

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

Free Speech For People
1320 Centre Street #405
Newton, MA 02459,

Plaintiff,

v.

Federal Election Commission
1050 First Street, NE
Washington, DC 20463,

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30109(a)(8)(A), challenging the Federal Election Commission’s (“FEC”) failure to act on an administrative complaint by Free Speech For People (“FSFP”) against American Media, Inc., Donald J. Trump for President, Inc., Donald J. Trump, and Michael Cohen, for violating the FECA by unlawfully arranging surreptitious payment of \$150,000 to Karen McDougal for the purpose of influencing the 2016 presidential election. FSFP filed the initial administrative complaint on February 16, 2018 (“Initial Complaint”). FSFP filed an amendment to the complaint on April 26, 2018 (the “First Amendment”), and a second amendment to the complaint on July 26, 2018 (the “Second Amendment”).

2. Under 52 U.S.C. § 30109(a)(8)(A), if the FEC fails to act on an administrative complaint within 120 days, the complainant may file an action in this Court challenging the FEC's delay as contrary to law.

3. The FEC has failed to resolve the Initial Complaint, filed over 460 days ago. The FEC has also failed to resolve the First Amendment or the Second Amendment, filed over 390 days ago and over 300 days ago respectively.

JURISDICTION AND VENUE

4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties under 52 U.S.C. § 30109(a)(8)(A) and/or 5 U.S.C. § 702. This Court also has jurisdiction over this action under 28 U.S.C. §§ 1331, 2201(a), and/or 2202.

5. Venue lies in this district under 52 U.S.C. § 30109(a)(8)(A), 28 U.S.C. § 1391(e), and/or 5 U.S.C. § 703.

PARTIES

6. Plaintiff FSFP is a national non-partisan, non-profit 501(c)(3) organization that works to restore republican democracy to the people, including through legal advocacy concerning the law of campaign finance. FSFP's supporters around the country engage in education and non-partisan advocacy to encourage and support effective government of, by, and for the people. In support of its mission, FSFP uses research, litigation, and public advocacy to inform the public about the financing of political campaigns by corporations and wealthy donors, and how that spending may influence public officials. FSFP uses information about

campaign finance practices to advocate for legal reforms, oversight of elected officials, and actions by state authorities when corporations exceed or abuse the authority conferred upon them by law. FSFP is frustrated in carrying out its mission when outside political spending or a campaign's involvement in facilitating such spending is concealed, and when the FEC fails to enforce FECA's requirements for disclosing that spending.

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

STATUTORY AND REGULATORY BACKGROUND

8. FECA was enacted to “to limit the actuality and appearance of corruption resulting from large individual financial contributions.” *Buckley v. Valeo*, 424 U.S. 1, 26 (1976) (*per curiam*). FECA limits the dollar amounts and permissible sources of contributions to candidates, and requires public disclosure of funds spent or received to influence federal elections. This disclosure “provides the electorate with information . . . in order to aid the voters in evaluating those who seek federal office,” helps “deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity,” and is “an essential means of gathering the data necessary to detect violations of the contribution limitations.” *Id.* at 67–68.

9. Corporations are prohibited from making any contributions to federal candidates, and federal candidates are prohibited from accepting a corporate contribution. 52 U.S.C. § 30118(a).

10. Expenditures by candidates or others are generally not subject to dollar limits. However, any expenditure by an outside entity that is “coordinated” with a candidate is deemed an in-kind contribution to the candidate and must be reported as a contribution to, and expenditure by, that candidate’s authorized committee. “Coordinated” means “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate [or] a candidate’s authorized committee,” including an agent thereof. 11 C.F.R. § 109.20.

11. Candidate committees must report all contributions (including the value of in-kind contributions and coordinated expenditures) exceeding \$200. 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. §§ 104.3, 104.8. Similarly, candidate committees must report expenditures (including coordinated expenditures by others) exceeding \$200. 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. §§ 104.3, 104.9.

12. Any person who believes there has been a violation of FECA may file a sworn complaint with the FEC. 52 U.S.C. § 30109(a)(1). Based on the complaint, the response from the person or entity alleged to have violated the Act, and facts and recommendations developed by the Office of General Counsel, the FEC decides whether there is “reason to believe” that a violation of FECA has occurred. 52 U.S.C. § 30109(a)(2). A “reason to believe” exists where a complaint “credibly alleges” a violation of FECA “may have occurred.” FEC, *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12,545 (Mar. 16, 2007). If four commissioners find there is “reason to believe” a violation of the FECA has occurred, the FEC must notify the

respondents of that finding and “shall make an investigation of such alleged violation.” 52 U.S.C. § 30109(a)(2).

