

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Ralph Nader	:
53 Hillside, Winsted, Connecticut 06098,	:
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Plaintiff,	:
	:
v.	:
	:
Federal Election Commission,	:
999 E Street, NW, Washington, DC, 20463	:
	:
Defendant.	:
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Civil Action No. \_\_\_\_\_

**COMPLAINT**

**INTRODUCTION**

1. This lawsuit is brought against the Federal Election Commission (“FEC”), to remedy the agency’s wrongful dismissal of Plaintiff’s administrative complaint against individuals and entities affiliated with the Democratic Party, who made, solicited or accepted millions of dollars in unreported and unlawful contributions and expenditures during the 2004 General Election (collectively, the “Respondents”).

2. In clear violation of the Federal Election Campaign Act of 1971 (“FECA” or the “Act”) and its own regulations, the agency failed to serve the administrative complaint on certain Respondents, delayed serving other Respondents for several months, and then relied on its own failure and delay as grounds for dismissal. By definition, therefore, the FEC’s wrongful dismissal was contrary to law, and reversal is necessary for that reason alone.<sup>1</sup>

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<sup>1</sup> Plaintiff’s allegations that the FEC failed to serve the administrative complaint on the law firm Respondents and others rely on the representations of Attorney Roy Q. Luckett of the agency’s General Counsel’s office, as set forth in the Affidavit of Counsel Oliver B. Hall submitted in support of this Complaint. Further, the record discloses no indication that the agency served such Respondents.

3. Reversal is also necessary because the FEC's conclusion that it had no reason to believe Respondents violated the Act was arbitrary and capricious and an abuse of discretion. The FEC's own General Counsel concluded that the violations alleged in the administrative complaint are "based on a viable theory." Further, the agency easily could have confirmed that Respondents committed such violations by serving the administrative complaint upon them and obtaining a response. Instead, for nearly two years prior to its wrongful dismissal, the FEC failed to conduct any investigation whatsoever, and then concluded that "the available information" does not indicate that Respondents committed the alleged violations. On the contrary, the administrative complaint provides reason to believe that Respondents violated the Act, and the FEC has a statutory duty to investigate the allegations and evidence set forth therein.

4. The administrative complaint, which the FEC designated as Matter Under Review ("MUR") 6021, alleges that Respondents Democratic National Committee ("DNC") and Kerry for President 2004, Inc. (the "Kerry-Edwards Campaign") planned, directed and participated in a coordinated nationwide effort to oppose the 2004 independent presidential campaign of Ralph Nader and Peter Miguel Camejo (the "Nader-Camejo Campaign"). Respondents' goal was to help the Kerry-Edwards Campaign win the 2004 presidential election by denying voters the choice of voting for a competing candidacy, and by convincing "progressive" voters not to vote for the Nader-Camejo ticket. To achieve that goal, Respondents organized state court or administrative challenges to Nader-Camejo nomination papers in 18 states, and launched a nationwide communications campaign that expressly advocated against the Nader-Camejo candidacy. In the course of such conduct, Respondents violated numerous provisions of the Act.

5. The FEC's wrongful dismissal of the administrative complaint caused Plaintiff direct injury. Despite being presented with clear evidence that Respondents committed numerous

violations of the Act, including knowing and willful violations, and that certain Respondents may have criminally interfered with Plaintiff's 2004 presidential campaign, the FEC failed to conduct an investigation, and also declined Plaintiff's request that it refer this matter to the Justice Department. The FEC thus deprived Plaintiff of the protection of federal law, and prevented Plaintiff from accessing information that Respondents are required by law to disclose. Further, as set forth below, the FEC's wrongful dismissal threatens Plaintiff with imminent harm, because certain Respondents continue to pursue enforcement of a costs judgment that they fraudulently procured against Plaintiff as a result of conduct that violated the Act.

### **PARTIES**

6. Plaintiff Ralph Nader was an Independent candidate for President of the United States in the 2004 presidential election. Mr. Nader also ran for President in 2000 as a candidate of the Green Party, and in 2008 as an Independent candidate. Mr. Nader continues to advocate on behalf of minor party and independent candidates, and may run for office again.

7. Defendant Federal Election Commission is a federal agency created under the statutory authority of FECA. 2 U.S.C. § 437c. The FEC is responsible for ensuring compliance with the Act, including its reporting requirements, its prohibitions against corporate and labor union contributions, its limitations on individual contributions, and its requirements that political committees register with and make disclosures to the agency. 2 U.S.C. § 431 *et seq.* The FEC also has authority to refer matters involving knowing and willful violations of the Act to the Justice Department for criminal prosecution. 2 U.S.C. § 437g(a)(5)(C).

## JURISDICTION AND VENUE

8. This action arises under FECA and the Declaratory Judgment Act, 2 U.S.C. § 431 *et seq.*; 28 U.S.C. § 2201. The jurisdiction of this Court is conferred by 2 U.S.C. § 437g and 28 U.S.C. § 1331.

## ALLEGATIONS

### Summary of Underlying Allegations in the Administrative Complaint

9. Respondents are members, allies or affiliates of the Democratic Party who engaged in a coordinated nationwide effort to oppose the Nader-Camejo Campaign during the 2004 presidential election. Ad. Com. 2. Respondents' goal was to help Democratic candidates John Kerry and John Edwards win the election by denying voters the choice of voting for a competing candidacy, and by convincing "progressive" voters not to vote for the Nader-Camejo ticket. Ad. Com. 2. To achieve their goal, Respondents organized legal or administrative challenges to Nader-Camejo nomination papers in 18 states, and launched a nationwide communications campaign that expressly advocated against the Nader-Camejo candidacy. Ad. Com. 2-20; ¶¶ 155-71.

10. Respondents' effort to oppose the Nader-Camejo Campaign was part of a campaign strategy jointly planned and executed by Respondents DNC and the Kerry-Edwards Campaign. Ad. Com. ¶¶ 155-71. Approximately three dozen leaders and organizers of Respondents' effort met at the Four Seasons Hotel in Boston on July 26, 2004 to coordinate plans and discuss the details of their strategy. Ad. Com. ¶ 156. Respondent Robert Brandon, a DNC consultant, organized the meeting, and the DNC paid for it. Ad. Com. ¶¶ 156.

11. The Democratic National Convention began the same day as Respondents' Four Seasons meeting, and was being held across town at Boston's Fleet Center. Ad. Com. ¶ 159.

Respondents planned to use the convention as a platform to introduce their litigation strategy to delegates from state Democratic Parties, whom they would enlist to file ballot access challenges against the Nader-Camejo Campaign, and to solicit financial support from major party donors. Ad. Com. ¶ 159. Respondents prepared a memo for this purpose, which they later circulated at the convention. Ad. Com. ¶ 160.

