

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

_____	)	
	)	
HERRON FOR CONGRESS,	)	
	)	Civil Action No. 11-1466 (ESH)
Plaintiff,	)	
	)	
v.	)	ANSWER
	)	
FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	
_____	)	

**FEDERAL ELECTION COMMISSION’S ANSWER**

Defendant Federal Election Commission (“FEC” or “Commission”) through its undersigned counsel responds as follows to the original complaint in this litigation. Everything not given a specific response is DENIED.

1. No response is required to this paragraph, which contain plaintiff’s characterizations of the legal claims in the complaint.
2. No response is required to this paragraph, which contain plaintiff’s characterizations of the legal claims in the complaint.
3. DENIED to the extent this paragraph asserts that the Declaratory Judgment Act is an independent source of federal jurisdiction or that the Administrative Procedure Act is an independent source of federal jurisdiction in this case. ADMIT that the Federal Election Campaign Act provides statutory standing. The remainder of the paragraph contains conclusions of law to which no further response is required.
4. ADMIT that venue is proper under 2 U.S.C. § 437g(a)(8)(A).

5. ADMIT.

6. ADMIT.

7. ADMIT.

8. The Commission DENIES the last sentence of this paragraph. The Commission further DENIES that it failed to take timely action on the administrative complaint, and that there will be no deterrent on future violations of the Federal Election Campaign Act (FECA or the Act), 2 U.S.C. §§ 431-455. The Commission is without knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph regarding the reasons for the results of the last campaign between candidates Stephen Fincher and Roy Herron and regarding Mr. Herron's state of mind.

9. The Commission ADMITS that it is a federal agency created by the Act and that the Commission is responsible for the civil enforcement and administration of the Act. To the extent this paragraph contains further conclusions of law, no additional response is required.

10. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

11. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

12. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

13. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

14. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

15. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

16. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

17. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

18. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

19. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA to which no response is required.

20. This paragraph contains conclusions of law and plaintiff's characterizations of provisions of FECA and Commission regulations to which no response is required.

21. ADMIT.

22. This paragraph contains conclusions of law and plaintiff's characterizations of court decisions to which no response is required.

23. This paragraph contains conclusions of law and plaintiff's characterizations of court decisions to which no response is required.

24. ADMIT.

25. ADMIT that this paragraph accurately quotes the administrative complaint filed by Herron for Congress except that in the original "Commission" appears in place of "FEC." ADMIT the remaining factual allegations in this paragraph except that "20100707" appears in the due date box.

26. ADMIT that this paragraph accurately quotes Herron for Congress's administrative complaint filed by Herron for Congress and that a copy of the disclosure report therein referenced was attached to the complaint as "Exhibit B." To the extent this paragraph characterizes the contents of disclosure reports, they speak for themselves and no further response is required.

27. ADMIT that this paragraph accurately quotes Herron for Congress's administrative complaint and the press article referenced. Because the administrative complaint and the press article referenced speak for themselves, no further response is required.

28. ADMIT that this paragraph accurately quotes from the supplement to the administrative complaint received by the Commission on October 18, 2010 except that in the original "Commission" appears instead of "FEC." ADMIT that the Schedule C from the Stephen Fincher for Congress Committee's ("Fincher Committee") October Quarterly Report indicates that the source of the \$250,000 loan was the personal funds of Steve Fincher, as it also indicated in the Fincher Committee's 12-Day Pre-Primary Report.

29. ADMIT that this paragraph accurately quotes from the supplement to the administrative complaint received by the Commission on October 18, 2010. ADMIT that the August 27, 2010 Associated Press article referenced by the plaintiff indicates that Warren Nunn, the president of Gates Bank & Trust Co. ("Gates Bank"), said that "[W]e did advance Stephen [Fincher] a loan" and that he "declined to say what kind of collateral Fincher put up for the loan . . ." The Commission is without knowledge or information sufficient to form a belief as to the factual allegations in the remainder of the paragraph.

