UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN, *et al.*,	)	
Plaintiffs,	)	Civ. No. 14-148 (RJL)
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant,	)	
CROSSROADS GRASSROOTS POLICY STRATEGIES,	)	SUPPLEMENTAL MEMORANDUM
Intervenor-Defendant.	)	

FEDERAL ELECTION COMMISSION'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS CROSS-MOTION FOR SUMMARY JUDGMENT

In its summary judgment memoranda and at oral argument, the Federal Election Commission ("FEC" or "Commission") explained why the Court should grant summary judgment to the Commission. The Federal Election Campaign Act's ("FECA" or "Act") contrary-to-law standard is highly deferential and the controlling FEC Commissioners' reasons for voting to dismiss plaintiffs' administrative complaint against Crossroads Grassroots Policy Strategies ("Crossroads") — explained at length in these three Commissioners' statement of reasons (AR 400-28) — was clearly not arbitrary or contrary to any FEC precedents or settled law. It was also a reasonable exercise of prosecutorial discretion. (FEC's Mem. of P. & A. in Supp. of its Cross-Mot. for Summ. J. and in Opp'n to Pls.' Mot. for Summ. J. at 18-50 (Docket No. 32) ("FEC Mem."); FEC's Reply in Supp. of its Cross-Mot. for Summ. J. at 1-30 (Docket No. 65) ("FEC Reply"); Transcript of Mot. Hearing Before the Hon. Richard J. Leon, United States District Judge at 18-29, 44-46 (Aug. 2, 2016) ("Tr.").)

Plaintiffs have failed to rebut these essential points. No argument they have advanced either in their oral presentation — the focus of this supplemental brief — or in any of their three earlier briefs provides a sound basis upon which the Court may find in their favor. Their request that the Court substitute its own judgment in reviewing the controlling Commissioners' statement runs contrary to ordinary principles of agency deference. It also runs contrary to the binding, settled law establishing the deference that this Court must accord the controlling Commissioners' statement in this particular context. On the merits, plaintiffs have failed to show any way in which these Commissioners' approach to evaluating Crossroads's major purpose was arbitrary, capricious, or contrary to law or precedent. Plaintiffs also have no answer to the controlling Commissioners' alternative analyses, which show that they would have reached the same conclusion even had they agreed with aspects of the approach that plaintiffs prefer. And plaintiffs' principal response to the Commissioners' invocation of prosecutorial discretion is only to observe, correctly, that this independent rationale was explained briefly. That complaint is unpersuasive. The Court should grant summary judgment to the FEC.

I. THE COURT MUST ACCORD *CHEVRON* DEFERENCE TO THE CONTROLLING COMMISSIONERS' DISMISSAL DECISION

A. The Limited and Deferential Contrary-To-Law Standard Is Settled Law

As explained in the FEC's opening brief, Congress's design of the FEC's enforcement process includes, in addition to a detailed and relatively formal process with several clearly defined stages, a provision allowing any person to file an administrative complaint with the Commission alleging a violation of the Act. FEC Mem. at 3-4; 52 U.S.C. § 30109(a)(1); 11 C.F.R. § 111.4. If, as is the case here, the complainants are unsatisfied by the FEC's decision not to investigate or otherwise pursue the alleged violations, Congress provided a procedure for "limited" judicial review. FEC Mem. at 3-4; 52 U.S.C. § 30109(a)(8); *Common Cause v. FEC*,

842 F.2d 436, 448 (D.C. Cir. 1988); *Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1135 n.5 (D.C. Cir. 1987) ("*DCCC*") (explaining that "[i]n the absence of prior Commission precedent . . . , judicial deference to the agency's initial decision or indecision would be at its zenith"). As then-Judge Ruth Bader Ginsburg noted almost thirty years ago, citing and quoting the complainants' brief, "where [a] deadlock reflects genuine uncertainty about the law, [a] court should be loath to intervene"; judicial intervention is there for instances "where [the] Commission is unable or unwilling to apply 'settled law to clear facts'" or acts arbitrarily. *DCCC*, 831 F.2d at 1135 n.5; *accord* Tr. at 21:14-16 ("THE COURT: So if it's a close question, tie goes to the deciders. MR. KITCHER: Absolutely. . . .").

