IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT C. MCCHESNEY, in his official capacity as Treasurer of Bart McLeay for U.S. Senate, Inc.; and BART MCLEAY FOR U.S. SENATE, INC.,	)	No. 8:16-cv-168
Plaintiffs,	)	**COMPLAINT**
MATTHEW S. PETERSON, in his official capacity as Chair of the Federal Election Commission; FEDERAL ELECTION COMMISSION; and UNITED STATES OF AMERICA,	)	
Defendants.	)	

COME NOW Plaintiffs, Robert C. McChesney, in his official capacity as Treasurer of Bart McLeay for U.S. Senate, Inc. ("McChesney") and Bart McLeay for U.S. Senate, Inc. ("BMUSSI") (collectively the "Corporation"), pursuant to Fed. R. Civ. P. 3, and hereby files this complaint in the nature of a petition against Defendants, Matthew S. Peterson (Peterson"), in his official capacity as Chair of the Federal Election Commission; Federal Election Commission (collectively "FEC"), and the United States of America ("United States"), stating and alleging as follows:

I. THE PARTIES

1. McChesney is an individual and citizen of the State of Nebraska appearing in this action in his official capacity as Treasurer of BMUSSI.

2. BMUSSI is a political corporation designated as the principal campaign committee pursuant to 52 U.S.C. § 301012(e)(1) (formerly 2 U.S.C. § 432(e)) for Bartholomew L. McLeay ("Candidate"), a former candidate for the United States Senate in the primary election held in Nebraska on May 13, 2014 ("2014 primary election"). BMUSSI is in good standing under Nebraska law.

3. FEC is an independent regulatory agency responsible for, among other things, implementing the law passed by Congress relating to federal elections.

4. Peterson is the Chair of the FEC. Commissioner Lee E. Goodman served as Chair of the FEC in 2014.

5. United States of America is the federal government of the United States and is named as a defendant pursuant to 5 U.S.C. §§ 702 and 703. Unless the context otherwise requires, Peterson, FEC, Commission and United States shall be collectively referred to as "Commission" herein.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331(a) for the reason this is a civil action arising under the laws of the United States, namely, The Federal Election Campaign Act of 1971, as amended, 52 U.S.C. 30109(a)(4)(C)(iii) (formerly 2 U.S.C. § 437g(4)(C)(3)) ("FECA"). This Court further has subject matter jurisdiction pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* Subject matter jurisdiction is further founded upon 28 U.S.C. § 1346(a)(2) for the reason this is a civil action which involves a claim against the United States, not exceeding $10,000 in amount, founded upon Acts of Congress, namely, FECA and APA. Subject matter jurisdiction is still further founded upon 28 U.S.C. § 1361 for the reason this action is in the nature of mandamus seeking to compel officers of agencies of the United States, namely, the Commission to perform its duties under FECA and APA.

7. Subject matter jurisdiction is founded in this court because the Corporation, consisting of each of McChesney and BMUSSI, is a person against whom an adverse determination was made by the Commission and is entitled to obtain a review of the Commission's final determination. The Corporation has timely filed a petition in this Court in the form of this

complaint prior to the expiration of the 30-day period which began no earlier than March 22, 2016, the date shown on a notification received by the Corporation of the final determination by the Commission ("final determination") pursuant to 52 U.S.C. 30109(a)(4)(C)(iii). The Corporation, consisting of each of McChesney and BMUSSI, requests the Commission's final determination be modified or set aside pursuant to 52 U.S.C. 30109(a)(4)(C)(iii) as further described herein.[1]

8. Venue is proper in this Court pursuant to 52 U.S.C. 30109(a)(4)(C)(iii) (formerly 2 U.S.C. § 437g(4)(C)(3)) because this is a district court of the United States for the district in which the Corporation resides and/or transacts business. Venue also is proper pursuant to 28 U.S.C. § 1391(e) for the reason this is a civil action in which the United States is a defendant and the individual defendant is an officer or employee of the Commission acting in his official capacity and this action is brought in a judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

