UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

TEA PARTY LEADERSHIP FUND, *et al*.,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil Case No. 12-1707 (KBJ/AK)

MEMORANDUM ORDER

This case was referred to the undersigned by the Honorable Ketanji Brown Jackson for resolution of Plaintiffs' Motion to Stay Discovery ("Pls.' Mot.") [13] and Defendant's Cross-Motion to Compel Responses to the Commission's Discovery Requests ("Def.'s Cross-Mot.") [16]. *See* 05/03/13 Referral to Magistrate Judge [33]. Plaintiffs moves to stay discovery on the grounds that Defendant's requests for discovery prior to the resolution of any dispositive motions are "burdensome, intrusive and unwarranted." (Pls.' Mot. [13] at 1.) Defendant moves to compel Plaintiffs' responses to its discovery requests on the grounds that the information requested is not only relevant to the issue of jurisdiction but also necessary before Defendant can respond to any dispositive motion. (Def.'s Cross-Mot. [16] at 1-3.)[1]

I. Background

The underlying action involves Plaintiffs' challenge to a law imposing a six-month waiting period on newly formed multicandidate political committees before they are allowed to contribute a maximum of $5,000 per candidate per election. *See* 2 U.S.C. § 441a(a)(2)(A). On May 9, 2012, the Tea Party Leadership Fund ("TPLF"), one of the three plaintiffs in this case (collectively referred to as "Plaintiffs"), registered as a non-connected Hybrid PAC with the Federal Election Commission ("FEC" or "Defendant"). Compl. [1] at ¶ 2. The two remaining

[1] Currently pending before the trial court is Plaintiffs' Motion for Summary Judgment [19] and Defendant's Cross-Motion to Continue to Allow for Discovery [20].

plaintiffs in this case are Mr. John Raese ("Raese"), the 2012 Republican candidate for the United States Senate from West Virginia, and Mr. Sean Bielat ('Bielat"), the 2012 Republican challenger for the House of Representatives from Massachusetts' Fourth Congressional District. (Compl.[1] at ¶¶ 21-22.) TPLF made contributions of $2,500 to both Raese and Bielat leading up to the 2012 elections. (*Id.* at ¶ 5.) TPLF requested an advisory opinion from Defendant seeking permission to make political contributions in excess of $2,500, but not exceeding $5,000, prior to the end of the six-month waiting period (*id.* at ¶51); however, such request was denied by Defendant. (*Id*. at ¶ 14.) TPLF's six-month waiting period, mandated by 2 U.S.C. § 441a(a)(4), ended on November 9, 2012, three days following the 2012 elections. (Pls.' Mot. at 5.)[2] In their Complaint, Plaintiffs collectively argue that the six-month waiting period infringes on their constitutional rights to associate and speak freely and it does not fulfill its intended purpose of preventing corruption of candidates and circumvention of other statutory contribution limits imposed on political committees. (Compl. [1] at ¶ 68).

Defendant served its discovery requests on November 26, 2012, and Plaintiffs' responses were due on December 26, 2012. (Def.'s Cross-Mot. at 18.) On December 18, 2012, Plaintiffs moved to stay discovery, arguing that the resolution of a constitutional challenge is purely a matter of law, involving no questions of fact, which may be addressed on summary judgment. (Pls.' Mot. [13] at 1.)[3] In response, on January 8, 2013, Defendant filed a cross-motion to compel discovery arguing that Plaintiffs' discovery responses are relevant to whether or not this Court has proper jurisdiction. (Def.'s Cross-Mot. [16] at 1.)

II. Legal Standard

Federal Rule of Civil Procedure 26(b) authorizes discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery . . ." For purposes of discovery, relevance is broadly construed. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 368 F. Supp. 2d 83, 86 (D.D.C. 2005) (citing *Food Lion, Inc. v. United Food & Comm'l Workers Int'l Union*, 103 F.3d

[2] After the six-month waiting period expires, multicandidate political committees are permitted to make a maximum contribution of $5,000 to an individual candidate. 2 U.S.C. § 441a(a)(2)(A).

