IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIBERTARIAN NATIONAL COMMITTEE, INC.,	)	No. 11-CV-562-RLW
	)	
Plaintiff,	)	
v.	)	
	)	
FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S
FACTS SUBMITTED FOR CERTIFICATION

Under the procedure set forth in 2 U.S.C. § 437h, the District Court's role "is not to answer any constitutional questions, or to render a judgment of any kind. Instead, [it is] to make findings of fact that will allow the Court of Appeals to answer the constitutional questions [it] certif[ies]." *SpeechNow.org* v. *FEC*, No. 1:08-cv-00248-JR, 2009 U.S. Dist. LEXIS 89011, at *2 (D.D.C. Sept. 28, 2009), *certified question answered by SpeechNow.org* v. *FEC*, 599 F.3d 686 (D.C. Cir. 2010).

Despite this Court's clearly limited role, Defendant seeks to certify "facts" that are argumentative, conclusory, inadmissible and – in many cases – conclusions of law reserved to the Court of Appeals.

This is not the first case under Section 437h, nor the first time Defendant has suggested the certification of irrelevant or inadmissible facts. In *SpeechNow.org v. FEC,* Judge Robertson was asked to review "several hundred proposed findings of fact, accompanied by thousands of pages of studies, reports, articles, and expert declarations." *SpeechNow*, 2009 U.S. Dist. LEXIS 89011, at *2. In that case, as here, "[m]ost of the proposed findings… centered on whether or not the challenged provisions [were] necessary to ward off corruption – or the appearance of corruption – in federal elections." *Id.*

But the Court correctly chose not to find such alleged "facts," noting that they were "the kind of 'facts' that legislatures find… not the kind of facts that can be determined in a judicial forum on the basis of a cold paper record full of hearsay and opinion." *Id.* at *3.

The Court should follow the same approach again here.

Plaintiff's objections largely take three forms.

First, the Commission seeks to certify facts found in other cases, principally *McConnell v. FEC,* 251 F. Supp. 2d 176 (D.D.C.), *aff'd in part and rev'd in part*, 540 U.S. 93 (2003). These facts are not based on the record developed here. Rather they are the pronouncements of a separate tribunal, offered for their truth, and consequently inadmissible hearsay.

Importing "facts" from *McConnell*, a case involving facial challenges, is especially inappropriate considering that this is an as-applied challenge to circumstances never considered in *McConnell*.

Second, the Commission seeks to certify certain quotations taken from Supreme Court opinions, principally *McConnell* v. *FEC,* 540 U.S. 93 (2003), *overruled in part by Citizens United* v. *FEC,* 130 S.Ct. 876 (2010). Such statements, cherry picked from the wide range of pronouncements by that court, are simply not facts suitable for certifications. To the extent that the Court of Appeals believes the Supreme Court's pronouncements are binding, it is because they are statements of law. Nor does the Court of Appeals require this Court to certify such statements to it; the D.C. Circuit has access to the United States Reports.

To the extent that this Court considers such statements certifiable, Plaintiff requests the opportunity to supply countervailing quotations from *McConnell* and other, unreversed Supreme Court rulings.

Third, Defendant's proposed findings are replete with conclusory and argumentative phrases. These are both irrelevant and inappropriate for certification.

General Objections

I. Facts found in other proceedings are not admissible evidence, and should not be certified to the Court of Appeals.

Plaintiff suggests that factual findings of the court in *McConnell* v. *FEC,* 251 F. Supp. 2d 176 (D.D.C. 2003), should be certified by this Court. But, simply put, "[f]indings of fact by a judge are hearsay not subject to any exception enumerated by the Federal Rules of Evidence." *Athridge* v. *Aetna Cas. & Sur. Co.,* 474 F.Supp.2d 102, 110 (D.D.C. 2007).

A Court may, of course, take notice of filings in another court in order to demonstrate the existence of that litigation, because the published opinions of federal tribunals are "capable of accurate and ready determination" and are "not subject to reasonable dispute." Fed. R. Evid. 201(b)(2). "Notice of prior findings of fact, however, is another matter" because such findings are "merely probabilistic determinations based upon a limited set of data points – the evidence." *Haim* v. *Islamic Republic of Iran,* 784 F.Supp.2d 1, 6 (D.D.C. 2011) (citation and internal quotation marks omitted).

Plaintiff was not a party to *McConnell.* It had no opportunity to contest the evidence in that case, nor to submit rebuttal evidence of its own. Defendant has made no attempt to establish privity between it and any party in that case. In short,

no theory of estoppel allows Plaintiff to be bound by determination made by a court before whom it never appeared. *Cf. Athridge,* 474 F.Supp.2d at 110 (refusing to take judicial notice of facts established in other litigation because, while "[a] non-party may also be bound by earlier litigation if he controlled a party's involvement in it," no privity or control had been established).

