IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	Civil Action No. 20-cv-01778-RCL

PLAINTIFF'S RESPONSE TO STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

As directed by the Court in its November 3, 2020 Order (ECF No. 17), Plaintiff Campaign Legal Center ("CLC") respectfully submits this response to the Statement of Interest of the United States of America (ECF No. 16) ("Statement"), which the Department of Justice ("DOJ") filed after the Court's entry of judgment in this case. DOJ's Statement is untimely, unwarranted, and legally unsupported. DOJ's supposed general concern about "structural barriers to representation" of "agencies of the Executive Branch," Statement at 5, is not implicated here, where the Federal Election Commission ("FEC") could have, but failed to, exercise its independent responsibilities regarding the investigation and enforcement of federal campaign finance violations. And DOJ's unsolicited "suggest[ion]" that the Court "vacate the default judgment and dismiss the case," *id.* at 9, is premised on legally dubious standing arguments that ignore binding decisions from the Supreme Court and D.C. Circuit that clearly and unequivocally establish Plaintiff's standing cases like this one.

The Court's Default Judgment was properly entered and DOJ's Statement fails to identify any basis for disturbing it.

PROCEDURAL HISTORY

This lawsuit arises out of the FEC's failure to take any action on an administrative complaint that Plaintiff filed with the FEC nearly one year ago, on December 19, 2019. As detailed in Plaintiff's Complaint and Motion for Default Judgment (ECF Nos. 1 and 9, respectively), CLC's administrative complaint provides reason to believe that Iowa Values, a tax-exempt 501(c)(4) organization whose "mission" was to help reelect U.S. Senator Joni Ernst, violated the Federal Election Campaign Act ("FECA") by failing to register as a political committee and file reports disclosing its contributors, expenditures, and debts. *See* Compl. ¶¶ 22-35; Mot. Default J. at 2-4, 9-10.

On December 27, 2019, the FEC sent CLC a letter acknowledging receipt of the administrative complaint and designating it MUR 7674. *See* Mot. Default J. at 5. Since receiving the FEC's acknowledgment of receipt of the administrative complaint on December 27, 2019, CLC has received no further communications from the FEC regarding MUR 7674. *Id.*

CLC waited more than 190 days for the FEC to take action on its administrative complaint, before filing this action on June 30, 2020. *Id.*

On July 1, 2020, the day after filing the complaint, plaintiff satisfied the requirements for service on the United States Attorney for the District of Columbia and the Federal Election Commission. Plaintiff ultimately completed its service of process obligations on September 19, 2020, by sending a copy of the summons and complaint to the United States Attorney General by certified mail on that date. *See* Pl.'s Response to Order to Show Cause at (ECF No. 11).

The FEC has failed to appear, file an answer, or otherwise defend itself in this action to date. Order Granting Mot. for Default J. (ECF No. 14).

On October 9, 2020, the Clerk entered default against the FEC (ECF No. 13), and October 14, 2020, this Court granted Plaintiff's motion for default judgment. The Court found that the FEC "has failed to defend" itself in this action, that "a default was properly entered against the defendant," and that the FEC's "failure to act on the administrative complaint designated as MUR 7674 is contrary to law." Order Granting Mot. for Default J. at 1.

On October 16, 2020, more than three months after Plaintiff filed this lawsuit and days after this Court entered default judgment against the FEC, the United States Department of Justice filed its Statement disclaiming any representation of the FEC while nevertheless "suggest[ing]," Statement at 9, that the Court vacate its default judgment and dismiss this case.

ARGUMENT

DOJ's attempt to prevent the enforcement of FECA's campaign finance transparency requirements—after this court has entered judgment—is untimely, unwarranted, and legally unsupported. DOJ claims that its unsolicited intervention is intended to help the FEC overcome "structural barriers" that supposedly prevented the agency from avoiding default judgment here. But as this Court recognized in its Order granting Plaintiff's motion for default judgment, Order at 1 n.1 (ECF No. 14), the FEC's *current* lack of quorum did not preclude the agency from acting on the underlying administrative complaint—or authorizing its General Counsel to defend this case—when it had a quorum. More importantly, the Statement's "suggestion" that the Court vacate its default judgment and dismiss this case is premised entirely on an incomplete and incorrect presentation of the relevant law. Contrary to DOJ's arguments, the law is well settled that "a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be

publicly disclosed pursuant to a statute. *FEC v. Akins*, 524 U.S. 11, 21 (1998). More specifically, where, as here, a plaintiff alleges denial of access to information that FECA requires to be disclosed and "[t]here is no reason to doubt their claim that the information would help them (and others to whom they would communicate it)" to evaluate the role that undisclosed contributions and spending "might play in a specific election," the Supreme Court has found "a genuine 'injury in fact.'" *Id.*

Plaintiff has alleged that Iowa Values, a tax-exempt 501(c)(4) organization whose "mission" was to help reelect U.S. Senator Joni Ernst, violated FECA by failing to register as a political committee and file reports disclosing its contributors, expenditures, and debts. These alleged violations of federal campaign finance registration and reporting requirements have deprived Plaintiff of important information that FECA requires to be disclosed, and the FEC's failure to take any action on Plaintiff's administrative complaint compounds Plaintiff's informational injury. As detailed in Plaintiff's Complaint and Motion for Default Judgment, *see* Compl. ¶¶ 22-35; Mot. Default J. at 2-4, 9-10, the administrative respondent's failure to comply with these transparency requirements, and the FEC's failure to investigate and enforce those violations, have injured Plaintiff by illegally concealing crucial information about who is behind tens of thousands of dollars in spending to influence the outcome of a federal election.

