

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

CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005

OPENSECRETS
1100 13th St. NW, Suite 800
Washington, DC 20005,
Plaintiffs,

v.

FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463,
Defendant.

Civil Action No. 23-3163

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Campaign Legal Center (“CLC”) and OpenSecrets¹ bring this action for declaratory and injunctive relief under the Administrative Procedure Act (“APA”) to challenge the unreasonable delay by Defendant Federal Election Commission (“FEC” or “Commission”) in responding to their Petition to Promulgate Rules for Reporting of “Cromnibus” Accounts (“Petition”), dated August 5, 2019.²

2. Nearly *nine years ago*, in December 2014, Congress approved amendments to the Federal Election Campaign Act (“FECA” or “Act”) creating new special-purpose accounts for national political party committees. The legislation, also known as the “Cromnibus” because it was

¹ The Center for Responsive Politics and the National Institute on Money in Politics merged in 2021 to become OpenSecrets.

² See CLC and Center for Responsive Politics, Petition to Promulgate Rules for Reporting of “Cromnibus” Accounts re: REG 2019-04 (Aug. 5, 2019), <https://sers.fec.gov/fosers/showpdf.htm?docid=408347>.

tucked into the \$1.1 trillion Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2772 (2014) (“Appropriations Act”), allowed national party committees to establish three new kinds of “separate, segregated” accounts—one for presidential nominating conventions, one for party headquarters buildings, and one for legal proceedings—and tripled the generally applicable limit for contributions to each account.

3. As a result, each party now operates up to *seven* special-purpose Cromnibus accounts—three for the parties’ national committees and two for their congressional and senatorial committees, because only a party’s national committee may establish a presidential nominating convention account—and *each* of those accounts is subject to a separate contribution limit 300% greater than the general limit. *See* 52 U.S.C. § 30116(a)(1)(B), (2)(B), (9). In the 2023-24 election cycle, therefore, each national party special-purpose account is subject to a limit of \$123,900 per year (three times the party’s base limit of \$41,300 per year)—meaning an individual can now contribute up to \$247,800 per two-year election cycle to each of a party’s seven special purpose accounts, or a total of *more than \$1.7 million per election cycle to a single party*.³

4. The Appropriations Act amendments to FECA, set forth in just three paragraphs near the end of a 702-page appropriations package, did not delineate the permissible uses of national party special-purpose accounts or establish any disclosure requirements specific to the funds flowing into and out of them. These major statutory changes to the party contribution limits thus demanded immediate rulemaking by the FEC to ensure proper implementation of the new special-purpose accounts and to prevent them from undercutting FECA’s core anti-corruption and transparency goals.

³ *See Contribution Limits for 2023-2024*, FEC, https://www.fec.gov/resources/cms-content/documents/contribution_limits_chart_2023-2024.pdf (issued Feb. 2023).

5. The Commission, however, did nothing. Nearly a decade later, the FEC has yet to promulgate a single rule to implement these amendments to the Act—or even to initiate such a rulemaking—despite having received two petitions asking that it do so, including the 2019 Petition from plaintiffs that is the subject of this suit.

6. Plaintiffs’ Petition, filed on August 5, 2019, focused narrowly on the significant disclosure deficiencies that have arisen in the absence of FEC rules governing reporting for national party Cromnibus accounts. As noted in the Petition, whatever obstacles there were to completing a full rulemaking on these accounts, it should have been easy for the Commission at least to promulgate simple and sorely needed reporting regulations. Petition at 2.

7. The Petition detailed how parties have adopted haphazard and inadequate reporting conventions with respect to the funds flowing into and out of their special-purpose accounts, making it virtually impossible for the public to monitor the parties’ use of these accounts or discern how Cromnibus funds are being raised and spent. Petition at 2-6.

8. To ameliorate these problems, the Petition requested that the FEC promulgate rules and forms requiring national party committees to delineate within their reports the individual and aggregate transactions involving their Cromnibus accounts, and proposed several specific regulatory changes that would help achieve such transparency. Petition at 6.

9. Plaintiffs subsequently submitted comments with the FEC on October 28, 2019 (“Comments”), and plaintiff CLC did so again on June 16, 2020, reiterating the importance of the pending Petition and providing additional information about the disclosure issues it described.⁴

⁴ See Comments of CLC and Center for Responsive Politics on REG 2019-04 (Oct. 28, 2019), <https://sers.fec.gov/fosers/showpdf.htm?docid=410234>; Letter from CLC to Commissioners at 7 (June 16, 2020), <https://sers.fec.gov/fosers/showpdf.htm?docid=411937> (“Letter”).

10. As of the filing of this Complaint, the Commission has not responded to (*i.e.*, granted or denied) the Petition.

11. Meanwhile, emboldened by the regulatory vacuum created by the FEC's failure to act, the national parties are continuing to make up their own rules. As a result, each national party committee reports its receipts to and disbursements from the accounts in inconsistent and insufficient ways, making it effectively impossible for plaintiffs or the public to accurately determine the amount of money flowing into and out of the accounts.

12. The 2023-24 election cycle is already well underway. Without prompt action by the FEC to ensure that the money in party special-purpose accounts is reported fully and uniformly, as the Act requires, the public and plaintiffs will remain in the dark.

13. By permitting national party committees to effectively conceal statutorily required details about the funds contributed to, and expended from, their supercharged special-purpose accounts, the Commission's inaction is wreaking havoc on the Act's core transparency provisions and depriving plaintiffs of the complete and accurate campaign finance information upon which both depend to carry out their missions.

