised $5,473 from 54 contributors, $5,000 of which was received on

August 18, 2014 from a single donor; 41 of those contributions were for five dollars, and three were for one dollar. On August 19, 2014, American Future contributed $2,600 to Tom Cotton's general election campaign for U.S. Senate, and then contributed $100 each to four other candidates. American Future wished to contribute an additional $2,000 to Cotton in connection with the 2014 general election, but section 441a(a)(1)(A) prevented it from doing so because it had not been registered with the FEC for six months before the November 2014 general election. American Future made no contribution to any candidate after August 25, 2014. At the time of its intervention, American Future also argued that it wished to contribute funds in excess of $2,600 to Cotton immediately, but, due to the six-month waiting period, could not unless and until Cotton filed paperwork concerning the 2016 primary election, and that it reasonably anticipated wanting to contribute funds in excess of $2,600 to other candidates for the 2016 primary election at the earliest available opportunity. American Future expected that many candidates would begin filing the paperwork necessary to begin fundraising for the 2016 primary election in December 2014 or January 2015.

Plaintiff ARCC is a local political party committee that is affiliated with the Virginia Republican State Committee, a state political party committee. The ARCC contends that its rights to receive contributions from the Fund and other PACs have been infringed as a result of FECA.

Plaintiff the Fund is a hybrid non-connected multicandidate PAC that registered with the FEC in

2012. By May 2014 the Fund had over 100,000 contributors and it has contributed to dozens of federal candidates. As such, the maximum amount that it may contribute to a state political party committee and local affiliates under section 441a(a)(2)(C) of FECA is $5,000 each year. 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 local affiliates. *See* § 441a(a)(1)(D). The maximum amount that federal law permits it to contribute to a national political party committee is $15,000 annually. *See* § 441a(a)(2)(B). If the Fund had been registered with the FEC for less than six months, it would have qualified as a "person" and been permitted to contribute up to $32,400 each year to a national political party committee. *See* § 441a(a)(1)(B). In 2014, the Fund contributed the statutory maximum of $5,000 to the ARCC, a local political party committee. The Fund wishes to contribute an additional $5,000 to the ARCC for a total of $10,000 in 2014. In addition, the Fund wants to contribute $32,400 in 2014 to the National Republican Senatorial Committee, a national party committee.

STANDARD OF REVIEW

Summary judgment should be granted where the record shows that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a);

see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Entry of summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The non-moving party must go beyond the pleadings and mere allegations and set forth specific facts showing that there is a genuine issue for trial." *Id.* at 323. "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Anderson*, 477 U.S. at 247-48. Indeed, "[i]f the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (internal citations omitted). The Court reviews the evidence in the light most favorable to the non-moving party.

ANALYSIS

A. Justiciability of Stop PAC and American Future's Claims[6]

The FEC first challenges the justiciability of Stop PAC and American Future's asserted claims based on the doctrines of standing and mootness.

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[6] Intervenor American Future has adopted, joined in, and incorporated by reference the arguments presented by Stop PAC in support of its motion for summary judgment and in opposition to FEC's motion for summary judgment.

As to standing, the FEC first argues that Stop PAC and American Future do not have standing because they have not suffered any cognizable injury as a result of the challenged scheme under the theory that they have themselves caused the alleged injury by not registering with the FEC early enough. As to mootness, FEC argues that Stop PAC is no longer subject to the six-month restriction under FECA, having become a multicandidate PAC on September 11, 2014, a position that now extends to American Future, which no longer is subject to the six-month restriction as of February 11, 2015.

In support of their standing claim, Stop PAC and American Future argue that they have suffered injuries in fact as a result of the six month delay that conditioned their ability to associate with candidates for political office by contributing more than $2,600 to a particular candidate. Ostensibly in recognition of their ability to remove any such disabilities by organizing more than six months before the primaries in which they wished to contribute, Stop PAC and American Future, relying on *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010), assert that "[i]t is well known that the public begins to concentrate on elections only in the weeks immediately before they are held." For that reason, they argue that they are injured because federal law allows entrenched, longstanding institutional interests to associate with candidates by contributing to the maximum authorized extent, $5,000, whereas members of the general public are crippled by being able to associate to a lesser degree, i.e., through only a $2,600 contribution.

