

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

REPRESENTATIVE TED LIEU)	
415 Cannon House Office Building)	
Washington, DC 20515)	
)	
REPRESENTATIVE WALTER JONES)	
2333 Rayburn House Office Building)	CIVIL ACTION NO. 16-cv-2201
Washington, DC 20515)	
)	
SENATOR JEFF MERKLEY)	FIRST AMENDED
1351 SE 114th Ave)	COMPLAINT FOR
Portland, OR 97216)	DECLARATORY AND
)	INJUNCTIVE RELIEF
STATE SENATOR (RET.) JOHN HOWE)	
2345 South Oak Drive)	
Red Wing, MN 55066)	
)	
ZEPHYR TEACHOUT)	
4236 Albany Post Road)	
Hyde Park, NY 12538)	
)	
MICHAEL WAGER)	
40 Ridgecreek Trail)	
Moreland Hills, OH 44022)	
)	
)	
)	
)	
<i>Plaintiffs,</i>)	
v.)	
)	
FEDERAL ELECTION COMMISSION)	
999 E Street, NW)	
Washington, DC 20463)	
)	
)	
<i>Defendant.</i>)	
)	
)	

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The fundamental issue in this case is whether multi-million dollar contributions to certain political committees, popularly known as “super PACs,” pose any risk of corruption or

the appearance of corruption. Congress, through the Federal Election Campaign Act, has enacted limits that apply to contributions to such committees. Based on a court decision that predated modern super PACs and a presumption that even very large contributions to super PACs cannot *possibly* pose any risk of corruption or the appearance of corruption, the Federal Election Commission refuses to enforce the contribution limits against super PACs. This refusal to enforce the law that Congress passed is “contrary to law” under the Federal Election Campaign Act.

2. Just two months after the Supreme Court held in *Citizens United v. FEC*, 558 U.S. 310 (2010), that corporations and labor unions may use their own funds to make unlimited *independent expenditures*, the D.C. Circuit in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), voided the long-established statutory limits for *contributions* to any political committee that restricts its spending to independent expenditures. That decision—which birthed the so-called “super PAC” and radically transformed American politics—rested on the misapprehension of a single sentence in *Citizens United* to the effect that “independent” expenditures, by definition, cannot corrupt. Based on this misunderstanding, the *SpeechNow* decision then incorrectly concluded that *contributions* to political committees that make only independent expenditures also cannot corrupt—or even appear to do so. But *SpeechNow*’s facile conclusion is flawed. It misconstrues *Citizens United*, ignores fundamental distinctions between expenditures and contributions, and is belied by seven years’ experience with unlimited and potentially corrupting contributions to super PACs.

3. The Department of Justice chose not to appeal the *SpeechNow* decision, and the Supreme Court has not yet had occasion to correct the D.C. Circuit’s erroneous conclusion. Therefore, the plaintiffs in this action—Representative Ted Lieu, Representative Walter Jones,

Senator Jeff Merkley, State Senator (ret.) John Howe, Zephyr Teachout, and Michael Wager (Plaintiffs)—filed an administrative complaint on July 7, 2016 with the Federal Election Commission (FEC) seeking to enforce the contribution limits that *SpeechNow* erroneously overturned. Specifically, under the Federal Election Campaign Act (FECA), for political committees that are not the authorized committees of candidates or political parties, contributions are limited to \$5,000 per contributor per year. 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d). This contribution limit “appl[ies] to contributions made to political committees making independent expenditures.” 11 C.F.R. § 110.1(n). A political committee may not knowingly accept any contribution in violation of that limit. 52 U.S.C. § 30116(f).

4. In their administrative complaint, Plaintiffs identified ten respondents, all registered with the FEC as independent expenditure-only committees (popularly known as super PACs).¹ The respondents were: House Majority PAC, Congressional Leadership Fund, Senate Majority PAC, Senate Leadership Fund, American Alliance PAC, Bold Agenda PAC, Defending Main Street SuperPAC Inc., ESAFund, Freedom Partners Action Fund, Inc., and New York Wins PAC. All these respondents accepted contributions substantially exceeding the \$5,000 per contributor per year limit. Furthermore, the administrative complaint presented evidence showing that large contributions to super PACs can, in fact, present a risk of corruption and the appearance of corruption.