III. INTRODUCTION

9. The Commission is a powerful government agency charged with administering federal election laws whose members are appointed by the President and confirmed by the United States Senate. The Commission establishes the penal code for federal elections. Congress commands the Commission every few years to review and formally establish a schedule of monetary penalties ("penalties schedule") for election-related infractions. There is no greater core responsibility or more important function of the Commission. The Commission's action must be performed in full public view. Indeed, all Commission business must be open to public observation unless it involves "routine matters." The Commission's deliberation and vote in response to Congress' directive to establish the penalties schedule for every federal campaign

[1] Both McChesney as treasurer for BMUSSI and BMUSSI itself are proper parties. *See Combat Veterans for Cong. Political Action Comm. v. FEC*, 795 F.3d 151, 158 (D.C. Cir. 2015) ("Combat Veterans and its current treasurer filed a timely petition for review in the district court") ("*Combat Veterans*").

across the nation for five years is not a routine matter.

10. The penalties schedule under then existing law expired on December 31, 2013. Congress granted *authority* and instructed the Commission to *both* establish *and* publish a new penalties schedule. The Commission failed in the first – and most important – task. The Commission did not establish the 2014 penalties schedule as required by law. The Commission is aware a public meeting on this subject has at least the potential for creating discomfort for the Commission or generating public controversy. The Commission created a plan to avoid this problem. It met in secret and then ordered a staff member to merely "post" on a government website a version of the expired penalties schedule on January 21, 2014, three weeks *after* the earlier one expired. To avoid this potential controversy in the future, the Commission also secretly adopted a new rule effectively eviscerating a longstanding sunset provision mandated by Congress that required the Commission to re-evaluate the penalties schedule in an open and public forum after a designated number of years.

11. The Candidate was a candidate for the United States Senate in the 2014 primary election. The Candidate did not prevail. More than one year later, the Commission gave notice to McChesney, acting in his official capacity as Treasurer, that it intended to assess civil money penalties against him in his capacity as Treasurer (and BMUSSI) for alleged late-delivery to the Commission of a handful of contributions received in the final days of the 2014 primary election. The Commission acknowledges that McChesney, one year *before* being contacted by the Commission, provided all necessary information required by law to be disclosed. The Commission nevertheless informed McChesney that his or BMUSSI's negligence, lack of knowledge regarding the law or inattention in failing to deliver the requested information earlier would not be a valid excuse.

12. The Commission purported to assess the Corporation a civil money penalty using the expired penalties schedule allegedly authorized under the new final rule. Neither the penalties schedule nor the new rule had been the subject of proper notice to the public or a vote of the Commission in an open meeting under full public view. The Corporation timely challenged the Commission's action on the ground it was unlawfully assessed by the Commission's use of the expired penalties schedule since it was not lawfully established by the Commission in 2014 as required by law. The Corporation brings this action for declaratory and other relief seeking, among other things, to set aside the Commission's penalty assessment.

IV. FACTUAL BACKGROUND

A. Commission's Authority and Duty to Establish Penalties Schedule

13. On or about December 26, 2013, Congress amended FECA under Public Law No: 113-72 for the purpose, among other things, to "extend through 2018 the ***authority*** of the Federal Election Commission to impose civil money penalties on the basis of a schedule of penalties ***established*** **and** published by the Commission" (emphasis added). This amendment was accomplished "by striking 'December 31, 2013' and inserting 'December 31, 2018''' in then 2 U.S.C. 437g(a)(4)(C)(iv). Public Law No. 113-72 amended the law to read in relevant part:

> (C) (i) [T]he Commission may—
>
> > (II) . . . require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is **established** and published by the Commission . . . .
> >
> > (iv) This subparagraph shall apply with respect to violations that relate to reporting periods . . . that end on or before December 31, 2018.