12. The memo outlined Respondents' comprehensive litigation and communications strategy against the Nader-Camejo Campaign. Ad. Com. ¶ 160. The memo stated that Respondents would coordinate and finance their activities with three Section 527 organizations they had established. Ad. Com. ¶ 160. One was The Ballot Project, which would coordinate Respondents' litigation strategy and recruit law firms and lawyers to challenge Nader-Camejo nomination papers in as many states as possible. Ad. Com. ¶ 160. The other two were the National Progress Fund and Uniting People for Victory, which would coordinate and finance Respondents' communications campaign.<sup>2</sup> Ad. Com. ¶ 160. The memo further stated that Respondents would work to convince Nader-Camejo supporters that the independent candidates were "in bed with Republicans," a message Democratic consultant Stanley Greenberg found most effective in polling he conducted prior to the Four Seasons meeting. Ad. Com. ¶ 160.

13. By relying on Section 527 organizations and others, Respondents could present their opposition to the Nader-Camejo Campaign to voters – and to the FEC – as an ostensibly independent, "grassroots" effort, when in fact, the administrative complaint alleges, it was an integral part of a nationwide campaign strategy planned and executed by the DNC and the Kerry-Edwards Campaign. Ad. Com. ¶¶ 155-71. Respondents thus violated numerous provisions of the Act.

***Respondents' Use of Unlawful and Unreported Corporate Contributions to Finance Ballot Access Litigation Against the Nader-Camejo Campaign***

14. To achieve their goal of denying voters the choice of voting for the Nader-Camejo ticket, Respondents organized state court or administrative challenges to Nader-Camejo nomination papers in 18 states, including Arizona, Arkansas, Colorado, Florida, Illinois, Iowa, Maine, Michigan, Mississippi, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, Washington, West Virginia and Wisconsin. Ad. Com. ¶ 164. In the course of such conduct, Respondents made, solicited or accepted millions of dollars in unreported and unlawful contributions and expenditures to benefit the Kerry-Edwards Campaign.

15. FECA defines a campaign contribution to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. 431(8)(A)(i). Applying this provision to ballot access challenges, the FEC has determined that:

a candidate’s attempt to force an election opponent off the ballot so that the electorate does not have an opportunity to vote for that opponent is as much an effort to influence an election as is a campaign advertisement derogating that opponent. FEC Advisory Opinion 1980-57.

Respondents’ concerted effort to force the Nader-Camejo ticket off the ballot for the benefit of the Kerry-Edwards Campaign thus constitutes an effort to influence the 2004 presidential election. Respondents’ contributions and expenditures in connection with that effort, including the value of the legal services rendered by Respondent law firms in the 18 states where Respondents challenged Nader-Camejo nomination papers, are therefore subject to the Act’s reporting requirements and limitations and prohibitions. 2 U.S.C. §§ 434; 441a; 441b; *see* FEC AO 1980-57 (funds solicited by Democratic Party to finance candidate’s litigation challenging

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<sup>2</sup> A fourth Section 527 organization, Americans for Jobs, was originally established to fund communications opposing Howard Dean during the 2004 Democratic primaries, but was terminated thereafter, and its remaining

opponent's ballot access are campaign contributions); FEC AO 1983-37 (funds are campaign contributions if used "to initiate legal action to remove an identified candidate from the ballot"); AO 2006-22 (the value of legal services law firm provides on behalf of a campaign committee in a court case addressing the ballot eligibility of another candidate is an in kind contribution).

16. In clear violation of the Act, Respondents failed to report millions of dollars in legal services rendered without charge by Respondent law firms that challenged Nader-Camejo nomination papers. 2 U.S.C. 434. Respondents also violated the Act by failing to report the value of Respondent law firm resources – including office space, support staff, computers, equipment, supplies and related materials – used by Respondent attorneys in connection with such challenges. *Id.* Respondents further violated the Act by making, soliciting or accepting such contributions and expenditures from incorporated law firm Respondents, in violation of the prohibition on corporate contributions and expenditures. 2 U.S.C. 441b(a); *see* AO 2006-22.

17. At least 95 lawyers from 53 law firms joined Respondents' litigation, filing 24 complaints to challenge Nader-Camejo nomination papers in 18 states. Ad. Com. ¶¶ 170, 172-307. In August 2004, with Respondents' litigation in full swing, The Ballot Project's president, Respondent Toby Moffett, told the *Washington Post* that Respondent law firms had already provided \$2 million in legal services, without charge. Ad. Com. ¶ 170. By Mr. Moffett's own estimation, therefore, the total value of the legal services that Respondent law firms unlawfully contributed to the Kerry-Edwards Campaign greatly exceeds \$2 million. None of these prohibited corporate contributions were reported. Ad. Com. 6.

18. In an apparent attempt to avoid the Act's reporting requirements and prohibitions and limitations, Respondents falsely denied that their ballot access challenges were part of a

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\$225,000 in funds was used to establish the National Progress Fund.

nationwide campaign strategy coordinated by the DNC and the Kerry-Edwards Campaign. For example, on August 17, 2004, the *New York Times* reported the following:

[Respondents'] legal strategies in most states are being developed by local Democrats, but The Ballot Project is helping them to find lawyers to work pro bono and share information. "We're doing everything we can to facilitate lawyers in over 20 states," said Toby Moffett. ...

Because of federal campaign finance laws, [The Ballot Project] cannot coordinate its activities with either the Kerry campaign or the national Democratic Party, but the party approves of the legal challenges, said Jano Cabrera, a spokesman, and is closely monitoring Mr. Nader's progress.

On September 4, 2004, the *Associated Press* reported a similar story:

In dozens of states, Democratic state parties have backed a myriad of legal challenges to Nader's efforts to win ballot access, frustrating his supporters and draining his resources.

"Our state parties made the decision to make sure that if Ralph Nader wanted to get on the ballot, that he was playing by the rules," said Democratic National Committee spokesman Jano Cabrera. He said the national party is not funding the efforts but fully supports what state parties are doing.

Ad. Com. ¶ 166 & n.84. State Democratic Party chairs likewise denied that they had filed ballot access challenges in their states as part of a nationwide effort coordinated by the DNC and the Kerry-Edwards Campaign, and Respondent John Kerry denied that his campaign would participate in such litigation. Ad. Com. ¶ 168.

19. Evidence cited in the administrative complaint, however – including Respondents' own internal email records – suggests that the DNC and Kerry-Edwards Campaign not only coordinated, but also directly participated in Respondents' litigation against the Nader-Camejo Campaign. For example, on September 17, 2004, DNC employee Caroline Adler, who worked as a member of the Kerry-Edwards Campaign legal team in Washington, D.C., sent DNC staff an email with an attachment entitled "Script for Nader Petition Signers," which DNC employees used to help Respondents prepare challenges to Nader-Camejo nomination petitions.



