

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LAURA HOLMES, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	
)	
FEDERAL ELECTION)	Civil Action No. 1:14-cv-01243 (RMC)
COMMISSION,)	
)	
Defendant.)	
)	
)	
)	

PLAINTIFFS’ PROPOSED FACTS FOR CERTIFICATION

In accordance with this Court’s February 9, 2015 Order to Govern Proceedings, (Dkt. 24), Plaintiffs submit the following proposed facts for certification. In doing so, Plaintiffs reiterate that “Congress’s objective when it enacted [§ 30110]... was, and is, speed.” *Wagner v. FEC*, 717 F.3d 1007, 1013 n.6 (D.C. Cir. 2013) (per curiam). Moreover, § 30110 “results in a less-focused record than ordinary litigation.” *Id.* at 1015; *see also id.* at 1017 (district court need only “make appropriate findings of facts, *as necessary*, and to certify those facts...” (emphasis supplied).

Plaintiffs submit that, with very few additions, the facts already certified by this Court are sufficient to resolve their constitutional claims. Thus, these proposed

facts come largely from this Court's Certification Order, which is cited herein. Plaintiffs' suggested additions are denoted by italics.

Defendant FEC

1. The Federal Election Commission (FEC) is a federal government agency charged with administering, interpreting, and enforcing the Federal Election Campaign Act (FECA), 2 U.S.C. §§ 431-57. Cert. Order at 2.
2. Effective September 1, 2014 the provisions of FECA codified in Title 2 were recodified at 52 U.S.C. § 30101-30146. Cert. Order at 2.
3. Under FECA as amended, *in 2014*, individual persons *could* contribute no more than \$2,600 per candidate, per federal election. *See* 52 U.S.C. § 30116(a); FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013) (FEC Price Index Adjustments) (limit on individual contributions to federal candidates in the 2013-2014 election cycle is \$2,600 per candidate, per election). Cert. Order at 2 (proposed changes to Certification Order here reflect the price index adjustments to the contribution limits as of February 3, 2015. 80 Fed. Reg. 5750, 5752, available at http://fec.gov/law/cfr/ej_compilation/2015/notice2015-01.pdf).
4. An election is defined as “a general, special, primary, or runoff election.”

52 U.S.C. § 30101(1)(A). Cert. Order at 3.

5. *Under the text of FECA as amended, the individual contribution limits apply separately with respect to each election.* 52 U.S.C. §§ 30116(a)(1)(A); 30116(a)(6).
6. The total amount that an individual may contribute to a particular candidate during a full election cycle depends on the number of elections in which that candidate runs. For example, if the candidate runs in both a primary and a general election, an individual may contribute a total of \$5,200—\$2,600 for the primary campaign and \$2,600 for the general election campaign. If the candidate must also participate in a runoff election, an individual may contribute an additional \$2,600 for that election campaign, for a total possible contribute of \$7,800. *See* 52 U.S.C. § 30116(a); FEC Price Index Adjustments, 78 Fed. Reg. at 8532. Cert. Order at 3.
7. FEC has adopted regulations on how contributions are to be allocated among these elections. Contributors “are encouraged to designate their contributions in writing for particular elections.” 11 C.F.R. § 110.1(b)(2)(i). Cert. Order at 3.
8. If a contribution is not so designated, it is presumed to be for “the next election for that Federal office after the contribution is made.” *Id.* §

