

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

VOGEL FOR CONGRESS by and through)
RAY WOLFF)
2007 Michigan Avenue)
LaPorte, IN 46350)

Case No. 1:11-cv-02309

Plaintiff,)

v.)

FEDERAL ELECTION COMMISSION)
Cynthia L. Bauerly, Chair)
999 E Street NW)
Washington, DC 20463)

Defendant.)
)
)
)

**FIRST AMENDED COMPLAINT FOR JUDICIAL REVIEW OF FEDERAL ELECTION
COMMISSION DISMISSAL OF ADMINISTRATIVE COMPLAINT**

COMES NOW Plaintiff, Vogel for Congress by and through Ray Wolff, and in support of its
Complaint for Review states as follows:

JURISDICTION AND VENUE

1. Jurisdiction and venue in this Court arise out of 2 USC 437g(a)(8)(A). Plaintiff filed a
complaint with the Federal Election Commission (“the Commission”), MUR 6434, on or about
November 24, 2010, which complaint was dismissed by the Commission on November 2, 2011, and 2
USC 437g(a)(8)(A) provides for judicial review by this Court of the dismissal:

Any party aggrieved by an order of the Commission
dismissing a complaint filed by such party under paragraph (1), or
by a failure of the Commission to act on such complaint during the
120-day period beginning on the date the complaint is filed, may
file a petition with the United States District Court for the
District of Columbia.

2 USC 437g(a)(8)(A).

PARTIES

2. Plaintiff Vogel for Congress is a US Congressional campaign committee organized for the candidacy of Mark Vogel, Libertarian candidate for Indiana's Second District congressional race in 2010, with its principal place of operation in St. Joseph County, Indiana. Ray Wolff is the media coordinator for the campaign committee and is a resident of LaPorte County, Indiana.

3. Defendant Federal Election Commission is an administrative agency of the United States, with its principal place of operation in Washington, DC.

BASIS FOR REVIEW

4. On or about November 24, 2010 Plaintiff filed an administrative complaint with the Commission. The complaint alleged that in the days leading up to the November 2, 2010 election for US House for the Second District of Indiana, a race between a Libertarian, a Democrat and a Republican, the Indiana Democratic Party mailed up to 20,000 flyers to Indiana Congressional Second District voters urging support for Libertarian candidate Mark Vogel at the polls. The mailer was not authorized by Vogel for Congress or candidate Vogel, however, and it mischaracterized and misrepresented Mr. Vogel's candidacy.

5. The complaint additionally alleged that the mailer was required by federal election law to contain a statement to the effect that it was not authorized by the candidate or the candidate's committee, and the mailer in question did not contain such a disclaimer, which resulted in one or more violations of federal election law by the Indiana Democratic Party.

6. On November 2, 2011 the Federal Election Commission issued a dismissal of Plaintiff's complaint, enclosing therewith a copy of the General Counsel's Report upon which the Commission relied in issuing its dismissal.

7. The General Counsel's Report recommended the dismissal, determining that the mailer was part of volunteer party activity and thus exempt activity under 11 CFR 100.147(e), which relieves

a public communication authorized by a candidate, authorized committee, or political party committee from complying with the portion of the disclaimer requirement under 11 CFR 100.147(b) that requires a statement that the communication was not authorized by a candidate or a candidate's committee.

8. The communication at issue, however, was not subject to the cited exempt activity provision, 11 CFR 100.147(e). In fact, the exempt activity provision applies only to authorized communications, not a mailer such as what was sent by the Indiana Democratic Party soliciting votes for a rival of its candidate at the polls.

9. Contrary to the Commission's determination, the Indiana Democratic Party was required to comply with the disclaimer requirement of 2 USC 441d, specifically 11 CFR 110.11(b) and 11 CFR 110.11(d)(3), and it did not. The Commission's dismissal of the complaint was therefore in error.

10. In accordance with 2 USC 437g(a)(8)(C), the Court should declare that the dismissal of the complaint was contrary to law and order the Commission to conform with said declaration.

WHEREFORE, Plaintiff, by counsel, prays that the Court declares that the Commission's dismissal of the administrative complaint was contrary to law, orders the Commission to conform with said declaration and grant all other just and proper relief.

Respectfully submitted,

January 6, 2012

/s/ Oliver B. Hall

Date:

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Pro Hac Vice Motion pending