UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE TED LIEU, *et al.*,	)	
Plaintiffs,	)	Civ. No. 16-2201 (EGS)
v.	)	
FEDERAL ELECTION COMMISSION,	)	MOTION TO DISMISS
Defendant.	)	

FEDERAL ELECTION COMMISSION'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendant Federal Election Commission ("Commission") hereby moves to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. In support of this motion, the Commission submits a Memorandum in Support of Its Motion to Dismiss Plaintiffs' First Amended Complaint and a Proposed Order.

/s/Jacob S. Siler

Lisa J. Stevenson (D.C. Bar No. 457628)
Acting General Counsel
lstevenson@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

Jacob S. Siler (D.C. Bar No. 1003383)
Attorney
jsiler@fec.gov

Sana Chaudhry
Attorney
schaudhry@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463
(202) 694-1650

May 7, 2018

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE TED LIEU, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 16-2201 (EGS) MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

MEMORANDUM IN SUPPORT OF FEDERAL ELECTION COMMISSION'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Lisa J. Stevenson (D.C. Bar No. 457628)
Acting General Counsel
lstevenson@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

Jacob S. Siler (D.C. Bar No. 1003383)
Attorney
jsiler@fec.gov

Sana Chaudhry
Attorney
schaudhry@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463
(202) 694-1650

May 7, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Miscellaneous

INTRODUCTION

This is a rare case in which the parties agree that this Court cannot grant the plaintiffs the ultimate relief they seek. Plaintiffs' amended complaint seeks judicial review of the Federal Election Commission's ("Commission" or "FEC") dismissal of their 2016 administrative complaint, which sought enforcement of the limits the Federal Election Campaign Act ("FECA") imposes on contributions to political committees against groups that make only independent expenditures, commonly known as "super PACs." (*See* Am. Compl. (Docket No. 36) ¶ 79.) But in *SpeechNow.org v. FEC*, the *en banc* Court of Appeals had unanimously concluded that "the government has no anti-corruption interest in limiting contributions to an independent expenditure group" and that therefore such limits are unconstitutional. 599 F.3d 686, 695 (D.C. Cir. 2010) (*en banc*). Recognizing that every other circuit court to decide this issue had agreed with *SpeechNow* — courts in six other circuits — the Commission voted to find no reason to believe the groups about which plaintiffs complained had violated the law, and therefore the agency dismissed plaintiffs' administrative complaint. Plaintiffs do not argue that the Commission misapplied *SpeechNow*, nor do they suggest that the decision is compatible with their claims here. Rather, plaintiffs argue that *SpeechNow* was wrongly decided, and they have conceded that the "goal of this litigation" is to "overturn" the decision. (Pls.' Reply in Supp. of Mot. for Leave to File Am. Compl. (Docket No. 28) at 1.) However, it is clear that binding circuit precedent compels this Court to conclude that the Commission's decision not to pursue the administrative respondents was lawful under the standard of review applicable to this action under 52 U.S.C. § 30109(a)(8). And plaintiffs' claim under the Administrative Procedure Act must be dismissed because FECA provides an adequate judicial review mechanism, as every court to consider that issue has held. This Court should therefore dismiss plaintiffs' complaint.

STATEMENT OF FACTS

I. FECA's Limits on Contributions to Political Committees

The Commission is a six-member independent agency of the United States government vested with the exclusive authority to administer, interpret, and civilly enforce FECA. *See generally* 52 U.S.C. §§ 30106-07. Congress authorized the Commission to investigate possible FECA violations, and it granted to the Commission exclusive jurisdiction to initiate civil enforcement actions. *Id.* §§ 30106(b)(1), 30109.

This case involves the constitutionality of FECA's limits on contributions to political committees that make only independent expenditures. FECA defines a "political committee" as "any committee club, association, or other group of persons" that receives "contributions" or makes "expenditures" "for the purpose of influencing any election for Federal Office" "aggregating in excess of $1,000 during a calendar year." 52 U.S.C. § 30101(4)(A), (8)(A)(i), (9)(A)(i).[1] Once a group is designated as a political committee, FECA sets varying limits on political contributions it may receive depending on the type of entity that receives the contribution. *See id.* § 30116(a). As relevant here, FECA's text limits any "person" from making a contribution of more than $5,000 to political committees that are not authorized by a candidate or established by a national or state political party (referred to in the statute as "other political committee[s]"). 52 U.S.C. § 30116(a)(1)(C). Political committees similarly may not "knowingly accept any contribution" in excess of the applicable limits. *Id.* § 30116(f).

[1] The Supreme Court has further limited FECA's definition of "political committee" to "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (per curiam).

FECA also distinguishes between "independent expenditures" and other types of expenditures that are made for the purpose of influencing federal elections. 52 U.S.C. § 30101(17). Expenditures are "independent" when they "expressly advocate[] the election or defeat of a clearly identified candidate" and are "not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." *Id.*

In its unanimous *en banc* decision in *SpeechNow.org v. FEC*, the Court of Appeals for the District of Columbia Circuit concluded that the $5,000 limit on contributions to other political committees in 52 U.S.C. § 30116(a)(1)(C) was unconstitutional as applied to a political committee that made only independent expenditures. 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*).[2] The *SpeechNow* court reasoned that the Supreme Court's decision in *Citizens United v. FEC* had established as a matter of law that "the government has *no* anti-corruption interest in limiting independent expenditures." *Id.* at 693; *see Citizens United v. FEC*, 558 U.S. 310, 357-58 (2010). "In light of" this holding, the D.C. Circuit further reasoned that "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption." *SpeechNow*, 599 F.3d at 694. As a result of this categorical holding, the district court on remand permanently enjoined the Commission from enforcing contribution limits against the *SpeechNow* plaintiffs. Am. J., *SpeechNow.org v. FEC*, No. 1:08-cv-248-JDB, ECF No. 85 (D.D.C. Oct. 29, 2010).

