

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

CITIZENS FOR RESPONSIBILITY AND :
ETHICS IN WASHINGTON :
and MELANIE SLOAN :
1400 Eye Street, N.W., Suite 450 :
Washington, D.C. 20005, :

Plaintiffs, :

v. :

Civil Action No. 1:10-cv-01350 (RMC)

FEDERAL ELECTION COMMISSION, :
999 E Street, N.W. :
Washington, D.C. 20463 :

Defendant. :

**AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

1. This is an action for declaratory and injunctive relief under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, and 2 U.S.C. § 437g(a)(8), challenging as arbitrary, capricious, an abuse of discretion, and contrary to law the dismissal by the Federal Election Commission (“FEC” or “Commission”) of an administrative complaint filed by Citizens for Responsibility and Ethics in Washington (“CREW”) and CREW Executive Director Melanie Sloan against Peace Through Strength Political Action Committee and its treasurer, Meredith Kelley, for violations of the Federal Election Campaign Act, 2 U.S.C. §§ 431 *et seq.* (“FECA”), as amended by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155.

2. This is also an action for declaratory and injunctive relief under the APA, 5 U.S.C. § 706, and 2 U.S.C. § 437g(a), challenging as arbitrary, capricious, and contrary to law the policy of the FEC, as reflected in its implementing regulations and ongoing practices, of failing to

provide complainants with the statutorily mandated minimum of 60 days' notice of its dismissal of complaints and the basis for those dismissals.

JURISDICTION AND VENUE

3. This action arises under the FECA, 2 U.S.C. §§ 431 *et seq.*, as amended by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155; the APA, 5 U.S.C. §§ 551-706; and the Declaratory Judgment Act, 2 U.S.C. § 2201. The Court has both subject matter and personal jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1336; 5 U.S.C. §§ 701, 702, and 706; and 2 U.S.C. § 437g(a)(8)(A). The APA, 5 U.S.C. § 702, gives private parties the right to seek injunctive relief when adversely affected or aggrieved by arbitrary or capricious agency action or inaction, as well as action or inaction that is contrary to law. The APA also empowers courts to compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391(e), 5 U.S.C. § 703, and 2 U.S.C. § 437g(a)(8).

PARTIES

5. Plaintiff CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to ensuring the integrity of government officials and to protecting the right of citizens to be informed about the activities of government officials. CREW seeks to empower citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

6. In furtherance of its mission, CREW seeks to expose the unethical and illegal conduct

of those involved in government. CREW does this in part by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws through its website, press releases, reports, and other methods of distribution. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing campaign finance violations and filing complaints with the FEC serve CREW's mission of keeping the public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance laws.

7. Currently CREW has nine complaints pending before the FEC in which the FEC has yet to take final action. These include complaints against the Republican Party of Minnesota (MUR 5926); Vern Buchanan (MUR 6054); a Maryland real estate developer and several of his employees (MUR 6223); Friends of Mary Landrieu, Inc. (MUR 6234); David Vitter (MUR 6279); Alvin Greene and two other candidates for the South Carolina primary (MURs 6312, 6314, 6315); and Christine O'Donnell (MUR 6380).

8. CREW is hindered in its programmatic activity when an individual, candidate, political committee, or other regulated entity fails to disclose campaign finance information in reports of receipts and disbursements required by the FECA, or fails to comply with other provisions of the FECA, including the requirement that principal campaign committees register with the FEC. 2 U.S.C. § 433(a).

9. CREW is also hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements, which provide CREW with the only source of information to determine if a candidate, political committee, or other regulated entity is

complying with the FECA.

10. Plaintiff Melanie Sloan is the executive director of CREW, a citizen of the United States, and a registered voter and resident of the District of Columbia. As a registered voter who votes in both local and national elections, Ms. Sloan is entitled to receive all the information the FECA requires candidates to report publicly and to the FEC's proper administration of the provisions of the FECA. Ms. Sloan is harmed when a candidate, political committee, or other regulated entity fails to report campaign finance activity or all other information required by the FECA.

