UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SPEECHNOW.ORG, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 08-248 (JR) REPLY

DEFENDANT FEC'S REPLY IN SUPPORT OF ITS MOTION FOR ENTRY OF PROTECTIVE ORDERS

Plaintiffs' opposition to the entry of the protective orders sought by the Commission is premised on hyperbolic claims that the proposed orders are unprecedented in their breadth, burdensome in practice, and arrive too late in the day. None of these descriptions is accurate. The protective orders the Commission has moved this Court to enter are characteristic of others entered in these types of First Amendment cases, and are no more burdensome than necessary to balance the parties' interests in preparing a full factual record in this important case, and the interests of the third parties whose documents have been subpoenaed. The Commission's Motion for Entry of Protective Orders, moreover, is not untimely given the accelerated timing of this case pursuant to 2 U.S.C. § 437h, the manner in which both parties conducted discovery, and the lack of cooperation from plaintiffs, despite the First Amendment privacy interests at stake.

I. BACKGROUND

This case involves a constitutional challenge to important, longstanding limits on contributions that can be accepted by political committees under the Federal Election Campaign Act ("FECA" or "Act"), 2 U.S.C. §§ 431-55. Since *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court has repeatedly upheld the Act's contribution restrictions, finding that they serve the important governmental purposes of preventing corruption and the appearance of corruption. *See, e.g., Buckley*, 424 U.S. at 26-28, 46-47; *FEC v. Colo. Republican Fed. Campaign Comm. ("Colorado II")*, 533 U.S. 431 (2001); *FEC v. Beaumont*, 539 U.S. 146, 160 (2003); *McConnell v. FEC*, 540 U.S. 93, 143-45 (2003). The Court has explained that corruption, properly understood, includes undue influence on an officeholder's judgment, and the appearance of such influence. *See Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 388 (2000) ("In speaking of 'improper influence' and 'opportunities for abuse' in addition to '*quid pro quo* arrangements,' we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors."). In *McConnell v. FEC*, 540 U.S. 93, 146-154 (2003), the Court further explained that the appearance of such undue influence had arisen from large "soft money" contributors gaining preferential access and influence over government officials.

In this line of cases, the Supreme Court has repeatedly relied on information obtained from third parties in deciding challenges to campaign finance laws. *See, e.g.*, *McConnell*, 540 U.S. at 146-51 (quoting and explaining third party declarations and documents). Accordingly, as part of the Commission's efforts to compile a factual record in this case, the Commission sent subpoenas to eight of the largest individual contributors over the last few election cycles to Section 527 organizations that have engaged in candidate-related independent spending but did

not register with the Commission as political committees under the Act. The Commission's subpoenas sought documents that might shed light on whether very large donations to these types of groups can lead to disproportionate access to or influence over elected officials, or create an appearance of corruption.

As the Commission explained (FEC's Motion for Entry of Protective Orders and Memorandum of Points and Authorities in Support Thereof ("Mem.") at 1-3, [Doc. No. 46]), all of the subpoenas asked for the same categories of documents, variously related to communications with, and contributions to, 527 groups. Three of the eight contributors, Linda Pritzker, Herbert M. Sandler, and A. Jerrold Perenchio, agreed to provide responsive documents, but only if covered by protective orders; the three individuals have concerns regarding the public disclosure of documents regarding their private political communications, financial information, giving strategies, and campaign tactics. The Commission negotiated protective orders with all three and moved this court on October 31, 2008, to enter the orders. The proposed orders provide that the third parties can designate as confidential information that is "non-public" and/or "sensitive," limit the disclosure of "Confidential" documents to the parties, counsel, and other individuals with a connection to the litigation, and, with the exception of Mr. Perenchio's production, require that the documents and other papers that discuss the substance of confidential information be filed under seal. On November 11, 2008, SpeechNow.org and the other plaintiffs ("plaintiffs") asked this Court (Plaintiffs' Response to the FEC's Motion for Entry of Protective Orders ("Resp.")) [Doc. No. 49] to deny the Commission's Motion.