5. After ten months (six months longer than the time contemplated by the statute) and a lawsuit for unlawful delay, the FEC dismissed Plaintiffs’ administrative complaint on the grounds that the FEC had already decided to acquiesce to *SpeechNow*. Plaintiffs now bring this

¹ By referring to the super PAC respondents as “independent expenditure-only committees,” plaintiffs do not confirm or concede that their expenditures are in fact truly independent, but only that they have registered with the FEC as such.

action for declaratory and injunctive relief against the FEC, challenging that dismissal as “contrary to law” under FECA, pursuant to 52 U.S.C. § 30109(a)(8)(A).

BACKGROUND

FECA’s limits on contributions to political committees

6. The primary purpose of FECA is “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). As the Court explained, “[o]f almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.” *Id.* at 26-27. Moreover, “a limitation upon the amount that any one person or group may contribute to a . . . political committee entails only a marginal restriction upon the contributor’s ability to engage in free communication.” *Id.* at 20.

7. In 1976, just two months after *Buckley*, Congress amended FECA to include, among other provisions, annual limits on contributions to political committees other than the authorized committees of candidates or political parties. *See* Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 112(2), 90 Stat. 475, 486-87 (May 11, 1976). That provision remains substantially the same today. *See* 52 U.S.C. § 30116(a)(1)(C) (2016).

8. In 1976, in the FEC’s very first proposed regulations to implement FECA, the FEC proposed a provision specifying that this limit “also appl[ies] to contributions to committees making independent expenditures.” FEC, *Federal Election Campaign Act*, 41 Fed. Reg. 21,572, 21,585 (May 24, 1976) (codified at 11 C.F.R. § 110.1(d) (1976)). Over several revisions, the FEC has preserved this provision in substantially the same form as it reads today, *see* 110 C.F.R. § 110.1(n) (2016), noting over the years that no public commenters had ever objected. *See* FEC, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 449 (Jan. 3,

2003) (“The Commission received no comments on this section.”); FEC, *Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees*, 52 Fed. Reg. 760, 764 (Jan. 9, 1987) (“None of the public comments received addressed this provision.”).

The SpeechNow litigation

9. In March 2010, the U.S. Court of Appeals for the D.C. Circuit found the limit in § 30116(a)(1)(C) to be unconstitutional as applied to (1) SpeechNow.org, an unincorporated nonprofit association that promised to make only independent expenditures, and (2) its contributors. *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc). In so doing, the D.C. Circuit extended *Citizens United v. FEC*, 558 U.S. 310 (2010), which concerned a *spender-based ban on independent expenditures*, to the entirely different context of a *contributor-based dollar limit*.

10. The Department of Justice chose not to seek Supreme Court review of the *SpeechNow* decision, partly on the theory that “the particularly limited nature of SpeechNow’s contribution and expenditure practices means that the court of appeals’ decision will affect only a small subset of federally regulated contributions.” Letter from Att’y Gen. Eric H. Holder, Jr., to Sen. Harry Reid (June 16, 2010), <http://1.usa.gov/298RWaP>. The Supreme Court has never considered the question.

11. In July 2010, the FEC issued Advisory Opinion No. 2010-11 (*Commonsense Ten*) (July 22, 2010), <http://1.usa.gov/298r8dg>, to a political committee that later became Senate Majority PAC. The FEC opined that the political committee’s “planned course of action, which involves soliciting and accepting unlimited contributions from individuals, political committees, corporations, and labor organizations for the purpose of making independent expenditures . . . complies with the Act.” *Id.* at 2.

12. The Court of Appeals for the D.C. Circuit has not yet revisited *SpeechNow* in any context beyond the specific facts in that as-applied challenge. However, facts have emerged that call into question *SpeechNow*'s conclusion that "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption." 599 F.3d at 694. Plaintiffs assert their claims based on the new empirical evidence regarding super PACs as they have developed since the D.C. Circuit decided *SpeechNow* in 2010, and in order to preserve their challenge for appeal.

Developments since *SpeechNow*

13. In *SpeechNow*, the D.C. Circuit opined that "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption." 599 F.3d at 694. This departed from both *Buckley* and *Citizens United*, and improperly applied to contribution limits the higher level of scrutiny that the Supreme Court currently applies to independent expenditure limits. See Albert W. Alschuler, *Limiting Political Contributions After McCutcheon, Citizens United, and SpeechNow*, 67 Fla. L. Rev. 389, 474-76 (2015). As defined by the Supreme Court, "an independent expenditure is political speech presented to the electorate." *Citizens United*, 558 U.S. at 360. However, "[a] contribution is not 'speech presented to the electorate.' A contribution is money given to a coordinating body." Lawrence Lessig, *What an Originalist Would Understand "Corruption" to Mean*, 102 Cal. L. Rev. 1, 21 (2014). Moreover, as set forth below, the D.C. Circuit's pronouncement that contributions to independent expenditure groups "cannot corrupt or create the appearance of corruption" has proven empirically wrong.