Ad. Com. ¶ 167. The document's electronic properties indicate that DNC and Kerry-Edwards Campaign consultant Jack Corrigan was its author. Ad. Com. ¶ 167. Another email, sent by Kerry-Edwards Campaign deputy national director for northern New England Judy Reardon on September 12, 2004, indicates that Ms. Reardon herself drafted at least one of Respondents' complaints and coordinated with the Democratic Party officials and attorneys who filed it, including New Hampshire Democratic Party Chair and DNC official Kathleen Sullivan. Ad. Com. ¶ 168.

20. Further, contrary to Respondent DNC's public misrepresentations, the FEC's own records confirm that the DNC did in fact retain several law firm Respondents, including those that challenged Nader-Camejo nomination petitions in Ohio, Maine, Mississippi and Pennsylvania. Ad. Com. ¶ 166. Specifically, the DNC and its state party affiliates paid at least \$527,508 to retain Respondent law firms that challenged Nader-Camejo nomination papers in Florida, Maine, Mississippi, Ohio, Oregon and Pennsylvania. Ad. Com. 4. Internal Revenue Service ("IRS") records likewise confirm that The Ballot Project spent an additional \$331,398 on lawyers, expert witnesses and others, mainly in connection with Respondents' Florida challenge. Ad. Com. 5. Only a few of the 95 Respondent law firms that joined Respondents' litigation received payment for their services, however, and such payments are exclusive of the millions of dollars in unreported and unlawful legal services that Respondent law firms provided without charge.

21. DNC official and Maine Democratic Party Chair Dorothy Melanson provided further confirmation that the DNC and the Kerry-Edwards Campaign coordinated Respondents' litigation, by testifying under oath that DNC officials directed her to file a challenge in that state and paid the costs of her lawsuit, including attorneys' fees. Ad. Com. 4; Ad. Com. ¶ 114. Five

more DNC officials serving as state party chairs filed challenges in their own names, including those in Florida, Michigan, Mississippi, New Hampshire and Washington. Ad. Com. ¶ 165. In addition, lawyers recruited by the Kerry-Edwards Campaign to join the group Lawyers for Kerry filed challenges in Ohio, New Mexico and Pennsylvania. Ad. Com. ¶ 169.

22. The great majority of Respondents' ballot access challenges failed. Nineteen of Respondents' 24 complaints were dismissed. Further, in four out of five states where Respondents' challenges "succeeded," they did so by invoking unconstitutional statutes that federal courts later struck down (in Arizona and Ohio) and/or by interfering with the Nader-Camejo Campaign's efforts to comply with state election laws (in Ohio, Oregon and Pennsylvania). Ad. Com. ¶¶ 242-47, 257-63, 270, 280. But for such unconstitutional statutes and unlawful interference, the Nader-Camejo ticket would have been on the ballot in Arizona, Ohio, Oregon and Pennsylvania.

23. Respondents confirmed on numerous occasions, however, that the purpose of their ballot access challenges was not to vindicate valid claims, but rather to distract the Nader-Camejo Campaign and drain its resources, by forcing it to defend lawsuits that Respondents themselves did not expect to prevail. Ad. Com. ¶¶ 155, 157, 171. Respondents' apparently knowing and willful violations of the Act therefore provided them with a significant advantage in their effort to drain the Nader-Camejo Campaign of resources. By using prohibited corporate contributions to finance their litigation, which they failed to report, Respondents were free to file as many challenges as possible, unconstrained by the Act's prohibitions and limitations.

***Respondents' Unlawful Interference With the Nader-Camejo Campaign***

24. Because litigation alone was unlikely to prevent the Nader-Camejo Campaign from gaining ballot access, Respondents in states such as Ohio, Oregon and Pennsylvania

organized concerted efforts to prevent the independent candidates from complying with state election laws, by sabotaging their nomination petitions, disrupting their nominating conventions and/or falsely threatening or harassing their petition circulators. Ad. Com. ¶¶ 242-47, 257-63, 270, 280. In the course of such conduct, Respondents in Oregon committed further violations of the Act.<sup>3</sup>

25. In Oregon, Multnomah County Democratic Party official Moses Ross sent an email urging party members to attend a June 26, 2004 Nader-Camejo nominating convention under false pretenses, and to refuse to sign the independent candidates' nominating petitions, so that the convention would fall short of the number of verified attendees required by law. Ad. Com. ¶ 258. Mr. Ross and at least 100 others did so, causing the convention to fall short, even though legitimate Nader-Camejo supporters were denied entry by state officials. Ad. Com. ¶ 258.

26. When the Nader-Camejo Campaign next attempted to access Oregon's ballot by collecting signatures, as the state's law alternatively permits, Respondent Service Employees International Union ("SEIU") hired private investigators, who visited Nader-Camejo petition circulators at their homes and falsely threatened them with prison sentences if they submitted signatures that were invalidated. Ad. Com. ¶ 261. The private investigators delivered a letter from a law firm retained by SEIU, which falsely threatened the petition circulators with "conviction of a felony with a fine of up to \$100,000 or prison for up to five years." Ad. Com. ¶ 261.

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<sup>3</sup> Respondents' harassment of Nader-Camejo petition circulators in Ohio is fully recounted in the administrative complaint. Ad. Com. 68-70, ¶¶ 242-47. In Pennsylvania, unidentified individuals planted approximately 7,000 phony signatures in the Nader-Camejo nomination petitions, which paid petition circulators identified and withdrew prior to submission. Ad. Com. ¶ 280. Further, as discussed *infra*, Respondents' Pennsylvania challenge was the product of a criminal conspiracy to deny the Nader-Camejo ticket ballot access, which was hatched before the independent candidates had even submitted their nomination petitions.

27. SEIU and its affiliated Section 527 organization America Coming Together (“ACT”) took even more aggressively unlawful measures to disqualify Nader-Camejo nominating petitions. Ad. Com. ¶ 262. According to ACT employee William Gillis, high-level officers of both organizations (which shared the office space in which he worked) directed staffers to sabotage Nader-Camejo nominating petitions by deliberately signing them in a manner that would invalidate entire sheets of signatures. Ad. Com. ¶ 262. The Oregon Secretary of State subsequently invalidated hundreds of signatures on that basis. Ad. Com. ¶ 265.

