

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

_____)	
LEVEL THE PLAYING FIELD, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:15-cv-01397 (TSC)
)	
FEDERAL ELECTION COMMISSION,)	Answer
)	
Defendant.)	
_____)	

**DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER
TO PLAINTIFFS’ AMENDED SUPPLEMENTAL COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant Federal Election Commission (“Commission” or “FEC”), through its undersigned counsel, responds to the Amended Supplemental Complaint for Declaratory and Injunctive Relief (Doc. # 76) (“Am. Supp. Compl.”) filed by plaintiffs Level the Playing Field (“LPF”), Peter Ackerman (“Ackerman”), Green Party of the United States (“Green Party”) and Libertarian National Committee, Inc. (“LNC”) on August 11, 2017:

GENERAL DENIAL

I. Any allegation not specifically responded to below is denied.

SPECIFIC RESPONSES AND DENIALS

II. The Commission responds as follows to the paragraphs of the Amended Supplemental Complaint:

**“AMENDED SUPPLEMENTAL COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF”**

The unnumbered paragraph on page 1 of the amended supplemental complaint contains plaintiffs’ characterization of that document, which speaks for itself, and therefore no response is

required. To the extent that this paragraph references and incorporates succeeding paragraphs of the complaint, the Commission incorporates its responses to those paragraphs and to plaintiffs' headings and prayer for relief.

"INTRODUCTION"

1. This paragraph contains plaintiffs' characterizations of the Court's Memorandum Opinion (Feb. 1, 2017) (Doc. # 60) ("Mem. Op.") and the administrative record in this case, which speak for themselves, as well as plaintiffs' conclusion of law, all of which require no response. To the extent a response is required, admit that the Court's opinion contains the word quoted in the first sentence of this paragraph, but deny that that sentence accurately characterizes the Court's opinion. Deny the remaining characterizations in this paragraph.

2. This paragraph contains plaintiffs' characterizations of the Court's Memorandum Opinion (Doc. #60.) and accompanying Order (Feb. 1, 2017) (Doc. #61) ("Order"), the Commission's handling of the underlying administrative matters, and the administrative record in this case, which speak for themselves, as well as plaintiffs' conclusions of law, all of which require no response. To the extent a response is required, admit that the Court's opinion contains the language quoted in this paragraph, but deny that the first sentence of this paragraph accurately characterizes the Court's opinion; deny the second sentence of this paragraph; and admit the third, fourth and fifth sentences of this paragraph.

3. Admit that following this Court's remand order, the Commission reconsidered plaintiffs' administrative complaints and petition for rulemaking, found no reason to believe that plaintiffs' allegations established violations of FECA, dismissed plaintiffs' complaints, and approved a supplemental notice of disposition declining to initiate a rulemaking. Deny

plaintiffs' characterizations of the Commission's actions on remand and otherwise deny the remainder of this paragraph.

4. This paragraph contains plaintiffs' characterizations of the Commission's Factual and Legal Analysis explaining its post-remand dismissal decisions in Matters Under Review ("MURs") 6869R and 6942R and Supplemental Notice of Disposition in REG 2014-06, which speak for themselves, and require no response. To the extent a response is required, admit that the first sentence of this paragraph quotes language excerpted from a New York Times article included in the administrative record, but deny the remainder of that sentence. To the extent the unidentified "director" referenced in the third sentence of this paragraph is Barbara Vucanovich, admit that she clarified that in using "the word 'bi-partisan,' as many do, [she] mean[t] not favoring any one party over another," and deny that she otherwise adopted the "definition" included in quotation marks in this sentence, without citation. The Commission denies the remaining factual allegations and characterizations in this paragraph.

5. This paragraph contains plaintiffs' characterizations of the Commission's Factual and Legal Analysis explaining its post-remand dismissal decisions in MURs 6869R and 6942R, the FEC's Supplemental Notice of Disposition in REG 2014-06, and Dr. Clifford Young's report, which speak for themselves, as well as plaintiffs' conclusions of law, all of which require no response. To the extent a response is required, deny that the Young Report relies exclusively on "late primary" or "general" election polling and deny that the FEC actually or apparently has not read or carefully considered that report.