[3] Defendant invoked Fed. R. of Civ. P. 33(b)(4), requesting this Court to find that "[b]ecause [P]laintiffs raised no timely objections to any specific discovery request, they are barred from raising such objections now." (Def.'s Cross-Mot. [16] at 18.) Rule 33(b)(4) states: "The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure." Fed. R. Civ. P. 33(b)(4). In this case, Plaintiffs moved to stay discovery in lieu of responding to the Defendant's discovery requests.

1007, 1012 (D.C. Cir. 1997)). "A showing of relevance can be viewed as a showing of need; for the purpose of prosecuting or defending a specific pending civil action, one is presumed to have no need of a matter not 'relevant to the subject matter involved in the pending action.'" *Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1341 (D.C. Cir. 1984) (citing Fed. R. Civ. P. 26(b)(1)).

If a relevancy objection is raised, the party seeking discovery must demonstrate that the information sought to be compelled is discoverable. *See Alexander v. Federal Bureau of Investigation*, 194 F.R.D. 316, 325 (D.D.C. 2000). If there is an objection based on undue burden, the objecting party must make a specific, detailed showing of how the discovery request is burdensome. *See Chubb Integrated Systems Ltd. v. National Bank of Washington,* 103 F.R.D. 52, 60-61 (D.D.C. 1984) ("An objection must show specifically how an interrogatory is overly broad, burdensome or oppressive, by submitting affidavits or offering evidence which reveals the nature of the burden.") Fed. R. Civ. P. 37(a)(3)(B) allows a party to move to compel a response to interrogatories and document production requests.

Fed. R. Civ. P. 26(b)(2)(iii) provides that the court may limit discovery on its own initiative, if it determines that the "burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issue at stake in the litigation, and the importance of the proposed discovery in resolving those issues." Rule 26 vests the court with "broad discretion to tailor discovery narrowly." *In re Sealed Case (Medical Records)*, 381 F.3d 1205, 1215 (D.C. Cir. 2004) (quoting *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998)). In exercising that discretion, the court may "undertake some substantive balancing of interests". *Laxalt v. McClatchy*, 809 F. 2d 885, 890 (D.C. Cir. 1987) (citation omitted). *See also Food Lion, Inc. v. United Food and Commercial Workers Int'l. Union*, 103 F.3d 1007, 1012 (D.C. Cir. 1997) ("[A] district court's decision to permit or deny discovery is reviewable only for an abuse of discretion.") (citation omitted).

Rule 56(d) [formerly Rule 56(f)] emphasizes the "importance of discovery in defending a motion for summary judgment." *Wiggins v. State Farm Fire and Cas. Co.,* 153 F. Supp. 2d 16, 19 (D.D.C.2001) (citing *Dyson v. Winfield,* 113 F. Supp. 2d 35, 42 (D.D.C.2000)). *See also Convertino v. U.S. Dep't of Justice*, 684 F.3d 93, 99 (D.C. Cir. 2012) ("[S]ummary judgment is premature unless all parties have 'had a full opportunity to conduct discovery[.]'"(quoting

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986))). Rule 56(d) motions "requesting time for additional discovery [before summary judgment] should be granted 'almost as a matter of course unless the nonmoving party has not diligently pursued discovery of the evidence.'" *Id.* (quoting *Berkeley v. Home Ins. Co.*, 68 F.3d 1409, 1414 (D.C. Cir. 1995)). *See also Resolution Trust Corp. v. N. Bridge Assocs.*, 22 F.3d 1198, 1203 (1st Cir.1994) ("Consistent with the salutary purposes underlying Rule 56(f), district courts should construe motions that invoke the rule generously, holding parties to the rule's spirit rather than its letter." (citation omitted)).

