IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER and DEMOCRACY 21,	)	
Plaintiffs,	)	Case No. 1:20-cv-00730
v.	)	Hon. Christopher R. Cooper
FEDERAL ELECTION COMMISSION,	)	
Defendant,	)	
RIGHT TO RISE SUPER PAC, INC.	)	
Proposed Intervenor-Defendant.	)	

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INTERVENOR-DEFENDANT RIGHT TO RISE SUPER PAC, INC.'S REPLY IN SUPPORT OF INTERVENOR-DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR CERTIFICATION FOR INTERLOCUTORY APPEAL

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INTRODUCTION

Right to Rise Super PAC, Inc. demonstrated in its initial brief that reconsideration is appropriate on two grounds. First, reconsideration is appropriate under Rule 60(b)(1) because the February 19, 2021 Memorandum Opinion and Order mistakenly applied the wrong legal standard. Determinations of Article III standing are made under the more stringent 12(b)(1) standard that—unlike the Rule 12(b)(6) standard that the Order applies—requires Plaintiffs to demonstrate by a preponderance of the evidence that the Court has subject-matter jurisdiction over what little remains of their Federal Election Campaign Act ("FECA") claim. While Plaintiffs argue now that they *could* prove an informational injury sufficient to confer Article III standing, their Complaint—relying on news articles published prior to June 2015—is inconsistent with the public record, showing that Governor John Ellis "Jeb" Bush disclosed all the subject activities through his presidential campaign's first campaign finance report in July 2015.

Second, reconsideration is appropriate under Rule 60(b)(6) for a similar reason: that aspect of the Order holding that Plaintiffs alleged a limited informational injury is based on the incorrect premise that Plaintiffs would obtain disclosure of *additional* information if they prevail on their FECA claim. But both Governor Bush and Right to Rise disclosed all the subject activities as FECA requires, so even if Plaintiffs succeed on what remains of their FECA claim, the statute does not entitle Plaintiffs to any additional information. And that is true no matter how many news articles published *before* Governor Bush and Right to Rise disclosed those activities are cited in Plaintiffs' Response. Plaintiffs did not suffer an informational injury necessary for Article III standing and seek only legal determinations to which they have no cognizable legal interest.

At a minimum, certification for interlocutory appeal is appropriate because Plaintiffs' standing is a controlling question of law that has divided judges in this District, and the D.C. Circuit's resolution of that question would substantially advance the termination of this litigation.

ARGUMENT

I. This Court Should Reconsider its Decision under the Legal Standard for Rule 12(b)(1) and Hold that Plaintiffs have not Shown by a Preponderance of the Evidence that the Court has Subject-Matter Jurisdiction over Their FECA Claim.

As Right to Rise explained in its Motion, a plaintiff "bears the burden of proving by a preponderance of the evidence that the Court has subject-matter jurisdiction over her claims." *Schmidt v. U.S. Capitol Police Bd.*, 826 F. Supp. 2d 59, 69 (D.D.C. 2011), *citing Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Here, Plaintiffs claim they have suffered informational injury because they were allegedly "deprived of over five months of information" regarding Governor Bush's testing-the-waters spending during early 2015 "that is statutorily required to be disclosed." ECF No. 17 at 11. Yet, aside from reciting the "preponderance of the evidence" burden of proof in the "Legal Standard" section preceding its analysis, *see id*. at 7-8, the February 19th Order never *applied* that burden in determining that Plaintiffs suffered an informational injury sufficient to confer Article III standing. Instead, the Order invoked the Rule 12(b)(6) legal standard: the Court "must accept plaintiffs' factual allegations as true," and that "the Court assumes that plaintiffs are correct that Bush was testing the waters as of January 2015." *Id*.

In other words, the Order applied a legal standard that did not require Plaintiffs to prove *anything at all* to show standing. This is a clear error given that Plaintiffs have the burden of proving injury by a preponderance. Accordingly, Right to Rise is entitled to reconsideration under Rule 60(b)(1). *See Dist. of Columbia Fed'n of Civic Ass'ns v. Volpe*, 520 F.2d 451, 451–53 (D.C. Cir.1975). *Accord, e.g.*, *Douglas v. D.C. Hous. Auth*., 306 F.R.D. 1, 5 (D.D.C. 2014).