6. This paragraph contains plaintiffs' characterizations and suppositions regarding the Commission's Factual and Legal Analysis explaining its post-remand dismissal decisions in

MURs 6869R and 6942R, Commission's actions on remand and Supplemental Notice of Disposition in REG 2014-06, the latter of which speaks for itself, and requires no response.

To the extent a response is required, the Commission admits that in the supplemental Notice of Disposition, it explained that it found the Schoen Report to be unpersuasive primarily because it built its conclusions through "unsupported suppositions and assertions," including, for example, the baseless statement that "the media will not cover an independent candidate until they are certainly in the debates." The Commission further admits that the supplemental Notice of Disposition responded to the Schoen Report by referencing the Commission's awareness "of at least three non-major party candidates who did not participate in the general election debates but received significant media attention in 2016," and that a footnote following that statement cited the results of certain Westlaw searches for "Gary Johnson, "Jill Stein," and "Evan McMullin." The Commission denies the remaining factual allegations and characterizations in this paragraph.

7. This paragraph contains plaintiffs' characterizations of the Commission's Factual and Legal Analysis in MURs 6869R and 6942R and Supplemental Notice of Disposition in REG 2014-06, which speak for themselves, and requires no response. To the extent a response is required, the Commission denies the factual allegations and characterizations in this paragraph.

8. This paragraph contains plaintiffs' characterizations of "the FEC's post-remand decisions" and the Court's Memorandum Opinion, which speak for themselves, as well as plaintiffs' suppositions about the Court's future disposition of the claims in plaintiffs' Amended Supplemental Complaint, all of which require no response. To the extent a response is required, the Commission admits that the quoted language in the third and fourth sentences of this paragraph appears in the Court's Memorandum Opinion, but denies that this paragraph

completely or accurately characterize the Court's opinion. The Commission denies the remaining factual allegations, characterizations, and suppositions in this paragraph.

9. The Commission admits that plaintiffs seek the relief set forth in this paragraph, and deny that plaintiffs are entitled to any such relief.

“BACKGROUND”

10. This paragraph incorporates the allegations in paragraphs 1 through 137 of Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief (Jan. 5, 2016) (Doc. # 25) (“Sec. Am. Compl.”). To the extent those allegations are not superseded by the new allegations in plaintiffs' amended supplemental complaint, the Commission incorporates its responses to the allegations in paragraphs 1 through 137 of plaintiffs' Second Amended Complaint. (*See* FEC Answer to Pls.' Second Am. Compl. (Jan. 19, 2017) (Doc. # 27) (“FEC Answer to Sec. Am. Compl.”). To the extent any allegation in paragraphs 1 through 137 of plaintiffs' Second Amended Complaint is superseded by new allegations in plaintiffs' amended supplemental complaint, the Commission denies that superseded allegation and incorporates its response in this Answer to such new allegations. The Commission further avers that plaintiffs' Second Amended Complaint sought relief prior to the 2016 general election, but that election has now passed, and plaintiffs' allegations specific to the 2016 general election and debates are now moot.

With respect to footnote 2 to this paragraph 10, the Commission admits the allegations in this paragraph describing reported changes in the composition of CPD's board of directors and citing the March 2017 departure of former FEC Commissioner Ann Ravel. The remainder of this paragraph purports to characterize, without citation, the personal actions and views of certain CPD directors, which speak for themselves, and requires no response. To the extent a response

is required, the Commission admits that the quotation in new footnote 2 attributed to Dorothy Ridings appears in George Farah, *No Debate* (Seven Stories Press 2004) at 9, but the Commission denies that the quotation is complete and accurate.

11. This paragraph contains plaintiffs' characterizations of complaints they filed challenging certain FEC actions, which speak for themselves, and require no response. To the extent a response is required, the Commission admits that plaintiffs filed the complaints on the dates alleged in this paragraph and that the complaints contain the allegations described in this paragraph.