14. Since *SpeechNow*, and contrary to Attorney General Holder's prediction that "the court of appeals' decision will affect only a small subset of federally regulated contributions," the number of super PACs has exploded, as has the size of contributions to them, and their

importance in federal races. In the 2016 cycle, there were approximately 3,000 organized federal super PACs. *See* FEC, *Committees* (search result for super PACs active 2015-16), <http://1.usa.gov/28SqlJD> (last visited June 21, 2017). By April 2016, over 40% of federal super PAC contributions had come from just 50 funders and their families. Matea Gold & Anu Narayanswamy, *The new Gilded Age: Close to half of all super-PAC money comes from 50 donors*, Wash. Post, Apr. 15, 2016, http://wpo.st/Uhv_1. This phenomenon—almost entirely the product of *SpeechNow*—was noted by both Democratic and Republican candidates in the 2016 presidential election, and became a major theme in both parties’ primaries and in the general election.

15. While much of the national media coverage of super PACs focuses on presidential elections, super PACs are increasingly dominant in the funding of congressional elections. *See* Gold & Narayanswamy, *supra*. As early as March 2016, outside groups (super PACs and political nonprofits such as 501(c)(4) organizations) from both the Democratic and Republican parties had *already* spent a combined \$34.1 million on races for seats in the House and Senate—85% more than the \$18.4 million that had been spent by the same time in the 2012 elections. Bill Allison, *With GOP in Disarray, Super-PACs Target Congress*, Bloomberg Politics, Mar. 22, 2016, <http://bloom.bg/1pxhuo7>.

16. Ultimately, federal super PACs raised \$1.79 *billion* in the 2016 election cycle. That is more than double the amount that super PACs raised in 2012 (\$828 million), let alone 2014 (\$696 million) or 2010 (\$89 million). *See* Ctr. for Responsive Politics, *Super PACs*, <https://www.opensecrets.org/pacs/superpacs.php> (last updated Apr. 3, 2017). It also substantially exceeds the FEC’s own calculations of how much money was raised in the 2016 election cycle by all federal candidates combined (\$1.26 billion) or by political parties (\$1.73

billion). See FEC, *Campaign finance data*, <https://www.fec.gov/data/> (“Raising” totals for Jan. 1, 2015 through Dec. 31, 2016) (visited June 17, 2017).

17. Super PACs threaten to supersede, and in some cases already have superseded, the direct campaign contribution system. In many races, super PACs substantially outraise and outspend the candidates they support. See Ctr. for Responsive Politics, *Races in Which Outside Spending Exceeds Candidate Spending, 2016 Election Cycle*, <https://www.opensecrets.org/outsidespending/outvscand.php> (visited June 21, 2017).

Corruption and the appearance of corruption through super PACs

18. Recent public opinion surveys reveal widespread perceptions of corruption in both Congress and the federal government as a whole. In a February 2016 Rasmussen Reports survey, 61% of likely voters agreed that most members of Congress were “willing to sell their vote for either cash or a campaign contribution,” with the same percentage believing it likely that their own representative had done the same. In a September 2015 Gallup survey, 75% of respondents agreed that corruption was widespread in government, up from 66% in 2009. In an April 2012 Pew Research Center survey, 54% of respondents described the United States government as “mostly corrupt.” In a 2011 Center for Competitive Politics/Cooperative Congressional Election Study survey, 59.2% of respondents agreed that a contribution of \$5,000 or more could exert a corrupting influence on a candidate for Congress.

19. In particular, public opinion demonstrates an appearance of corruption specifically attributable to large super PAC contributions. In an October 2012 Democracy Corps/Public Campaign Action Fund survey, 59% of voters in 54 competitive congressional districts agreed that “[w]hen someone gives 1 million dollars to a super PAC, they want something big in return from the candidates they are trying to elect.” In an April 2012 Brennan Center for Justice survey focusing specifically on super PACs, 69% of respondents (including

74% of Republicans and 73% of Democrats) agreed that “new rules that let corporations, unions and people give unlimited money to Super PACs will lead to corruption.” Seventy-three percent of respondents (75% of Republicans, 78% of Democrats) agreed that “there would be less corruption if there were limits on how much could be given to Super PACs,” and 68% of respondents (71% of Democrats, 71% of Republicans) agreed that “a company that spent \$100,000 to help elect a member of Congress could successfully pressure him or her to change a vote on a proposed law.” In a March 2012 ABC News/Washington Post survey, 69% of respondents stated that super PACs should be illegal. A similar survey that asked the same question in North Carolina yielded nearly identical results.