II. THE COURT SHOULD ENTER THE PROPOSED PROTECTIVE ORDERS

A. GOOD CAUSE EXISTS FOR THE COURT TO ENTER THESE PROTECTIVE ORDERS THAT ARE TYPICAL OF PROTECTIVE ORDERS ENTERED IN PREVIOUS CHALLENGES TO THE ACT

As the Commission explained (Mem. at 6), the third parties' concerns regarding the confidentiality of their First Amendment activities is sufficient justification for the entry of the protective orders. The identical subpoenas sent to Ms. Pritzker, Mr. Sandler, and Mr. Perenchio[1] (*See* Declaration of Graham M. Wilson in Support of Reply ("Wilson Reply Decl.") Exh. 1) requested documents involving communications between these individuals and candidates for public office, members of Congress, executive branch officials, political parties, and 527 groups regarding political advertising, solicitations for funds, and opportunities to meet.[2] The

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[1] As the Commission explained (Mem. at 4), Mr. Perenchio was not formally served with a subpoena, but his counsel has agreed to produce documents that would be responsive to such a subpoena, subject to a protective order.

[2] The subpoenas served by the Commission on all eight major donors to 527 groups, copies of which were sent to plaintiffs' counsel, consisted of the following six Document Requests:

1. Produce all Communications to or from any Candidate, Member, Executive Branch Official, or Political Party relating to: (a) any Independent Candidate Public Communications paid for or run by any 527 Organization; or (b) any Donation or potential Donation to any 527 Organization that has paid for or run any Independent Candidate Public Communications.

2. Produce all Documents that Relate to any requests from, offers to, or opportunities for you to meet or speak with any Candidate, Member, or Executive Branch Official.

3. Produce all Documents that Relate to any Solicitation referencing access to any Candidate, Member or Executive Branch Official or any legislation or potential legislation that you received from any 527 Organization that has made any Independent Candidate Public Communications.

4. Produce all Documents Related to your purpose, goal, or reason for making any Donation to any 527 Organization that has made any Independent Candidate Public Communications.

5. Produce all Documents Related to deliberations or strategies to use Donations to any 527 Organization to affect legislation or gain access to any Candidate, Member, or Executive Branch Official.

subpoenas also sought, *inter alia*, documents relating to these individuals' reasons for donating to 527 organizations and their strategies to use such donations to influence legislation or gain access to candidates and high-ranking officials. The subpoenas sent by the Commission to the 527 donors thus specifically sought materials relevant to this case, but which these individuals could validly claim reflect sensitive First Amendment activities.

In *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003), the D.C. Circuit explained that strategic documents and other materials reflecting "political expression and association concerning federal elections and officeholding" were of a "delicate nature" that implicated First Amendment rights. Mindful of the concerns expressed by these three individuals, the Commission has moved for protective orders that allow them to designate as confidential information that is "non-public" and/or "sensitive"; limit the disclosure of confidential information to the parties, counsel, and other individuals with a connection to the litigation; and, with the exception of Mr. Perenchio's production, require the documents and other papers that reflect confidential information be filed under seal.[3] Because materials responsive to the Commission's subpoenas would implicate these First Amendment concerns, good cause plainly exists for the Court to enter these orders.

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6. Produce all Documents Relating to the uses made or to be made of any Donation you made to any 527 Organization that has made any Independent Candidate Public Communication.

[3] The proposed protective orders for Ms. Pritzker and Mr. Sandler allow Plaintiffs and the Commission to challenge the designation of information as confidential. The proposed protective order for Mr. Perenchio (Mem. Exh. 3) erroneously provides that only the Commission may do so. The Commission has contacted counsel for Mr. Perenchio who has agreed to a change in the protective order allowing the Plaintiffs to challenge a designation of "Confidential" as well. A new Protective Order reflecting this change is attached hereto as Attachment A.