12. Admit.

13. This paragraph contains plaintiffs' characterization of portions of the Memorandum Opinion, which speaks for itself, and requires no response. To the extent a response is required, admit that this paragraph accurately describes portions of this Court's Memorandum Opinion.

14. This paragraph contains plaintiffs' description and characterization of portions of the Memorandum Opinion, which speaks for itself, and require no response. To the extent a response is required, admit that the Court found the challenged dismissal decisions contrary to law and that the quoted language in this paragraph appears in the Court's Memorandum Opinion, but deny that this paragraph accurately and completely describes the Memorandum Opinion.

15. This paragraph contains plaintiffs' description and characterization of portions of the Memorandum Opinion, which speaks for itself, and require no response. To the extent a response is required, admit the quoted language in this paragraph appears in the Court's Memorandum Opinion, but deny that this paragraph accurately and completely describes the Memorandum Opinion.

16. This paragraph contains plaintiffs' description and characterizations of portions of the Memorandum Opinion and the Federal Election Campaign Act ("FECA"), which speak for themselves, and require no response. To the extent a response is required, admit that FECA and the Court's Memorandum Opinion contain the quoted language respectively attributed to them in this paragraph, but deny that this paragraph accurately and completely describes either the statute or Memorandum Opinion.

17. This paragraph contains plaintiffs' description and characterizations of portions of the Memorandum Opinion, which speaks for itself, and require no response. To the extent a response is required, admit the quoted language in this paragraph appears in the Court's Memorandum Opinion, but deny that this paragraph accurately and completely describes that opinion, and specifically deny that the Court "agreed" with the quoted language in the first sentence of this paragraph, which reflects the Court's recitation of plaintiffs' argument.

18. This paragraph contains plaintiffs' description and characterizations of portions of the Memorandum Opinion, which speaks for itself, and require no response. To the extent a response is required, admit that the quoted language in this paragraph appears in the Court's Memorandum Opinion, but deny that this paragraph accurately and completely describes that opinion. The Commission further responds that the characterization of the Court's "rulemaking decision" as containing "similar conclusions" is too vague to either admit or deny.

19. Admit that plaintiffs filed a Partial Opposition to the FEC's Motion for Clarification, Reconsideration, and/or Partial Extension of Time (Doc. # 63), which also included a cross-motion for clarification or reconsideration, on February 9, 2017, and further admit that in that filing, plaintiffs requested that the Court expressly retain jurisdiction to adjudicate any challenge to the FEC's decision on remand. Deny that this paragraph completely and accurately

describes plaintiffs' February 6 filing. Admit that on February 10, 2017, the Court issued an order in which it granted in part and denied in part the Commission's motion and extended the Commission's time to comply with the remand order, and also granted plaintiffs' request that the Court retain jurisdiction (Order (Feb. 10, 2017) (Doc. # 64)).

20. Admit that the Commission complied with the remand order by reconsidering plaintiffs' allegations; issuing a Supplemental Notice of Deposition further explaining its decision to decline initiating a rulemaking petition, which was published in the Federal Register on March 29, 2017; voting to dismiss plaintiffs' administrative complaints; and issuing a new Factual and Legal Analysis explaining the Commission's dismissal decisions. The second and third sentences of this paragraph further contain plaintiffs' characterizations of the Commission's Supplemental Notice of Disposition in REG 2014-06 and Factual and Legal Analysis in MURs 6869R and 6942R, which speaks for themselves and require no response. To the extent a response is required, the Commission denies plaintiffs' characterizations of those decisions.

“THE FEC FAILED TO ADEQUATELY EXPLAIN ITS DISMISSAL OF THE ADMINISTRATIVE COMPLAINTS”

Deny the heading that precedes paragraph 21.

