

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

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CAMPAIGN LEGAL CENTER ET AL.,))	
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Plaintiffs,))	Civ. No. 23-2163 (EGS)
))	
v.))	
))	
FEDERAL ELECTION COMMISSION,))	ANSWER
))	
Defendant.))	
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DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint for Declaratory and Injunctive Relief (the “Complaint”) filed by plaintiffs Campaign Legal Center (“CLC”) and OpenSecrets. Any allegation not specifically responded to below is DENIED.

INTRODUCTION¹

1. This paragraph summarizes plaintiffs’ Complaint, the allegations of which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that plaintiffs brought this case under the Administrative Procedure Act (“APA”) alleging unreasonable delay by the FEC in responding to a Petition to Promulgate Rules for Reporting of “Cromnibus” Accounts dated August 5, 2019 (the “Petition”). DENY that the FEC has been unreasonably delayed in responding to the Petition and DENY that plaintiffs are entitled to the relief requested or any other relief. The Commission is without knowledge or information sufficient to admit or deny plaintiffs’ allegation in the footnote in this paragraph that the Center

¹ The FEC has included the headings from the Complaint for the sole purpose of assisting in the reading of this answer and does not admit the accuracy of those headings.

for Responsive Politics and the National Institute on Money in Politics merged in 2021 to become OpenSecrets.

2. This paragraph contains plaintiffs' characterizations of, quotes from, and references to amendments made to the Federal Election Campaign Act ("FECA") in December 2014 pursuant to the Consolidated and Further Continuing Appropriations Act of 2015, P. L No. 113-235, 128 Stat. 2103, 2772 (2014) (the "Appropriations Act") concerning "separate, segregated" accounts (the "Special Purpose Accounts"), which speak for themselves, and so no response is required.

3. This paragraph contains plaintiffs' characterizations of and references to statutory provisions of FECA and publicly available information published by the FEC, which speak for themselves, and so no response is required.

4. This paragraph contains plaintiffs' characterizations of and references to the Appropriations Act amendments to FECA, which speak for themselves, so no response is required. This paragraph further contains plaintiffs' legal argument and legal conclusions, and so no response is required. To the extent a response is required, DENY that the referenced statutory changes demanded immediate rulemaking.

5. DENY that the Commission "did nothing." DENY the allegations in this paragraph to the extent they suggest that the FEC was required to promulgate rules pursuant to the Appropriations Act amendments and petitions concerning the Special Purpose accounts. ADMIT that the FEC has not promulgated rules construing the Appropriation Act.

6. This paragraph contains plaintiffs' characterizations of the allegations in the Petition, which speak for themselves, and so no response is required. Further, the summarized

allegations include plaintiffs' legal argument and legal conclusions, and so no response is required. To the extent a response is required, DENY.

7. This paragraph contains plaintiffs' characterizations of the allegations in the Petition, which speak for themselves, and so no response is required. The summarized allegations include plaintiffs' legal argument and legal conclusions, and so no response is required. To the extent a response is required, DENY that monitoring use of the referenced accounts is virtually impossible.

8. This paragraph contains plaintiffs' characterizations of the allegations in the Petition, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the Petition requested the promulgation of rules and proposed regulatory changes governing the Special Purpose Accounts.

9. ADMIT that plaintiff CLC and the Center for Responsive Politics (which plaintiffs alleged has been merged into plaintiff OpenSecrets) submitted comments on October 28, 2019 (the "October 2019 Comments"), and June 16, 2020. This paragraph contains plaintiffs' characterizations of these comments, which speak for themselves, and so no response is required.

10. ADMIT that the FEC has not granted or denied the Petition. DENY as to the remainder of the paragraph.

11. This paragraph contains plaintiffs' characterizations of publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a further response is required, DENY that determining the described money flow is effectively impossible.

12. ADMIT that the 2023-24 election cycle is underway; state that this paragraph contains plaintiffs' legal arguments and conclusions, and so no response is required as to them; and DENY as to the remainder of the paragraph.

13. This paragraph contains plaintiffs' legal arguments and conclusions, and so no response is required. To the extent a further response is required, DENY.

14. This paragraph contains plaintiffs' legal arguments and conclusions, and so no response is required. To the extent a response is required, DENY that the FEC has unreasonably delayed in violation of the APA. The last sentence of the paragraph summarizes the allegations set forth in the Complaint, which speaks for itself, and so no response is required.

JURISDICTION AND VENUE

15. ADMIT that 28 U.S.C. § 1331 provides federal question jurisdiction in the district court and that 28 U.S.C. § 2201 and 2202 provide authority for declaratory and injunctive relief. ADMIT that 5 U.S.C. § 701-706 provides authority for judicial review of agency actions. To the extent this paragraph contains plaintiffs' legal conclusions and legal arguments that relief is "proper" under these provisions, no response is required. To the extent a further response is required, DENY.