In response, Plaintiffs characterize the Order as having held that Plaintiffs demonstrated an informational injury by a preponderance of the evidence, *see* Opp'n at 6. But those words appear nowhere in the Order's analysis; quite the opposite, the less stringent legal standard governing motions under Rule 12(b)(6)—which puts no burden of proof on Plaintiffs—*is* in the Order.

Alternatively, Plaintiffs say they satisfied the 12(b)(1) standard based on the Complaint's allegations that "Bush engaged in more testing-the-waters activities prior to June 2015 than the campaign reported," as well as the inferences that may be drawn from now obsolete "public reporting" of those possible campaign activities in the form of newspaper articles and other media accounts. Opp'n at 6-8. But Plaintiffs' focus on the liberal construction of pleadings and the benefit of inferences misconstrues the analysis the Court was required to apply under Rule 12(b)(1).

A Rule 12(b)(1) motion "imposes on the court an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority." *Grand Lodge of Fraternal Ord. of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13 (D.D.C. 2001). Although the court "must accept as true all of the factual allegations contained in the complaint and draw all *reasonable* inferences in favor of the plaintiff," the court must also "scrutinize the plaintiff's allegations more closely … than it would under a motion to dismiss pursuant to Rule 12(b)(6)." *Schmidt*, 826 F. Supp. 2d at 65 (emphasis added). *Accord, e.g.*, *Biton v. Palestinian Interim Self-Gov't Auth.*, 310 F. Supp. 2d 172, 176 (D.D.C. 2004) (a complaint's allegations "will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim."); *Harrison v. Norton*, 429 F. Supp. 2d 83, 87–88 (D.D.C. 2006) ("In spite of the favorable inferences that a plaintiff receives on a motion to dismiss, it remains the plaintiff's burden to prove subject matter jurisdiction by a preponderance of the evidence.")

In the D.C. Circuit, the "distinctions between 12(b)(1) and 12(b)(6) are important and well understood." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987). Unlike a Rule 12(b)(6) motion, "[i]n 12(b)(1) proceedings, it has been long accepted that the judiciary may make appropriate inquiry *beyond the pleadings* to satisfy itself on authority to entertain the case." *Id.* (emphasis added, quotations omitted). To this end, a court must reject a complaint's

"unreasonable" or "implausible" inferences that are countered by other factual evidence. *Kareem v. Haspel*, 986 F.3d 859, 869 (D.C. Cir. 2021). For example, in *Kareem*, the D.C. Circuit held that a plaintiff lacked standing to assert that he was targeted by the U.S. government because the "basic facts" of the Syrian conflict made the targeting allegation "an unreasonable inference." *Id.* at 868-69. The court explained that while "[t]hese facts do not eliminate the *possibility*" of the complaint's inferences, "they do make the necessary inferences *implausible*." *Id.* at 869 (emphasis in original). Thus, the Circuit Court concluded "the complaint simply does not permit the court to infer more than the mere possibility of misconduct, and this is insufficient to show that [plaintiff] has the requisite standing. *Id.* (cleaned up).

Here, by mistakenly applying the more liberal Rule 12(b)(6) standard, the Order incorrectly assumed that Plaintiffs were deprived of statutorily required disclosures for the period January to June 2015 and, as a result, determined that Plaintiffs suffered an informational injury sufficient for Article III. ECF No. 17 at 11. But Plaintiffs cannot establish by a preponderance that they were deprived of information from January to June 2015. The public record shows that Governor Bush reported $386,020.15 of testing-the-waters activity for that period. Jeb 2016, Inc., July Quarterly Report of Itemized Disbursements, FEC Form 3P, Schedule B, Line No. 23 (filed Jul. 15, 2015), https://docquery.fec.gov/cgi-bin/forms/C00579458/1015075/sb/23.[1] Plaintiffs' allegations and compiled news reports from prior to the filing of that FEC report do not establish the likelihood of uncovering additional, *non-disclosed* spending such that Plaintiffs could establish an informational injury by a preponderance of the evidence. Accordingly, the Order's misapplication of the standard

[1] On a Rule 12(b)(1) motion, the court may "consider such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction in the case." *Schmidt*, 826 F. Supp. 2d at 65. *Accord, e.g., Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002).

and burden of proof in its jurisdictional analysis is a dispositive mistake warranting reconsideration and dismissal.