14. The FEC's years-long, unexplained failure to initiate a rulemaking or otherwise conclusively respond to the Petition has no conceivable justification and clearly constitutes unreasonable delay in violation of the APA. Plaintiffs therefore bring this action pursuant to the APA to compel the Commission to respond to their Petition.

JURISDICTION AND VENUE

15. This Court has jurisdiction under 28 U.S.C. § 1331. The requested relief is proper under 28 U.S.C. §§ 2201 and 2202 and the Administrative Procedure Act, 5 U.S.C. §§ 701–706.

16. Venue lies in this district under 28 U.S.C. § 1391(e)(1).

PARTIES

17. Plaintiff CLC is a nonpartisan nonprofit organization that works to strengthen American democracy through, *inter alia*, activities seeking to ensure that the public has access to information regarding the financing and spending of U.S. election campaigns.

18. As part of this effort, CLC conducts research, authors reports and articles, and regularly provides expert analysis to the media. CLC also litigates throughout the country regarding campaign finance matters; files FEC complaints requesting that enforcement actions be taken against individuals or organizations that violate the law; participates in rulemaking and advisory opinion proceedings before the FEC to ensure the agency is properly interpreting and enforcing federal campaign finance laws; and engages in legislative advocacy for reform measures at the federal, state, and local levels.

19. CLC expends significant resources assisting reporters and other members of the media in their investigative research into candidates' and parties' financial activities, to ensure that the public is equipped with the information necessary to evaluate different candidates and messages and cast informed votes.

20. CLC also uses its analyses of federal campaign finance disclosure information to support its administrative practice at the FEC and before state and local campaign finance agencies, and to defend campaign finance laws in its active docket of cases in federal and state courts.

21. When inadequate or incomplete disclosure of federal campaign finance activity makes it difficult to track a political committee's fundraising or spending, reporters often contact CLC for guidance as to whether or where they can find the campaign finance information that is not being properly reported. This work requires CLC to divert resources and funds from other organizational needs.

22. Plaintiff OpenSecrets is a nonpartisan nonprofit organization that educates the American public about state and federal money's influence on politics and policy and advocates for a more transparent and accountable government. Its mission is to track the flow of money in American politics and provide the data and analysis to strengthen democracy. The organization's work is aimed at creating a more educated voter, an involved citizenry, and a more responsive and accountable government.

23. As the nation's premier research group tracking money in U.S. politics and its effect on elections and public policy, OpenSecrets depends on its ability to receive timely, accurate, and complete disclosure information under FECA about the money raised and spent in federal political campaigns.

24. In particular, accurate and complete FECA-required disclosure information is essential to OpenSecrets' public education, research, and investigative reporting activities. OpenSecrets pursues its mission largely through its award-winning website, OpenSecrets.org, which seeks to provide an accurate, consistent, and comprehensive resource, free of charge, for the press, scholars, advocates, and the public about money in U.S. politics. Its professional reporting staff and researchers work hand-in-hand to comb the data for patterns and anomalies, which are shared with the public through OpenSecrets' digital e-newsletter, reports, and data tools.

25. Other organizations and institutions also rely on the accuracy of OpenSecrets' campaign finance data and analyses. OpenSecrets' staff assist news organizations large and small with their campaign finance investigations and often collaborate with other media organizations to create data-driven features illustrating the role of money in politics. OpenSecrets' data is routinely cited in the nation's most prominent print, broadcast, and online news outlets, as well as by federal and state courts, public policymakers, advocates, and scholars.

26. Both plaintiffs thus rely on the accurate and complete reporting of campaign finance information to carry out activities central to their missions, including the production of reports and other materials to educate the public about campaign spending. These activities are obstructed when information that is subject to mandatory disclosure under FECA is not publicly available. By unreasonably delaying resolution of the Petition, the FEC has denied plaintiffs access to statutorily required information about national party “Cromnibus” accounts, and plaintiffs suffer concrete informational and organizational harms as a result.

27. Defendant FEC is an independent federal agency charged with the administration and civil enforcement of FECA. 52 U.S.C. § 30106(b).

STATUTORY AND REGULATORY FRAMEWORK

FECA Disclosure and Reporting Requirements

28. Transparency about the money raised and spent in federal elections is a core purpose of FECA. The Act’s comprehensive disclosure provisions were crafted to “expos[e] large contributions and expenditures to the light of publicity,” *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam), and to enable an informed electorate by achieving “total disclosure” of the amounts and sources of funds used to influence federal elections, *id.* at 76. *See also* S. Rep. No. 93-689, at 2 (1974) (noting that FECA was “predicated upon the principle of public disclosure”); 52 U.S.C. § 30104.

29. Under FECA, therefore, all federal political committees, including political party committees, must file periodic reports accurately disclosing their receipts, disbursements, and debts and obligations. *See* 52 U.S.C. § 30104(a)(1)-(4), (b). These reports must itemize, *inter alia*, each person to whom the committee has made operating expenditures or other disbursements of over \$200, “together with the date[s], amount[s], and purpose[s]” of those expenditures or

disbursements, *id.* § 30104(b)(5)(A), (6)(A), (B)(v), and must also include aggregate totals for all receipts, disbursements, and cash-on-hand for the reporting period and election cycle to-date, *see id.* § 30104(b).