11. Ms. Sloan is also personally committed to ensuring the integrity of federal elections. Toward that end, Ms. Sloan reviews campaign finance filings and media reports to determine whether candidates and political committees comply with the FECA's requirements. When Ms. Sloan discovers a violation of the FECA, she submits complaints against violators pursuant to her rights under the law, 2 U.S.C. § 437g(a)(1).

12. Both CREW and Ms. Sloan are harmed when the FEC fails to properly administer the FECA, particularly its reporting requirements, thereby limiting their ability to review campaign finance information.

13. When CREW and Ms. Sloan file complaints against violators of the FECA, they rely on the FEC, as the exclusive civil enforcement authority, to comply strictly with the FECA when making its enforcement decisions. *See* 2 U.S.C. § 437d(e). CREW and Ms. Sloan are harmed and are "aggrieved" parties within the meaning of 2 U.S.C. § 437g(a)(8)(A) when the FEC dismisses their complaints contrary to the FECA or otherwise acts contrary to the requirements of the FECA.

14. CREW and Ms. Sloan are dedicated to pursuing and protecting their interests and rights under the FECA to the fullest extent available under the law. When the Commission acts contrary to the FECA in dismissing a complaint brought by CREW or Ms. Sloan, both CREW and Ms. Sloan seek to vindicate their rights as aggrieved parties under the FECA by filing complaints before the U.S. District Court for the District of Columbia as authorized by 2 U.S.C. § 437g(a)(8).

15. CREW and Ms. Sloan are harmed when the FEC fails to give them the statutorily mandated minimum of 60 days' notice of its dismissal of a particular complaint and the reasons for that dismissal, as it deprives them of an adequate time in which to decide whether or not to file a petition with the U.S. District Court for the District of Columbia, a right afforded them by 2 U.S.C. § 437g(a)(8).

16. Defendant FEC is an agency within the meaning of 5 U.S.C. § 552(f) and was established by Congress to oversee the administration of the FECA. *See* 2 U.S.C. § 437c. The Commission has exclusive jurisdiction with respect to the civil enforcement of the FECA, 2 U.S.C. § 437c(b)(1), and is empowered to dismiss complaints brought before it for violations of the FECA, 2 U.S.C. § 437g(a). The FEC has dismissed at least several complaints brought by CREW and/or Ms. Sloan pursuant to that authority.

STATUTORY AND REGULATORY FRAMEWORK

17. Under the FECA, any person who believes there has been a violation of the FECA can file a sworn complaint with the FEC. 2 U.S.C. § 437g(a)(1). Upon receipt of a complaint, the FEC has five days in which to notify the person or persons alleged in the complaint to have violated the Act. *Id.* The respondent then has 15 days to demonstrate to the FEC that no action

should be taken based on the complaint. *Id.*

18. Based on the complaint, the response, and any recommendation of the FEC Office of General Counsel, the FEC may then vote on whether there is “reason to believe” a violation of the FECA has occurred. 2 U.S.C. § 437g(a)(2). If the FEC finds there is “reason to believe” a violation of the FECA has occurred, the FEC must notify the respondents of that finding and must “make an investigation of such alleged violation.” *Id.*

19. After the investigation, the FEC’s general counsel may recommend that the FEC vote on whether there is “probable cause” to believe the FECA has been violated. 2 U.S.C. § 437g(a)(3). The general counsel must notify the respondents of any such recommendation and provide the respondents with a brief stating the position of the general counsel on the legal and factual issues presented. *Id.* Within 15 days of receiving the brief, respondents may submit their own brief on the legal and factual issues presented in the case and replying to the brief of the general counsel. *Id.*

20. Upon consideration of these briefs, the FEC may then determine whether there is “probable cause” to believe a violation of the FECA has occurred. 2 U.S.C. § 437g(a)(4)(A)(I). If the FEC finds probable cause to believe a violation of the FECA has occurred, the FEC must attempt for at least 30 days, but not more than 90 days, to resolve the matter “by informal methods of conference, conciliation and persuasion,” *id.*, a process that does not involve the complainant.

