UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KEAN FOR CONGRESS COMMITTEE,	)	
Plaintiff,	)	
v.	)	Case Number 1:04CV00007 (JDB)
FEDERAL ELECTION COMMISSION,	)	MOTION
Defendant.	)	

DEFENDANT FEDERAL ELECTION COMMISSION'S MOTION TO HOLD PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN ABEYANCE AND TO SUSPEND FURTHER BRIEFING PENDING THE COURT'S RULING ON THE COMMISSION'S PENDING DISPOSITIVE MOTION BASED ON LACK OF JURISDICTION

Defendant Federal Election Commission ("Commission") hereby moves to hold plaintiff's motion for summary judgment in abeyance and to suspend further briefing pending the Court's ruling on the Commission's fully briefed motion to dismiss or, in the alternative, for summary judgment for lack of Article III standing. The Commission further requests that, if the Court finds that the plaintiff does have standing, the Commission's opposition to the plaintiff's motion for summary judgment be due three weeks (21 days) after the date the Court rules on the Commission's motion to dismiss.

The Court should grant this motion because the Court must decide the threshold jurisdictional issue before it may address the merits, and, if it finds that the plaintiff does not have Article III standing, the Court must dismiss this case for lack of jurisdiction. Furthermore, granting the motion will conserve the time and resources of the Court and the parties and will not prejudice or harm the plaintiff. In support of this motion the Commission relies upon the

accompanying memorandum of points and authorities. The Commission also submits a proposed order.

In accordance with LCvR 7(m), the Commission states that its counsel discussed this motion with plaintiff's counsel and that the plaintiff opposes the motion.

Respectfully submitted,

/s

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General Counsel

/s

Richard B. Bader_
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/s

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June 1, 2004

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KEAN FOR CONGRESS COMMITTEE, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	)	Case Number 1:04CV00007 (JDB) MEMORANDUM

DEFENDANT FEDERAL ELECTION COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO HOLD PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN ABEYANCE AND TO SUSPEND FURTHER BRIEFING PENDING THE COURT'S RULING ON THE COMMISSION'S PENDING DISPOSITIVE MOTION BASED ON LACK OF JURISDICTION

On May 20, 2004, plaintiff Kean for Congress Committee ("Kean Committee" or "the Committee" or "plaintiff") filed a motion for summary judgment addressing the merits of its petition for review of the dismissal of its administrative complaint by the Federal Election Commission ("the Commission" or "FEC"). See 2 U.S.C. 437g(a)(8). However, when that motion was filed, there was already pending before the Court a dispositive motion filed by the Commission to dismiss this case for lack of Article III jurisdiction. The Commission's motion was fully briefed and ready for decision on the day the Committee filed its summary judgment motion. Holding plaintiff's summary judgment motion in abeyance is thus appropriate because, if the Court finds that it has no jurisdiction, this case will be over and the time and resources spent by the Court and the parties addressing the merits will have been unnecessary and wasteful. The Supreme Court, the D.C. Circuit, and this Court have made absolutely clear that a federal court may not proceed to the merits of a claim when jurisdictional objections are pending.

Background

On May 31, 2000, the Kean Committee — the principal campaign committee of Tom Kean, Jr., a candidate in the New Jersey primary election to be held less than a week later — filed an administrative complaint with the Commission. First Amended Complaint ¶ 17.[1] The complaint alleged that in May 2000, the Council for Responsible Government, Inc. ("CRG"), financed and mailed advertisements advocating the defeat of Mr. Kean in the primary election. Id. at ¶¶ 2, 14, 15. In doing so, that complaint further alleged, CRG violated various provisions of the Federal Election Campaign Act ("Act"). Id. at ¶¶ 18-19. Mr. Kean, who lost the election, did not join in the administrative complaint. On November 4, 2003, the Commission dismissed the complaint. FEC Exhibit 10, accompanying the FEC's Memorandum in Support of Its Motion to Dismiss or, in the Alternative, for Summary Judgment ("FEC Mem."). In early January 2004, the Kean Committee filed its initial complaint for judicial review of that dismissal, and on March 4, 2004, it filed an amended court complaint alleging that the dismissal was arbitrary, capricious, and contrary to law. First Amended Complaint ¶¶ 7, 33. See 2 U.S.C. 437g(a)(8).