30. ADMIT that this paragraph accurately quotes from the supplement to the administrative complaint received by the Commission on October 18, 2010. The Commission is

without knowledge or information sufficient to form a belief as to the factual allegations in the remainder of the paragraph.

31. ADMIT the first two sentences. With respect to the last two sentences, the Commission ADMITS that Attachments A, B, and D of the Fincher Committee's reply and Attachments A, B, and C of Gates Bank's reply have not been made public on the Commission's website.

32. ADMIT that this paragraph accurately quotes the Fincher Committee's reply. The remainder of this paragraph contains plaintiff's characterization of that reply, which speaks for itself.

33. ADMIT that Attachments A, B, and D of the Fincher Committee's reply and Attachments A, B, and C of Gates Bank's reply have not been made public on the Commission's website. With respect to the third sentence, ADMIT that the Fincher Committee and Gates Bank both attached a copy of the Multipurpose Note and Security Agreement to their replies. The remainder of this paragraph characterizes those replies, which speak for themselves, and to which no further response is required.

34. ADMIT that the Fincher Committee's reply stated, "The loan was reported to the Commission on July 23, 2010 as an itemized receipt on Schedule A and as a loan on Schedule C. . . . The maturity date was November 30, 2010. The purpose of the loan was listed on the loan document as 'business expense . . .'" ADMIT that Schedule C of the Fincher Committee's July 23, 2010, 12-Day Pre-Primary Report lists an interest rate of zero percent.

35. ADMIT.

36. ADMIT that this paragraph accurately quotes the Fincher Committee's reply except that in the original "evidence" appears in place of "evidenced." The remainder of this paragraph contains plaintiff's characterization of Gates Bank's reply, which speaks for itself.

37. ADMIT.

38. The Commission ADMITS that Gates Bank stated in its reply that it "did not file a separate UCC Financing Statement for the campaign loan on the same assets [Mr. Fincher] already held as collateral." The remainder of this paragraph contains plaintiff's characterization of the reply of Gates Bank, which speaks for itself. No further response is thus required.

39. This paragraph contains plaintiff's characterizations of the replies of the Fincher Committee and Gates Bank, which speak for themselves. No response is thus required.

40. This paragraph contains plaintiff's characterizations of the replies of the Fincher Committee and Gates Bank, which speak for themselves. No response is thus required.

41. This paragraph contains plaintiff's characterizations of the Fincher Committee reply.

a. No response is required to this subparagraph that contains a legal conclusion and characterizes the replies and attachments submitted by the Fincher Committee and Gate Bank, which speak for themselves.

b. No response is required to the first sentence of this subparagraph, which contains a legal conclusion. In the second sentence, the Commission ADMITS that Gates Bank said that it did not file a separate UCC financing statement for the campaign loan.

c. No response is required to the first sentence of this subparagraph which characterizes the Deed of Trust, which speaks for itself. Nor is any response required to the second sentence, which contains a legal conclusion.

d. The Commission need not respond to this subparagraph that solely contains legal conclusions or characterizes the replies and attachments submitted by the Fincher Committee and Gate Bank, which speak for themselves.

e. The Commission is without knowledge or information sufficient to form a belief as to the allegations in the first sentence regarding a prior filing in favor of Helena Chemical Company. No response is required to the second sentence that solely contains legal conclusions or characterizes the replies and attachments submitted by the Fincher Committee and Gate Bank, which speak for themselves.

42. The Commission is without knowledge or information sufficient to form a belief as to the factual allegations in the first five sentences of this paragraph regarding the usual practice of Tennessee banks beyond what is required by the Commission's regulations, including whether a loan is made "in the ordinary course of business" under 11 C.F.R. 100.82(a). The Commission is also without knowledge or information sufficient to form a belief as to the factual allegations in the third sentence regarding documents that may be in the possession of Gates Bank, or the allegations in the fourth sentence regarding a prior filing in favor of Helena Chemical Company. With respect to the last sentence, the Commission ADMITS that the only documents provided to the Commission by the Fincher Committee were copies of two 15-day extensions granted by the Commission, the Fincher Committee's 12-day Pre-Primary Report, a Multipurpose Note and Security Agreement, a Gates Bank cashiers check for \$250,000 made out to Stephen Fincher for Congress, a UCC financing note for Fincher's 2010 crops, and a deed of trust to the Fincher's home. With respect to the last sentence, the Commission further ADMITS that the only documents provided to the Commission by Gates Bank were a Multipurpose Note and Security Agreement, a 30-day extension granted by the Commission, a Gates Bank cashiers

check for \$250,000 made out to Stephen Fincher for Congress, a UCC financing note for Fincher's 2010 crops, and a deed of trust to the Fincher's home. This paragraph also contains legal conclusions to which no response is required.