Although plaintiffs claim otherwise (Resp. at 2-3), specific facts demonstrate that the responsive documents identified by the three individuals are the proper subject of a protective order. The Commission's subpoenas plainly seek documents reflecting "political expression and association concerning federal elections and officeholding." *AFL-CIO*, 333 F.3d at 170. As explained in a declaration, FEC counsel has reviewed the documents identified by Ms. Pritzker and the documents "generally consist of memoranda from an advisor of Ms. Pritzker's suggesting a proposed political giving strategy." (Wilson Decl. ¶ 3). Mr. Perenchio's documents were previously produced to the Commission in an administrative enforcement action and are responsive to the subpoena. (*Id.* ¶ 5.) The Commission has made clear to plaintiffs "on numerous occasions" that they may view Mr. Perenchio's documents before a protective order is entered subject to their agreement to abide by its terms, but they have chosen not to do so. (*Id.*) Counsel for Mr. Sandler has also represented that Mr. Sandler has responsive documents but will not produce them without a protective order. (*Id.* ¶ 4.) These specific facts, set forth in the sworn declaration of Commission counsel, demonstrate that the Commission's case for entry of the orders is hardly speculative.[4]

Nothing more is required. Affidavits from the third parties whose documents are sought by the Commission are not necessary for the Court to enter these protective orders. Plaintiffs

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[4] Nonetheless, plaintiffs claim (Resp. at 9, 14) that the protective orders should not be entered because neither the FEC nor the third parties have *proved* to the plaintiffs' satisfaction that the responsive documents should be confidential. (*See also* Resp. at 4 n.3 ("Plaintiffs state that they have no objections 'in principle' because they have not been able to review the documents and have no idea what they say or whether the third parties' claims of confidentiality are legally legitimate, or merely matters of personal preference.").)

Plaintiffs have it backwards to the extent they are suggesting that the content of the documents should first be revealed to them without the benefit of a protective order so that plaintiffs can independently evaluate the third parties' confidentiality claims. Producing parties are understandably reluctant to disseminate information they believe should remain confidential until *after* a protective order has been entered.

cite no decision holding that producing parties must submit affidavits in support of their claims to confidentiality. Plaintiffs assert (Resp. at 7; emphasis added), "*Typically*, those claims must be presented by affidavits from the party making claims of confidentiality." Plaintiffs, however, cite only to cases involving parties who resisted discovery and claimed it would be burdensome. (*See* Resp. at 7-8 (citing cases).) The third parties here are not resisting discovery; they are merely seeking to keep information confidential they believe is sensitive.

The proposed protective orders are by no means, as argued by plaintiffs (Resp. at 2, 14), "unprecedented" or otherwise atypical. Courts have routinely entered protective orders in cases involving challenges to the Act that allow litigants and third parties to designate sensitive information as confidential, that require documents that reflect such information to be filed under seal, and that do not limit the parties' discretion to rely on covered information. One notable example is the protective order entered in *McConnell v. FEC*, No 02-0582 (D.D.C 2003) (Doc. No. 121) (Wilson Reply Decl., Exh. 2), a wide-ranging constitutional challenge brought against the Act by more than 80 individuals and groups. In that case, all of the parties — represented by seventeen different teams of lawyers — agreed to a protective order entered by a three-judge court in this district that contained the same provisions that plaintiffs object to in this case, allowing producing parties to designate as "confidential" "sensitive non-public information" (*Id*. at ¶ 2) and providing that any papers filed with the Court that disclosed confidential information were to be filed under seal (*Id*. at ¶ 11). The Order contained no provision limiting the parties' discretion to rely on confidential information.

In *FEC v. Club for Growth*, Civ. No. 05-1851 (D.D.C.) (filed Sept. 19, 2005) (Doc. No. 35), the Court entered a Protective Order (Wilson Reply Decl. Ex. 3) that allowed the defendant to designate as "confidential" "sensitive non-public information" (*id*. at ¶ 4), that

required papers disclosing such information to be filed under seal (*id*. at ¶ 4), and that did not limit the parties' discretion to rely on confidential information. Club for Growth's then-Executive Director, David Keating, is also the President and Treasurer of SpeechNow.org and a plaintiff in this case, although he now complains that the proposed protective orders are unprecedented, he agreed to a protective order with nearly identical terms only three years ago. Similarly, in *FEC v. Colorado Republican Federal Campaign Committee*, Civ. Act. No. 89-1159 (D.Colo.) (filed July 6, 1989), the district court entered five materially similar protective orders (Wilson Reply Decl. Exh. 4) that allowed third parties to designate as "protected" all the documents they had produced that were not otherwise public (*id*. at ¶ 1), that required court filings containing protected information to be filed under seal (*id*. at ¶ 4), and that in no way limited the parties' discretion to rely on protected information. In that matter, the Commission had subpoenaed documents from several corporations and their connected political committees. In neither *McConnell*, *Club for Growth*, nor *Colorado Republican*, did the courts require any person or entity claiming confidentiality to submit an affidavit supporting its claim.