30. The Supreme Court has long recognized that FECA’s detailed disclosure and reporting requirements “provide[] the electorate with information ‘as to where political campaign money comes from and how it is spent,’” *Buckley*, 424 U.S. at 66 (quoting H.R. Rep. No. 92-564, at 4 (1971)), and thereby “enable[] the electorate to make informed decisions,” *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

31. The Commission is charged to “administer, seek to obtain compliance with, and formulate policy with respect to [the] Act.” 52 U.S.C. § 30106(b)(1). In accordance with this mandate, the Act authorizes the Commission to prescribe such regulations as are necessary to carry out the statute’s purposes. *Id.* § 30107(a)(8).

Administrative Procedure Act

32. The APA sets forth general rules governing the issuance of proposed and final regulations by federal agencies. 5 U.S.C. §§ 551–559.

33. In particular, the APA establishes that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. § 553(e). It also requires that, “within a reasonable time, each agency shall proceed to conclude a matter presented to it.” *Id.* § 555(b). Finally, the agency must give “[p]rompt notice” of the “denial in whole or in part” of a written petition, together with a “brief statement of the grounds for denial.” *Id.* § 555(e).

34. In accordance with the APA, the FEC has adopted procedural rules delineating the processes governing the submission, consideration, and disposition of rulemaking petitions filed with the Commission. *See* 11 C.F.R. §§ 200.1–200.6.

35. Under these rules, the Commission, upon receiving a valid rulemaking petition under 11 C.F.R. § 200.2, will publish a Notice of Availability in the Federal Register and establish a public comment period for statements in support of or opposition to the petition. *See id.* § 200.3(a)(1). At the close of the comment period(s) and following the Commission’s consideration of the petition and available record, “the Commission *will decide* whether to initiate a rulemaking based on the filed petition.” *Id.* § 200.4(a) (emphasis added). In the event the Commission declines to initiate a rulemaking, “it will give notice of this action by publishing a Notice of Disposition in the Federal Register and sending a letter to the petitioner,” and such notice “will include a brief statement of the grounds for the Commission’s decision.” *Id.* § 200.4(b).

36. As prescribed in the APA and under its own regulations, the Commission is obliged to decide, within a reasonable time, whether to initiate a rulemaking in response to a petition—failing which the APA’s judicial review provisions empower a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed[.]” 5 U.S.C. § 706(1).

37. In determining whether an agency’s delay is unreasonable, courts in this Circuit generally look to several factors, including (1) “the length of time that has elapsed since the agency came under a duty to act,” (2) “the context of the statute which authorizes the agency’s action,” (3) “the consequences of the agency’s delay,” and (4) “any plea of administrative error, administrative convenience, practical difficulty in carrying out a legislative mandate, or need to prioritize in the face of limited resources.” *Cobell v. Norton*, 240 F.3d 1081, 1096 (D.C. Cir. 2001)

(quoting *In re Int'l Chemical Workers Union*, 958 F.2d 1144, 1149 (D.C. Cir. 1992)); *see also Telecomm. Research & Action Ctr. v. F.C.C.*, 750 F.2d 70, 80 (D.C. Cir. 1984).

38. In the context of FEC delay, courts have also considered, *inter alia*, whether the agency's failure to act frustrates a "principal purpose[] of FECA," *see Democratic Senatorial Campaign Comm. v. FEC*, No. 95-cv-0349-JHG, 1996 WL 34301203, at *5 (D.D.C. April 17, 1996), or undermines "[p]ublic confidence in our democratic electoral system, which the Act seeks to protect," *id.* at *8.

FACTUAL BACKGROUND

2015: FECA Amendments Establish National Party "Cromnibus" Accounts

39. In December 2014, as part of a \$1.1 trillion omnibus appropriations package, Congress amended FECA by creating three new "separate, segregated" political party accounts—one for presidential nominating conventions, one for party headquarters buildings, and one for legal proceedings, 52 U.S.C. § 30116(a)(9)—and allowing national party committees to accept contributions into each of these accounts in amounts up to 300% of the otherwise applicable contribution limit. 52 U.S.C. § 30116(a)(1)(B), (a)(2)(B).

40. National political parties were thus freed to raise millions of dollars into these accounts above the generally applicable contribution limits. Moreover, because each national party has three committees—the national committee, the congressional committee, and the senatorial committee, each of which operates two or three special-purpose accounts—each party now operates up to seven special-purpose accounts, with *each* subject to a contribution limit 300% greater than the base contribution limit. 52 U.S.C. § 30116(a)(1)(B), (2)(B), (9).

41. In the 2023-24 election cycle, therefore, each national party committee special-purpose account is subject to a limit of \$123,900 per year (three times the base limit of \$41,300

per year), meaning an individual can now contribute up to \$247,800 per two-year election cycle to each of a party's seven special purpose accounts, or a total of more than \$1.7 million per election cycle to a single party.⁵

42. The funds in these segregated party accounts must be raised and spent for specified purposes and cannot be used for campaign-related expenditures. According to the statutory language, the accounts are to be used “solely to defray expenses incurred with respect to a presidential nominating convention,” 52 U.S.C. § 30116(a)(9)(A); “to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings,” *id.* § 30116(a)(9)(C); and “solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party,” or to repay loans or restore funds to defray such expenses, *id.* § 30116(a)(9)(B).

43. However, the Appropriations Act did not further define these purposes or contain disclosure requirements specific to funds spent out of the new restricted party accounts.

