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UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF WYOMING

|                              |   |                         |
|------------------------------|---|-------------------------|
| _____                        | ) |                         |
| FREE SPEECH,                 | ) |                         |
|                              | ) |                         |
| Plaintiff,                   | ) | Civ. No. 2:12-127 (SWS) |
|                              | ) |                         |
| v.                           | ) |                         |
|                              | ) |                         |
| FEDERAL ELECTION COMMISSION, | ) | MOTION TO DISMISS       |
|                              | ) |                         |
| Defendant.                   | ) |                         |
| _____                        | ) |                         |

**FEDERAL ELECTION COMMISSION’S MOTION TO DISMISS**

Defendant Federal Election Commission (“Commission”) respectfully moves the Court to dismiss this case with prejudice for failure to state a claim on which relief can be granted. Fed. R. Civ. P. 12(b)(6). As grounds for this motion, the Commission refers to (and incorporates by reference herein) its Opposition to Plaintiff’s Motion for Preliminary Injunction (Docket No. 26) (“FEC Inj. Br.”), in which the Commission demonstrated the legal deficiencies of plaintiff’s claims and the constitutionality of (1) the Commission’s regulatory definition of “expressly advocating,” 11 C.F.R. § 100.22; (2) the Commission’s method for determining whether a group is a “political committee” as defined by 2 U.S.C. § 431(4)(A) and construed by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); and (3) the Commission’s standard for determining whether a request for donations is a solicitation for contributions under 2 U.S.C. § 441d(a). Because the resolution of this case depends exclusively on legal questions that have been fully and extensively briefed by both parties and amicus curiae (*see* Docket Nos. 20, 26, 29) — and recently addressed by both parties during nearly two hours of oral argument (*see* Docket No. 31) — this Court may decide the merits of this case now, in connection with its consideration of plaintiff’s request for a preliminary injunction.

In the alternative, should the Court decline to dismiss this case with prejudice, the Commission requests that the case be dismissed without prejudice under Federal Rule of Civil Procedure 41(b). Plaintiff’s First Amended Verified Complaint (Docket No. 24) violates Federal Rule of Civil Procedure 8, which requires that a pleading contain “a *short and plain* statement of the claim showing that the pleader is entitled to relief” and that “[e]ach allegation must be *simple, concise, and direct.*” Fed. R. Civ. P. 8(a)(2), (d)(1) (emphases added).

For these reasons and those set forth in the accompanying Memorandum in Support of the Commission's Motion to Dismiss, the Commission requests that the Court grant this Motion and dismiss the case.

Respectfully submitted,

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Dated: September 24, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2012, the foregoing Federal Election Commission's Motion to Dismiss was filed electronically with the Clerk of Court through the Court's ECF system, and served by electronic filing on the following recipients:

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