



preliminary injunction. LCvR 65.1(d). Indeed, instead of immediately filing suit in May to remedy their alleged emergency, plaintiffs waited until September and then submitted an unnecessary and futile advisory-opinion request that asked the Commission to declare the relevant statute unconstitutional, which of course the agency has no power to do. *Meredith Corp. v. FCC*, 809 F.2d 863, 872 (D.C. Cir. 1987) (noting the “well known principle that regulatory agencies are not free to declare an act of Congress unconstitutional”). Given plaintiffs’ unjustified delay in filing suit, it is highly unlikely that plaintiffs would receive meaningful preliminary relief within their desired timeframe.

In any event, plaintiffs’ delay warrants denying the type of “emergency” injunction they seek. *See Tenacre Found. v. INS*, 78 F.3d 693, 695 n.2 (D.C. Cir. 1996) (finding that several-month delay before filing suit “undermines any assertions that [plaintiff] will suffer irreparable harm if the Court does not grant preliminary injunctive relief”); *see also Respect Maine PAC v. McKee*, 622 F.3d 13, 16 (1st Cir. 2010) (affirming district court’s denial of preliminary injunction where “appellants, well aware of the requirements of the election laws, chose not to bring this suit until August 5, 2010, shortly before the November 2 elections”); *Hispanic Leadership Fund v. Walsh*, No. 1:12-cv-1337, slip op. at 27 (N.D.N.Y. Oct. 23, 2012) (“[A]lthough denying an injunction now may deprive Plaintiffs a remedy for the upcoming November 6, 2012 election, Plaintiffs’ decision to wait until just two months before the election to challenge provisions of the Election Law that have been in place for decades undermines the alleged seriousness of the harm that they purportedly stand to suffer.”). Because emergency action is unwarranted and this case can properly be resolved on cross-motions for summary judgment, consolidation would further the interests of judicial economy by eliminating the need for duplicative briefing, hearings, and rulings on plaintiffs’ claim. *See Pharm. Research & Mfrs.*

*of Am. v. District of Columbia*, 406 F. Supp. 2d 56, 59 (D.D.C. 2005) (noting that consolidation serves “the interests of judicial efficiency”); *Fisons Corp. v. Shalala*, 860 F. Supp. 859, 860 (D.D.C. 1994) (consolidation “advance[s] the ends of justice and further[s] judicial economy”); *NOW v. Operation Rescue*, 747 F. Supp. 760, 768 (D.D.C. 1990), *aff’d in part, vacated in part*, 37 F.3d 646 (D.C. Cir. 1994).

Regarding the schedule for consolidated briefing (Order to Show Cause at 2), the Commission respectfully requests adequate time to fully assemble and present its defense of the provision at issue, 2 U.S.C. § 441a(a)(4). The Supreme Court has cautioned that a consolidated hearing should not be held until “a time which will still afford the parties a full opportunity to present their respective cases.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (internal quotations marks and citation omitted). Consolidation should not, therefore, prevent a party from developing and presenting all its evidence on the merits. *See CFTC v. Bd. of Trade of City of Chicago*, 657 F.2d 124, 127 (7th Cir. 1981). Specifically, the Commission requires a brief window in which to determine the extent and substance of the factual record it will provide to assist the Court in assessing the purpose and effect of the six-month waiting period. The Commission also requires sufficient time to develop that record, which the Commission anticipates will amply confirm that the statutory requirement — upheld by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 35-36 (1976) — remains constitutional.

Accordingly, as directed by the Court’s Order, the Commission proposes the following briefing schedule for sequential summary judgment motions:

- Plaintiffs shall file their motion for summary judgment on or before January 11, 2013.
- Defendant shall file its combined motion for summary judgment and opposition to plaintiffs’ motion for summary judgment on or before February 15, 2013.

- Plaintiffs shall file their combined opposition to defendant's motion for summary judgment and reply in support of their motion for summary judgment on or before March 8, 2013.
- Defendant shall file its reply in support of its motion for summary judgment on or before March 29, 2013.

### CONCLUSION

For the foregoing reasons, the Court should consolidate its consideration of plaintiffs' motion for a preliminary injunction with a hearing on the merits of this case and enter the above schedule for summary judgment briefing.

Respectfully submitted,

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