

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

COMBAT VETERANS FOR CONGRESS)	
POLITICAL ACTION COMMITTEE and)	
DAVID H. WIGGS, TREASURER)	
)	
Plaintiffs,)	
)	
v.)	Civil Case No. 1:11-cv-02168 CKK
)	
FEDERAL ELECTION COMMISSION)	
)	
Defendant.)	

CONSENT MOTION TO AMEND COMPLAINT

Plaintiffs, Combat Veterans for Congress PAC and its current treasurer, David H. Wiggs, (collectively CVFC PAC) hereby move this Court with the written consent of Defendant Federal Election Commission (FEC) for an order permitting the Plaintiffs to file the attached Amended Complaint pursuant to Fed. R. Civ. P. 15(a) (2), and in support thereof state as follows:

1. On May 4, 2012, the FEC filed its Administrative Record with the Court that included Certifications by its Secretary and Clerk of the vote tally of the Commissioners in this proceeding as well as a copy of a blank notation ballot used by the Commissioners for casting their respective votes during various stages of the proceedings of the three administrative fines imposed for the late filings of the three reports at issue.
2. In particular, the FEC certified that the votes were: 1) 6-0 for finding reason to believe that CVFC PAC violated 2 U.S.C. 434(a) for all three late reports, AF#2199 (Dec. 15,

2010); AF#2312 (March 11, 2011), and AF#2355 (March 25, 2011); 2) 6-0 for making a consolidated final determination in all three proceedings that CVFC PAC violated the law and imposing fines totally \$8,690.00 (Oct. 26, 2011); and 3) 6-0 approving recommendation denying reconsideration of Final Determination (Dec. 6, 2011).

3. In the course of preparing their Motion for Summary Judgment, Plaintiffs requested copies of the actual signed notation ballots cast by the individual Commissioners since those completed ballots were not made part of the Administrative Record filed by the FEC.
4. Plaintiffs received copies of the requested ballots on June 5, 2012 from the FEC which showed that instead of a vote of 6-0 for finding reason to believe, the signed ballots for the “Do Not Object” to the staff recommending a finding of reason to believe was 3-0 in AF#2199; 2-0 in AF#2312; and 3-0 in AF#2355. The ballots for “I approve the recommendation” were 6-0 as well as 6-0 for approving the recommendation to deny reconsideration.
5. Two days after receiving copies of the signed ballots, Plaintiffs filed their Motion for Summary Judgment and Memorandum of Points and Authorities on June 7, 2012 and also submitted a Declaration by Dan Backer, counsel for Plaintiffs, attaching copies of the actual notation ballots he received from the FEC. Plaintiffs argued in their Memorandum , *inter alia*, that the enforcement proceedings in all three cases were defective to find reason to believe as required by 2 U.S.C. 437g(a)(2) and 11 C.F.R. 111.32, and further argued that in any event, the votes cast did not affirmatively find reason to believe or make a final determination.

6. Because the Plaintiffs did not have access to these ballots when it first filed its original Complaint on December 7, 2011, and assumed the votes were all 6-0 as stated in the FEC Certifications, Plaintiffs did not include a claim or argument in that Complaint that the administrative proceedings were procedurally defective because the Commissioners failed to cast the minimum “four affirmative votes” required by 2 U.S.C. 437g(a)(2) and 11 C.F.R. 111.37(a).
7. Counsel further indicated in his Declaration that an Amended Complaint would be forthcoming and that he did not anticipate that such amendment would affect the current amended briefing schedule which requires the FEC to file its Opposition to Plaintiffs’ Motion for Summary Judgment and Cross Motion for Summary Judgment on or before July 9, 2012.
8. Plaintiffs’ counsel contacted FEC counsel who indicated on June 15, 2012 that it consented to the filing of an Amended Complaint; that it would want the allotted time to file its Answer to the Amended Complaint under Rule 15(a)(2) [“[u]nless the court orders otherwise . . . within 14 days after service of the amended pleading”]; and that it was likely that it would be able to address the voting issue in its forthcoming filing due on July 9, 2012.

WHEREFORE, Plaintiffs request that the attached Amended Complaint be filed.

Respectfully submitted,

Dated June 19, 2012

/s/
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