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,	No. 1:14-CV-00397-AJT-IDD
	Judge Anthony John Trenga
Plaintiffs,	Magistrate Judge Ivan D. Davis
v.	
FEDERAL ELECTION COMMISSION,	
Defendant.	

PLAINTIFFS' REBUTTAL BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND AGAINST DEFENDANT'S RULE 56(d) MOTION

This case is about whether the First Amendment permits the government to impose different contribution limits on materially indistinguishable political committees (*i.e.*, committees that have received more than 50 contributions and contributed to more than five federal candidates), based solely on whether they have existed for 6 months—particularly when the government ***increases*** the amount such a committee may contribute to a candidate when it hits the six-month mark, while inexplicably ***slashing*** the amount it may contribute to political parties. None of the discovery that the FEC claims to need, which focuses on Plaintiffs themselves, is necessary to resolve this pure question of law. Plaintiffs therefore respectfully ask this Court to adjudicate the merits of their summary judgment motion and deny Defendant Federal Election Commission's ("FEC") motion under Fed. R. Civ. P. 56(d) for additional time in which to take discovery.

Each piece of discovery the FEC seeks relates to either:

(i) pure questions of law that the U.S. Supreme Court already has resolved, rather than issues of fact for which discovery is appropriate;[1]

(ii) matters that are not reasonably subject to dispute;

(iii) matters that, if established, would not give rise to a genuine dispute of material fact, *see Murchinson v. Astrue*, 466 F. App'x 225, 231 (4th Cir. 2012), or

(iv) information already within the FEC's possession.

Some of the FEC's requests test the bounds of credulity. For example, despite the fact that Plaintiff Niger Innis is appearing on Nevada ballots in a few weeks as a candidate for the Republican nomination for Congress and has an active candidate committee registered with the FEC, the FEC professes the need for discovery to determine "whether plaintiff Innis is eligible to vote in a presidential election." FEC Rule 56(d) Brief 13 n. 11;[2] *cf.* Voter Registration Record for Niger Innis (attached as Exh. 1 to Declaration of Dan Backer). Requests such as this underscore the fact that the FEC's requested discovery will lead only to unnecessarily delay, without facilitating resolution of the pure questions of law this case entails.

1. <u>Plaintiffs' claims are narrow, pure questions of law.</u> Plaintiffs ask this Court to determine whether, under the Equal Protection Clause and First Amendment, the Government

[1] *See Pisano v. Strach*, 743 F.3d 927, 932 (4th Cir. 2014) (affirming denial of Rule 56(f) motion in First Amendment ballot-access case "given that the question before us is principally one of law"); *see also Greater Balt. Ctr. for Pregnancy Concerns v. Mayor & City Council*, 683 F.3d 539, 559 (4th Cir. 2012) (affirming district court's refusal to allow defendant to take discovery concerning plaintiffs' First Amendment challenge, because plaintiffs asserted "overbreadth" claims that were apparent from "the face of the Ordinance" and constituted "question[s] of law") (quotation marks omitted);

[2] This brief uses the abbreviation "FEC Rule 56(d) Brief" to refer to Defendant Federal Election Commission's Memorandum in Support of Motion to Allow Time for Discovery Under Rule 56(d) and in Opposition to Plaintiffs' Motion for Summary Judgment, Doc. #27-1 (May 23, 2014).

may prohibit a political committee that meets all the requirements for recognition as a "multicandidate political committee" ("multicandidate PAC"), except for the fact that it has not yet existed for 6 months, from contributing the full statutory amount of $5,000 per election to the candidates it supports, while simultaneously ***cutting*** the amounts that it may contribute to local, state, and national political party committees once it reaches that six-month mark.

Current law imposes the following disparate limits on non-connected political committees that have received contributions from more than 50 people, and contributed to five or more federal candidates, based solely on whether the committee has been registered with the FEC for more than six months:

Recipient of Contribution:	If the Political Committee Making Contribution Has Existed for ***Less*** Than Six (6) Months	If the Political Committee Making the Contribution Has Existed for ***More*** Than Six (6) Months
Candidate	$2,600 2 U.S.C § 441a(a)(1)(A)	$5,000 2 U.S.C. § 441a(a)(1)(B) (limit *increased*)
State political party committee and local party committee affiliates	$10,000 2 U.S.C. § 441a(a)(1)(D)	$5,000 2 U.S.C. § 441a(a)(2)(C) (limit *reduced*)
National political party committee	$32,400 2 U.S.C. § 441a(a)(1)(B)	$15,000 2 U.S.C. § 441a(a)(2)(B) (limit *reduced*)

This Court may adjudicate the constitutionality of this disparate treatment of materially identical political committees ***as a matter of law***, based on precedent, without subjecting Plaintiffs to intrusive discovery about their intended exercise of their fundamental First Amendment rights.