To establish standing, a plaintiff must satisfy the "case or controversy" requirement of Article III by demonstrating that it had the requisite stake in the outcome when the suit was filed and that the alleged prospective injury qualifies for redress. Specifically, the plaintiff must show (1) it has suffered an "injury in fact," (2) the injury is "fairly traceable" to the actions of the defendant, and (3) the injury will likely be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). An injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Id.* at 560. Here, there is no doubt that the plaintiffs and intervenor American Future have been affected by the challenged contribution limits. There are, however, substantial issues concerning whether that injury satisfies the constitutional requirements for standing, given the ability of entities such as Stop PAC and American Future to control the timing of their registrations relative to any particular election. Nevertheless, the Court will assume, without deciding, that they have standing for the purposes of challenging the contribution limits.

As for mootness, in order to be justiciable, Article III also requires a live case or controversy. *See FEC v. Wis. Right to Life, Inc.* (*WRTL*), 551 U.S. 449, 461-62, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007) (stating the "case-or-controversy requirement subsists through all stages of federal judicial proceedings. . . . [I]t is not enough that a dispute was very much alive when suit was filed.") (alteration in original) (*quoting Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477,

110 S. Ct. 1249, 108 L. Ed. 2d 400 (1990)). "A case becomes moot when interim relief or events have eradicated the effects of the defendant's act or omission, and there is no reasonable expectation that the alleged violation will recur." *Van Wie v. Pataki*, 267 F.3d 109, 113 (2d Cir. 2001) (*quoting Irish Lesbian and Gay Org. v. Giuliani*, 143 F.3d 638, 647 (2d Cir. 1998)). However, there is an exception to the mootness doctrine that applies where the underlying dispute is capable of repetition, yet evading review. *See WRTL*, 551 U.S. at 462. Specifically, the exception applies where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again" unless the court intervenes. *Id*. (*quoting Spencer v. Kemna*, 523 U.S. 1, 17, 118 S. Ct. 978, 140 L. Ed. 2d 43 (1998)); *see also Delaney v. Bartlett*, 2003 Civ. No. 1:02cv0741, 2003 U.S. Dist. LEXIS 24059, 2003 WL 23192145, at *3 (M.D.N.C. Dec. 24, 2003).

Under the "evading review" prong, "[ejection controversies are paradigmatic examples of cases that cannot be fully litigated before the particular controversy expires." *Moore v. Hosemann*, 591 F.3d 741, 744 (5th Cir. 2009). However, it is unclear under the existing election case law whether the "capable of repetition" prong applies under the circumstances of this case. *Compare Davis v. FEC*, 554 U.S. 724, 735, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008) (holding capable of repetition yet evading review exception applied where case could not be resolved before election concluded and same U.S. Congressional candidate plaintiff who challenged

self-financing limitations announced his intent to self-finance another bid for Congress), and *WRTL*, 551 U.S. at 463-64 (applying exception where plaintiff "credibly claimed" a "materially similar" future controversy involving the same parties would occur), *with Storer v. Brown*, 415 U.S. 724, 737 n.8, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974) (noting that, although the California election was over, case was "capable of repetition, yet evading review" because "the issues properly presented, and their effects on independent candidacies, will persist as the California statutes are applied in future elections"), *and Catholic Leadership Coalition of Texas v. Reisman*, 764 F.3d 409, 422-23 (5th Cir. 2014) (stating that a challenge to a statute's waiting period imposed on new committees was not moot, even though election was over and waiting period would no longer apply to plaintiffs, because the statute would continue to injure plaintiffs by limiting their "ability to receive contributions from newly formed general purpose committees" and holding that plaintiffs "need not show they will suffer the exact same injury so long as an injury is caused by the same alleged illegality"). Given the election law context, the Court assumes, without deciding, that the circumstances presented here satisfy both prongs of the mootness exception.[7]

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[7] The mootness issues, particularly as to the Fund's challenge to the $15,000 limit, and its previous inability to contribute up to $32,400, has been further affected by FECA amendments on December 16, 2014 that allow multicandidate PACs to give an additional $45,000 to up to three new types of accounts that national committee are allowed to create. *See* Consolidated and Further Continuing Appropriations Act, 2015, PL 113-235, 128

B. First Amendment Challenges

Stop PAC and American Future argue that the six-month waiting period of section 441a(a)(4) and the monetary contribution restrictions that flow from it to new PACs violate the First Amendment. That position presents the same type of First Amendment constitutional challenges considered and rejected in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), and *California Medical Association v. FEC*, 453 U.S. 182, 101 S. Ct. 2712, 69 L. Ed. 2d 567 (1981), where the Supreme Court rejected a constitutional challenge to contribution limits that, overall, restricted advocacy more than those challenged here. Stop PAC and American Future claim, however, that these cases do not control because they are bringing a more narrow, as applied challenge to restrictions placed on groups that have received more than 50 contributors and contributed to at least five candidates, as opposed to individuals. The Court finds the relied upon distinctions immaterial to the core holdings of *Buckley* and *California Medical Association*, which dictate the result here.