In the forty years since Congress established the section 30109(a)(8) review process, the Supreme Court and D.C. Circuit have directly addressed it on several occasions and have, in a series of decisions, established certain black-letter law propositions. These include: (1) the requirement that declining-to-go-forward Commissioners must articulate their reasons for dismissing a complaint in a statement of reasons, *DCCC*, 831 F.2d at 1134-35; *Common Cause*, 842 F.2d at 449; (2) that these Commissioners are the "controlling group" for purposes of judicial review, *FEC v. Nat'l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) ("*NRSC*"); (3) that courts review such statements of controlling Commissioners using the principles of deference "[o]rdinarily" applying, *id.*; and (4) that, due to the relatively formal nature of the FEC's enforcement process, the level of deference owed when the controlling Commissioners are interpreting one of the Act's provisions, as here, is *Chevron* deference, *In re Sealed Case*, 223 F.3d 775, 780 (D.C. Cir. 2000). (FEC Mem. at 4-5, 18-26.)

In accordance with the D.C. Circuit's instructions, this Court's opinion in *Akins v. FEC* summarized the judicial task correctly. 736 F. Supp. 2d 9, 16-17 (D.D.C. 2010) (relying on *FEC*

v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 39 (1981) ("*DSCC*") and *Orloski v. FEC*, 795 F.2d 156, 161, 167 (D.C. Cir. 1986)). There, as here, the Commissioners' dismissal must be sustained unless it was based on (1) an "'impermissible interpretation'" of FECA or, (2) even "'under a permissible interpretation of the statute, was arbitrary or capricious, or an abuse of discretion.'" *Id.* (quoting *Orloski*, 795 F.2d at 161). The contrary-to-law standard is "'extremely deferential'" and "'requires affirmance if a rational basis for the agency's decision is shown.'" *Id.* (quoting *Orloski*, 795 F.2d at 167).

B. Plaintiffs' Two Arguments Against According the Controlling Statement of Reasons *Chevron* Deference Are Meritless

Notwithstanding the foregoing settled law, plaintiffs have asked the Court to scrutinize the controlling Commissioners' statement using a lesser degree of deference. At argument, they submitted that "at the end of the day, with all the briefing in hand," there are "two fundamental reasons why [the controlling Commissioners' dismissal] determination is not entitled to *Chevron* deference." (Tr. at 6:16-19.) Plaintiffs argued that (1) "[t]he deadlocked Commission's statements about major purpose do not establish a rule of law that appl[ies] in any case other than this one" and (2) "what the Commission was doing here was not an exercise of . . . interpretive discretion delegated to it by Congress in construing ambiguous statutory language." (*Id.* at 6:22-24, 9:16-19.) Both arguments are incorrect.

1. The Controlling Dismissal Decision Is Entitled to *Chevron* Deference Because it Has the Force of Law

As the Commission explained at argument, although the D.C. Circuit's decision in *Common Cause* "makes clear that when there's an absence of a four-Commissioner majority, the decision of the controlling group is non-precedential," Tr. at 22:18-20; *Common Cause*, 842 F.2d at 449 n.32, the Court's later decision in *In re Sealed Case* also "makes clear that, like any other

no-action decision, when the Commission is prevented from moving forward on an enforcement matter, that[] 'precludes further enforcement'" (Tr. at 22:21-24 (quoting *In re Sealed Case*, 223 F.3d at 780)). That legal preclusion of further enforcement *is* force of law and it is why *In re Sealed Case* wholly disposes of plaintiffs' argument. In an extended discussion in that decision, *see* 223 F.3d at 779-81, the Court of Appeals carefully analyzed FECA's relatively formal enforcement process and concluded that it "is part of a detailed statutory framework for civil enforcement and is analogous to a formal adjudication, which itself falls on the *Chevron* side of the line," *id.* at 780. Importantly, the Court of Appeals explained that "[i]f courts do not accord *Chevron* deference to a prevailing decision that specific conduct is not a violation, parties may be subject to criminal penalties where Congress could not have intended that result." *Id.*; Tr. at 21:1-7; *see also* FEC Mem. at 23-25; FEC Reply at 9-12.