[2] In 2014, the provisions of FECA at issue in this litigation were recodified into Title 52 of the United States Code from their prior codification in Title 2. *See* Editorial Reclassification Table, http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html. Cases decided prior to 2014, including *SpeechNow*, refer to the previous codification.

In the wake of the *SpeechNow* decision, the Commission issued an advisory opinion acknowledging the ruling and its effect on limits on contributions to groups that make only independent expenditures. FEC Advisory Op. 2010-11 (Commonsense Ten), 2010 WL 3184269 (July 22, 2010). As that advisory opinion acknowledged, it "necessarily follows" from *Citizens United* and *SpeechNow* "that there is no basis to limit the amount of contributions to" an independent expenditure committee "from individuals, political committees, corporations and labor organizations," which are covered by 52 U.S.C. § 30116(a)(1)(C). *Id.* at *2. Once the Commission issues an advisory opinion, FECA provides a safe harbor for "any person involved in any specific transaction or activity which is indistinguishable in all its material aspects" from the activity described in the opinion, and those who do so in good faith "shall not, as a result of any such act, be subject to any sanction provided" by FECA. 52 U.S.C. § 30108(c)(1)(B), (c)(2). Since issuing the *Commonsense Ten* advisory opinion, the Commission has not enforced the limits embodied in 52 U.S.C. § 30116(a)(1)(C) in the context of contributions to groups that make only independent expenditures. The Commission has, however, continued to enforce other statutory restrictions on the source of contributed funds, such as FECA's ban on contributions by federal government contractors, even when those contributions are made to super PACs, because those provisions serve interests distinct from the basic anticorruption interest discussed in *SpeechNow* and have not been invalidated. *See* 52 U.S.C. § 30119(a)(1); Conciliation Agreement, FEC Matter Under Review 7099 (Suffolk Construction Co.), https://www.fec.gov/files/legal/murs/7099/17044430547.pdf; *cf. Wagner v. FEC*, 793 F.3d 1, 21-22 (D.C. Cir. 2015) (*en banc*) (discussing the distinct interests supporting the ban on contributions by federal government contractors), *cert. denied*, 136 S. Ct. 895 (2016).

II. FECA's Administrative Enforcement Procedures

FECA permits any person to file an administrative complaint with the Commission alleging a violation of the statute. 52 U.S.C. § 30109(a)(1); *see also* 11 C.F.R. § 111.4. After reviewing the complaint and any submissions made by the administrative respondents, the Commission must determine whether there is "reason to believe" that FECA has been violated. 52 U.S.C. § 30109(a)(2). If at least four of the FEC's Commissioners affirmatively vote that there is reason to believe a respondent has violated FECA, the Commission "shall make an investigation" into the violation alleged. *Id.* Without such a vote, the Commission may not proceed with enforcement and instead dismisses the administrative complaint. *Id.* §§ 30106(c); 30109(a)(2).

Should the Commission elect to dismiss an administrative complaint, FECA permits "[a]ny party aggrieved" by the dismissal to file suit to obtain judicial review. 52 U.S.C. § 30109(a)(8)(A). All such lawsuits must be filed in this district. *Id.* (providing that aggrieved parties "may file a petition with the United States District Court for the District of Columbia"). If the reviewing court concludes that the Commission's dismissal is "contrary to law," the court may enter a declaration to that effect and "direct the Commission to conform with [that] declaration within 30 days." *Id.* § 30109(a)(8)(C).

III. Administrative Proceedings

In July 2016, plaintiffs and two non-profit entities filed an administrative complaint with the Commission alleging that ten political committees, all of which are super PACs that make only independent expenditures, "knowingly accepted multiple contributions that exceed $5,000 per person per year, in violation of 52 U.S.C. § 30116(a)(1)(C) and (f)." (Am. Compl. ¶ 79.) The administrative complaint went on to identify 39 specific contributions to the named super PACs from 27 identified contributors and alleged that these contributions violated FECA as well.

(Administrative Record ("AR") 23-30; Am. Compl. ¶¶ 41-78.) Plaintiffs candidly admitted in their administrative complaint that the *SpeechNow* ruling had declared contribution limits unconstitutional in the precise circumstances presented here, although they noted their disagreement with that decision. (AR 3-4.) Plaintiffs similarly acknowledged that the Commission had announced its intention to follow *SpeechNow* in its *Commonsense Ten* advisory opinion. (AR 4; Am. Compl. ¶ 80.) Nevertheless, plaintiffs asked "the FEC to reconsider, in light of later experience, its previous decision to acquiesce to *SpeechNow*." (AR 5.)

In May 2017, the Commission unanimously voted to find no reason to believe that the administrative respondents had violated FECA, and accordingly it dismissed plaintiffs' administrative complaint. (*See* Am. Compl. ¶ 83; AR 295-96.) The Commission also adopted a "Factual and Legal Analysis" explaining its decision to dismiss. (Am. Compl. ¶¶ 83-84; AR 281-94, 296.) After acknowledging plaintiffs' factual allegations and arguments about *SpeechNow*, the Commission observed that plaintiffs "concede that *SpeechNow* and" the *Commonsense Ten* advisory opinion "permit the conduct described in the" administrative complaint. (AR 293.) The Commission further noted that "every circuit court that has considered this issue has ruled that [super PACs] may accept unlimited contributions." (AR 290 & n.38 (citing cases from six additional circuits).) In light of the fact that "seven federal courts of appeals" had ruled that limits on contributions to super PACs "are unconstitutional," the Commission chose "not to accept the [plaintiffs'] invitation not to acquiesce" in those decisions. (AR 293.)