In *Buckley*, the Supreme Court considered whether the limits the FEC placed on contributions from a person, defined as "an individual, partnership, committee, association, corporation, or any other organization or group of persons," to candidates violated the First Amendment under the theory that,

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Stat. 2130, 2772-73 (Dec. 16, 2014) (codified as amended at 52 U.S.C. § 30116(a), (d)).

by limiting contributions, the FEC limited the contributor's ability to express his political views through the speech of another. Although the Court recognized that contribution limits "implicate fundamental First Amendment interests," it upheld various ceilings on contributions. *Buckley*, 424 U.S. at 23. Specifically, the Court upheld a $1,000 limit on contributions from individuals or groups to candidates for federal office and a $5,000 limit on donations from PACs. The Court reasoned that contribution limits are such "marginal restriction[s]" that they involve "little direct restraint" on contributors' ability to express their own political views. *See id.* at 20-21 (reasoning that "[w]hile contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor").

In *California Medical Association*, the Supreme Court considered whether a contributor's rights were impaired by limits on the amount he could contribute to a PAC that advocates the views and candidacies of candidates. Determining that the analysis in Buckley controlled the issue, the Court held that the rights of a contributor were not impaired by limits on what he could contribute to an advocacy PAC, reasoning that this form of "proxy speech" was too attenuated to garner constitutional protection. See id. at 196 (deciding the "sympathy of interests" between the PAC and the contributor did not convert the PAC's speech into that of the contributor, thus not entitling PAC speech to full First Amendment protection). These rulings apply with equal or

greater force to a legislative scheme that allows a non-connected PAC to make separate $2,600 contributions to many candidates.

Here, Stop PAC made contributions to five candidates 24 days after registering with the FEC and had the ability to make such contributions to any other candidate it chose. Similarly, American Future contributed $2,600 to Tom Cotton, and had the ability to make many other such contributions. Stop PAC and American Future therefore had the ability to make, and in fact made, greater contributions than the plaintiffs in *Buckley*, whom the Supreme Court concluded had not suffered a constitutional injury. In light of *Buckley*, Stop PAC and American Future cannot show that they have suffered a cognizable constitutional injury as a result of the waiting period, even if they would have made a higher contribution, had they been permitted to do so.[8] Stop PAC and American Future were able to associate with, express approval of, and contribute to their chosen candidates through monetary contributions; and under *Buckley*, the limits placed on those contributions do not translate into a First Amendment infringement. *See Buckley*, 424 U.S. at 21 (reasoning a campaign contribution limit involves little direct restraint because it "permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues").

Likewise, Stop PAC and American Future did not sustain a constitutional injury as a result of the six-

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[8] *See* Am. Comp. HI 21, 25, 30 (alleging that it had the ability and desire to make additional contributions).

month waiting period, which did not restrict their ability to participate in political activity, other than through direct financial contributions. FECA does not restrain new PACs or their individual contributors from otherwise assisting the campaigns and political activities of their selected candidates. For example, Stop PAC and American Future's contributors were free to engage in independent political expression during the six-month waiting period through such activities as raising their own funds to support candidates, volunteering their time to work on candidates' campaigns, and voting for the candidate of their choice, and Stop PAC and American Future could have spoken independently in favor of, or organized volunteer efforts to support, candidates of their choice. *See Gottlieb v. FEC*, 143 F.3d 618, 622, 330 U.S. App. D.C. 104 (D.C. Cir. 1998). In fact, Stop PAC and American Future have not claimed that their ability to engage in any specific protected speech has been stifled or compromised by the delay. *See Buckley*, 424 U.S. at 21 (reasoning that "[t]he quantity of communication by the contributor does not increase perceptively with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing").

