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8 **United States District Court**
9 **Central District of California**
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11 GARY E. JOHNSON; JAMES P. GRAY) Civil Action #
and GARY JOHNSON 2012, INC.,)
12 Plaintiff) VERIFIED COMPLAINT FOR
13 vs.) DECLARATORY AND INJUNCTIVE
14 FEDERAL ELECTION COMMISSION,) RELIEF
15 Defendants.) **THREE-JUDGE COURT**
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18 **PRELIMINARY STATEMENT**

19 1. This is an action for declaratory and injunctive relief against the United States
20 Federal Election Commission (“FEC”) to enforce federal law concerning
21 financing of presidential election campaigns, and specifically to compel the FEC
22 to make disbursement of pre-general election funding as provided by statute. 26
23 U.S.C. §9011 (b) (2) provides that this suit be heard and determined by a court
24 comprised of three judges in accordance with 28 U.S.C. §2284.
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26 **JURISDICTION AND VENUE**
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1 2. This Court has jurisdiction over this case, brought under the Presidential
2 Campaign Funding Act, 26 U.S.C. §9001, *et seq.*, pursuant to Section 9011 (b) (2)
3 thereof, which provides that “The district courts of the United States shall have
4 jurisdiction of proceedings instituted pursuant to this subsection.” Plaintiffs have
5 elected to bring this action for declaratory and injunctive relief pursuant to that
6 subsection to “implement this chapter”. Jurisdiction is also conveyed by 28 U.S.
7 C. §1331.

8 3. Venue is proper in this Court because Plaintiff James P. Gray is a resident of the
9 City of Newport Beach, and County of Orange, California, and thus of this
10 district, and under 28 U.S.C. 1391 (e) (1) (C), venue is proper where any plaintiff
11 resides if no real property is involved and the case is against an agency of the
12 United States. Defendant Federal Election Commission is an agency of the United
13 States.

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15 **PARTIES**

16 4. Plaintiff Gary E. Johnson is the former Governor of the State of New Mexico, a
17 resident of that state, and the nominee of the Libertarian Party for the office of
18 President of the United States. Plaintiff James P. Gray is a retired judge of the
19 Superior Court of the State of California for the County of Orange, and is the
20 nominee of the Libertarian Party for Vice President of the United States. Their
21 authorized campaign committee is Plaintiff Gary Johnson 2012, Inc, and it is
22 based in Salt Lake City, Utah. The names of Johnson and Gray will appear this
23 November as candidates for president and vice president on the ballots of not less
24 than 47 states, and confirmation of the same has been received from those states,
25 and from the District of Columbia. These jurisdictions have 495 combined votes
26 in the electoral college.

1 5. Defendant FEC is the government agency with the obligation under the
2 Presidential Election Campaign Fund Act, 26. U.S.C. §9001, *et seq.* to disburse
3 pre-general election federal funds to candidates.
4

5 **FACTS**
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7 6. The Presidential Election Fund Act (“the Act”) was enacted in the late-1960's to
8 provide for federal funding of presidential general election campaigns. The Act
9 provides for funding for not only the two major-party candidates but for third
10 party candidates as well. Funding is available, under specified circumstances,
11 both prior to the general election and, separately, after the general election. This
12 lawsuit involves only the former, which is referred to herein as “pre-general
13 election funding”.

14 7. On May 5, 2012, Plaintiff Johnson received the nomination of the Libertarian
15 Party for President of the United States, and Plaintiff Gray received the
16 nomination of the Libertarian Party for Vice President of the United States. The
17 Libertarian Party, which was founded in 1971, is the third-largest political party
18 in the United States. In the 30 states of the union where voters are allowed to
19 register by party, over 282,000 are currently registered Libertarians. Hundreds of
20 Libertarians have won election throughout the country at the state and local levels,
21 and thousands of candidates have appeared on ballots seeking election. Its
22 nominees for President and Vice President have appeared on ballots in every
23 presidential election from 1972 onwards. Millions of votes have been cast for
24 these candidates.
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- 1 8. The scheme for pre-general election funding for third party candidates is set forth
2 in 26 U.S.C. §9004 (a)(2)(A)¹ which provides, *in its entirety*, that, “[t]he eligible
3 candidates of a minor party in a presidential election shall be entitled to payments
4 under section 9006 equal in the aggregate to an amount which bears the same ratio
5 to the amount allowed under paragraph (1) for a major party as the number of
6 popular votes received by the candidate for President of the minor party, as such
7 candidate, in the preceding presidential election bears to the average number of
8 popular votes received by the candidates for President of the major parties in the
9 preceding presidential election.” Johnson is an “eligible candidate” within the
10 ambit of this section, as that term is defined in §9002(4) and §9003(a) and (c).
- 11 9. On May 8, 2012, through counsel², plaintiffs applied by letter to the FEC for
12 public funds for the general election, asserting their entitlement to such funding
13 under §9004 (a)(2)(A). It will be noted that this provision imposes no additional
14 requirement relating to the same presidential candidate having run in the
15 presidential election four years earlier. It will also be noted that the following
16 section, §9004 (a)(2)(B), as distinct from subsection (A) provides funding under
17 to candidates who do meet an additional criteria, and the funding provided in
18 subsection (B) is derived from a different mathematical calculation than the
19 funding authorized by subsection (A), and would necessarily result in much
20 greater funding—a much larger amount-- than under subsection (A).
- 21 10. On June 11, 2012, at the FEC’s request, plaintiffs sent a separate letter to the FEC
22 requesting funding, and a true copy of this letter is attached hereto as Exhibit 2.
23 Subsequently, on June 27, 2012, also at the FEC’s request, plaintiffs sent the FEC

