

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

CAMPAIGN LEGAL CENTER,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil Action No. 20-cv-01778-RCL

**Motion for Order Declaring Defendant
Has Failed to Conform to Default
Judgment Order**

**PLAINTIFF’S MOTION FOR AN ORDER DECLARING THAT DEFENDANT HAS
FAILED TO CONFORM TO THE DEFAULT JUDGMENT ORDER**

It has been more than 400 days since Plaintiff Campaign Legal Center (“CLC”) filed its administrative complaint alleging that Iowa Values, a nonprofit dedicated to reelecting U.S. Senator Joni Ernst, violated the Federal Election Campaign Act (“FECA”) by failing to register with the Federal Election Commission (“FEC”) as a political committee and file reports disclosing its contributors, expenditures, and debts. On June 30, 2020, CLC filed this lawsuit over the FEC’s failure to act on its administrative complaint. Compl. (ECF No. 1). On October 14, 2020, after the FEC had failed to appear or otherwise respond to CLC’s Complaint, this Court issued an Order awarding default judgment against the FEC (“Default Judgment Order”) (ECF No. 14).

In the Default Judgment Order, the Court found that the FEC’s failure to act on CLC’s administrative complaint in MUR 7674 was “contrary to law” and it ordered the FEC to “conform to this Court’s Order within ninety days by acting on the plaintiff’s administrative complaint.” Default Judgment Order at 2. The ninety-day deadline for the agency to conform

was January 12, 2021. Nonetheless, the FEC, which has been restored to a full quorum of Commissioners for more than a month, has not made an appearance nor provided any evidence that it has conformed with this Court's Default Judgment Order. Undersigned counsel contacted the FEC's General Counsel and Associate General Counsel for Litigation, advised of CLC's intention to file this motion, and asked FEC counsel to inform undersigned counsel if the FEC has conformed with this Court's Default Judgment Order and/or if it intends to appear in this action, but has received no response.

In light of the foregoing, this Court should find that the FEC has failed to conform to this Court's Default Judgment Order. Moreover, under FECA, the FEC's failure to conform means that CLC is entitled to sue Iowa Values directly "to remedy the violation involved in the original complaint." 52 U.S.C. § 30109(a)(8)(C); *see Citizens for Responsibility and Ethics in Wash. v. Am. Action Network*, 410 F. Supp. 3d 1, 7, 8-9 (D.D.C. 2019).

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

1. More than 400 days ago, on December 19, 2019, CLC filed its administrative complaint alleging that Iowa Values, a tax exempt corporation organized under section 501(c)(4) of the Internal Revenue Code, had violated FECA by failing to register as a political committee and file reports disclosing its contributors, expenditures, and debts. *See* Compl. ¶¶ 22, 36 & Ex. 1 (ECF No. 1).

2. CLC filed this lawsuit on June 30, 2020, after waiting more than 190 days for the FEC to take action on its administrative complaint against Iowa Values. *Id.* ¶¶ 5, 38. To date, the FEC has failed to answer or otherwise defend itself in this action.

3. On October 14, this Court issued an order awarding default judgment against the FEC. *See* Default Judgment Order (ECF No. 14). The Default Judgment Order mandated that

the FEC “conform to this Court’s Order within ninety days [*i.e.*, by January 12, 2021] by acting on the plaintiff’s administrative complaint.” *Id.* at 2. The Default Judgment Order noted that although the FEC lacked a quorum for part of the time during which the underlying administrative matter has been pending, the agency “had a quorum during the pendency of MUR 7674 from May 19, 2020 to July 3, 2020.” *Id.* at 2 n.1.

4. On October 16, two days after the Court entered the Default Judgment Order, the Department of Justice (“DOJ”) filed a Statement of Interest purporting to challenge CLC’s standing and suggesting that the Court vacate the Default Judgment Order. Statement of Interest of the United States of America (ECF No. 16). CLC responded (*see* ECF Nos. 18, 21), explaining that controlling decisions of the Supreme Court and D.C. Circuit Court of Appeals, which DOJ had neglected even to mention, make clear that CLC has standing in cases like this one, where a plaintiff alleges denial of access to information that FECA requires to be disclosed and “[t]here is no reason to doubt their claim that the information would help them (and others to whom they would communicate it)” to evaluate the role that undisclosed contributions and spending “might play in a specific election.” *FEC v. Akins*, 524 U.S. 11, 21 (1998).¹