21. This paragraph contains plaintiffs' characterizations of the Court's Memorandum Opinion and Order, which speak for themselves, as well as plaintiffs' conclusions of law, neither of which require a response. To the extent a response is required, the Commission admits that the Court ordered the FEC to issue new decisions on plaintiffs' administrative complaints but denies the remainder of the first sentence. Admit that the second sentence in this paragraph describes aspects of the Court's Memorandum Opinion. Deny the third and fourth sentences of this paragraph.

“A. The FEC Failed to Articulate The Standard It Used.”

Deny the heading that precedes paragraph 22.

22. This paragraph contains plaintiffs’ characterizations of Court’s Memorandum Opinion and the Commission’s Factual and Legal Analysis in MURs 6869R and 6942R, both of which speak for themselves, and requires no response. To the extent a response is required, the Commission admits the Court’s Memorandum Opinion and the FEC’s Factual and Legal Analysis contain the quoted language respectively attributed to them in this paragraph, but deny that this paragraph completely or accurately characterizes those documents and otherwise deny the factual allegations in this paragraph.

23. This paragraph contains plaintiffs’ characterizations of the Commission’s Factual and Legal Analysis in MURs 6869R and 6942R, which speaks for itself, as well as plaintiffs’ conclusions of law, neither of which require a response. To the extent a response is required, the Commission admits that this paragraph quotes excerpted language that appears in this Court’s Memorandum Opinion, but denies plaintiffs’ explicit and implicit allegations that such language applies to the Commission’s post-remand dismissal decision. The Commission further admits that its Factual and Legal Analysis in MURs 6869R and 6942R includes analysis of the district court’s decision in *Buchanan v. FEC*, 112 F. Supp. 2d 58 (D.D.C. 2000), but denies plaintiffs’ characterization of that analysis in this paragraph and otherwise denies the characterizations and factual allegations in this paragraph.

“B. The FEC Failed to Demonstrate How It Considered The Evidence”

Deny the heading that precedes paragraph 24.

24. This paragraph contains plaintiffs’ characterizations of the Commission’s Factual and Legal Analysis in MURs 6869R and 6942R and the evidence upon which plaintiffs rely,

both of which speak for themselves, as well as plaintiffs' conclusions of law, none of which require a response. To the extent a response is required, the Commission admits that the first sentence in this paragraph quotes a phrase that appears in the Memorandum Opinion, but otherwise denies that sentence and the remainder of this paragraph to the extent they purport to characterize the Commission's consideration of plaintiffs' administrative complaints and evidence submitted in support of those complaints. The Commission further denies the factual allegations and legal conclusion in the last sentence in this paragraph.

“The Partisan Statements and Activities of The CPD And Its Members”

Deny the heading that precedes paragraph 25.

25. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and Frank Fahrenkopf's March 2017 affidavit, which speak for themselves, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes those documents. Plaintiffs' characterizations of those documents also are denied.

26. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and Barbara Vucanovich's March 2017 affidavit, which speak for themselves, and plaintiffs' conclusions of law and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes those documents. Plaintiffs' characterizations of those documents also are denied.

27. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and Frank Fahrenkopf's affidavit, which speak for themselves, and plaintiffs' conclusions of law and therefore no response is necessary. To the extent that a further response

is required, the Commission denies that this paragraph completely and accurately describes those documents.

28. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis, which speaks for itself, and therefore no response is necessary.

To the extent that a further response is required, admit that the quoted language does not appear in the Factual and Legal Analysis, but deny that the Commission failed to consider the referenced evidence. The remaining factual allegations in this paragraph are denied.

29. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and Fahrenkopf's affidavit, which speak for themselves, and plaintiffs' conclusions of law and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes those documents, and denies plaintiffs' characterizations.

30. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Commission's factual and legal analyses in prior FEC enforcement and litigation matters involving CPD presidential debates, which speak for themselves, and plaintiffs' conclusions of law and therefore no response is necessary. To the extent that a further response is required, the Commission denies plaintiffs' characterizations.

31. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis, which speaks for itself, and plaintiffs' conclusions of law and therefore no response is necessary. To the extent that a further response is required, the Commission denies plaintiffs' characterizations.

32. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and CPD's submissions, which speak for themselves, and therefore no response

is necessary. To the extent that a further response is required, the Commission denies plaintiffs' characterizations. The Commission specifically denies that the Commission's dismissal decisions in MURs 6869R and 6942R were arbitrary and capricious.

"The Young Report"

33. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Young Report, which speak for themselves, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes those documents, and denies plaintiffs' characterizations.

34. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Young Report, which speak for themselves, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes those documents, and denies plaintiffs' characterizations.

35. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Young Report, which speak for themselves, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes those documents, and denies plaintiffs' characterizations.

36. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Young Report, which speak for themselves, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this

paragraph completely and accurately describes those documents, and denies plaintiffs' characterizations.

37. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Young Report, which speak for themselves, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes those documents, and denies plaintiffs' characterizations.

38. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis, which speaks for itself, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes that documents, and denies plaintiffs' characterizations.

39. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Young Report, which speak for themselves, and therefore no response is necessary. Admit that the quoted language "inherently more reliable" appears in the 2017 Factual and Legal Analysis (Doc. # 70-1 at 34), but note that the Commission was quoting Frank Newport. To the extent that a further response is required, the Commission denies that this paragraph completely and accurate describes those documents, and denies plaintiffs' characterizations.

"The Schoen Report"

40. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Schoen Report, which speak for themselves, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this

paragraph completely and accurately describes these documents, and denies plaintiffs' characterizations.

41. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis, which speaks for itself, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes this document, and denies plaintiffs' characterizations.

42. Deny the first, second, fifth and eighth sentences. The third and fourth sentences contain plaintiffs' characterization of information on the Open Secrets website, <http://www.opensecrets.org/pres16>, which speak for itself, and plaintiffs' conclusions of law, as to which no response is required. To the extent a response is required, the Commission is without knowledge or sufficient information sufficient to form a belief regarding data compilation by the Center for Responsive Politics. Admit the sixth and seventh sentences.

43. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Young Report, which speak for themselves, and therefore no response is necessary. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes these documents, and denies plaintiffs' characterizations.

44. Admit the first sentence. The remainder of this paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis and the Supplemental Notice of Disposition, which speak for themselves, and plaintiffs' conclusions of law as to which no response is required. To the extent that a further response is required, the Commission denies that those documents are completely and accurately described in this paragraph, denies the third and fifth sentences, and denies plaintiffs' other characterizations.

“The CPD’s Discretion To Manipulate Poll Selection”

45. This paragraph contains plaintiffs’ characterization of CPD’s selection criterion for CPD’s 2012 general election presidential debates and the 2017 Factual and Legal Analysis, which speak for themselves, and plaintiffs’ conclusions of law as to which no response is required. Deny the second, third and fourth sentences. To the extent that a further response is necessary, the Commission denies the remaining factual allegations in this paragraph.

“C. The FEC Failed to Meaningfully Consider The Evidence Against the CPD Directors”

Deny the heading that precedes paragraph 46.

46. Admit the first sentence. The second sentence contains plaintiffs’ characterization of the Court’s Memorandum Opinion, which speaks for itself, and therefore no response is required. Admit that the Memorandum Opinion contains the quoted language.

47. Admit that the additional CPD directors were notified in February 2017, and that they subsequently submitted responses to the administrative complaints and supplements. This paragraph contains plaintiffs’ characterization of the Commission’s notifications and the directors’ responses, which speak for themselves, and therefore no response is required. Admit that the affidavits contain the same footers.

48. This paragraph contains plaintiffs’ characterization of the directors’ responses, which speak for themselves, and therefore no response is required. Admit Simpson’s February 2017 affidavit and the director declarations quoted in footnote 7 contain the respective quoted language, but without the added emphasis, but deny that this paragraph completely and accurately describes those documents. The Commission is without knowledge or information sufficient for admit or deny the last sentence.