16. ADMIT.

PARTIES

17. The Commission is without knowledge or information sufficient to admit or deny CLC's description of its work in this paragraph.

18. The Commission is without knowledge or information sufficient to admit or deny CLC's description of its work in this paragraph.

19. The Commission is without knowledge or information sufficient to admit or deny CLC's description of its work in this paragraph.

20. The Commission is without knowledge or information sufficient to admit or deny CLC's description of its work in this paragraph.

21. The Commission is without knowledge or information sufficient to admit or deny CLC's description of its work in this paragraph.

22. The Commission is without knowledge or information sufficient to admit or deny OpenSecrets' description of its work in this paragraph.

23. The Commission is without knowledge or information sufficient to admit or deny OpenSecrets' description of its work in this paragraph.

24. The Commission is without knowledge or information sufficient to admit or deny OpenSecrets' description of its work in this paragraph.

25. The Commission is without knowledge or information sufficient to admit or deny OpenSecrets' description of its work in this paragraph.

26. The Commission is without knowledge or information sufficient to admit or deny plaintiffs' description of their work in the first and second sentences of this paragraph.

Sentences three and four of this paragraph contain plaintiffs' legal arguments and legal conclusions, and so no response is required. To the extent a response is required to sentences three and four, DENY that the FEC has unreasonably delayed in violation of the APA and DENY the remainder.

27. This paragraph contains plaintiffs' characterizations of and references to FECA, which speaks for itself, and so no response is necessary. To the extent a response is required, ADMIT that the FEC is an independent agency of the United States government with jurisdiction

over the administration, interpretation, and civil enforcement of FECA pursuant to 52 U.S.C. § 30106(b).

STATUTORY AND REGULATORY FRAMEWORK

FECA Disclosure and Reporting Requirements

28. This paragraph contains plaintiffs' characterizations of, quotations from, and references to a judicial opinion, Senate Report, and FECA, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam) and Senate Report No. 93-689 contain the quoted language.

29. This paragraph contains plaintiffs' characterizations of, quotations from, and references to FECA, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that FECA contains the quoted language.

30. This paragraph contains plaintiffs' characterizations of, quotations from, and references to judicial opinions, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that *Buckley*, 424 U.S. at 66 and *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) contain the quoted language.

31. This paragraph contains plaintiffs' characterizations of, quotations from, and references to FECA, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that FECA contains the quoted language.

Administrative Procedure Act

32. This paragraph contains plaintiffs' description of and reference to the APA, which speaks for itself, and no response is required.

33. This paragraph contains plaintiffs' characterizations of, quotations from, and references to the APA, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the APA contains the quoted language.

34. This paragraph contains plaintiffs' characterizations of and references to the FEC's regulations, which speak for themselves, and so no response is required.

35. This paragraph contains plaintiffs' characterizations of, quotations from, and references to the FEC's regulations, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the cited regulations contain the quoted language.

36. This paragraph contains plaintiffs' characterizations of, quotations from, and references to the APA, which speaks for themselves, and so no response is required. To the extent a response is required, ADMIT that the APA contains the quoted language and DENY as to the remainder of the paragraph.

37. This paragraph includes plaintiffs' legal conclusions and arguments, and no response is required. This paragraph also includes plaintiffs' characterization of, quotations from, and references to judicial opinions, which speak for themselves, and no response is required. To the extent a response is required, ADMIT that the judicial opinion cited contains the quoted language but DENY that the judicial opinions cited set forth all considerations used by district courts to evaluate unreasonable delay claims.

38. This paragraph includes plaintiffs' legal conclusions and arguments, and so no response is required. This paragraph further includes plaintiffs' characterization of, quotations from, and references to judicial opinions, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the judicial opinion cited contains

the quoted language but DENY that the judicial opinions cited set forth all considerations used by district courts to evaluate unreasonable delay claims.

FACTUAL BACKGROUND

2015: FECA Amendments Establish National Party “Cromnibus” Accounts

39. This paragraph contains plaintiffs’ characterizations of, quotations from, and references to the Appropriations Act and FECA, which speaks for themselves, and so no response is required.

40. This paragraph contains plaintiffs’ characterizations of and references to FECA, which speaks for itself, and so no response is required.

41. This paragraph contains plaintiffs’ characterizations of and references to publicly available information published by the FEC, which speaks for itself, and so no response is required.

42. This paragraph contains plaintiffs’ characterizations of, quotations from, and references to FECA, which speaks for itself, and so no response is required.

43. This paragraph contains plaintiffs’ characterizations of, quotations from, and references to FECA, which speaks for itself, and so no response is required.