Notably, the nonmoving party implementing Federal Rule of Civil Procedure 56(d) "bears the burden of identifying the facts to be discovered that would create genuine issues of material fact and the reasons why the party cannot acquire those facts without ... discovery." *Graham,* 608 F. Supp. 2d at 52-53 (citation omitted). Rule 56(d) is not "designed to allow fishing expeditions, and [the nonmoving party] must specifically explain what [its] proposed discovery would likely reveal and why that revelation would advance [its] case." *Id.* at 54 (quotation omitted). *See also Milligan v. Clinton*, 266 F.R.D. 17, 18-19 (D.D.C. 2010) (directing the party requesting additional discovery before summary judgment to supplement her motion with an explanation of how the discovery she sought would create a genuine factual dispute).[4]

III. Analysis

A. Discovery is not precluded in First Amendment cases

Plaintiffs argue that because their case involves a constitutional challenge under the First Amendment, there should be "minimal if any discovery, to allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation." (Pls.' Mot [13] at 10) (quoting *FEC v. Wisconsin Right to Life, Inc.* ("*WRTL"*), 551 U.S. 449, 469 (2007)). *See also Citizens United v. FEC*, 558 U.S. 310, 334 (2010) (noting that protracted lawsuits stifle speech because "[b]y the time the lawsuit concludes, the election will be over and the litigants in most cases will have neither the incentive nor, perhaps, the resources to carry on. . . .")[5]

[4] Implementation of discovery through Rule 56(d) requires the movant to submit an affidavit to the court detailing why additional information is necessary. *Convertino*, 684 F.3d at 99. The affidavit submitted must 1) outline the facts the movant seeks and explain why the facts are crucial to the movant's case, 2) explain why the movant was unable to produce the facts in opposition to the opposing party's motion for summary judgment, and 3) demonstrate that the facts sought are discoverable. *Id.* at 99-100. (internal citations and quotation marks omitted).

[5] In *Citizens United*, *id.*, a nonprofit corporation sued the FEC for declaratory/injunctive relief in anticipation of being subjected to civil and criminal penalties for airing a film about a presidential candidate within thirty days of the primary election. In *Wisconsin Right to Life*, *supra*., a nonprofit advocacy corporation sued the FEC seeking a ruling that certain provisions of the Bipartisan Campaign Reform Act violated the First Amendment by barring the

Plaintiffs further assert that summary judgment is preferable in cases involving First Amendment disputes because "unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights and because speedy resolution of cases involving free speech is desirable." (Pls.' Mot. at 13) (citing *Dorsey v. National Enquirer, Inc.*, 973 F.2d 1431, 1435 (9th Cir. 1992)). *See also Hickey v. Capital Cities/ABC, Inc.*, 792 F. Supp. 1195, 1199 (D. Or. 1992) (Summary judgment is the "preferred means of dealing with first amendment cases due to the chilling effect of first amendment rights inherent in expensive and time-consuming litigation." (citing *Basilius v. Honolulu Pub. Co., Ltd.*, 711 F. Supp. 548, 550 (D. Hawaii 1989))).

The Court notes that the cases relied upon by Plaintiffs involve claims for defamation against a newspaper (*Dorsey*), a network (*Hickey*) and the publisher of a magazine (*Basilius*) and none of the cases explicitly address whether discovery should be permitted prior to briefing of summary judgment motions. Both the Supreme Court and this district have permitted discovery prior to summary judgment in cases involving facial challenges to voting and elections-related laws. *See, e.g., Crawford v. Marion County Election Bd.*, 553 U.S. 181, 187-88 (2008) (describing district court's summary judgment decision, after discovery, rejecting facial challenge to state voter identification requirement due to insufficient evidence); *McConnell v. FEC*, 251 F. Supp. 2d 176, 206-207 (D.D.C 2003), *aff'd in part, rev'd in part*, 540 U.S. 93 (2003) (agreeing that "even in the context of a facial challenge" to campaign finance laws, "wide ranging" discovery was necessary (citing *Turner Broadcasting Sys. v. FCC*, 512 U.S. 622, 664-68 (1994))).[6]

