

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**JACK and RENEE BEAM,**

**Plaintiffs,**

**Civil Action No. 07-cv-1227**

**Honorable Rebecca R. Pallmeyer**

**vs.**

**FEDERAL ELECTION COMMISSION,**

**Defendant.**

/

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S  
SECOND MOTION FOR SUMMARY JUDGMENT**

In its second motion for summary judgment, Defendant FEC contends that this Court lacks subject matter jurisdiction over this matter because, it claims, Plaintiffs' financial institution at issue, Merrill Lynch, does not fall within the protections of the Right to Financial Privacy Act. The Court should flatly reject Defendant's motion for the following reasons.

The Right to Financial Privacy Act prohibits the disclosure and/or transfer of certain financial records. Title 12 U.S.C. § 3401 defines financial institution as "any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States . . . ."

Based on a plain reading of the statute, Plaintiffs' financial institution, Merrill Lynch, is covered by the RFPA. In fact, according to its website, "Merrill Lynch is one of the world's premier providers of wealth management, securities trading and sales, corporate finance and investment

*banking* services.” See **Exhibit A**. Indeed, Plaintiffs deposited money into their Merrill Lynch money market checking account (interest bearing) and received deposit notices and financial statements just like any other bank. There is no reason that Merrill Lynch is exempted from the protections of the RFPA. The RFPA defines a financial institution as “any office of a bank.” Merrill Lynch, a self-described investment bank, falls within the purview of the statute. *See also Merrill Lynch v. Dabit*, 547 U.S. 71 (2006)(describing Merrill Lynch as an investment *banking* firm).

Defendant’s attempt to exempt Merrill Lynch from the protections afforded under the RFPA are both unavailing and untimely. The Court should deny Defendant Federal Election Commission’s Second Motion for Summary Judgment.

Respectfully submitted,

FIEGER, FIEGER, KENNEY, JOHNSON & GIROUX, P.C.

s/ Michael R. Dezsi

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Dated: May 4, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record in this matter.

s/ Michael R. Dezsi \_\_\_\_\_

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# Exhibit A



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[http://www.ml.com/about\\_us/company\\_overview](http://www.ml.com/about_us/company_overview)

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## Merrill Lynch Overview

### Merrill Lynch – A Global Leader

Merrill Lynch is one of the world's premier providers of wealth management, securities trading and sales, corporate finance and investment banking services.

Working with our clients as strategic partners, we create and execute winning solutions, which address our clients' most pressing strategic, financial and investment needs—anywhere in the world.

We stand apart by building and maintaining solid partnerships with clients. Merrill Lynch places our client relationships first and is proud to conduct our business based on five unwavering principles: **Client Focus, Respect for the Individual, Teamwork, Responsible Citizenship, and Integrity.**

#### Trusted Advisors

The world's leading corporations, financial institutions and governments, as well as the top mutual funds, hedge funds, pensions and endowments, trust Merrill Lynch to help them solve problems and capitalize on opportunities.

#### Global Partners

More than 60,000 professionals in 40 countries combine local market expertise with Merrill Lynch's substantial global product resources, technology and capital.

#### Culture of Innovation

For decades, we have pushed beyond the status quo to design new securities and improve existing structures; create sophisticated analytics and trading systems; structure landmark transactions; and help clients find the right strategies to improve performance.

#### Superior Execution

Leadership positions in our chosen markets enable us to anticipate market trends, see opportunities as they develop and execute cleanly.

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