2. **<u>This case is time-sensitive by its very nature</u>,** because Plaintiffs Stop Reckless Economic Instability Caused by Democrats ("Stop PAC")[3] and Niger Innis for Congress ("NIFC")[4] seek to challenge a discriminatory limit on contributions from political committees to candidates that applies only during the first six (6) months of a committee's existence. The FEC contends, and Plaintiffs are willing to stipulate for purposes of this litigation, that Stop PAC was formed on March 11, 2014. FEC Rule 56(d) Brief at 6 n.7. This means that the discriminatory restriction will be lifted on September 11, 2014 (at which point the FEC is likely to contend that this case has become moot,[5] *see* Hancock Decl., ¶ 7(a)).[6] To grant Stop PAC full and meaningful relief, this Court should adjudicate the challenges to the six-month waiting period ***within*** that six-month waiting period (and potentially also allow time for appeal).[7] Despite the FEC's claims to the contrary, this time pressure is not the result of Plaintiffs' timing or delay, *see*

[3] The FEC objects to abbreviating this Plaintiff's name as "Stop REID." *See* (hereafter, "FEC Rule 56(d) Brief"). Without conceding the legitimacy of FEC's position, and solely for the purpose of avoiding unnecessary disagreement over an immaterial issue, Plaintiffs will use the FEC's abbreviation of "Stop PAC" in this litigation.

[4] The FEC contends that this Court may not have jurisdiction over Plaintiff Niger Innis' claims. *See* FEC Rule 56(d) Brief at 7 n.9. Because Plaintiff Niger Innis for Congress, a political action committee not subject to 2 U.S.C. § 437h, seeks the same injunctive and declaratory relief as Plaintiff Innis himself, this Court need not resolve that issue in order to fully adjudicate this matter and grant full relief.

[5] Plaintiffs believe that this case will be subject to the exception to the mootness doctrine for disputes that are capable of repetition, yet evading review. *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 Lawrence v. Blackwell*, 430 F.3d 368, 372 (6th Cir 2005). This Court need not adjudicate this issue at the present time, however.

[6] This brief uses the abbreviation "Hancock Decl." to refer to the Declaration of Counsel in Support of Defendant Federal Election Commission's Motion to Allow Time for Discovery Under Rule 56(d), Doc. #27-2 (May 23, 2014).

[7] Indeed, the 60-day deadline for filing an Answer—of which it seems the FEC will take full advantage—itself will consume 1/3 of this period. *See* Fed. R. Civ. P. 12(a)(2).

FEC Rule 56(d) Brief at 15-17, but rather the impermanent nature of the waiting period itself, and would exist regardless of when a plaintiff sued to challenge it.[8]

3. <u>The FEC has not identified any appropriate issues for discovery</u>. The FEC's brief identifies three areas in which it claims it will seek discovery, but none of them warrant deferring ruling on Plaintiffs' summary judgment motion:

a. The burdens that the discriminatory contribution limits place on Plaintiffs—First, the FEC contends that it needs discovery about the "burdens [Plaintiffs] in fact face" as a result of the discriminatory limits Plaintiffs challenge. *See* FEC Rule 56(d) Brief 11; *see also* Hancock Decl., ¶ 7(a) ("[T]he Commission requires discovery to determine the actual scope and extent of the burdens that plaintiffs allege FECA has placed on their ability to associate with each other and to speak."). In particular, they seek to scrutinize Plaintiffs' "contributions, resources, plans, and capabilities." *Id*.

The constitutional burden imposed by the discriminatory limits Plaintiffs challenge is clear: Stop PAC is limited, throughout the first six months of its existence, to contributing only $2,600 per election (rather than $5,000) to each federal candidate it supports. And Plaintiff Tea Party Leadership Fund ("the Fund") is ***permanently*** limited to contributing only $5,000 annually (rather than $10,000) to the state and local political party committees it supports, as well as $15,000 (rather than $32,400) to national political party committees.