Fogo De Chao (Holdings) Inc. v. U.S. Dep't of Homeland Sec., 769 F.3d 1127 (D.C. Cir. 2014) ("*Fogo De Chao*") and *United States v. Mead Corp.*, 533 U.S. 218 (2001), which plaintiffs cited at oral argument (Tr. at 7:7-8:17), are not to the contrary. In *Fogo De Chao*, the challenged "decision, and any legal interpretations contained within it," were not entitled to *Chevron* deference because they "were the product of *informal* adjudication within the [agency], rather than a *formal adjudication* or notice-and-comment rulemaking." 769 F.3d at 1136 (emphases added); *see also* Tr. at 23:23-25 (noting that the *Fogo de Chao* case that was cited by plaintiffs concerned a different agency and involved informal agency action). Similarly, in *Mead*, the Supreme Court held that tariff classifications made by dozens of different Customs offices, mostly "contain[ing] little or no reasoning," were not entitled to *Chevron* deference because they were too far "removed not only from notice-and-comment [rulemaking] process" but also other indicia that Congress intended deference. 533 U.S. at 224, 231.

In *In re Sealed Case*, in contrast, the D.C. Circuit expressly considered whether controlling statements by declining-to-go-ahead FEC Commissioners in cases like this one were like the "interpretations" discussed in *Christensen v. Harris County*, 529 U.S. 576 (2000), a case that preceded *Mead*. The Court of Appeals concluded that the FEC statements were not like such interpretations; instead, they fell on the "*Chevron* side of the line." 223 F.3d at 780; *compare Fogo De Chao*, 769 F.3d at 1136-37 (explaining that it was "[t]he absence of those relatively formal administrative procedure[s] that tend[] to foster the fairness and deliberation that should underlie a pronouncement of legal interpretation" that "weighs against the application of *Chevron* deference" (internal quotation marks and citation omitted)); *Mead*, 533 U.S. at 230 ("It is fair to assume generally that Congress contemplates administrative action with the effect of law when it provides for a relatively formal administrative procedure tending to foster the fairness and deliberation that should underlie a pronouncement of such force."); *see also* Tr. at 23:14-22 (MR. KITCHER: "*Chevron* Deference is also perfectly consistent with *Mead* in this case. . . . [T]his is an adjudication that falls on the *Chevron* side of the line, due to the agency's inherently and relatively formal adjudicative process. That is why the decision has force of law."). Irrespective of whether the controlling dismissal decision is binding in future FEC enforcement matters, the Court is required to follow *In re Sealed Case*, which held that such dismissal decisions carry "'*the force of law*'" because they "preclude coercive Commission action in a partisan situation." *In re Sealed Case*, 223 F.3d at 780 (quoting and contrasting *Christensen*, 529 U.S. 587); Tr. at 20:22-25 (explaining that Congress's "design [of the FEC] ensures that when the agency decides issues charged with the dynamics of party politics under the pressure of an impending election, it does so both with care and legitimacy.").

2. The Controlling Dismissal Decision Is Entitled to *Chevron* Deference Because the Commissioners Were Interpreting FECA and the FEC's Supplemental Explanation and Justification

Plaintiffs' argument that the controlling Commissioners were not interpreting FECA (Tr. at 9:14-24) is incorrect. The central question before the agency was whether there was reason to believe that Crossroads was a political committee. "'Political committee,'" as the Commission pointed out at argument, "is a term that appears in [FECA]." Tr. at 24:7-9; 52 U.S.C. § 30101(4)(A). The Supreme Court's limiting construction of that defined term in *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (per curiam), establishes that the statutory definition means "what the Supreme Court has said" it means. (Tr. at 24:17-19.) Here, in determining that there was insufficient reason to believe that Crossroads was a political committee, the controlling Commissioners were interpreting section 30101(4)(A).

If that were not enough, the FEC itself also explicitly embraced the major-purpose test in its 2007 Supplemental Explanation and Justification. *Rules and Regulations: Political Committee Status*, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("Supplemental E&J"). Tellingly, plaintiffs' opening brief recognized that "if there is any agency determination to which this Court should defer under *Chevron*, it is the 'major purpose' construction adopted by a majority of the Commission in the [Supplemental E&J]." (Pls.' Mem. of P. & A. in Supp. of Pls.' Mot. for Summ. J. at 16 n.2 (Docket No. 23).) Thus, although the "'major purpose' test has never been codified in a regulation, [it] is applied by the FEC in its enforcement actions against individual organizations." *Shays v. FEC*, 511 F. Supp. 2d 19, 23 (D.D.C. 2007). The FEC's applications of the major-purpose test accordingly warrant deference.

