

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

JOHN DOE 1, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 17-2694 (ABJ)
)	
v.)	
)	RESPONSE TO MOTION
FEDERAL ELECTION COMMISSION,)	FOR STAY OR INJUNCTION
)	PENDING APPEAL
Defendant.)	

**FEDERAL ELECTION COMMISSION’S RESPONSE
TO PLAINTIFFS’ EMERGENCY MOTION
FOR A STAY OR INJUNCTION PENDING APPEAL**

On March 23, 2018, this Court denied plaintiffs’ request to permanently enjoin the Federal Election Commission’s (“FEC” or “Commission”) disclosure of plaintiffs’ identities as part of its regular release of the public file in Matter Under Review 6920 in accordance with Commission regulations and disclosure policy, and it entered final judgment in favor of the Commission. *Doe v. FEC*, Civ. No. 17-2694 (ABJ), --- F. Supp. 3d ---, 2018 WL 1461964 (D.D.C. Mar. 23, 2018); Final Order and Judgment (Docket No. 46). That same day, plaintiffs moved for a stay or an injunction pending appeal, seeking to enjoin the Commission from releasing plaintiffs’ identities until resolution of their appeal. (Pls.’ Emergency Mot. for a Stay or Injunction Pending Appeal (Docket No. 48).) Plaintiffs’ motion was filed before the parties had an opportunity to confer on the motion. (*Id.* at 2.)

Since then, the parties have conferred on multiple occasions in an attempt to narrow areas of disagreement. The parties disagree regarding the strength of plaintiffs’ showing regarding the four factors the Court considers when exercising its discretion in determining whether to issue a stay. *Nken v. Holder*, 556 U.S. 418, 425-26 (2009). The parties do agree that release of

plaintiffs' identities would moot their right to appeal. At the same time, the Commission is harmed by further delay given, *inter alia*, public interest in the relevant enforcement file which relates to the financing of elections and disputes involving many of the same legal issues that may need to be resolved in other contexts. The parties have thus agreed that the Commission will consent to entry of the attached proposed order entering a stay in return for plaintiffs consenting to expedited consideration of their appeal. See *Charles v. Office of the Armed Forces Med. Exam'r*, No. 1:09-CV-0199, 2013 WL 12332949, at *2 (D.D.C. May 9, 2013) (finding "harm" to party from "further delay" "outweighed" by possibility of "disclosure without an opportunity to appeal" and granting stay conditioned upon seeking expedited appeal); *Ctr. for Int'l Env'tl. Law v. Office of the U.S. Trade Rep.*, 240 F. Supp. 2d 21, 24 (D.D.C. 2003) (granting stay pending appeal, subject to the condition of seeking expedited appellate review); *Ctr. for Nat'l Sec. Studies v. U.S. Dep't of Justice*, 217 F. Supp. 2d 58, 59 (D.D.C. 2002) (granting stay pending appeal due to, *inter alia*, a promise to seek expedited consideration of the appeal). More specifically, plaintiffs will (a) file their notice of appeal by April 11, 2018, (b) consent to the FEC's anticipated motion in the D.C. Circuit requesting expedited consideration of plaintiffs' appeal and to the agreed-upon briefing schedule proposed therein, and (c) continue to take all necessary steps to obtain an appeal determination expeditiously. Though the briefing schedule in the Court of Appeals will be presented to that court, under the Commission's anticipated consent motion, appellants' brief shall be due May 14, 2018; any amicus briefs in support of appellants shall be due May 17, 2018; appellee's brief shall be due June 18, 2018; any amicus briefs in support of appellees shall be due June 21, 2018; and appellants' reply brief shall be due July 2, 2018.

A proposed order reflecting a negotiated resolution related to the relief plaintiffs seek in their motion for stay or injunction pending appeal is attached for the Court's consideration.

Respectfully submitted,

Lisa J. Stevenson (D.C. Bar No. 457628)
Acting General Counsel
l Stevenson@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

Charles Kitcher (D.C. Bar No. 986226)
Acting Assistant General Counsel
ckitcher@fec.gov

/s/ Haven G. Ward
Haven G. Ward (D.C. Bar. No. 976090)
Attorney
hward@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463
(202) 694-1650

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