

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

45COMMITTEE, INC.,

*Plaintiff,*

v.

FEDERAL ELECTION COMMISSION,

*Defendant.*

Civil Action No. 22-0502 (ABJ)

**ANSWER**

Defendant, the Federal Election Commission (“Defendant,” “FEC,” or the “Commission”) answers the Complaint of Plaintiff, 45Committee, Inc. (“45Committee”), as follows.

To the extent that the Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their accurate and complete contents; however, Defendant’s references are not intended to be, and should not be construed to be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiff; (b) are relevant to this, or any other, action; and (c) are admissible in this, or any other, action. Defendant denies each and every allegation contained in the Complaint except as expressly admitted in this Answer.

**INTRODUCTION<sup>1</sup>**

1. Paragraph 1 contains Plaintiff’s characterization of this action, to which no response is required. To the extent a response is required, Defendant admits that Plaintiff purports to bring this action under the Freedom of Information Act (“FOIA”) to compel the production of certain agency records requested on November 19, 2021.

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<sup>1</sup> Defendant has included the headings from the Complaint for the sole purpose of assisting in the reading of this answer and does not admit the accuracy of those headings.

2. Paragraph 2 contains Plaintiff's characterization of the FOIA request at issue in this case, which speaks for itself and requires no response. Defendant respectfully refers the Court to Plaintiff's request, *see* ECF No. 1-1, for a complete and accurate account of its contents and denies all allegations inconsistent therewith. This paragraph also contains Plaintiff's conclusions of law, to which no response is necessary. To the extent a response is required, Defendant admits the first sentence and admits that the Commission has taken previous votes on the administrative complaint against 45Committee as is evident despite the redactions from the certification of actions taken on June 23, 2020, that is attached as part of Exhibit 2 to Plaintiff's Complaint. Defendant denies that the actions of Commission personnel in connection with the public release of records have been arbitrary and capricious and denies that the Commission has "exclusive enforcement authority over the federal campaign-finance laws." Defendant avers that the Commission is charged with the administration and civil enforcement of the Federal Election Campaign Act, 52 U.S.C. §§ 30101–46. The Commission is otherwise without knowledge or information sufficient to admit or deny the allegations regarding what 45Committee "believes."

3. Paragraph 3 contains conclusions of law and Plaintiff's legal argument, to which no response is required. To the extent a response is required, Defendant denies Plaintiff's factual allegations, and denies that Plaintiff is entitled to the relief it requests in this paragraph and avers that the requested relief exceeds the relief available under FOIA.

### **JURISDICTION AND VENUE**

4. Paragraph 4 consists of legal conclusions, to which no response is required. To the extent a response is required, Defendant admits that this Court has jurisdiction over proper FOIA actions pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Defendant denies that 28 U.S.C. §§ 2201 and 2202 grant the Court jurisdiction.

5. Paragraph 5 consists of legal conclusions, to which no response is required. To the extent a response is required, Defendant admits that venue is proper in this District.

6. Paragraph 6 consists of legal conclusions, to which no response is required. To the extent a response is required, Defendant admits that Plaintiff constructively exhausted its administrative remedies.

### **PARTIES**

7. The FEC is without knowledge or information sufficient to admit or deny the allegations in Paragraph 7.

8. Defendant admits the allegations contained in Paragraph 8.

### **STATEMENT OF FACTS**

9. Paragraph 9 consists of Plaintiff's characterization of the FOIA request at issue in this case, which speaks for itself, and no response is necessary. Defendant respectfully refers the Court to Plaintiff's request, *see* ECF No. 1-1, for a complete and accurate account of its contents and denies all allegations inconsistent therewith. Defendant admits that Exhibit 1 to Plaintiff's Complaint is a copy of Plaintiff's FOIA request, that it was submitted on November 19, 2021, and that it was assigned FOIA Request No. 2022-12 for administrative purposes.

10. Paragraph 10 consists of Plaintiff's characterization of the FEC's response to the FOIA request at issue in this case, which speaks for itself, and no response is necessary. Defendant respectfully refers the Court to Defendant's response for a complete and accurate account of its contents and denies all allegations inconsistent therewith. Defendant admits that Exhibit 2 to Plaintiff's Complaint is a copy of the FEC's response and that it was dated January 5, 2022.

11. Paragraph 11 consists of Plaintiff's characterization of the FEC's response to the FOIA request at issue in this case, which speaks for itself, and no response is necessary. Defendant

respectfully refers the Court to the FEC's response for a complete and accurate account of its contents and denies all allegations inconsistent therewith.

12. Defendant admits the allegations in Paragraph 12.

13. Paragraph 13 consists of Plaintiff's characterization of its administrative FOIA appeal, which speaks for itself, and no response is necessary. Defendant respectfully refers the Court to Plaintiff's administrative appeal, ECF No. 1-3, for a complete and accurate account of its contents and denies all allegations inconsistent therewith.

14. Defendant admits that the FEC FOIA Service Center called counsel for 45Committee on February 7, 2022, to discuss the timing of the Commission's consideration of the appeal, but Defendant denies that extraordinary circumstances to extend the statutory deadline to respond to the appeal were invoked in this call.

15. Defendant admits that the FEC did not respond to Plaintiff's administrative FOIA appeal by February 22, 2022. The remainder of paragraph 15 consists of conclusions of law, to which no response is required. To the extent a response is required, Defendant admits that Plaintiff constructively exhausted its administrative remedies.

16. Paragraph 16 consists of conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies.

**CLAIM FOR RELIEF**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Records**

17. The FEC incorporates its responses to paragraphs 1-16.

18. Paragraph 18 consists of Plaintiff's characterization of and a quotation from a provision of FOIA, and therefore no response is necessary. To the extent a response is required,

Defendant respectfully refers the Court to the cited provision of law and denies all allegations inconsistent therewith.

19. Defendant admits that Plaintiff requested records from the FEC under FOIA.

20. Defendant admits that the FEC is an agency subject to FOIA.

21. Defendant admits that 45Committee constructively exhausted its administrative remedies before filing suit.

22. Paragraph 22 consists of Plaintiff's characterization of and conclusions of law regarding FOIA, and therefore no response is required. To the extent a response is required, Defendant respectfully refers the Court to the cited provisions of law and denies all allegations inconsistent therewith.

23. Defendant denies the allegations contained in paragraph 23.

24. Defendant denies the allegations contained in paragraph 24.

25. Defendant denies the allegations contained in paragraph 25.

#### **PRAYER FOR RELIEF**

The remaining paragraphs set forth in Plaintiff's prayer for relief to which no response is required.

#### **DEFENSES**

Defendant reserves the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to this Complaint become known to Defendant through the course of this litigation.

#### **FIRST DEFENSE**

Certain of the information sought by Plaintiff may be exempt from release under one or more FOIA exemptions.

**SECOND DEFENSE**

Plaintiffs are neither eligible for nor entitled to attorneys' fees or costs.

**THIRD DEFENSE**

The Court lacks jurisdiction to award relief that exceeds that authorized by the FOIA.

Respectfully submitted,

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Dated: March 31, 2022