IV. Prior Judicial Proceedings

The operative First Amended Complaint was filed in this action on March 7, 2018.[3] That complaint alleges that the Commission's administrative dismissal "rested on legally erroneous conclusions about the constitutionality of 52 U.S.C. § 30116 and the meaning of 52 U.S.C. § 30108." (Am. Compl. ¶ 85.) In light of these purported errors, plaintiffs seek a declaration from this Court that the Commission's dismissal was "contrary to law" under FECA and "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under the Administrative Procedure Act ("APA").

Plaintiffs are two sitting members of Congress, one sitting Senator, and three former congressional candidates. (Am. Compl. ¶¶ 28-38.) Plaintiffs all state that they "plan" or "expect" to run again in 2018 or, in the case of Senator Merkley, 2020. (*Id.*) According to the Amended Complaint, these candidates either "face[]" or "expect[] to face the strong risk that" political committees will use unlimited contributions to make independent expenditures "in an attempt to influence" plaintiffs' elections. (*Id.* ¶¶ 29, 31, 33, 34, 36, 38.)

ARGUMENT

I. STANDARD OF REVIEW

A motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) may be granted "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Bell Atl. Corp. v Twombly*, 550 U.S. 544, 558 (2007). Where a

[3] Plaintiffs originally commenced this action in November 2016, claiming that the Commission's alleged failure to act on their administrative complaint was contrary to law. (Compl. (Docket No. 1).) After the Commission dismissed plaintiffs' administrative complaint, this Court granted plaintiffs leave to file the amended complaint at issue in this motion. (Minute Order, Mar. 7, 2018.)

case may be decided "on the basis of a dispositive issue of law," dismissal is appropriate. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989).

This is an action for judicial review of an administrative agency action. *See* LCvR 7(n). When reviewing such a case, the "district judge sits as an appellate tribunal," *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001), and the "entire case on review is a question of law and only a question of law," *Marshall Cty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993). "[B]ecause a court can fully resolve any purely legal question on a motion to dismiss, there is no inherent barrier to reaching the merits at the 12(b)(6) stage" and "there is no real distinction in this context between the question presented on a 12(b)(6) motion and a motion for summary judgment." *Marshall Cty.*, 988 F.2d at 1226. Additionally, this Court is not limited to the well-pleaded allegations in plaintiffs' amended complaint and may "consult the" entire administrative "record to answer the legal question before the court." *Id.*

II. COMMISSION DISMISSAL DECISIONS ARE NOT REVIEWABLE UNDER THE ADMINISTRATIVE PROCEDURE ACT

In Count II of the Amended Complaint, plaintiffs claim that the Commission's dismissal of their administrative complaint violates the APA. (*See* Am. Compl. ¶¶ 89-90 (citing 5 U.S.C. § 706(2)).) Because it is well-established that FECA provides an adequate remedy for claims that a Commission dismissal is contrary to law, however, the APA provides no distinct cause of action in this situation, and plaintiffs' Count II should be dismissed.

Judicial review under the APA is available only for agency action "made reviewable by statute" and for "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704. As such, the APA "does not provide additional judicial remedies in situations where the Congress has provided special and adequate review procedures." *Bower v. Massachusetts*, 487 U.S. 879, 903 (1988) (internal quotation marks omitted). Where alternative review procedures

exist, "Congress did not intend to permit a litigant challenging an administrative denial to utilize simultaneously both the [separate statutory] review provision and the APA." *El Rio Santa Cruz Neighborhood Health Ctr. v. U.S. Dep't of Health & Human Servs.*, 396 F.3d 1265, 1270 (D.C. Cir. 2005) (internal quotation marks omitted) (alterations omitted). "When considering whether an alternative remedy is 'adequate' and therefore preclusive of APA review, [courts] look for 'clear and convincing evidence' of 'legislative intent' to create a special, alternative remedy and thereby bar APA review." *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice*, 846 F.3d 1235, 1244 (D.C. Cir. 2017) (quoting *Garcia v. Vilsack*, 563 F.3d 519, 523 (D.C. Cir. 2009)). In particular, the D.C. Circuit has identified that intent "where Congress has provided 'an independent cause of action or an alternative review procedure.'" *Id.* at 1245.

FECA's detailed provisions for judicial review of Commission enforcement dismissals provide the clear and convincing evidence of legislative intent necessary to preclude APA review. *See* 52 U.S.C. § 30109(a)(8). FECA permits complainants aggrieved by a Commission dismissal to file a petition for judicial review in this district within 60 days of the dismissal. 52 U.S.C. § 30109(a)(8)(A)-(B). On review, the district court may "declare that the dismissal of the complaint is . . . contrary to law" and "direct the Commission to conform with such declaration within 30 days." *Id.* § 30109(a)(8)(C). Should the Commission fail to conform with the Court's declaration, FECA grants the original complainant the right to bring "a civil action to remedy the violation involved in the original complaint." *Id.*

A comparison of the scope of review available under FECA and the APA confirms that APA review is precluded. An alternative remedy such as the one FECA provides "need not provide relief identical to relief under the APA, so long as it offers relief of the 'same genre.'" *Garcia*, 563 F.3d at 522 (quoting *El Rio Santa Cruz Neighborhood Health Ctr.*, 396 F.3d at

1272). Nevertheless, all of the relief plaintiffs seek in this litigation appears to be available in an action under section 30109(a)(8). The Amended Complaint requests that the court "[d]eclare" the FEC's dismissal was unlawful and "[o]rder the FEC to conform with this declaration within 30 days." (Am. Compl. at pp. 22-23.) Both of those forms of relief are expressly contemplated by FECA. 52 U.S.C. § 30109(a)(8)(C).

As every court to consider the issue has concluded, these detailed alternate review procedures are clear markers of legislative intent to preclude APA review. *See Stockman v. FEC*, 138 F.3d 144, 152 (5th Cir. 1998) ("[FECA] creates a detailed administrative process and sets forth the exclusive methods of judicial review under the Act."); *Citizens for Responsibility & Ethics in Wash. v. FEC*, 243 F. Supp. 3d 91, 103-05 (D.D.C. 2017) (holding that FECA precludes APA review of "garden-variety challenges to the FEC's dismissal of the plaintiffs' administrative complaint"); *Citizens for Responsibility & Ethics in Wash. v. FEC*, 164 F. Supp. 3d 113, 119-20 (D.D.C. 2015).