21. If the FEC is unable to settle the matter through informal methods, it may institute a civil action for legal and equitable relief in the United States district court. 2 U.S.C. § 434g(a)(6)(A). In any action instituted by the FEC, the district court may grant injunctive relief

as well as impose monetary penalties. 2 U.S.C. §§ 437g(a)(6)(B)-(C).

22. If, at any stage of the proceedings, the FEC dismisses a complaint, any “party aggrieved” may seek judicial review of that dismissal in the United States District Court for the District of Columbia. 2 U.S.C. § 437g(a)(8)(A). All petitions from the dismissal of a complaint by the FEC “shall be filed . . . within 60 days after the date of the dismissal.” 2 U.S.C. § 437g(a)(8)(B). The FECA also allows a party filing an administrative complaint to seek judicial review of the FEC’s “failure . . . to act” after 120 days have elapsed. 2 U.S.C. § 437g(a)(8)(A).

23. The FEC considers the date of a dismissal for purposes of 2 U.S.C. § 437g(a)(8)(A) to be the date on which the Commission votes to dismiss an administrative complaint, regardless of when the complainant and respondent are notified of the Commission’s actions.

24. The district courts lacks jurisdiction over any petition for review filed more than 60 days after the date of dismissal, even when the complainant does not receive timely notice of the dismissal. *Spannaus v. Fed. Election Comm’n*, 990 F.2d 643, 644 (D.C. Cir. 1993).

25. The FECA, by vesting in the FEC exclusive jurisdiction to civilly enforce the Act’s provisions and setting forth a detailed time schedule within which the FEC must act on complaints, allows the development of a record before the matter reaches the district court pursuant to 2 U.S.C. § 437g(a)(8)(A). *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538, 542-43 (D.C. Cir. 1980). It also avoids unnecessary judicial review, as “[i]nvestigations of complaints may result in a vindication of the alleged conduct to the complete satisfaction of all.” *Id.* at 543.

26. The district court reviewing either the FEC’s dismissal or its failure to act may declare the FEC’s actions (or inactions) “contrary to law.” 2 U.S.C. § 437g(a)(8). The court

may also order the FEC “to conform with such declaration within 30 days.” *Id.* If the FEC fails to abide by the court’s order, the FECA provides the complainant with a private right of action, brought in its own name, “to remedy the violation involved in the original complaint.” *Id.*

27. FEC regulations implementing the FECA require the FEC, when it makes a “no reason to believe” finding or “otherwise terminates its proceedings,” to so advise both a complainant and a respondent by letter. 11 C.F.R. § 111.9(b). But the regulation is silent as to when this letter must be sent.

28. FEC regulations also require the Commission to “authorize the General Counsel” to notify a complainant and respondent “[i]f the Commission finds no probable cause to believe or otherwise orders a termination of Commission proceedings.” 11 C.F.R. § 111.17(b). This regulation also is silent as to when the Commission must send this notification.

29. FEC regulations governing public disclosure of a Commission action require the Commission to make public the fact that it made a finding of no reason to believe, no probable cause to believe, or otherwise terminated a proceeding and the basis for such action “no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.” 11 C.F.R. § 111.20(a). In addition, 11 C.F.R. § 5.4(a)(4) requires the FEC to place commissioner opinions in enforcement cases, general counsel’s reports, and non-exempt investigatory materials on the public record within 30 days from the date on which respondents are notified the FEC has voted to close an enforcement file.

30. Following the dismissal of a complaint, the Secretary of the Commission also issues a certification attesting to the action taken by the Commission with respect to a particular complaint, including how each commissioner voted on each enumerated motion. The

certification is placed on the public record.

31. When the Commission follows the recommendation of its general counsel and dismisses an administrative complaint, the General Counsel's Report to the Commission provides the basis for district court review. *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 38 and n. 19 (1981).