14. The Commission is a federal agency with considerable authority and enormous power[2] that is required by Congress, among other things, to implement regulations ("Commission regulations"), including those implementing the Government in the Sunshine Act, 5 U.S.C. 552b(g) ("Sunshine Act"). *See* 11 C.F.R. Part 2 et seq. One key Commission regulation provides "Commissioners shall not . . . dispose of Commission business other than in accordance with" Commission regulations. 11 C.F.R. § 2.3(a) Commission regulations further provide "the deliberation of at least four voting members of the Commission in collegia where such deliberations determine or result in . . . disposition of official Commission business" constitutes a "meeting" under the Sunshine Act and thus must be conducted in full public view. 11 C.F.R. Part 2 § 2.2(d)(1). Commission regulations still further provide, with exceptions not applicable here, "every portion of every Commission meeting shall be open to public observation." *See* 11 C.F.R. § 2.3(b). Commission regulations grant a very narrow exception to the requirement a meeting must be "open to public observation" when the Commission disposes of "routine matters." *See* 11 C.F.R. § 2.2(d)(2) ("The term meeting does not include the process of notation voting by circulated memorandum for the purpose of expediting consideration of routine matters"). Routine matters can be addressed by the Commission by using a formal "tally vote" procedure adopted by the Commission that involves written ballots marked by each of the commissioners and returned to the Commission Secretary and Clerk ("Clerk").[3]

15. On September 10, 2008, the Commission issued Directive No. 52 outlining specific procedures for "Certifications of tally votes" to be performed by the Commission and the Clerk

[2] *See Combat Veterans* at 153 ("The Commission's mandate is broad and its authority considerable . . . . Such an independent Commission holds potentially enormous power . . . .").

[3] "A tally vote . . . refers to the [Commission] practice of circulating paper ballots, receiving and counting marked ballots, and deeming ballots not returned by the deadline (within a week) to be abstentions, i.e., to *not* count as 'yes' or 'affirmative' votes." *Combat Veterans* at 158. This is one of two "'circulation vote' procedures that the Commission set forth in Directive 52, *FEC Directive 52* (Sept. 10, 2008), http://www.fec.gov/directives/directive_52.pdf, pursuant to its statutory authority to promulgate 'rules for the conduct of its activities,' 52 U.S.C. § 30106(e)." *Id.*

when addressing routine matters. Directive No. 52 provides the "matters circulated for tally vote" must comply with a strict procedure including delivery "to each Commissioner's office and other recipients" by a specific time, namely "11:00 A.M. daily." Directive No. 52 further requires a copy of any Certification "with the official seal" to be delivered to the Staff Director, the General Counsel and the Chief Financial Officer" of the Commission following the vote. A tally vote requires completion of actual ballots and a ballot not properly marked and completed is invalid.

B. The Commission Did Not Establish the 2014 Penalties Schedule As Required by Law

16. On December 31, 2013, the penalties schedule under then existing law expired.

17. On January 6, 2014, a Commission staff attorney purportedly distributed to commissioners a draft of a Final Rule for Extension of Administrative Fines Program ("unauthorized final rule"), *without* attaching the expired penalty schedule, for the purpose of "extending" the Commission's "Administrative Fines Program" ("AFP"). The unauthorized final rule for the AFP was circulated on a strictly "72-hour tally vote basis."

18. On January 7, 2014, a ballot relating to the unauthorized final rule was delivered to commissioners with a request that a response be made by January 10, 2014. The delivered ballot stated: "A definite vote is *required.* All ballots *must* be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above" (emphasis in original). None of the ballots for establishing the 2014 penalties schedule was returned to the Commission Secretary as required. In fact, no ballot was ever signed, dated or returned by any commissioner to the Clerk for establishing the 2014 penalties schedule as required by the tally vote procedure.

19. On January 9, 2014, the Clerk gave public notice of a public meeting of the Commission to be held on January 16, 2014, including on the distributed agenda subjects for the meeting, "Management and Administrative Matters." The agenda did not include any reference

to establishing the 2014 penalties schedule for the next five years despite the recent mandate only a few weeks earlier by Congress. Commission records also show there was not any public meeting, executive session or other gathering of commissioners scheduled to occur, or that in fact occurred, before January 16, 2014 (http://fec.gov/sunshine/2014/open/notice20140116.pdf).