Through FECA's provisions for judicial review, Congress created a special alternative remedy for the claim that a Commission decision to dismiss an administrative complaint is contrary to law. Because Congress created an adequate alternative that bars APA review, plaintiffs' APA claim should be dismissed.

III. THE COMMISSION'S DISMISSAL DECISION WAS NOT "CONTRARY TO LAW" UNDER 52 U.S.C. § 30109(a)(8)

A. The Contrary to Law Standard Is Deferential to the Commission's Enforcement Decisions

Under FECA's provisions for judicial review, a court "may set aside the FEC's dismissal of a complaint only if its action was 'contrary to law.'" *Hagelin v. FEC*, 411 F.3d 237, 242 (D.C. Cir. 2005) (quoting FECA provision now codified at 52 U.S.C. § 30109(a)(8)(C)). A decision is "contrary to law" under FECA if "the FEC dismissed the complaint as a result of an

impermissible interpretation of the Act" or "if the FEC's dismissal of the complaint, under a permissible interpretation of the statute, was arbitrary or capricious, or an abuse of discretion." *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986). As the D.C. Circuit has explained, this standard is "[h]ighly deferential" to the Commission's enforcement decisions. *Hagelin*, 441 F.3d at 242 (internal quotation marks omitted).

When interpreting provisions of FECA, courts often give conclusive deference to the Commission's interpretation of the statute under the principles of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In this case, however, plaintiffs argue that the Commission's decision was contrary to law because it followed a judicial decision declaring a provision of FECA unconstitutional, specifically *SpeechNow*. To be sure, courts are not obligated to give binding deference to an administrative agency's interpretation of judicial precedent or of the Constitution. *See, e.g., Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1341 (D.C. Cir. 2002).

In the context of a decision about whether to bring an enforcement action, however, the Supreme Court has recognized that the enforcement agency is generally "far better equipped" to analyze practical factors that attend a particular matter. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). When making such a decision, the agency must engage in a "complicated balancing of a number of factors which are particularly within its expertise," including "whether the agency is likely to succeed if it acts" and "whether the particular enforcement action requested best fits the agency's overall policies." *Id.* Those considerations led the Supreme Court to the conclusion that agency decisions not to enforce are presumptively unreviewable absent clear direction from Congress. *Id.* While FECA provides for that judicial review, it does so only under the deferential "contrary to law" standard. 52 U.S.C. § 30109(a)(8)(C).

B. The Commission's Dismissal Decision Here Did Not Result from an Impermissible Legal Interpretation

Plaintiffs' amended complaint generally alleges that the Commission's dismissal is contrary to law because it accepted the D.C. Circuit's holding in *SpeechNow.org v. FEC*, which invalidated limits on contributions to committees that only make independent expenditures. 599 F.3d 686 (D.C. Cir. 2010) (*en banc*). Plaintiffs admit that the *SpeechNow* decision, if accepted as correct, would compel the FEC to dismiss the case. (*See, e.g.*, Am. Compl. ¶¶ 2, 3, 5.) But because plaintiffs believe that decision misapplied Supreme Court precedent and constitutional principles, they argue that the Commission's decision to follow it was contrary to law.

Plaintiffs' position, in essence, is that an administrative agency was *required* to disregard a clear judicial holding — binding in this jurisdiction — on a constitutional issue. "Given that obeying judicial decisions is usually what courts expect agencies to do, [plaintiffs] face an uphill battle." *Grant Med. Ctr. v. Hargan*, 875 F.3d 701, 703 (D.C. Cir. 2017). Plaintiffs cannot achieve that hill in this case because the Commission correctly applied on-point judicial precedent and its decision not to challenge that precedent was reasonable.

1. The Commission's Dismissal Decision Permissibly Applied the D.C. Circuit's Constitutional Holding in *SpeechNow*

The Commission's dismissal decision reasonably adhered to precedent binding in this jurisdiction. In *SpeechNow*, the *en banc* D.C. Circuit unequivocally held that FECA's limits on contributions could not be constitutionally applied to contributions to groups that only make independent expenditures. 599 F.3d at 694-96. That court began by noting that restrictions on political contributions face a less-stringent standard of scrutiny than do restrictions on political expenditures. *Id.* at 692. As the court reasoned, the Supreme Court has made clear that "although contribution limits do encroach upon First Amendment interests, they do not encroach upon First Amendment interests to as great a degree as expenditure limits." *Id.* Even so, the

court stated, "contribution limits still do implicate fundamental First Amendment interests," and therefore those "'involving significant interference with associational rights must be closely drawn to serve a sufficiently important interest.'" *Id.* at 692 (quoting *Davis v. FEC*, 554 U.S. 724, 740 n.7 (2008)). Surveying the various governmental interests that had been offered in the past for the contribution limits at issue, the D.C. Circuit recognized that the "Supreme Court has recognized only one" such interest: preventing *quid pro quo* corruption or its appearance. *Id.* at 692, 694. The *SpeechNow* court also recognized that in *Citizens United*, which had been decided only a few months earlier, the Supreme Court "expressly decid[ed]" "as a matter of law" that "'independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.'" *SpeechNow*, 599 F.3d at 694 (quoting *Citizens United*, 558 U.S. at 357). That was so, the Supreme Court held, because the "'absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.'" *Citizens United*, 558 U.S. at 345 (quoting *Buckley*, 424 U.S. at 47).