There is no need for this Court to certify the existence of published records. The Court of Appeals may take notice of those opinions if they are relevant to its constitutional analysis. And to go further, certifying the opinions of other judges as themselves fact, would be improper. *See, e.g., Global Network Communs., Inc.* v. *City of New York,* 458 F.3d 150, 157 (2d Cir. 2006) ("[a] court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings") (internal quotation marks omitted); *see also Murphy v. Islamic Republic of Iran,* 740 F.Supp.2d 51, 58 (D.D.C. 2010) ("Findings of fact in prior proceedings are therefore not subject to judicial notice.").

II. Defendant's cherry-picked quotations from the Supreme Court are not "facts" certifiable to the Court of Appeals.

The pronouncements of the Supreme Court are well known to the Court of Appeals. Indeed, interpreting and giving force to the High Court's rulings are a

central competence of an appellate court. Fundamentally, there is little need for this Court to certify particular passages from published materials when the whole is readily available. It is not the purpose of the Section 437h certification process for a District Court to select the passages from Supreme Court opinions it believes are most relevant for the Court of Appeals' determination of a given case.

Plaintiff has explained that the rulings of other courts are not admissible evidence. The same is true for any factual pronouncements of the Supreme Court as they too are based only on a "limited set of data points," the evidence in the record before it. *See Haim* v. *Islamic Republic of Iran,* 784 F.Supp.2d at 6.

This is a point referenced even in Defendant's own proposed facts. Paragraph 34 of that document relies entirely upon citations to *McConnell.* It begins with the sentence: "The trading of soft money to national party committees in exchange for access to and influence over federal candidates and officeholders was rampant." Def. Proposed Fact 34. Perhaps understanding that words like "rampant" are characterizations and not evidence, Defendant then quotes the *McConnell* decision: "The record *in the present case* [] is replete with… examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations." *Id.* In short, the Supreme Court itself noted that its pronouncements were based on a particular

record – one which Plaintiff had no role in assembling, and one which does not apply to this litigation.

Defendant's use of charged language to summarize the Supreme Court's views is neither factual nor helpful. Nor is its attempt to select language it particularly likes and then ask this court to dress it up as "fact" to which the Court of Appeals must defer. *See, e.g., Singletary* v. *District of Columbia,* 351 F.3d 519, 523 (D.C. Cir. 2003) ("While we may not set aside the [District] court's factual findings unless they are clearly erroneous, we owe no such deference to findings that rest on an erroneous view of the law.").

Moreover, Defendant has made no effort to adequately summarize the Supreme Court's views of the First Amendment and campaign finance regulation. It references only two cases, the principal one being a decision that has been partially overruled. Plaintiff does not believe any citation to a legal quotation is an appropriate fact for certification by this Court, and consequently did not submit "evidence" of this kind.

Had it done so, it would have suggested certifiable facts including, for instance, the following.

1. Contribution limits "operate in an area of the most fundamental First Amendment activities" because "[d]iscussion of public issues and

debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." *Buckley* v. *Valeo,* 424 U.S. 1, 14 (1976).

2. The interests served by contribution limits "include restricting the voices of people and interest groups who have money to spend and reducing the over-all scope of federal election campaigns." *Buckley,* 424 U.S. at 17. Contribution limits are "aimed in part at equalizing the relative ability of all voters to affect electoral outcomes by placing a ceiling on expenditures for political expression by citizens and groups." *Id.*

3. "[I]t is beyond dispute that the interest in regulating the alleged 'conduct' of giving or spending money arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful." *Buckley,* 424 U.S. at 17.

4. "Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." *Buckley,* 424 U.S. at 21. Indeed, the Court has invalidated

contribution limits in part on this basis. *See Randall* v. *Sorrell,* 548 U.S. 230, 247 (2006).

5. "The increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy." *Buckley,* 424 U.S. at 26. It is only when such sums are given in exchange for a *quid pro quo* bargain that they pose a risk to representative democracy. *Id.* at 26-27.

6. Contribution limits that do not allow groups to effectively campaign are not carefully tailored, in that their requirements are "disproportionately severe" as compared to the countervailing threat of corruption or its appearance. *Randall,* 548 U.S. at 237.

7. "[T]oo low a contribution limit [may] significantly increase the reputation-related or media-related advantages of incumbency and thereby insulates legislators from effective electoral challenge." *Nixon* v. *Shrink Mo. Gov't PAC,* 528 U.S. 377, 403-404 (2000) (Breyer, J., joined by Ginsburg, J., concurring) (declining to defer to the Legislature on this point).

8. "[C]ontribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountaibility." *Randall,* 548 U.S. at 238-48.

9. Moreover, limitations on contributions to party committees can also affect democratic competition. Specifically, parties tend to concentrate on competitive races, and low contribution limits can "cut the parties' contributions to competitive races dramatically." *Randall,* 548 U.S. at 254.

Plaintiff can provide many more such facts for certification by this Court, and requests the opportunity to do so if Defendant's many quotations from Supreme Court rulings are found certifiable.