44. This paragraph contains plaintiffs’ legal arguments and legal conclusions, and so no response is required. To the extent a response is required, DENY.

2015-2019: FEC Fails to Promulgate Any Rules Implementing the Amendments

45. This paragraph includes plaintiffs’ characterization of and reference to FECA, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT.

46. This paragraph contains plaintiffs' characterizations of, quotations from, and references to publicly available information published by the FEC, which speaks for itself, and so no response is required.

47. This paragraph contains plaintiffs' legal arguments and legal conclusions, and so no response is required. This paragraph further contains plaintiffs' characterizations of and references to publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, DENY.

48. This paragraph contains plaintiffs' legal arguments and legal conclusion, and so no response is required. This paragraph further contains plaintiffs' characterizations of and references to publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, DENY that the FEC has failed to provide sufficient guidance to its analysts.

49. ADMIT that the Commission has not promulgated rules concerning the Special Purpose Accounts and ADMIT that the Commission has been petitioned to open a rulemaking. DENY the remainder of the paragraph.

50. This paragraph contains plaintiffs' characterizations of, quotations from, and references to CLC and Democracy 21's January 2015 comments, which speak for themselves, and so no response is required.

51. This paragraph contains plaintiffs' characterizations of and references to a memorandum drafted by the Office of General Counsel at the Commission and a Commission agenda, both of which speak for themselves, and so no response is required.

52. This paragraph contains plaintiffs' characterizations of, quotations from, and references to a letter drafted by CLC and Democracy 21, which speaks for itself, and so no

response is required. This paragraph further contains plaintiffs' legal arguments and legal conclusions, and so no response is required. To the extent a response is required, DENY that the Commission has acted unlawfully and ADMIT that the letter contains the quoted language.

53. This paragraph contains plaintiffs' characterizations of and references to a publicly available petition filed by a nonparty, which speaks for itself, and so no response is required.

54. This paragraph contains plaintiffs' characterizations of, quotations from, and references to a publicly available petition filed by a nonparty, which speaks for itself, and so no response is required.

55. This paragraph contains plaintiffs' characterizations of and references to a publicly available petition filed by a nonparty as well as a Notice of Availability published by the FEC on October 7, 2016 (the "Notice of Availability), both of which speak for themselves, and so no response is required. This paragraph further cites an FEC regulation, which speaks for itself, and so no response is required.

56. This paragraph contains plaintiffs' characterizations of and references to comments submitted by CLC and Democracy 21 in January 2017 in response to the Notice of Availability, which speak for themselves, and so no response is required. This paragraph further contains plaintiffs' legal arguments and legal conclusions, and so no response is required. To the extent a response is required, DENY that the Commission has acted unlawfully and ADMIT the letter contains the quoted language.

57. This paragraph contains plaintiffs' characterizations of and references to publicly available comments submitted by nonparties in response to the Notice of Availability, which speak for themselves, and so no response is required.

2019: Plaintiffs' Petition to Promulgate Rules for Reporting of "Cromnibus" Accounts

58. ADMIT that the public comment period for the petition filed by Perkins Coie closed in January 2017, and ADMIT that the Commission did not promulgate rules in response to the petition. DENY the remainder of the paragraph.

59. This paragraph contains plaintiffs' reference to the Petition, which speaks for itself, and so no response is required. DENY as to the remainder of the paragraph.

60. This paragraph contains plaintiffs' characterization of and references to the Petition, which speaks for itself, and so no response is required.

61. This paragraph contains plaintiffs' characterizations of and references to the October 2019 Comments, which speak for themselves, and so no response is required.

62. This paragraph contains plaintiffs' legal arguments and legal conclusion, and so no response is required. This paragraph further contains plaintiffs' characterizations of and references to publicly available data filed by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, DENY.

63. This paragraph contains plaintiffs' characterizations of and references to FECA, and so no response is required. To the extent that the factual allegations suggest that the national party committees are not required to report total receipts, disbursements, and cash-on-hand in the course of their normal reporting cycles, DENY.

64. This paragraph contains plaintiffs' characterizations of and references to publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the public has access to publicly filed information permitting it to access information about total receipts, disbursement, and cash-on-hand for a national party committee's Special Purpose Account.

65. This paragraph contains plaintiffs' characterizations of and references to publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, DENY that the task of getting information about total receipts, disbursement, and cash-on-hand for a national party committee's Special Purpose Account is "effectively impossible"; state that the Commission is without knowledge or information sufficient to admit or deny this paragraph to the extent it makes factual allegations regarding the ability of plaintiffs or others "to automate the data-collection process"; and DENY the remainder of the paragraph.

66. This paragraph contains plaintiffs' characterizations of, quotations from, and references to the Petition and to publicly available information published by the FEC, both of which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the cited sources contain the quoted language.

