

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

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No: 1:07-cv-01707 (HHK/JMF)
	)	
EXECUTIVE OFFICE OF THE PRESIDENT, et al.,	)	
	)	
Defendants.	)	
	)	
NATIONAL SECURITY ARCHIVE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No: 1:07-cv-01577 (HHK/JMF)
	)	
EXECUTIVE OFFICE OF THE PRESIDENT, et al.,	)	
	)	
Defendants.	)	
	)	

**ANSWER TO CITIZENS FOR RESPONSIBILITY  
AND ETHICS IN WASHINGTON’S COMPLAINT**

Defendants the Executive Office of the President (“EOP”)<sup>1</sup> including its components The Council on Environmental Quality (“CEQ”), The Office of Management and Budget (“OMB”), The Office of National Drug Control Policy (“ONDCP”), The Office of Science and Technology Policy (“OSTP”), and The Office of the United States Trade Representative (“USTR”); The Office of Administration (“OA”); Sandra K. Evans, in her official capacity as Director of OA

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<sup>1</sup> Although the District Court held that “EOP” is a proper defendant, Mem. Op. & Order [90] at 33, it also provided that allowing the suit to proceed against “EOP” “will not affect components of the EOP that are not governed by the FRA.” *Id.* Accordingly, for the purposes of this Answer, responses on behalf of the defendant “EOP” shall be responses on behalf of only those EOP components governed by the FRA.

(“Director of OA”)<sup>2</sup>; National Archives and Records Administration (“NARA”); and Allen Weinstein, in his official capacity as the Archivist of the United States (collectively, “Defendants”), hereby respond to each numbered paragraph of the Complaint for Declaratory, Injunctive and Mandamus Relief of plaintiff, Citizens for Responsibility and Ethics in Washington (“CREW”) as follows:

**COMPLAINT FOR DECLARATORY, INJUNCTIVE AND MANDAMUS RELIEF**

1. This paragraph contains plaintiff’s characterization of its action against defendants to which no answer is required, but insofar as an answer may be deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any other relief.

2. This paragraph contains plaintiff’s characterization of its action against defendants to which no answer is required, but insofar as an answer may be deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any other relief.

**JURISDICTION AND VENUE**

3. This paragraph contains plaintiff’s conclusions of law regarding the jurisdictional basis for this action, to which no response is required.

4. Defendants admit that venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

**PARTIES**

5. Defendants are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

6. Defendants are without first-hand knowledge or information sufficient to confirm or

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<sup>2</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Alan Swendiman’s successor, Sandra K. Evans, “is automatically substituted as a party.”

deny the allegations contained in this paragraph.

7. Defendants are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

8. Defendants are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph, except to admit that they are aware of a publication released by CREW entitled *Without a Trace: The Story Behind the Missing White House E-Mails and the Violations of the Presidential Records Act*.

9. The first sentence of this paragraph contains conclusions of law to which no response is necessary, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to *Public Citizen v. Carlin*, 2 F. Supp. 2d 1 (D.D.C. 1997), *rev'd on other grounds*, 184 F.3d 900 (D.C. Cir. 1999), for a full and accurate statement of its holding, and also respectfully refer the Court to the Official Website of The Executive Office of the President, <http://www.whitehouse.gov/government/eop.html> and <http://www.whitehouse.gov/government/eop-foia.html> (as of Aug. 31, 2007) for a full and accurate statement of its contents. As to the remaining allegations in the paragraph, Defendants OA and Director of OA deny that the Office of Administration falls under the definition of an agency under the Federal Records Act, but admit that OA is a part of the Executive Office of the President ("EOP"). Defendants NARA, EOP, the FRA components of the EOP and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph, which also calls for a legal conclusion. Defendant EOP further admits that CEQ, OMB, ONDCP, OSTP, and USTR are components of the EOP. Defendants OA, Director of OA, NARA and Weinstein are without first-hand knowledge or information

sufficient to confirm or deny the allegations contained in second sentence.

