

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

_____)	
REPRESENTATIVE TED LIEU, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 16-2201 (EGS)
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	ANSWER
)	
Defendant.)	
_____)	

DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint for Declaratory Judgment and Injunctive Relief filed by plaintiffs Representative Ted Lieu, Representative Walter Jones, Senator Jeff Merkley, State Senator (Ret.) John Howe, Zephyr Teachout, and Michael Wager. Any allegation not specifically responded to below is DENIED.

1. This paragraph contains plaintiffs’ characterizations of judicial decisions in *Citizens United v. FEC*, 558 U.S. 310 (2010), and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc) (“*SpeechNow*”), which speak for themselves, and plaintiffs’ legal conclusions, to which no response is required. ADMIT that independent-expenditure-only PACs, also commonly known as “super PACs,” were active in the years following these decisions.

2. This paragraph contains plaintiffs’ characterizations of the judicial decision in *SpeechNow* and plaintiffs’ legal conclusions, to which no response is required. ADMIT that plaintiffs filed an administrative complaint with the FEC. DENY that the Federal Election Campaign Act (“FECA”) prescribes a time for the Commission to act or take final action on an

administrative complaint, *see* 52 U.S.C. § 30109 (authorizing the filing of petition for judicial review after 120 days), and DENY that the Commission has failed to act on plaintiffs' administrative complaint within the meaning of the statute. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

3. The first sentence of this paragraph and the accompanying footnote contain plaintiffs' characterizations of, and a partial quote from, specified sources which speak for themselves, and contain plaintiffs' characterization of unspecified press and commentary sources, to which no response is required. The second sentence of this paragraph contains legal argument and conclusions to which no response is required. To the extent a response is required, DENY the second sentence of this paragraph. DENY that the FEC has acted unlawfully and DENY that FECA "contemplates" that the Court compel the FEC to "resolve the administrative complaint within 30 days."

4. This paragraph describes plaintiffs' court complaint, which speaks for itself, and so no response is required.

5. This paragraph contains plaintiffs' characterizations of FECA, the statutory provisions in 52 U.S.C. §§ 30116(a)(1)(C) and 30116(f), and the Commission's regulations in 11 C.F.R. §§ 110.1(d) and 110.1(n), which speak for themselves, and so no response is required.

6. ADMIT that plaintiffs filed an administrative complaint with the FEC on July 7, 2016. The remainder of this paragraph and the accompanying footnote describe the allegations in plaintiffs' administrative complaint and court complaint, which speak for themselves, and so no response is required.

7. This paragraph contains plaintiffs' request for relief, to which no response is required. To the extent a response is required, DENY that plaintiffs are entitled to the requested

relief because the Commission has not failed to act on plaintiffs' administrative complaint within the meaning of 52 U.S.C. § 30109(a)(8)(A).

8. This paragraph contains plaintiffs' characterization of FECA and the judicial decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that *Buckley* contains the quoted language.

9. This paragraph purports to characterize FECA and describe its legislative history, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that Congress amended FECA in 1976.

10. This paragraph contains plaintiffs' characterizations of the cited regulations and rulemaking statements, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the cited rulemaking statements contain the quoted language.

11. This paragraph contains plaintiffs' characterization of the judicial decisions in *SpeechNow* and *Citizens United*, which speak for themselves, and plaintiffs' legal conclusions, to which no response is required.

12. ADMIT that the Department of Justice ("DOJ") chose not to seek the Supreme Court's review of the decision in *SpeechNow*. To the extent the first sentence of this paragraph characterizes DOJ's decision by quoting from the cited document, the cited document speaks for itself, and so no response is required. The second sentence of this paragraph contains plaintiffs' legal conclusions, to which no response is required.

13. The Commission is without knowledge or information sufficient to admit or deny the allegation in the last sentence. The rest of this paragraph contains plaintiffs'

characterizations of judicial decisions and law review articles, which speak for themselves, and plaintiffs' legal conclusions, to which no response is required.

14. ADMIT that the number of super PACs and the size of contributions to them have increased "[s]ince *SpeechNow*," when super PACs first became permissible. ADMIT that in the two-year 2016 election cycle, there were about 3,000 super PACs reporting to the FEC and they had receipts and total independent expenditures over the indicated amounts through November 2016. The Commission is otherwise without knowledge or information sufficient to admit or deny the allegations in this paragraph, which includes in the third sentence an analysis of the family relations of super PAC contributors.

15. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph. The statistics in the second sentence appear to regard spending by 26 U.S.C. § 501(c)(4) organizations that is not limited to spending reported to the Commission. In addition, the first sentence contains quotes from a press article, which speaks for itself, and so no response is required.

16. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

17. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

18. The first sentence of this paragraph contains plaintiffs' legal conclusion, to which no response is required, and plaintiffs' characterization of the cited law review article, which speaks for itself. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

19. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

20. This paragraph contains plaintiffs' legal argument and conclusions, and so no response is required.

21. ADMIT that the cited FEC advisory opinion was issued in July 2010 to a political committee that later became Senate Majority PAC and that the opinion contains the quoted language.

22. This paragraph contains legal conclusions to which no response is required.

23. This paragraph contains plaintiffs' characterization of the judicial decision in *SpeechNow*, which speaks for itself, and plaintiff's legal conclusions, to which no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

24. ADMIT that 52 U.S.C. § 30109(a)(8) provides statutory jurisdiction over Count I and that 28 U.S.C. § 1331 provides for federal question jurisdiction over Count I in the district court. DENY that this Court has jurisdiction over Count II.