20. Even assuming that a super PAC does not “coordinate” its campaign strategy with a supported candidate, a contributor to that super PAC is still free to discuss both the “quid” and the “quo” with the candidate. *See* Alschuler, *supra*, 67 Fla. L. Rev. at 475. Interviews with former Members of Congress, recent congressional candidates, campaign and legislative staff, and political operatives suggest how such quid pro quo agreements could occur. *See* Daniel B. Tokaji & Renata E.B. Strause, *The New Soft Money* (2014), <http://moritzlaw.osu.edu/thenewsoftmoney/wp-content/uploads/sites/57/2014/06/the-new-soft-money-WEB.pdf>. As one campaign operative explained: “So the Member calls and says ‘Hey, I know you’re maxed out – and I can’t take any more money from you – but there’s this other group. I’m not allowed to coordinate with them, but can I have someone call you?’” *Id.* at 68. The same conversation could then proceed to discuss legislative matters, including an agreement to take some official action in exchange for the donor’s contributions to the “other group,” *i.e.*, the super PAC. Furthermore, many super PACs support only one candidate, and both contributors and the

candidate know in advance that any contribution to such a super PAC would be spent in support of that candidate.²

21. In fact, quid pro quo corruption or its appearance can arise even without direct communication between contributor and candidate. *See* Christopher Robertson *et al.*, *The Appearance and the Reality of Quid Pro Quo Corruption: An Empirical Investigation*, 8 J. Legal Analysis 375 (2016) (describing grand jury simulation in which 73% of subjects voted to indict corporate executive and/or candidate under 18 U.S.C. § 201 and/or 371 based on hypothetical scenario involving \$50,000 corporate contribution to outside spending organization that did not coordinate spending with campaign and where all communications between contributor and candidate were mediated through a lobbyist).

22. Recent empirical research confirms that major donors use a “dual-track” approach to amplify direct contributions to preferred candidates with much larger contributions to supportive super PACs. Approximately 80% of the top 100 individual and 60% of the top 50 organizational donors to super PACs and other outside spending groups in the 2012 and 2014 federal elections used this dual-track approach. While directly contributing thousands of dollars (on average) to multiple candidates, they simultaneously contributed *millions* of dollars (on average) to super PACs and other outside entities spending on behalf of the very same candidates. Since large donors to super PACs also maintain direct financial relationships with candidates, the donors themselves can bridge the distance between candidates and ostensibly independent super PACs. By supplementing their direct contributions to candidates with unlimited contributions to super PACs supporting those candidates, contributors can circumvent

² The FEC has compounded this problem by advising that candidates may solicit contributions to super PACs, including single candidate super PACs, so long as the *candidate herself* does not personally ask for more than \$5,000. *See* FEC Advisory Op. No. 2011-12 (*Majority PAC*) (June 30, 2011), <http://saos.fec.gov/aodocs/AO%202011-12.pdf>.

federal contribution limits to candidates, thereby intensifying the danger of corruption or its appearance. *See* Stephen R. Weissman, *The SpeechNow Case and the Real World of Campaign Finance* (Oct. 2016).

23. Some super PACs also replicate the risks associated with political party “soft money.” Before the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81, “federal law permitted corporations and unions, as well as individuals who had already made the maximum permissible contributions to federal candidates, to contribute ‘nonfederal money’—also known as ‘soft money’—to political parties for activities intended to influence state or local elections.” *McConnell v. FEC*, 540 U.S. 93, 123 (2003), *overruled in other part by Citizens United*, 558 U.S. 310 (2010). As this “soft money” came to dwarf “hard” (federal) money, “the solicitation, transfer, and use of soft money enabled parties and candidates to circumvent FECA’s limitations on the source and amount of contributions in connection with federal elections.” *See id.* at 124-26. Consequently, in BCRA, Congress sought to close this loophole by prohibiting national and state political parties from using money raised outside of the FECA system for federal elections. *See* 52 U.S.C. § 30125. The Supreme Court upheld these limits in May 2017. *See Republican Party of Louisiana v. FEC*, No. 16-865, 2017 WL 2216928 (mem.) (U.S. May 22, 2017), *aff’g* 219 F. Supp. 3d 86 (D.D.C. 2016) (3-judge court).