¹ Although the FEC has not appeared in this case, its Office of General Counsel conceded just a few days ago, in another case involving questions of who has standing to challenge FEC inaction on an administrative complaint, that an administrative respondent would have standing to challenge FEC inaction where, as here, the underlying administrative complaint alleges a violation of FECA’s disclosure requirements. *See* Oral Argument at 15:39, *Campaign Legal Center v. FEC*, No. 20-5159 (D.C. Cir. Jan. 25, 2021), [https://www.cadc.uscourts.gov/recordings/recordings2020.nsf/13BFED3D4212E37685258668006BF6AC/\\$file/20-5159.mp3](https://www.cadc.uscourts.gov/recordings/recordings2020.nsf/13BFED3D4212E37685258668006BF6AC/$file/20-5159.mp3) (FEC counsel arguing that “if a complainant had alleged that there were some non-disclosure—whether non-disclosure of a contribution or an expenditure—some sort of non-disclosure related to their underlying claim of an alleged FECA violation, then they could establish informational injury that could be sufficient for standing.”). Notwithstanding DOJ’s own erroneous arguments to the contrary in its Statement of Interest, it has informed this Court that it “would defer to the arguments and positions taken by the Commission.” Reply In Support of Statement of Interest of the United States of America at 1 (ECF No. 20).

5. In a Press Release dated December 18, 2020, the FEC announced the full restoration of the agency's quorum with the swearing in of three new Commissioners. *See* Press Release, FEC, Shana Broussard, Sean Cooksey, Allen Dickerson Sworn In as Commissioners (Dec. 18, 2020), <https://www.fec.gov/updates/shana-broussard-sean-cooksey-allen-dickerson-sworn-commissioners/>.

6. The FEC has now had a full quorum of Commissioners for more than a month, during which time it has held three days of executive session meetings where the agency discusses pending enforcement actions and litigation, among other confidential matters. *See* FEC, Commission Meetings, <https://www.fec.gov/meetings/?tab=executive-sessions> (listing FEC Executive Session meetings on January 12, 14, and 26, 2021).

7. On January 26, 2021, undersigned counsel contacted the FEC's General Counsel and Associate General Counsel for Litigation, advised of CLC's intention to file this motion, and asked FEC counsel to inform undersigned counsel if the FEC has conformed with this Court's Default Judgment Order and/or if it intends to appear in this action. As of the time of this filing, undersigned counsel has received no response. The agency thus apparently has failed to take any action on CLC's administrative complaint, which has now been pending for more than a year.

ARGUMENT

In the Default Judgment Order, the Court found that the FEC's failure to act on CLC's administrative complaint against Iowa Values was "contrary to law" and it mandated that the FEC "conform to this Court's Order within ninety days [*i.e.*, by January 12, 2021] by acting on the plaintiff's administrative complaint." Default Judgment Order at 2. That time to conform has

now passed.² The FEC’s continued failure to appear in this case or otherwise inform the Court and CLC of any action on CLC’s underlying administrative complaint against Iowa Values indicates that the FEC has failed to conform to the mandate in the Default Judgment Order that it act on CLC’s administrative complaint.

FECA provides that where, as here, a court declares that the FEC’s failure to act on an administrative complaint is “contrary to law” and directs the FEC to conform with such declaration, and the FEC fails to conform with the court’s order, the administrative complainant may “sue the alleged FECA violator directly ‘to remedy the violation involved in the original complaint.’” *Citizens for Responsibility and Ethics in Wash.*, 410 F. Supp. 3d at 8-9 (quoting 52 U.S.C. § 30109(a)(8)(C)). In other words, under FECA’s citizen suit provision, CLC now has the right to sue Iowa Values “directly, [to] seek[] a declaration that [Iowa Values] is a political committee and an injunction ordering it to make the attendant disclosures that FECA requires.” *Id.* at 7; *see also Citizens for Responsibility and Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 101 (D.D.C. 2018) (concluding that FEC dismissal of administrative complaint was contrary to law and explaining that “[i]f the FEC does not timely conform with the Court’s declaration,” the administrative complainant “may bring ‘a civil action to remedy the violation involved in the original complaint’” (quoting 52 U.S.C. § 30109(a)(8)(C))).

² Although the FEC lacked a quorum for some time after the Default Judgment Order was entered, the agency has been restored to a full quorum of Commissioners for more than a month and has met in executive session three times—on January 12, 14, and 26, 2021. *See supra* at 4 ¶¶ 5-6. During those meetings, the Commission voted to authorize defense of at least one other lawsuit alleging FEC inaction—a case filed *three months after* this one—and the FEC has appeared in that case. *See* Def. FEC’s Mot. for an Order Extending the Time to Answer or Otherwise Respond to Pl.’s Compl. Nunc Pro Tunc at 2 ¶ 3, *CLC v. FEC*, No. 20-2842 (CJN) (Jan. 26, 2021) (“The first meetings of the Commission in Executive Session after the quorum was regained were on January 12 and January 14, 2021, and defense of this matter was authorized on January 14.”). Yet the FEC has neither appeared in this case nor advised of any action on CLC’s underlying administrative complaint.

CONCLUSION

For foregoing reasons, CLC respectfully requests that the Court issue an order declaring that the FEC has failed to conform to this Court's Default Judgment Order.

Dated: January 27, 2021

Respectfully submitted,

/s/ Erin Chlopak

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