Overall, *Buckley* makes clear that, within jurisprudential limits not exceeded here, the limited effect on First Amendment freedoms imposed by restrictions on the size of financial contributions from individuals and PACs to candidates and their political committees does not unconstitutionally infringe on political speech. *California Medical Association* makes clear that limitations on

contributions from persons to PACs, even PACs that engage in advocacy and "proxy speech," receive less First Amendment protection than direct individual contributions to candidates. Because this case does not involve an individual contributor, the First Amendment, under these Supreme Court precedents, provides Stop PAC and American Future with limited rights, not offended here, with respect to their ability to make political contributions. Accordingly, the Court concludes that FECA's six-month waiting period, and the limited restriction that it places on financial contributions from PACs, do not constitute a First Amendment violation of Stop PAC and American Future's ability to associate with the candidates whom they support.

C. Fifth Amendment Equal Protection Challenges

Plaintiffs also seek protection under the Fifth Amendment from the per election contribution limits imposed on amounts new PACs can contribute to candidates and the annual contribution limits placed on amounts multicandidate PACs, such as the Fund and ARCC, can contribute to national, state, and local party committees. The FEC argues that FECA's restrictions do not violate the Fifth Amendment because the restrictions are not discriminatory and, in any event, new PACs and multicandidate PACs are not similarly situated for the purposes of any equal protection analysis.

A contribution limit violates the equal protection component of the Fifth Amendment if plaintiffs can show they were treated differently from others who

were similarly situated and that the unequal treatment was the result of discriminatory animus. *See Equity in Athletics, Inc. v. Dept. of Educ*, 639 F.3d 91, 108 (4th Cir. 2011). The equal protection claim here reduces to whether a difference in treatment may be legislated with respect to a group of political committees that has more than 50 contributors and contributed to at least five federal candidates based on when a political committee registered with the FEC. This inquiry involves three questions: (1) are the political committees that have been registered for less than six months similarly situated to those that have been registered for more than six months? (2) If so, what is the appropriate level of scrutiny? (3) Depending on the appropriate level of scrutiny, is the government's purpose sufficiently important and is the statutory classification sufficiently connected to that purpose? *See Riddle v. Hickenlooper*, 742 F.3d 922, 925 (10th Cir. 2014).

In assessing these claims, the Court must recognize that the legislation at issue, as a whole, places fewer restrictions on PACs than some other regulated persons or entities. *See California Medical Association*, 453 U.S. at 200 (holding that "claim of unfair treatment [based on limitations on contributions different than other regulated entities] ignores the plain fact that the statute as a whole imposes far fewer restrictions on . . . associations than it does on corporations and unions"); *see also* 52 U.S.C. §§ 30118 and 30121 (restricting certain persons and entities from making contributions altogether). In short, plaintiffs' claims of unconstitutional discrimination must be assessed

within the broad context of the overall legislative scheme that Congress adopted.

Separate entities are "similarly situated" "if they are alike in 'all relevant respects.'" *Riddle*, 742 F.3d. at 926 (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992)). The Fund and Stop PAC argue that they are materially identical because they both have more than 50 contributors and have contributed to five or more candidates (perhaps even the same candidates), engage in the same activities, and have the same goals, yet are subject to different contribution limits depending on when they registered with FEC. But Stop PAC and the Fund are not "similarly situated" when considered relative to core, legitimate legislative purposes. By its own description, Stop PAC is a "grassroots organization," as compared to the more "entrenched" multicandidate PACs. See Am. Compl. at 1. As such, Stop PAC is precisely the type of instrumentality that lends itself to a circumvention of the contribution limits applicable to individuals. The risk of circumvention is particularly great during the initial months of a PAC's creation, which often coincides with the period immediately before an election when the incentives to infuse funds to a candidate are at their highest. *See, e.g.*, Clark Decl., Doc. No. 57, Ex. 11 (showing that in 2008 the busiest month for PAC registrations was October, just before the November election and stating that since 2003, 5,084 PACs have registered with the FEC, and approximately 77 percent of those PACs had not become multicandidate PACs as of August 26, 2014). For example, when Stop PAC had been registered with the FEC for one month it was

comprised of approximately 150 contributors and had contributed to five candidates for federal office, with Stop PAC's two largest contributors providing a significant portion of Stop PAC's receipts. On the other hand, the Fund is a broad-based interest group. When it had been registered with the FEC for two years it had over 100,000 contributors and had contributed to dozens of federal candidates. For these reasons, the Court concludes that Stop PAC, during the initial six month period following registration, and multicandidate PACs, such as the Fund, are not similarly situated, the FECA does not improperly discriminate among such committees; and the FEC does not violate the plaintiffs' rights under the Fifth Amendment.[9]