44. It was therefore imperative for the FEC to undertake swift regulatory action to provide guidance to the parties, prevent abuse, and ensure that funds flowing through the new supercharged party accounts would be fully subject to the Act's core transparency provisions.

2015–2019: FEC Fails to Promulgate Any Rules Implementing the Amendments

45. The so-called “Cromnibus” amendments took effect on January 1, 2015.

⁵ See *Contribution Limits for 2023-2024*, FEC, *supra* note 3.

46. The following month, the FEC issued a press release with “interim” reporting guidance for national party committees operating Cromnibus accounts, which it directed parties to follow “[u]ntil the Commission adopts new regulations.”⁶

47. The FEC’s issuance of “interim” guidance via press release was a clear acknowledgment that new regulations were necessary, and at least an implicit indication that new regulations would be forthcoming. Nevertheless, this “interim” guidance reflects essentially the sum total of the agency’s interpretive efforts to date, and it did not even address some of the most commonly reported transactions. For example, the press release was silent on how to report the internal transfer of funds between accounts and how to report joint-fundraising transfers into the special-purpose accounts. The guidance has proven wholly inadequate and ineffective in carrying out FECA’s disclosure provisions.

48. The FEC has also failed to provide sufficient guidance to its own analysts on how to review the national party committees’ reports for disclosure failures involving the special-purpose accounts. The Commission’s Reports Analysis Division Review and Referral Procedures—the guidelines Commission staff use to identify reporting problems, request that committees correct reporting errors for the benefit of the public record, and recommend corrective audits—do not even mention the special-purpose accounts.⁷ Therefore, it is not clear that the FEC is even requiring the party committees to abide by the scant guidance it has issued, further frustrating FECA’s transparency purpose.

⁶ Press Release, FEC, FEC Issues Interim Reporting Guidance for National Party Committee Accounts (Feb. 18, 2015), <https://www.fec.gov/updates/fec-issues-interim-reporting-guidance-for-national-party-accounts>.

⁷ See FEC, Reports Analysis Division Review and Referral Procedures for the 2023-2024 Election Cycle, <https://www.fec.gov/resources/cms-content/documents/Final-Redacted-2023-2024-RAD-Review-Referral-Procedures.pdf>.

49. In the nearly nine years since the amendments were enacted, the Commission has failed to promulgate any rules delineating the limitations and disclosure requirements applicable to party special-purpose accounts. Indeed, the agency has not even opened a rulemaking to implement these significant changes to the Act, although it has repeatedly been asked to do so—by watchdog organizations and members of the regulated community alike, as well as by the agency’s own lawyers.

50. For its part, plaintiff CLC first pressed for regulatory action in comments submitted on January 15, 2015—just weeks after the Cromnibus amendments were adopted—in response to an Advance Notice of Proposed Rulemaking (“ANPRM”) regarding the Supreme Court’s decision in *McCutcheon v. FEC*, 572 U.S. 185 (2014). While primarily focused on a range of other issues created in the wake of that ruling, CLC’s January 2015 comments, which were joined by Democracy 21, also urged: “[T]o prevent abuse of these new restricted-use funds, the Commission should promulgate regulations specifying and limiting the permissible uses of these new funds, prohibiting transfer of these funds between party accounts, and requiring detailed disclosure of these funds.”⁸

51. Ten months later, in October 2015, the Commission began nominally considering a rulemaking, after the FEC Office of General Counsel recommended that the Commission publish a Notice of Proposed Rulemaking (“NPRM”) to implement the Appropriations Act and prepared an “Outline of Draft NPRM” that would begin the process to start a rulemaking.⁹ Two months

⁸ Comments of Campaign Legal Center and Democracy 21 re REG 2014-01: Earmarking, Joint Fundraising, Disclosure and Other Issues (*McCutcheon*), at 15 (Jan. 15, 2015), <https://sers.fec.gov/fosers/showpdf.htm?docid=312983>.

⁹ See FEC Agenda Doc. 15-54-B (Oct. 23, 2015), https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_15-54-b.pdf.

later, in December 2015, the Commission discussed the draft outline at a meeting but took no action.¹⁰

52. In May 2016, following several more months of inaction, CLC and Democracy 21 renewed their concerns about the need for a rulemaking in a letter to the Commission. As the letter noted, seventeen months had by then already elapsed since the enactment of the Cromnibus provisions, but the Commission had “failed to adopt regulations to administer . . . [them]. There is no excuse for this failure.”¹¹

53. Meanwhile, even the regulated community was urging the FEC to act. On January 8, 2016, the Perkins Coie LLP Political Law Group¹² filed a petition requesting that the Commission open a rulemaking to address the Appropriations Act amendments, both by adopting new rules and revising relevant pre-existing rules.¹³

54. The Perkins Coie petition, which generally detailed the need for comprehensive new rules governing the operation of party Cromnibus accounts, also specifically urged the FEC to amend its disclosure rules “to reflect the principle that the national party committee must report contributions to and expenditures from their separate accounts on their regular reports.”¹⁴

55. Although the Perkins Coie petition was submitted in January 2016, the Commission waited almost ten months to take the mandatory ministerial step of publishing a Notice of

¹⁰ See, e.g., FEC Agenda Doc. 16-04-A, at 11-12, 14 (Dec. 17, 2015), https://www.fec.gov/resources/updates/agendas/2016/mtgdoc_16-04-a.pdf.