28. Like Respondents in other states, SEIU and ACT publicly stated that their goal was to benefit the Kerry-Edwards Campaign by denying ballot access to the Nader-Camejo Campaign. For example, an ACT spokesperson told *CBS News* in April 2004, “If we think it gets to a point where we need to step in and mobilize to make sure [the Nader-Camejo ticket] doesn’t get on the ballot, then we will.” Ad. Com. ¶ 257. SEIU also endorsed and publicly committed its resources to electing John Kerry in 2004, and SEIU intervened in proceedings to challenge the Nader-Camejo Oregon nomination petitions. Ad. Com. ¶ 268. Further, according to SEIU’s own documents, “SEIU gave \$1 million to the DNC.” Ad. Com. ¶ 268.

29. The Act prohibits labor organizations such as SEIU from making contributions to a national political party, and contributions by SEIU’s political action committee to political parties are limited to \$15,000. 2 U.S.C. §§ 441b(a), 441a(a)(2)(B). Therefore, all contributions and expenditures by SEIU in connection with its effort to deny the Nader-Camejo ticket ballot access in Oregon or elsewhere, including compensation paid to the law firm that SEIU retained to “investigate” Nader-Camejo petitioners and to intervene in the Oregon proceedings, compensation paid to SEIU staff that participated in Respondents’ effort to deny Nader-Camejo

ballot access, and any other thing of value that SEIU contributed to Respondents' effort violated the Act. *Id.* In addition, SEIU's \$1 million contribution to the DNC violated the Act. *Id.*

***Respondents' Communications Against the Nader-Camejo Campaign***

30. To achieve their goal of convincing "progressive" voters not to vote for the Nader-Camejo ticket, Respondents launched a nationwide communications campaign that expressly advocated against the independent candidates. Ad. Com 8-17. In the course of such conduct, Respondents made or accepted, and failed to report, hundreds of thousands of dollars in unlawful contributions and expenditures. Ad. Com. 8-17.

31. Like their litigation against the Nader-Camejo Campaign, Respondents planned and coordinated the details of their communications strategy during their July 26, 2004 meeting at Boston's Four Seasons Hotel. Ad. Com. ¶ 157. Democratic pollster Stanley Greenberg presented his findings to the attendees, including Respondent Robert Brandon, the DNC consultant who housed both The Ballot Project and Uniting People for Victory in his offices. Ad. Com. ¶¶ 156, 160. Greenberg's message that the Nader-Camejo Campaign was "in bed with Republicans" became the predominant theme of Respondents' communications. Ad. Com. 11.

32. To execute Respondents' communications strategy, the National Progress Fund and Uniting People for Victory hired political consultants and pollsters, produced press materials and advertisements, and paid to broadcast these advertisements on television, radio and other media outlets throughout the country. Ad. Com. 8-9. For example, the National Progress Fund paid Stanley Greenberg's firm \$25,000 in June 2004, and The Ballot Project paid Greenberg's firm another \$10,000 in July 2004. Ad. Com. ¶ 160. To further publicize Respondents' message, the National Progress Fund established the website [www.thenaderfactor.com](http://www.thenaderfactor.com), while Uniting People for Victory established [www.upforvictory.com](http://www.upforvictory.com). Ad. Com. 9.

33. Both the National Progress Fund and Uniting People for Victory produced advertisements containing express advocacy against the Nader-Camejo Campaign and in support of the Kerry-Edwards Campaign. The National Progress Fund produced and broadcast at least eight different radio and television advertisements, which included statements such as: “Ralph Nader’s candidacy in 2000...helped put George Bush in office”; “by supporting Ralph Nader, I actually helped George Bush”; “I made a mistake supporting Ralph Nader, because it helped George Bush”; and “After all the good he has done, Ralph Nader’s legacy could be reduced to four more years of George Bush.” Ad. Com 11-12. The unambiguous meaning of this language – and the message of the advertisements themselves – was that progressive voters should not vote for Ralph Nader.

34. Uniting People for Victory primarily produced advertisements in the form of “open letters” to Nader-Camejo supporters, and developed anti-Nader-Camejo/pro-Kerry-Edwards talking points, fact sheets, flyers, letters to the editor and related materials. Ad. Com. 15. These advertisements and materials included statements such as, “Voting for John Kerry and John Edwards is the only choice for those of us who want to safeguard progressive values,” and “Citizens who believe in a progressive agenda should vote for John Kerry. A vote for Nader could result in four more years of George Bush.” Ad. Com. 15.

35. The National Progress Fund made expenditures of \$516,334 to finance Respondents’ communications. Ad. Com. 10. Uniting People for Victory (and its affiliated political committee United Progressives for Victory) made expenditures of approximately \$235,000 for the same purpose. Ad. Com. 15.

***Respondents’ Unlawful Use of Section 527 Organizations to Coordinate and Finance Their Opposition to the Nader-Camejo Campaign***

36. Neither the National Progress Fund nor Uniting People for Victory engaged in any advocacy that was unrelated to Respondents' goal of persuading Nader-Camejo supporters to vote for the Kerry-Edwards ticket. Just as Respondents established The Ballot Project specifically to coordinate their litigation against the Nader-Camejo Campaign, Respondents also established the National Progress Fund and Uniting People for Victory specifically to coordinate their communications against the Nader-Camejo Campaign. All three Section 527 Respondents terminated following the conclusion of the 2004 election, without engaging in any other activity.

37. Because The Ballot Project, the National Progress Fund and Uniting People for Victory received contributions and made expenditures in excess of \$1000, and because they primarily engaged in activity intended to help elect John Kerry as a candidate in the 2004 General Election, these Section 527 Respondents – like Respondents' fourth Section 527 organization Americans for Jobs – fall within the Act's definition of "political committee," and satisfy the "major purpose" test established by the Supreme Court. 2 U.S.C. § 431; *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (an organization is a political committee under FECA if its major purpose is to influence the election of federal candidates).

38. In clear violation of the Act, The Ballot Project, the National Progress Fund, Uniting People for Victory and Americans for Jobs each failed to register as political committees, and each of these Section 527 Respondents also violated the Act's reporting requirements and prohibitions and limitations. 2 U.S.C. §§ 431, 433, 434, 441a, 441b.

39. Further, the violations committed by the individual Respondents who established The National Progress Fund and Uniting People for Victory appear to be knowing and willful. For example, in order to avoid triggering the \$1,000 threshold for registration of political committees, the National Progress Fund improperly reported its express advocacy against the

Nader-Camejo Campaign as electioneering communications, thus plainly misrepresenting the content and purpose of its advertisements. Ad. Com. 12. Although the Respondents who established Uniting People for Victory did register with the FEC in June 2004 (under the name “United Progressives for Victory”), one month later they established their Section 527 organization (under the name “Uniting People for Victory”), which they failed to register or operate in compliance with the Act. Ad. Com. 15. These Respondents also apparently failed to respond to a letter from the FEC, which requested that they identify “any affiliated or connected organization” – information that the letter states is “essential to full public disclosure of your federal election campaign finances.” Ad. Com. 16.