32. When the Commission rejects the general counsel's recommendation to pursue a possible violation of the FECA, the reasoning of the Commissioners who voted to dismiss the complaint – generally set forth in a Statement of Reasons – provides the basis for judicial review. *FEC v. Nat'l Republican Senatorial Comm.*, 842 F.2d 436, 449 (D.C. Cir. 1988).

FACTS GIVING RISE TO PLAINTIFFS' CLAIMS FOR RELIEF

33. On March 14, 2007, CREW and Melanie Sloan filed a complaint with the FEC against Peace Through Strength Political Action Committee ("PTS PAC") and its treasurer, Meredith Kelley, for violations of the FECA. The complaint alleged: (1) PTS PAC, the political action committee of Rep. Duncan Hunter, who was then a candidate for president of the United States, had knowingly received 11 contributions exceeding the FECA's individual contribution limit for "testing the waters" activities in violation of 2 U.S.C. § 441a(f); (2) PTS PAC had failed to register as a candidate committee in violation of 2 U.S.C. § 433(a); (3) PTS PAC had made an excessive in-kind contribution in violation of 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.2(b)(1); and (4) to the extent PTS PAC had failed to report disbursements for certain television advertisements it had violated 11 C.F.R. §§ 104.3(b) and 104.9(a).

34. By letter dated July 23, 2010, and received by CREW on July 27, 2010, FEC Assistant General Counsel Mark Shonkwiler notified CREW of the FEC's dismissal of CREW's

complaint, designated as MUR 5908. Mr. Shonkwiler's letter was the first substantive communication CREW received from the FEC regarding its complaint in MUR 5908.

35. According to Mr. Shonkwiler's letter, the FEC had found reason to believe Peace Through Strength Political Action Committee, Treasurer Meredith G. Kelley, Duncan Hunter, Hunter for President, Inc. and Treasurer Bruce Young violated specified provisions of the FECA and FEC regulations. Mr. Shonkwiler further advised that on June 29, 2010, the FEC determined to take no further action and closed the file in this matter.

36. Under the time-line of Commission actions outlined in Mr. Shonkwiler's letter of July 23, 2010, the Commission had dismissed the complaint in MUR 5908 24 days earlier. Accordingly, pursuant to 2 U.S.C. § 437g(a)(8), CREW and Ms. Sloan were required to file a complaint in district court challenging the FEC's dismissal of MUR 5908 by August 30, 2010, given that the 60th day fell on Saturday, August 28. By the time CREW and Ms. Sloan received this notice of dismissal on July 27, 2010, they had only 34 days remaining in which to file such a complaint, notwithstanding the 60-day notice period for filing provided by the statute.

37. Mr. Shonkwiler's letter stated that documents "related to the case" would be placed on the public record within 30 days from the date of the letter, and that "[a] Statement of Reasons further explaining the basis for the Commission's decision will follow." His letter did not identify the date on which the Commission would provide the Statement of Reasons.

38. On August 11, 2010, 43 days after the Commission dismissed CREW's complaint in MUR 5908, CREW and Ms. Sloan filed a complaint before this Court. At that point CREW and Ms. Sloan had received neither an explanation for the Commission's dismissal nor any

representation from the Commission as to when it would provide its Statement of Reasons.

39. The complaint alleged that the dismissal of the complaint in MUR 5908, without providing the complainants an explanation for the dismissal, was arbitrary, capricious, an abuse of discretion, and contrary to law. The complaint also challenged as arbitrary, capricious, and contrary to law the Commission's pattern and practice of failing to provide a timely explanation for its dismissals of complaints, effectively depriving complainants of their full statutory right to review conferred by 2 U.S.C. § 437g(a)(8).

40. Thirteen days later, by letter dated August 24, 2010, and sent by both facsimile and certified mail, Mr. Shonkwiler forwarded to CREW and Ms. Sloan the Statement of Reasons explaining the basis for the Commission's decision to dismiss the complaint in MUR 5908. Had CREW and Ms. Sloan awaited receipt of the Commission's Statement of Reasons before filing suit, they would have had only six days remaining in which to file a complaint in U.S. District Court.