13. If the FEC fails to act on an administrative complaint within the 120-day deadline, the complainant aggrieved by the FEC’s inaction may file a petition in this Court. 52 U.S.C. § 30109(a)(8)(A).

FACTS

14. On February 16, 2018, FSFP filed a sworn administrative complaint with the FEC against respondents American Media, Inc. (“AMI”) and Donald J. Trump for President, Inc. (“Trump Campaign”). FSFP filed the First Amendment and the Second Amendment on April 26, 2018 and July 26, 2018 respectively. The Second Amendment added two new administrative respondents: Donald J. Trump (the current president of the United States) and Michael Cohen.

15. As amended, the administrative complaint requested an FEC investigation into the following allegations:

- a. AMI paid Ms. McDougal \$150,000 to buy the rights to her life story, including an account of her alleged affair with Mr. Trump, in order to suppress her story for the purpose of influencing the 2016 election.
- b. Mr. Cohen, as an agent for the Trump Campaign, facilitated negotiations between AMI and Ms. McDougal, in order to suppress her story for the purpose of influencing the 2016 election.

- c. Mr. Trump, on behalf of the Trump Campaign, instructed Mr. Cohen to facilitate negotiations between AMI and Ms. McDougal, in order to suppress her story for the purpose of influencing the 2016 election.

ADMINISTRATIVE PROCEEDINGS

16. FSFP mailed the Initial Complaint to the FEC on February 16, 2018.
17. On March 1, 2018, the FEC sent FSFP a letter acknowledging receipt of the Initial Complaint on February 27, 2018, and designating it Matter Under Review (“MUR”) No. 7332.
18. On April 26, 2018 and on July 26, 2018, FSFP mailed to the FEC the First Amendment and the Second Amendment respectively.
19. On May 10, 2018, the FEC sent FSFP a letter acknowledging receipt of the First Amendment on May 9, 2018. On August 9, 2018, the FEC sent FSFP a letter acknowledging receipt of the Second Amendment on August 6, 2018.
20. As amended, the administrative complaint for MUR 7332 requested that the FEC investigate six separate potential violations of FECA. Counts I and II alleged failure to report a contribution and an expenditure required to be disclosed to the FEC under 52 U.S.C. § 30104(b)(3)(A). Counts III, IV, V, and VI alleged the making and receipt of an unlawful contribution under 52 U.S.C. §§ 30118(a) and 30116(a)(1)(A).
21. The FEC has failed to take final action on FSFP’s administrative complaint to date.

22. FSFP has been harmed by the FEC's failure to act on the administrative complaint. FSFP still lacks essential information about the financing of the 2016 election as a result of the FEC's failure to act.

23. For example, while many facts suggest that Mr. Cohen acted as an agent of the Trump Campaign and in consultation with Mr. Trump himself in facilitating the payment from AMI to Ms. McDougal, spokespeople and counsel for the Trump Campaign and Mr. Trump have repeatedly denied contemporaneous knowledge of, or involvement with, that payment.

24. FSFP's lack of information regarding the nature of the involvement of the Trump Campaign and/or Mr. Trump in AMI's payment is due in significant part to the FEC's delays in investigating MUR 7332. An FEC investigation and determination of Mr. Trump and the Trump Campaign's role in AMI's payment, through an investigative process in which Mr. Trump and the Trump Campaign have the opportunity to provide a detailed written response to all allegations, is essential to clarifying the nature of Mr. Trump's and/or the Trump Campaign's involvement.

25. Because of the lack of an FEC determination as to the role of Mr. Trump and/or the Trump Campaign, FSFP has not had the full opportunity to disseminate such information to its supporters and the public, and has not had the full opportunity to act on the matter.

CAUSE OF ACTION

FECA—Failure to Act, 52 U.S.C. § 30109(a)(8)(A)

26. FSFP realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

27. FSFP filed the Initial Complaint over 460 days ago. FSFP filed the First Amendment over 390 days ago. FSFP filed the Second Amendment over 300 days ago.

28. The FEC has not resolved MUR No. 7332, and has not disclosed taking any action on the administrative complaint.

29. The FEC's failure to act on FSFP's administrative complaint within 120 days of its filing is contrary to law under 52 U.S.C. § 30109(a)(8)(A).

REQUESTED RELIEF

WHEREFORE, FSFP, by its undersigned counsel, respectfully requests that the Court grant the following relief:

- a) declare that the FEC's failure to act on FSFP's administrative complaint is contrary to law under 52 U.S.C. § 30109(a)(8)(A);
- b) order the FEC to conform with this declaration within 30 days, pursuant to 52 U.S.C. § 30109(a)(8)(C);
- c) award FSFP costs and attorneys' fees incurred in this action; and
- d) grant such other and further relief as this Court deems just and proper.

Dated: June 13, 2019

Respectfully submitted,

/ s / S. Douglas Bunch

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