¹¹ Letter from Campaign Legal Center and Democracy 21 to Commissioners, at 1-2 (dated May 27, 2016), <https://sers.fec.gov/fosers/showpdf.htm?docid=350856>.

¹² The petition, though not submitted on behalf of any then-client of Perkins Coie, was characterized as reflecting the perspective of practitioners who represent parties regulated by the FEC.

¹³ See Marc Erik Elias and Perkins Coie LLP Political Law Group, Petition for Rulemaking re: REG 2014-10 (dated Jan. 8, 2016), <https://sers.fec.gov/fosers/showpdf.htm?docid=351581> (commencing document at 705-21).

¹⁴ *Id.* at 14.

Availability in the Federal Register and establishing a period for public comment, which it finally did in October 2016. *See* 11 C.F.R. § 200.3(a)(1); FEC, Notice 2016-10: Rulemaking Petition: Implementing the Consolidated and Further Continuing Appropriations Act, 2015, 81 Fed. Reg. 69,722-23 (Oct. 7, 2016).

56. In January 2017, in response to the Notice of Availability, CLC and Democracy 21 again submitted comments urging the Commission to act.¹⁵ CLC’s January 2017 comments detailed, once again, why a rulemaking was sorely needed, and requested that the Commission “promulgate regulations specifying and limiting the permissible uses of these new funds, prohibiting transfer of these funds between party accounts, and requiring detailed disclosure of these funds.”¹⁶ In particular, the comments stressed that “it is vital to ensure there is effective and specific disclosure, by account, of all money spent from the three restricted accounts created by the Omnibus Act.”¹⁷

57. The Commission also received public comments on the 2016 rulemaking petition from the Republican National Committee (“RNC”),¹⁸ the National Republican Senatorial Committee (“NRSC”) and National Republican Congressional Committee (“NRCC”), commenting jointly,¹⁹ and the Center for Competitive Politics.²⁰ While the Republican

¹⁵ *See* Comments of Campaign Legal Center and Democracy 21 on Notice 2016-10, Rulemaking Petition re: REG 2014-10 (dated Jan. 30, 2017), <https://sers.fec.gov/fosers/showpdf.htm?docid=354662>.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 7.

¹⁸ *See* Comments of RNC on Rulemaking Petition re: REG 2014-10 (dated Jan. 30, 2017), <https://sers.fec.gov/fosers/showpdf.htm?docid=354660>.

¹⁹ *See* Comments of NRSC and NRCC re: Notice 2016-10 (dated Jan. 30, 2017), <https://sers.fec.gov/fosers/showpdf.htm?docid=354658>.

²⁰ *See* Comments of Center for Competitive Politics re: Notice 2016-10 (dated Jan. 30, 2017), <https://sers.fec.gov/fosers/showpdf.htm?docid=354562>.

congressional committees opined that a rulemaking was unnecessary, the other public commenters were broadly supportive of the petition or neutral.

58. The public comment period on the Perkins Coie petition closed in January 2017, but the Commission did not promulgate any rules, initiate a rulemaking, or otherwise take any action in response to the petition or supporting comments.

2019: Plaintiffs’ Petition to Promulgate Rules for Reporting of “Cromnibus” Accounts

59. By August 2019, more than two years had elapsed since the close of public comments on the Perkins Coie petition, and still the Commission had not initiated a rulemaking related to Cromnibus accounts. Accordingly, on August 5, 2019, CLC and the Center for Responsive Politics (now OpenSecrets) submitted their Petition to Promulgate Rules for Reporting of “Cromnibus” Accounts with the FEC pursuant to 11 C.F.R. § 200.2 and 5 U.S.C. § 553(e).

60. While recognizing there was a continuing need for regulations to implement all aspects of the Cromnibus amendments, the Petition focused on just one serious problem created in the legislation’s wake—namely, the disclosure and reporting issues associated with special-purpose accounts.

61. On October 28, 2019, plaintiffs submitted comments with the FEC in further support of the Petition, providing additional examples of the disclosure concerns it described; CLC thereafter followed up again by letter to reiterate the importance of the pending Petition.²¹

62. As noted in the Petition, the FEC’s continuing failure to promulgate disclosure rules for Cromnibus accounts has fostered irregular and woefully insufficient reporting practices that vitiate the public’s statutory informational right to know who is contributing to these accounts, and

²¹ See Comments, *supra* note 4; Letter, *supra* note 4, at 7.

in what amounts; how the money in each account is being spent; and how much money each account is carrying over from one reporting period to the next.

63. In particular, FECA requires every political committee to file periodic reports that include the committee's total receipts, total disbursements, and cash-on-hand for the reporting period and election cycle to-date. *See* 52 U.S.C. § 30104(b). The national party committees, however, report none of these figures for their special-purpose accounts.

64. Therefore, if a member of the public wants to get information about total receipts, disbursements, and cash-on-hand for a national party committee's special-purpose account, they need to search the committee's monthly reports—which are typically thousands of pages long—and compile each transaction that refers to the account.

65. But even this arduous task is made effectively impossible because there is no consistent location or terminology that committees use to denote transactions involving the special-purpose accounts. In the absence of clear rules delineating their reporting obligations, committees instead use a mix of the memo, purpose, and “receipt for”/“disbursement for” sections of the applicable FEC Schedule A and B committee forms to indicate such transactions. And their terminology also varies so significantly as to defeat efforts to automate the data-collection process. Compounding these problems, some committees even use internally inconsistent terminology within a single report.