24. Recent empirical research confirms that many top donors to official national party committees amplify these contributions with much larger contributions to “party-linked” super PACs active in the very same elections. Specifically, nearly half of the top 100 individual and 50 organizational donors to *all* outside spending groups in the 2012 and 2014 federal elections were “dual-track” party donors. They contributed (on average) \$75-\$85,000 to official national party committees and \$1,000,000-\$2,000,000 to party-linked super PACs (including three

respondents identified in plaintiffs' administrative complaint) active in the same elections. By supplementing their direct contributions to official party committees with unlimited contributions to party-linked super PACs, contributors can circumvent federal contribution limits to political parties, thereby intensifying the danger of corruption or its appearance. *See* Stephen R. Weissman, *The SpeechNow Case and the Real World of Campaign Finance, Part II: Undermining Federal Limits on Contributions to Political Parties* (May 2017).

25. Large super PAC contributions create a potential for corruption, and an appearance of corruption that is confirmed by the public. For this reason, enforcing the contribution limits of 52 U.S.C. § 30116(a)(1)(C) against super PACs is justified by the interest in preventing corruption and the appearance of corruption.

JURISDICTION AND VENUE

26. This Court has jurisdiction under 52 U.S.C. § 30109(a)(8)(A) and 28 U.S.C. §§ 1331, as well as 28 U.S.C. §§ 2201(a) and 2202, and 5 U.S.C. §§ 702 and 706.

27. Venue in this district is proper pursuant to 52 U.S.C. § 30109(a)(8)(A) and 28 U.S.C. § 1391(e).

PARTIES

28. Ted Lieu is a United States Representative from California's 33rd District and a Democrat. As a Member of Congress, Representative Lieu is interested in upholding federal campaign finance law. In his 2014 election campaign, he was targeted by spending from two super PACs, American Alliance and Bold Agenda PAC. American Alliance spent \$506,407 in his race (including an attack ad falsely linking him to a terrorist group), of which \$500,000 came from a single donor. In his 2016 re-election campaign, as of the date this action was filed, he faced unregulated super PAC contributions that could be used in an attempt to influence federal elections in which he is a candidate.

29. Representative Lieu plans to run for Congress again in 2018. On February 21, 2017, he filed a Statement of Candidacy with the FEC, stating his candidacy for United States Representative from California's 33rd District. He expects to face the strong risk that unregulated super PAC contributions will again be used in an attempt to influence federal elections in which he is a candidate. If the FEC does not faithfully enforce § 30116, he will be open to attack, particularly during critical time periods just before the election, in broadcast advertising campaigns mounted by groups created to evade the contribution limits imposed by Congress.

30. Walter Jones is a United States Representative from North Carolina's 3rd District and a Republican. As a Member of Congress, Representative Jones is interested in upholding federal campaign finance law. In his 2014 election campaign, he was targeted by spending from a super PAC called Ending Spending Action Fund (now known as ESAFund), which spent \$381,354 opposing him and \$353,252 supporting his then-opponent. He was also targeted by spending from a super PAC in his 2016 primary campaign. In his 2016 re-election campaign, as of the date this action was filed, he faced unregulated super PAC contributions that could be used in an attempt to influence federal elections in which he is a candidate.

31. Representative Jones plans to run for Congress again in 2018. On February 7, 2017, he filed a Statement of Candidacy with the FEC, stating his candidacy for United States Representative from North Carolina's 3rd District. He expects to face the strong risk that unregulated super PAC contributions will again be used in an attempt to influence federal elections in which he is a candidate. If the FEC does not faithfully enforce § 30116, he will be open to attack, particularly during critical time periods just before the election, in broadcast

advertising campaigns mounted by groups created to evade the contribution limits imposed by Congress.

32. Jeff Merkley is a United States Senator from Oregon and a Democrat. As a Senator, Senator Merkley is interested in upholding federal campaign finance law. He participates in this matter in his individual capacity and in anticipation of being a candidate for re-election in 2020.

33. In his 2014 election campaign, Senator Merkley was targeted by spending from a super PAC called Freedom Partners Action Fund, Inc., which spent \$1,020,016 opposing him. Furthermore, Senator Merkley expects to run for re-election in 2020. He still faces unregulated super PAC contributions that can be used in an attempt to influence federal elections in which he is a candidate. If the FEC does not faithfully enforce § 30116, he will be open to attack, particularly during critical time periods just before the election, in broadcast advertising campaigns mounted by groups created to evade the contribution limits imposed by Congress.