"In light of the [Supreme] Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption," the *SpeechNow* court concluded that "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption." *SpeechNow*, 599 F.3d at 694. Because "the government has no anti-corruption interest in limiting contributions to an independent expenditure group," the court stated, that interest cannot justify the burden contribution limits place on First Amendment rights, even assuming those intrusions are less extensive than an expenditure ban. *Id.* at 695. As the D.C. Circuit put it, "something outweighs nothing every

time." *Id.* (internal quotation marks and alteration omitted). As a result, the court unanimously ruled that FECA's contribution limits "violate the First Amendment by preventing plaintiffs from donating to SpeechNow in excess of the limits and by prohibiting SpeechNow from accepting donations in excess of the limits." *Id.* at 696.

Plaintiffs' allegations here plainly fell within the rule announced in *SpeechNow*. Each super PAC about which plaintiffs complained had registered with the FEC as an independent expenditure-only committee, and plaintiffs offered no allegation that any of the respondent committees had coordinated their expenditures with a candidate. (*See* Am. Compl. ¶ 4.) In fact, many of plaintiffs' arguments that *SpeechNow* was wrongly decided assume a lack of coordination on campaign strategy between the super PAC and its supported candidate. (Am. Compl. ¶ 20.) Five additional courts of appeals have considered the issue since *Citizens United*, and each has held as a categorical matter that the government cannot constitutionally limit contributions to political committees that make only independent expenditures.[4] As those courts have explained, "[f]ew contested legal questions are answered so consistently by so many courts and judges." *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013); *see also Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 537 (5th Cir. 2013) (noting that

[4] *Republican Party of N.M. v. King*, 741 F.3d 1089, 1095-97 (10th Cir. 2013); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 487 (2d Cir. 2013); *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 538 (5th Cir. 2013); *Wis. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 154 (7th Cir. 2011); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 697-99 (9th Cir. 2010); *cf. Ala. Democratic Conference v. Att'y Gen. of Ala.*, 838 F.3d 1057, 1066 (11th Cir. 2016) ("Other Circuits, applying the logic of *Citizens United*, have uniformly invalidated laws limiting contributions to PACs that made only independent expenditures."), *cert. denied sub nom. Ala. Democratic Conference v. Marshall*, 137 S. Ct. 1837 (2017). The Fourth Circuit had reached the same conclusion prior to *Citizens United*. *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274 (4th Cir. 2008).

this is a "well-worn path"). There is simply no basis to distinguish the respondents named in the plaintiffs' administrative complaint from the organization at issue in the *SpeechNow* decision.

That is all that is needed for this Court to fully resolve this case. Whatever the merit of plaintiffs' arguments that *SpeechNow*'s logic was flawed or that new developments undermine its rationale, this Court, "like panels of [the Court of Appeals, is] obligated to follow controlling circuit precedent until either [the Court of Appeals], sitting en banc, or the Supreme Court, overrule it." *United States v. Torres*, 115 F.3d 1033, 1036 (D.C. Cir. 1997). Because the Commission correctly applied *SpeechNow* when dismissing plaintiffs' administrative complaint, its decision was not contrary to law and should be affirmed.

2. Plaintiffs Provided No New Evidence That Would Have Required the Commission to Disregard *SpeechNow*'s Central Holding

Although this Court need go no further to affirm the Commission's dismissal, plaintiffs' allegations vastly overstate the extent to which subsequent events or unconsidered legal arguments might undermine the force of *SpeechNow*. (*See, e.g.*, Am. Compl. ¶¶ 2-3, 12.) As an initial matter, plaintiffs allege that the Supreme Court has not yet addressed *SpeechNow*. (Am. Compl. ¶ 3.) Although it is true that the Supreme Court has not directly considered the central issue in that case, the controlling opinion in *McCutcheon v. FEC* cited *SpeechNow* in explaining that FECA's contribution "limits govern contributions to traditional PACs, *but not to independent expenditure PACs*." 134 S. Ct. 1434, 1442 n.2 (2014) (plurality op.) (emphasis added). Far from casting doubt on *SpeechNow*, subsequent Supreme Court jurisprudence supports the case's applicability, albeit in dictum.

In any event, the supposedly "new" evidence and developments since *SpeechNow* that plaintiffs presented to the Commission and recited in their Amended Complaint would not have justified a departure from that decision. Many of the points plaintiffs cited as new developments

were actually argued to the D.C. Circuit during the *SpeechNow* litigation or otherwise addressed in the opinion. To begin, plaintiffs argued that *SpeechNow*'s holding is inconsistent with *Buckley* because it "ignores fundamental distinctions between expenditures and contributions." (Am. Compl. ¶ 2; *see* AR 18.) But the Commission had specifically argued in *SpeechNow* that Supreme Court cases striking down limits on *expenditures* were distinguishable because a more permissive standard of review applies to limits on contributions. *See* FEC Br. at 19-23, *SpeechNow.org v. FEC*, No. 08-5223 (D.C. Cir. Sept. 23, 2009), http://www.fec.gov/law/litigation/speechnow_fec_brief_092309.pdf ("*SpeechNow* Brief"). The Court of Appeals expressly rejected that argument, writing that limits on contributions to super PACs were unconstitutional "[n]o matter which standard of review" applies. *SpeechNow*, 599 F.3d at 696.

The Commission also presented to the Court of Appeals the argument, echoed by plaintiffs, that a ruling striking down contribution limits for independent expenditure groups might "lead to the proliferation of independent expenditure political committees devoted to supporting or opposing a single federal candidate or officerholder and funded entirely by very large contributions." *SpeechNow* Brief at 45; *see* Am. Compl. ¶ 22 (arguing that "major donors" can "amplify direct contributions to preferred candidates with much larger contributions to supportive super PACs"); AR 20. And like plaintiffs, the Commission warned that such independent expenditure groups might then gain "undue influence over officeholders" even "without directly coordinating with them" on campaign-related spending. *SpeechNow* Brief at 36-38; *see* Am. Compl. ¶¶ 20-21 (arguing that a danger of quid pro quo corruption remains "[e]ven assuming that a super PAC does not 'coordinate' its campaign strategy with a supported candidate"); AR 21-22. Plaintiffs rely generally on recent research and advocacy (Am. Compl.