I. SUPREME COURT AND D.C. CIRCUIT PRECEDENT CLEARLY ESTABLISH CLC'S INFORMATIONAL INJURY HERE.

More than two decades ago, in a case concerning the same political committee disclosure violations underlying Plaintiff's delay lawsuit here, the Supreme Court held that "a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Akins*, 524 U.S. at 21. *Akins*, just like this case, involved allegations that a group had violated FECA by failing to register as a political committee and file regular reports

disclosing the group's receipts and disbursements. *Id.* at 15-16. The Supreme Court held that the plaintiffs had suffered an injury in fact because they had been unable "to obtain information—lists of [the organization's] donors . . . and campaign-related contributions and expenditures—that, on [the plaintiffs'] view of the law, the statute requires that [the organization] make public." *Id.* Because the plaintiffs had been deprived of that information and there was "no reason to doubt" that the concealed information would be helpful for evaluating candidates and "the role that [the organization's] financial assistance might play in a specific election," the plaintiffs' injury was sufficient to give them standing. *Id.* The injury complained of in *Akins* is exactly the same deprivation of information as Plaintiff's injury here, and that is "injury of a kind that FECA seeks to address." *Id.* at 20; *see also Campaign Legal Center v. FEC*, 952 F.3d 352, 354 (D.C. Cir. 2020) ("As the Supreme Court has repeatedly declared, the electorate has an interest in knowing 'where political campaign money comes from and how it is spent by the candidate.'" (quoting *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); citing *McCutcheon v. FEC*, 572 U.S. 185, 223 (2014))).

Consistent with *Akins*, the D.C. Circuit and other courts in this District have recognized that plaintiffs are injured when an alleged FECA violation causes the concealment of information that the Act requires disclosed. For example, in *Campaign Legal Center v. FEC*, the D.C. Circuit held that CLC had standing to challenge the FEC's dismissal of CLC's administrative complaints alleging violations of FECA provisions "that require accurate disclosure of contributor information and the filing of public reports by political committees." 952 F.3d at 354 (citing 52 U.S.C. § 30122 (banning straw donor contributions), and 52 U.S.C. §§ 30102, 30103, 30104 (registration and reporting requirements for political committees)); *see also CREW v. FEC*, 243 F. Supp. 3d 91, 101-02 (D.D.C. 2017) (holding that challenge to an organization's informational standing in lawsuit against FEC "is foreclosed by both D.C. Circuit and Supreme Court precedent recognizing

that 'the denial of information [a plaintiff] believes the law entitles him to' constitutes an injury in fact"). The Statement ignores these binding Supreme Court and D.C. Circuit decisions, which are squarely on point and establish that Plaintiff has standing. The DOJ's "suggestion" therefore lacks any merit.

Indeed, the D.C. Circuit has held that CLC, specifically, is injured by a denial of its statutory right to information regarding who is secretly spending money to influence a federal election. In *Campaign Legal Center v. FEC*, the D.C. Circuit held that CLC had standing to challenge the FEC's dismissal of CLC's administrative complaints alleging violations of both FECA's straw donor ban and political committee registration and reporting provisions. 952 F.3d at 354. There, the court held:

> The law is settled that a denial of access to information qualifies as an injury in fact where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them. The plaintiffs [including CLC] allege violations of FECA provisions that require accurate disclosure of contributor information . . . and the filing of public reports by political committees. There is "no reason to doubt" that the disclosures they seek would further their efforts to defend and implement campaign finance reform.

CLC, 952 F.3d at 356 (internal citations omitted). CLC alleges the same concrete and particularized injury here. *Compare id.* (explaining that "[t]o further its mission, Campaign Legal Center participates in 'public education, litigation, regulatory practice, and legislative policy'"), *with* Compl. ¶¶ 8-12 (ECF No. 1) (describing CLC's mission, which includes "ensur[ing] the public has access to information regarding the financing of U.S. election campaigns"; describing CLC's work in furtherance of this mission, including research, written reports and articles, expert analysis, and litigation; describing CLC's expenditure of "significant resources" to ensure the public has information necessary to evaluate different candidates and messages and cast informed

votes; and describing CLC's use of federal campaign finance disclosure information to support its federal and state administrative policy and litigation work).

II. DOJ'S "SUGGESTION" RELIES ON IRRELEVANT AND ABROGATED COURT DECISIONS.

DOJ suggests that CLC has alleged no more than "a bare procedural violation," insufficient to demonstrate standing. (Statement at 6-7). Not so. As discussed above, Plaintiff has specifically alleged that it was denied a statutory right to information about the sources of respondent Iowa Values's spending to influence the outcome of a federal election, and binding decisions from the Supreme Court and the D.C. Circuit clearly establish Plaintiff's standing in these circumstances. The DOJ's contention to the contrary relies on inapposite decisions and ignores the facts of this case.