40. Once again, Respondents’ apparently knowing and willful violations of the Act provided them with a significant advantage in their effort to convince “progressive” voters to support the Kerry-Edwards Campaign instead of the Nader-Camejo Campaign. By using unregistered Section 527 organizations to finance their communications, Respondents were free to publicize express advocacy against the Nader-Camejo Campaign, unconstrained by the Act’s prohibitions on corporate and labor union contributions and its limitations on individual contributions.

***Respondents’ Violations of the Act***

41. The foregoing account, which is only a summary of the relevant allegations and evidence, clearly provided the FEC with reason to believe that Respondents committed the following violations, as set forth in the administrative complaint:

**Count 1** – Respondents DNC, the Kerry-Edwards Campaign, The Ballot Project, at least 95 lawyers from 53 law firms, 18 state or local Democratic Parties and an unknown number of DNC and Democratic Party employees made, solicited or accepted, and failed to report, millions of dollars in prohibited in kind contributions from the corporate law firm Respondents that provided legal services, without charge, in litigation initiated



against the Nader-Camejo Campaign, for the benefit of the Kerry-Edwards Campaign, in violation of 2 U.S.C. §§ 434, 441a and 441b;

**Count 2** – Respondent SEIU and its affiliated Section 527 organization ACT made, and failed to report, prohibited contributions and expenditures in connection with their effort to prevent the Nader-Camejo Campaign from accessing Oregon’s ballot, in violation of 2 U.S.C. §§ 434, 441a(a)(2)(B) and 441b(a), and further, SEIU made, and failed to report, a prohibited contribution of \$1,000,000 to Respondent DNC, in violation of 2 U.S.C. §§ 434, 441a(a)(2)(B) and 441b(a);

**Count 3** – Respondents National Progress Fund, Uniting People for Victory, The Ballot Project, Americans for Jobs and the individual Respondents who served as officers and employees of these organizations failed to register their Section 527 organizations as political committees, and failed to comply with the Act’s reporting requirements and prohibitions and limitations, in violation of 2 U.S.C. §§ 432, 434, 441a and 441b.

***Newly Discovered Evidence That Respondents’ Pennsylvania Challenge Was Prepared By Means of a Criminal Conspiracy to Misappropriate Taxpayer Funds and Resources for the Benefit of the Kerry-Edwards Campaign***

42. If the FEC entertained any doubt that it had reason to believe Respondents committed the foregoing violations, a Grand Jury Presentment filed by the Pennsylvania Attorney General on July 10, 2008 (“Presentment”) substantially confirmed that Respondents’ Pennsylvania challenge, at least, was intended to influence the 2004 presidential election for the benefit of the Kerry-Edwards Campaign. The Attorney General’s ensuing prosecution also provided clear, convincing and undisputed evidence that Respondents’ Pennsylvania challenge was prepared by means of a criminal conspiracy to misappropriate taxpayer funds and resources for the benefit of the Kerry-Edwards Campaign. Plaintiff therefore submitted two supplements to the administrative complaint, on September 24, 2008 (“Supp. 1”) and January 7, 2010 (“Supp. 2”), which summarized such newly discovered evidence.<sup>4</sup>

43. The Presentment includes detailed findings indicating that “a veritable army” of state employees – “as many as fifty [Pennsylvania House Democratic] Caucus staff members” – unlawfully prepared Respondents’ Pennsylvania challenge, which Respondent Reed Smith, LLP

filed, at taxpayer expense. Supp. 1 at 8. According to the sworn testimony of state employee Melissa Lewis, Respondent Efrem Grail, a partner in Reed Smith, coordinated this effort. Supp. 2 at 2. Reed Smith is one of the law firms that the DNC retained during the 2004 election, and the firm also represented John Kerry in at least one other matter arising from the 2004 election. Ad. Com. ¶ 286.

44. The Grand Jury based its findings on evidence such as the following email, which former Pennsylvania House Minority Whip Michael Veon sent to his staff after Respondents' Pennsylvania challenge removed the Nader-Camejo ticket from the ballot:

FYI... great job by our staff! This would never ever have been successful without your work. You have given John Kerry an even better opportunity to win this state... one of the most 5 [sic] important states to win this year. *That is a very significant fact and significant contribution by each one of you to the Kerry for president campaign...* you should take great pride in your efforts (emphasis added).

Supp. 1 at 9. This evidence that Respondents' Pennsylvania challenge was intended to influence the election, for the benefit of the Kerry-Edwards Campaign, could hardly be more clear. The Presentment also includes detailed findings that quantify the taxpayer funds and resources that were misappropriated in connection with Respondents' Pennsylvania challenge, including taxpayer-funded bonuses that were specifically paid to induce state employees to work on the challenge. Supp. 1 Ex. A 54-58.

45. Prior to the commencement of the Pennsylvania Attorney General's Grand Jury investigation, Respondent Efrem Grail and his colleagues submitted a bill of costs requesting that the Pennsylvania court order Mr. Nader and Mr. Camejo to pay \$81,102.19 in litigation costs that they purportedly incurred in connection with their challenge. Ad. Com. ¶ 282. These Respondents failed to disclose that state employees had prepared their challenge at taxpayer

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<sup>4</sup> The supplemented submitted on January 7, 2010 was incorrectly dated January 7, 2009.

expense, and the court awarded the requested costs. Ad. Com. ¶ 283. Thereafter, in July 2007, Respondent Reed Smith initiated attachment proceedings in the District of Columbia, in an attempt to seize the funds in Mr. Nader's personal bank accounts. Ad. Com. ¶ 284. Reed Smith continues to pursue such efforts, even following disclosure of the above-cited evidence indicating that state employees unlawfully prepared Respondents' Pennsylvania challenge, which Reed Smith filed, at taxpayer expense.

46. The supplements to the administrative complaint also provide clear, convincing and undisputed evidence that the same criminal conspiracy produced the challenge to 2006 Pennsylvania Green Party senatorial candidate Carl Romanelli's nomination petitions. Supp. 1 at 13. The Grand Jury found that the goal of that challenge, which was filed by the campaign counsel of Bob Casey for Senate, was "to enhance the electability of the Democratic nominee, Robert Casey." Supp. 1 at 13. Mr. Casey's campaign counsel thus worked on the challenge in cooperation with state employees who misappropriated taxpayer funds and resources for Mr. Casey's benefit. Supp. 1 at 13-14.

47. Thus far in the Pennsylvania Attorney General's ongoing investigation, 11 defendants have been convicted or pleaded guilty to numerous felony counts of criminal conspiracy, theft and conflict of interest. Based on such developments, the supplements to the administrative complaints named additional individual Respondents, and reiterated Plaintiff's request that the FEC refer this matter to the Justice Department for investigation of certain Respondents' knowing and willful violations of the Act and other federal laws, including 18 U.S.C. § 241 (conspiracy against rights) and 18 U.S.C. § 242 (deprivation of rights under color of law).