10. Defendants OA and Director of OA deny the allegation in the first sentence that OA is an agency within the meaning of that term as defined in 44 U.S.C. §§ 2101, 2901(14) and 5 U.S.C. § 701(b)(1), see CREW v. Office of Admin., Civ. No. 07-964, Dkt. #54 (Memorandum Opinion concluding that OA is not an agency within the meaning of the FRA) (June 16, 2008) (D.D.C.) (CKK), on appeal Civ. App. No. 08-5188 (D.C. Cir.), but admit that OA is a component within the EOP. Defendants NARA, EOP, the FRA components of the EOP and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this first sentence, which also calls for a legal conclusion. The second and third sentences of this paragraph contain conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer the Court to the Federal Records Act, 44 U.S.C. §§ 2101 et seq., 2901 et seq., 3101 et seq., and 3301 et seq., and the Presidential Records Act, 44 U.S.C. §§ 2201 et seq., for a full and accurate statement of its contents. Defendants deny the allegations contained in the fourth sentence of this paragraph, except OA admits that it has possession and control of numerous disaster recovery tapes.

11. Defendants OA and Director of OA admit that Sandra K. Evans is the Director of OA, and is responsible for directing and overseeing the activities and business of the OA. Defendants NARA, EOP, the FRA components of the EOP and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this sentence. The remaining allegations of this paragraph contain plaintiff's characterization of the lawsuit, to which no response is necessary, but insofar as an answer is deemed necessary, defendants admit that plaintiffs have filed this action against defendants, OA and the Director of

OA.

12. Defendants NARA and Allen Weinstein admit the first sentence of this paragraph. Defendants OA, Director of OA, EOP, and the FRA components of EOP are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this sentence. Defendants deny the second sentence of this paragraph, except defendants NARA and Weinstein admit that Defendant NARA's responsibilities under the Federal Records Act include appraising records, approving the disposition of federal records, operating Federal Records Centers, and preserving permanent records. Defendants respectfully refer the Court to the Federal Records Act, 44 U.S.C. §§ 2101-18, 2901-09, 3101-07, and 3301-24, for a full and accurate description of NARA's responsibilities under the Federal Records Act.

13. The first, second, third, fourth, fifth, and sixth sentences of this paragraph contain plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to the Federal Records Act, 44 U.S.C. §§ 2101 et seq., 2901 et seq., 3101 et seq., and 3301 et seq., and the Presidential Records Act, 44 U.S.C. §§ 2201 et seq., for a full and accurate statement of their content. The remaining allegations of this paragraph contain plaintiff's characterization of the lawsuit, to which no response is necessary.

## **STATUTORY FRAMEWORK**

### **FEDERAL RECORDS ACT**

14. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to the Federal Records Act, 44 U.S.C. §§ 2101-18, 2901-09, 3101-07, and 3301-24, for a full and

accurate statement of their content.

15. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3101 and 2901(14), for a full and accurate statement of their content.

16. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3301, for a full and accurate statement of its contents.

17. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3301 et seq. (Ch. 33 Disposal of Records) and 3314, for a full and accurate statement of their content.

18. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3303 and 3303a(a), for a full and accurate statement of their content.

19. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3303a(c), for a full and accurate statement of its contents.

20. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2905(a), for a full and accurate statement of its contents.

21. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court

to 44 U.S.C. § 3106, for a full and accurate statement of its contents.

22. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 2904(a), 2904(c)(1), and 2905(a), for a full and accurate statement of their content.

23. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3102 and 3105, for a full and accurate statement of their content.

#### **THE PRESIDENTIAL RECORDS ACT**

24. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2203, for a full and accurate statement of its contents.

25. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2201(2), for a full and accurate statement of its contents.

26. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2203(b), for a full and accurate statement of its contents.

27. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to the Federal Records Act, 44 U.S.C. §§ 2101 et seq., 2901 et seq., 3101 et seq., and 3301 et seq., and the Presidential Records Act, 44 U.S.C. §§ 2201 et seq., for a full and accurate

statement of their content.

28. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 2203(c) and 2203(d), for a full and accurate statement of their content.

29. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2203(f)(1), for a full and accurate statement of its contents.

30. Defendants OA, Director of OA, EOP and FRA components of EOP are without first-hand knowledge or information sufficient to confirm or deny the allegations in the first sentence of the paragraph to the extent it alleges facts relating to records management systems from previous administrations, and for that reason denies them. The first sentence in this paragraph also contains a characterization of law to which no response is required. To the extent a response is required, defendant OA admits that systems were in place in 2002 to preserve presidential records, as defined in the Presidential Records Act, from the sensitive but unclassified ("SBU") EOP email system. Defendants OA, Director of OA, EOP, and FRA components of EOP deny the allegations contained in the second sentence of this paragraph. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this second sentence.

**FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF**

31. Defendants deny the allegations contained in the first sentence, except Defendants OA and Director of OA admit that in 1994, OA implemented the Automated Records Management System ("ARMS") to manage emails in the SBU EOP email system, which

comprises more than “White House emails.” Defendants deny the allegations contained in the second sentence of this paragraph, except Defendants OA and Director of OA admit that ARMS is a record management apparatus that receives emails and then preserves and categorizes them. Defendants deny the allegations contained in the third sentence of this paragraph, except that Defendants OA and Director of OA admit that both federal and presidential records have been stored in ARMS. Defendants deny the allegations contained in the fourth sentence of this paragraph, except Defendants OA and Director of OA admit that ARMS contains controls to prevent unauthorized deletion of emails.

32. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the first sentence of this paragraph. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the second, third, and fourth sentences of this paragraph. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this second sentence.

33. Defendants OA, Director of OA, EOP and FRA components of EOP admit that all components of the EOP, including, but not limited to the White House Office, are on the one SBU EOP network, with the exception of certain classified communications and records. Defendants OA, Director of OA, EOP and FRA components of EOP deny the second and third sentences of this paragraph, and defendants OA and Director of OA aver that the SBU EOP email system allow for storage of email based on the component that creates or receives the email. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

34. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the first sentence of this paragraph, except Defendant OA admits that, in approximately 2005, it learned that a number of emails within the SBU EOP network may not have been properly stored. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the second sentence of this paragraph, except Defendant OA admits that OA created a chart that purports to identify certain dates and EOP components for which the chart's creator appears to have concluded that certain EOP components were missing emails on certain dates in the 2003-2005 time period. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the third sentence of this paragraph. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

35. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in this paragraph. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

36. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the first sentence of this paragraph, except Defendant OA admits that in late 2005-early 2006, a plan was developed and implemented to focus on recovery of certain limited information in response to legal inquiry. Defendants OA, Director of OA, EOP and FRA components of EOP deny the remaining allegations contained in this paragraph. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

37. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in this paragraph, except Defendant OA admits that, as early as 2002, it began to research replacing Lotus Notes and ARMS, began to work on a new platform for its email records management system, and that it was working with the White House on the project. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

38. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in this paragraph, except Defendant OA admits that, when the decision was made to change the EOP email platform from Lotus Notes to Microsoft Exchange, efforts were made to create an interface between Microsoft Exchange and ARMS that would allow ARMS to continue being used for records management purposes. Because that interface would not work, defendant OA avers that it implemented a new system to manage the email records on the SBU EOP email system and that efforts were begun to develop a new approach to handle the records management aspects of the Microsoft Exchange email platform. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

39. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in this paragraph. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

40. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the paragraph. Defendants NARA and Weinstein are without first-hand

knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

41. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the first sentence of this paragraph. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in the second and third sentences of this paragraph. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph.

42. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations contained in this paragraph. Defendants OA and Director of OA deny the second sentence of this paragraph except to acknowledge that disaster recovery backup tapes may, in some circumstances, be able to be used to recover e-mails. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph, although they admit that the Archivist did not provide authorization to dispose of the emails alleged in this paragraph to have been deleted.

43. Defendants OA, Director of OA, EOP and FRA components of EOP are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in the first sentence of this paragraph. Defendants NARA and Weinstein deny that officials at NARA had been made aware at the time of the filing of the Complaint that millions of federal and presidential email records actually had been deleted, except to admit that one or more officials at NARA were aware of allegations that some indeterminate number of federal and presidential email records may have been deleted. Defendants OA, Director of OA, EOP and FRA components of EOP deny the allegations in the second and third sentences of this paragraph.

Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in the second and third sentences and for that reason denies them. Defendants deny the allegations contained in the fourth sentence of this paragraph.

44. This paragraph contains plaintiff's conclusions of law and plaintiff's characterization of its action against defendants to which no answer is required, but insofar as an answer may be deemed necessary, defendants deny the allegations contained in this paragraph.

45. This paragraph contains plaintiff's conclusions of law and plaintiff's characterization of its action against defendants to which no answer is required, but insofar as an answer may be deemed necessary, defendants deny the allegations contained in this paragraph.

46. The first sentence contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to the Federal Records Act, 44 U.S.C. §§ 2101 et seq., 3010 et seq., and 3301 et seq., and the Presidential Records Act, 44 U.S.C. §§ 2201 et seq., for a full and accurate statement of their content. The second sentence contains plaintiff's characterization of the 1997 White House Staff Manual, the content of which speaks for itself. To the extent that the allegations contained in the second sentence are inconsistent with the manual, Defendants deny the allegations.