20. On January 13, 2014, despite the absence of any record showing the presence of commissioners or a meeting of the Commission, and without a single returned ballot, the Clerk dated an unsworn Certification claiming a "vote" was decided "on" January 13, 2014 approving the unauthorized final rule, including a "circulated email" amendment from one of the commissioners. Even though the Commission implores parties before it to present affidavits or declarations (http://www.fec.gov/pages/brochures/admin_fines.shtml), the Clerk did not execute either an affidavit or sworn declaration. Nor did the Clerk provide a sworn Certification with a date stamp and official seal or represent the vote on this critical topic was face-to-face with each commissioner *in presentia actuale* (en.glosbe.com/la/en/in%20presentia%20actuale).[4]

21. On January 16, 2014, the Commission assembled in an open meeting and public session. The subject of establishing the penal code (2014 penalties schedule) for all federal elections in the United States for the next five years as mandated by Congress was not raised or discussed in any way at the meeting (http://www.fec.gov/agenda/2014/agenda20140116.shtml).

22. On January 17, 2014, without public notice placed on any agenda or public vote by the Commission in an open meeting, a Commission staff member posted for ultimate publication in the Federal Register the unauthorized final rule referring to the expired penalties schedule. *See* Federal Register Document, FR Doc. 2014–00960 Filed 1–17–14; 8:45 am.

23. On January 21, 2014, again without public notice placed on any agenda or public

[4] *See* American Society of Notaries, Physical Presence - The Foundation of ALL Notarial Acts, Enotarization and Presence Requirement (Jan. 2011) ("The traditional fundamentals of the notarial act, including personal/physical presence of the signer, are required whether the transaction is electronic or on paper").

vote by the Commission in an open meeting, a Commission staff member published Notice 2014–01 ("January 21 notice") announcing the unauthorized final rule. *See* 11 CFR Part 111, Federal Register/Vol. 79, No. 13 at 3303/Tuesday, January 21, 2014. The notes accompanying the unauthorized final rule show it was made to avoid the mandatory sunset provision Congress created for the Commission to reevaluate the penalties schedule in a public meeting in five years:

> The Commission's regulations implementing the AFP can be found at 11 CFR 111.30–111.46. Section 111.30 specifies the end date of the program; each time Congress has extended the statute that authorizes the AFP, the Commission has revised the end date in section 111.30 accordingly. To implement Congress's most recent extension of the AFP's authorization—**and to obviate the need to revise section 111.30 each time Congress extends the statute**—this final rule revises section 111.30 to provide that the AFP applies to reporting periods that 'end on or before the date specified in 2 U.S.C. 437g(a)(4)(C)(v).' The Commission's current AFP regulations apply 'to reporting periods that . . . end on or before December 31, 2013.' 11 CFR 111.30. Because the statutory extension was not enacted until late December 2013, there is a short gap between the end date of the Commission's current regulations and the effective date of this final rule on January 21, 2014 (emphasis added).

24. As of January 21, 2014, when the unauthorized final rule was posted, the Commission was fully aware the expired penalties schedule, extant as of December 31, 2013, had ended three weeks earlier and was no longer of any force or effect. The unauthorized final rule posted by Commission staff expressly acknowledged the "gap between the end date of the Commission's current regulations [December 31, 2013] and the effective date of this final rule on January 21, 2014." Because of the gap, the January 21 notice stated campaign reporting rules during the gap period would not be "subject to the AFP." In other words, the Commission was fully aware – and does not deny now – it was *required* in early January 2014 to "establish" a new penalties schedule because the prior penal code had expired on December 31, 2013.