II. Plaintiff objects to each of the argumentative characterizations that fill Defendant's Proposed Findings of Fact.

Defendant's proposed findings of fact are not supposed to be a legal brief. Nevertheless, Defendant has used argumentative and conclusory language throughout its Proposed Findings of Fact. This extends to the use of words such as "rampant" which clearly characterize evidence in an argumentative manner. (Defendant's Proposed Fact 34).

It also includes argumentative sentences that are unsupported by citation and, in some cases, by the supporting sentences that follow. For instance, Defendant suggests the following broad finding: "National party committees have granted major donors preferential access based on their promise to donate more in the future." Def. Proposed Fact 66. There is no citation for this sentence. To support this finding, Defendant offered the fact that "the RNC allows members of its major-donor groups to sign up for a payment plan," which is unremarkable and certainly does not prove the FEC's point. *Id.* Defendant then continues by citing another, inadmissible, factual finding from another case.

Similarly, Defendant makes liberal use of various headings which are not, themselves, facts. This would be unobjectionable were they straightforward guides to navigating the Commission's Proposal. But they strongly characterize the evidence, indeed reading like the table of contents for a brief on the merits. *See, e.g.,* Defendant's Proposed Findings of Fact at i ("an Amount More Than Seven Times Greater Than FECA's Limit…) ("Unlimited Bequeathed Contributions to National Party Committees Would Pose a Danger of Corruption…") ("Committees Could Held Those Donors Circumvent the Limits on Individual Contributions…"). Such headings are inappropriate at this stage of litigation, and Defendant asks that they be stricken.

Defendant will have a full and fair opportunity to characterize the evidence certified by this Court, and to make its legal arguments, before the Court of Appeals. Now is not the time.

SPECIFIC OBJECTIONS

Apart from those proposed facts, itemized below, to which Plaintiff has no objection, Plaintiff's general objections apply to each alleged "fact" submitted by Defendant FEC. Additional objections and responses to each alleged "fact" are also noted below.

1. Plaintiff does not object to Defendant's First Proposed Fact.

2. Plaintiff does not object to Defendant's Second Proposed Fact.

3. Plaintiff does not object to Defendant's Third Proposed Fact.

4. Plaintiff does not object to Defendant's Fourth Proposed Fact.

5. Plaintiff does not object to Defendant's Fifth Proposed Fact.

6. Plaintiff does not object to Defendant's Sixth Proposed Fact.

7. Plaintiff does not object to Defendant's Seventh Proposed Fact.

8. Plaintiff objects to Defendant's Eighth Proposed Fact in that it attempts to characterize Plaintiff's claims; the pleadings in this case speak for themselves. Plaintiff does not otherwise object.

Subjeading II.A.

Plaintiff objects to subheading II.A. in that it is extraneous and argumentative. Plaintiff does not object to the phrase "Raymond Groves Burrington Bequeathed $217,734 to the LNC."

9. Plaintiff does not object to Defendant's Ninth Proposed Fact.

10. Plaintiff does not object to Defendant's Tenth Proposed Fact.

11. Plaintiff does not object to Defendant's Eleventh Proposed Fact.

12. Plaintiff objects to the first phrase of Defendant's Twelfth Proposed Fact on the grounds that it is argumentative and lacks relevance. Plaintiff moves to strike the phrase "The bequest of $217,-734 is more than seven times greater than FECA's annual limit on contributions to national party committees" and adjust the remainder. Plaintiff does not otherwise object.

13. Plaintiff objects that this proposed "fact" is argumentative. Plaintiff acknowledges that *it is FEC's belief* that FECA's contribution limits apply to contributions made by an estate. However, no Court has ever passed on this question, it does not appear that Congress ever contemplated such a result, and this Court cannot issue an advisory opinion to the D.C. Circuit. Moreover, Plaintiff objects to the extent the phrasing of this "fact" assumes the legal conclusion desired by Defendant FEC.

14. This "fact" is mere unwarranted speculation. LNC was unaware of the Burrington and other bequests at the time they were made, and neither LNC nor FEC can prove or disprove the negative proposition that no other bequests have been made but not yet realized. Indeed, to the contrary – the Burrington bequest proves that such bequests may exist. The alleged "fact" is also irrelevant to any issue in the case. Presumably, were there no limits on bequests, the LNC could solicit and receive additional bequests in excess of existing FECA contribution limits. Plaintiff further objects to the word "applicable" insofar as it assumes the act is applicable to bequests, and not merely applied to bequests by Defendant FEC.

15. Plaintiff objects that this proposed "fact" is argumentative. Plaintiff acknowledges that *it is FEC's belief* that FECA's contribution limits apply to contributions made by an estate, and that the mechanism it describes is legally required by FECA. However, no Court has ever passed on this question, it does not appear that Congress ever contemplated such a result, and this Court cannot issue an advisory opinion to the D.C. Circuit. Moreover, Plaintiff objects to the extent the phrasing of this "fact" assumes the legal conclusion desired by Defendant FEC.