II. The Factual Misconceptions in the February 19th Order Require Reconsideration under Rule 60(b)(6).

Reconsideration is necessary under Rule 60(b)(6) when an order is "based on a 'fundamental misconception of the facts' which entitled [the movant] to relief from the court's judgment." *Stanford v. Potomac Elec. Power Co.*, No. CIV.A. 104-1461RBW, 2006 WL 1722329, at *3 (D.D.C. June 21, 2006) (quoting *Good Luck Nursing Home, Inc. v. Harris*, 636 F.2d 572, 577 (D.C. Cir. 1980) (cleaned up). As explained in its initial brief, Right to Rise is also entitled to reconsideration because the Order mistakenly reasoned that, "[t]o the extent that Bush was either a de-facto candidate or testing the waters at some point prior to June 2015, then plaintiffs have alleged an informational injury *because further disclosures would be required*." ECF No. 17 at 12 (emphasis added). In fact, the Bush campaign and Right to Rise timely reported the exact information FECA requires. Plaintiffs have suffered no informational injury because there is simply nothing more to disclose under FECA.

Plaintiffs say that Right to Rise is not situated to argue that Governor Bush disclosed the testing-the-waters activities upon which Plaintiffs' FECA claim now hangs. But the Court need not rely on Right to Rise; it need only look at the public record. In approximately December of 2014, Governor Bush began testing-the-waters for a Presidential campaign. Everyone knows this because of *contemporaneous news reports*—some of which are cited in Plaintiffs' Complaint and their Response—and because of subsequently reported testing-the-waters spending by Governor Bush.

In early 2015, the Bush team set up a leadership PAC called Right to Rise PAC to raise funds to assist other Republicans, and shortly after that, Governor Bush's allies set up a Super

PAC called Right to Rise Super PAC to raise funds and independently support Bush if he decided – when the testing-the-waters process led him to a decision – to campaign for President. Two legal compliance concepts were important for Governor Bush, Right to Rise PAC, and Right to Rise Super PAC. First, any activity in which Governor Bush engaged that met the FEC's definition of testing-the-waters activity had to be paid for by Bush personally as well as tracked and then later reported on his first FEC report *if* he decided to run for federal office. If Governor Bush did not decide to run, then such activity need not be reported under FECA. Second, if Bush travelled to Right to Rise PAC or Right to Rise Super PAC events as the "special guest" at fundraisers for those entities, then those groups were legally required to pay for his travel and lodging because the benefit of his attendance ran to whichever of those entities hosted that event. Such spending would be reported as an expenditure by the benefitted entity.

In spring 2015, Bush travelled to Right to Rise PAC and Right to Rise Super PAC fundraising events, the result of which was a remarkable "shock and awe" $100 million fundraising by Right to Rise Super PAC. Throughout this period, opponents of the free speech protections codified in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), such as Plaintiffs, complained about these events and the law, as evidenced by the voluminous new articles cited in Plaintiffs' Complaint and Response, many of which were initially encouraged by—and even cite—Plaintiffs. *See* ECF No. 1-1 ¶ 14 n 19 (citing Matea Gold, *Why super PACs have moved from sideshow to center stage for presidential hopefuls*, Wash. Post (Mar. 12, 2015), https://www.washingtonpost.com/politics/once-the-sideshows-super-pacs-now-at-the-forefront-of-presidential-runs/2015/03/12/516d371c-c777-11e4-a199-6cb5e63819d2_story.html (quoting Paul D. Ryan, senior counsel to Plaintiff Campaign Legal Center)); *Accord, e.g.*, ECF No. 1-1 ¶ 4 n 1 (citing Paul Blumenthal, *Jeb Bush Messes Up Charade Of Not Running For President*, Huff.