¶¶ 18-24; AR 19-22), but the FEC predicted the basic developments they describe in its arguments to the D.C. Circuit. These arguments did not carry the day in *SpeechNow*, and plaintiffs offer no reason to think that the Court of Appeals would find them more persuasive now.

Nor does the Supreme Court's recent summary affirmance in *Republican Party of Louisiana v. FEC* undermine the logic of *SpeechNow*. 137 S. Ct. 2178 (2017), *aff'g* 219 F. Supp. 3d 86 (D.D.C. 2016); *see* Am. Compl. ¶ 23. That case involved the constitutionality of restrictions on "soft money" contributions to political parties contained in the Bipartisan Campaign Reform Act of 2002. Those restrictions, however, applied not to independent groups but to political parties, which the courts have treated differently in light of their close relationship with officeholders and candidates. 219 F. Supp. 3d at 97; *see also McConnell v. FEC*, 540 U.S. 93, 154-55 (2003). Nothing in the *Republican Party of Louisiana* case undermines *SpeechNow*'s conclusions about independent-expenditure groups.

In short, none of the recent developments plaintiffs have presented demonstrate that the Commission was required to ignore contrary circuit precedent. Even if plaintiffs had established some relevant change that might cause *SpeechNow* to be suspect, that decision remains binding in this jurisdiction and the Commission acted reasonably in following it.

C. The Commission's Decision Was Not Otherwise Arbitrary and Capricious

Although the Commission's permissible adherence to *SpeechNow* is sufficient to resolve the instant motion, the agency's dismissal decision was also a reasonable application of its enforcement powers. In light of the unanimous case law cited above, the FEC reasonably concluded that instigating enforcement proceedings in nonacquiescence to so many circuit courts' decisions would be unjustified. The Commission also reasonably concluded that any action other than dismissal would be inconsistent with its prior *Commonsense Ten* advisory

opinion and would potentially subject respondents to enforcement proceedings and sanctions in conflict with FECA's safe harbor provision. Those conclusions easily satisfy the deferential standard of review applicable to Commission enforcement decisions.

1. The Commission's Decision Not to Challenge the Unanimous Line of Cases Following *SpeechNow* Was Reasonable

As the Commission recognized in dismissing plaintiffs' administrative complaint, administrative agencies with nationwide jurisdiction are not always bound to conform their decisions to judicial opinions with which they disagree. (AR 293-94.) Thus, an administrative agency faced with a contrary ruling of a court of appeals has some ability not to acquiesce in that decision in other jurisdictions to generate a split in authority that might improve the likelihood of Supreme Court review. *See Heartland Plymouth Court MI, LLC v. NLRB*, 838 F.3d 16, 21 (D.C. Cir. 2016). Here, however, the Commission chose "not to accept the [plaintiffs'] invitation not to acquiesce" because the law did not remain "unsettled in a way that would begin to justify" such a course of action. (AR 293-94.) That choice was a reasonable one.

The courts' approval of agency nonacquiescence depends on its necessity to develop the law to present issues for Supreme Court review. Thus, the D.C. Circuit has concluded that the justification for declining to follow circuit-level precedent must end when the law becomes sufficiently settled. *Johnson v. U.S. R.R. Ret. Bd.*, 969 F.2d 1082, 1093 (D.C. Cir. 1992). In *Johnson*, the Court of Appeals explained that after "three circuits have rejected" an agency's "position, and not one has accepted it, further resistance would show contempt for the rule of law." *Id.* Similarly here, the Commission reasonably determined that continued litigation of a constitutional argument that had been rejected in seven circuits was not warranted.

Declining to non-acquiesce was particularly reasonable in the case of *SpeechNow* because the opinion came from the District of Columbia Circuit. Because venue would arguably

be appropriate here for suits against the Commission, if the Commission had sought to relitigate the question through enforcement actions in multiple other circuits, it would have run the risk of "generat[ing] a flood of duplicative litigation" through "separate actions for declaratory relief in this circuit." *Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998).

The reasonableness of the Commission's dismissal is additionally bolstered by the fact that this case involves an agency decision not to initiate an enforcement action, to which courts generally provide wide latitude. *See, e.g.*, *Heckler*, 470 U.S. at 831. Even for the rare case like this one where such a decision is subject to judicial review, courts afford broad discretion to the agencies in making enforcement decisions in a particular case. *See Dunlop v. Bachowski*, 421 U.S. 560, 573 (1975) ("[I]t is not the function of the Court to determine whether or not the case should be brought or what its outcome would be."), *overruled in part on other grounds*, *Local No. 82, Furniture & Piano Moving v. Crowley*, 467 U.S. 526, 549 n.22 (1984).

Under these circumstances, it was eminently reasonable for the Commission to decide against pursuing alleged violations of a statutory provision against numerous named administrative respondents. Had the Commission accepted plaintiffs' request to go forward, these respondents would have had to defend their conduct in further administrative proceedings — and potential enforcement litigation — even though the D.C. Circuit and other jurisdictions have held that such conduct cannot be limited consistent with the First Amendment. As noted above, the court does not give *Chevron* deference to the Commission's interpretation of the Constitution or legal precedent. *See supra* p. 11. But it was plainly not arbitrary and capricious for the Commission to elect not to defy the consistent rulings of seven courts of appeals or to

consider the additional enforcement costs that would be imposed against administrative respondents if the Commission sought to relitigate a settled constitutional issue.