25. ADMIT that 52 U.S.C. § 30109(a)(8) provides for venue in the United States District Court for the District of Columbia.

26. ADMIT that Ted Lieu is a United States Representative from California's 33rd congressional district and a member of the Democratic Party. ADMIT that American Alliance and Bold Agenda PAC reported to the FEC that they spent funds opposing his 2014 campaign or supporting his opponent, and that American Alliance reported to the FEC that it spent about \$506,407 opposing his 2014 campaign or supporting his opponent, of which \$500,000 was

reported as being contributed by a single donor. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

27. ADMIT that Representative Lieu ran for re-election in 2016. To the extent the remainder of the paragraph contains plaintiffs' legal conclusions, no response is required. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

28. ADMIT that Walter Jones is a United States Representative from North Carolina's 3rd congressional district and a member of the Republican Party. ADMIT that Ending Spending Action Fund is now known as ESAFund and that Ending Spending Action Fund reported to the FEC that in the 2014 election cycle, it spent about \$381,353 opposing Representative Jones and about \$353,251 supporting his then-opponent, William Taylor Griffin.

29. ADMIT that Representative Jones ran for re-election in 2016. To the extent the remainder of the paragraph contains plaintiffs' legal conclusions, no response is required. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

30. ADMIT that Jeff Merkley is a United States Senator from Oregon and a member of the Democratic Party. ADMIT that Freedom Partners Action Fund, Inc. reported to the FEC that in the 2014 election cycle, it spent about \$1,020,015 opposing Senator Merkley. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

31. To the extent this paragraph contains plaintiffs' legal conclusions, no response is required. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

32. ADMIT that John Howe is a former member of the Minnesota state senate, that he was a Republican candidate in the 2016 United States House of Representatives election to represent Minnesota's 2nd congressional district, and that he did not win the August 2016 Republican primary election. ADMIT that House Majority PAC reported to the FEC that it spent about \$759,432 opposing the Republican candidate for Minnesota's 2nd congressional district. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

33. ADMIT that Zephyr Teachout was the Democratic candidate in the 2016 election to represent New York's 19th congressional district in the United States House of Representatives. The Commission is without knowledge or information sufficient to admit or deny the remaining allegation in this paragraph.

34. ADMIT that New York Wins PAC reported to the FEC that it spent over \$915,000 opposing the Republican primary candidate Andrew Heaney, who lost the Republican primary election, and ADMIT that the Congressional Leadership Fund reported to the FEC that it spent over 3,596,000 opposing Zephyr Teachout in the general election. To the extent this paragraph contains plaintiffs' legal conclusions, no response is required. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

35. ADMIT that Michael Wager was the Democratic candidate in the 2016 election to represent Ohio's 14th congressional district in the United States House of Representatives, and that he was a candidate for the same office in 2014 when he ran against the incumbent, Representative David Joyce. ADMIT that in 2016, plaintiff Wager again ran against Representative Joyce. ADMIT that Defending Main Street SuperPAC Inc. reported to the FEC

that in the 2014 election cycle, it spent \$82,000 opposing Wager and \$39,550 supporting his then-opponent, Representative Joyce, and that Defending Main Street SuperPAC Inc. reported to the FEC that in the 2016 election cycle, it spent over \$243,000 supporting Representative Joyce. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

36. To the extent this paragraph contains plaintiffs' legal conclusions, no response is required. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

37. ADMIT.

38. ADMIT that plaintiffs filed an administrative complaint with the FEC on July 7, 2016. The second sentence of this paragraph describes plaintiffs' administrative complaint, which speaks for itself, and requires no response. Without responding to plaintiffs' allegations regarding whether they were included in an administrative complaint, the Commission responds to the alleged facts themselves in paragraphs 39-76.

39-46. ADMIT that the transaction described in this paragraph was reported to the FEC.

47. ADMIT that Congressional Leadership Fund reported to the FEC that in March 2016, it accepted a \$1,000,000 contribution from Chevron (Corporation) of Concord, CA.

48-59. ADMIT that the transaction described in this paragraph was reported to the FEC.

60. ADMIT that Bold Agenda PAC reported to the FEC that on October 14, 2014, it accepted a contribution of \$110,000 from Americans for Shared Prosperity, which is registered under 26 U.S.C. § 501(c)(4) of the Internal Revenue Code, and that Bold Agenda PAC reported to the FEC that on October 16, 2014, it accepted a contribution of \$250,000 from John Jordan of

Healdsburg, CA, who is the CEO of Jordan Winery. The Commission is without knowledge or information sufficient to admit or deny the remaining allegation in this paragraph.

61-76. ADMIT that the transaction described in this paragraph was reported to the FEC.

77. This paragraph describes allegations in plaintiffs' administrative complaint, which speaks for itself, and requires no response.

78. This paragraph describes plaintiffs' administrative complaint, which speaks for itself, and requires no response.

79. ADMIT.

80. Without a protective order in place, any potentially responsive information would be protected from disclosure pursuant to 11 C.F.R. § 111.21, and thus no response is permitted at this time.

81. DENY.

82. DENY.

83. The Commission incorporates by reference all preceding paragraphs of its answer as if fully set forth here.

84. DENY.

85. The Commission incorporates by reference all preceding paragraphs of its answer as if fully set forth here.

86. DENY.

REQUESTED RELIEF

No response is required to Paragraphs (a) through (e) of plaintiffs' requested relief, but plaintiffs are entitled to none of the requested relief.

AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction over Count II.
2. Count II fails to state a claim upon which relief can be granted.

Respectfully submitted,

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