Post (May 13, 2015), https://www.huffpost.com/entry/jeb-bush-president_n_7278624 (quoting Fred Wertheimer, president of Plaintiff Democracy 21)); ECF No. 1 ¶ 26 n 4 (Jim Rutenburg, *The Next Era of Campaign-Finance Craziness is Already Underway*, N.Y. Times (Apr. 21, 2015), https://www.nytimes.com/2015/04/21/magazine/the-next-era-of-campaign-finance-craziness-is-already-underway.html (quoting Fred Wertheimer, president of Plaintiff Democracy 21)). It is easy to forget now that, at the time of these articles, it was unclear whether Governor Bush would decide to run, therefore mandating his testing-the-waters activity be publicly reported, or not run, in which case no testing-the-waters activity would be required to be reported. At the same time, Right to Rise Super PAC was on a quarterly FEC reporting schedule, meaning that its spending for travel and event costs would be publicly reported in July 2015 (for activity through June 31, 2015).

Governor Bush *did* end up announcing his candidacy in June 2015, and consequently—as FECA required—he reported $386,020.15 of testing-the-waters activity on his campaign's first FEC report in July 2015. As explained in Right to Rise's initial brief, the Order's finding that Plaintiffs suffered an information injury is based on the misconception that Bush's testing-the-waters activity was *not* reported. ECF No. 19, at 9. But Plaintiffs now concede that Governor Bush reported his testing-the-waters activity. Opp'n at 10.

This forces Plaintiffs to pivot and speculate that Governor Bush's reporting of testing-the-waters activity may not have been "complete or accurate," Opp'n at 11, and that Right to Rise cannot prove otherwise. But Plaintiffs' examples point merely to "extensive travel for fundraising and campaign-styled events," *id.*, events that were put on by, and for the benefit of, Right to Rise. Because Right to Rise was the beneficiary of *and was responsible for FEC reporting of the expenses for its own events* (including the many events featuring Governor Bush as Special Guest), Right to Rise has direct knowledge that the activity was indeed reported on Right to Rise's reports.

In sum, the extensive Bush travel reported in Plaintiffs' news articles was on behalf of Right to Rise and paid for *and reported* by Right to Rise. Plaintiffs have a legal theory whereby they believe that fully-reported Super PAC travel and event activity should have triggered Governor Bush's candidacy for office and then been reported by Governor Bush instead of by Right to Rise, but that is a theory regarding *already disclosed* expenditures—precisely the sort of information that is insufficient to confer standing in this Court. *E.g.*, *Wertheimer v. Fed. Election Comm'n*, 268 F.3d 1070, 1075 (D.C. Cir. 2001) ("[Plaintiffs] bear the burden of showing their standing, and they simply failed to establish that the ruling sought would yield anything more than a legal characterization or *duplicative reporting* of information that under existing rules is already required to be disclosed.") (emphasis added); *Free Speech for People v. FEC*, No. 19-CV-1722 (APM), 2020 WL 999205, at *6 (D.D.C. Mar. 2, 2020) (no informational injury where "Plaintiff already knows the information FECA requires be disclosed [but] Plaintiff simply wants the same information from a different source—an FEC investigation and a finding of an election law violation. Such a desire does not support an informational injury."). The analysis of whether Right to Rise's already disclosed expenses should have also been reported as testing-the-waters or campaign activity by Governor Bush hinges on, among other factors, whether the FEC believes the Right to Rise expenditures were coordinated with Bush. But this is exactly the sort of legal determination found insufficient for informational injury under *Wertheimer*, as well as this Court's Order. *See* ECF No. 17, at 14 (holding that *Wertheimer* precluded a finding that Plaintiffs had standing to pursue their FECA claim as it relates to alleged coordination between Governor Bush and Right to Rise).