47. This paragraph contains plaintiff's characterization of the February 2001 White House Staff Manual, the content of which speaks for itself. To the extent that the allegations contained in this paragraph are inconsistent with the manual, Defendants deny the allegations.

48. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations.

**PLAINTIFF'S CLAIMS FOR RELIEF**  
**CLAIM ONE**

**For an Order Compelling Defendant Archivist to  
Initiate Action to Restore Deleted Records  
Under 44 U.S.C. § 2905.**

49. Defendants repeat their answers to all preceding paragraphs.

50. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2905, for a full and accurate statement of its contents.

51. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2905, for a full and accurate statement of its contents.

52. Defendants deny the allegations in this paragraph, except to admit that Defendant Weinstein has not to date formally provided notice to the Attorney General pursuant to 44 U.S.C. § 2905, to initiate action to recover any allegedly missing emails.

53. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations contained therein and respectfully refer this Court to 44 U.S.C. § 2905, for a full and accurate statement of its contents.

54. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

**CLAIM TWO**

**For an Order Compelling Defendants EOP and OA to  
Initiate Action to Restore Deleted Records  
Under 44 U.S.C. § 3106.**

55. Defendants repeat their answers to all preceding paragraphs.

56. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3106, for a full and accurate statement of its contents.

57. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3106, for a full and accurate statement of its contents.

58. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations contained therein and respectfully refer this Court to 44 U.S.C. § 3106, for a full and accurate statement of its contents.

59. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

**CLAIM THREE**

**For a Writ of Mandamus Compelling Defendant Archivist to  
Restore Deleted Records.**

60. Defendants repeat their answers to all preceding paragraphs.

61. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court

to 44 U.S.C. § 2905, for a full and accurate statement of its contents.

62. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2905, for a full and accurate statement of its contents.

63. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 2905, for a full and accurate statement of its contents and deny that 44 U.S.C. § 2905 imposes ministerial duties upon the Archivist with no discretion allowed on the part of the Archivist.

64. Defendants are without first-hand knowledge or information sufficient to form a belief regarding the truth of the allegations in this paragraph, except to the extent it states a legal conclusion to which no response is required.

65. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations contained therein and respectfully refer this Court to 44 U.S.C. § 2905, for a full and accurate statement of its contents.

66. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

#### **CLAIM FOUR**

#### **For a Writ of Mandamus Compelling Defendants EOP and OA to Restore Deleted Records.**

67. Defendants repeat their answers to all preceding paragraphs.

68. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3106, for a full and accurate statement of its contents.

69. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3106, for a full and accurate statement of its contents.

70. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3106, for a full and accurate statement of its contents and deny that 44 U.S.C. § 3106 imposes ministerial duties upon the EOP, or FRA components within EOP, with no discretion allowed on the part of them.

71. Defendants are without first-hand knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, except to the extent it states a legal conclusion to which no response is required.

72. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations therein and respectfully refer this Court to 44 U.S.C. § 2905, for a full and accurate statement of its contents.

73. This plaintiff contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

**CLAIM FIVE**

**For an Order Compelling Defendant Archivist to  
Set Forth Guidelines For an Adequate System to Preserve Federal Records  
under 44 U.S.C. §§ 2904, 2905, 3301, 3302, 3303a, and 3314.**

74. Defendants repeat their answers to all preceding paragraphs.

75. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3301, for a full and accurate statement of its contents.

76. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 2904 and 2905, for a full and accurate statement of their content.

77. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3302 and 3314, for a full and accurate statement of their content.

78. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph and for that reason denies them. The remaining Defendants deny the allegations contained in this paragraph.

79. Defendants deny the allegations in the first sentence of this paragraph. The second sentence of this paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations contained therein and respectfully refer this Court to 44 U.S.C. §§ 2904, 2905, 3301, 3302, 3303a, and 3324, for a full and accurate statement of their content.

80. This paragraph contains plaintiff's conclusions of law to which no response is

required, but insofar as an answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

**CLAIM SIX**

**For an Order Compelling Defendants EOP and OA to  
Implement an Adequate System to Preserve Federal Records  
Under 44 U.S.C. §§ 3101, 3102, 3105, 3301, 3303, and 3314.**

81. Defendants repeat and reallage their answers in all preceding paragraphs.

82. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3101 and 3303, for a full and accurate statement of their content.

83. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3102 and 3108, for a full and accurate statement of their content.

84. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3303 and 3314, for a full and accurate statement of their content.

85. Defendants NARA and Weinstein are without first-hand knowledge or information sufficient to confirm or deny the allegations contained in this paragraph and for that reason denies them. The remaining Defendants deny the allegations contained in this paragraph.

86. The second sentence of this paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations therein and respectfully refer this Court to 44 U.S.C. §§ 3101, 3102, 3105, 3301, 3303, and 3314, for a full and accurate statement of their content.

87. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

**CLAIM SEVEN**

**For a Writ of Mandamus Compelling Defendant Archivist to  
Set Forth Guidelines For an Adequate System to Preserve Federal Records.**

88. Defendants repeat their answers to all preceding paragraphs.

89. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. § 3301, for a full and accurate statement of its contents.

90. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 2904 and 2905, for a full and accurate statement of their content.

91. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3302, 3303a, and 3314, for a full and accurate statement of their content.

92. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 2904, 2905, 3301, 3302, 3303a, and 3314, for a full and accurate statement of their content and deny that 44 U.S.C. §§ 3302, 3303a, 3314 imposes ministerial duties upon the Archivist, with no discretion allowed on his part..

93. Defendants are without first-hand knowledge or information sufficient to form a belief regarding the truth of the allegations in this paragraph, except to the extent it states a legal

conclusion to which no response is required.

94. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations therein and respectfully refer this Court to 44 U.S.C. §§ 2904, 2905, 3301, 3302, 3303a, and 3314, for a full and accurate statement of their content.

95. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

### **CLAIM EIGHT**

#### **For a Writ of Mandamus Compelling Defendants EOP and OA to Implement an Adequate System to Preserve Federal Records.**

96. Defendants repeat their answers to all preceding paragraphs.

97. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3101 and 3301, for a full and accurate statement of their content.

98. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3102 and 3105, for a full and accurate statement of their content.

99. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court to 44 U.S.C. §§ 3303 and 3314, for a full and accurate statement of their content.

100. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants respectfully refer this Court

to 44 U.S.C. §§ 3101, 3102, 3105, 3303, and 3314, for a full and accurate statement of their content and deny that those sections impose a ministerial duty on EOP and OA, with no discretion allowed on their part.

101. Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph, except to the extent it states a legal conclusion to which no response is required.

102. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny the allegations therein and respectfully refer this Court to 44 U.S.C. §§ 3101, 3102, 3105, 3301, 3303, and 3314, for a full and accurate statement of their content.

103. This paragraph contains plaintiff's conclusions of law to which no response is required, but insofar as an answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

#### PRAYER FOR RELIEF

This remaining unnumbered paragraph, including subparts (1) through (6), contain plaintiff's demand for relief to which an answer is not required, but insofar as an answer is deemed necessary, defendants deny that plaintiff is entitled to the relief requested or to any relief whatsoever.

Defendants further deny any and all allegations in the Complaint not expressly admitted herein.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

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

**SECOND DEFENSE**

The Court lacks subject matter jurisdiction over any claims for relief under the Presidential Records Act, 44 U.S.C. § 2201, et seq.

**THIRD DEFENSE**

Plaintiff lacks standing to pursue any of its claims.

**FOURTH DEFENSE**

Plaintiff fails to state a cause of action for mandamus relief because the Federal Records Act provisions relied upon by plaintiff do not state ministerial duties.

**FIFTH DEFENSE**

“EOP” is an improper party to the Complaint.

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WHEREFORE, defendants pray for an order (1) denying plaintiff's request for relief; and  
(2) for such other and further relief as the Court deems just and proper.

Dated: November 28, 2008

Respectfully submitted,

GREGORY G. KATSAS  
Assistant Attorney General

JEFFREY A. TAYLOR  
United States Attorney

JOHN R. TYLER  
Assistant Branch Director

/s/ Helen H. Hong

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HELEN H. HONG (CA Bar No. 235635)  
TAMRA T. MOORE (D.C. Bar No. 488392)  
Trial Attorneys  
U.S. Department of Justice, Civil Division  
P.O. Box 883, 20 Massachusetts Ave., NW  
Washington, D.C. 20044  
Telephone: (202) 514-8095  
Fax: (202) 616-8470  
tamra.moore@usdoj.gov

Counsel for Defendants