41. The Statement of Reasons in MUR 5908 was signed by five commissioners, each of whom did not sign the statement until August 23, 2010 – seven days before the expiration of the statutory period for seeking judicial review. Commissioner Bauerly did not vote.

42. According to the Statement of Reasons, the Commission's investigation into the issue of excessive contributions revealed that PTS PAC made approximately \$10,200 in disbursements for travel expenses incurred during the same time Congressman Hunter was "testing the waters" for his presidential campaign. If made on behalf of the Hunter Committee, these disbursements would have resulted in \$10,200 of unreported, in-kind contributions, of which up to \$5,200 would have been excessive.

43. Nevertheless, the Commission concluded, without citing to any evidence, that because these travel disbursements also advanced PTS PAC's core mission, they were allocable between the two committees. As a result, the Commission concluded the amount of potentially excessive contributions was just over \$100, an amount over which the Commission stated it was exercising its "prosecutorial discretion" by declining to take any further action.

44. On the issue of reporting violations, the Commission found reason to believe a violation of the FECA might have occurred because Congressman Hunter might have decided to become a candidate prior to filing his Statement of Candidacy. Ignoring the multiple examples of statements by Congressman Hunter set forth in the first General Counsel's Report indicating he was a candidate for president months before his presidential campaign registered with the FEC, the Commission stated there was insufficient evidence to establish that Congressman Hunter failed to timely file his Statement of Candidacy.

45. Despite this purported lack of evidence, the Commission reached the conclusion that Congressman Hunter's Statement of Candidacy "was filed, at most, only a few days late," and again declined to take any further action for what it termed a "*de minimis*" potential violation.

46. Completely unaddressed in the Commission's Statement of Reasons was the key issue underlying the complaint – the "testing the waters" exception.

47. On August 23, 2010, the FEC posted on its website the Certification of the June 29, 2010 Commission vote to dismiss the case and the first and second General Counsel's Reports in MUR 5908.

48. The First General Counsel's Report, dated January 18, 2008, is 16 pages in length with no redactions. It concludes that PTS PAC made more than \$10,000 in in-kind contributions

to the Hunter presidential campaign by funding his travel to early primary states, and that these contributions were excessive under the FECA. According to that report, Mr. Hunter's receipt of these contributions triggered the requirement that his presidential campaign register with the FEC. But his presidential campaign did not register until months later.

49. On the issue of when Mr. Hunter crossed the line from merely "testing the waters" to being an actual presidential candidate, the First General Counsel's Report based its determination on multiple statements by Mr. Hunter evidencing that he was a candidate for president months before his presidential campaign actually registered with the FEC. For example, the First General Counsel's Report cites Mr. Hunter's statement at an October 20, 2006 news conference that "As I finish my final two years as chairman of the Armed Services Committee and serve you, I am also going to be preparing to run for president of the United States in 2008." Similarly, during a speech in December 2006, Mr. Hunter discussed what his goals would be as president and is quoted as having said "I'm going to be running."

50. The Second General Counsel's Report, dated May 3, 2010, is also 16 pages in length. Pages 13-15, which contain the General Counsel's analysis of the facts and application of the law to those facts, have been redacted virtually in their entirety. As a result, it is impossible to determine the basis for the General Counsel's recommendation that the Commission find no reason to believe that PTS PAC and its treasurer violated the FECA and the FEC's implementing regulation.

51. Despite the FEC's finding that PTS PAC had made illegal excessive contributions to the Hunter for President campaign, neither PTS PAC nor Hunter for President has ever amended its FEC reports to reflect the in-kind contributions by PTS PAC to Hunter for President. In the

absence of these corrections to the public record, it is impossible to determine from an examination of PTS PAC's FEC reports that it made in-kind contributions to Hunter for President.