66. For example, some committees refer to the party headquarters account using the note “hq,” while others use “headquarters”;²² some alternate between different terms across and/or

²² *See, e.g.*, Petition at 3 (citing RNC, 2019 June Monthly, FEC Form 3X, at 7,954, 7,965 (filed June 20, 2019), <https://docquery.fec.gov/pdf/623/201906209150190623/201906209150190623.pdf>; NRSC, Disbursements to Lexis-Nexis from “Headquarters Acct” (2017-18), FEC, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00027466&rec

within reports;²³ and some employ different terminologies and formats when reporting receipts versus disbursements—such as by using the disbursement purpose line to denote “hq account – subscriptions,” with no accompanying memo text, but using a memo text entry to denote when contributions are deposited in the “legal proceedings account” or “headquarters account.”²⁴

67. Plaintiffs noted numerous illustrative examples of such reporting inconsistencies, both in the Petition itself and in supporting comments that they filed in October 2019, including:

- a. In its May 2019 monthly filing, the DNC used “hq account” and “headquarters accoung” on the same page.²⁵
- b. The NRSC described disbursements from the legal proceedings account by noting “Legal Proc” in the purpose line (for example, “Legal Proc – Attorneys Fees”²⁶), whereas the NRCC described disbursements from both a “LEGAL ACCT,”²⁷ and a “RECOUNT” account,²⁸ despite both apparently referencing the same account. The Democratic Senatorial

[ipient_name=lexis+nexis&two_year_transaction_period=2018&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00075820&recipient_name=lexis+nexis&two_year_transaction_period=2018&disbursement_description=HQ+) (last visited Oct. 20, 2023); NRCC, Disbursements to Lexis Nexis from “HQ Acct” (2017-18), FEC, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00075820&recipient_name=lexis+nexis&two_year_transaction_period=2018&disbursement_description=HQ+ (last visited Oct. 20, 2023)).

²³ See, e.g., Petition at 4-5 (citing NRSC, 2019 June Monthly, FEC Form 3X, at 2,963, 3,004 (filed June 20, 2019), <https://docquery.fec.gov/pdf/587/201906209150150587/201906209150150587.pdf>; NRCC, 2019 June Monthly, FEC Form 3X, at 3,105, 3,182 (filed June 20, 2019), <https://docquery.fec.gov/pdf/020/201906209150165020/201906209150165020.pdf>; Democratic National Committee (“DNC”), 2019 May Monthly, FEC Form 3X, at 2,532 (filed May 20, 2019), <https://docquery.fec.gov/cgi-bin/fecimg/?201906209150231905>).

²⁴ See, e.g., Petition at 3 (citing NRSC, Disbursements to Lexis-Nexis from “Headquarters Acct” (2017-18), *supra* note 22; NRCC, Disbursements to Lexis Nexis from “HQ Acct,” 2017-18, *supra* note 22; NRSC, 2019 June Monthly, *supra* note 23, at 3,004; NRCC, 2019 June Monthly, *supra* note 23, at 3,274). See also NRSC, 2019 June Monthly, *supra* note 23, at 2,967-68; NRCC, 2019 June Monthly, *supra* note 23, at 3,112.

²⁵ Petition at 5 (citing DNC, 2019 May Monthly, *supra* note 23, at 2,532).

²⁶ See Comments at 3 (citing NRSC, 2019 September Monthly, FEC Form 3X, at 4,310 (filed Sept. 20, 2019), <https://docquery.fec.gov/cgi-bin/fecimg/?201909209163462488>).

²⁷ See Comments at 3 (citing NRCC, 2019 September Monthly, FEC Form 3X, at 5,384 (filed Sept. 20, 2019), <https://docquery.fec.gov/pdf/287/201909209163468287/201909209163468287.pdf>).

²⁸ See Comments at 3 (citing NRCC, 2019 September Monthly, *supra* note 27, at 5,383).

Campaign Committee (“DSCC”) also reported disbursements from both a “legal services” and a “legal services recount” account.²⁹

- c. The NRSC reported *contributions* to the headquarters account with a memo item that said “HEADQUARTERS ACCOUNT,”³⁰ but then reported *disbursements* from that same account in an entirely different format, by writing “HQ ACCT” in the “Purpose of Disbursement” line and leaving the memo item blank.³¹
- d. The DNC’s conventions for reporting disbursements appear to have changed over time. In its more recent reports, the DNC reported disbursements in the format of “headquarters account” in the purpose line, with no accompanying memo text, where it had previously reported such disbursements by writing “legal account” in the memo text and providing descriptions (*e.g.*, “GOTV canvassing”) in the purpose line.³²
- e. In their June 2019 monthly filings, the NRSC and NRCC used the term “headquarters account” in one part of the report, but “hq account – maintenance” and “hq acct – computer support,” respectively, in another.³³

68. To remedy these transparency problems, the Petition requested that the FEC promulgate rules and forms requiring national party committees to delineate within their reports the individual and aggregate transactions involving their Cronnibus accounts. Petitioners also provided several specific possible solutions, noting that the Commission could: promulgate a new schedule to the national party committees’ monthly reports under 52 U.S.C. § 30111(a)(1); create

²⁹ See Comments at 3 (citing DSCC, Disbursements for “Legal,” 08/01/2019–09/30/2019, FEC, https://www.fec.gov/data/disbursements/?t+wo_year_transaction_period=2020&disbursement_description+=legal&data_type=processed&committee_id=C00042366&min_date=08%2F01%2F2019&max_date=09%2F30%2F2019&disbursement_description=legal (last visited Oct. 20, 2023)).