25. The January 21 notice posted by Commission staff also acknowledges the penalties schedule was required by law to be *periodically* established anew by the Commission. The

posted notice expressed apparent discontent by the Commission for the imposition of "each time Congress has extended the statute that authorizes the AFP, the Commission has" had to take action to reauthorize a new penalties schedule. This posted notice shows the Commission misapprehends its duties to the public. Congress undoubtedly created the sunset feature in part to ensure a review by the Commission in an open forum that would allow the public at least an opportunity to have input, whether directly or indirectly, concerning the penal code that would govern federal elections for the next several years. The January 21 notice purported to effectively strip the sunset feature from the law by way of the unauthorized final rule, ultimately having the effect of eliminating any future public involvement and a public vote, all done merely to accommodate the Commission's extraneous desire "to obviate the need to revise . . . [the penalties schedule] each time Congress extends the statute."[5]

26. The January 21 notice also acknowledges the unauthorized final rule was made "without advance notice or an opportunity for comment," would not be subjected to "congressional review" and would be self-implementing upon filing, that is, "effective immediately." The Commission did not vote in a public meeting after public notice to *reauthorize* the expired penalties schedule for the 2014 primary election at any time. *See* 11 CFR Part 111, Federal Register/Vol. 79, No. 13 at 3302/Tuesday, January 21, 2014.[6]

27. The January 21 notice purported to establish the expired penalties schedule for the 2014 primary election in which McChesney acted as Treasurer on behalf of Corporation.

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[5] The January 21 notice was published in the Federal Register claiming the expired penalties schedule for 2014 had taken effect immediately on that date. The unauthorized final rule read: "Accordingly, this final rule is effective upon publication in the Federal Register" on January 21, 2014.

[6] The January 21 notice states, "***The Commission finds*** that notice and comment are unnecessary here because **this final rule *merely extends the applicability*** of the existing AFP and deletes one administrative provision; the final rule makes no substantive changes to the AFP" (emphasis added). This statement is untrue. The Commission made no finding in any public meeting that was open to the general public either prior to, on or after January 21, 2014. The Commission also never placed on a Commission agenda or voted in a Commission meeting open to the public to "extend[] the applicability of the existing AFP" containing the expired penalties schedule.

28. The January 21 notice was not authorized. Only the Commission acting in an open and public session by majority vote – after advance notice to the public – is authorized to establish the penalties schedule for 2014. It failed to do so. This important function cannot be performed by the Commission in a back room or secret meeting or otherwise justified on the basis of a *post hac* technical amendment. The penalties schedule is the penal code for federal elections. The Commission's formal action in establishing it must be open to the public and directly approved by majority vote of the Commission in a public forum. The Commission's failure to comply with these requirements is not subject to a Commission defense of negligence, oversight or lack of knowledge. This is particularly important in this circumstance because the posted January 21 notice advised the public it was made "without advance notice or an opportunity for comment," would not be subjected to "congressional review" and would be self-implementing, that is, "effective immediately."

C. 2014 Election

29. The 2014 primary election was held and completed on May 13, 2014. More than one year later, on or about June 29, 2015, the Commission delivered a letter dated June 2, 2015 ("June 29 letter") to McChesney in his official capacity as Treasurer. The June 29 letter claimed the Commission had "reason to believe" ("RTB finding") that McChesney acting as Treasurer and BMUSSI had failed to timely "submit 48-Hour Notices" allegedly required to be given to the Commission with regard to a small group of contributions and two loans from the Candidate. The Commission stated in the June 29 letter the law required strict compliance and the Commission would not consider any excuse based on "negligence," "inexperience" or a "failure to know" by McChesney (or BMUSSI) in failing to give the notices.

30. On July 30, 2015, the Corporation delivered a letter ("July 30 letter") making timely objection and challenge to the RTB finding, among other things, challenging "imposition of

the civil monetary penalty in the June 29 letter on the ground it is not based on an authorized schedule of penalties established by the Commission."

31. On September 29, 2015, the Commission responded to the July 30 letter by rejecting the Corporation's challenges and reiterating that negligence would not be considered by the Commission or deemed "reasonably unforeseen" or "beyond the [Corporation's] control."

32. On October 8, 2015, the Corporation delivered a reply letter ("October 8 letter") to the Commission, again making a timely objection and challenge, asserting, among other things, the Commission's action against the Corporation was unlawful and without effect because it was not based on an authorized schedule of penalties lawfully established by the Commission. The Corporation delivered a draft complaint and an initial draft summary judgment brief to the Commission in the October 8 letter to help explain and generally outline its arguments.