67. The introduction to this paragraph contains plaintiffs' characterizations of the Petition and October 2019 Comments, both of which speak for themselves, and so no response is required.

a. Subsection a of this paragraph contains plaintiffs' characterizations of, quotations from, and references to the Petition and to publicly available information published by the FEC and cited by plaintiffs, both of which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the cited sources contain the quoted language.

b. Subsection b of this paragraph contains plaintiffs' characterizations of, quotations from, and references to plaintiffs' October 2019 Comments and to publicly available information published by the FEC and cited by plaintiffs, both of which speak for themselves,

and so no response is required. To the extent a response is required, ADMIT that the cited sources contain the quoted language.

c. Subsection c of this paragraph contains plaintiffs' characterizations of, quotations from, and references to plaintiffs' October 2019 Comments and to publicly available information published by the FEC and cited by plaintiffs, both of which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the cited sources contain the quoted language.

d. Subsection d of this paragraph contains plaintiffs' characterizations of, quotations from, and references to the Petition and to publicly available information published by the FEC and cited by plaintiffs, both of which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the cited sources contain the quoted language.

e. Subsection e of this paragraph contains plaintiffs' characterizations of, quotations from, and references to the Petition and to publicly available information published by the FEC and cited by plaintiffs, both of which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the cited sources contain the quoted language.

68. This paragraph contains plaintiffs' characterizations of, quotations from, and references to the Petition and to FECA, both of which speak for themselves, and so no response is required.

69. This paragraph contains plaintiffs' characterizations of and references to the Notice of Availability, which speaks for itself, and so no response is required. To the extent a

response is required, ADMIT that the comment period for the Notice of Availability closed October 28, 2019.

70. This paragraph contains plaintiffs' characterizations of publicly available comments submitted by nonparties in response to the Notice of Availability, which speak for themselves, and so no response is required.

71. DENY.

72. This paragraph contains plaintiffs' legal arguments and legal conclusions, and so no response is required. This paragraph further contains plaintiffs' characterizations of and references to FECA and to publicly available information published by the FEC, both of which speak for themselves, and so no response is required. To the extent a response is required, DENY that party committees are effectively concealing information.

73. The first two sentences of this paragraph contain plaintiffs' characterizations of publicly available information published by the FEC, which speaks for itself, and so no response is required.

a. Subsection a of this paragraph contains plaintiffs' characterizations of, quotations from, and references to publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the cited sources include the quoted language.

b. Subsection b of this paragraph contains plaintiffs' characterizations of, quotations from, and references to publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the cited sources include the quoted language.

c. Subsection c of this paragraph contains plaintiffs' characterizations of, quotations from, and references to publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the cited sources include the quoted language.

d. Subsection d of this paragraph contains plaintiffs' characterizations of, quotations from, and references to publicly available information published by the FEC, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the cited sources include the quoted language.

74. This paragraph contains plaintiffs' characterizations of publicly available information published by the FEC, which speaks for itself, and no response is required. DENY as to the remainder of the paragraph.

75. This paragraph contains plaintiffs' legal arguments and legal conclusions, and so no response is required. To the extent a response is required, DENY that the Commission has acted unlawfully; DENY that the FEC has unreasonably delayed in responding to the Petition; and DENY as to the remainder of the paragraph.

CAUSE OF ACTION

Count I: Unreasonable Delay, 5 U.S.C. § 706(1)

76. This paragraph repeats and realleges paragraphs 1-75 of the Complaint. The Commission repeats and realleges its responses to paragraphs 1-75 as if set forth fully herein.

77. This paragraph contains plaintiffs' characterizations of, quotations from, and references to FECA and to the FEC's regulations, which speak for themselves, and so no response is required.

78. This paragraph contains plaintiffs' characterizations of, quotations from, and references to the APA and the FEC's regulations, which speak for themselves, and so no response is required.

79. This paragraph contains plaintiffs' characterizations of, quotations from, and references to the APA and the FEC's regulations, which speak for themselves, and so no response is required.

80. This paragraph contains plaintiffs' legal arguments and legal conclusions, and so no response is needed. To the extent a response is needed, ADMIT that plaintiffs filed the Petition in 2019 and DENY as to the remainder of the paragraph.

81. This paragraph contains plaintiffs' legal arguments and legal conclusions, and so no response is needed. This paragraph further contains plaintiffs' characterizations of, quotations from, and references to the APA, and so no response is needed. To the extent a response is required, ADMIT that the APA contains the quoted language and DENY as to the remainder of the paragraph.

REQUESTED RELIEF

With regard to the Requested Relief section of the Complaint, DENY that the FEC has acted unlawfully; DENY that the plaintiffs are entitled to the relief requested or any other relief; and DENY as to the remainder of the allegations.

Respectfully submitted,

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