52. This is not the first time the FEC has denied CREW the full 60 days in which to seek judicial review of the FEC's dismissal of its complaint. On September 24, 2004, CREW filed a complaint with the FEC against The November Fund, Bill Sittman as treasurer of The November Fund, the U.S. Chamber of Commerce, Tom Donohue as President of the U.S. Chamber of Commerce, Bush-Cheney '04, and Bush Cheney '04 Campaign Manager Ken Mehlman for violations of federal campaign finance laws.

53. On December 15, 2008, the FEC hand-delivered to CREW a letter from FEC Assistant General Counsel Mark Shonkwiler notifying CREW of the FEC's dismissal of CREW's complaint, designated as MUR 5541. Mr. Shonkwiler's letter was the first substantive communication CREW received from the FEC regarding its complaint in MUR 5541. By the time the Commission notified CREW of its actions, 55 of the 60 days afforded CREW by statute to determine whether to file a complaint had elapsed.

54. The FEC did not provide CREW with its Statement of Reasons at the time it advised CREW on December 15, 2008, of the dismissal of CREW's complaint and instead stated that "[a] Statement of Reasons further explaining the basis for the Commission's decision will follow." Thereafter, the FEC issued its first Statement of Reason on December 19, 2008 – one day before the 60-day statutory period was to expire – and its Second Statement of Reasons on January 22, 2009 – 33 days after the expiration of the 60-day period for filing a complaint pursuant to 2 U.S.C. § 437g(a)(8).

55. Thus, in MUR 5541, the FEC first notified CREW of its dismissal of CREW's complaints well into the 60-day period afforded complainants for seeking judicial review, and did not provide all of its Statements of Reasons explaining the bases for the dismissals until after the 60-day period had elapsed.

56. CREW and Ms. Sloan are by no means the only complainants the FEC has deprived of the full 60 days afforded them by statute to consider and seek judicial review. This is because the FEC has a policy and practice of refraining from providing complainants with timely notice of its decisions to dismiss complaints and the basis for those dismissals.

57. For example, on October 27, 2008, the National Right to Work Foundation filed a complaint with the FEC against the Service Employees' International Union, MUR 6124. The FEC dismissed the complaint in MUR 6124 on April 27, 2010. By letter dated May 18, 2010 – 21 days after the dismissal and with 39 days remaining of the 60-day period for seeking judicial review – the FEC advised the parties of its dismissal of MUR 6124. The FEC did not provide a Statement of Reasons explaining the basis for its dismissal until August 6, 2010 – 11 days after the deadline for seeking judicial review.

58. On July 22, 2008, Wicker for Senate filed a complaint with the FEC against Ronnie Musgrove for Senate, MUR 6044. The Commission dismissed the complaint on May 15, 2009. By letter dated June 2, 2009 – 18 days after the dismissal and with 42 days remaining of the 60-day period for seeking judicial review – the FEC advised the parties of its dismissal of MUR 6044. The FEC did not provide a Statement of Reasons explaining the basis for its dismissal until July 14, 2009 – the last day of the 60-day statutory period for seeking judicial review.

59. On May 2, 2008, the Democratic Congressional Campaign Committee filed a

complaint with the FEC against Peter Teahen, Friends of Peter Teahen, and Teahen Funeral Home, Inc., MUR 6013. The FEC dismissed the complaint on March 11, 2009. By letter dated March 17, 2009 – six days after the dismissal and with 54 days remaining of the 60-day period for seeking judicial review – the FEC advised the parties of its dismissal of MUR 6013. The FEC did not provide its first Statement of Reasons until May 12, 2009 – two days after the expiration of the 60-day period for seeking judicial review – and its second Statement of Reasons until June 11, 2009 – 32 days after the expiration of the 60-day period.