49. This paragraph contains plaintiffs' characterization of the Memorandum Opinion and the responses from Newton Minow and Alan Simpson, which speak for themselves, and therefore no response is required. To the extent that a further response may be necessary, the Commission denies that this paragraph completely and accurately describes those documents.

50. Deny.

“D. The FEC Arbitrarily and Capriciously Concluded That The CPD’s Polling Criterion Was Objective”

Deny the heading that precedes paragraph 51.

51. This paragraph contains plaintiffs' characterization of the 2017 Factual and Legal Analysis, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies the allegations in this paragraph. The Commission specifically denies the factual allegation in the first sentence that “CPD’s polling criterion is not objective.”

52. This paragraph contains plaintiffs' conclusions of law, and therefore no response is needed. Admit that Ross Perot was polling at or below 10% prior to the 1992 presidential debates. Admit that George Wallace and John Anderson were candidates for their respective parties' presidential nomination prior to becoming independent candidate for president in the respective general elections. To the extent that a further response is required, the Commission denies the remaining allegations in this paragraph.

53. This paragraph contains plaintiffs' characterization of the 2017 Factual and Legal Analysis, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. Admit that the dates of the campaigns of Teddy Roosevelt, Robert Lafollette and Strom Thurman. Admit the fifth, sixth, seventh sentences. To the extent that a further response is required, the Commission denies the remaining allegations in this paragraph.

54. This paragraph contains plaintiffs' characterization of the Court's Memorandum Opinion, which speaks for itself, and plaintiffs' conclusions of law, therefore no response is required. To the extent that a further response is required, the Commission denies that this paragraph completely and accurately describes those documents, and denies plaintiffs' characterizations.

**“THE FEC FAILED TO EXPLAIN ITS REFUSAL TO
ENGAGE IN RULEMAKING**

Deny the heading that precedes paragraph 55.

55. This paragraph contains plaintiffs' characterization of the Notices of Disposition, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies that this paragraph completely or accurately describes the Notices of Disposition. The Commission specifically denies that the Commission's rulemaking decision was arbitrary and capricious.

“The Young Report”

56. This paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition and the Young Report, which speaks for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies that this paragraph completely or accurately describes those documents.

57. This paragraph contains plaintiffs' characterizations of the Notices of Disposition and the Young Report, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies that this paragraph completely or accurately describes those documents.

“The Schoen Report”

58. This paragraph contains plaintiffs’ characterization of the Supplemental Notice of Disposition and the Schoen Report, which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies that this paragraph completely or accurately describes those documents.

59. This paragraph contains plaintiffs’ characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs’ conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission admits it searched the Westlaw “Major Newspapers” database to determine how many newspaper stories mentioned certain candidates during specified time periods, and admits the searches and results are described in the Supplemental Notice of Disposition. The Commission also admits that the Notice describes the results for Gary Johnson as comparable to those for Bobby Jindal and Mike Huckabee, the results for Jill Stein as comparable to those for Rick Perry and Martin O’Malley, and the results for Evan McMullin as comparable to those for Lincoln Chafee, Jim Webb and George Pataki.

60. This paragraph contains plaintiffs’ characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs’ conclusions of law, and therefore no response is needed. The Commission responds that the allegations regarding whether articles “meaningfully advance a candidacy” is too vague to either admit or deny. To the extent that a further response is required, the Commission admits that the Supplemental Notice of Disposition did not differentiate between different levels of depth of treatment in the articles located and denies the remaining allegations in this paragraph. To the extent that this paragraph

characterizes the purpose of footnote 6 of the Commission's Supplemental Notice of Disposition, the Commission denies that the purpose was anything other than what was stated in the footnote.

61. The first sentence of this paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies the allegations in this sentence.

Deny the second sentence. The Westlaw searches strings were: "advanced: "donald trump" & DA(aft 08-01-2015 & bef 05-04-2016)" and "advanced: "Hillary Clinton" & DA(aft 09-04-2015 & bef 06-07-2016)." These produce 7,451 and 7,404 responsive articles, respectively.

