

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

CAMPAIGN LEGAL CENTER  
1411 K Street NW, Ste. 1400  
Washington, DC 20005,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION  
999 E Street NW  
Washington, DC 20463,

Defendant.

Civil Action No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

(1) This is an action under the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30109(a)(8)(A), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1). Plaintiff seeks injunctive and declaratory relief to compel defendant Federal Election Commission (“FEC”) to act on plaintiff’s administrative complaint regarding hundreds of thousands of dollars of illegal political contributions. Specifically, plaintiff filed with the FEC in 2016 an administrative complaint showing that GEO Corrections Holdings, Inc.—a wholly owned subsidiary of a federal contractor that operates private prisons and detention facilities—had violated FECA’s prohibition on contributions by government contractors by illegally contributing \$225,000 to a “super PAC.” FECA provides administrative complainants with a right of action against the FEC if the FEC fails to act on a complaint within 120 days. More than a year after plaintiff filed its administrative complaint, there is no indication that the FEC has acted on it.

### **Jurisdiction and Venue**

(2) This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 52 U.S.C. § 30109(a)(8)(A) and 5 U.S.C. § 702. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 52 U.S.C. § 30109(a)(8)(A) and 5 U.S.C. § 703.

### **The Parties**

(3) Plaintiff Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization that works to strengthen American democracy through, among other activities, local, state, and federal efforts to ensure that the public has access to information regarding the financing of our election campaigns and the influence campaign donations have on governmental policy decisions. As part of this effort, CLC conducts research, authors reports and articles, and regularly provides expert analysis to the media. CLC is also involved in litigation throughout the country regarding campaign finance matters, participates in rulemaking and advisory opinion proceedings before the FEC to ensure that the agency is properly interpreting and enforcing federal election laws, files FEC complaints requesting that enforcement actions be taken against individuals or organizations that violate the law, and files suits in federal court when the FEC fails to comply with the provisions of FECA.

(4) Defendant Federal Election Commission is an independent federal agency charged with the administration and civil enforcement of FECA. 52 U.S.C. § 30106.

### **Background**

(5) In August 2016, the Department of Justice (“DOJ”) Office of Inspector General (“OIG”) issued a report concluding that “contract prisons incurred more safety and security incidents per capita than comparable BOP [Bureau of Prisons] institutions.”<sup>1</sup>

(6) The OIG report highlighted in particular the problems at private prisons operated by GEO Group Inc. (“GEO Group”), one of the largest private prison federal contractors. Specifically, the report noted that GEO Group’s “contract prisons had more incidents per capita compared to those operated by [other contractors] for contraband finds, several types of reports of incidents, lockdowns, guilty findings on inmate discipline charges, positive drug test results, and sexual misconduct.”<sup>2</sup>

(7) On August 18, 2016, then-Deputy Attorney General Sally Yates issued a memorandum instructing the Bureau of Prisons (“BOP”) to phase out the use of privately operated correctional facilities, writing that private prisons “compare poorly to our own Bureau facilities” and “do not provide the same level of correctional services, programs, and resources; . . . do not save substantially on costs; and as noted in a recent report by [OIG], . . . do not maintain the same level of safety and security.”<sup>3</sup>

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<sup>1</sup> Office of Inspector Gen., U.S. Dep’t of Justice, *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons*, at ii (Aug. 2016), <https://oig.justice.gov/reports/2016/e1606.pdf#page=2>.

<sup>2</sup> *Id.* at 15.

<sup>3</sup> See Memorandum from Sally Yates, Deputy Attorney Gen. to Acting Dir. of Fed. Bureau of Prisons (Aug. 18, 2016), <https://www.justice.gov/archives/opa/file/886311/download>.

(8) The next day, August 19, GEO Group’s wholly owned subsidiary, GEO Corrections Holdings, Inc., contributed \$100,000 to Rebuilding America Now, a “super PAC” supporting Donald Trump’s campaign for president.<sup>4</sup>

(9) According to news reports, Rebuilding America Now had the blessing of the Trump campaign as one of its preferred super PACs, and President Trump’s then-campaign manager, Paul Manafort, called into a July 2016 meeting of top donors to Rebuilding America Now informing them that they were the only super PAC he was addressing.<sup>5</sup>

(10) According to news reports, at the same meeting of the super PAC’s donors, attendees were shown a quote from then-Governor Mike Pence, who stated that “[s]upporting Rebuild [*sic*] America Now is one of the best ways to stop Hillary Clinton and help elect Donald Trump our next president!”<sup>6</sup>

(11) Federal law prohibits a federal contractor from “directly or indirectly . . . mak[ing] any contribution of money or other things of value . . . to any person for any political purpose or use.” 52 U.S.C. § 30119(a)(1). Federal law likewise prohibits any person from “knowingly . . . solicit[ing] any such contribution for any such person for any such purpose.” *Id.* § 30119(a)(2).