43. ADMIT.

44. ADMIT that on March 9, 2011, the Office of General Counsel submitted the First General Counsel's Report to the Commission. The remainder of this paragraph contains plaintiff's characterizations of the First General Counsel's Report, which speaks for itself. No further response is thus required.

45. ADMIT.

46. ADMIT that this paragraph accurately quotes the First General Counsel's Report. The remainder of the paragraph contains plaintiff's characterizations of the Report, which speaks for itself, and to which no further response is required.

47. ADMIT.

48. ADMIT that this paragraph accurately quotes the First General Counsel's Report. The remainder of this paragraph contains plaintiff's characterizations of the Report, which speaks for itself, and to which no further response is required.

49. This paragraph contains plaintiff's characterizations of the First General Counsel's Report, which speaks for itself, and to which no response is required.

50. ADMIT that the first and last two sentences of this paragraph accurately quote the First General Counsel's Report, except that the word "the" appears before "Fincher Committee" in this paragraph's penultimate sentence. In the third sentence the Commission ADMITS that its staff is aware of the requirements of the regulations therein cited. The remainder of this paragraph contains plaintiff's characterizations of the First General Counsel's Report as well as

the replies of the Fincher Committee and Gates Bank, which speak for themselves, and to which no further response is thus required.

51. ADMIT.

52. ADMIT the first two sentences of this paragraph. With respect to the final sentence, ADMIT that the Commission's vote was 3-3 on one motion to approve a proposed conciliation agreement that provided for payment of a civil penalty, and that the Commission's vote was 3-3 on a motion to approve a proposed conciliation agreement that provided for sending a caution letter.

53. ADMIT.

54. ADMIT that Commissioners Hunter, McGahn, and Petersen had not issued a Statement of Reasons as of August 11, 2011. They issued one on September 15, 2011.

55. In this paragraph, plaintiff realleges paragraphs 1-54. Likewise, the Commission incorporates its responses to paragraphs 1-54.

56. This paragraph contains plaintiff's characterizations of the Statement of Reasons of Commissioners Bauerly, Walther, and Weintraub, which speaks for itself, and to which no response is required.

57. DENY.

58. DENY.

59. DENY.

60. This paragraph contains the plaintiff's prayer 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.

61. In this paragraph, plaintiff realleges paragraphs 1-60. Likewise, the Commission incorporates its responses to paragraphs 1-60.

62. ADMIT that the First General Counsel's Report did not recommend any knowing and willful violations against any respondent. The remainder of the paragraph contains plaintiff's characterizations of the Report, which speaks for itself, and to which no further response is required.

63. DENY the factual allegations in the first sentence. The second sentence and supporting citations contain plaintiff's legal conclusions to which the Commission is not required to respond. The Commission is without knowledge or information sufficient to form a belief as to the allegations in the third sentence regarding the state of mind of the respondents, but with respect to the third and seventh sentences ADMITS that the Fincher for Committee did not fully report the loan in its 12-day Pre-Primary Report, filed on July 23, 2010, and did not file any amended reports until December 2, 2010. ADMIT the fourth and sixth sentences. With respect to the fifth sentence, ADMIT that in its reply the Fincher Committee stated, "[A] review of how the loan was reported to the Commission revealed inadvertent reporting errors and omissions that require the need for amended reports to be filed with the Commission." The eighth sentence contains a legal conclusion to which the Commission need not respond. DENY the allegations in the ninth sentence.

