

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

_____)	
RALPH NADER,)	
)	
PLAINTIFF,)	
)	
v.)	Civ. No. 10-989 (HHK)
)	
FEDERAL ELECTION COMMISSION,)	
)	ANSWER
DEFENDANT.)	
_____)	

DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (FEC or Commission) submits this answer to the Complaint of plaintiff Ralph Nader. Any allegation not specifically responded to below is DENIED.

1. DENY that the Commission’s disposition of plaintiff’s administrative complaint was “wrongful.” The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.
2. DENY that the Commission acted in “clear violation of the Federal Campaign Act of 1971 and its own regulations.” ADMIT that the Commission did not treat all of the over 100 individuals and entities referenced in the administrative complaint as respondents required to respond to the complaint. ADMIT that the Commission did not send the administrative complaint, which was improperly filed with a faulty signature, to some respondents until a few months after it was filed due to administrative oversight, but that those respondents were

sent the administrative complaint prior to the time when the signature defect was corrected.¹

DENY that the Commission “relied on its own failure and delay as grounds for dismissal.”

DENY that any of the Commission’s determinations were “wrongful” or “contrary to law”

and that “reversal is necessary.”

3. DENY that “[r]eversal is also necessary” and that the FEC’s conclusions were “arbitrary and capricious and an abuse of discretion.” ADMIT that the First General Counsel’s Report described Count 1 of the administrative complaint as “based on a viable theory” but the Report also concluded that “the available facts do not support the allegations.” The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the third sentence of this paragraph. ADMIT that the Commission chose to dismiss this matter and/or find no reason to believe violations occurred rather than open an investigation. DENY the factual allegations in the remainder of the paragraph. The last sentence of the paragraph contains legal conclusions to which no response is required.

4. ADMIT that the administrative complaint contains the allegations in the first sentence of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

5. DENY that the Commission’s disposition of plaintiff’s administrative complaint was “wrongful.” DENY that the FEC was “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.” ADMIT that the Commission found no reason to believe that some of the

¹ The Commission objects to Mr. Hall’s affidavit as improperly filed outside the administrative record.

conduct alleged in the administrative complaint violated the law and exercised its prosecutorial discretion to dismiss the administrative complaint with respect to the remaining allegations. ADMIT that the Commission did not refer this matter to the Justice Department. DENY that the FEC “deprived Plaintiff of the protection of federal law.” DENY that the Commission’s dismissal of the administrative complaint threatens plaintiff with imminent harm. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph and is not required to respond to the conclusions of law in the paragraph.

6. ADMIT the allegations in the first and second sentences of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the third sentence of this paragraph.

7. ADMIT.

8. DENY the first sentence to the extent it asserts that the Declaratory Judgment Act is an independent source of federal jurisdiction. ADMIT that the referenced statutes provide statutory standing.

9. ADMIT, upon information and belief, that at least some of the individuals and organizations identified in the administrative complaint as “Respondents” are or were affiliated with the Democratic Party and that at least some of them challenged Nader-Camejo nomination papers in the 2004 presidential election in certain states. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

10. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

11. ADMIT that the 2004 Democratic National Convention began on July 26, 2004, and was held at Boston's Fleet Center. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

12. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

13. ADMIT that the administrative complaint contains allegations regarding a national campaign by the DNC and Kerry-Edwards campaign. The Commission is without knowledge or information sufficient to admit or deny any of the remaining factual allegations in this paragraph. The last sentence of the paragraph contains legal conclusions to which no response is required.

14. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

15. ADMIT that the first two sentences of this paragraph and the block quote accurately quote from the Act and from FEC Advisory Opinion 1980-57, respectively. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph and is required to respond to neither the legal conclusions nor the characterizations of past Advisory Opinions therein.

16. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. The paragraph also contains conclusions of law to which no response is required.

17. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first sentence of this paragraph. ADMIT that the *Washington Post* article cited in the administrative complaint states that "[Toby] Moffett says [The Ballot

Project] ... is relying on pro bono work from lawyers across the country who have contributed up to \$2 million worth of labor.” The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the last two sentences of this paragraph and is not required to respond to the legal conclusions therein.

18. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in first sentence of this paragraph. ADMIT that the block quotes accurately quote both the *New York Times* article and Associate Press articles identified. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

19. ADMIT that copies of emails with text similar to what is described in the second and fourth sentences were attached to the administrative complaint. The Commission is without knowledge or information sufficient to admit or deny any of the remaining factual allegations in this paragraph and is not required to respond to the paragraph’s legal conclusions.

20. ADMIT that at least some of the law firms identified in the administrative complaint are also identified in FEC filings as having been paid by either the DNC or state party affiliates and the same law firms also represented clients challenging Nader-Camejo nomination papers. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph with greater specificity.

21. ADMIT that Dorothy Melanson testified that the Democratic Party contacted her and stated that it would support her financially with respect to her ballot challenge. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the remainder of the paragraph.

22. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

23. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph and is not required to respond to the paragraph's legal conclusions.

24. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph (including the footnote to this paragraph) and is not required to respond to the paragraph's legal conclusions.

25. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

26. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

27. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

28. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first sentence of this paragraph. ADMIT that an exhibit to the administrative complaint is an April 2004 CBS News report stating that an ACT spokesperson made the statement quoted in the second sentence of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the third sentence of this paragraph. ADMIT that an SEIU press release and accompanying document indicated that SEIU gave \$1 million to the DNC.

29. This paragraph contains conclusions of law to which no response is required and factual allegations about which the Commission is without knowledge or information sufficient to admit or deny.

30. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph and is not required to respond to the paragraph's legal conclusions.

31. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

32. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first sentence of this paragraph. ADMIT that IRS Reports attached to the administrative complaint indicate that the National Progress Fund paid Greenberg Research \$25,000 in June 2004 for "Polling, Focus Groups" and the Ballot Project paid Greenberg Research \$10,000 in July 2004 for "consulting fees-political research." The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the third sentence of this paragraph.

33. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph and is not required to respond to the paragraph's legal conclusions.

34. ADMIT that publicly available information indicates that Uniting People for Victory reportedly disseminated "open letters" via newspaper advertisements signed by numerous people urging people to vote for Senator John Kerry rather than plaintiff Nader. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

35. ADMIT that IRS Reports attached to the administrative complaint and reports filed with the FEC indicate that the National Progress Fund, Uniting People for Victory and United Progressives for Victory made expenditures of approximately the amounts indicated in this paragraph. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

36. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first two sentences of this paragraph. ADMIT that the Ballot Project, National Progress Fund, and Uniting People for Victory have now all either dissolved, became defunct, or ceased operations. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in the third sentence of this paragraph.

37. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. The statements that these organizations were required to file as political committees or satisfied the “major purpose” test are conclusions of law to which no response is required.

38. ADMIT that The Ballot Project, the National Progress Fund, Uniting People for Victory and Americans for Jobs did not register with the Commission as political committees. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph and is not required to respond to the paragraph’s legal conclusions.

39. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first two sentences of this paragraph. ADMIT that United Progressives for Victory registered with the FEC as a political committee in June 2004.

ADMIT that Uniting People for Victory did not register with the Commission as a political committee. ADMIT that United Progressives for Victory did not respond to the FEC's letter requesting identification of "any affiliated or connected organization," if any. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph and is not required to respond to the paragraph's legal conclusions.

40. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph and is not required to respond to the paragraph's legal conclusions.

41. DENY that the plaintiff "clearly provided the FEC with reason to believe that Respondents committed the ... violations [] as set forth in the administrative complaint." ADMIT that the paragraph accurately quotes the administrative complaint.

42. DENY the factual allegations in the first two sentences of this paragraph. ADMIT that plaintiff submitted two supplements to the administrative complaint, on or about September 24, 2008 and January 7, 2010 (mistakenly dated January 7, 2009).

43. The first sentence of this paragraph contains plaintiff's characterization of a Grand Jury Presentment, which speaks for itself. ADMIT that a transcript attached to a supplement to the administrative complaint indicates that Melissa Lewis testified that Efrem Grail coordinated the effort described in the Presentment. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

44. ADMIT that the block quote in this paragraph accurately quotes a Grand Jury Presentment. The remainder of this paragraph contains plaintiff's characterization of the Grand Jury Presentment, which speaks for itself.

45. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

46. DENY the factual allegations in the first sentence of the complaint. The second sentence of this paragraph contain plaintiff's characterization of a Grand Jury Presentment, which speaks for itself. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the third sentence of this paragraph.

47. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first sentence of this paragraph. ADMIT that the supplements to the administrative complaint named additional respondents and requested that the FEC refer this matter to the Justice Department.

48. DENY that the FEC's actions were "arbitrary and capricious." ADMIT that the Commission's regulations provide that the General Counsel shall send "each respondent" a copy of the complaint. DENY that the Commission acted "[i]n direct violation of the Act and its own regulations." ADMIT that the FEC notified neither SEIU nor the law firms, state Democratic Parties, and individuals named in the administrative complaint as allegedly affiliated with the Section 527 Respondents.

49. DENY that the Commission "violated the Act and its own regulations." ADMIT that the Ballot Project was first notified approximately four months after the initial (defective) administrative complaint was filed and the Commission attributed the lack of earlier notification to an "administrative oversight." ADMIT that America Coming Together claimed to have not received notice until approximately six months after the initial (defective) administrative complaint was filed, despite having been sent notice by the Commission two months earlier. DENY that the "FEC relied on its failure to serve certain

Respondents, and its delay in serving others, as grounds to dismiss the entire administrative complaint.” DENY that the Commission acted “contrary to law” and that “the FEC must be reversed.”

50. DENY that “the FEC apparently faulted Plaintiff for the length of the administrative complaint, as supplemented.” The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in the first two sentences of this paragraph. DENY that the Commission acted with a “willful failure even to process the administrative complaint.” The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

51. DENY that the Commission “requires reversal,” “erred as a matter of law,” “had a statutory duty to investigate,” and acted in a manner that was “arbitrary, capricious and an abuse of discretion.” DENY all remaining factual allegations in this paragraph.

52. The first sentence of this paragraph characterizes the Commission’s First General Counsel’s Report, which speaks for itself. The next three sentences of this paragraph contain plaintiff’s characterizations of judicial decisions, to which no response is required. ADMIT that the claims in the administrative complaint are generally governed by a five-year statute of limitations. DENY any remaining factual allegations in this paragraph.

53. DENY that the Commission acted “[i]n clear violation of the Act and its regulations.” DENY that claims against law firms identified in the administrative complaint were “dismissed.” ADMIT that the law firms identified in the administrative complaint were not notified of the complaint. ADMIT that the First General Counsel’s Report stated that Count 1 of the administrative complaint was “based on a viable theory” but the Report concluded that “the available facts do not support the allegations.” The assertions that “the FEC’s duty

to serve the administrative complaint on respondent parties is mandatory” and that “this error alone requires reversal” are conclusions of law to which no response is required.

54. DENY the factual allegations in the first sentence of this paragraph. ADMIT that the second sentence quotes from the Factual and Legal Analyses for the Commission’s determination. The third and fourth sentences characterize and quote from the administrative complaint, which speaks for itself. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the last sentence of this paragraph.

55. DENY that 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.” The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

56. ADMIT that the quotes from the Factual and Legal Analyses for the Commission’s determination in the first sentence of this paragraph are accurate. DENY the remaining factual allegations in this paragraph.

57. This paragraph contains solely conclusions of law to which no response is required.

58. The first sentence of this paragraph contains a conclusion of law to which no response is required. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

59. DENY the factual allegations in the first sentence of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the second and third sentences of this paragraph. DENY the factual allegations in the last sentence of this paragraph.

60. DENY the factual allegations in the first sentence of this paragraph. The second sentence characterizes and quotes from the Factual and Legal Analyses for the Commission's determination, which speak for themselves. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the third sentence of this paragraph and is not required to respond to its legal conclusions. DENY the allegations in the last sentence of this paragraph.

61. DENY.

62. DENY that the FEC's determination "violated the Act and its own regulations." ADMIT that the Commission did not notify SEIU of the administrative complaint. The second sentence of this paragraph contains plaintiff's characterizations of the administrative complaint, which speaks for itself. The assertions that "the FEC's duty to serve the administrative complaint on respondent parties is mandatory" and that "this error alone requires reversal" are conclusions of law to which no response is required.

63. DENY the allegations in the first sentence of this paragraph. The second sentence characterizes and quotes from the Factual and Legal Analyses for the Commission's determination, which speak for themselves. The third and fourth sentences of this paragraph contain conclusions of law to which no response is required. DENY the allegations in the last sentence of this paragraph.