Plaintiffs assert (Resp. at 5) that the Commission should spare the plaintiffs the onus of complying with the proposed protective orders by instead moving to compel production from the third parties. The third parties and the Commission, however, have avoided unnecessary litigation by cooperatively and mutually agreeing to a procedure to handle documents for which the third parties have asserted legitimate confidentiality concerns. Plaintiffs again have it backwards: There is no reason why third parties and courts in three separate federal districts should be burdened with contested motions in order to spare plaintiffs the trouble of complying with the reasonable terms of a protective order.

B. THE PROTECTIVE ORDERS ARE NO MORE BURDENSOME THAN NECESSARY TO PROTECT THE FIRST AMENDMENT INTERESTS OF THE THIRD PARTIES WHOSE DOCUMENTS HAVE BEEN SUBPOENAED

As the Commission has explained (*see supra* pp. 2-3; Mem. at 1-2), the third party documents subpoenaed by the Commission may provide the Court with critical information regarding the weighty constitutional issues in this case. Because the documents sought involve First Amendment concerns (*see supra* 4-6), the Court should enter the protective orders, which provide that papers filed with the Court that contain or reflect confidential information be filed under seal.

The authority afforded the third parties to designate information as confidential is hardly, as claimed by plaintiffs (Resp. at 11), "complete." The proposed Pritzker and Perenchio protective orders only allow them to designate "sensitive non-public information" as confidential. (*See* Mem. Attach. 1. at ¶ 2; Mem. Attach. 3 at ¶ 2.) While the proposed Sandler protective order allows him to designate "non-public information" as confidential, the proposed order also provides that he cannot designate "mass fundraising solicitations, press releases, or mass public communications" as confidential. (*See* Mem. Attach. 2 at ¶¶ 2-3.) Consequently, the limited discretion given to the third parties strikes a necessary balance between the government's interest in gaining access to evidence that may prove critical to defending the Act and the legitimate concerns of the third parties.

In addition to filing briefs that contain confidential information under seal, the Commission will file publicly redacted versions of papers filed with the Court. As the Commission has explained (Mem. at 6-7), such procedures are within the Court's discretion and common in other cases. Plaintiffs do not dispute this. They argue instead (Resp. at 4-5) that the length of the Commission's proposed findings of fact suggests that the Commission is unlikely to

exercise restraint in its use of confidential information. But the length of the Commission's *publicly-filed* proposed findings of fact, and their accompanying exhibits, suggest no proclivity on the part of the Commission for sealed filings. Like the plaintiffs, the Commission will be burdened by the process of filing documents under seal, so it has no incentive to undertake that effort unnecessarily. Moreover, as the Commission has explained (Mot. at 4 & Wilson Decl. ¶ 3), counsel for Mrs. Pritzker has identified only five responsive documents, so the volume of materials that will likely be subject to the protective orders is very small compared with the public evidentiary record. Yet, without justification, plaintiffs argue (Resp. at 2, 14) that the Commission and the third parties will indiscriminately designate information as confidential and disproportionately rely on it.

In any event, the number of covered documents the Commission chooses to rely upon will have only a marginal effect on plaintiffs' obligations. Whether the Commission or plaintiffs rely upon one or multiple confidential documents, the parties will be required to file two briefs, one under seal and one in public, redacted form. And since both parties have expressed an interest in having as much of the record publicly disclosed as possible, there is no reason to believe a specific judicial mandate is necessary to ensure that as little information is redacted as possible.

All three proposed protective orders limit the disclosure of confidential information to the parties, counsel, and other individuals with a connection to the litigation, including paralegals and clerical assistants. Additionally, the proposed protective orders allow confidential information to be disclosed to those "who have a clear need therefore in connection with this action" (*see* Mem. Attach. 2 at ¶ 5(a); Mem. Attach. 3 at ¶ 4(a)) or those who are working on this litigation (*see* Mem. Attach. 1 at ¶ 4(a)). These provisions, necessary to protect the

confidentiality of the information, hardly create the burdens imagined by plaintiffs (Resp. at 12). For example, attorneys in counsel's office that participate in moot courts or are needed for consultation on the case are manifestly "working on" the case, and have a "clear need" for the information.