In *Turner*, cable television operators and programmers challenged certain provisions of the Cable Television Consumer Protection Act that required them to carry local broadcast stations. The Supreme Court remanded the case to "permit the parties to develop a more thorough factual record." 512 U.S. at 668. The Supreme Court held that in order to demonstrate the detrimental impact of striking a law, the Government needed to more fully demonstrate possible harms to the broadcasting industry and substantially elaborate on the evidence behind its assertions. *Id.* at 667. Without such elaboration, the Court could not determine if the threat to the

---

broadcasting of advertisements that the corporation wanted to run before the state's primary and general federal elections. Those two cases involved restrictions on the content of speech while the case at bar involves the content-neutral application of a regulation.

[6] *Crawford*, *supra*. involved a Fourteenth Amendment challenge to the Indiana law requiring photo identification in order to vote.

industry outweighed the constitutional challenge made by the Plaintiffs. *Id*. Additionally, the Court noted that fair consideration of the case required more information regarding the projected "actual effects" of striking the law, a crucial consideration in a First Amendment case. *Id.* at 667-668.

The *McConnell* case encompassed eleven consolidated actions challenging the Bipartisan Campaign Reform Act of 2002 and raised issues concerning the financing of federal election campaigns. 251 F. Supp. 2d at 183. In outlining the procedural history of *McConnell*, the court referred to a status conference that was held to determine the scope of discovery necessary to develop an adequate factual record. 251 F. Supp. 2d at 206. The defendants in *McConnell* "argued that wide-raging discovery was necessary even in the context of a facial challenge, ... [in order to] look to the record of the case for evidence substantiating the governmental interests asserted in support of legislation said to violate the First Amendment." *Id*. The Court agreed with the defendants, finding that extensive discovery was appropriate in order to develop an adequate factual record. *Id.* at 207. The Court also emphasized the danger of compromising "informed and deliberate judicial decisionmaking" in favor of quickly proceeding with the litigation. *Id.*

The Court finds that discovery should not be precluded merely because this case involves a First Amendment challenge and there is a preference to resolve the dispute expeditiously to avoid chilling speech.[7] The *Crawford, Turner* and *McConnell* cases, *supra.*, indicate that it is appropriate for the parties to conduct discovery in cases involving constitutional challenges.

B. Discovery is necessary to address the Court's Article III jurisdiction.

Defendant argues that discovery is necessary for purposes of addressing this Court's jurisdiction. The jurisdictional question in this case rests on whether this case properly falls within the "capable of repetition, yet evading review" exception to dismissing otherwise moot cases. Plaintiffs concede that their case is moot but argue that the Court retains jurisdiction because this case falls within the "capable of repetition, yet evading review" doctrine. (Pls.' Mot. [13] at 4.) The "capable of repetition, yet evading review" doctrine applies where "(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." (*Id*.) (citing *Weinstein v. Bradford*, 423 U.S. 147, 149

[7] The Court notes that the six-month waiting period that is being challenged does not bar newly formed political action committees from making any contributions but instead they are limited in the amount they can contribute for a discrete period of time

(1975)). In addressing the first prong of this doctrine, Plaintiffs look to *Wisconsin Right to Life*, 551 U.S. at 462, where the court found that the plaintiff advocacy corporation in *WRTL* could not have "obtained judicial review of its claims in time for it to air its ads during the BCRA blackout periods." Plaintiffs similarly assert that they could not have obtained judicial review of its claims in time for the TPLF to increase its contributions to the individual Plaintiffs. (Pls.' Mot. [13] at 6.) This Court agrees that Plaintiffs could not have obtained judicial review of their claims before the election took place.

Regarding the second prong of this doctrine, Plaintiffs also look to *Wisconsin Right to Life*, which indicates that there must be a "reasonable expectation or a demonstrated probability [ ]that the same controversy will recur involving the same complaining party." *WRTL*, 551 U.S. at 462 (internal quotation marks omitted). In *WRTL*, the plaintiff non-profit advocacy corporation aired radio advertisements as part of a "grassroots lobbying campaign." 551 U.S. at 458. The Supreme Court found that the plaintiff had "credibly claimed that it planned on running materially similar future targeted broadcast ads" in the future and even "sought another preliminary injunction based on an ad it planned to run" for a particular approaching blackout period. *Id.* at 463-465 (internal quotation marks omitted).