33. On March 22, 2016, the Commission communicated its final determination regarding the civil money penalty advising it intended to assess the Corporation $12,122.00 for an alleged violation of FECA. The Commission's final determination included the opinion of the Commission's Office of the General Counsel, which expressly acknowledged the Corporation's "legal argument about the establishment of the Commission's schedule of penalties . . . may outweigh the policy of treating reporting violations as a strict liability offense." The Commission threatened in the final determination, in the absence of an appeal, to "transfer the debt" to the Department of Treasury "for collection," consider "referral of the debt to agency counsel for litigation," "reporting of the debt to a credit bureau" and initiating "administrative wage garnishment."

D. The Commission's Final Determination is Flawed and Legally Unauthorized

34. The Commission admits in the final determination the "prior regulations" expired on December 31, 2014, creating a "gap" requiring the Commission to take *some* action to establish

the 2014 penalties schedule before publication could be made on January 21, 2014. The Commission admits it never established the 2014 penalties schedule in an open public meeting: "The Commission adopted the extension by tally vote rather than in a public meeting." The Commission claimed its action "was legally permissible and does not invalidate the civil money penalties as [the Corporation] contends."

35. The Commission's final determination did not address the Commission regulations that require "every portion of every Commission meeting" to be "open to public observation" with regard to any matter resulting in "disposition of official Commission business" (11 C.F.R. Part 2 §§ 2.2(d)(1), 2.3(b)). Nor did the Commission explain how the duty of establishing the penal code for all federal elections over a five year period following a specific Congressional mandate could be a "routine" matter (11 C.F.R. § 2.2(d)(2)). If the Commission is correct, then *every* action of the Commission is a routine matter and the Sunshine Act will be rendered nugatory.

36. The tally vote procedure actually employed by the Commission for complying with its vital duty of establishing the federal election penalties schedule for the nation for the next five years was an abject failure. The procedure was fraught with internal violations of the Commission's own governing rules, including wholesale disregard for the written ballot process, failure to deliver to commissioners the expired penalty schedule for review, execution of an unsworn certification without a date stamp or seal by the Clerk based on votes not made in person or marked on a written ballot or otherwise in writing beyond an "email" amendment directed at the unauthorized final rule. The Commission's failure to even mention the action taken on the penalties scheduled at the next Commission open meeting three days after its secret "vote" on the unauthorized final rule is telling and only proves the Commission's apparent intention was to

impermissibly avoid ("obviate") *forever* the discomfort of discussing and having to vote in an open and public forum about the penal code used for all federal elections. [7]

37. The Commission's final determination stated in conclusory fashion, despite these multiple failures, the Commission's action "does not invalidate the civil money penalties." The Commission's final determination cites *Combat Veterans* and another decision of the United States Court of Appeals for the District of Columbia in *Communications Systems, Inc. v. FCC,* 595 F. 2d 797 (D.D. Cir. 1978) in support of its actions. *Communications Systems* does not require any discussion since it is a nearly forty-old decision involving a separate federal agency operating under a different regulatory scheme and was not controlled by the specific "routine matters" rule governing the Commission's action here (11 C.F.R. § 2.2(d)(2)). Any reliance on *Combat Veterans* is equally misplaced since the litigants in that case, unlike the Corporation here, failed to raise a non-routine matter as its foundational objection to the Commission's action and instead complained *only* about the tally vote procedure used to determine their individual penalties (which the court properly described as an "not important" or essentially routine function of the Commission).[8]

E. Timely Objection

38. The Corporation made and filed a timely challenge and objection with the Commission and otherwise exhausted any required administrative remedy.

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[7] The Commission's tally vote procedure is an operational mess, employed more in the breach than in the observance. *Combat Veterans* noted it "gives us pause" and explained the Commission's failings are so frequent there is now "precedent" for the Commission's ratification to overcome the defects. *Id*. at 152. The Commission claimed a need to ratify an earlier botched vote involving the Corporation. *See* March 8, 2016 memorandum at 1 n.1. The Commission wisely did not claim it could or did ratify a non-routine matter like establishing the 2014 penalties schedule.

