

AE

UNITED STATES DISTRICT COURT

JACK and RENEE BEAM,

Plaintiffs,

vs.

07CV1227
JUDGE PALLMEYER
MAG. JUDGE COLE

ALBERTO R. GONZALES, UNITED STATES ATTORNEY GENERAL, AND ROBERT LENHARD, FEDERAL ELECTION COMMISSION CHAIRMAN, In their official capacities,

Defendants.

FILED

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**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

MICHAEL R. DEZSI (P64530)
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APPLICATION FOR WRIT OF MANDAMUS AND COMPLAINT

Plaintiffs, Jack and Renee Beam, bring this Complaint against the above named Defendants seeking a writ of mandamus and other relief under the Administrative Procedures Act and declaratory judgment. In support of their complaint, Plaintiffs state the following:

1. Plaintiffs Jack and Renee Beam are residents of Cook County, Illinois, located in the Northern District of Illinois, Eastern Division. Plaintiffs are the target of a politically motivated investigation initiated by Defendants because of Plaintiffs' political activities and support of former presidential and vice presidential candidate John Edwards.

2. Defendant Alberto R. Gonzales is the United States Attorney General who serves at the pleasure of President George W. Bush. Prior to his appointment as United States Attorney

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General, Mr. Gonzales served as White House Counsel to President George W. Bush, and prior to that, he was appointed by then Governor George W. Bush to serve as a Justice of the Texas Supreme Court.

3. Defendant Robert Lenhard is the current Chairman of the Federal Election Commission.

4. Jurisdiction is conferred upon this Honorable Court by 28 U.S.C. § 1331, this being a civil action arising under the Constitution and the laws of the United States. Jurisdiction is also conferred upon this Court by 28 U.S.C. § 1361, this being an action to compel the Chairman of the Federal Election Commission to perform nondiscretionary duties imposed on him by federal law.

5. Plaintiffs bring this action pursuant to 28 U.S.C. § 2201 & 2202, this being an action for declaratory judgment and equitable relief authorized by law to redress deprivations under color of law of rights, privileges, and immunities secured by the United States Constitution. Plaintiffs also bring this action pursuant to the Administrative Procedures Act, 5 U.S.C. §§ 701-705, which in conjunction with provisions of the Federal Campaign Finance Act, confers jurisdiction on this Court over the acts or omissions of the FEC.

6. At all times relevant to this Complaint, and in taking all of the actions described herein, Defendants have acted and threaten to act under color of law and were effecting, and will effect, the custom, policies, rules, and laws of the United States of America.

FACTS GIVING RISE TO PLAINTIFFS' COMPLAINT

7. The Federal Election Commission (FEC) is congressionally delegated with the sole exclusive jurisdiction over the Federal Campaign Finance Act ("Act"). 2 U.S.C. § 437c.

8. By statute, the FEC is a bipartisan Commission consisting of 6 members no more than 3 of whom may be affiliated with the same political party. 2 U.S.C. § 437c.

9. By statute, the FEC is charged with the exclusive jurisdiction of civil enforcement of the Act. 2 U.S.C. § 437c.

10. By statute, once the Commission determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of the Act, the Commission *shall make an investigation of such alleged violation*. 2 U.S.C. § 437g(a)(2).

11. By statute, no one other than the Federal Election Commission can proceed with an investigation or prosecution of alleged violations of the Act *until and only after the FEC has itself conducted an investigation and referred the matter to the Attorney General "by an affirmative vote of 4 of its members."* 2 U.S.C. § 437g(a)(5)(C). Until such time that the FEC has made such a bipartisan referral to the Attorney General, the Attorney General has no authority, jurisdiction, or power to proceed with an investigation of alleged violations of the Act.

12. During or about June 2005, the Attorney General, by and through his official office and in supervision of his agents including the Department of Justice, the FBI, and the IRS, began an unlawful and unconstitutional investigation of many trial attorneys including Geoffrey N. Feiger, members of his law firm Fieger, Fieger, Kenney, and Johnson, their spouses and children, Plaintiff Jack Beam who is *of counsel* to the Fieger law firm, and Plaintiff Renee Beam who is the spouse of Jack Beam. The Attorney General is investigating whether these individuals have violated the Federal Campaign Finance Act, 2 U.S.C. § 431 *et. seq.*

13. To date, the FEC has never made any referral to the Attorney General alleging that Mr. Fieger, members of the Fieger Firm, or Mr. and Mrs. Beam have violated any provisions of the Act.