By contrast, plaintiffs' reliance at argument (Tr. at 10:18-11:3) on the D.C. Circuit's vacated opinion in *Akins v. FEC*, 101 F.3d 731, 740 (D.C. Cir. 1996) (en banc), *vacated on other*

grounds sub nom. FEC v. Akins, 524 U.S. 11 (1998) remains unsound. As previously explained, that decision is non-precedential and the question it would have left open about whether the major-purpose test categorically applies has been clearly resolved by a number of subsequent court decisions and FEC determinations. (Tr. at 25:11-26:5; FEC Reply at 8 (collecting cases).) That is why "all parties here agree that the major-purpose test applies." (Tr. at 25:7-8.)

Plaintiffs reliance on *FEC v. GOPAC, Inc.*, 917 F. Supp. 851 (D.D.C. 1996) ("*GOPAC*"), which they highlighted at argument as supposedly supportive of reduced deference (Tr. at 11:4-14), is similarly unsound. *GOPAC* supports the Commission, not plaintiffs. In that case, the court distinguished between the context at issue there, in which the FEC had instituted a court action against the organization, and this situation, in which the FEC's dismissal of an administrative complaint is being challenged by the complainants. *GOPAC*, 917 F. Supp. at 860-61. It is this latter context, which the court was *contrasting*, in which the court correctly explained that section 30109(a)(8) is "[t]he statutory provision entitling the Commission to deference" and "relates only to 'the Commission's *dismissal* of a complaint[, which] should be reversed only if 'contrary to law.'" *Id.* at 860 (quoting *DSCC*, 454 U.S. at 37). Accordingly, to paraphrase the *GOPAC* court, "the Commission's interpretation of 'political committee' is . . . entitled to deference *by statute*" here, *id.* at 860-61 (emphasis added), namely by the contrary-to-law standard established in section 30109(a)(8)(C). (*See* FEC Mem. at 26 (citing *GOPAC* as an example of a court acknowledging the deference applicable in section 30109(a)(8) dismissal cases such as this one).)

C. The Government's Interest in Disclosure Does Not Reduce Plaintiffs' Burden or Alter the Standard of Review

Plaintiffs' argument that Congress's creation of other disclosure regimes affects the issue in this case (Tr. at 12:14-13:4) continues to be erroneous. As the Commission has explained, the

constitutionality of the different disclosure programs Congress and the FEC have established — such as the event-driven reporting requirements that are distinct from the disclosures that political committees must make (FEC Mem. at 5-10), and pursuant to which Crossroads has filed certain FEC reports (*id.* at 13) — neither alters the standard of review in this case nor required the agency to perform the major-purpose test in the manner that plaintiffs prefer. (*Id.* at 26-27; FEC Reply at 12-14; Tr. at 26:10-20.) The question here is whether there was reason to believe Crossroads is a political committee, not whether, assuming Crossroads were such a committee, requiring it to make political-committee disclosures would be constitutional.

II. THE CONTROLLING COMMISSIONERS' DISMISSAL DECISION WAS NOT CONTRARY TO LAW AND SHOULD BE SUSTAINED

The controlling Commissioners' decision should be upheld. (FEC Mem. at 28-48; FEC Reply at 15-28; Tr. at 26:21-29:9.) The simple reason the Court should grant summary judgment to the FEC is that, in light of the foregoing standard, "[p]laintiffs have failed to identify any law to which the controlling dismissal decision is contrary." (Tr. at 20:1-2.) In their statement, the controlling Commissioners reasonably analyzed Crossroads's central organizational purpose and comparative spending in light of the law, FEC precedents, and the full undisputed factual record that was before the agency. Their approach of evaluating Crossroads's most relevant organizational documents (FEC Mem. at 35-37; FEC Reply at 18-20), and comparing its most relevant electoral spending on express advocacy (or its functional equivalent) to its other spending in its first fiscal year (FEC Mem. at 37-46; FEC Reply at 20-28), is not in conflict with any judicial decision or other law requiring the test to be performed another way. Nor was it arbitrary; in fact, it is consistent with the ways several courts addressed a number of similar issues in analogous contexts, as explained further below.