**The FEC's Arbitrary and Capricious Dismissal of the Administrative Complaint**

48. The FEC's arbitrary and capricious dismissal of the administrative complaint began with the agency's failure to perform its basic initial function of serving the respondent parties. The Act provides that the FEC "shall notify, in writing" parties alleged to have committed a violation "within 5 days after receipt of a complaint." 2 U.S.C. § 437g(a)(1). The FEC's regulations further specify that such notice must include a copy of the complaint. 11 C.F.R. § 111.5(a). In direct violation of the Act and its own regulations, however, the FEC failed to serve any of the law firm Respondents, as well as SEIU, the state Democratic Party Respondents and the individual named Respondents affiliated with the Section 527 Respondents.

49. The FEC violated the Act and its own regulations again by neglecting to serve The Ballot Project for nearly four months, and by failing to serve America Coming Together for more than six months. The FEC attributed its delay to an "administrative oversight," but its failure to serve the administrative complaint as required by law was no harmless error. Rather, as set forth below, the FEC relied on its failure to serve certain Respondents, and its delay in serving others, as grounds to dismiss the entire administrative complaint – nearly two years after it was filed, without conducting any investigation. Such dismissal was therefore contrary to law, and the FEC must be reversed on this ground alone.

50. The FEC apparently faulted Plaintiff for the length of the administrative complaint, as supplemented, but the filing is commensurate with the scope of Respondents' violations of the Act, which arise from a nationwide effort planned and coordinated by Respondents in Washington, D.C. and executed by additional Respondents in 18 states. Further, Respondents deliberately concealed the coordinated nature of their conduct, necessitating specific pleading and evidence to refute such concealment. The agency's willful failure even to

process the administrative complaint thus rewards Respondents – and penalizes Plaintiff – for the scope of their wrongdoing, and for their efforts to conceal it.

51. The FEC’s wrongful dismissal also requires reversal because the record plainly contradicts the agency’s conclusion that it had no reason to believe that Respondents violated the Act. The FEC’s factual and legal analysis is an exercise in selective amnesia, with the agency examining each allegation and piece of evidence in the administrative complaint anew, in isolation from all the others, and inevitably concluding that, “without more,” such individual allegations and pieces of evidence fail to establish that Respondents committed a single violation. In each case, however, there is more – *much* more – that the FEC simply disregarded. Further, the agency erred as a matter of law by requiring Plaintiff to submit evidence amounting to proof that Respondents violated the Act, when the administrative complaint clearly provides reason to believe that they committed such violations. The FEC therefore had a statutory duty to investigate, and its failure to do so was arbitrary, capricious and an abuse of discretion.

52. As if to provide cover for the patent insufficiency of its analysis, the FEC began by reciting the procedural history of proceedings that are not relevant to this matter, in which Plaintiff’s state tort and federal civil rights claims against certain Respondents were dismissed. Contrary to the FEC’s suggestion, however, the only ground upon which such claims were ultimately dismissed is that they were barred by the District of Columbia’s one- and three-year statutes of limitations. In fact, the D.C. Circuit noted that Plaintiff’s tort claims raise “interesting legal issues of first impression,” and expressly stated that its statute of limitations holding did not reach “the ultimate merits.” *Nader v. DNC*, 567 F.3d 692, 699, 702 (D.C. Cir. 2009). The D.C. Circuit subsequently dismissed Plaintiff’s federal claims in reliance on its limitations holding.<sup>5</sup>

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<sup>5</sup> See *Nader v. DNC*, 2009 U.S. App. LEXIS 24747 (D.C. Cir. Oct. 30, 2009); *Nader v. McAuliffe*, 2009 U.S. App. LEXIS 24737 (D.C. Cir. Oct. 30, 2009).

Such proceedings are plainly irrelevant, therefore, because the administrative complaint was filed well within the five-year statute of limitations governing this action.

***The FEC Wrongfully Dismissed Count 1 of the Administrative Complaint***

53. In clear violation of the Act and its own regulations, the FEC dismissed Count 1 of the administrative complaint, which alleges that Respondent law firms made millions of dollars in unlawful contributions and expenditures to benefit the Kerry-Edwards Campaign, without serving a single law firm Respondent – despite the conclusion of its General Counsel that the claims against such Respondents are “based on a viable theory.” The FEC’s duty to serve the administrative complaint on respondent parties is mandatory. 2 U.S.C. 437g(a)(1); 11 C.F.R. 111.5(a). Therefore, this error alone requires reversal.

54. The FEC compounded its error in failing to serve Respondent law firms by relying upon its supposed lack of information regarding such Respondents as grounds for dismissal. Thus, the FEC reasoned, the administrative complaint fails to specify “which firms allegedly provided free services or to whom, which of those firms are incorporated, and of those, which firms compensated their attorneys who worked on the ballot challenges.” Kerry An. 5; DNC An. 5. This assertion is patently false: the administrative complaint clearly specifies that Respondent law firms “provided their legal services for the benefit of the Kerry-Edwards Campaign,” and that, with one named exception, the 95 Respondent lawyers “apparently received normal compensation from their law firm employers.” Ad. Com. 92, ¶ 310. Further, the administrative complaint identifies each Respondent law firm and lawyer by name and provides their addresses. If the FEC actually doubted whether a particular Respondent law firm were incorporated, therefore, it could have resolved such doubt with nothing more than an internet connection and a few keystrokes.

55. The FEC also imposed an impossible burden by requiring direct evidence amounting to proof that Respondent law firms compensated Respondent lawyers who challenged Nader-Camejo nomination papers. No complainant has access to the billing records of private law firms. By contrast, the FEC easily could have obtained the relevant information by serving the administrative complaint upon the law firm Respondents, as it was required by law to do, and seeking their response. Failing that, the FEC could have subpoenaed the necessary documents.

56. The FEC declined to make such rudimentary inquiries because it reasoned that “any free attorney services may have been provided by volunteers without any sponsorship from their employers,” and that “without such information, there is no reason to believe a violation of the Act occurred, and therefore insufficient grounds to investigate the 2004 activities and billing practices” of the Respondent law firms. Kerry. An. 5; DNC An. 5. Such reasoning is plainly circular: the FEC declined to investigate Respondent law firms’ billing practices because it lacked information regarding Respondent law firms’ billing practices. The FEC was presented with specific and credible allegations that Respondents violated the Act, however, based on a legal theory that its own General Counsel deemed to be viable, and the agency had a statutory duty to investigate.