[8] In any event, it is neither surprising nor unreasonable that political committees are especially likely to coalesce, be able to raise funds, and make contributions or independent expenditures as elections draw near. *See Citizens United v. FEC*, 558 U.S. 310, 334 (2010) ("It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held. . . . The need or relevance of the speech will often first be apparent at this stage in the campaign."). Moreover, plaintiffs wishing to bring challenges such as this must attempt to minimize the risk that their claims be subject to dismissal as unripe, hypothetical, or abstract.

The FEC misapprehends the nature of Plaintiffs' allegations. The Supreme Court already has held, ***as a matter of law***, that contribution limits burden fundamental First Amendment rights, albeit to a lesser extent than limits on expenditures. *Buckley v. Valeo*, 424 U.S. 1, 24 ("[T]he primary First Amendment problem raised by the Act's contribution limitations is their restriction of one aspect of the contributor's freedom of political association."); *see, e.g.*, *Citizens Against Rent Cont./Coalition for Fair Hous. v. Berkeley*, 454 U.S. 290, 296 (1981) (holding that limiting contributions to a political committee engaging in advocacy concerning ballot measures "is clearly a restraint on the right of association").[9]

Because contribution limits "operate in an area of the most fundamental First Amendment activities," they are subject to a "rigorous standard of review," *Buckley*, 424 U.S. at 14, 29; *accord McCutcheon*, 134 S. Ct. at 1444; *see also Davis v. FEC*, 554 U.S. 724, 737 (2008) (recognizing that contribution limits must be "closely drawn" to survive heightened constitutional scrutiny); *Randall v. Sorrell*, 548 U.S. 230, 247 (2006) (same). Thus, detailed evidence about the precise manner in which the discriminatory contribution limits burden these particular Plaintiffs is irrelevant.

Indeed, the FEC acknowledges that, to prevail in this suit, it is required to show that the discriminatory limits Plaintiffs challenge are "closely drawn to furthering the government's important interest[s]." FEC Rule 56(d) Br. at 12. And the Supreme Court has never intimated that a lesser level of scrutiny might apply to a contribution limit, based on its impact on a particular plaintiff.

[9] *See also Buckley*, 424 U.S. at 22 ("The Act's contribution ceilings thus limit one important means of associating with a candidate or committee . . . ."); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 388 (2000) (holding that contribution limits "bore more heavily on the associational right than on freedom to speak").

Finally, this case presents the pure legal question of whether the Government constitutionally may impose different contribution limits on materially indistinguishable PACs (*i.e.*, those that have received more than 50 contributions, and contributed to more than 5 federal candidates), based solely on whether they have been registered for at least six months. Nothing about Plaintiffs' individual circumstances, or the precise impact that these discriminatory limits has on these particular Plaintiffs, is relevant to resolving that constitutional issue.

Thus, the FEC's proposed discovery into the precise burdens to which the discriminatory limits subject Plaintiffs is immaterial.

b. Alternate avenues for speech and association available to Plaintiffs—Second, the FEC contends that it needs discovery into whether Plaintiffs "have alternate ways to speak and associate aside from making contributions." Hancock Decl. ¶ 7(b). This is merely a subset of the discovery the FEC seeks in its previous request, concerning the magnitude of the burden that the discriminatory limits impose on the particular Plaintiffs in this case. As discussed above, the extent of the discriminatory limits' individualized impact on these particular Plaintiffs is irrelevant to the constitutionality of the limits themselves.

Moreover, the Supreme Court already has presumed that contributors have numerous alternate ways of expressing their support for a candidate, which is the main reason why contribution limits are subject only to "heightened scrutiny" or "rigorous" review, rather than strict scrutiny. *Buckley*, 424 U.S. at 22. Especially since the FEC does not dispute that such heightened scrutiny applies, *see* FEC Rule 56(d) Brief at 12, discovery into Plaintiffs' other potential avenues for speaking about, and associating with, their favored candidates is not required to adjudicate their constitutional challenge.

Finally, because the alleged absence of alternate means of political speech and expression is not a material fact upon which the validity of Plaintiffs' claim depends, Plaintiffs would concede to striking from their Listing of Undisputed Facts the paragraphs relating to that issue *See* Plaintiffs' SJ Memo at 5, ¶¶ 19, 21-23.[10]

c. The disadvantages to which the discriminatory contribution limits subject Plaintiffs—The FEC further asserts that it "cannot address whether FECA disadvantages Stop PAC or the [Fund] without taking discover to ascertain the actual disadvantages, if any, that plaintiffs face" as a result of the discriminatory limits. FEC Rule 56(d) Brief 12; *see also* Hancock Decl. ¶ 7(c). This seems to be yet another restatement of the FEC's first proposed area for discovery, concerning the "burdens" that the discriminatory limits impose upon Plaintiffs. *Cf*. FEC Rule 56(d) Brief 11; Hancock Decl., ¶ 7(a).