SpeechNow also claims that it would not be opposed to entering some kind of protective order and that an order suiting their preferences would have been agreed to if the parties started negotiating earlier. (Resp. at 16-17). This is simply not the case. As stated in their Response, SpeechNow wanted to find a way to protect the documents without requiring briefs to be filed under seal. (Resp. at 16). This was that the position that SpeechNow took in several discussions regarding potential protective orders, and a position on which they would not compromise. *See* Declaration of Steven M. Simpson in Support of Plaintiffs' Response to FEC's Motion for Entry of Protective Orders ("Simpson Resp. Decl.") Exhs. 1 and 6). This proposal was rejected by two of the third parties, who would not agree to have the substance of their documents concerning political strategies and affiliations filed in open court. Similarly, the third parties would not agree to produce the documents without some protective order already being in place. Given plaintiffs' unwillingness to compromise, the Commission contacted SpeechNow to state that it was going to file a motion to enter the protective orders on October 14, 2008. At that point, it was the plaintiffs who proposed an extension to the briefing schedule in the hopes that an agreement regarding the Protective Orders could be reached. Simpson Resp. Decl. ¶ 6. The Commission agreed, and made another attempt at securing the agreement of the third parties but was unsuccessful. Plaintiffs did not relent on their insistence that no redaction of briefs occur, and the Commission was unfortunately forced to file this contested motion.

Finally, plaintiffs' burdensomeness objections are belied by their own elaborate counterproposals to the Court. Plaintiffs contend (Resp. at 16-17) that the parties could have agreed to a limited protective order to allow review of the documents, after which the parties could negotiate another agreement — presumably a second protective order, governing the remainder of the case. This second protective order, plaintiffs suggest, could have obviated the need to file briefs under seal. In their view, the parties could have referred to confidential documents only by exhibit numbers or by generic descriptions without divulging confidential information. But plaintiffs fail to explain how either of these methods is less onerous than redacting confidential information, or, more important, how either party could meaningfully discuss the substance of the documents with a generic or numerical label.[5] Plaintiffs' proposals contemplate additional negotiations between the parties, an additional protective order, and no less austere compliance measures than the proposed protective orders. Their burdensomeness objections to the proposed orders thus ring hollow. Even if plaintiffs have "no desire to use those [third party] documents even in the context of this lawsuit" (Resp. at 8), the Commission, in its defense of longstanding, important provisions of the Act, should be able to rely on the materials that it believes may assist the Court, even if that requires a protective order that recognizes the First Amendment interests of third parties.

[5] Plaintiffs also contend (Resp. at 17) that a second protective order could have strictly limited the amount of information that could be redacted from briefs. As the Commission explained above (*see supra* pp. 7-8, 10), however, courts routinely enter protective orders that do not include such limits, which in any event would save little in the way of effort: whether a party relies on one or more pieces of confidential information, that party will still file two briefs, one under seal and one redacted.

C. THE SUBPOENAS WERE TIMELY SERVED

SpeechNow also asserts that the Court should not enter the Protective Orders because the motion was filed too late in the case. In fact, the subpoenas were served in time to be completed before the close of discovery. Serving the subpoenas towards the end of the discovery period was an understandable consequence of the compressed schedule dictated by 2 U.S.C. § 437h, and was consistent with the timing of the Rule 45 subpoenas served by Plaintiffs. The timing of this motion was dictated, in part, by SpeechNow's unwillingness to cooperate in addressing the First Amendment privacy concerns of third parties.

The discovery schedule in this case has been compressed to comply with the requirement of 2 U.S.C. § 437h that the Court "immediately" certify the "questions of constitutionality" to the *en banc* court of appeals. The result is that both parties served subpoenas duces tecum and noticed depositions at the end of the discovery period. The original deadline for the close of discovery was on September 26, 2008. On September 8, 2008 SpeechNow served subpoenas seeking documents and deposition testimony on Clyde Wilcox, the Commission's expert witness. Wilson Reply Decl. Exh. 5. On the same date, SpeechNow noticed a Fed.R.Civ.P 30(b)(6) deposition of the Commission. Wilson Reply Decl. Exh. 6. On September 18, 2008, SpeechNow then served subpoenas seeking documents and deposition testimony on West Virginia Supreme Court Justice Larry Starcher. Wilson Reply Decl. Exh. 7. Finally, Plaintiffs sent a series of different subpoenas seeking documents and deposition testimony on the California Fair Political Practices Commission on September 8, September 19, and September 26, 2008. Wilson Decl. Exh. 8.