34. John Howe is a former Minnesota State Senator, and in 2016 was a Republican candidate for United States Representative from Minnesota's 2nd District. Although Mr. Howe did not win the August 9, 2016 Republican primary, he expects to run for Congress again in 2018, and still faces unregulated super PAC contributions that can be used in an attempt to influence federal elections in which he is a candidate. For example, in the 2016 election cycle, House Majority PAC, a super PAC which supports Democrats and opposes Republicans in Congressional races, reserved \$2,415,794 of television time in the Minneapolis media market months in advance, and spent over \$759,000 opposing the Republican candidate for Congress from Minnesota's 2nd District. If the FEC does not faithfully enforce § 30116, in future races Mr. Howe will be open to attack, particularly during critical time periods just before the

election, in broadcast advertising campaigns mounted by groups created to evade the contribution limits imposed by Congress.

35. Zephyr Teachout was the Democratic candidate for United States Representative from New York's 19th District in 2016. This district was identified by outside observers as a highly competitive race.

36. In the 2016 Republican primary race for New York's 19th District, a super PAC called New York Wins PAC, which supported the eventual primary winner, spent over \$915,000. In the general election for this seat, a super PAC called Congressional Leadership Fund spent \$3,718,930 opposing Ms. Teachout. Another super PAC called National Horizon raised \$1.2 million between October 14, 2016 and November 3, 2016 (\$700,000 from a single donor) and spent approximately \$200,000 opposing Ms. Teachout, including as late as November 3, 2016.³ As of the date this action was filed, Ms. Teachout faced unregulated super PAC contributions that could be used in an attempt to influence federal elections in which she is a candidate. Furthermore, Ms. Teachout expects to run for Congress again in 2018, and expects to face the strong risk that unregulated super PAC contributions will again be used in an attempt to influence federal elections in which she is a candidate. If the FEC does not faithfully enforce § 30116, she will be open to attack, particularly during critical time periods just before the election, in broadcast advertising campaigns mounted by groups created to evade the contribution limits imposed by Congress.

37. Michael Wager was the Democratic candidate for United States Representative from Ohio's 14th District in 2016. In 2014, he ran for this seat against the incumbent Representative, and he was targeted by spending from a super PAC called Defending Main

³ National Horizon received its final \$50,000 on November 2, 2016, and spent it the next day.

Street SuperPAC Inc. In the 2014 election cycle, Defending Main Street SuperPAC Inc. spent \$82,000 opposing his candidacy, and \$39,550 supporting the candidacy of his then-opponent, Representative David Joyce. In 2016, Mr. Wager again ran against Representative Joyce. In the 2016 election cycle, Defending Main Street SuperPAC Inc. spent over \$243,000 supporting the candidacy of Representative Joyce.

38. As of the date this action was filed, Mr. Wager faced unregulated super PAC contributions that could be used in an attempt to influence federal elections in which he is a candidate. Furthermore, Mr. Wager expects to run for Congress again in 2018, and expects to face the strong risk that unregulated super PAC contributions will again be used in an attempt to influence federal elections in which he is a candidate. If the FEC does not faithfully enforce § 30116, he will be open to attack, particularly during critical time periods just before the election, in broadcast advertising campaigns mounted by groups created to evade the contribution limits imposed by Congress.

39. Defendant Federal Election Commission is an independent federal agency charged with the administration and civil enforcement of FECA. 52 U.S.C. § 30106.

FACTS

40. On July 7, 2016, Plaintiffs filed a sworn administrative complaint with the FEC. The administrative complaint specifically recited the following facts, each documented with citations to data available from the FEC itself:

House Majority PAC

41. On June 30, 2015, House Majority PAC accepted a \$500,000 contribution from S. Donald Sussman of North Haven, ME, the Founder and Chairman of Paloma Partners.

42. On September 3, 2015, House Majority PAC accepted a \$500,000 contribution from S. Donald Sussman of North Haven, ME, the Founder and Chairman of Paloma Partners.

43. On December 28, 2015, House Majority PAC accepted a \$1,000,000 contribution from Fred Eychaner of Chicago, IL, the President of Newsweb Corporation.

44. On December 29, 2015, House Majority PAC accepted a \$500,000 contribution from S. Donald Sussman of North Haven, ME, the Founder and Chairman of Paloma Partners.

45. On January 7, 2016, House Majority PAC accepted a \$1,000,000 contribution from James Simons of New York, NY, the President of Euclidean Capital.

46. On February 18, 2016, House Majority PAC accepted a \$500,000 contribution from Bernard Schwartz of New York, NY, the Chairman and CEO of BLS Investments.

Congressional Leadership Fund

47. On October 3, 2014, Congressional Leadership Fund accepted a \$5,000,000 contribution from Sheldon Adelson of Las Vegas, NV, the Chairman of Las Vegas Sands.