The Commission is without knowledge or information about plaintiffs' searches sufficient to admit or deny the third or fourth sentences. To the extent a further response is required, the Commission denies the third and fourth sentences.

62. This paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed.

Admit that a search of the Westlaw Major Newspapers database for "Gary Johnson" for articles published between February 4 and November 8, 2016 includes articles like the examples listed in this paragraph, but only a relatively small number of each (and some articles fall into more than one category.)¹ To the extent that a further response is required, the Commission denies the characterizations and factual allegations in this paragraph.

¹ The Westlaw search string was: "advanced: "gary johnson" & DA(aft 02-04-2016 & bef 11-08-2016)."

63. This paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that this paragraph references or incorporates the allegations in paragraph 62, the Commission incorporates its response thereto. Admit that a search of the Westlaw Major Newspapers database for "Gary Johnson" between February 4 and November 8, 2016 yields the number of articles indicated in note 8 and includes some results like those described in this paragraph but only a relatively small number. The Commission responds that the allegations regarding whether articles advanced the candidacy of Gary Johnson is too vague to either admit or deny. The Commission otherwise denies the characterizations and allegations in this paragraph, including that the rationale for its decision to decline to initiate a rulemaking was pretextual. To the extent that this paragraph characterizes the purpose of footnote 6 of the Commission's Supplemental Notice of Disposition, the Commission denies that the purpose was anything other than what was stated in the footnote.

64. This paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. Admit the details of the search described in the Commission's Supplemental Notice of Disposition and repeated here. Admit that some or all of the referenced presidential candidates may have ceased actively campaigning before May or June 2016. Deny the first and fifth (last) sentences. To the extent that a further response is required, the Commission denies the allegations in this paragraph.

65. This paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission admits the details of the

search described in the Commission's Supplemental Notice of Disposition and repeated here, but denies the remainder of this paragraph.

66. This paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. The Commission denies the first sentence. The Commission is without knowledge or information sufficient to admit or deny the second and third sentences, which purport to describe plaintiffs' search and analysis. To the extent that a further response is required, the Commission denies the factual allegations in the second and third sentences.

67. The first sentence appears to reference the description of plaintiffs' search and analysis alleged in paragraph 66, as to which the Commission incorporates its response thereto. Deny the second, third and fourth sentences of this paragraph.

68. The first and second sentences of this paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, the Commission denies the factual allegations in the first and second sentences of this paragraph. The Commission responds that the allegation regarding whether articles were "meaningfully devoted" to certain candidates is too vague to either admit or deny. To the extent that it may not be vague, the Commission is without knowledge or information sufficient to admit or deny the third sentence, which purports to describe plaintiffs' search and analysis. To the extent that this paragraph characterizes the purpose of footnote 6 of the Commission's Supplemental Notice of Disposition, the Commission denies that the purpose was anything other than what was stated in the footnote.

69. This paragraph contains plaintiffs' characterizations of the 2017 Factual and Legal Analysis, which speaks for itself, and plaintiffs' conclusions of law as to which no response is required. This paragraph also appears to reference and discuss plaintiffs' analysis discussed in paragraph 68, so the Commission incorporates its responses thereto. To the extent a further response is required, the Commission denies the factual allegations in this paragraph.

70. The first sentence of this paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition and the Schoen Report, which speak for themselves, and therefore no response is needed. To the extent a response to the first sentence is required, the Commission denies the factual allegations in the first sentence. The Commission also denies the second and third sentences.

71. The first, second and third sentences of this paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition and the Schoen Report, which speak for themselves, and therefore no response is required. To the extent a response is required, deny that the FEC did not undermine the validity of this aspect of the Schoen report. Admit that then-Senator Obama delivered the keynote address at the 2004 Democratic National Convention and that a certain number of people became familiar with him through that speech. Deny that the party nominating process was the exclusive reason for any increase in Obama's name recognition before he ran for president, and that the Commission is responsible for providing the same opportunities to third-party and independent candidates that major-party candidates have through their party nominating process. The Commission is otherwise without knowledge or information sufficient to form a belief regarding the remaining sentences of this paragraph.