(12) On February 21, 2017, two weeks after being confirmed, Attorney General Jeff Sessions issued a memo rescinding Yates’s directive to phase out BOP’s use of private prisons.

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<sup>4</sup> See Rebuilding America Now, Report of Receipts & Disbursements at 13, FEC Form 3X (filed Dec. 8, 2016), <http://docquery.fec.gov/cgi-bin/fecimg/?201612089039950752>.

<sup>5</sup> Alex Isenstadt & Kenneth P. Vogel, *Trump Blesses Major Super PAC Effort*, Politico (July 20, 2016), <http://www.politico.com/story/2016/07/trump-super-pac-donors-225892>.

<sup>6</sup> *Id.* The Politico article mistakenly quotes Pence as referring to “Rebuild America Now”; the link to the slide shown at the meeting shows the actual quote, which referred to Rebuilding America Now. See <http://static.politico.com/82/37/a220e5774f6e893fadcc4d48abfe/rebuilding-america-now-pac-slide.jpg>.

(13) Attorney General Sessions's single-paragraph memo stated that Yates's decision "changed long-standing policy and practice, and impaired [BOP's] ability to meet the future needs of the federal correctional system," and he thus "direct[ed] [BOP] to return to its previous approach."<sup>7</sup>

(14) Attorney General Sessions's memo attracted significant attention among the press and public,<sup>8</sup> and, according to news reports, caused the stock prices of private prisons to rise significantly.<sup>9</sup> Many news reports pointed out that the private prison companies that benefitted from the policy reversal, including GEO Group, had financially supported President Donald Trump's campaign.<sup>10</sup>

(15) In April 2017, according to news reports, GEO Group was awarded a \$110 million contract to build the first immigrant detention center under the Trump Administration.<sup>11</sup>

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<sup>7</sup> See Memorandum from Jefferson B. Sessions III, Attorney Gen. to Acting Dir. of Fed. Bureau of Prisons (Feb. 21, 2017), [https://www.bop.gov/resources/news/pdfs/20170224\\_doj\\_memo.pdf](https://www.bop.gov/resources/news/pdfs/20170224_doj_memo.pdf).

<sup>8</sup> E.g., Eric Lichtblau, *Justice Department Keeps For-Profit Prisons, Scrapping an Obama Plan*, N.Y. TIMES (Feb. 23, 2017), <https://www.nytimes.com/2017/02/23/us/politics/justice-department-private-prisons.html>; Jon Schuppe, *Private Prisons: Here's Why Sessions' Memo Matters*, NBC NEWS (Feb. 26, 2017), <http://www.nbcnews.com/news/us-news/private-prisons-here-s-why-sessions-memo-matters-n725316>; Christopher Dean Hopkins, *Private Prisons Back in Mix for Federal Inmates as Sessions Rescinds Order*, NPR (Feb. 23, 2017), <http://www.npr.org/sections/thetwo-way/2017/02/23/516916688/private-prisons-back-in-mix-for-federal-inmates-as-sessions-rescinds-order>.

<sup>9</sup> Robert Martin, *The GEO Group Inc. (GEO), Corecivic Inc (CXW) Up on Sessions Memo*, NASDAQ (Feb. 23, 2017), <http://www.nasdaq.com/article/the-geo-group-inc-geo-corecivic-inc-cxw-up-on-sessions-memo-cm752487>.

<sup>10</sup> E.g., Fredreka Schouten, *Private Prisons Back Trump and Could See Big Payoffs With New Policies*, USA Today (Feb. 23, 2017), <http://www.usatoday.com/story/news/politics/2017/02/23/private-prisons-back-trump-and-could-see-big-payoffs-new-policies/98300394/>; Betsy Woodruff, *Trump Moves to Make Private Prisons Great Again*, DAILY BEAST (Feb. 23, 2017), <http://www.thedailybeast.com/articles/2017/02/23/trump-moves-to-make-private-prisons-great-again.html>; David Dayen, *Memo Restoring Use of Private Prisons Is Good News for One Company*, NATION (Feb. 24, 2017), <https://www.thenation.com/article/memo-restoring-use-of-private-prisons-is-good-news-for-one-company/>.

<sup>11</sup> Meredith Hoffman, *Immigrant Center to Be Built in Texas for \$110M*, U.S. NEWS (Apr. 13, 2017), <https://www.usnews.com/news/best-states/texas/articles/2017-04-13/texas-getting-first-immigrant-lockup-built-under-trump>.