48. On July 1, 2014, Congressional Leadership Fund accepted a \$1,000,000 contribution from Chevron (Corporation), of Concord, CA.

49. On March 31, 2016, Congressional Leadership Fund accepted a \$1,000,000 contribution from Chevron (Corporation), of Concord, CA.

Senate Majority PAC

50. On June 8, 2012, Senate Majority PAC (then known as Majority PAC) accepted a \$300,000 contribution from Vitreo-Retinal Consultants of the Palm Beaches, of West Palm Beach, FL.

51. On October 16, 2012, Senate Majority PAC (then known as Majority PAC) accepted a \$300,000 contribution from Vitreo-Retinal Consultants of the Palm Beaches, of West Palm Beach, FL.

52. On August 28, 2015, Senate Majority PAC accepted a \$1,000,000 contribution from George Marcus of Palo Alto, CA, the Chairman of Marcus & Millichap Company.

53. On December 28, 2015, Senate Majority PAC accepted a \$1,000,000 contribution from Fred Eychaner of Chicago, IL, the President of Newsweb Corporation.

Senate Leadership Fund

54. On April 30, 2015, Senate Leadership Fund accepted a \$1,000,000 contribution from Robert McNair of Houston, TX, the Chairman of Houston Texans.

55. On May 7, 2015, Senate Leadership Fund accepted a \$1,000,000 contribution from Bernard Marcus of Atlanta, GA, the Chairman of the Marcus Foundation.

56. On May 20, 2015, Senate Leadership Fund accepted a \$1,000,000 contribution from Paul Singer of New York, NY, the Founder and CEO of Elliott Management Group.

57. On August 27, 2015, Senate Leadership Fund accepted a \$1,000,000 contribution from Warren Stephens of Little Rock, AR, the Chairman, President, and CEO of Stephens Inc.

58. On September 28, 2015, Senate Leadership Fund accepted a \$1,000,000 contribution from Chevron (Corporation), of Concord, CA.

59. On October 9, 2015, Senate Leadership Fund accepted a \$1,000,000 contribution from Petrodome Energy, of Houston, TX.

60. On December 8, 2015, Senate Leadership Fund accepted a \$1,000,000 contribution from Access Industries, of New York, NY.

American Alliance

61. On October 22, 2014, American Alliance accepted a \$500,000 contribution from Sheldon Adelson of Las Vegas, NV, the Chairman of Las Vegas Sands.

Bold Agenda PAC

62. On October 14, 2014, Bold Agenda PAC accepted a contribution of \$110,000 from Americans for Shared Prosperity, an organization registered under Section 501(c)(4) of the Internal Revenue Code and reportedly headed by winery owner John Jordan. Two days later,

Bold Agenda PAC accepted a contribution of \$250,000 from John Jordan of Healdsburg, CA, the CEO of Jordan Winery.

63. On October 15, 2014, Bold Agenda PAC accepted a contribution of \$145,000 from Americans for Shared Prosperity.

Defending Main Street SuperPAC Inc.

64. On February 22, 2016, Defending Main Street SuperPAC Inc. accepted a contribution of \$200,000 from Robert Ziff of New York, NY, an investment banker at Ziff Brothers Investments.

65. On February 26, 2016, Defending Main Street SuperPAC Inc. accepted a contribution of \$250,000 from LIUNA Building America of Washington, DC, itself a super PAC funded mainly by contributions exceeding \$5,000 per year.

66. On May 17, 2016, Defending Main Street SuperPAC Inc. accepted a contribution of \$200,000 from Sean Parker of Washington, DC, a self-employed entrepreneur.

ESAFund

67. On April 16, 2015, ESAFund accepted a contribution of \$500,000 from Paul Singer of New York, NY, the Founder and CEO of Elliott Management Group.

68. On August 4, 2015, ESAFund accepted a contribution of \$850,000 from Marlene Ricketts of Omaha, NE, a retiree.

69. On December 11, 2015, ESAFund accepted a contribution of \$500,000 from Paul Singer of New York, NY, the Founder and CEO of Elliott Management Group.

70. On December 30, 2015, ESAFund accepted a contribution of \$500,000 from Kenneth Griffin of Chicago, IL, the Founder and CEO of Citadel, LLC.

Freedom Partners Action Fund, Inc.

71. On September 8, 2014, Freedom Partners Action Fund, Inc. accepted a contribution of \$2,500,000 from Robert Mercer of East Setauket, NY, the co-CEO of Renaissance Technologies.