14. Plaintiffs Mr. and Mrs. Beam have never violated any provisions of the Act.

15. During his unlawful investigation, the Attorney General has issued numerous subpoenas to compel testimony and the production of documents before a grand jury. In the course of Defendant Gonzales's unconstitutional investigation and interrogation, witnesses were coerced to reveal constitutionally protected activities such as the identity of the presidential candidate for whom they voted in the 2004 election.

16. Many of the individuals compelled to testify before the grand jury were supporters and financial contributors to the John Edward's campaign during the 2004 vice presidential election.

17. On September 19, 2006, almost a year after the Attorney General began his unlawful investigation of Plaintiffs, Mr. Fieger and the Fieger firm, the FEC informed Plaintiffs that it had "reason to believe" that Plaintiffs violated certain provisions of the Federal Election Campaign Finance Act of 1971.

COUNT I; DECLARATORY JUDGMENT

18. Plaintiffs incorporate paragraphs 1-17 of their Complaint herein.

19. Under the plain and unambiguous statutory language of the Act, the Attorney General, and all of its subordinate agencies, are barred from conducting an investigation or prosecution of alleged violations of the Federal Campaign Finance Act until such time that the FEC has investigated and referred the matter "*by an affirmative vote of 4 of its members.*" The purpose of the statute is to protect against the type of politically motivated investigation/prosecution as are occurring here.

20. To date, the FEC has never investigated or referred to the Attorney General any alleged violations of the Act by Plaintiffs, Mr. Fieger, or the members, spouses, or children of Mr. Fieger's law firm.

21. Nevertheless and contrary to the congressional mandate contained in the statute, the Attorney General has initiated an unlawful and unconstitutional investigation and persecution of Plaintiffs, Mr. Fieger, and his law firm based on suspected violations of the Act. The FEC is tacitly cooperating and conspiring with the Attorney General and his subordinate offices to circumvent the jurisdictional requirements of the Federal Campaign Finance Act.

22. Plaintiffs have a well founded fear of being prosecuted by the Attorney General who is conducting an extra-jurisdictional, illegal, and unconstitutional investigation of facts involving Plaintiffs.

23. By proceeding with a criminal investigation without a congressionally mandated referral by a bipartisan majority vote of the FEC, Defendants are violating the clear provisions of the Act, and usurping the congressional command that the FEC has exclusive primary jurisdiction over all alleged violations of the Act.

24. By proceeding with a criminal investigation without a congressionally mandated referral by a bipartisan majority vote of the FEC, Defendants are engaging in an unlawful investigation for which they lack jurisdiction.

25. By ignoring the terms of the Act, and proceeding without a referral from the FEC, Defendant Gonzales is using Plaintiffs' Fifth Amendment privilege as a mechanism to thwart the mandated role of the FEC to investigate and resolve, in the first instance, disputes involving campaign finance.

COUNT II; ADMINISTRATIVE PROCEDURES ACT

26. Plaintiffs incorporate paragraphs 1-25 of their Complaint herein.

27. Under the plain and unambiguous language of 2 U.S.C. § 437g(a)(2), once the FEC has found reason to believe that an individual has committed a violation of the Act and notifies the individual involved, the FEC “shall make an investigation of such alleged violation.” On September 19, 2006, the FEC found reason to believe that Plaintiffs may have violated provisions of the Act.

28. To date, the FEC has utterly failed, or refused, to comply with the statutorily mandated requirement that it conduct an investigation. Furthermore, the Attorney General has thwarted the ability of the FEC to conduct its statutorily required investigation.

29. The FEC’s failure to comply with the law, in order to aid the unconstitutional investigation of the Attorney General, is a violation of the Administrative Procedures Act, 5 U.S.C. §§ 701-706.

COUNT III; WRIT OF MANDAMUS

30. Plaintiffs incorporate paragraphs 1-29 of their Complaint herein.

31. The FEC is wilfully failing to abide by the provisions of the Federal Campaign Finance Act. Instead, the FEC is abdicating its affirmative duty to conduct a civil investigation in order to violate Plaintiffs’ federally secured rights and assist the Attorney General in his extra-jurisdictional, illegal, and unconstitutional investigation.

32. Under 28 U.S.C. § 1361, “[t]he district court shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

RELIEF REQUESTED

For the reasons stated herein, Plaintiffs are entitled to:

(a) a declaration that Defendants' conduct is unlawful, unconstitutional, and contrary to the requirements of the Federal Campaign Finance Act;

(b) a declaration that the FEC has failed to adhere to the requirements imposed upon it the Federal Campaign Finance Act.

(c) a writ of mandamus compelling the Federal Election Commission to comply with the Congressionally mandated procedures set forth in the Federal Campaign Finance Act.

(d) any other relief as authorized under the laws including costs and attorney fees for bringing this action.

Respectfully submitted,

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

By: 
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Dated: March 1, 2007

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