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

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS, NIGER INNIS, NIGER INNIS FOR CONGRESS, TEA PARTY LEADERSHIP FUND, and ALEXANDRIA REPUBLICAN CITY COMMITTEE,	Civ. No. 1:14-397 (AJT-IDD)
	NO HEARING REQUESTED
Plaintiffs,	
v.	
FEDERAL ELECTION COMMISSION,	
Defendant.	

MOTION OF PLAINTIFFS STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS, TEA PARTY LEADERSHIP FUND, AND ALEXANDRIA REPUBLICAN CITY COMMITTEE TO AMEND AND SUPPLEMENT COMPLAINT PURSUANT TO FED. R. CIV. P. 15(a), (d)

Plaintiffs Stop Reckless Economic Instability Caused by Democrats ("Stop PAC"), Tea Party Leadership Fund ("the Fund"), and Alexandria Republican City Committee ("ARCC") hereby move this Court to accept the attached Exhibit as an Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B).

Out of an abundance of caution, Plaintiffs Stop PAC, the Fund, and ARCC ask in the alternative that this Court accept the attached Exhibit as an Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(2), and a Supplemental Complaint pursuant to Fed. R. Civ. P. 15(d). Plaintiffs have separately have filed a Motion to Dismiss Plaintiffs Niger Innis and Niger Innis for Congress from this case pursuant to Fed. R. Civ. P. 41(a)(2).

Summary of Proposed Changes to Complaint

The proposed new complaint is attached as Exhibit 1 (hereafter, "Amended Complaint"). The proposed Amended Complaint:

- omits Niger Innis and Niger Innis for Congress ("NIFC") as Plaintiffs, as well as any claims by them. As explained in the accompanying Rule 41(a)(2) motion, Niger Innis lost his congressional primary and therefore no longer has an interest in pursuing this lawsuit concerning the constitutionality of certain campaign finance restrictions. Insofar as the proposed new complaint seeks to drop these claims, it is an amended complaint cognizable under Fed. R. Civ. P. 15(a);

- makes certain minor technical corrections that do not affect either the gravamen of Plaintiffs' factual allegations, their causes of action, or their supporting legal theories. Insofar as the proposed new complaint modifies existing allegations, it is an amended complaint cognizable under Fed. R. Civ. P. 15(a); and

- contains additional allegations concerning contributions to candidates that Plaintiff Stop PAC made since the date the original complaint was filed on April 14, 2014. Insofar as the proposed new complaint makes allegations concerning events that occurred after the filing date of the original complaint, it may be cognizable either as an amended complaint under Rule 15(a)(2), which Plaintiffs have an absolute right to file regardless of its contents, or as a supplemental complaint Fed. R. Civ. P. 15(d).

Legal Standards

"A party may amend its pleading once ***as a matter of course*** within . . . 21 days after service of a responsive pleading." Fed. R. Civ. P. 15(a)(1)(B) (emphasis added). "'The plaintiff's right to amend once [within this timeframe] is ***absolute***.'" *Scinto v. Stansberry*, 507 F.

App'x 311, 312 (4th Cir. 2013) (quoting *Galustian v. Peter*, 591 F.3d 724, 730 (4th Cir. 2010); emphasis added). Defendant Federal Election Commission ("FEC") filed its Answer on June 16, 2014. Plaintiffs have filed this motion within 21 days of the FEC's responsive pleading. Thus, this Court should accept the Amended Complaint, in its entirety, "as a matter of course" without further analysis; any parties or claims omitted from the Amended Complaint should be deemed excluded from this case.[1] *See, e.g.*, *Foxworth v. United States*, No. 3:13-CV-291, 2013 U.S. Dist. LEXIS 149012, at *6-7 (E.D. Va. Oct. 16, 2013). Granting this motion pursuant to Rule 15(a)(1)(B) will moot Plaintiffs' accompanying Rule 41(a)(2) motion, as there would be no basis for either retaining Innis and NIFC as party litigants in this case, or nevertheless continuing to treat them as party litigants for discovery purposes, as the FEC demands.