[8] *Combat Veterans* found the sole objection to the tally vote used for the specific campaign's penalties *alone* did not involve the Commission's "exercise" of "important powers". *Id*. at 156; *see also* 11 C.F.R. 2.4(a)(1). By analogy, the Department of Treasury's exercise of power to establish all of the tax regulations is enormous in comparison to its exercise of power to impose a small penalty on an individual filing a late return. The latter is a routine matter; the former is not. The same distinction applies here. The Commission's exercise of power to establish the penal code for all federal elections for the nation for five years is enormous while, as *Combat Veterans* demonstrates, the authority of the Commission to assess a single campaign for late filing of reports may be routine.

39. The Commission has not met its burden of justification applicable to an administering agency's determination of civil money penalties in this circumstance. The Commission's actions were not in accordance with law, were in excess of statutory jurisdiction and authority and limitations or, alternatively, short of statutory right, under FECA, and otherwise without observance of procedure required by law.[9]

FIRST CLAIM FOR RELIEF

(Declaratory Judgment for FECA Violation Pursuant to 28 U.S.C. § 2201)

40. The Corporation reasserts the allegations in paragraphs 1 through 39 as though fully stated herein.

41. A case of actual controversy exists between the Corporation, including both McChesney and BMUSSI, and the Commission pursuant to 28 U.S.C. § 2201 concerning the Commission's final determination. The Corporation, upon the filing of this petition in the form of a complaint, seeks a declaratory judgment finding the Commission has no authority to impose a civil money penalty against the Corporation on the ground the Commission had not lawfully established the penalties schedule for the 2014 primary election under which the civil money penalty against the Corporation was assessed. The Commission at minimum exceeded its statutory duty in administering and enforcing FECA. The Commission legally could not establish the required penalties schedule for the 2014 primary election through a secret vote or in a private setting without public notice. Such a critical duty required the formal vote of the Commission conducted in an open meeting following public notice of the proposed action to be taken. That did not occur.

[9] *See Union Pacific Railroad Company v. U.S. Dept. of Homeland Sec.*, 738 F.3d 885, 900 (8th Cir. 2013) ("We therefore conclude all of the [federal agency] penalties assessed against [plaintiff] are 'not in accordance with law' and 'in excess of statutory authority [and] limitations, or short of statutory right.' 5 U.S.C. § 706(2) . . . . Because the penalties are 'unlawful,' they must be "set aside").

42. The Corporation, upon filing of this pleading, further seeks an order of this Court, pursuant to 28 U.S.C. § 2201, declaring McChesney and BMUSSI's right to be free from any obligation to pay the civil money penalty in the Commission's final determination and further declare and instruct the Commission to strike and otherwise remove any statement, claim or reference to the Commission's final determination relating to the Corporation from any and all official records of the Commission.

43. The Corporation requests and prays the Commission's final determination be modified to declare Corporation does not owe, and is not obliged to pay, any civil money penalty to the Commission and to set aside the Commission's final determination regarding same pursuant to 52 U.S.C. 30109(a)(4)(C)(iii) (formerly 2 U.S.C. § 437g(4)(C)(3)).

SECOND CLAIM FOR RELIEF

(FECA Violation Pursuant to 5 U.S.C. § 706(2)(A)(B)(C) and (D))

44. The Corporation reasserts the allegations in paragraphs 1 through 43 as though fully stated herein.

45. The Corporation is a person suffering legal wrong because of the Commission's action in imposing a civil money penalty on the Corporation in the Commission's final determination and for any statement, claim or reference to or regarding the Commission's final determination in the Commission's official records.

46. The Corporation seeks, pursuant to 5 U.S. Code § 706 (2) (A)(B)(C) and (D), for the Court to hold unlawful and set aside the action, findings, and conclusions of the Commission in the Commission's final determination on the ground they, and each of them, were not in accordance with law, were in excess of statutory jurisdiction and authority and limitations or, alternatively, short of statutory right, under FECA, and otherwise without observance of procedure required by law.