Even if the PACs were similarly situated, under either rational basis or intermediate scrutiny, there is sufficient government interest to justify the FECA contribution limits. *See, e.g.*, *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 387, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000) ("It has, in any event, been plain ever since Buckley that contribution limits would more readily clear the hurdles before them."); *see also Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085, 1091 (9th Cir. 2003) (reasoning that after Shrink Missouri courts "need not be overly concerned with the precise standard of scrutiny to be applied"). Specifically, there is sufficient government interest in preventing the risk of corruption of the political process and the circumvention of the

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[9] Because the Court finds that new committees and multicandidate PACs are not similarly situated, it does not consider the second and third questions under an Equal Protection analysis.

legislative and regulatory systems to justify the limits on contributions from new PACs, or "persons," to candidates and from mullicandidate PACs to parties. *See, e.g.*, *Buckley*, 424 U.S. at 26 (justifying limitations on contributions from individuals to candidates based on statute's primary stated purpose of limiting the actuality and appearance of corruption).

For the above reasons, the Court will enter summary judgment in favor of defendant Federal Election Commission and deny the motion for summary judgment filed on behalf of plaintiffs Stop Reckless Economic Instability Caused By Democrats, Tea Party Leadership Fund, and Alexandria Republican City Committee and intervenor American Future.

The Court will issue an appropriate Order.

The Clerk is directed to forward copies of this Memorandum Opinion to all counsel of record.

/s/ Anthony J. Trenga
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
Feb. 27, 2015

Order of the U.S. District Court for the Eastern District of Virginia Denying Plaintiffs' Motion for Summary Judgment and Granting Defendant's Cross-Motion for Summary Judgment (Feb. 27, 2015)

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.	Case No. 1:14-cv-397 (AJT/IDD)

ORDER

This matter is before the Court on Plaintiffs' Motion for Summary Judgment [Doc. No. 56] and Defendant Federal Election Commission's Motion for Summary Judgment [Doc. No. 57] (collectively, the

"Motions"). Upon consideration of the Motions, the memoranda submitted in support thereof and in opposition thereto, the argument presented at the hearing held on October 31, 2014, and for the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that Plaintiffs' Motion for Summary Judgment [Doc. No. 56] be, and the same hereby is, DENIED; and it is further

ORDERED that Defendant Federal Election Commission's Motion for Summary Judgment [Doc. No. 57] be, and the same hereby is, GRANTED, and the action is hereby DISMISSED.

The Clerk is directed to enter judgment in favor of defendant Federal Election Commission and against plaintiffs Stop Reckless Economic Instability Caused By Democrats, the Tea Party Leadership Fund, and the Alexandria Republican City Committee and intervenor American Future PAC pursuant to Fed. R. Civ. P. 58 and in accordance with this Order, and to forward copies of this Order to all counsel of record.

/s/ Anthony J. Trenga
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
Feb. 27, 2015

Order of the U.S. Court of Appeals for the Fourth Circuit Denying Appellants' Motion for Rehearing and Rehearing *En Banc* (Apr. 22, 2016)

FILED: April 22, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-1455
(1:14-cv-00397-AJT-IDD)

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS ("Stop Reid"); TEA PARTY LEADERSHIP FUND; ALEXANDRIA REPUBLICAN CITY COMMITTEE

Plaintiffs – Appellants

AMERICAN FUTURE PAC

Intervenor/Plaintiff – Appellant

and

NIGER INNIS; NIGER INNIS FOR CONGRESS

Plaintiffs

v.

FEDERAL ELECTION COMMISSION

Defendant – Appellee

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Chief Judge Trexler, Judge Shedd and Judge Dillon.

For the Court

/s/ Patricia S. Connor, Clerk

Order of the U.S. District Court for the Eastern District of Virginia Dismissing Counts I and II for Lack of Subject-Matter Jurisdiction
(May 18, 2016)

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.	Case No. 1:14-cv-397 (AJT/IDD)

ORDER

This matter is before the Court on remand from the United States Court of Appeals for the Fourth Circuit with instructions to dismiss Counts l and II of the Complaint [Doc. No. 1] for lack of subject matter jurisdiction. *See Stop Reckless Econ. Instability*

Caused by Democrats v. Fed. Election Comm'n, 814 F.3d 221 (4th Cir. 2016). Accordingly, it is hereby

ORDERED that Counts I and II of the Complaint [Doc. No. 1] be, and the same hereby are, DISMISSED for lack of subject matter jurisdiction.

The Clerk is directed to forward copies of this Order to all counsel of record.

/s/ Anthony J. Trenga
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
May 18, 2016