NOT YET SCHEDULED FOR ORAL ARGUMENT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

No. 16-5300

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**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CITIZENS FOR RESPONSIBILTY AND
ETHICS IN WASHINGTON, *et al.*,

Plaintiffs-Appellees and Cross-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee,[[1]](#footnote-1)

and

AMERICAN ACTION NETWORK,

Intervenor Defendant-Appellant.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**MOTION TO HOLD CASE IN ABBEYANCE**

Pursuant to Circuit Rule 27(f), Plaintiffs-Appellees and Cross-Appellants (collectively, “CREW”) hereby respectfully move the Court to hold in abeyance all proceedings in the above-captioned appeals, including the briefing schedule, pending disposition of CREW’s post-judgment motion in the district court. CREW hereby certifies that it consulted with Appellant and Appellee FEC (“FEC”) but was unable to obtain their consent on this request.

**BACKGROUND**

The instant appeals concern United States District Judge Christopher Cooper’s judgment of September 19, 2016 reversing as contrary to law the FEC’s dismissals of Plaintiffs’ administrative complaints, including one complaint against Appellant American Action Network (“AAN”). As required by the Federal Election Campaign Act, 52 U.S.C. § 30109(a)(8)(C), the district court provided the FEC thirty days to correct its errors of law and cure the unlawful dismissals. That thirty day period expired on October 19, 2016. On that day, the FEC informed CREW that it once again deadlocked on the merits of CREW’s complaint against AAN, and therefore voted to dismiss the complaint. Also on that day, AAN filed notice of the instant appeal but did not otherwise seek to stay the district court’s injunction. On \_\_\_\_, CREW filed a notice of cross-appeal.

On \_\_\_\_\_, CREW filed a motion with the district court for an order to the FEC to show cause why, among other things, its dismissal of CREW’s complaint against AAN was not contrary to law and not inconsistent with the district court’s September 19, 2016 judgment. *See* Exhibit 1. CREW’s motion is currently pending before the district court.

**DISCUSSION**

This Court should hold the appeals in abeyance pending resolution of CREW’s motion below as resolution of the pending motion will likely affect the course of the current appeals. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). Where a post-judgment motion creates the “possibility that the order complained of will be modified in a way which renders judicial review unnecessary,” *Stone v. INS*, 514 U.S. 386, 392 (1995), holding the appeal in abeyance will serve the economy of time and effort.

Although CREW believes these appeals raise significant and weighty issues deserving the Court’s attention, if the case is not held in abeyance, the case may proceed on an inefficient track resulting in the waste of judicial resources. If the district court below finds that the renewed dismissal of CREW’s complaint against AAN was not inconsistent with the Court’s judgment or not otherwise contrary to law, AAN would not have jurisdiction to appeal the judgment below. AAN intervened as a defendant below based on “the risk that [AAN] might lose the benefit of the FEC dismissal” in the event CREW prevailed. Am. Action Network’s Unopposed Mot. to Intervene and Mem. in Support 2, *CREW v. FEC*, No. 1:14-cv-01419 CRC (D.D.C. Aug. 5, 2015), ECF No. 16. A finding that the FEC’s renewed dismissal was consistent with the district court’s judgment would place AAN’s standing to appeal in doubt as they would no longer face any risk of losing the benefit of an FEC dismissal. Any effort by the Court expended on AAN’s appeal could then be wasted. *See Hollingsworth v. Perry*, 133 S. Ct. 2652, 2668 (2013) (vacating decision of appellate court where appellant had no standing to appeal).

Alternatively, if the district court finds the renewed dismissal was not consistent with the district court’s judgment, the court may make additional findings and conclusions that could clarify or effectively amend the judgment. Although the defendants below have not yet responded to the order to show cause, CREW presumes they will either oppose the order or argue that the dismissal was consistent with the district court’s judgment. It makes little sense for this Court to review the September 19 judgment while the parties dispute what the judgment means before the district court and at a time when the appellant might lose standing to appeal based on developments before the agency.

Holding the appeals in abeyance (including the briefing schedule) is appropriate here because it will promote “economy of time and effort” for the Court, counsel, and parties. *See Landis*, 299 U.S. at 255. Once the district court resolves the pending motion below, the issues for this Court to resolve will be clarified, and the appeal or appeals can proceed.

For the foregoing reasons, the Court should hold in abeyance this case pending the district court’s resolution of the CREW’s post-judgment motion.

Dated: November \_\_, 2016.

Respectfully submitted,

*/s/ Stuart McPhail*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on November \_\_, 2016, a true and correct copy of Plaintiffs’ notice of cross appeal was filed and served electronically through the Court’s CM/ECF system upon the following counsel of record:

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1. The Federal Election Commission (“FEC”) deadlocked on the question of whether to authorize an appeal to this Court. [↑](#footnote-ref-1)