At argument, plaintiffs contended that the controlling Commissioners' allegedly mechanical approach contravened the approach the FEC had itself advanced in *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d. 544, 556 (4th Cir. 2012) ("*RTAA*"). (Tr. at 5:3-12.) This is incorrect. In *RTAA*, the Fourth Circuit rejected a challenge to the Commission's "sensible" and "flexibl[e] . . . case-by-case" method of determining an organization's major purpose. 681 F.3d at 556, 558; *accord* Supplemental E&J, 72 Fed. Reg. at 5602 ("[A]ny list of factors developed by the Commission would not likely be exhaustive . . . , as evidenced by the multitude of fact patterns at issue in the Commission's enforcement matters considering the political committee status of various entities."). The controlling Commissioners' approach was consistent with *RTAA* and far more nuanced and "flexible" than plaintiffs' characterization suggests. (Tr. at 44:24-25.) Those Commissioners even undertook several "alternative analyses," in which they factored in certain aspects of the analysis that plaintiffs prefer, such as broader conceptions of relevant spending or shorter time periods. (*Id.* at 45:1-6; FEC Mem. at 46-47; FEC Reply at 27-28.) But even using these different approaches, the controlling Commissioners found that Crossroads did not "get across the [political committee] line." Tr. at 45:1-6; *see also infra* p. 11.

Plaintiffs also erred in arguing that the controlling Commissioners "were simply wrong in believing that they were compelled by the case law on major purpose to limit their consideration to express advocacy." (Tr. at 14:16-21.) Contrary to this gloss, however, the controlling statement does not reflect that the Commissioners believed themselves to be "compelled" (*id.*) to limit their consideration in this way. While the Commissioners noted that "[c]ourts that have examined spending ratios in political committee cases have focused on express advocacy spending," their conclusion was that express advocacy and its functional equivalent were the most relevant kinds of spending. (AR 413-14.) Importantly, the court opinions considering non-

FECA, state disclosure regimes that plaintiffs view as supportive of the broader spending analysis they prefer (*see* Tr. at 13:22-14:15) do not establish that the controlling analysis was improper. As the Commission observed in its reply brief, "[i]t is one thing to show that an approach is *permissible*; it is quite another to show that it is *required*." (FEC Reply at 17.) The contrary-to-law standard requires plaintiffs to show not only that their preferred approach is acceptable but that the Commission was compelled to use it. That is a showing that plaintiffs cannot make. (Tr. at 27:5-11 (MR. KITCHER: "[N]o court has said that certain types of non-express advocacy, be it a [PASO][1] communication or electioneering communication[,] must be counted . . . in the . . . analysis.").)

Furthermore, not only did the controlling Commissioners not actually view themselves as compelled only to use express advocacy as a constitutional matter, but, again, in their alternative analyses they treated some of Crossroads's non-express advocacy spending as relevant, just as plaintiffs urge. In one such alternative approach, for example, they included Crossroads's non-express advocacy electioneering communications. (AR 424.) But even using this alternative framework — which also employed the shorter, calendar-year time period plaintiffs prefer — the Commissioners found that "Crossroads [] still would not be considered a political committee" because its relevant spending would still only be "42 percent of [its] total spending." (*Id.*) This percentage, they wrote, was "significantly lower than the percentages found in the [enforcement matters] summarized in the 2007 [Supplemental E&J], when the Commission determined that political committee status existed." (*Id.*)

[1] "PASO" communications are non-express advocacy communications that "refer[] to a clearly identified candidate for Federal office" and "promote[]," "support[]," "attack[]," or "oppose[]" a candidate for that office. 52 U.S.C. § 30101(20)(A)(iii).