57. The FEC’s reasoning is also wrong as a matter of law. The value of legal services that Respondent law firms provided falls under the Act’s volunteer exception only if the attorneys employed by the law firms received no compensation for the services rendered. 2 U.S.C. 431(8)(B)(i). Respondent lawyers who received the usual compensation from their employer law firms while providing such services, by contrast, are not volunteers but paid employees, and the value of their services constitutes an in kind contribution by the Respondent law firms. 2 U.S.C. 431(8)(A)(ii) (the term ‘contribution’ includes “the payment by any person

of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose”); *see* AO 2006-22 (law firm’s payment of compensation to firm employees for legal services rendered to political committee free of charge is a contribution). Therefore, Respondent lawyers cannot be considered “volunteers” if they received normal compensation from Respondent law firms while working on Respondents’ challenges.

58. Even Respondent lawyers who qualified as volunteers under the Act by taking unpaid leaves of absence would still be prohibited from using corporate law firm resources, including office space, office equipment, office supplies and support staff services. Only one out of 95 named Respondent lawyers claimed to have taken such leave, and even that attorney may have used prohibited corporate resources. Ad. Com. 85 ¶ 287; 92, ¶ 310. Evidence in the record thus contradicts the FEC’s conclusion that it had no reason to believe that a violation occurred.

59. The FEC erred again by failing to investigate Respondent Reed Smith on the ground that the allegations against the firm are “contradictory.” Kerry An. 5-6; DNC An. 5-6. On the contrary, the allegations that Reed Smith billed its services to “charity, without charging any client,” and that the DNC retained the firm during the 2004 election, are not mutually exclusive. Kerry An. 6; DNC An. 6. Instead, the DNC could have – and did in fact – retain Reed Smith and pay the firm \$136,142, Ad. Com. 83, ¶ 286, while by its own admission, Reed Smith *also* provided \$1 million in unpaid legal services in connection with Respondents’ Pennsylvania challenge. Supp. 1 at 12. The FEC’s conclusions regarding Reed Smith thus rest on nothing more than a logical fallacy.

60. Furthermore, presented with sworn and undisputed testimony that Reed Smith partner Efreem Grail coordinated an unlawful effort to prepare Respondents’ Pennsylvania



challenge using funds and resources misappropriated from the taxpayers of Pennsylvania, for the benefit of the Kerry-Edwards Campaign, the FEC simply disregarded the evidence. *Compare* Supp. 2 at 2 *with* Kerry An. 9 n.1; DNC An. 8 n.1. The FEC further asserted that such conduct “does not constitute a FECA violation.” Kerry An. 9 n.1; DNC An. 8 n.1. Taxpayer funds and resources plainly fall within the Act’s definition of a contribution as “anything of value,” however, and Reed Smith’s failure to report the value of such contributions clearly violated the Act. 2 U.S.C. §§ 431(8)(A)(i), 434. Therefore, the FEC abused its discretion by disregarding the foregoing evidence.

61. Finally, the FEC’s analysis of Count 1 is flawed because the agency repeatedly confused Respondents’ mere *denials* with actual *refutation* of the claims against them. Kerry An. 9-10; DNC An. 9. Such unquestioning acceptance of Respondents’ unsupported assertions, which contradict evidence in the record, is a clear abuse of discretion.

***The FEC Wrongfully Dismissed Count 2 of the Administrative Complaint***

62. The FEC again violated the Act and its own regulations by dismissing Count 2 of the administrative complaint without even serving Respondent SEIU. Count 2 alleges that SEIU and Respondent ACT made illegal and unreported contributions in connection with their effort to prevent the Nader-Camejo Campaign from accessing Oregon’s ballot. Because the FEC’s duty to serve the administrative complaint on respondent parties is mandatory, this error alone requires reversal. 2 U.S.C. 437g(a)(1); 11 C.F.R. 111.5(a).

63. The FEC compounded its error in failing to serve SEIU by failing to inquire whether SEIU made unreported and unlawful expenditures as alleged in Count 2. The FEC thus deemed the allegations in Count 2 to be “insufficient,” because “the available information” does not establish that SEIU and ACT coordinated their Oregon efforts with the DNC or the Kerry-

Edwards Campaign. Kerry An. 11; DNC An. 11; ACT An. 3. Even if that were true, however, the Act prohibits labor organizations such as SEIU from making any “contribution *or expenditure* in connection with any election at which presidential and vice presidential electors...are to be voted for.” 2 U.S.C. § 441b(a) (emphasis added). Therefore, SEIU’s expenditures to influence the 2004 presidential election, as alleged in Count 2, violate the Act whether or not the labor union coordinated with the DNC and/or the Kerry-Edwards Campaign, 2 U.S.C. §§ 431(9)(A), 441b(a). By disregarding such violations, the FEC erred as a matter of law.

64. The FEC is obviously aware of the Act’s distinction between a “contribution” and an “expenditure,” because the agency itself applied the distinction in its analysis of whether ACT committed the violations alleged in Count 2. ACT An. 4-5. Indeed, the FEC appears to concede that it had reason to believe that ACT – and therefore SEIU – made expenditures in connection with Respondents’ efforts to deny the Nader-Camejo Campaign ballot access in Oregon, because the agency “determined not to proceed further” with respect to such violations, on the ground that ACT is “essentially defunct.” ACT An. 5. Even if that rationale were valid with respect to ACT, however, it is plainly inapplicable to SEIU, and cannot excuse the FEC’s disregard of the labor union’s prohibited expenditures.

65. Given that the FEC did not serve the administrative complaint on SEIU, the record also cannot support the agency’s conclusion that “the available information” fails to provide reason to believe that SEIU and ACT coordinated with the DNC and the Kerry-Edwards Campaign. The fact that SEIU’s Secretary-Treasurer is a DNC official, for instance, plainly establishes a factual predicate providing reason to believe that the two organizations may have coordinated Respondents’ Oregon efforts – particularly in view of evidence that the DNC was

coordinating similar efforts in other states. Yet the FEC rejected such evidence on the ground that it does not, “without more,” establish coordination. DNC An. 11. There is “more,” of course, but the FEC simply failed to investigate, because it had already violated the Act and its own regulations by failing to serve SEIU.

66. The FEC’s arbitrary and capricious dismissal of the claim that SEIU made an unreported and unlawful contribution of \$1 million to the DNC is even clearer. This claim relies, in part, on two of SEIU’s own documents, one of which states that “SEIU gave \$1 million to the DNC and has made large donations to groups that share our goals,” and another that states, “SEIU contributed \$1,000,000 to fund various DNC activities.” Ad. Com. Ex. 60-61. The FEC nevertheless dismissed this claim – without making any inquiry of SEIU – on the ground that such statements have “a number of possible meanings,” and that it “seems unlikely” that SEIU would commit such a violation. DNC An. 11.