Despite their absolute right to file the appended Amended Complaint as a matter of right, Plaintiffs have filed this motion out of an abundance of caution, given the FEC's insistence during the parties' "meet and confer" session on attempting to treat Innis and NIFC as party litigants for discovery purposes as a condition of their dismissal from this case. If this Court concludes that Rule 15(a)(1)(B) is somehow inapplicable, it still may grant leave to amend pursuant to Rule 15(a)(2), which requires a court to "freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

> In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be freely given.

[1] As discussed at length in the accompanying Rule 41(a)(2) motion, the FEC is asking this Court to continue to treat Niger Innis and NIFC as plaintiffs for discovery purposes, despite the fact that Innis and NIFC are seeking to drop their claims before this Court has even held its initial scheduling conference or any discovery has been propounded.

Foman v. Davis, 371 U.S. 178, 182 (1962) (quotation marks omitted); *see also Equal Rights Center v. Niles Bolton Assocs.*, 602 F.3d 597, 603 (4th Cir. 2010) ("A district court may deny a motion to amend when the amendment would be prejudicial to the opposing party, the moving party has acted in bad faith, or the amendment would be futile."). The Fourth Circuit has held that this standard is effectively interchangeable with that for granting voluntary dismissal under Fed. R. Civ. P. 41(a)(2).[2]

Moreover, Fed. R. Civ. P. 15(d) provides, "On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d). "The filing of a supplemental pleading is an appropriate mechanism for curing numerous possible defects in a complaint," *Franks v. Ross*, 313 F.3d 184, 198 (4th Cir. 2002), particularly including a "defect which otherwise would have deprived the district court of jurisdiction," *Feldman v. Law Enforcement Assocs. Corp.*, No. 13-1849, 2014 U.S. App. LEXIS 8833, at *20-21 (May 12, 2014); *see, e.g.*, *Mathews v. Diaz*, 426 U.S. 67, 75 (1976) (holding that a "supplemental complaint in the District Court" may "eliminate[] [a] jurisdictional issue"). This standard a court must apply in deciding whether to permit supplemental pleadings under Rule 15(d) is effectively the same as that for amending a complaint under Rule 15(a)(2), *Franks*, 313 F.3d at 198 n.15, or dismissing a claim under Rule 41(a)(2), *cf*. *Miller*, 114 F. App'x at 539.

[2] *See Miller v. Terramite Corp.*, 114 F. App'x 536, 539 (4th Cir. 2004) ("Because Rule 41(a)(2) provides for the dismissal of 'actions' rather than claims, it can be argued that Rule 15 is technically the proper vehicle to accomplish a partial dismissal of a single claim, but similar standards govern the exercise of discretion under either rule."); *Skinner v. First Am. Bank*, No. 93-2493, 1995 U.S. App. LEXIS 24237, at * (4th Cir. Aug. 28, 1995) ("Because Rule 41 provides for the dismissal of actions, rather than claims, Rule 15 is technically the proper vehicle to accomplish a partial dismissal. However, similar standards govern the exercise of discretion under either rule.") (citations omitted).

This Court Should Accept the Attached Exhibit as Plaintiffs' Operative Pleading in This Case

This Court should grant Plaintiffs' Motion and accept the attached Exhibit as the operative pleading for Plaintiffs Stop PAC, the Fund, and ARCC in this case; Niger Innis and NIFC should neither continue to be included as Plaintiffs in this case, nor treated as such for discovery purposes. As discussed above, Plaintiffs are categorically entitled to replace their original complaint with the attached Exhibit, without precondition, since this motion has been filed within 21 days of the FEC's Answer. *See* Fed. R. Civ. P. 15(a)(1)(B); *Scinto*, 507 F. App'x at 312.