16. Plaintiff objects to the phrase "in compliance with FECA's contribution limit" as it is argumentative and begs the legal question posed by this litigation. Plaintiff does not otherwise object to Defendant's Sixteenth Proposed Fact.

17. Plaintiff does not object to Defendant's Seventeenth Proposed Fact.

18. Plaintiff objects to the phrase "in compliance with FECA's then-applicable contribution limits" as it is argumentative and begs the legal question posed by this litigation. Plaintiff does not otherwise object to Defendant's Eighteenth Proposed Fact.

19. Plaintiff does not object to Defendant's Nineteenth Proposed Fact.

Heading III and Subheading IIIA.

Plaintiff objects to these headings in their entirety as they are argumentative and beg the question posed by this litigation.

20. Plaintiff objects to Defendant's Twentieth Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Indeed, the Libertarian Party has no federal "public officials" and is thus not "control[led]" by any such officials, nor can it have any "unity of interest" with such officials, as they do not exist.

The submission of this "fact" from *McConnell* highlights the impropriety of importing legislative facts from a facial challenge into a case raising an as-applied challenge. Whatever the legislative facts discussed in *McConnell*, they do not reliably apply, if at all, to Plaintiff LNC.

Plaintiff further objects that the proposed fact is irrelevant, as testators have no idea who will be receiving the benefits of their funds, nor can party officials or candidates reliably count on receiving bequested funds.

21. Plaintiff objects to Defendant's Twenty-First Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. It is also irrelevant, as testators have no idea who will be receiving the benefits of their funds, nor can party officials or candidates reliably count on receiving bequested funds.

22. Plaintiff objects to Defendant's Twenty-Second proposed Fact as irrelevant. Testators have no idea who will be receiving the benefits of their funds, nor can party officials or candidates reliably count on receiving bequested funds. For example, Redpath was clearly unaware of the Burrington bequest prior to Burrington's death, and had no expectation of receiving the Burrington bequest to benefit his various campaigns while Burrington was alive. Moreover, neither Redpath nor any other LNC official or office holder ever

had any contact with Burrington or any of his associates or family members, save for processing the bequest after Burrington's death.

23. Plaintiff objects to Defendant's Twenty-Third Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay.

24. Plaintiff does not object to Defendant's Twenty-Fourth proposed Fact.

25. Plaintiff does not object to Defendant's Twenty-Fifth proposed Fact.

26. Plaintiff does not object to Defendant's Twenty-Sixth proposed Fact.

27. Plaintiff objects to Defendant's Twenty-Seventh proposed Fact as irrelevant. The Libertarian Party's platform, as voted on at the party's convention, is comprised of general statements of political ideology. The platform is available at http://www.lp.org/platform . There is no evidence supporting an assertion that the party tailors its platform in order to attract donations, and it would be silly to suggest that there is, especially if such donations take the form of testamentary bequests. Rather, the party decides what it believes in, and then seeks support for advancing those beliefs. *See* FEC Proposed Fact 24. Additionally, the LNC lacks power to remove the Libertarian Party affiliation from House and Senate candidates for failure to adhere to the Party's platform. LNC 30(b)(6) Dep. at 27:20-22, FEC Exh. 20.

Subheading IIIB.

Plaintiff objects to this subheading in its entirety as it is argumentative and states a conclusion of law that is inappropriate for certification to the Court of Appeals.

28. Plaintiff objects to Defendant's Twenty-Eighth Proposed Fact as it merely quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. The proposed fact is also irrelevant.

29. Plaintiff objects to Defendant's Twenty-Ninth Proposed Fact as it merely quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. The proposed fact is also irrelevant.

30. Plaintiff objects to Defendant's Thirtieth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. Furthermore, to the extent it does state a

certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. The proposed fact is also irrelevant.

31. Plaintiff does not object to Defendant's Thirty-First Proposed Fact, apart from the characterization "loophole."

32. Plaintiff objects to Defendant's Thirty-Second Proposed Fact in that it attempts to characterize Plaintiff's claims; the pleadings in this case speak for themselves. Plaintiff does not otherwise object.

Subheading IIIC.

Plaintiff objects to this subheading in its entirety as it is argumentative and states a conclusion of law that is inappropriate for certification to the Court of Appeals.

33. Plaintiff objects to Defendant's Thirty-Third Proposed Fact as it merely quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it does not relate to contributions by testamentary bequests.

34. Plaintiff objects to Defendant's Thirty-Fourth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Moreover, Plaintiff objects to Defendant's characterization of the Court's opinion using loaded terms such as "rampant" in place of the Court's own language. Plaintiff further objects that this proposed fact is irrelevant, as it has nothing to do with the conduct of the Libertarian Party — which has never had federal office holders – nor does it relate to testamentary bequests.

35. Plaintiff objects to Defendant's Thirty-Fifth Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects that this proposed fact is irrelevant. What the "majority of the American public" believes or does not believe has absolutely nothing to do with whether a law is constitutional, the Constitution being itself designed as a limit on the excesses of democratic majorities. Nor does the proposed fact relate to what the public, or anyone, believes about the impact of testamentary bequests. Plaintiff is aware of no polling on the subject, and FEC submits none. On information and belief,

the majority of the American public has never contemplated whether testamentary bequests can cause the appearance of corruption, and would be surprised to learn that Defendant FEC takes this position.