72. On October 17, 2014, Freedom Partners Action Fund, Inc. accepted a contribution of \$3,000,000 from Charles G. Koch 1997 Trust, attributed to the Chairman of the Board and CEO of Koch Industries, Inc., of Wichita, KS.

73. On May 13, 2016, Freedom Partners Action Fund, Inc. accepted a contribution of \$2,000,000 from Diane Hendricks of Afton, WI, the Chairperson of Hendricks Holding Co., Inc.

74. On May 13, 2016, Freedom Partners Action Fund, Inc. accepted a contribution of \$2,000,000 from Mountaire Corporation of Little Rock, AR.

75. On May 24, 2016, Freedom Partners Action Fund, Inc. accepted a contribution of \$1,000,000 from Richard B. Gilliam of Keswick, VA, the President, Chairman, and CEO of Cumberland Development.

76. On May 24, 2016, Freedom Partners Action Fund, Inc. accepted a contribution of \$3,000,000 from Charles Koch of Wichita, KS, the Chairman of the Board and CEO of Koch Industries, Inc.

New York Wins PAC

77. On January 29, 2016, New York Wins PAC accepted a contribution of \$500,000 from Robert Mercer of Setauket, NY, a financial consultant at Renaissance Technologies.

78. On May 13, 2016, New York Wins PAC accepted a contribution of \$500,000 from Paul Singer of New York, NY, the Founder and CEO of Elliott Management Group.

Allegations of violation

79. The administrative complaint alleged that the respondents knowingly accepted multiple contributions that exceed \$5,000 per person per year, in violation of 52 U.S.C. § 30116(a)(1)(C) and (f) and 11 C.F.R. §§ 110.1(d) and (n), and, on information and belief, would continue to do so.

80. In light of the FEC's *Commonsense Ten* advisory opinion (AO 2010-11) and 52 U.S.C. § 30108(c)(2), the administrative complaint specifically disclaimed any intent of asking the FEC to seek civil penalties or other sanctions for past conduct, but rather asked the FEC to pursue only declaratory and/or injunctive relief against future acceptance of excessive contributions.

ADMINISTRATIVE PROCEEDINGS

81. Plaintiffs filed the administrative complaint with the FEC on July 7, 2016.

82. On or about July 14, 2016, the FEC sent each Plaintiff a letter acknowledging receipt of the administrative complaint and designating it as Matter Under Review (MUR) 7101.

83. On or about June 1, 2017, the FEC sent letters to one or more Plaintiffs. These letters reported that, on May 25, 2017, the FEC had concluded that there was no reason to believe that the respondents had violated 52 U.S.C. § 30116, and had closed the matter. The letters also included a Factual and Legal Analysis providing the basis for the FEC's decision.

84. The Factual and Legal Analysis did not dispute that the respondents received the specific contributions identified in the administrative complaint. Nor did the FEC make any factual findings. Instead, the FEC based its decision on the conclusion that "the Commission has adopted the holding of *SpeechNow* in AO 2010-11, and cannot now pursue sanctions against the Respondents so long as they act consistently with the Commission's guidance."

85. The FEC's conclusion rested on legally erroneous conclusions about the constitutionality of 52 U.S.C. § 30116 and the meaning of 52 U.S.C. § 30108.

86. Because of the FEC's dismissal of their complaint, Plaintiffs will continue to be forced to raise money and campaign in a system that is subject to the risk and appearance of quid pro quo corruption (and other forms of corruption) through large contributions to super PACs that exceed the limits that Congress determined were necessary to protect against corruption.

VIOLATIONS

Count I

87. Plaintiffs reallege and incorporate by reference paragraphs 1 to 86 as if fully set forth herein.

88. The FEC's dismissal of Plaintiffs' administrative complaint was "contrary to law" under 52 U.S.C. § 30109(a)(8)(C).

Count II

89. Plaintiffs reallege and incorporate by reference paragraphs 1 to 88 as if fully set forth herein.

90. The FEC's dismissal of Plaintiffs' administrative complaint was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2).

REQUESTED RELIEF

WHEREFORE, Plaintiffs, by their undersigned counsel, respectfully request that the Court grant the following relief:

- a) Declare that the FEC's dismissal of Plaintiffs' administrative complaint was contrary to law under 52 U.S.C. § 30109(a)(8)(C);

- b) Declare that the FEC's dismissal of Plaintiffs' administrative complaint was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2);
- c) Order the FEC to conform with this declaration within 30 days;
- d) Award legal fees and costs of suit incurred by Plaintiffs; and
- e) Grant such other and further relief as this Court deems just and proper.

Dated: June 22, 2017

Respectfully submitted,

/s/ Stephen A. Weisbrod

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