The only "disadvantage" Stop PAC alleges is that it is permitted to contribute only $2,600 to federal candidates, while a materially identical PAC that has been registered for ***more*** than six months may contribute $5,000. Likewise, the only "disadvantage" that the Fund alleges is that it is permitted to contribute only $5,000 to state and local political party committees, and $15,000 to national political party committees, while a materially identical PAC that has been registered for ***less*** than six months could contribute $10,000 and $32,400, respectively, to those recipients. Plaintiffs challenge the constitutionality of these discriminatory limits. Both sides recognize that these limits are subject to heightened constitutional scrutiny, requiring the FEC to prove that they are carefully tailored to achieving an important governmental interest. *See* FEC Rule 56(d) Brief at 12. Further discovery into the "disadvantages" imposed by these discriminatory burdens is therefore unnecessary and immaterial.

[10] This Brief uses the abbreviation "Plaintiffs' SJ Memo" to refer to Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, Doc. #6-1 (May 6, 2014).

d. The overbreadth of the discriminatory limits—The FEC also claims that it requires discovery to establish whether FECA's discriminatory limits are "closely drawn to furthering [its] important interest in either (1) preventing actual corruption; (2) preventing the appearance of corruption or (3) preventing circumvention of . . . contribution limits." FEC Rule 56(d) Brief 12; *see also id*. at 13; Hancock Decl. ¶ 7(d) ("[T]he Commission requires discovery to present evidence essential to proving that any constitutional burdens imposed by the challenged FECA provisions are justified since the statutes are closely drawn to furthering an important government interest.").

This is perhaps the most shocking of the FEC's contentions. The discriminatory limits at issue here long pre-date the creation of Plaintiffs Stop PAC, Fund, and NIFC, and they apply to thousands of political committees across the nation. Congress necessarily could not have been relying on any information about any of the Plaintiffs in enacting these limits. And the FEC has decades of experience enforcing them against both new and established PACs. To the extent there is any factual basis for the assorted increases and decreased in contribution limits to which a political committee is subject at the six-month mark, the FEC itself—not plaintiffs—would be in possession of the pertinent evidence. The constitutionality of these limits cannot hinge on any facts relating to Plaintiffs themselves.[11] *Cf. Pisano*, 743 F.3d at 931 (affirming denial of a Rule 56(d) motion because, as the district court correctly held, "discovery was not needed to decide whether [a candidate filing] deadline is unconstitutional" under the First Amendment). Discovery is therefore unnecessary.

e. The circumstances of Stop PAC's creation and operation—Relatedly, the FEC claims that it needs discovery into "the circumstances of Stop PAC's creation and

[11] Indeed, if facts concerning the Plaintiffs PACs truly did bolster the constitutionality of the discriminatory limits, then by implication the constitutionality of those limits was on shakier ground before Plaintiffs were formed—an absurd result this Court should not embrace.

operation" to "determine the extent to which Innis's colleagues, contributors, and campaign consultants are responsible for the formation and operation of Stop PAC and the extent to which it may operate to enable circumvention of the limits on contributions to Niger Innis for Congress." FEC Rule 56(d) Brief 12-13; *see also* Hancock Decl. ¶ 7(e).

The FEC fails to explain how any such discovery is relevant to the central issue in this case: whether the Government may subject newly formed committees that have received at least 50 contributions and contributed to at least five federal candidates to discriminatory low limits on contributions to candidates, while simultaneously subjecting materially identical committees that have been registered for more than six months to discriminatorily low limits on contributions to local, state, and national political party committees.

None of the facts that the FEC recites have anything to do with this six-month cut-off. All newly formed political committees are subject to this six-month waiting period, regardless of whether a candidates "colleagues, contributors, and campaign consultants" helped form it. FEC Rule 56(d) Brief 12-13. Conversely, once Stop PAC has existed for six months, the amount it may contribute to candidates will automatically increase to $5,000, *see* Plaintiffs' SJ Memo, at 3-4, ¶¶ 6-8, 14, regardless of the various circumstances to which the FEC points. Thus, none of the facts for which the FEC seeks to take further discovery bear any relevance to the constitutionality of the six-month waiting period.