Pursuing enforcement under these particular circumstances is so unwarranted that, had the Commission attempted it, it might have been exposed to an award of legal fees for pursuing a litigation position that was not "substantially justified." 28 U.S.C. § 2412. One court in this district has already ordered the Commission to pay nearly $125,000 in legal fees for arguing that it could restrict political committees that make direct contributions to candidates from also raising unlimited contributions for independent expenditures. *See Carey v. FEC*, 864 F. Supp. 2d 57 (D.D.C. 2012). That court criticized the FEC for "failing to appreciate binding precedent," including *Citizens United* and *SpeechNow*. *Id.* at 61. Plaintiffs' position that the dismissal here was contrary to law would place the Commission in an impossible bind. On their view, the Commission must pursue enforcement in the face of clear contrary circuit precedent, exposing the agency itself to the possibility of a court awarding legal fees against it, or otherwise it acts contrary to law. The Commission's dismissal here avoids that absurd result.

These factors also distinguish this case from those in which courts have held improper an agency's decision to accept nationwide a single court's interpretation of a statute the agency administers. *See, e.g.*, *Holland v. Nat'l Mining Ass'n*, 309 F.3d 808 (D.C. Cir. 2002); *cf. Grant Med. Ctr*, 875 F.3d 701. Those cases did not involve an agency declining to bring an enforcement action, nor did they consider the circumstance in which the same jurisdiction reviewed the agency's compliance with a clear constitutional ruling. Rather, those cases refused to give *Chevron* deference to an administrative agency's claim that its *statutory* interpretation was compelled by the court decision. *See Holland*, 309 F.3d at 818. Deference was inappropriate in those cases because the agency's adoption of the statutory interpretation did not

represent "the agency's own reasoned judgment on the meaning of the statute." *Id.* at 817. Here, in contrast, the Commission made a reasoned judgment about the propriety of nonacquiescence to a constitutional ruling and likelihood of success in pursuing that course of action.

Recognizing the Commission's latitude in enforcement decisions would not insulate the legal issues in *SpeechNow* from further percolation and potential Supreme Court review. The same issues arise in cases against state or local jurisdictions, as seen by the extensive appellate consideration of these issues. *See supra* p. 14 & n.4. And plaintiffs could have chosen any of several possible procedural avenues to squarely present their arguments without implicating the reliance interests of the administrative respondents or the Commission's enforcement decisions. For example, assuming plaintiffs have standing to do so, they might have pursued a declaratory judgment action to construe the constitutionality of FECA, either in an ordinary district court lawsuit or under FECA's special review provision, 52 U.S.C. § 30110. Or plaintiffs might have attempted to directly challenge the *Commonsense Ten* advisory opinion, which announced the Commission's decision to acquiesce in *SpeechNow*. *See, e.g.*, *Unity08 v. FEC*, 596 F.3d 861, 864-65 (D.C. Cir. 2010) (holding that Commission advisory opinions are final agency actions subject to judicial review). Options like these would have presented the constitutional argument plaintiffs seek to make without implicating the Commission's enforcement authority and would not have threatened to impose compliance costs on third-parties that had relied on Commission guidance in good faith.

2. The Commission's Dismissal Also Reasonably Acknowledged the Consequences of Its *Commonsense Ten* Advisory Opinion

In dismissing plaintiffs' administrative complaint, the Commission also reasonably recognized the import of its prior advisory opinion that had expressly authorized committees that make only independent expenditures to accept unlimited contributions. *See* FEC Advisory Op.

2010-11 (*Commonsense Ten*), 2010 WL 3184269 (July 22, 2010). The *Commonsense Ten* advisory opinion justifies the Commission's dismissal decision for two reasons. First, the Commission reasonably concluded that the issuance of the opinion letter established that FECA as construed by the courts permitted the conduct described in plaintiffs' administrative complaint. The Commission therefore determined that there was no "reason to believe" the statute had been violated, the threshold determination FECA requires the Commission to make when considering administrative complaints. (*See* AR 293.)

Second, even without the clear and directly applicable judicial precedent that exists here, it was reasonable for the Commission to conclude that its advisory opinion prevented the relief the plaintiffs sought. FECA provides a safe harbor for "any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered." 52 U.S.C. § 30108(c)(1)(B). Under that safe harbor, those who rely in good faith on a Commission advisory opinion "shall not, as a result of any such act, be subject to any sanction provided by" FECA. *Id.* § 30108(c)(2). Plaintiffs do not contest that their administrative complaint sought enforcement of FECA against persons who are entitled to protection under the safe harbor. Instead, they "disclaimed any intent of asking the FEC to seek civil penalties" for past conduct, "but rather asked the FEC to pursue only declaratory and/or injunctive relief against future acceptance of excessive contributions." (Am. Compl. ¶ 80.)[5] Plaintiffs do not claim, therefore, that FECA's safe harbor would have allowed the Commission to obtain fines or penalties.

[5] Plaintiffs' focus on prospective relief also appears to mean that the claims of at least two plaintiffs, Zephyr Teachout and Michael Wager, are moot. Notwithstanding their allegation that they intended to run for Congress in 2018, these two plaintiffs did not file to appear on the 2018 primary ballot in their respective congressional districts. *See* Filings Received for the June 26,

FECA, however, does not explicitly limit the term "sanction" to civil penalties or other means of redressing past conduct. Indeed, FECA does not define the term sanction at all. *See* 52 U.S.C. § 30101. In its dismissal decision, the Commission interpreted "sanction" in section 30108(c)(2) to preclude seeking both injunctive and declaratory relief in the context of the plaintiffs' administrative complaint. (AR 292 n.45.) Because Congress has not "directly spoken to the precise question at issue," the Commission's reasonable construction of "any sanction" to include the relief plaintiffs sought is due *Chevron* deference. 467 U.S. at 842.