In this case, TPLF will never be disadvantaged by the six-month waiting period again. Whether or not Plaintiffs Sean Bielat and John Raese will be disadvantaged by the six-month waiting period in the future is an inquiry that may be answered through the discovery being sought by Defendant. The FEC contends that it is not enough for the Plaintiffs to assert that repetition is a possibility but instead the evidence must show a "demonstrated probability" of repetition. (Def.'s Cross-Mot. at 10) (citing *James v. U.S. Dep't of Health & Human Servs.*, 824 F.2d 1132, 1136 (D.C. Cir. 1987)). Plaintiffs argue that they have "amply demonstrated" that Mr. Bielat and Mr. Raese have a "reasonable probability" of running for federal office in the future. (Pls.' Reply [17] at 10.) Plaintiffs rely upon the fact that "Messrs. Raese and Bielat have already run for federal office a combined total of six times." *Id.* Plaintiffs further argue that the FEC could "explore its own voluminous database and determine how many unsuccessful candidates have run for office more than once." (Pls.' Reply at 10.) The Court finds that the number of

unsuccessful candidates who have run for office multiple times has no bearing on whether Plaintiffs Bielat and Raese will run for office again.[8]

Plaintiffs have the burden of showing a "demonstrated probability" of repetition—a standard that was articulated in *Herron for Cong. v. FEC*, 903 F. Supp. 2d 9, 14 (D.D.C. 2012) (quoting *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curiam)). In *Herron*, the named plaintiff (hereinafter referred to as "Herron") was a political committee for an unsuccessful Congressional candidate [Mr. Herron] who alleged that his opponent violated federal law by failing to make certain disclosures in his FEC filings. *Id.* at 11.[9] Herron filed an administrative action with the FEC and when the FEC decided not to issue penalties, Herron filed a civil action against the FEC.

The court began its analysis by noting that Herron had the burden of demonstrating that the claim was not moot because the election had passed. *Id.* at 13. In applying the "capable of repetition, yet evading review" doctrine, the court "assume[d] that Herron's claim –like most electoral controversies –could not be fully litigated prior to election day." *Id.* at 14. Accordingly, the first prong of the standard set forth in *Wisconsin Right to Life*; i.e., a challenged action with a duration too short to permit full litigation prior to cessation, was met. *Id.* (citing *WRTL*, 551 U.S. at 462.)

The court then examined the second prong of the *WRTL* standard requiring a reasonable expectation that the same complaining party will be subject to the same action. *Id.* The court noted that "[o]rdinarily, courts require plaintiffs to submit evidence suggesting that their controversy is likely to recur." *Id.* at 14. In Herron's case, Mr. Herron had to demonstrate his "clear and definite intent" to participate if future elections and show a "demonstrable probability" that he would again be subjected to the same action. *Id.*

The Court found that the case was moot, in part because Mr. Herron admitted that he was only "*considering*" another run for office. *Id.* The court further determined that:

---

[8] The Court also notes that Plaintiffs' references to other candidates for office and political action committees that may be disadvantaged by the statute at issue in this case, (Pls.' Reply Memorandum [17] at 10-11), as well as the Plaintiffs' reliance on *Dunn v. Blumstein*, 405 U.S. 330 (1972), (Pls.' Mot. at 4-5), are misplaced because the instant case is not a class action. The Supreme Court ruled that "in the absence of a class action, the 'capable of repetition, yet evading review' doctrine [is] limited to the situation where ... there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again." *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (citing *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173, 187 (1979); *Sosna v. Iowa*, 419 U.S. 393 (1975)).

[9] Herron alleged that his political opponent failed to file accurate financial disclosures and the campaign received an unlawful corporate contribution. 903 F.Supp.2d at 12.