64. The first two sentences of this paragraph characterize the Factual and Legal Analysis for the Commission's determination as to ACT, which speaks for itself. ADMIT, upon information and belief, that SEIU is not "essentially defunct." DENY any remaining allegations in the last sentence of this paragraph.

65. ADMIT that the Commission did not notify SEIU of the administrative complaint. DENY the remaining allegations in the first two sentences of this paragraph. The third sentence of this paragraph characterizes the Factual and Legal Analysis for the Commission's determination as to DNC, which speaks for itself. DENY the allegations in the last sentence of this paragraph.

66. DENY the allegations in the first sentence of this paragraph. ADMIT that the administrative complaint contains the assertions in the second sentence of this paragraph. The third sentence of this paragraph characterizes the Factual and Legal Analysis for the Commission's determination as to DNC, which speaks for itself.

67. The first sentence of this paragraph characterizes the Factual and Legal Analysis for the Commission's determination as to DNC, which speaks for itself. DENY the allegations in the second and third sentences of this paragraph. The fourth sentence of this paragraph characterizes the Factual and Legal Analysis for the Commission's determination as to DNC, which speaks for itself. The fifth sentence of this paragraph characterizes the administrative complaint, which speaks for itself. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the last sentence of this paragraph. The implication in the last sentence that the Commission violated the Act by not serving the administrative complaint on SEIU is a conclusion of law to which no response is required.

68. DENY that the FEC's determination "violat[ed] the Act and its own regulations." ADMIT that the Commission did not notify the individuals alleged in Count 3 of the administrative complaint to have violated the Act. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the second sentence of this paragraph. The third sentence and accompanying of this paragraph characterize the

administrative complaint and one of the Commission's Factual and Legal Analyses, which speak for themselves. The assertions that "the FEC's duty to serve the administrative complaint on such Respondent parties is mandatory" and that "its failure to do so is contrary to law and requires reversal" are conclusions of law to which no response is required.

69. The first sentence of this paragraph characterizes and quotes from the Factual and Legal Analyses for the Commission's determination, which speak for themselves. The second sentence is a conclusion of law to which no response is required. ADMIT, upon information and belief, that the individuals identified in the administrative complaint are not "defunct." DENY the allegations in the last sentence of this paragraph.

70. ADMIT that the first sentence of this paragraph quotes from either the Commission's First General Counsel's Report or one of the Factual and Legal Analyses for the Commission's determination. ADMIT that the initial (defective) administrative complaint was filed on May 30, 2008. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in the second sentence of this paragraph. ADMIT that the Commission's "administrative oversight" resulted in The Ballot Project and ACT receiving notification of the administrative complaint several months later than intended by the Commission. DENY the remaining allegations in this paragraph.

71. DENY that the Commission's actions were "contrary to law," "an abuse of discretion," and "arbitrary and capricious." DENY the remaining allegations in this paragraph.

72. DENY.

73. The first sentence of this paragraph characterizes the administrative complaint, which speaks for itself. DENY that the Commission caused plaintiff ongoing reputational harm.

The remainder of the second sentence of this paragraph contains legal conclusions, to which no response is required.

74. DENY that the Commission's actions were "wrongful" or threaten plaintiff with imminent harm. ADMIT that the Commission did not refer this matter to the Justice Department. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the remainder of this paragraph.

75. The Commission incorporates by reference all responses contained in the preceding paragraphs.

76. DENY.

77. DENY.

PRAYER FOR RELIEF

No response is required, but the relief requested by plaintiff should be denied.

AFFIRMATIVE DEFENSES

The Complaint fails to state a claim upon which relief may be granted.

Plaintiff lacks standing to bring some of the claims in this lawsuit.

Respectfully submitted,

Phillip Christopher Hughey
Acting General Counsel

David Kolker (D.C. Bar No. 394558)
Associate General Counsel

Kevin Deeley
Assistant General Counsel

/s/ Seth Nesin

Seth Nesin
Attorney

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
Telephone: (202) 694-1650
Fax: (202) 219-0260

August 23, 2010

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be delivered through the ECF electronic filing system on the 23rd day of August, 2010, to:

Oliver B. Hall
1835 16th Street NW
Washington, D.C. 20009
oliverbhall@gmail.com

/s/ Seth Nesin _____
Seth Nesin
COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
Telephone: (202) 694-1650
Fax: (202) 219-0260
snesin@fec.gov