- 110.1(b)(2)(ii). If a contribution is designated for an election that has already occurred, it can be used to satisfy outstanding net debts from that election. To the extent that a contribution to a past election exceeds that amount, it must be refunded, redesignated to a future election, or reattributed as from another contributor. 11 C.F.R. § 110.1(b)(2)(i). Cert. Order at 3.
9. “Redesignation” means that a candidate running in a general election “may spend unused primary contributions for general election expenses;” however, those contributions “continue to apply toward the contributors’ limits for the primary” and do not prevent the same contributor from giving \$2,600 for the general election campaign. FEC, CAMPAIGN GUIDE: CONGRESSIONAL CANDIDATES AND COMMITTEES June 2014 at 21, available at <http://www.fec.gov/pdf/candgui.pdf> (citing 11 C.F.R. § 110.3(c)(3)) (last visited Oct. 20, 2014) (retained in Court file). Cert. Order at 3-4.
10. As a result of the rules on redesignation, if a party candidate has no opposition in the primary election, an individual can contribute \$2,600 for the primary campaign and \$2,600 for the general election campaign and the candidate can use both amounts (\$5,200) in the general election campaign alone. Cert. Order at 4.

11. It is on the basis of the rules allowing redesignation that Plaintiffs complain that some individuals can contribute \$5,200 to candidates general election whereas they, who chose not to contribute to candidates facing opposition in their primary campaigns, could not. Cert. Order at 4.

Plaintiffs Holmes and Jost

12. Plaintiffs Laura Holmes and Paul Jost are a married couple, residing in Miami, Florida. Cert. Order at 4.
13. *Plaintiffs are citizens of the United States, and reside at 1500 Ocean Drive, Unit 1105, Miami Beach, Florida 33139.* Compl. ¶ 8; Holmes Decl. ¶ 3 (ECF 6-2); Jost Decl ¶ 3 (ECF 6-3).
14. *Plaintiffs were eligible to vote in the 2012 presidential election.* Compl. ¶ 8; Holmes Decl. ¶ 5 (ECF 6-2); Jost Decl ¶ 5 (ECF 6-3).
15. *Plaintiff Laura Holmes sometimes uses the name “Laura Holmes-Jost” when contributing to candidates.* Compl. ¶ 8.
16. Ms. Holmes supported Carl DeMaio, a general election candidate for California’s 52nd Congressional District (CA-52). Cert. Order at 4.
17. *During the 2014 primary election on June 3, 2014, there were four candidates on the ballot to represent California Congressional District 52 (“CA-52”): Scott Peters, a Democrat and the incumbent; Carl*

- DeMaio, a Republican; Kirk Jorgensen, a Republican; and Fred J. Simon, Jr., a Republican.* California Secretary of State, Statement of Vote, June 3, 2014, Statewide Direct Primary Election at 24, available at <http://elections.cdn.sos.ca.gov/sov/2014-primary/pdf/2014-complete-sov.pdf>.
18. *Peters finished first in the June 3, 2014 primary election, receiving 53,926 votes (approximately 42.3%). DeMaio finished second, receiving 44,954 votes (approximately 35.5%). Jorgensen finished third receiving 23,588 votes (approximately 18.5%), and Simon, Jr. finished fourth, receiving 5,040 votes (approximately 4%).* California Secretary of State, Statement of Vote, June 3, 2014, Statewide Direct Primary Election at 24, available at <http://elections.cdn.sos.ca.gov/sov/2014-primary/pdf/2014-complete-sov.pdf>. *See also* Cert. Order at 4.
 19. Under California's "Two Two" primary system, all candidates for the United States Congress are listed on the same primary ballot and the two candidates who receive the most votes, regardless of party affiliation, compete in the general election. *See* No Party Preference Information, California Secretary of State, <https://www.sos.ca.gov/elections/no-party-preference.htm> (last visited Nov. 7, 2014). Cert. Order at 4-5.
 20. *DeMaio and Peters were the only candidates to represent CA-52 on the*