47. The Corporation seeks relief in this cause of action other than monetary damages, namely, declaratory and injunctive relief, declaring the Corporation's right to be free from any obligation to pay the civil money penalty in the Commission's final determination and further declare and instruct the Commission to strike or otherwise remove any statement, claim or reference to the Commission's final determination relating to the Corporation from the Commission's official records.

48. The Corporation seeks a mandatory and/or other injunctive decree ordering the Commission to vacate the Commission's final determination and finding the Corporation to be free from any obligation to pay the civil money penalty in the Commission's final determination and to further instruct the Commission to strike and otherwise remove any statement, claim or reference to the Commission's final determination relating to the Corporation from the Commission's official records.

49. The Commission's actions described herein were not reasonable and thus a mandatory and/or injunctive decree in favor of the Corporation is warranted under the circumstances.

THIRD CLAIM FOR RELIEF

(FECA Claim to Modify and Set Aside Pursuant to 52 U.S.C. 30109(a)(4)(C)(iii))

50. The Corporation reasserts the allegations in paragraphs 1 through 49 as though fully stated herein.

51. The Corporation is a person against whom an adverse determination was made by the Commission in the Commission's final determination and the Corporation, consisting of McChesney and BMUSSI, is entitled to obtain a review of the Commission's final determination.

52. The Corporation has timely filed a petition in this Court in the form of this complaint pursuant to 52 U.S.C. 30109(a)(4)(C)(iii) (formerly 2 U.S.C. § 437g(4)(C)(3)) that seeks to: (a) modify the Commission's final determination assessing a civil money penalty against the Corporation and further seeks a finding there is no obligation for Corporation to pay the civil money penalty identified in the Commission's final determination; (b) set aside or modify the Commission's final determination and order the Commission to remove any statement, claim or reference to the Commission's final determination regarding the Corporation from the Commission's official records.

WHEREFORE, the Corporation, consisting of each of McChesney and BMUSSI, prays that the Court enter judgment in their favor, and each of them, and enter a judgment against FEC and Peterson, in his official capacity as Chair of FEC, and the United States, and each of them, and any officer, agent or employee under her/their/its supervision or control, with regard to the First, Second and Third Claim for Relief as applicable, as follows:

(a) Declaring the Commission did not have authority to impose a civil money penalty on the Corporation (McChesney and BMUSSI), since the Commission had not properly established under law the penalties schedule for the 2014 primary election in which the Corporation was assessed a civil money penalty, and that the Commission's actions were not in accordance with law, were in excess of statutory jurisdiction and authority and limitations or, alternatively, short of statutory right, under FECA, and otherwise without observance of procedure required by law;

(b) Declaring the Corporation's right to be free from any obligation to pay the civil money penalty in the Commission's final determination and further

declaring the Corporation's right to have any statement, claim or reference to the Commission's final determination stricken and otherwise removed from the Commission's official records;

(c) Entering a mandatory injunction compelling the Commission, by and through Peterson or otherwise, to vacate the Commission's final determination finding the Corporation's alleged obligation to pay any civil money penalty and further compelling the Commission to strike or otherwise remove any statement, claim or reference to the Commission's final determination in the Commission's official records.

(d) Ordering the Commission to pay the Corporation any losses or damages for which recovery is permitted by law or in equity plus it costs, reasonable attorney fees and other expenses pursuant to 28 U.S.C. § 2412.

(e) Providing such other or further relief to the Corporation as the Court finds just or equitable or allowed by the pleadings.

Dated this 15th day of April, 2016.

Respectfully submitted,

ROBERT C. MCCHESNEY, in his official capacity as Treasurer of Bart McLeay for U.S. Senate, Inc., and BART MCLEAY FOR U.S. SENATE, INC., Plaintiffs,

By: s/*L. Steven Grasz*

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REQUEST FOR SPEEDY HEARING

Pursuant to Fed. R. Civ. P. 57, the Corporation requests the Court, to the extent its current docket allows, order speedy consideration of this matter by advancing it on the Court's calendar.