Subheading IIID.

Plaintiff objects to this subheading in its entirety as it is argumentative and does not state a fact certifiable to the Court of Appeals.

36. Plaintiff objects to Defendant's Thirty-Sixth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, which could not be counted upon to be received in particular campaigns, and has nothing to do with the Libertarian Party, which has never had federal office holders.

37. Plaintiff objects to Defendant's Thirty-Seventh Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of

another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, which could not be counted upon to be received in particular campaigns, and has nothing to do with the Libertarian Party, which has never had federal office holders.

38. Plaintiff objects to Defendant's Thirty-Eighth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, which could not be counted upon to be received in particular campaigns, whose existence or availability is not at all well known, and has nothing to do with the Libertarian Party, which has never had federal office holders.

39. Plaintiff objects to Defendant's Thirty-Ninth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of

another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, which self-evidently are not the subject of discussion between the deceased and any office holder, and has nothing to do with the Libertarian Party, which has never had federal office holders.

40. Plaintiff objects to Defendant's Fortieth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders.

Subheading IIIE.

Plaintiff objects to this subheading in its entirety as it is argumentative and does not state a fact certifiable to the Court of Appeals.

41 Plaintiff objects to Defendant's Forty-First Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does

state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders.

The relevant facts *with respect to Plaintiff LNC* are: **(1)** LNC does not have any control over its federal candidates, and cannot direct their actions. LNC 30(b)(6) Dep. at 27:3-6, FEC Exh. 20; **(2)** LNC has no knowledge that Donors inform LP candidates that they have donated to the LNC. Id. at 26:10-21; **(3)** Libertarian donors do not request personal meetings with candidates or special benefits beyond what the party offers in exchange for donations. Id. at 48:10-49:1; **(4)** Promises of testamentary bequests do not earn perks from the LNC. Id. at 49:17-50:9, 67:7-68:4; **(5)** LNC is unaware of any attempts to seek benefits or perks in exchange for testamentary bequests, nor is LNC aware of any attempt to direct the funds made by a bequest. Id. at 55:17-56:6; **(6)** it is doubtful that LNC would solicit bequests with promises of special access to candidates. Id. at 72:15-73:3; **(7)** Any individual, including FEC's counsel, might be granted candidate access or benefits from the Libertarian Party on an ad hoc basis. Id. at 74:8-15.

42. Plaintiff objects to Defendant's Forty-Second Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

43. Plaintiff objects to Defendant's Forty-Third Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

44. Plaintiff objects to Defendant's Forty-Fourth Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently

inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

45. Plaintiff objects to Defendant's Forty-Fifth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

46. Plaintiff objects to Defendant's Forty-Sixth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does

state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

47. Plaintiff objects to Defendant's Forty-Seventh Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

48. Plaintiff objects to Defendant's Forty-Eighth Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently

inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

49. Plaintiff objects to Defendant's Forty-Ninth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. Moreover, the Libertarian Party would not grant preferential access to people who merely make testamentary bequests to the Party, in part because a promise of giving money in the future does not earn present-day party benefits; nor does the Party control the behavior of its candidates, regardless of what practices might prevail among other parties. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

50. Plaintiff objects to Defendant's Fiftieth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

51. Plaintiff objects to Defendant's Fifty-First Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in

response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

52. Plaintiff objects to Defendants' Fifty-Second Proposed Fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

53. Plaintiff objects to Defendants' Fifty-Third proposed Fact as hearsay, and as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

54. Plaintiff objects to Defendant's Fifty-Fourth Proposed Fact as irrelevant. Testamentary bequests do not earn any perks or benefits from the Libertarian Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

55. Plaintiff objects to Defendant's Fifty-Fifth Proposed Fact as irrelevant.

56. Plaintiff objects to Defendant's Fifty-Sixth Proposed Fact as irrelevant.

57. Plaintiff objects to Defendant's Fifty-Seventh Proposed Fact as irrelevant. Testamentary bequests do not earn any perks or benefits from the Libertarian Party, including, admission to Torch Club events. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

58. Plaintiff objects to Defendant's Fifty-Eighth Proposed Fact as irrelevant. Testamentary bequests do not earn any perks or benefits from the Libertarian Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

59. Plaintiff objects to Defendant's Fifty-Ninth Proposed Fact as irrelevant. Testamentary bequests do not earn any perks or benefits from the Libertarian Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

60. Plaintiff objects to Defendant's Sixtieth Proposed Fact as irrelevant. Testamentary bequests do not earn any perks or benefits from the Libertarian Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

61. Plaintiff objects to Defendant's Sixty-First Proposed Fact as irrelevant. Testamentary bequests do not earn any perks or benefits from the Libertarian

Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

62. Plaintiff objects to Defendant's Sixty-Second Proposed Fact as irrelevant. Testamentary bequests do not earn any perks or benefits from the Libertarian Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

Subheading IIIF.