25 ¹All further statutory references are to 26 U.S.C., unless otherwise noted.

26 ²A true copy of this letter is attached hereto as Exhibit 1.

- 1 a Letter Agreement in connection with their application, and a true copy of this is
2 attached hereto as Exhibit 3. The request made by the plaintiffs included a request
3 for an extension of time, and subsequently the FEC granted this time extension.
- 4 11. In 2008, the Democrat nominee for president received 69,498,215 votes; the
5 Republican nominee for president received 59,498,240; the Libertarian nominee
6 for president received 523,713 votes. The average of the two major party votes
7 is 64,498,228. The Libertarian nominee thus received 523,713/64,498,228, or
8 .81% of the average vote of the major party candidates.
- 9 12. This election cycle, the major party candidates will each receive \$92,241,400.00.
10 Based on this, Plaintiffs are entitled to receive .81% of that number, which is
11 \$747,115.34. The FEC has failed to distribute any funds to Plaintiffs, and has
12 taken the position that Plaintiffs are ineligible for funding, notwithstanding the
13 plain language of §9004 (a)(2)(A).

14
15 **COUNT ONE**

16 *Declaratory and Injunctive Relief*

- 17 13. Plaintiffs incorporate and restate the allegations in Paragraphs 1 through 12 above.
- 18 14. An actual dispute has arisen between Plaintiffs and Defendant, namely that
19 Plaintiffs claim they are entitled to pre-general election funding as set forth above,
20 the Defendant claims Plaintiffs are ineligible for such funding. A judicial
21 determination of this dispute is necessary.
- 22 15. Pre-election funding and post-election funding serve entirely different purposes.
23 Unless Plaintiffs receive their pre-election entitlement *before* the general election,
24 it is of little use, because the election will have already taken place. The amount
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1 of the funding to which plaintiffs are presently entitled is so significant that it
2 *could* make the difference between winning and losing. Even more likely is the
3 impact the receipt by plaintiffs before the general election of pre-election funding
4 would have on plaintiffs' subsequent entitlement to *post*-general election funding.
5 Post general-election funding requires that the Johnson/Gray ticket receive a
6 certain threshold percentage of votes in the general election, and the likelihood of
7 Plaintiffs meeting this threshold is dramatically greater if they receive the pre-
8 election funding in time to spend it to support their candidacy.

9 16. Unless an injunction issues mandating that the FEC disburse the pre-general
10 election funding to which the Plaintiffs are entitled, they will be gravely and
11 irreparably harmed and no amount of money could adequately compensate them.

12 17. Accordingly, Plaintiffs are entitled to a mandatory injunction directing the
13 immediate payment of the pre-election funds they have applied for, such that
14 payment be received in advance of the general election this November.

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16 **RELIEF REQUESTED**

17 WHEREFORE, plaintiffs pray for a judicial declaration that they are entitled to
18 pre-general election campaign funding, and for a mandatory injunction directly the FEC
19 to immediately disburse to plaintiffs the sum of \$747,115.34. Further, plaintiffs pray
20 for their costs of suit, and for such other and further relief as the Court may deem just
21 and equitable.

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23 September 24, 2012

Respectfully submitted,

JENSEN & ASSOCIATES, APC
Trial Lawyers

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26 By: _____
PAUL ROLF JENSEN
Attorneys for Plaintiffs