Plaintiffs' attempts to discredit the judicial decisions the controlling Commissioners cited in support of their manner of identifying Crossroads's relevant electoral spending (Tr. at 14:22-15:17) are likewise unavailing. In *New Mexico Youth Organized v. Herrera*, the Tenth Circuit considered whether an organization spent "a preponderance of its expenditures on *express advocacy* or contributions to candidates." 611 F.3d 669, 678 (10th Cir. 2010) (emphasis added). In *GOPAC*, the court concluded that the organization was not a political committee, in part by dismissing the relevance of a letter which, though mentioning the name of a federal candidate, "[did] not *advocate his election or defeat*, nor was . . . directed at [his] constituents." 917 F. Supp. at 863 (emphasis added); *accord FEC v. Malenick*, 310 F. Supp. 2d 230, 235 (D.D.C. 2004) (considering communications "advocat[ing] for the election of specific federal candidates" in determining group's major purpose). And in *Wisconsin Right to Life, Inc. v. Barland*, which post-dated the controlling decision, the court explained that imposing political-committee registration and reporting requirements on "groups that engage in express election advocacy as their major purpose . . . is a relevantly correlated and reasonably tailored means of achieving the public's informational interest," but it rejected the imposition of such requirements "on issue-advocacy groups that only occasionally engage in express advocacy." 751 F.3d 804, 841 (7th Cir. 2014); Tr. at 27:25-28:8. Contrary to plaintiffs' suggestion at oral argument (Tr. at 15:11-17), these decisions *are* consistent with the controlling Commissioners' First-Amendment-sensitive approach to determining a group's major purpose.[2]

[2] In the FEC's opening brief, it also showed that the controlling Commissioners' approach is consistent with the Supreme Court's decisions in *Buckley* and *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986), the Court of Appeals's decision in *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981), and even with Public Citizen's own previous comments on the question. (FEC Mem. at 29-31, 38.)

Finally, plaintiffs' claim that the controlling Commissioners used a "gerrymandered time frame" (Tr. at 5:18) is incorrect for two reasons. First, as noted at argument, no case or other law compels the use of a calendar-year time period for evaluating an organizations' major purpose, as opposed to the broader record the controlling Commissioners reviewed. (Tr. at 28:9-29:1.) Second, the use of a fiscal-year time period is practical, because "the numbers that make up this ratio often come from things like tax returns. And tax returns, of course, are filed based on when an organization completes its fiscal year. Budgeting, organizational priorities are also often organized around a fiscal year. . . ." (*Id.* at 29:2-9.) For these reasons, it was clearly not contrary to law for the controlling Commissioners to look beyond the first six months of Crossroads's existence in evaluating its spending. (FEC Mem. at 42-46; FEC Reply at 24-27.)

III. THE DISMISSAL DECISION WAS A REASONABLE EXERCISE OF PROSECUTORIAL DISCRETION

The Commission has separately explained why the dismissal decision was independently justified by the agency's broad prosecutorial discretion. (FEC Mem. at 49-50; FEC Reply at 28-30; Tr. at 29:10-24.) Plaintiffs argued that this rationale was just a "throw-away footnote" and not "a real sustainable [exercise of enforcement] discretion." (Tr. at 43:21-44:15.) But that argument ignores that the controlling Commissioners' succinct explanation of their exercise of prosecutorial discretion in the final footnote of the controlling statement of reasons cross-referenced the Commissioners' notice and due process concerns, which they detailed at earlier points in their statement. (*See* FEC Reply at 29.) The brevity with which the Commissioners explained their rationale for exercising prosecutorial discretion does not render that rationale invalid or reduce its force.

Plaintiffs are also incorrect in arguing that the allegedly "erroneous ground" upon which the controlling Commissioners' major-purpose determination was premised also supposedly

dooms their prosecutorial-discretion rationale. (Tr. at 44:2-7.) This argument fails to recognize the distinct bases for dismissal that the controlling Commissioners articulated. Unlike their substantive assessment of Crossroads's major purpose, the Commissioners' prosecutorial discretion rationale was based on their concern about whether it would have been fair to exercise the agency's enforcement authority in a way that those Commissioners believed the potentially regulated community would not have expected.

CONCLUSION

For the foregoing reasons, and for the reasons set out in the FEC' memoranda and oral presentation, the Court should grant summary judgment to the Commission.

Respectfully submitted,

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

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

Erin Chlopak (D.C. Bar No. 496370)
Acting Assistant General Counsel
echlopak@fec.gov

Greg J. Mueller (D.C. Bar No. 462840)
Attorney
gmueller@fec.gov

/s/ Charles Kitcher
Charles Kitcher (D.C. Bar No. 986226)
Attorney
ckitcher@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463
(202) 694-1650

September 6, 2016