72. This paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition and the Schoen Report, which speak for themselves, and therefore no response is

needed. To the extent that a further response is required, the Commission denies that this paragraph completely or accurately describes those documents, and denies the remaining factual allegations.

73. The first sentence of this paragraph contains plaintiffs' characterization of the Supplemental Notice of Disposition, which speaks for itself, and therefore no response is necessary. Regarding the second sentence, the Commission admits that the Commission would have been within its discretion to conduct further research about the referenced media-buying firm, but deny that any such research was necessary or required. The Commission is without knowledge or information sufficient to admit or deny the third, fourth and fifth sentences.

“* * * * *”

74. This paragraph contains plaintiffs' conclusions of law, as to which no response is necessary. To the extent that a response is necessary, deny that CPD violated the debate regulations as alleged in plaintiffs' administrative complaints, deny that all plaintiffs possess constitutionally cognizable injury from the described dismissals, and deny that plaintiffs are entitled to any relief. The Commission is without knowledge or information sufficient to admit or deny in full the allegations of injury to plaintiffs or the allegations regarding plaintiffs' intentions if the relief sought by plaintiffs should be granted.

75. This paragraph contains plaintiffs' conclusions of law, as to which no response is necessary. To the extent that a response is required, the Commission admits the second sentence and denies the first, third and fourth sentences.

**“FIRST CAUSE OF ACTION
FOR DECLARATORY AND INJUNCTIVE RELIEF
(28 U.S.C. §§ 2201-2202)”**

Regarding the heading that precedes paragraph 76, deny that 28 U.S.C. §§ 2201-2202 waive sovereign immunity and create an independent basis for jurisdiction.

76. The Commission incorporates its responses to paragraphs 1 through 75 inclusive, including the Commission's responses to paragraphs 1 through 137 of plaintiffs' Second Amended Complaint.

77. Deny.

78. Deny.

79. Deny.

**“SECOND CAUSE OF ACTION
FOR DECLARATORY AND INJUNCTIVE RELIEF
(28 U.S.C. §§ 2201-2202)”**

Regarding the heading that precedes paragraph 80, deny that 28 U.S.C. §§ 2201-2202 waive sovereign immunity and create an independent basis for jurisdiction.

80. The Commission incorporates its responses to paragraphs 1 through 75 inclusive (including its responses to paragraphs 1 through 137 of plaintiffs' Second Amended Complaint).

81. Deny.

82. Deny.

“REQUESTED RELIEF”

The Court should deny plaintiffs' requests for relief and grant no other relief to plaintiffs. Such relief is not warranted in this case because the Commission's dismissal of the administrative complaints in MUR 6869R and MUR 6942R and decision to decline to initiate a rulemaking in REG 2014-06 were not contrary to law. In addition, the relief requested in subparagraphs (c), (d), (e), and (f) regarding the administrative complaints exceeds the Court's authority under 52 U.S.C. § 30109(a)(8)(C), and the relief requested in subparagraphs (g)(2) and (h) regarding the rulemaking petition exceeds the Court's authority under the APA. *See* FEC response to paragraph 3, *supra*.

Affirmative Defenses

1. The Complaint fails to state a claim upon which relief may be granted.
2. One or more defendants lack standing to bring an asserted claim.
3. The relief requested by plaintiffs exceeds the Court's authority.

Respectfully submitted,

Lisa J. Stevenson
Acting General Counsel
lstevenson@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

/s/ Robert W. Bonham III
Robert W. Bonham III (D.C. Bar. No. 397859)
Senior Attorney
rbonham@fec.gov

Haven G. Ward (D.C. Bar. No. 976090)
Attorney
hward@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463
(202) 694-1650

August 25, 2017