³⁰ See Comments at 3 (citing NRSC, 2019 October Monthly, FEC Form 3X, at 5,144 (filed Oct. 20, 2019), <https://docquery.fec.gov/pdf/666/201910209165195666/201910209165195666.pdf>).

³¹ See Comments at 3 (citing NRSC, 2019 October Monthly, *supra* note 30, at 5,185).

³² See Petition at 4 (citing DNC, 2019 June Monthly, FEC Form 3X, at 3,670 (filed June 21, 2019), <https://docquery.fec.gov/pdf/674/201906219150234674/201906219150234674.pdf>; DNC, 2017 March Monthly, FEC Form 3X, at 2,037 (filed Mar. 20, 2017), <https://docquery.fec.gov/pdf/247/201703209050964247/201703209050964247.pdf>).

³³ See Petition at 4-5 (citing NRSC, 2019 June Monthly, *supra* note 23, at 2,963, 3,004; NRCC, 2019 June Monthly, *supra* note 23, at 3,105, 3,182).

an effective “cross-indexing system” under 52 U.S.C. § 30111(a)(3); or issue guidelines on uniform terminology for all committees to use under 52 U.S.C. § 30111(a)(2). *See* Petition at 6.

69. On August 28, 2019, the Commission published a Notice of Availability requesting comments on the Petition. The comment period closed on October 28, 2019—*four years ago*.

70. During the public comment period, five individuals and entities besides CLC and the Center for Responsive Politics submitted comments, including Public Citizen,³⁴ Democracy 21,³⁵ and Perkins Coie LLP Political Law Group.³⁶ Only one commenter, an individual, appeared to oppose the initiation of a rulemaking.³⁷ Perkins Coie, however, opined that the Commission should engage in a comprehensive rulemaking (consistent with its own 2016 petition) rather than the narrower disclosure rulemaking urged in plaintiffs’ Petition, stressing the need “for the FEC to issue full guidance on all areas of the law on the national party committees’ segregated accounts.”³⁸

71. In the nearly four years since the close of the comment period on October 28, 2019, the Commission has not initiated a rulemaking, conclusively responded to, or otherwise taken any action on the Petition.

72. Meanwhile, millions of dollars are flowing through the parties’ Cronibus accounts, and the public has a statutory right to the corresponding financial information. *See* 52 U.S.C. § 30104. However, thanks to the Commission’s failure to promulgate any disclosure rules

³⁴ *See* Comments of Public Citizen re: REG 2019-04 (Oct. 28, 2019), <https://sers.fec.gov/fosers/showpdf.htm?docid=410235>.

³⁵ *See* Comments of Democracy 21 re: REG 2019-04: Rulemaking Petition to Require Reporting of Segregated Party Accounts (Oct. 25, 2019), <https://sers.fec.gov/fosers/showpdf.htm?docid=410231>.

³⁶ *See* Comments of Perkins Coie LLP Political Law Group re: REG 2019-04 Notice of Proposed Rulemaking (Oct. 28, 2019), <https://sers.fec.gov/fosers/showpdf.htm?docid=410233>.

³⁷ *See* Comments of David Himes re: REG 2019-04 (Aug. 30, 2019), <https://sers.fec.gov/fosers/showpdf.htm?docid=410232>.

³⁸ *See* Perkins Coie 2019 Comments, *supra* note 36, at 1.

governing these accounts, national party committees are continuing to disclose their receipts and disbursements in non-uniform and manifestly deficient ways, effectively concealing information from the general public.

73. The situation has not improved since plaintiffs filed their October 2019 supporting comment. The national party committees have continued to report their special-purpose account receipts and disbursements in varied and haphazard ways:

- a. Almost every party committee reports contributions to their special-purpose accounts differently. For example, the Democratic Congressional Campaign Committee (“DCCC”) uses the terms “headquarters/building fund contribution” and “recount/legal fund contribution,”³⁹ whereas the NRCC uses the phrases “contribution headquarters account” and “contribution legal proceedings account.”⁴⁰ On top of these terminology differences, some committees, like the RNC, write the special-account designations as memo items;⁴¹ some, like the DSCC, write the designations in the space reserved for indicating the election to which the contribution will be applied;⁴² and the DCCC uses both spaces.⁴³
- b. The stylistic differences continue for reporting disbursements. Different party committees use different terms. For example, the NRSC prefaces its “purpose of disbursement” entries with “legal proc” or “HQ account,”⁴⁴ while the DCCC prefaces its purpose descriptions with “recount,” “legal proceedings,” or “headquarters.”⁴⁵ Not every committee even uses the “purpose of disbursement” line for its account designations; the RNC writes the account designations as memo entries.⁴⁶

³⁹ DCCC, 2023 September Monthly, Form 3X, at 13,167-68 (filed Sept. 20, 2023), <https://docquery.fec.gov/pdf/373/202309209597210373/202309209597210373.pdf>.

⁴⁰ NRCC, 2023 September Monthly, Form 3X, at 7,672-73 (filed Sept. 20, 2023), <https://docquery.fec.gov/pdf/744/202309209597201744/202309209597201744.pdf>.

⁴¹ RNC, 2023 September Monthly, Form 3X, at 13,432-33 (filed Sept. 20, 2023), <https://docquery.fec.gov/pdf/234/202309209597228234/202309209597228234.pdf>.