Plaintiff objects to this subheading in its entirety as it is argumentative, not relevant, and unsupported by evidence submitted in this proceeding.

63. Plaintiff objects to Defendant's Sixty-Third Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

64. Plaintiff objects to Defendant's Sixty-Fourth Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

65. Plaintiff object to Defendant's Sixty-Fifth Proposed Fact as irrelevant. Testamentary bequests do not earn any perks or benefits from the Libertarian Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

66. Plaintiff objects to Defendant's Sixty-Sixth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Moreover, Plaintiff objects as the second two sentences of the Proposed Fact, even if accepted, do not prove the first sentence. Plaintiff further objects to this proposed fact as irrelevant. Testamentary bequests do not earn any perks or

benefits from the Libertarian Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

67. Plaintiff objects to Defendant's Sixty-Seventh Proposed Fact on the grounds of relevance. Testamentary bequests do not earn any perks or benefits from the Libertarian Party. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

68. Plaintiff objects to Defendant's Sixty-Eighth Proposed Fact as untrue in that it is not supported by the cited evidence, and otherwise as irrelevant. In no event is a Chairman's Circle membership earned solely by "a promise to donate more money in the future." Even in the monthly pledge option, membership does not begin until four months' worth of payment – $10,000 – has been received. Moreover, testamentary bequests do not earn any perks or benefits from the Libertarian Party— including access to the Chairman's Circle. *Please see* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

Subheading IIIG

Plaintiff objects to this subheading in its entirety, as it is argumentative and unsupported by Plaintiff's admissible evidence.

69. Plaintiff objects to Defendant's Sixty-Ninth Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

70. Plaintiff objects to Defendant's Seventieth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

71. Plaintiff objects to Defendant's Seventy-First Proposed Fact as it quotes two opinions of the United States Supreme Court and is consequently not a

"fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

72. Plaintiff objects to Defendant's Seventy-Second Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

Subheading IIIH.

Plaintiff objects to this subheading in its entirety, as it is argumentative and unsupported by Plaintiff's admissible evidence.

73. Plaintiff objects to Defendant's Seventy-Third Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

74. Plaintiff objects to Defendant's Seventy-Fourth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with

testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

75. Plaintiff objects to Defendant's Seventy-Fifth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

Heading IV and Associated Subheadings

Plaintiff objects to these headings in their entirety as they are argumentative, beg questions posed by this litigation, are not relevant, and are unsupported by the admissible evidence introduced by the Defendant.

76. Plaintiff objects to Defendant's Seventy-Sixth Proposed Fact as irrelevant and hearsay.

77. Plaintiff objects to Defendant's Seventy-Seventh Proposed Fact as irrelevant and hearsay.

78. Plaintiff objects to Defendant's Seventy-Eighth Proposed Fact as irrelevant and hearsay.

79. Plaintiff objects to Defendant's Seventy-Ninth Proposed Fact as irrelevant and hearsay.

80. Plaintiff objects to Defendant's Eightieth Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

81. Plaintiff objects to Defendant's Eighty-First Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has

nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

82. Plaintiff objects to Defendant's Eighty-Second Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay. Plaintiff further objects to the proposed fact as irrelevant, as it has nothing to do with testamentary bequests, and has nothing to do with the Libertarian Party, which has never had federal office holders. *Please see also* counter-facts in response to proposed "fact" 41, incorporated by reference as though fully set forth herein.

83. Plaintiff does not object to Defendant's Eighty-Third Proposed Fact.

84. Plaintiff does not object to Defendant's Eighty-Fourth Proposed Fact.

85. Plaintiff does not object to Defendant's Eighty-Fifth Proposed Fact.

86. Plaintiff does not object to Defendant's Eighty-Sixth Proposed Fact.

87. Plaintiff does not object to Defendant's Eighty-Seventh Proposed Fact.

88. Plaintiff does not object to Defendant's Eighty-Eighth Proposed Fact.

89. Plaintiff does not object to Defendant's Eighty-Ninth Proposed Fact.

90. Plaintiff does not object to Defendant's Ninetieth Proposed Fact.

91. Plaintiff does not object to Defendant's Ninety-First Proposed Fact.

92. Plaintiff does not object to Defendant's Ninety-Second Proposed Fact..

93. Plaintiff objects to Defendant's Ninety-Third Proposed Fact to the extent it would certify an advisory opinion to the D.C. Circuit, but otherwise Plaintiff does not object.