On March 15, 2004, the Commission filed a motion to dismiss the court action, see Fed. R. Civ. P. 12(b)(1), or, in the alternative, for summary judgment for lack of subject-matter jurisdiction. That motion rests on the Kean Committee's lack of Article III standing, either in its own right or on behalf of others, to challenge the dismissal of the administrative complaint. The Commission's supporting memorandum pointed out that, under the Act and the implementing regulations, the Committee, as a principal campaign committee, was and is limited to supporting Mr. Kean's 2000 election campaign. FEC Mem. at 13-14. The Memorandum noted that the Committee's court complaint does not allege that Mr. Kean has any firm plans to run again for

[1] The citation is to the Kean Committee's amended court complaint, which describes the administrative complaint.

federal office and that, even if he were to run again some day, he would have to designate a principal campaign committee for that election at that time. See FEC Mem. at 14-15 & n.10. Thus, the Memorandum concluded, the Committee has no present stake in any future Kean campaign, and its allegation of past injury during the 2000 campaign cannot support Article III standing for the prospective equitable relief it seeks. See FEC Mem. at 10-11.

The Kean Committee filed an Opposition in which it merely speculated that Mr. Kean "may" run again for federal office at some unspecified time and also that he "might or might not run again." Opp. at 15, 16. The Committee submitted no affidavit or declaration from Mr. Kean, and the one declaration it did file did not state that the declarant had spoken with Mr. Kean about his plans, did not quote Mr. Kean, and relied on anonymous gossip and speculation from a newspaper column. On May 20, 2004, the Commission filed a Reply in which it explained in detail how the Committee's Opposition failed to demonstrate that the Committee has standing under Article III.

Argument

This Court clearly has the authority to hold the Committee's summary judgment motion on the merits in abeyance and to suspend further briefing pending resolution of the jurisdictional issues. The Supreme Court long ago held that "every court" has the "inherent" power "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. North American Co., 299 U.S. 248, 254 (1936). This power encompasses holding in abeyance or staying the merits phase of a case. Id. at 253-54. See also Clinton v. Jones, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket").

This suit by the Kean Committee presents an especially compelling case for holding consideration of the merits in abeyance. First, the Commission's pending motion has been fully briefed and would resolve the entire case if the Court agrees that the Committee lacks Article III standing. Proceeding to the merits while jurisdiction is in doubt "carries the courts beyond the bounds of authorized judicial action," Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998), because "the first and fundamental question is that of jurisdiction." Id. (internal quotation marks and citation omitted). See also Whitmore v. Arkansas, 495 U.S. 149, 154 (1990) ("It is well established … that before a federal court can consider the merits of a legal claim, the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue"); Utility Air Regulatory Group v. EPA, 320 F.3d 272, 277 (D.C. Cir. 2003) ("'[B]efore we reach the merits of any claim, we must first assure ourselves that the dispute lies within the constitutional and prudential boundaries of our jurisdiction'" (internal citation omitted)); The Grand Council of the Crees v. FERC, 198 F.3d 950, 954 (D.C. Cir. 2000) ("Article III standing must be established before any decision is made on the merits"); In re Madison Guar. Sav. & Loan Ass'n, 173 F.3d 866, 870 (D.C. Cir. 1999) ("[I]t is not proper for federal courts to proceed immediately to a merits question despite jurisdictional objections"); Walker v. Cheney, 230 F.Supp.2d 51, 62 (D.D.C. 2002).

Accordingly, holding the merits phase of a case in abeyance pending resolution of jurisdictional issues is well recognized as an appropriate exercise of a court's power "to coordinate the business of the court efficiently and sensibly." Landis, 299 U.S. at 255. See, e.g., National Wildlife Federation v. Browner, 237 F.3d 670, 672 (D.C. Cir. 2001) (court "bifurcated the motion to dismiss and the merits, holding the merits in abeyance pending resolution of the jurisdictional issue"); Perry v. Village of Arlington Heights, 186 F.3d 826, 830 (7th Cir. 1999)

(district court properly postponed ruling on plaintiff's motion for summary judgment on the merits and instead ruled first on defendants' motion to dismiss for lack of Article III standing); Campbell v. Clinton, 52 F.Supp.2d 34, 39 (D.D.C. 1999) (court "held in abeyance further briefing on plaintiffs' motion [for summary judgment] pending a determination on the motion to dismiss [for lack of standing and nonjusticiability] filed by the [defendant]"), aff'd, 203 F.3d 19 (D.C. Cir.), cert. denied, 531 U.S. 815 (2000); Adams House Health Care v. Bowen, No. 85-2739, 1988 WL 235540, at *2 (D.D.C. 1988) (describing stay pending Ninth Circuit and Supreme Court review of jurisdictional question), aff'd, 895 F.2d 767 (D.C. Cir. 1990); Capital Engineering & Mfg. Co., Inc. v. Weinberger, Civ. No. 87-1623 JHP, 1988 WL 13272, at *1 (D.D.C. 1988) ("[C]ourts have not hesitated to stay discovery as to the merits of an action pending initial consideration of preliminary, and potentially dispositive, motions").