In footnote 15 of their Response, Plaintiffs rely on the Order's mistaken understanding of the facts by referencing the inaccurate statement that Right to Rise has denied that Governor Bush

was engaged in any testing-the-waters activities before June 2015. Opp'n at 10 n 15 ("Right to Rise strenuously denies that Bush was testing the waters prior to June 2015.") (quoting ECF No. 17, at 11). To be clear, Right to Rise agrees—and has never argued to the contrary—that Bush engaged in testing-the-waters activities as early as January 2015 but only disclosed them as of June 4, 2015. *E.g.*, ECF No. 15 ("In the spring of 2015, when Right to Rise was raising funds, Governor Bush was by all accounts testing-the-waters to decide whether to run for President, as was reported by hundreds if not thousands of news sources at the time. Governor Bush personally paid for any travel or activities that qualified as "testing-the-waters" activities, and such expenses were publicly reported on the Bush for President campaign's first FEC report[.]") That disclosure is consistent with Plaintiffs' interpretation of FECA requiring potential candidates to record testing-the-waters activities and disclose those activities *if and when they subsequently become candidates*. See 11 C.F.R. §§ 100.72(a), 100.131(a), 101.3. That is exactly the procedure that Governor Bush followed when he disclosed his testing-the-waters activities when he became a candidate. During the time Plaintiffs filed their FEC Complaints and over the five-month period of the news reports cited in Plaintiffs' Complaint, they had no immediate right to the information that was statutorily required to be disclosed, as those disclosure requirements applied only if—and at which time—Bush became a candidate.

Finally, one article repeatedly cited by Plaintiffs makes clear the legal, and not factual, nature of the dispute here. ECF No. 1 ¶ 26 n 4 (citing J. Rutenburg, *supra*); ECF No. 1-1 ¶ 12 n 12 (same). That article explains how, in 2015, supporters of major potential candidates such as Hillary Clinton, Jeb Bush, Scott Walker, and Rand Paul were or would be relying upon independent entities run by former advisors to support their current or likely campaigns. Fred Wertheimer—the founder of Plaintiff Democracy 21, ECF No. 13 at 26—essentially accused all those

organizations of breaking his view of the law, while at the same time acknowledging that while he raised similar complaints in the previous 2012 election cycle, the FEC did not agree with him. *See* J. Rutenburg, *supra.* More realistically, in the same article, Richard Briffault, a campaign finance law professor at Columbia Law School, argued that for those opposed to the 2015 activity, the solution was a new set of regulations that addressed the formation of candidate-specific super PACs. *Id*. Those new laws, of course, were never enacted, and Plaintiffs clearly remain frustrated with the FEC. But mere policy disagreements neither confer standing nor create additional disclosure requirements under FECA. Right to Rise is entitled to dismissal of Plaintiffs' FECA claim for lack of standing.

III. In the Alternative, the Court Should Certify its Order for Interlocutory Appeal.

At minimum, Right to Rise seeks certification of the Court's Order for interlocutory appeal. Under 28 U.S.C. § 1292(b), interlocutory appeal from a non-final order may be taken if the district court certifies that the order: (1) "involves a controlling question of law"; (2) "as to which there is a substantial ground for difference of opinion"; and (3) "that an immediate appeal from the order may materially advance the ultimate termination of the litigation." *Id.*

Plaintiffs concede that Right to Rise has satisfied factor (1). *See* Opp'n at 13. They disagree as to factors (2) and (3). But for the reasons set forth below, Plaintiffs are wrong. So the Court should amend its Order consistent with Federal Rule of Civil Procedure 5(a)(3) to include the findings necessary for certification.

A. There is a Substantial Ground for Difference of Opinion on the Issue of Plaintiffs' Standing to Proceed with the Remainder of their FECA Claim.

Substantial ground for difference of opinion under § 1292(b) may be established "where a court's challenged decision conflicts with decisions of several other courts." *APCC Servs., Inc. v. Sprint Commc'ns Co., L.P.*, 297 F. Supp. 2d 90, 97-98. As Right to Rise stated in its initial brief,

the Order's conclusion that Plaintiffs have demonstrated an information injury despite all disclosures required under FECA having been made conflicts directly with decisions from other courts in this District and Circuit. As in those cases, Plaintiffs have nothing to gain here but a legal conclusion, which is insufficient to confer Article III standing. *E.g.*, *Campaign Legal Ctr. v. Fed. Election Comm'n*., CV 19-2336 (JEB), 2020 WL 7059577 at *9 (D.D.C. Dec. 2, 2020) ("It is equally well established, however, that a plaintiff's mere desire for information concerning a violation of FECA does not give rise to an Article III injury-in-fact."); *Wertheimer*, 268 F.3d at 1075.