Indeed, despite the facts the FEC raises, Stop PAC ***currently*** may contribute up to $10,000 to state and local political party committees, and $32,400 to national political party committees. Yet, like the Fund, once Stop PAC has existed for six months, those limits will be slashed to $5,000 and $15,000, respectively. None of the discovery the FEC seeks will shed any light on these issues.

If the FEC does not approve of various arrangements Stop PAC has made, it may seek statutory amendments, or perhaps even attempt to promulgate regulations, to prohibit them. Similarly, if the FEC believes that any of Stop PAC's arrangements violate current law, it is free to attempt to commence appropriate enforcement proceedings. None of the facts that the FEC raises about Stop PAC or any other Plaintiff, however, has any bearing on the fundamental constitutional question underlying this case: whether materially identical political committees may be subject to different contribution limits, based solely on whether they have existed for six months—especially when some limits increase at the six-month mark, and others are reduced.

f. Information concerning "similarly situated groups"—Finally, the FEC declares that it needs to seek discovery of all of the foregoing categories of information "as they relate to groups that are similarly situated to plaintiffs." Hancock Decl., ¶ 7(f). As mentioned earlier, however, the FEC itself is the most logical repository of such information. Moreover, Plaintiffs' explanations above as to why the FEC does not need any discovery concerning them apply with equal force to the discovery the FEC claims to need concerning other political committees and candidates. Additionally, the Supreme Court will invalidate contribution limits without separately scrutinizing, and requiring discovery for, each entity that is subject to them. *See, e.g.*, *McCutcheon*, 134 S. Ct. at 1462 (invalidating contribution limits as a matter of law, with no discovery); *cf. Citizens Against Rent Cont.*, 454 U.S. 290 (invalidating limit on contributions to all committees engaged in advocacy concerning public referenda).

Thus, the FEC has failed to establish that discovery is necessary to adjudicate Plaintiffs' narrow, carefully tailored constitutional challenge, which presents a pure question of law. Indeed, the very Fourth Circuit authorities that the FEC cites in support of its request are easily distinguishable and simply underscore the FEC's failure to establish its need for discovery. *See,*

e.g., *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 247 (4th Cir. 2002) (holding that "summary judgment prior to discovery" was "particularly inappropriate" because the case involved "complex factual questions about intent and motive") (cited in FEC Rule 56(d) Brief at 9); *TC Tech. Mgmt. v. Geeks on Call Am., Inc.*, 2004 U.S. Dist. LEXIS 30068, at *21 & n.3 (E.D. Va. Mar. 24, 2004) (holding that summary judgment before discovery was premature where plaintiffs alleged that defendants "made fraudulent representations" and "induced" them to enter into a contract "by . . . fraud").

4. The factual allegations underpinning Plaintiffs' standing is not reasonably subject to dispute—The FEC goes on claim that it also needs discovery to "test the jurisdictional bases for plaintiffs' claims." Hancock Decl. ¶ 8. ***First***, it seeks discovery concerning whether Plaintiff Niger Innis is "eligible to vote in a presidential election." *Id*. ¶ 8(a). Plaintiffs have submitted a copy of Innis' online voter registration record from the website of the Registrar of Voters for Clark County, Nevada. *See* Backer Decl., Ex. 1.

Second, the FEC seeks discovery into whether Stop PAC will contribute to any federal candidates "'immediately after' the June 10 primary," to ensure that its claim is not moot. Hancock Decl., ¶ 8(b). A hearing is scheduled on this motion for June 23, 2014. On that date, with the Court's permission, Plaintiffs will provide the FEC and the Court with true and complete electronic copies of cancelled checks reflecting all contributions that Stop PAC makes to federal candidates after June 10, 2014 in connection with the November general election, which will be sufficient to preserve its standing in this case. Backer Decl., ¶ 7.[12]

[12] If Plaintiff Innis wins the June 10 primary election, Stop PAC intends to contribute $2,600 to his campaign for the general election at its earliest opportunity, which also will preclude his claims from becoming moot. Backer Decl., ¶ 8.