The Statement's limited discussion of Plaintiff's informational injury relies on *Common Cause v. FEC*, 108 F.3d 413 (D.C. Cir. 1997) and *CREW v. FEC*, 267 F. Supp. 3d 50 (D.D.C. 2017). In each case, the court found the plaintiffs lacked standing because they had not shown that the remedy sought—enforcement of plaintiffs' administrative complaints—would result in the disclosure of additional information. *Id*. That is not the case here, as explained *supra* Part I. Indeed, the court in *CREW* specifically acknowledged that a plaintiff states a cognizable informational injury where "the statute they seek to enforce (or have the FEC enforce in the first instance) entitles them to receive information that they intend to use in a particularized way." 267 F. Supp. 3d at 53 (citing *Akins*). It simply concluded that the "plaintiffs [could not] plausibly allege that an FEC enforcement action on [the plaintiffs' straw donor claim] would require [the respondent] to disclose any information." *Id.* at 54. And, even this holding, which rested on the finding that the straw donor ban "[a]t most" prevents accepting or making straw donor contributions, *id.*, has been abrogated by the D.C. Circuit. *See CLC*, 952 F.3d at 354 (holding that CLC had informational

standing to challenge the FEC's dismissal of its complaint alleging violations of both FECA's straw donor ban and political committee registration and reporting provisions, and describing the straw donor ban as "designed to ensure accurate disclosure of contributor information"). Thus, *CREW* does not appear to be reliable authority even on the distinct issue decided in that case.

DOJ's Statement neglects to cite two binding decisions that are squarely on point and directly dispose of DOJ's standing arguments. The Statement is thus neither "helpful [n]or persuasive" and the Court should disregard it. *Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 296 F. Supp. 3d 959, 964 n.1 (S.D. Ind. 2017).

III. NEITHER THE FEC'S DELAY NOR ITS DEFAULT WAS "CAUSED BY STRUCTUAL BARRIERS TO REPRESENTATION"

DOJ's purported justification for inserting itself into a lawsuit where the defendant FEC "possesses independent litigating authority" and "has not requested representation by [DOJ] in this matter," Statement at 1, is questionable. According to the Statement, DOJ seeks to "ensur[e] that agencies of the Executive Branch are not burdened by default judgments, caused by structural barriers to representation." *Id.* at 9. But such structural barriers, even to the extent they might serve as a proper justification for DOJ's involvement in other circumstances, cannot be blamed for the FEC's failure to defend itself in *this* lawsuit, nor for the agency's failure to act on Plaintiff's underlying administrative complaint.

CLC filed its administrative complaint on December 19, 2019, and its lawsuit for administrative delay on June 30, 2020. *See* Mot. Default J. at 2, 5. As this Court noted in its Order awarding default judgment to Plaintiff, the FEC "had a quorum during the pendency of MUR 7674 from May 19, 2020 to July 3, 2020" and thus "was statutorily capable of acting on the complaint during that period." Order at 1 n.1 (ECF No. 14). Indeed, the FEC was statutorily capable both of

acting on the administrative complaint, and "authorizing the General Counsel to appear and defend this case" during that time, contrary to DOJ's assertion, Statement at 4.

Finally, while the Statement explicitly recognizes the FEC's independent litigating authority, *id.* at 3-5, it fails to recognize how DOJ's unnecessary intervention here threatens to undermine that independence. Congress established the FEC as an independent agency with a bipartisan Commissioner structure to "insulate the campaign finance agency from political pressures." R. Sam Garret, *The Federal Election Commission: Overview and Selected Issues for Congress*, Cong. Research Serv. (Dec. 22, 2015), https://fas.org/sgp/crs/misc/R44318.pdf. Those pressures could include, for example, interference in how the agency responds to alleged campaign finance violations by a group spending money to help elect an ally of the President. *See* Mot. for Default J. at 2-4 (describing Plaintiff's allegations that Iowa Values violated registration and reporting requirements for federal political committees despite its major purpose of reelecting Senator Joni Ernst); *Ernst calls Trump an 'ally in the White House' in RNC convention speech*, The Gazette, Aug. 26, 2020, https://www.thegazette.com/subject/news/ernst-calls-trump-an-ally-in-the-white-house-in-rnc-convention-speech-20200826. Indeed, Congress specifically granted the FEC independent litigating authority, ensuring that the FEC's litigation decisions—including whether and how to defend itself an enforcement matter—are *not* controlled by DOJ. *See* 52 U.S.C. §§ 30107(a)(6), 30106(f)(4). Whatever the reason for DOJ's filing, its extraordinary, untimely interference here could create the appearance of the very concerns Congress sought to avoid when it granted the FEC independent litigating authority in the first place.

CONCLUSION

The Court's entry of Default Judgment was proper and should stand.

Dated: November 16, 2020

Respectfully submitted,

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