Applying step one of *Chevron*, Congress has not "unambiguously foreclosed" the Commission's interpretation of 52 U.S.C. § 30108(c)(2). *Catawba Cty. v. EPA*, 571 F.3d 20, 35 (D.C. Cir. 2009). As other courts have noted, the statutory term "sanction" is "spacious enough to cover" multiple forms of relief. *U.S. Dep't of Energy v. Ohio*, 503 U.S. 607, 621 (1992). Thus, "the imposition of a nonmonetary obligation" can be "one kind of 'sanction.'" *Alabama v. North Carolina*, 560 U.S. 330, 340-41 (2010). So, too, can any "'restrictive measure used to . . . prevent some future activity.'" *United States v. Alabama*, 691 F.3d 1269, 1289 (11th Cir. 2012)

2018 Federal Primary Election at 9-11, New York State Board of Elections (May 4, 2018), https://www.elections.ny.gov/NYSBOE/Elections/2018/FederalPrimary/FilingsReceivedJune262018FederalPrimary.pdf (listing candidates for New York Congressional District 19); Candidate List for May 8, 2018 Primary Election at 9, Cuyahoga County Board of Elections (Apr. 20, 2018), https://boe.cuyahogacounty.us/pdf_boe/en-US/2018/CPS/2018%20Candidate%20List.pdf (listing candidates for Ohio Congressional District 14). In fact, Teachout recently referred to herself on social media as an "undecided voter" in her congressional district. Zephyr Teachout (@ZephyrTeachout), Twitter (Apr. 14, 2018, 5:19 AM), https://twitter.com/ZephyrTeachout/status/985130475013500928. Because these plaintiffs cannot establish that they are likely to face super PAC spending in future congressional races, their argument to the Commission for injunctive and declaratory relief is now moot and their claim for judicial review should be dismissed. *See City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) (plaintiff lacked standing to pursue prospective relief when he could not establish likelihood that he would face allegedly unconstitutional condition in future).

(quoting Webster's Third New International Dictionary 2009 (1976)). As these courts implicitly recognized, "sanction" is a broad term that has multiple meanings. It is ambiguous.

In the prior stages of this case, plaintiffs argued that "there is no ambiguity for the FEC to resolve" at step one because "[d]eclaratory relief is not a 'sanction.'" (Pls.' Reply in Supp. of Mot. for Leave to File Am. Compl. (Docket No. 28) at 23.) In support, plaintiffs argued that the D.C. Circuit's opinion in *LaRouche v. FEC*, 28 F.3d 137 (D.C. Cir. 1994), precludes deference to the Commission's interpretation of "sanction" because that case "equated sanctions with penalties." (*See* Pls.' Reply in Supp. of Mot. for Leave to File Am. Compl. at 24.) But that case held only that a Commission order to a presidential candidate to repay presidential matching funds erroneously disbursed to that candidate was not a "sanction." *LaRouche*, 28 F.3d at 142. It did not address whether declaratory or injunctive relief constitutes a sanction under FECA. It is also not clear that *LaRouche* equated sanctions with penalties, as plaintiffs suggest. That court decided in a single, conclusory sentence that a Commission "request that [the candidate] repay . . . matching funds was not a sanction." *Id.* at 142. It did not discuss whether the repayment order was a penalty or otherwise define the precise scope of the safe harbor. *Id.* The order to repay at issue in *LaRouche*, moreover, is akin to an agency disgorgement order, which the Supreme Court has recently construed as a penalty in some contexts. *See Kokesh v. SEC*, 137 S. Ct. 1635, 1644 (2017). *LaRouche* predates *Kokesh* by two decades, and it is not clear that it would survive the Supreme Court's decision.

In any event, a "court's prior judicial construction of a statute trumps an agency construction otherwise entitled to *Chevron* deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967,

982 (2005). *LaRouche* did not hold that "sanction" was unambiguous; indeed, the case does not appear to have considered that question at all. 28 F.3d at 142. In the absence of such an indication, the Commission's reasonable construction of the ambiguous term controls.[6]

Under step two of *Chevron* analysis, the Commission's construction of 52 U.S.C. § 30108(c)(2) was reasonable. In addition to the judicial interpretations discussed above, the Commission also noted that defining sanction to preclude the type of relief plaintiffs sought here "would also be consistent with the relatively broad definition found in the" APA. (AR 292 n.45 (citing 5 U.S.C. § 551(10)).) The APA defines the term to include an agency "prohibition, requirement, limitation, or other condition affecting the freedom of a person" and other "compulsory or restrictive action." 5 U.S.C. § 551(10). The Commission also cited the inherent unfairness of interpreting the term sanction to permit enforcement proceedings and potential litigation against those who relied in good faith on a Commission advisory opinion. (AR 292 n.45.) "Such a conclusion upends the purpose of the advisory opinion process" by denying members of the regulated community "assurance that they can carry out activity deemed permissible by the Commission without the possibility of some form of regulatory enforcement action." (*Id.*) Applying those considerations, the Commission reasonably concluded that it should not pursue the case in light of its prior blessing of the very conduct at issue in plaintiffs' administrative complaint.

CONCLUSION

In response to plaintiffs' administrative complaint, the Commission properly applied a constitutional holding of the unanimous *en banc* Court of Appeals, knowing that its dismissal

[6] Notably, plaintiffs did not argue that the FEC's interpretation of FECA to bar injunctive relief against persons who relied in good faith on an advisory opinion was ineligible for *Chevron* deference. (*See* Pls.' Reply in Supp. of Mot. for Leave to File Am. Compl. at 22-25.)

decision would be reviewed in that jurisdiction. Although plaintiffs disagree with that precedent, they concede that the Commission applied it correctly in the context of this matter. Because the Commission properly applied the law of this circuit, its decision to dismiss the administrative complaint was plainly lawful, and plaintiffs' court complaint should be dismissed.

Respectfully submitted,

/s/Jacob S. Siler

Lisa J. Stevenson (D.C. Bar No. 457628)
Acting General Counsel
lstevenson@fec.gov

Jacob S. Siler (D.C. Bar No. 1003383)
Attorney
jsiler@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

Sana Chaudhry
Attorney
schaudhry@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463
(202) 694-1650

May 7, 2018