> [b]ecause [Mr.] Herron does not provide any evidence [regarding his opponent receiving another allegedly improper bank loan], his claim is theoretical at best. And a "theoretical possibility" does not create a justiciable controversy. *Murphy v. Hunt*, 455 U.S. at 482, 102 S.Ct. 1181; *Pharmachemie*, 276 F.3d at 633; *see also Hall v. Beals*, 396 U.S. 45, 49–50, 90 S.Ct. 200, 24 L.Ed.2d 214 (1969) (rejecting "speculative contingencies" regarding future elections as grounds for continuing a moot controversy); *Golden v. Zwickler*, 394 U.S. 103, 109, 89 S.Ct. 956, 22 L.Ed.2d 113 (1969) (concluding that it was "wholly conjectural" that the plaintiff would be a candidate for Congress again and thereby run afoul of a state's electoral regulation).

Id.

In contrast, the *Herron* court provided examples of two cases in which the Supreme Court found a "demonstrated probability" that the controversy was capable of repetition. *Id.* at 15. *See Davis v. FEC*, 554 U.S. 724, 736 (2008)(where the plaintiff publicly announced his intention to run in an upcoming federal election); *Wisconsin Right to Life*, 551 U.S. at 463 (finding that the controversy was capable of repetition during the next election cycle because plaintiff had filed a similar legal challenge to the same campaign finance regulations during the prior election cycle).

In this case, Defendant's discovery requests are aimed at ascertaining whether the controversy at issue in this case is likely to recur; i.e., whether Plaintiffs Raese and Bielat intend to run for office in the future and they anticipate that political action committees will be willing to give them contributions of $5,000.00 but will be prohibited from doing so. Plaintiffs characterize the discovery requested as "a fishing expedition into the private operations of Tea Party Leadership Fund, and into the personal lives of Mr. Raese and Mr. Bielat" and "overly expansive." (Pls.' Mot. at 11) This Court finds that the discovery propounded by Defendant requests information that Plaintiffs are required to prove in order to demonstrate that their claims are not moot. Furthermore, the discovery requests are limited in number and the scope of such requests may be further limited by this Court to reduce any burden on the Plaintiffs. Accordingly, the Court determines that, at this stage in the proceeding, Defendant is entitled to obtain some discovery from the Plaintiffs regarding issues that are relevant to jurisdiction.

C. Permitting discovery before Defendant responds to the motion for summary judgment

This Court has already determined that discovery is not unilaterally barred in First Amendment cases and further, that Defendant is entitled to obtain responses to its discovery

requests that are relevant to the issue of the trial court's jurisdiction.[10] Accordingly, this Court need not consider Defendant's argument that discovery should be permitted prior to its response to Plaintiffs' summary judgment motion.[11]

D. Discovery Requested

Plaintiffs attached a copy of Defendant's discovery requests as exhibits to their motion. *See* Defendant's Discovery Requests to Raese [13-2]; Defendant's Discovery Requests to Bielat [13-3]; Defendant's Discovery Requests to the Tea Party Leadership Fund [13-4]. The Defendant served Plaintiffs Bielat and Raese with the same six interrogatories and six requests for production of documents, and a request for admission that the documents produced are originals or true and correct copies of the originals. Def.'s Disc. Reqs. [13-2 & 13-3].[12] The Defendant served Plaintiff TPLF with one interrogatory, five requests for production of documents, and a request for admission that the documents produced are originals or true and correct copies of the originals. Def.'s Disc. Reqs. [13-4].

1. Defendant's Interrogatories

   A. Plaintiff Raese shall respond to Interrogatories Nos. 1, 2, 5 and 6. Plaintiff Raese shall respond to Interrogatory No. 3 although it may be impossible for him to identify political committees that have not yet been created (or even contemplated). Plaintiff Raese need not respond to Interrogatories Nos. 4 and 7.