64. DENY.

65. DENY

66. This paragraph contains the plaintiff's prayer 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.

67. In this paragraph, plaintiff realleges paragraphs 1-66. Likewise, the Commission incorporates its responses to paragraphs 1-66.

68. This paragraph contains legal conclusions to which the Commission is not required to respond. DENY any allegation that FEC staff acted incorrectly.

69. The first and second sentences appear to contain plaintiff's characterization of Gates Bank's reply and attachments and the First General Counsel's Report, which speak for themselves and to which no response is required. The third sentence contains a legal conclusion to which no response is required, and the Commission DENIES the remainder of the sentence. No response is required to the fourth through seventh sentences, which contain legal arguments and conclusions and/or characterize attachments to replies that speak for themselves. The eighth sentence purports to characterize the replies of the Fincher Committee and Gates Bank, both of which speak for themselves, and to which no response is required. The ninth sentence contains a legal conclusion to which no response is required.

70. DENY.

71. The first sentence of this paragraph contains a legal conclusion to which the Commission need not respond. The second sentence is DENIED.

72. This paragraph contains the plaintiff's prayer 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.

73. In this paragraph, plaintiff realleges paragraphs 1-72. Likewise, the Commission incorporates its responses to paragraphs 1-72.

74. This paragraph contains legal conclusions to which the Commission is not required to respond. DENY any allegation that FEC staff acted incorrectly.

75. The first sentence contains a legal conclusion to which no response is required. The second sentence contains characterizations of the First General Counsel's Report which speaks for itself and to which no response is required. Nor is any response required to the third and fourth sentences, which contain legal argument and conclusions. The fourth sentence contains a legal conclusion to which no response is required. The fifth and sixth sentences purport to characterize the replies (and attachments thereto) of the Fincher Committee and Gates Bank, which speak for themselves and to which no response is required. The Commission is without knowledge or information sufficient to form a belief as to the allegations in sentences seven through ten regarding the usual practice of Tennessee banks beyond what is required by the Commission's regulations, including whether a loan is made "in the ordinary course of business" under 11 C.F.R. 100.82(a). Sentences seven through ten also contain legal conclusions, to which no response is required. With respect to the last sentence, the Commission ADMITS that the only documents provided to the Commission by the Fincher Committee were copies of two 15-day extensions granted by the Commission; the Fincher Committee's July 23, 2010, 12-day Pre-Primary Report; a Multipurpose Note and Security Agreement; a Gates Bank cashiers check for \$250,000 made out to Stephen Fincher for Congress; a UCC financing note for Fincher's 2010 crops; and a deed of trust to the Fincher's home. The Commission further ADMITS that the only documents provided to the Commission by Gates Bank were a Multipurpose Note and Security Agreement, a 30-day extension granted by the Commission, a Gates Bank cashiers check for \$250,000 made out to Stephen Fincher for Congress, a UCC financing note for Fincher's 2010 crops, and a deed of trust to the Fincher's home.

a. With respect to the first sentence, the Commission ADMITS that Gates Bank stated in its reply that it "did not file a separate UCC Financing Statement for the campaign

loan on the same assets [Mr. Fincher] already held as collateral.” The Commission is without knowledge or information sufficient to form a belief as to the allegations in the fifth sentence regarding Helena Chemical Company. The remainder of this subparagraph contains legal argument and conclusions for which no further response is required.

b. The first sentence characterizes the deed of trust on Mr. Fincher’s residence, which speaks for itself and to which no response is required. The remainder of this subparagraph contains legal argument and conclusions for which no further response is required.

c. The third sentence characterizes Mr. Fincher’s U.S. House of Representatives Financial Disclosure Statement which speaks for itself and to which no response is required. The remainder of this subparagraph (including the final sentence of the paragraph) contains legal argument and conclusions for which no further response is required.

76. DENY.

77. DENY.

78. This paragraph contains the plaintiff’s prayer 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.

PRAYER FOR RELIEF. The Commission is not required to respond to plaintiff’s prayer for relief. But if a response is deemed necessary, the Commission DENIES that any relief should be granted.

Respectfully submitted,

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