(16) By letter to DOJ dated February 28, 2017 (addressed to the Office of the Attorney General, BOP, OIG, the Office of Legal Counsel (“OLC”), and the Office of Public Affairs (“OPA”)), pursuant to the Freedom of Information Act (“FOIA”), plaintiff requested “[a]ll factual materials, reports, and other evidence that the DOJ considered in reaching its conclusion to rescind the August 18, 2016 memo on private prisons.”<sup>12</sup>

(17) After DOJ failed to produce documents by FOIA’s statutory deadline, plaintiff filed suit, *see Campaign Legal Center v. DOJ*, No. 17-1170 (D.D.C. filed June 15, 2017). DOJ eventually indicated that OLC, BOP, and OIG possessed no responsive documents.

### **Administrative Proceedings**

(18) On November 1, 2016, CLC and an individual, Catherine Hinckley Kelley, filed a complaint with the FEC against Rebuilding America Now and GEO Corrections Holdings, Inc., seeking enforcement for apparent violation of the ban on federal contractor donations.<sup>13</sup> The same day, GEO Corrections Holdings, Inc. contributed an additional \$125,000 to Rebuilding America Now.<sup>14</sup>

(19) On November 4, 2016, the FEC sent CLC and Kelley a letter acknowledging receipt of the administrative complaint, and designating it Matter Under Review (“MUR”) 7180.

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<sup>12</sup> See Letter from CLC to DOJ (Feb. 28, 2017), <http://www.campaignlegalcenter.org/sites/default/files/02-28-17%20FOIA%20request%20-%20Private%20Prisons.pdf>.

<sup>13</sup> See Complaint, MUR 7180 (Rebuilding America Now & GEO Corrections Holdings, Inc.) (Nov. 1, 2016), <http://www.campaignlegalcenter.org/sites/default/files/11-01-16%20Rebuilding%20America%20Now%20Contractor%20Complaint.pdf>.

<sup>14</sup> Rebuilding America Now, Report of Receipts & Disbursements at 33, FEC Form 3X (filed Oct. 15, 2016), <http://docquery.fec.gov/cgi-bin/fecimg/?201610159032869693>.

(20) On December 20, 2016, CLC and Kelley supplemented their complaint by providing additional evidence of illegal contributions and further information as to the nature of GEO Corrections Holdings, Inc.'s status as a federal contractor.<sup>15</sup>

(21) Upon information and belief, the FEC has failed to act on plaintiff's administrative complaint to date.

(22) Meanwhile, GEO Corrections Holdings, Inc. has continued to make illegal contributions. On March 8, 2017, it contributed \$100,000 to Congressional Leadership Fund,<sup>16</sup> and on April 26, 2017, it contributed \$100,000 to Senate Leadership Fund,<sup>17</sup> both of which are super PACs. Since 2015, GEO Corrections Holdings, Inc. has contributed \$845,000 to political committees.

## CAUSES OF ACTION

### Count I: FECA, 52 U.S.C. § 30109(a)(8)(A)

(23) Plaintiff repeats and realleges paragraphs 1-22.

(24) Defendant's failure to act on plaintiff's administrative complaint within 120 days of its filing was contrary to law under 52 U.S.C. § 30109(a)(8)(A), which provides plaintiff a cause of action for "a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed."

### Count II: APA, 5 U.S.C. § 706(1)

(25) Plaintiff repeats and realleges paragraphs 1-22.

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<sup>15</sup> See Letter from CLC *et al.* to Fed. Election Comm'n (Dec. 20, 2016), <http://www.campaignlegalcenter.org/document/letter-trump-super-pac-received-illegal-donations-private-prison-company>.

<sup>16</sup> Congressional Leadership Fund, 2017 Pre-Special Election Report at 12, FEC Form 3X (filed April 6, 2017), <http://docquery.fec.gov/cgi-bin/fecimg/?201704069052044467>.

<sup>17</sup> Senate Leadership Fund, 2017 July Mid-Year Report at 9, FEC Form 3X (filed August 1, 2017), <http://docquery.fec.gov/cgi-bin/fecimg/?201708019069928857>.

(26) By failing to act on plaintiff's administrative complaint within 120 days of its filing, the FEC unlawfully withheld and unreasonably delayed agency action under 5 U.S.C. § 706(1).

**REQUESTED RELIEF**

WHEREFORE, plaintiff requests that this Court:

- (1) Declare that the FEC's failure to act on plaintiff's administrative complaint was contrary to law under 52 U.S.C. § 30109(a)(8)(A);
- (2) Declare that the FEC has unlawfully withheld and unreasonably delayed agency action on plaintiff's administrative complaint under 5 U.S.C. § 706(1);
- (3) Order the FEC to conform with this declaration within 30 days pursuant to 52 U.S.C. § 30109(a)(8)(C);
- (4) Award plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- (5) Grant such other relief the Court may deem just and proper.

Dated: January 10, 2018

Respectfully submitted,

/s/ Adav Noti

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