

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

_____)	
CAMPAIGN)	
LEGAL CENTER,)	
	Plaintiff,)	
)	
	v.)	Civil Action No. 20-0809 (ABJ)
)	
FEDERAL ELECTION)	
COMMISSION,)	
	Defendant.)	
_____)	

ORDER

Before the Court is plaintiff’s Motion for Default Judgment against the Federal Election Commission (“FEC”) [Dkt. # 11] (“Pl.’s Mot.”). Plaintiff filed an administrative complaint with the FEC on August 23, 2018, alleging that an organization called 45Committee, Inc. “violated the Federal Election Campaign Act (“FECA”) by failing to register as a political committee and failing to file reports disclosing its contributors, expenditures, and debts.” Compl. [Dkt. # 1] at 1. The agency has yet to take action on the complaint, and plaintiff asserted in this case that the agency’s long delay in addressing the submission was contrary to law. It sought an order compelling the agency to act on the administrative complaint, but it did not ask the Court to direct the agency to reach a particular result. *Id.* at 14.

Plaintiff summarizes the current procedural posture of this case as follows:

CLC brought this action on March 24, 2020, challenging Defendant’s unlawful failure to act on Plaintiff’s administrative complaint alleging violations of the Federal Election Campaign Act (“FECA”). Service was effected on March 25, 2020, such that the FEC’s deadline to file a responsive pleading was May 26, 2020. *See*

ECF No. 6. The FEC failed to appear, answer, plead, or otherwise defend this action as required by the Federal Rules of Civil Procedure, and the Clerk of Court entered a default against the FEC on May 28, 2020. *See* ECF No. 10.

Pl.'s Mot. at 1.

Plaintiff now seeks default judgment in the form of a declaration that the FEC's failure to act is contrary to the FECA, 52 U.S.C. § 30109(a)(8)(C), as well as an order directing the FEC to conform with the ruling within 30 days by acting on the administrative complaint. Pl.'s Mot. at 1–2; *see also* Proposed Order [Dkt. # 11-1]. While the agency has not responded to this motion, the New Civil Liberties Alliance was granted leave to submit an amicus brief, and it “respectfully urges the Court to not create a quagmire by entering default judgment” in this case. Brief Amicus Curiae [Dkt. # 8] at 1.¹

Under Federal Rule of Civil Procedure 55(d), “default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.” “The determination of whether default judgment is appropriate is committed to the discretion of the trial court.” *Int’l Painters & Allied Trades Indus. Pension Fund v. Auxier Drywall, LLC*, 531 F. Supp. 2d 56, 57 (D.D.C. 2008), citing *Jackson v. Beech*, 636 F.2d 831, 836 (D.C. Cir. 1980).

Because courts strongly favor resolution of disputes on their merits, and because “it seems inherently unfair” to use the court's power to enter judgment as a penalty for filing delays, modern courts do not favor default judgments. Accordingly, default judgment usually is available “only when the adversary process has been halted because of an essentially unresponsive party as the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights.”

¹ The Court granted leave for the New Civil Liberties Alliance to submit an amicus brief in a minute order on May 26, 2020.

Boland v. Elite Terrazzo Flooring, Inc., 763 F. Supp. 2d 64, 67 (D.D.C. 2011) (brackets and ellipses omitted), quoting *Jackson*, 636 F.2d at 835–36.

Under FECA, the FEC is assigned to fulfill a critical mission enforcing the rules governing campaign finance and disclosure. The languishing of plaintiff’s complaint and the failure of the agency to appear in this action are disturbing signs that the agency has been dysfunctional and broken for some time.² But the complaint and the instant motion were both filed at a time when the agency did not have a quorum, and therefore it could not take action even if the Court ruled in plaintiff’s favor and directed the FEC to do something within thirty days. *See* Second Notice Regarding the Federal Election Commission’s Quorum [Dkt. # 16] (“Second Notice”) ¶ 1 (acknowledging that “[t]he FEC was without a quorum of four Commissioners for most of 2020” and “[a]bsent a quorum of Commissioners, the FEC was unable to take action on enforcement matters, including the matter underlying the instant action”). This means that for the bulk of the time this case was pending, it was not at all clear that the Court could provide relief.³

The FEC has finally obtained a quorum, and plaintiff reports that it has since voted to defend at least one other lawsuit alleging FEC inaction. Second Notice ¶ 4. But this state of affairs has only existed since December. For all of these reasons, then, the Court concludes in its discretion that the entry of a default judgment would be premature, as it is not yet apparent that a

² *See Campaign Legal Center v. Federal Election Commission*, No. 20-cv-1778 (D.D.C. Oct. 14, 2020) (order entering default judgment against the FEC for failing to defend a similar action).

³ There is no clear authority indicating whether the Court had the power to order the agency to act under those circumstances. The Supreme Court declined to answer the question, *see Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 19 n.10 (2013) (“It is a nice point, which we need not resolve here, whether a court can compel agency action that the agency itself, for lack of the statutorily required quorum, is incapable of taking.”), and the D.C. Circuit has not addressed the issue.

lack of diligence on the part of the defendant warrants a decision to forego a resolution on the merits.

But it is necessary for the agency to pay attention to this case.

Therefore, based on the entire record, and in the Court's discretion, the motion will be **DENIED** without prejudice to a renewed motion if defendant does not enter an appearance in this case by May 1, 2021.

SO ORDERED.

A handwritten signature in black ink that reads "Amy B Jackson" with a horizontal line extending to the right from the end of the signature.

AMY BERMAN JACKSON
United States District Judge

DATE: March 11, 2021