⁴² DSCC, 2023 September Monthly, Form 3X, at 16,373-74 (filed Sept. 20, 2023), <https://docquery.fec.gov/pdf/854/202309209597136854/202309209597136854.pdf>.

⁴³ DCCC 2023 September Monthly, *supra* note 39, at 13,167-68.

⁴⁴ NRSC, 2022 Amended Pre-General, Form 3X, at 15,441, 16,015 (filed Apr. 11, 2023), <https://docquery.fec.gov/pdf/086/202304119579818086/202304119579818086.pdf>.

⁴⁵ DCCC, 2022 Amended May Monthly, Form 3X at 12,816, 14,000 (filed Mar. 16, 2023), <https://docquery.fec.gov/pdf/713/202303169579265713/202303169579265713.pdf>.

⁴⁶ RNC 2023 September Monthly, *supra* note 41, at 13,730-31, 13,822.

- c. The party committees also have different terms for reporting transfers between their general accounts and special-purpose accounts. The NRSC calls these “internal transfers,”⁴⁷ the DNC calls them “transfers,”⁴⁸ and the NRCC calls them “allocable expenses.”⁴⁹ The DCCC includes a lengthy description that references the Cromnibus bill; for example, “recount expense reimbursement” followed by “transfer – recount expenses to Line 21b per 2014 Cromnibus bill.”⁵⁰
- d. Finally, the party committees all have some degree of internal inconsistency in their reporting. For example, when describing contributions, the NRSC spells out the account names in full (“legal proceedings account” and “headquarters account”), while it uses abbreviations when it describes disbursements (“legal proc” and “HQ account”).⁵¹ Similarly, the NRCC uses “legal proceedings account” when describing contributions and “recount” when describing disbursements from the same account.⁵² And, as noted above, the DCCC uses both “recount” and “legal proceedings” when describing its disbursements, with both terms even appearing on the same page of its amended May 2022 report.⁵³

74. This lack of standardized reporting poses a concrete obstacle to CLC’s work as a nonprofit watchdog organization and to OpenSecrets’ ability to provide comprehensive and accurate data about the national parties’ campaign money to members of the public, journalists, and other stakeholders.

75. That the Commission has not, after nearly a decade, been able to write a single regulation to implement only three paragraphs of statutory text has no conceivable justification. Over *four years* have passed since plaintiffs filed their Petition seeking simple rules to implement

⁴⁷ NRSC 2022 Amended Pre-General, *supra* note 44, at 16,017 (describing disbursements as an “internal legal proceedings expenditures transfer” and an “internal hq allocable expenditures transfer”).

⁴⁸ DNC, 2023 September Monthly, Form 3X, at 9,946 (filed Sept. 20, 2023), <https://docquery.fec.gov/pdf/287/202309209597280287/202309209597280287.pdf> (describing a disbursement as “Recount Account – Transfer for Recount and Other Legal Proceeding Expenses”).

⁴⁹ NRCC 2023 September Monthly, *supra* note 40, at 7,965 (describing a disbursement as “allocable expenses to legal acct”).

⁵⁰ DCCC 2023 September Monthly, *supra* note 39, at 13,202.

⁵¹ NRSC 2022 Amended Pre-General, *supra* note 44, at 15,306-07, 15,441, 16,016.

⁵² NRCC 2023 September Monthly, *supra* note 40, at 7,672, 7,965.

⁵³ DCCC 2022 Amended May Monthly, *supra* note 45, at 14,000.

the core transparency requirements of FECA—a statute organized around two-year election cycles—but the Commission still has yet to act on or conclusively respond to the Petition. The Commission’s years-long, continuing delay is wholly indefensible, unreasonable within the meaning of the APA, and warrants swift correction by this Court.

CAUSE OF ACTION

Count I: Unreasonable Delay, 5 U.S.C. § 706(1)

76. Plaintiffs repeat and reallege paragraphs 1-75 as if set forth fully herein.

77. Under the APA, each federal agency “shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. § 553(e); *see also* 11 C.F.R. § 200.2.

78. The APA further directs each federal agency “to conclude a matter presented to it” “within a reasonable time.” 5 U.S.C. § 555(b); *cf.* 11 C.F.R. § 200.4.

79. Each federal agency must also give “[p]rompt notice” of the denial in whole or in part of a petition, together with a “brief statement of the grounds for denial.” 5 U.S.C. § 555(e); *see also* 11 C.F.R. § 200.4(b).

80. More than four years have elapsed since plaintiffs filed their Petition with the FEC, in August 2019, and the FEC still has yet to act on the Petition or render a final decision in response to it.

81. The Commission’s unreasonable delay and failure to act on the Petition violates the APA, which provides that a reviewing court “shall compel agency action . . . unreasonably delayed.” 5 U.S.C. § 706(1).

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Declare that the FEC's ongoing failure to act on or conclusively respond to plaintiffs' Petition constitutes agency action unreasonably delayed in violation of the APA;
 - (2) Enter an order enjoining the FEC from further delay in responding to the Petition and compelling the FEC to issue a final decision within 30 days;
 - (3) Retain jurisdiction of this matter to supervise the FEC's timely compliance with its obligations as set forth in this Complaint;
 - (4) Award plaintiffs their costs and reasonable attorney's fees incurred in this action;
- and
- (5) Grant such other relief as the Court may deem just and proper.

Dated: October 20, 2023

Respectfully submitted,

/s/ Megan P. McAllen

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