94. Plaintiff does not object to Defendant's Ninety-Fourth Proposed Fact.

95. Plaintiff does not object to Defendant's Ninety-Fifth Proposed Fact.

96. Plaintiff does not object to Defendant's Ninety-Sixth Proposed Fact.

97. Plaintiff does not object to Defendant's Ninety-Seventh Proposed Fact.

98. Plaintiff does not object to Defendant's Ninety-Eighth Proposed Fact.

99. Plaintiff does not object to Defendant's Ninety-Ninth Proposed Fact.

100. Plaintiff does not object to Defendant's One-Hundredth Proposed Fact.

101. Plaintiff does not object to Defendant's One-Hundred-First Proposed Fact.

102. Plaintiff does not object to Defendant's One-Hundred-Second Proposed Fact.

103. Plaintiff does not object to Defendant's One-Hundred-Third Proposed Fact.

104. Plaintiff does not object to Defendant's One-Hundred-Fourth Proposed Fact.

105. Plaintiff does not object to Defendant's One-Hundred-Fifth Proposed Fact.

Subheading IV(4)(B).

Plaintiff objects to this subheading as it is argumentative, begs a question posed by this litigation, and unsupported by admissible evidence.

106. Plaintiff objects to Defendant's One-Hundred-Sixth Proposed Fact as irrelevant. A national party committee can already grant individuals preferential access to individuals in exchange for a promise to donate money, or in the hope that money would be donated. *See* LNC Proposed Facts 14, 15, 16; LNC Exh. C, Defendant FEC's Responses to Requests for Admission 1, 2, 3.

107. Plaintiff objects to Defendant's One-Hundred-Seventh Proposed Fact as irrelevant. A national party committee can already grant individuals preferential access to individuals in exchange for a promise to donate money, or in the hope that money would be donated. *See* LNC Proposed Facts 14, 15, 16; LNC Exh. C, Defendant FEC's Responses to Requests for Admission 1, 2, 3.

108. Plaintiff objects to Defendant's One-Hundred-Eighth Proposed Fact as irrelevant. A national party committee can already grant individuals preferential access to individuals in exchange for a promise to donate money, or in the hope that money would be donated. *See* LNC Proposed

Facts 14, 15, 16; LNC Exh. C, Defendant FEC's Responses to Requests for Admission 1, 2, 3.

109. Plaintiff objects to Defendant's One-Hundred-Ninth Proposed Fact as irrelevant. A national party committee can already grant individuals benefits in exchange for a promise to donate money, or in the hope that money would be donated. *See* LNC Proposed Facts 14, 15, 16; LNC Exh. C, Defendant FEC's Responses to Requests for Admission 1, 2, 3.

Moreover, Defendant's proposed fact is misleading and misstates the testimony. The cited testimony indicates that mere promises to leave a bequest *do not* entitle individuals to perks from the LNC:

> Q. Would LNC -- if someone came to LNC and said, "I am going to leave LNC a $5,000 bequest" and they showed you the will, would that get them into the Chairman's Circle?
>
> A. I don't think so.
>
> Q. Why not?
>
> A. They haven't paid the money -- there is no provision -- why? Because there is no provision that I know of in any of the current rules, give this much and you belong to this group. It is having given the money, not having promised the money.
>
> Q.Would that change if the amount were vastly higher than would qualify for the group?

A. I don't know. That would require action by the LNC.

LNC 30(b)(6) Dep. at 49:17-50:9, FEC Exh. 20.

> Q. . . . there was a lot of discussion about what the LNC might do on an ad hoc basis to award certain benefits, Torch Club admissions, things like that on an ad hoc basis. Is that not true of anybody -- could the FEC counsel here be awarded on an ad hoc basis admission to the Torch Club and its benefits?
>
> A. Yes.

LNC 30(b)(6) Dep. at 74:8-15, FEC Exh. 20.

110. Plaintiff objects to Defendant's One-Hundred-Tenth Proposed Fact as irrelevant.

111. Plaintiff objects to Defendant's One-Hundred-Eleventh Proposed Fact as irrelevant and hearsay.

112. Plaintiff objects to Defendant's One-Hundred-Twelfth Proposed Fact as irrelevant and hearsay.

113. Plaintiff objects to Defendant's One-Hundred-Thirteenth Proposed Fact as irrelevant and hearsay.

114. Plaintiff objects to Defendant's One-Hundred-Fourteenth Proposed Fact as irrelevant and hearsay.

Subheading IV(4)(C).

Plaintiff objects to this subheading as it is argumentative, begs a question posed by this litigation, and is unsupported by admissible evidence.

115. Plaintiff objects to Defendant's One-Hundred-Fifteenth Proposed Fact as irrelevant and based on hearsay.

116. Plaintiff objects to Defendant's One-Hundred-Sixteenth Proposed Fact as irrelevant and based on hearsay.

117. Plaintiff objects to Defendant's One-Hundred-Seventeenth Proposed Fact as irrelevant.

118. Plaintiff objects to Defendant's One-Hundred-Eighteenth Proposed Fact to the extent it is premised on the factual findings of another tribunal, and is consequently inadmissible hearsay. The proposed fact is also irrelevant.

119. Plaintiff objects to Defendant's One-Hundred-Nineteenth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. To the extent the Proposed Fact does state a certifiable fact, it is premised in part on the factual findings of another tribunal, and is consequently inadmissible hearsay.