Plaintiffs try to distinguish these conflicting cases by invoking a "right to receive undisclosed factual information about campaign or testing-the-waters spending," Opp'n at 13, alleging that Plaintiffs were "deprived of months of information about Jeb Bush's testing-the-waters and/or candidate activities and RTR's funding of them." *Id.* at 14. But as noted above, both Right to Rise and Governor Bush made all the FECA-required disclosures regarding those testing-the-waters and/or candidate activities for the period in question. *See* Section II. So, even if Plaintiffs' alleged informational injury is premised on the belief that these disclosures should have been made by Governor Bush instead of Right to Rise, that premise seeks nothing more than a legal conclusion regarding coordination—a theory already rejected by this Court as insufficient to confer standing, *see* ECF No. 17, at 14, consistent with the law of this Circuit. *Wertheimer*, 268 F.3d at 1075. The portion of the Order concluding that Plaintiffs suffer informational injury conflicts with this Circuit's established case law because all the information that must be disclosed under FECA was disclosed years ago, and Plaintiffs have nothing to gain but a legal conclusion such as, for example, when Governor Bush became a candidate.

What's more, a substantial ground for difference of opinion does not even require conflicting "controlling authority." Opp'n at 13. Rather, the court may review the relevant case law and "analyze the reasoning in those decisions and the strength of the arguments in opposition in order to decide whether there is a substantial ground for dispute." *Molock v. Whole Foods Mkt. Grp., Inc.*, 317 F. Supp. 3d 1, 5 (D.D.C. 2018); *see also Nat'l Veterans Legal Servs. Program v. U.S.*, 321 F. Supp. 3d 150, 155 (D.D.C. 2018) (substantial ground for dispute where the court's order "made clear that [the parties'] arguments are not without merit"). Here, Right to Rise's request for certification is not based on a mere disagreement with the Order (Opp'n at 15), but is based on the same legal principle applied in similar cases in this District as recently as three months ago, *see Campaign Legal Ctr. v. Fed. Election Comm'n*, CV 19-2336 (JEB), 2020 WL 7059577 at *9 (D.D.C. Dec. 2, 2020). Thus, the Order warrants interlocutory appeal.

B. An Immediate Appeal Would Advance the Litigation's Ultimate Termination.

The third interlocutory-appeal factor "is whether reversal would hasten or at least simplify the litigation in some material way, such as by significantly narrowing the issues, conserving judicial resources, or saving the parties from needless expense." *Molock*, 317 F. Supp. 3d at 6. That requirement is satisfied here because the issue of Plaintiffs' standing to proceed with what's left of their FECA claim is likely to be dispositive. Plaintiffs concede as much, *see* Opp'n at 15 ("A contrary appellate ruling on plaintiffs' standing would potentially resolve this case"), and the law of this Circuit supports Right to Rise's contention that it would prevail on appeal given that the required disclosures have been made. *See Wertheimer* 268 F.3d at 1075. Therefore, certification for interlocutory appeal is appropriate; an immediate appeal and a D.C. Circuit ruling for Right to Rise would terminate this litigation for lack of subject matter jurisdiction immediately, thereby preventing the needless expense and waste of judicial resources if it should turn out that this Court's ruling is reversed. *E.g. Howard v. Off. of Chief Admin. Officer of U.S. House of*

Representatives, 840 F. Supp. 2d 52, 57 (D.D.C. 2012) (material advancement of the disposition of the litigation satisfied where "if, post judgment, the Court of Appeals were to conclude that it was error to allow [plaintiff's] claims to go forward, then the [defendant] would have been improperly subjected to the burden of defending those claims.").

CONCLUSION

Right to Rise respectfully requests that the Court reconsider that portion of its February 19, 2021 Memorandum Opinion and Order holding that Plaintiffs have Article III standing to pursue the remainder of their FECA claim. At minimum, the Court should certify the Order for interlocutory appeal under 28 U.S.C. § 1292(b).

Dated: March 26, 2021

Respectfully Submitted,

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**Pending Admission*

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2021, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

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