As part of its effort to create a record on the important question of whether unlimited contributions to political committees have the potential to corrupt elected officials or lead to

undue or disproportionate access and influence, the Commission also served subpoenas seeking documents late into the discovery schedule. The Commission sent subpoenas to eight of the largest contributors to section 527 organizations, including contributors to both Democratic- and Republican-leaning 527 groups. *See* Wilson Decl. ¶ 2. Theses subpoenas were all sent out between August 29 and September 9, 2008. *Id.*

Accordingly, SpeechNow's accusations that the Commission should have served its subpoenas earlier or that it served subpoenas after a deadline cannot be squared with plaintiffs' own actions. The Commission acted during the exact same time frame that SpeechNow was serving its third-party subpoenas. SpeechNow's claim about the "deadline" is apparently in reference to the provision in the Joint Scheduling Order that "all documents requests, interrogatories, and requests for production to be served by August 26, 2008." (Joint Scheduling Report, Doc. No. 27). However, this provision does not refer to "subpoenas," the third party discovery device.[6] The Joint Scheduling Report asked that the discovery schedule include the provision: "All discovery to be completed by September 26, 2008." Consistent with that deadline, the Joint Report called for party discovery — which allows for 30 days response time — to be served by August 26, 2008. See Jt. Sched. Rept. at 4; Fed. R. Civ. P. 33, 34, 36. Rule 45 subpoenas, on the other hand, must only allow "a reasonable time to comply," Fed. R. Civ. P. 45(c)(3)(A)(i), and ten days notice is customary and generally considered reasonable. *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 320, 327 (N.D. Ill. 2005). The mention of August 26 was not intended to create any special discovery deadlines, but simply to clarify that requests under the Fed. R. Civ. P. 33, 34, 36 must be served 30 days prior to the close of discovery, September 26, 2008. Both parties conducted discovery as if August 26, 2008 was the deadline to

[6] The Joint Scheduling Report erroneously referred to "requests for production" rather than "requests for admission."

serve discovery requests on each other, but sent numerous subpoenas to third parties after that date. Tellingly, rebuttal experts did not even have to be disclosed under the Joint Scheduling Order until September 15, 2008. (Joint Scheduling Report, Doc. No. 27). Under SpeechNow's new interpretation it would have been impossible for the parties to serve a document request on a new rebuttal expert witness. Ultimately, under Rule 45(b)(1), plaintiffs were provided notice of the subpoenas and they did not object. They thus waived any objections to timeliness and cannot belatedly raise such an objection now. SpeechNow's arguments about the timing of the Commission's third-party subpoenas mischaracterize a rushed calendar that saw both parties attempting to maximize the final weeks of discovery.[7]

The timing of the Motion for Entry of Protective Orders is an unfortunate by-product of an expedited court calendar and an unwillingness by plaintiffs to agree to a commonplace measure to protect legitimate privacy interests. However, plaintiffs have offered no reason to preclude relevant evidence, sought at the appropriate time, from coming before the Court.

III. CONCLUSION

Plaintiffs are unable to offer a legitimate reason why the protective orders proposed by the Commission should not be entered. The proposed orders are a standard measure to protect legitimate privacy concerns, and are not untimely or unduly burdensome. Accordingly, the Commission respectfully requests that this Court enter the proposed protective orders regarding documents to be produced by third parties Herbert Sandler, Linda Pritzker, and A. Jerrold Perenchio.

[7] SpeechNow also criticizes the Commission for having discussed the option of making a declaration in lieu of producing documents with a few of the individuals on whom it served subpoenas. In fact, the Commission's flexibility on this point demonstrates its interest in streamlining fact development and lessening burdens on third parties if possible. Given the time constraints, the Commission simply mentioned the possibility of providing testimony to the third parties if it would be less time consuming than finding and producing documents.

Respectfully submitted,

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