   B. Plaintiff Bielat shall respond to Interrogatories Nos. 1, 2, 4 and 5. Plaintiff Bielat shall respond to Interrogatory No. 3 although it may be impossible for him to identify political committees that have not yet been created (or even contemplated). Plaintiff Bielat need not respond to Interrogatory No. 6.

[10] This ruling is not meant to preclude Defendant from pursuing responses to its other discovery requests at a later date.

[11] As previously noted, this argument by Defendant overlaps with the arguments set forth in Defendant's Cross-Motion to Continue to Allow for Discovery [20], which is pending before the trial court. Rule 56(d) of the Federal Rules of Civil Procedure provides that where a party moves for summary judgment and the nonmovant demonstrates by affidavit that it lacks sufficient facts to substantiate its opposition, the court may defer consideration of the motion for summary judgment or "allow time to obtain affidavits or declarations or to take discovery." Fed. R. Civ. P. 56(d)(2). The rule essentially "allows a summary judgment motion to be denied, or the hearing on the motion to be continued, if the nonmoving party has not had an opportunity to make full discovery." *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). This rule is crucial for fairness in judicial proceedings as it would be patently unfair for a moving party to "railroad[] a non-moving through a premature motion for summary judgment before the non-moving party has had the opportunity to make full discovery." *Graham v. Mukasey*, 608 F. Supp. 2d 50, 53 (D.D.C. 2009) (quoting *Berliner Corcoran & Rowe LLP v. Orian*, 563 F. Supp. 2d 250, 253 (D.D.C.2008)) (internal quotation marks omitted).

[12] Defendant requested one additional interrogatory from Raese.

C. Plaintiff TPLF shall respond to Interrogatory No. 1.

2. Defendant's Requests for Production of Documents

D. Plaintiff Raese shall produce documents responsive to Request for Production No. 1, to the extent that the requested communications are confined to the subject matter of this civil action and are not privileged. Plaintiff shall produce a privilege log for documents that are confined to the subject matter of this civil action but are alleged to be privileged. Plaintiff Raese need not produce documents responsive to Requests for Production Nos. 4, 5, or 6. Plaintiff Raese shall produce documents responsive to Requests for Production Nos. 2 and 3.

E. Plaintiff Bielat shall produce documents responsive to Request for Production No.1, to the extent that the requested communications are confined to the subject matter of this civil action and are not privileged. Plaintiff shall produce a privilege log for documents that are confined to the subject matter of this civil action but are alleged to be privileged. Plaintiff Bielat need not produce documents responsive to Requests for Production Nos. 4, 5, or 6. Plaintiff Bielat shall produce documents responsive to Requests for Production Nos. 2 and 3.

F. Plaintiff TPLF need not produce documents responsive to Request for Production Nos. 2 and 5 and that portion of Request for Production No. 3 inquiring about future contributions. Plaintiff TPLF need only respond to Request for Production No. 4 to the extent that the requested communications are confined to the subject matter of this civil action and are not privileged. Plaintiff shall produce a privilege log for documents that are confined to the subject matter of this civil action but are alleged to be privileged. Accordingly, Plaintiff TPLF shall produce documents responsive to Request for Production No. 1 and a portion of Requests for Production Nos. 3 and 4, as noted above.

2. Defendant's Requests for Admission

Raese, Bielat, and TPLF shall respond to the Requests for Admission asking for verification that the documents produced are originals or true copies.

It is hereby this 26th day of August, 2013,

ORDERED that the Plaintiffs' Motion to Stay Discovery [13] be and hereby is granted in part and denied in part and it is further

ORDERED that the Defendant's Cross-Motion to Compel Responses to the Commission's Discovery Requests [16] be and hereby is granted in part and denied in part. Within fifteen [15] days from the date of this Memorandum Order, Plaintiffs John Raese, Sean Bielat, and the Tea Party Leadership Fund must respond to Defendant's discovery requests, consistent with the rulings in this Memorandum Order.

_____/s/_____
ALAN KAY
UNITED STATES MAGISTRATE JUDGE