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 SUR-REPLY TO REPLY IN SUPPORT OF STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

As permitted by the Court's December 21, 2020 Order (ECF No. 19), Plaintiff Campaign Legal Center ("CLC") respectfully submits this sur-reply to the Reply in Support of the Statement of Interest of the United States of America (ECF No. 20). In its Reply, the Department of Justice ("DOJ") declines to address whether the recent restoration of the Federal Election Commission's quorum should affect the default judgment in this case, responding only that it "would defer to the arguments and positions taken by the Commission" should the agency "seek to appear in this case." Reply at 1. Instead, DOJ's Reply purports to advance DOJ's challenge to Plaintiff's standing by continuing to dismiss controlling Supreme Court and D.C. Circuit decisions while mischaracterizing the nature of Plaintiff's legal claims.

DOJ has failed to establish any basis for this Court to question Plaintiff's standing, and has not even attempted to identify any reason why the recent restoration of the FEC's quorum warrants alteration of this Court's default judgment award. It does not. The Court has already recognized that the FEC's lack of quorum on the date by which its answer was *due* 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. The default judgment should stand.

ARGUMENT

I. RESTORATION OF THE FEC'S QUORUM DOES NOT ALTER OR JUSTIFY ITS DEFAULT IN THIS CASE.

As this Court's recent Order observes, the FEC's quorum was recently restored. ECF No. 19. That development indicates that the FEC is statutorily capable of complying with this Court's default judgment Order (ECF No. 14), in which the Court "**ORDERED** that, pursuant to 52 U.S.C. § 30109(a)(8)(C), Defendant conform to this Court's Order within ninety days by acting on the plaintiff's administrative complaint." Order at 2 (ECF No. 14). But the restoration of the FEC's quorum now does not change the fact that the FEC defaulted when it failed to timely answer or otherwise appear in this case. As Plaintiff explained in its Response to DOJ's Statement (ECF No. 18), and 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 lack of quorum on the date by which its answer was *due* 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. As this Court previously recognized, the FEC "had a quorum during the pendency of MUR 7674 from May 19, 2020 to July 3, 2020," Order at 1 n.1 (ECF No. 14), and thus, during that time period, the FEC could have acted on the complaint and authorized its Office of General Counsel to appear and defend this case. The recent restoration of the FEC's quorum changes none of these facts.

II. PLAINTIFF'S STANDING TO SUE IN THESE CIRCUMSTANCES IS WELL SETTLED

DOJ's Reply (ECF No. 20) continues to press its baseless challenge to Plaintiff's standing. But as Plaintiff previously explained, 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). Here, plaintiff's administrative complaint alleges 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. In circumstances like these, where 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.* Indeed, the denial of access to information FECA requires to be disclosed 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) (per curiam); citing *McCutcheon v. FEC*, 572 U.S. 185, 223 (2014))).

DOJ appears to concede that this denial of access to information about Iowa Values's contributors, expenditures, and debts would provide CLC with standing if the FEC eventually acts on and dismisses CLC's administrative complaint. *See* Reply at 4 (citing *Akins* and *Campaign Legal Center*). DOJ's conflicting assertion, *see id.*, that "CLC has not been denied any information" is thus wrong on its face. CLC has *already* been harmed by the denial of access to that information, as a result of Iowa Values's unlawful failure to disclose it. *See, e.g.*, Compl. ¶¶ 2-3, 8-12. The FEC's failure to act on Plaintiff's administrative complaint compounds that harm, by perpetuating the denial of Plaintiff's access to that information, including during the run-up to Senator Ernst's recent election. DOJ's view that CLC may be harmed by Iowa Values's failure to

disclose information required by law only if and when the Commission dismisses CLC's administrative complaint, but not "while the Commission considers the administrative complaint," Reply at 3, makes no sense.

Moreover, under DOJ's cramped view of the law, it appear that no party would ever have standing to challenge FEC delay. *See* Reply at 3 (challenging Plaintiff's standing based on the fact that CLC lacks foresight of "how the Commission will ultimately rule"); *id.* at 4 (arguing that CLC lacks standing because "[t]he Commission has not denied or dismissed the administrative complaint"). But Congress clearly intended otherwise, having explicitly created a cause of action not only where the FEC "dismiss[es] a complaint filed by such party," but also where a party is aggrieved by "a failure of the Commission to act on such complaint." 52 U.S.C. § 30109(a)(8).[1] Here, Plaintiff was aggrieved by the denial of access to information that FECA required to be disclosed *more than a year ago*, and by the FEC's failure to take any action regarding Plaintiff's administrative complaint challenging that unlawful failure to disclose.

Finally, DOJ's continued reliance on inapposite cases that do not involve alleged violations of FECA's disclosure requirements, *see* Reply at 2-3, are misguided for all the reasons explained in Plaintiff's response to DOJ's Statement. *See* CLC Response to DOJ Statement at 7-8.

DOJ's standing arguments lack any basis in law or fact and should be rejected.

[1] DOJ's novel standing theory could also call into question standing under the Freedom of Information Act, 5 U.S.C. § 552, to challenge a government entity's failure to timely respond to a FOIA request. The D.C. Circuit has recognized, however, that a FOIA requestor may file suit where a federal agency fails to make and communicate a determination regarding the underlying FOIA request within the applicable statutory 20- or 30-day time period. *Citizens for Responsibility and Ethics in Wash. v. FEC*, 711 F.3d 180, 189-90 (D.C. Cir. 2013).

CONCLUSION

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

Dated: January 12, 2021

Respectfully submitted,

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