If Innis does not receive the Republican nomination for Congress from Nevada's fourth district in that election, Plaintiffs will not argue his claims are "capable of repetition, yet evading review" based on the possibility that ***he*** might run for office in the future. Rather, Plaintiffs

Third, the FEC effectively contends that Plaintiff Stop PAC perjured itself—and, by extension, that the undersigned Plaintiffs' counsel violated their ethical obligations to this Court—by representing to this Court, under oath, that it had contributed to at least five candidates and had more than 50 contributors. Hancock Decl., ¶ 8(c) ("[T]he FEC is entitled to test the veracity of these claims" to determine "if they are not accurate . . . .").[13]

To defuse these spurious speculations and attempt to return focus to the merits of this case, Plaintiffs have submitted with this brief true and complete electronic copies of cancelled checks from Stop PAC reflecting contributions to five different federal candidates, including:

	Date	**Candidate Name**	**Amount of Contribution from Stop PAC**
a.	4/4/14	Niger Innis (NV-4)	$2,600
b.	4/4/14	Mark Amodei (NV-2)	$250
c.	4/4/14	Joe Heck (NV-3)	$250
d.	4/4/14	Jose Padilla (NV-1)	$250
e.	4/4/14	Dean Heller (Senate)	$250

See Backer Decl., Ex. 2.

Plaintiffs also have provided a certified list of 60 contributions that Stop PAC received from different individuals - out of more than 1200 received to date, all but 4 of which were in

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intend to argue that the Supreme Court permits plaintiffs challenging laws relating to elections to invoke that exception to the mootness doctrine, even if there is no chance they will again be subject to the challenged provisions. *See, e.g.*, *supra* note 5. Thus, contrary to the FEC's argument, *see* Hancock Decl., ¶ 8(b), discovery into Innis' future electoral plans is unnecessary.

[13] The FEC notes that Stop PAC's March 31, 2014 disclosure report did not reflect contributions from 50 or more people. Hancock Decl., ¶ 8(c). As the FEC itself acknowledges, contributions to PACs are reported only if they exceed $200.00. *Id*. Thus, for newly-formed grassroots PACs that rely primarily (although not exclusively) on small-dollar individual donors, the absence of reported contributions neither is remarkable nor suggests a lack of contributions. Stop PAC's March disclosure report therefore provides no basis for the FEC to cast aspersions upon the veracity of the factual representations made by Stop PAC and submitted by Plaintiffs' counsel.

amounts of $100 or less - specifying the amount and date of each contribution; the first initial and last name of each contributor; and the contributor's city, state, and zip code. *Id*. Ex. 3.[14]

Among the cancelled checks that Stop PAC has submitted is the check reflecting its $2,600 contribution to Innis, *see* Backer Decl, Ex. 2; *cf*. Hancock Decl., ¶ 8(c). Plaintiffs also have submitted a true and complete electronic copy of the cancelled check for $5,000 from Plaintiff Fund to the Alexandria Republican City Committee. *See* Backer Decl. Ex. 4; *cf*. Hancock Decl. ¶ 8(c).

Thus, there is no reasonable basis for seeking discovery concerning the jurisdictional facts underlying Plaintiffs' claims.

CONCLUSION

Plaintiffs have brought this claim in good faith to obtain this Court's ruling on pure questions of law under the Equal Protection Clause and First Amendment. Discovery is unnecessary and will not further illuminate these issues. For these reasons, Plaintiffs respectfully request that this Court avoid unnecessary delay, deny the FEC's Rule 56(d) Motion, and Grant Plaintiffs' Motion for Summary Judgment.

Respectfully submitted,

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[14] The FEC's purported skepticism over whether Stop PAC has 50 contributors rings especially hollow because, to qualify for multicandidate status, a political committee that meets the statutory criteria (*i.e.*, it has existed for six months, has contributed to at least 5 candidates, and has received more than 50 contributions) need only file a "Notification of Multicandidate Status," certifying the date on which it "received a contribution from its 51st contributor." FEC Form 1M, *available at* http://www.fec.gov/pdf/forms/fecfrm1m.pdf. The FEC generally does not traverse such representations by demanding the identities of the contributors or seeking other confirmation before recognizing a political committee as a multicandidate PAC. Thus, its purported need for such further proof from Plaintiff Stop PAC is curious.

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CERTIFICATE OF SERVICE

I, Dan Backer, hereby certify that on this 27th day of May 2014, I will electronically file the foregoing Plaintiffs' Rebuttal Brief in Support of Their Motion for Summary Judgment and Against Defendant's Rule 56(d) Motion with the Clerk of Court using the CM/ECF system, which will then send a notification of such filings to the following counsel for Defendant:

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