Second, as the Commission has amply demonstrated in its Memorandum and Reply in support of its dispositive jurisdictional motion, the attempt by the politically inactive Kean Committee, established only to serve as a principal campaign committee in an election campaign long over, to carry its burden of demonstrating its Article III standing is particularly weak. The Committee's alleged injuries from CRG's actions during the 2000 election campaign were limited to that election, which Mr. Kean lost, and are not now capable of being redressed. The Committee can offer only speculation about the theoretical possibility of future harm — speculation so vague and indefinite as not even to rise to the level of the "some day" predictions that the courts have uniformly found insufficient to support constitutional standing. See supra pp. 2-3; FEC Mem. at 14-15; FEC Reply at 5-10.

Third, the issues concerning Article III standing raised by the Commission's motion to dismiss do not at all overlap the issues raised by the Kean Committee's motion for summary

judgment. Thus, the jurisdictional issues would not be illuminated by the parties' discussion of the merits. The Kean Committee in its Opposition to the Commission's jurisdictional motion did not rely on any argument about the merits.

Fourth, the Court does not even have before it an administrative record compiled by the agency. "[R]eview is to be based on the full administrative record that was before the … [governmental official] at the time he made his decision." Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 420 (1971). See also, e.g., Camp v. Pitts, 411 U.S. 138, 142 (1973) ("In applying that [arbitrary and capricious] standard, the focal point for judicial review should be the administrative record").

In these circumstances, failure to hold the Kean Committee's motion on the merits in abeyance and to suspend briefing until the Court rules on the Commission's dispositive jurisdictional motion would needlessly burden the parties, particularly the Commission, and require them to divert their resources from other tasks. The issues on the merits involve complex legal questions with constitutional implications that have divided the Circuits. Also, the Kean Committee's summary judgment motion makes arguments regarding the construction of a recent Supreme Court decision, McConnell v. FEC, 124 S.Ct. 619 (2003), that present issues of first impression not yet addressed by any court. If this Court finds that the Committee lacks Article III standing and therefore grants the Commission's pending motion, the Court and the parties will have wasted substantial time, money, and effort on these merits issues over which the Court has no jurisdiction.

In contrast, granting the motion would not in any way prejudice the Committee or cause it any hardship. A party "may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted,"

Landis, 299 U.S. at 256, and that is precisely the situation here. The parties have already fully briefed Article III standing. Any further effort expended by the parties and the Court with respect to the merits would be wasted if the Commission's jurisdictional motion is granted, and the period of abeyance would be very limited, determined solely by the timing of this Court's decision on the jurisdictional issues. Finally, the Committee's own allegations show that it will not be prejudiced in any way by this modest delay. Regardless of whether the Committee's speculation about possible future campaigns ever materializes, it is undisputed that Mr. Kean will not be a candidate in any federal election this year, the next scheduled federal elections are not until 2006, and the Committee has never engaged in any political activity involving any candidate other than Mr. Kean.

In sum, with no prejudice to the plaintiff, the abeyance and suspension the Commission seeks are "an eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources." Chavous v. District of Columbia Fin. Responsibility and Mgmt. Assistance Auth., 201 F.R.D. 1, 2 (D.D.C. 2001) (internal quotation marks and citation omitted) (staying discovery pending resolution of dispositive motions).

Conclusion

For the reasons given above, the Federal Election Commission requests that the Court grant the Commission's motion and hold the Kean Committee's motion for summary judgment on the merits in abeyance pending the Court's ruling on the Commission's motion to dismiss or, in the alternative, for summary judgment on the ground of lack of Article III standing. If the Court were to find that the plaintiff has standing, the Commission also requests that it be

permitted to file an opposition to the plaintiff's summary judgment motion by three weeks (21 days) after the date the Court rules on the Commission's motion to dismiss.

Respectfully submitted,

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