Plaintiff further objects on grounds of relevance. Being polite, and using words like "please" or "thank you," to people engaging in ministerial

functions, is hardly objectionable and in any event fully protected by the First Amendment. The suggestion that LNC officials "feel inclined to reciprocate" politically to lawyers, accountants, clerks, and other functionaries effectuating a third party decedent's bequest, and that their saying "thank you" to such people is evidence of a political quid pro quo, is specious.

120. Plaintiff objects to Defendant's One-Hundred-Twentieth Proposed Fact as irrelevant. *See also* response to Defendant's One-Hundred-Nineteenth Proposed Fact.

121. Plaintiff objects to Defendant's One-Hundred-Twenty-First Proposed Fact as it is irrelevant. *See also* response to Defendant's One-Hundred-Nineteenth Proposed Fact.

122. Plaintiff does not object to Defendant's One-Hundred-Twenty-Second Proposed Fact.

Subheading IV(4)(D).

Plaintiff objects to this subheading as it is argumentative, speculative, begs a question posed by this litigation, and is unsupported by admissible evidence.

123. Plaintiff objects to Defendant's One-Hundred-Twenty-Third Proposed Fact as it is premised entirely on the factual findings of another tribunal, and is

consequently inadmissible hearsay. Plaintiff further objects on grounds of relevance, as *any* individual can always suggest to a party how it should use its funds, but as a decedent's bequest is irrevocable upon death, such suggestions coming from a decedent's relatives or associates are not any more important than requests from other people unrelated to the decedent.

124. Plaintiff objects to Defendant's One-Hundred-Twenty-Fourth Proposed Fact as irrelevant, as *any* individual can always suggest to a party how it should use its funds, but as a decedent's bequest is irrevocable upon death, such suggestions coming from a decedent's relatives or associates are not any more important than requests from other people unrelated to the decedent. To the extent that a decedent leaves specific instructions for the use of bequeathed funds, that is also irrelevant—no rules or regulations restricting the use of donated funds are at issue in this litigation. Any such rule or regulation upon the use of bequested funds would be a less-restrictive alternative of which the government could possibly avail itself.

125. Plaintiff objects to Defendant's One-Hundred-Twenty-Fifth Proposed Fact as irrelevant. To the extent that a decedent leaves specific instructions for the use of bequeathed funds, no rules or regulations restricting the use of donated funds are at issue in this litigation. Any such rule or regulation upon

the use of bequested funds would be a less-restrictive alternative of which the government could possibly avail itself.

Subheading IV(4)(E).

Plaintiff objects to this subheading as it is argumentative, speculative, calls for a legal conclusion, and is unsupported by admissible evidence.

126. Plaintiff objects to Defendant's One-Hundred-Twenty-Sixth Proposed Fact as it is speculative, irrelevant and states a legal conclusion.

127. Plaintiff object to Defendant's One-Hundred-Twenty-Seventh Proposed Fact as it is irrelevant to this litigation.

128. Plaintiff object to Defendant's One-Hundred-Twenty-Eighth Proposed Fact as it is irrelevant to this litigation.

Heading V and associated subheading.

Plaintiff objects to these headings as they are argumentative, speculative, beg a question posed by this litigation, and are unsupported by admissible evidence.

129. Plaintiff objects to Defendant's One-Hundred-Twenty-Ninth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently not a "fact" certifiable to the Court of Appeals. Furthermore, to

the extent it does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay.

130. Plaintiff does not object to Defendant's One-Hundred-Thirtieth Proposed Fact.

131. Plaintiff does not object to Defendant's One-Hundred-Thirty-First Proposed Fact.

132. Plaintiff does not object to Defendant's One-Hundred-Thirty-Second Proposed Fact.

133. Plaintiff does not object to Defendant's One-Hundred-Thirty-Third Proposed Fact.

134. Plaintiff does not object to Defendant's One-Hundred-Thirty-Fourth Proposed Fact.

135. Plaintiff objects to Defendant's One-Hundred-Thirty-Fifth Proposed Fact as it is irrelevant to this litigation. Plaintiff does not otherwise object.

Subheading IV(B).

Plaintiff objects to this subheading as it is speculative, irrelevant to this litigation, and unsupported by admissible evidence.

136. Plaintiff objects to Defendant's One-Hundred-Thirty-Sixth Proposed Fact as it quotes the opinion of the United States Supreme Court and is consequently

not a "fact" certifiable to the Court of Appeals. Furthermore, to the extent it does state a certifiable fact, it is premised entirely on the factual findings of another tribunal, and is consequently inadmissible hearsay.

137. Plaintiff object to Defendant's One-Hundred-Thirty-Seventh Proposed Fact as it is irrelevant to this litigation. Plaintiff does not otherwise object.

138. Plaintiff object to Defendant's One-Hundred-Thirty-Eighth Proposed Fact as it is irrelevant and hearsay.

139. Plaintiff object to Defendant's One-Hundred-Thirty-Ninth Proposed Fact as it is irrelevant and hearsay.

Dated: July 6, 2012

Respectfully submitted,

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