Even if this Court chooses to traverse Rule 15(a)(1)(B) and consider the substance of the proposed pleading, each of the proposed changes is appropriate under Rule 15(a)(2) or Rule 15(d). ***First***, the omission of Innis and NIFC as Plaintiffs is appropriate given that Innis lost the primary and is no longer a candidate for federal office. *See generally* Pls.' Memo. in Support of Their Motion to Dismiss Plaintiffs Niger Innis and Niger Innis for Congress Pursuant to Fed. R. Civ. P. 41(a)(2), Doc. #35-1 (July 3, 2014). Indeed, the FEC already has questioned this Court's subject-matter jurisdiction over Innis' claims under 2 U.S.C. § 437h. *See, e.g.*, FEC's Memo. in Support of Motion to Allow Time for Discovery Under Rule 56(d), Doc. #27-1, at 7 n.9 (May 23, 2013). Because the standards for amending a complaint under Rule 15(a)(2) and dismissing claims under Rule 41(a)(2) are materially identical, *Miller*, 114 F. App'x at 539 (4th Cir. 2004), Plaintiffs respectfully incorporate by reference the arguments in that concomitantly filed companion brief concerning the omission of Innis' and NIFC's claims.

Second, Plaintiffs Stop PAC, the Fund, and ARCC, have made some technical changes to their allegations—several in response to the FEC's Answer—to help clarify the legal issues in

this case and narrow the scope of the dispute between the parties. None of these changes substantively prejudice the FEC.

Finally, Plaintiff Stop PAC has added allegations concerning contributions it has made to candidates for federal office after the Complaint was filed. These allegations demonstrate that Stop PAC has contributed the maximum statutorily permitted amount of $2,600 to Dan Sullivan, a candidate in Alaska's August 19, 2014 primary election for U.S. Senate, *see* Amended Complaint, ¶ 24 (attached as Exh. 1), and an additional $2,600 to Congressman Joe Heck, the Republican nominee for Congress from Nevada's 3rd congressional district in the November general election, *id*. ¶ 28.

The proposed Amended Complaint further alleges that Stop PAC currently possesses (and will continue to retain in its account) $2,400 more that it wishes to immediately contribute to Sullivan, *id*. ¶ 25, as well as an additional $1,800 that it wishes to immediately contribute to Heck, *id*. ¶ 30. Although Stop PAC has received over 50 contributions (in excess of 1400 contributions) and made contributions to at least 5 federal candidates, it has not yet existed and been registered with the FEC for six months. Thus, it is treated as a "person" under federal campaign finance law and may contribute only $2,600 per election to candidates such as Sullivan and Heck, 2 U.S.C. § 441a(a)(1)(A); it may not take advantage of the $5,000 limit that would apply to an identically situated committee that has been existed and been registered with the FEC for six or more months, *id*. § 441a(a)(2)(A).

These new allegations, concerning contributions that Stop PAC made after the initial Complaint was filed, demonstrate the existence of an ongoing live case or controversy between Stop PAC and the FEC concerning the constitutionality of § 441a(a)(1)(A)'s candidate contribution limits, as applied to committees such as Stop PAC that have received 50

contributions and made contributed to five or more candidates. These new allegations confirm Stop PAC's standing and establish the continued and ongoing justiciability of this case. It is therefore appropriate for this Court to allow Plaintiff Stop PAC to supplement its complaint to add these allegations. *Feldman*, 2014 U.S. App. LEXIS 8833, at *20-21 (holding that supplementation of complaint is appropriate where new allegations help to establish court's jurisdiction).

CONCLUSION

For these reasons, this Court should ACCEPT the attached exhibit as the Amended Complaint of Plaintiffs Stop PAC, the Fund, and ARCC pursuant to Fed. R. Civ. P. 15(a)(1)(B). In the alternative, this Court should GRANT the motion of Plaintiffs Stop PAC, the Fund, and ARCC to amend and supplement their complaint pursuant to Fed. R. Civ. P. 15(a)(2) and (d).

Respectfully submitted,

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