67. To support such speculation, the FEC asserted that the foregoing claim “has been generally refuted by SEIU in a prior MUR.” DNC An. 11 (citing MUR 5612). That is patently false. The claim was never even addressed in MUR 5612 – much less was it “refuted”. The FEC also noted that its “disclosure database does not reveal any direct contributions by SEIU itself to the DNC,” and asserted that “we have no information to the contrary.” DNC An. 12. SEIU’s apparent failure to report its prohibited contribution to the DNC, however, is one of the violations that SEIU allegedly committed. Ad. Comm. 93-94, ¶ 313. Furthermore, the FEC certainly *could* have had information to confirm the alleged violation, had it served the administrative complaint on SEIU as required by law, and conducted an investigation.

*The FEC Wrongfully Dismissed Count 3 of the Administrative Complaint*

68. Once again violating the Act and its own regulations, the FEC dismissed Count 3 of the administrative complaint without serving the individual named Respondents who committed the violations alleged therein. Ad. Com. ¶ 322. Such Respondents served as the officers and directors of the Section 527 Respondents National Progress Fund, Uniting People for Victory, The Ballot Project and Americans for Jobs. Ad. Com. ¶¶ 142-54. Count 3 alleges that these individual named Respondents violated the Act by failing to register their Section 527 organizations, and by failing to comply with the Act's reporting requirements, prohibitions and limitations.<sup>6</sup> Because the FEC's duty to serve the administrative complaint on such Respondents is mandatory, its failure to do so is contrary to law and requires reversal. 2 U.S.C. 437g(a)(1); 11 C.F.R. 111.5(a).

69. The FEC asserted "prosecutorial discretion" to justify its dismissal of Count 3, on the ground that the Section 527 Respondents are "defunct." NPF An. 1; UPV An. 1; TBP An. 2; AFJ An. 1. The FEC's duty to serve the individual named Respondents is not discretionary, however, and therefore, prosecutorial discretion cannot possibly justify its failure to serve them. 2 U.S.C. 437g(a)(1); 11 C.F.R. 111.5(a). Moreover, even if the agency had such discretion, its rationale for declining to prosecute the Section 527 Respondents – that they are defunct – is plainly inapplicable to the individual named Respondents. Thus, the record cannot support the FEC's wrongful dismissal of Count 3 as against the individual named Respondents.

70. The FEC also asserted that "the age of the alleged violations would create problems of proof and raise obstacles under the five-year statute of limitations." The

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<sup>6</sup> The FEC erroneously asserted that Plaintiff alleges that ACT failed to register as a political committee. ACT An. 1.4. In fact, the administrative complaint makes that allegation against the Section 527 Respondents National Progress Fund, Uniting People for Victory, The Ballot Project and Americans for Jobs – not ACT. Ad. Com. 8-20; 98, ¶ 322.

administrative complaint was filed on May 30, 2008, however – only three and one-half years into the applicable five-year statute of limitations. It was the FEC’s own “administrative oversight” that delayed service of the administrative complaint on The Ballot Project and ACT for several months thereafter. But even that delay need not present “problems of proof,” because the administrative complaint meticulously documents the violations alleged in Count 3 by citation to the relevant, publicly available IRS documents and other materials, and even itemizes each unlawful contribution that the individual named Respondents accepted on behalf of their Section 527 organizations. Ad. Com. 8-20. The FEC could easily confirmed such violations simply by verifying the evidence included in the administrative complaint.

71. Because the record does not support the FEC’s conclusory assertion that it would encounter “problems of proof,” its wrongful dismissal of Count 3 was not only contrary to law, but a clear abuse of discretion. The FEC’s failure to investigate the apparently knowing and willful violations alleged in Count 3 rewards the individual named Respondents who committed them, while penalizing Plaintiff for the scope of such violations, and for Respondents’ attempts to conceal them. Therefore, the FEC’s wrongful dismissal of Count 3 was arbitrary and capricious.

#### **Harm to Plaintiff**

72. The FEC’s wrongful dismissal of the administrative complaint nearly two years after it was filed, without conducting any investigation, amounts to a total abdication of the agency’s statutory duty to enforce the Act. The administrative complaint presented the FEC with clear evidence that Respondents engaged in a concerted nationwide effort to neutralize Plaintiff’s 2004 presidential campaign, which Respondents funded almost entirely with unlawful and unreported contributions and expenditures, and yet the agency did not even perform its basic

initial function of serving the respondent parties as required by law and its own regulations. Such official dereliction not only deprived Plaintiff of the protection of the law, but invites further and even more flagrant violations of federal campaign finance laws in the future. In effect, the FEC stamped its imprimatur upon an unlawful, mercenary, hit-and-run-style of electoral politics, which freely operates outside the law, without fear of consequence. *See, e.g.* Charles Lewis, *Political Mugging in America, Anatomy of an "Independent" Smear Campaign*, CENTER FOR PUBLIC INTEGRITY (March 4, 2004) ("In the 21<sup>st</sup> century in the United States of America, it is still astonishingly easy to assassinate a political opponent's character, with little or no accountability or basis in fact") (attached to administrative complaint as Exhibit 25).

73. The reputational harm sustained by Plaintiff as a result of Respondents' unlawful conduct is thoroughly documented in the administrative complaint. By failing to investigate such conduct, and by failing to enforce the Act in this matter, the FEC has denied Plaintiff access to information that Respondents are required by law to disclose, thus causing Plaintiff ongoing reputational harm.

74. The FEC's wrongful dismissal, and its failure to refer this matter to the Justice Department as Plaintiff requested, also threatens Plaintiff with imminent harm because, as set forth herein, certain Respondents continue to pursue enforcement of a costs judgment that they procured against Plaintiff as a result of conduct that violated the Act.

**COUNT I**  
**(Wrongful Dismissal)**

75. Plaintiff repeats and realleges the allegations of paragraphs 1 through 74, as if fully set forth herein.

76. The FEC's dismissal of the administrative complaint is arbitrary and capricious, an abuse of discretion, and contrary to law in violation of 437g(a)(8)(A).

77. The FEC's dismissal of the administrative complaint was based on an impermissible interpretation of the Federal Election Campaigns Act and was contrary to law in violation of 437g(a)(8)(A).

WHEREFORE, Plaintiff requests that this Court: 1) declare that the FEC's dismissal of the administrative complaint was contrary to law; 2) remand the matter to the FEC with an order to conform to the declaration within 30 days; and 3) grant such other and further relief as may be appropriate, including an award of attorneys' fees and litigation expenses pursuant to 28 U.S.C. § 2412(d)(1)(A).

Dated: June 11, 2010

Respectfully Submitted,

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