60. On October 12, 2006, Democracy 21 and the Campaign Legal Center filed a complaint with the FEC against the Economic Freedom Fund and Majority Action, MUR 5842. The Commission dismissed the complaint on April 14, 2009. By letter dated April 24, 2009 – 10 days after the dismissal and with 50 days remaining of the 60-day period for seeking judicial review – the FEC advised the parties of its dismissal of MUR 5842. The FEC did not provide its first Statement of Reasons until May 21, 2009 – 23 days before the expiration of the 60-day period for seeking judicial review – and its second Statement of Reasons until June 10, 2009 – three days before the expiration of the 60-day period.

61. The California Democratic Party and the Senate Majority Project filed complaints with the FEC against Senator and then-presidential candidate John McCain in March 2006 (MUR 5712) and August 2006 (MUR 5799) alleging solicitation of so-called “soft money” in violation of the Bipartisan Campaign Reform Act of 2002. The FEC dismissed both the complaints in MUR 5712 and MUR 5799 on March 18, 2009. By letter dated April 6, 2009 – 19 days after the dismissal and with 41 days remaining of the 60-day period for considering and seeking judicial review – the FEC advised the parties of its decisions to dismiss the complaints.

The FEC did not provide a Statement of Reasons explaining either dismissal until nearly one year later, on March 5, 2010, long after the 60-day period for filing a complaint had expired.

62. On March 22, 2006, the Democratic Party of Oregon filed a complaint with the FEC against then congressional candidate Jim Feldkamp and his campaign for allegedly accepting excessive campaign contributions in violation of the FECA, MUR 5724. The FEC dismissed the complaint in MUR 5724 on October 7, 2008, after the FEC commissioners deadlocked. By letter dated October 30, 2008 – 23 days after the dismissal and with 37 days remaining of the 60-day period for considering and seeking judicial review – the FEC advised the parties of its decision to dismiss the complaints. The FEC did not provide its first Statement of Reasons explaining the basis for the dismissal until December 11, 2009, and its second Statement of Reasons until December 15, 2009 – over one year after the deadline for seeking judicial review.

63. On January 18, 2005, the National Legal and Policy Center filed a complaint with the FEC against George Soros for allegedly failing to report an independent expenditure, MUR 5642. The FEC dismissed the complaint in MUR 5642 on November 18, 2008. By letter dated December 15, 2008 – 27 days after the dismissal and with 33 days remaining of the 60-day period for seeking judicial review – the FEC advised the parties of its dismissal of MUR 5642. The FEC did not provide its first Statement of Reasons explaining the basis for its dismissal until January 22, 2009 – five days after the deadline for seeking judicial review.

64. On December 1, 2004, NGP Software filed a complaint with the FEC against Aristotle International, Inc., MUR 5625. The Commission dismissed the complaint on March 17, 2010. By letter dated March 23, 2010 – six days after the dismissal and with 54 days remaining of the 60-day period for seeking judicial review – the FEC advised the parties of its

dismissal of MUR 5625. The FEC did not provide its first Statement of Reasons explaining the basis for its dismissal until May 14, 2010 – eight days before the expiration of the 60-day period for seeking judicial review – and its second Statement of Reasons until May 19, 2010 – three days before the expiration of the 60-day period.

65. On October 19, 2004, Timothy A. McKeever filed a complaint with the FEC against the Alaska Democratic Party and the Tony Knowles for U.S. Senate Committee for alleged violations of the FECA, MUR 5575. The FEC dismissed the complaint in MUR 5575 on May 19, 2009. By letter dated June 11, 2009 – 24 days after the dismissal and with 36 days remaining of the 60-day period for seeking judicial review – the FEC advised the parties of its dismissal of MUR 5575. The FEC did not provide its Statement of Reasons explaining the basis for its dismissal until July 27, 2009 – nine days after the deadline for seeking judicial review.

66. On October 9, 2004, the Utah Democratic Party filed a complaint with the FEC against the John Swallow for Congress Committee, the National Republican Campaign Committee, and the Utah Republican Committee, MUR 5598. The FEC dismissed the complaint on February 11, 2009. By letter dated March 5, 2009 – 22 days after the dismissal and with 38 days remaining of the 60-day period for seeking judicial review – the FEC advised the parties of its dismissal of MUR 5598. The FEC did not issue its Statement of Reasons until April 9, 2009 – three days before the expiration of the 60-day period.

