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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

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FREE SPEECH)	
	Plaintiff,)	
)	
v.)	Civil Case No. 12-CV-127-S
)	
FEDERAL ELECTION COMMISSION)	
	Defendant.)	
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PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

Plaintiff Free Speech opposes Defendant Federal Election Commission (FEC)'s Motion to Dismiss. Plaintiff agrees that "the resolution of this case depends exclusively on legal questions that have been fully and extensively briefed." Def.'s Motion to Dismiss (Docket No. 33) at 2. However, as the Plaintiff's First Amended Verified Complaint (Docket No. 24) and Memorandum in Support of Preliminary Injunction (Docket No. 20) establish, it is the FEC's regulations that are legally and constitutionally deficient, not the Plaintiff's claims.

The Defendant's central argument attempts to foreclose the Plaintiff's claims as settled law. To the contrary, the Plaintiff has established that imposing political committee (PAC) status on issue advocacy organizations is a burden on political speech—far above the "disclosure" approved in *Citizens United v. FEC*—and thus brightline rules must prevent arbitrary and discriminatory assignment of PAC status. However, the FEC's vague and overbroad definitions of "express advocacy" under 11 C.F.R. § 100.22(b), "solicitation," and its consideration and application of the "major purpose" test individually and collectively allow the Defendant to ensnare groups like Free Speech that only wish to speak about important political issues and how they relate to political candidates. Given these arguments and the ample record supporting facial and as-applied unconstitutionality of these regulations, this Court should not dismiss this case for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

The Commission's alternative argument is also without merit. In its First Amended Verified Complaint, the Plaintiff carefully breaks down a complex regulatory structure into four specific areas with relevant facts that support as-applied and facial claims against each under the First Amendment and Administrative Procedure Act. Building on this, the Plaintiff challenges the entire regulatory structure in question as a system of prior restraint. Less detailed pleadings would risk depriving this Court of information necessary to afford relief to the Plaintiff. *See Real Truth About Abortion v. FEC*, 681 F.3d 544, 558 n.5 (4th Cir. 2012). Plaintiff's First Amended Verified Complaint comports with Federal Rule of Civil Procedure 8 by properly alleging its claims and making allegations as "simple, concise, and direct" as possible. Fed. R. Civ. P. 8(a)(2), (d)(1). Thus, this Court should not dismiss without prejudice under Federal Rule of Civil Procedure 41(b).

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

Dated: October 2, 2012

Respectfully submitted,

/s/ Stephen R. Klein

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2012, I the below listed persons received copies of this document by electronic mail via Electronic Case Filing pursuant to Fed. R. Civ. P. 5(b)(2)(E):

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