- ballot on November 4, 2014.*
21. Ms. Holmes did not make any contributions to Mr. DeMaio before the primary election but contributed \$2,600 to his general election campaign. Cert. Order at 5.
 22. Mr. Jost supported Marionette Miller-Meeks, a general election candidate for Iowa's Second Congressional District. Cert. Order at 5.
 23. *During the 2014 primary election, Dr. Miller-Meeks was on the ballot with two other candidates from the Republican Party, Mark S. Lofgren and Matthew C. Waldren. Miller-Meeks received 15,043 votes, Lofgren received 11,634 votes, and Waldren received 3,746 votes, out of a total of approximately 33,662 votes cast. Iowa Secretary of State, 2014 Primary Election Results, Official Canvass by County at 10, available at <https://sos.iowa.gov/elections/pdf/2014/primary/canvsummary.pdf>.*
 24. Mr. Jost contributed \$2,600 to Dr. Miller-Meeks only after she won the primary election; he made no contribution to any candidate in the Iowa primary. Cert. Order at 5.
 25. During the general election campaign, Dr. Miller-Meeks faced incumbent David Loeb sack, who was the only candidate on the ballot in the Democratic Party primary for Iowa's Second Congressional District. Cert. Order at 5.

26. Ms. Holmes wanted to contribute an additional \$2,600 to Mr. DeMaio and Mr. Jost wanted to contribute an additional \$2,600 to Dr. Miller-Meeks during the general election campaigns but they were prevented from doing so by FECA and FEC regulations. Cert. Order at 5.
27. Plaintiffs did not want to exceed the contribution limit of \$5,200 for the combined primary and general election periods, but each wanted to give \$5,200 solely for use in the general election. Cert. Order at 5.

Procedural Background

28. Plaintiffs filed suit on July 21, 2014, alleging that FECA's contribution limit of \$2,600 per individual/per candidate/per election is unconstitutional as applied to them, where Plaintiffs wanted to contribute no money to any primary candidate and contribute a full \$5,200 to general election candidates. *See* Compl. [Dkt. 1]. Cert. Order at 5.
29. Plaintiffs sought a declaratory judgment and injunction barring enforcement against them of the per-election provisions of FECA and the FEC regulations in the 2014 federal elections. *Id.* Cert. Order at 6.
30. On August 28, 2014, Plaintiffs filed a motion for a preliminary injunction [Dkt. 6]. Cert. Order at 6.
31. After full briefing, this Court denied the motion for a preliminary injunction on October 20, 2014 [Dkt 15]. Cert. Order at 6.

32. In response to the Court's Order to Show Cause, Plaintiffs sought certification of two constitutional questions to the D.C. Circuit [Dkt. 17].
Cert. Order at 6.
33. Plaintiffs' complaint is not mooted by the November 4, 2014 election inasmuch as the same limitations would apply to their contributions in the next federal election in which they wish to contribute to a candidate.
Cert. Order at 6.
34. *On January 30, 2015, the United States Court of Appeals for the District of Columbia Circuit granted the FEC's Motion to Remand this case "in order to provide the parties an opportunity to develop, by expedited discovery or otherwise, the factual record necessary for en banc review of the plaintiffs' constitutional challenge." Order Granting Motion for Remand, Dkt. 22 (citing Cal. Med. Ass'n v. FEC, 453 U.S. 182, 192 n.14 (1981); Wagner v. FEC, 717 F.3d 1007, 1009 (D.C. Cir. 2013)).*

Respectfully submitted this 13th day of March, 2015.

/s/ Allen Dickerson
Allen Dickerson, DC Bar No. 1003781
Center for Competitive Politics
124 S. West Street, Suite 201
Alexandria, VA 22314
Phone: 703.894.6800
Facsimile: 703.894.6811
adickerson@campaignfreedom.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March, 2015, I filed the foregoing Plaintiffs' Proposed Facts for Certification via this Court's electronic filing system, causing electronic notice to be served on the following:

Kevin Deeley
Acting Associate General Counsel
kdeeley@fec.gov

Erin Chlopak
Acting Assistant General Counsel
echlopak@fec.gov

Benjamin R. Streeter, III
Attorney
bstreeter@fec.gov

Steve Hajjar
Attorney
shajjar@fec.gov

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463
(202) 694-1650

Counsel for Defendant FEC

/s/ Allen Dickerson
Allen Dickerson