67. In each instance in which the FEC has failed to provide a Statement of Reasons or other explanation for the basis of its dismissal of a complaint before the expiration of the 60-day statutory period for seeking judicial review, there is no adequate record from which a reviewing court, consistent with its judicial role under the FECA, could rule on a petition challenging the

dismissal.

68. The FEC does not follow a consistent practice in how it provides notice to parties of its actions. In some cases, the FEC provides notice through letters delivered by hand or facsimile, and in other cases it provides notice through letters sent by first-class mail. As a result, the date of the FEC's letter advising the parties of its actions and the basis for those actions often does not reflect the actual date on which the parties received such notice.

69. On information and belief, in nearly every complaint before it, if not every complaint, the FEC has failed to provide the complainant with the statutorily required 60 days' notice of a dismissal and the basis for that dismissal.

PLAINTIFFS' CLAIM FOR RELIEF

CLAIM ONE

(Wrongful Dismissal of MUR 5908)

70. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

71. The FEC's dismissal of the complaint in MUR 5908 is arbitrary, capricious, an abuse of discretion, and contrary to law in violation of 2 U.S.C. § 437g(a)(8)(A).

72. Plaintiffs are therefore entitled to relief in the form of a declaratory order that defendant FEC's failure to require PTS PAC and Hunter for President to amend their FEC reports to reflect the receipt of in-kind contributions by PTS PAC to Hunter for President is contrary to law in violation of 2 U.S.C. § 437g(a)(8).

CLAIM TWO

(Failure to Provide Statutorily Mandated 60 Days' Notice of Dismissal and Basis for Dismissal)

73. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully

set forth herein.

74. Section 437g(a)(8) of the FECA requires the FEC to provide complainants with 60 days' notice of any dismissal of their complaint and the basis for such a dismissal.

75. In the absence of the required 60 days' notice, complainants are deprived of their statutory right to effectively seek judicial review of any dismissal.

76. Accordingly, in order to give meaningful effect to the statutory right to judicial review conferred on any "party aggrieved" by 2 U.S.C. § 437g(a)(8)(A), the FEC by law must provide complainants with 60 days' notice of any dismissal of any complaint and an explanation for its dismissal of any complaint.

77. The FEC's policy and practice of failing to provide the statutorily mandated 60 days' notice of dismissals and the basis for such dismissals is arbitrary, capricious, an abuse of discretion, and contrary to law.

78. Plaintiffs are therefore entitled to relief in the form of a declaratory order that defendant FEC is in violation of its statutory responsibilities under 2 U.S.C. § 437g(a)(8) and has acted arbitrarily and capriciously in failing to provide 60 days' notice of dismissals of complaints and an explanation for those dismissals. Plaintiffs are also entitled to an injunction compelling defendant FEC to provide 60 days' notice of dismissals and a Statement of Reasons or other explanation for dismissing any complaint so as to permit a complainant to effectively file a petition for review with the U.S. District Court for the District of Columbia.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

(1) Declare that the FEC's dismissal of MUR 5908 is arbitrary, capricious, an abuse of

discretion, and contrary to law;

(2) Remand the matter to the FEC with an order to conform to the declaration within 30 days;

(3) Declare the failure of the FEC to provide 60 days' notice of its dismissal of any complaint and a Statement of Reasons or other explanation for that dismissal is arbitrary, capricious, an abuse of discretion, and contrary to law;

(4) Order the FEC to provide 60 days' notice of its dismissal of any complaint and the Statement of Reasons or other explanation for that dismissal so as to permit a complainant to effectively file a petition for review with the U.S. District Court for the District of Columbia;

(5) Award plaintiff its costs, expenses, and reasonable attorneys' fees in this action; and

(6) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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