

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

GEOFFREY N. FIEGER,  
NANCY FISHER, and FIEGER,  
FIEGER, KENNEDY & JOHNSON, P.C.,

Plaintiffs,

v.

ALBERTO GONZALES, UNITED  
STATES ATTORNEY GENERAL,  
and MICHAEL E. TONER, FEDERAL  
ELECTION COMMISSION  
CHAIRMAN,

Civil Action No. 07-10533  
Hon. Lawrence P. Zatkoff  
Mag. Judge Mona K. Majzoub

ANSWER

**ANSWER OF THE FEDERAL ELECTION COMMISSION AND ITS CHAIRMAN**

The Commission responds to the numbered paragraphs in Plaintiffs' Application for Writ of Mandamus and Complaint as follows and denies everything not specifically given a response.

1. The Commission is without knowledge or information sufficient to form a belief as to the truth of the first two sentences. To the extent the third sentence of this paragraph makes a factual allegation regarding the Commission, the Commission DENIES the allegation.

2. ADMIT.

3. The Commission DENIES the first sentence. Robert D. Lenhard is the current chairman of the Commission and was the chairman when plaintiffs filed their complaint. Mr. Toner is no longer a member of the Commission. In any event, it is the Commission, not its chairman that has statutory authority to administer the Act. The Commission ADMITS the second sentence of this paragraph.

4. DENY.

5. This paragraph describes plaintiffs' complaint and legal conclusions, to which no response is required.

6. The Commission is without knowledge or information sufficient to form a belief as to the allegations in this paragraph regarding the Attorney General. To the extent this paragraph purports to make a factual allegation regarding the Commission, it is unintelligible and vague so that no response is possible. If a response is deemed required, the Commission DENIES the allegation.

7-10. These paragraphs purport to describe statutory provisions that speak for themselves and to which no response is required. The Commission ADMITS that it has exclusive jurisdiction over civil enforcement of the Act.

11. The Commission ADMITS that it made reason-to-believe findings to the extent plaintiffs have already publicly disclosed those findings in Exhibit B to their Motion for Declaratory Judgment.

12. The Commission DENIES that it has failed to do anything required by the Act.

13. This paragraph contains plaintiffs' legal conclusions and purports to describe statutory provisions, which speak for themselves. No response is therefore required.

14. The Commission can neither admit nor deny the allegation in this paragraph because the Act prohibits the Commission or "any person" — which includes the Commission's attorneys, as well as plaintiffs and their attorneys — from making public any notification or any investigation by the Commission in any administrative enforcement proceeding, without the written consent of the recipient(s) of the notification(s) or the subjects of the investigation(s).

2 U.S.C. 437g(a)(12).

15-17. The Commission is without knowledge or information sufficient to form a belief as to the truth of these allegations.

18. In this paragraph plaintiffs' re-allege paragraphs 1-17. Likewise, the Commission incorporates its responses to paragraphs 1-17.

19. There is no statute entitled the "Federal Campaign Finance Act." To the extent that plaintiffs intend to refer to the Federal Election Campaign Act, as amended, 2 U.S.C. 431-55, that statute speaks for itself and no response is required.

20. The Commission ADMITS that it has opened an investigation, to the extent plaintiffs have already publicly disclosed that fact in Exhibit B to their Motion for Declaratory Judgment. The Commission can neither admit nor deny any other allegations in this paragraph for the reasons stated in the response to paragraph 14, supra.

21. The Commission is without knowledge or information sufficient to form a belief as to the allegations in the first sentence regarding the Attorney General. The Commission DENIES the remainder of the paragraph.

22-24. These paragraphs contain plaintiffs' legal conclusions and legal argument. The statutes plaintiffs purport to describe speak for themselves and no response, therefore, is required. To the extent these paragraphs contains any factual allegations regarding the Commission, the Commission DENIES them.

25. In this paragraph plaintiffs' re-allege paragraphs 1-24. Likewise, the Commission incorporates its responses to paragraphs 1-24.

26. This paragraph purports to describe a statutory provision which speaks for itself, therefore no response is required.

27. The Commission DENIES the first sentence, to the extent it suggests the Commission has failed to comply with the law; plaintiffs have already publicly disclosed that the Commission has instituted an investigation in Exhibit B to their Motion for Declaratory Judgment. The Commission DENIES the second sentence.

28. DENY.

29. In this paragraph plaintiffs' re-allege paragraphs 1-28. Likewise, the Commission incorporates its responses to paragraphs 1-28.

30. DENY.

31. This paragraph quotes a statutory provision that speaks for itself and to which no response is required.

The final paragraph contains a request for relief to which no response is required. However, if an answer may be deemed necessary, the Commission DENIES that any relief should be granted against the Commission and requests that plaintiffs' complaint be dismissed as to the Commission, and that the Commission be awarded any additional relief that may be authorized by law. See, e.g., Fed. R. Civ. P. 11.

#### **Affirmative Defenses**

1. The Court lacks jurisdiction over any claim plaintiffs have asserted against the Commission.

2. Plaintiffs have failed to state a claim against the Commission upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

/s/ Thomasenia P. Duncan  
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/s/ Colleen T. Sealander

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April 9, 2007

FOR THE DEFENDANT  
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**Certificate of Service**

I hereby certify that on April 9, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF System, which will send notification of such filing to the following.

Michael R. Dezsi  
*Counsel for Plaintiffs*

Peter A. Caplan  
*Counsel for the United States*

I further certify that I have mailed by U.S. mail the paper to the following non-ECF participant:

Alan M. Dershowitz  
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/s/ Greg J. Mueller  
\_\_\_\_\_  
Greg J. Mueller  
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