

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

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| NATIONAL RIFLE ASSOCIATION OF AMERICA POLITICAL VICTORY FUND, |) | |
| |) | |
| and |) | Civ. No. 22-1017 |
| |) | |
| NATIONAL RIFLE ASSOCIATION OF AMERICA, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| FEDERAL ELECTION COMMISSION, |) | ANSWER |
| |) | |
| Defendant. |) | |
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DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint filed by the National Rifle Association of America Political Victory Fund (“NRA-PVF”) and the National Rifle Association of America (“NRA”). Any allegation not specifically responded to below is DENIED.

INTRODUCTION¹

1. This paragraph summarizes the plaintiffs’ complaint, the allegations of which speak for themselves and require no response. To the extent a response is required, ADMIT that this case is an action under the Freedom of Information Act (“FOIA”) to compel the production

¹ The FEC 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.

of certain agency records requested by NRA-PVF on November 24, 2021. DENY that the FEC has improperly withheld records and that NRA-PVF's request was made on November 24, 2022.

2. ADMIT that the FEC has withheld certain documents pursuant to FOIA. DENY that any records have been improperly withheld and DENY that the records plaintiffs describe are "Decisional Documents" reflecting final agency decisions in the matters at issue.

3. This paragraph contains plaintiffs' legal conclusions and legal argument, to which no response is necessary. To the extent a response is required, ADMIT that the FEC has held votes in the administrative matters at issue, but DENY that the FEC has improperly withheld any records, DENY that the FEC has "terminat[ed] the administrative complaints," and DENY that the FEC has acted arbitrarily and capriciously or to deny the exercise of any party's rights. DENY the remainder of the paragraph.

4. This paragraph consists of plaintiffs' characterizations of the FEC's response to the FOIA request at issue in this case, which speaks for itself, and no response is necessary. This paragraph also contains plaintiffs' legal conclusions and legal argument, to which no response is necessary. To the extent a response is required, DENY that the FEC has violated FOIA.

5. This paragraph contains plaintiffs' legal conclusions and legal argument, to which no response is necessary. To the extent a response is required, DENY that the FEC has improperly withheld records, and DENY that plaintiffs are entitled to the relief requested.

PARTIES, JURISDICTION, AND VENUE

6. ADMIT that this Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. ADMIT that venue is proper in this district.

7. ADMIT that the FOIA request at issue was submitted on behalf of plaintiff NRA-PVF and the National Rifle Association of America Institute of Legislative Action ("NRA-

ILA”). The FEC is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

8. ADMIT that NRA-PVF is a political committee that is registered and files reports with the FEC and lists Virginia as its address of record on its FEC statement of organization. ADMIT that the FOIA request at issue was submitted on behalf of NRA-PVF and NRA-ILA. DENY that the request was submitted on behalf of plaintiff NRA. The FEC is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

9. ADMIT.

STATUTORY AND LEGAL FRAMEWORK

10-15. These paragraphs contain plaintiffs’ legal conclusions, as well as their characterizations of FOIA and a judicial decision, to which no response is necessary.

16. This paragraph contains plaintiffs’ legal conclusions and arguments, as well as their characterizations of FOIA and judicial decisions, to which no response is necessary. This paragraph also contains plaintiffs’ characterization of the FEC’s FOIA response, which speaks for itself, and no response is required.

STATEMENT OF FACTS

17. This paragraph contains plaintiffs’ legal conclusions and legal arguments, to which no response is necessary. To the extent a response is required, ADMIT that the FEC is an independent agency of the United States government with jurisdiction over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (“FECA”).

18. ADMIT that plaintiff NRA-PVF is a respondent in the FEC Matters Under Review (“MURs”) identified in Paragraph 2 of the complaint. DENY that the NRA is a respondent. ADMIT that the MURs are related to the cases cited in the second sentence.

19. This paragraph describes the FOIA request at issue in this case, which speaks for itself, and no response is necessary. To the extent a response is required, ADMIT that Exhibit A is a copy of the request submitted on November 24, 2021. ADMIT that the request was submitted on behalf of plaintiff NRA-PVF and NRA-ILA, but deny that plaintiff NRA was a requester. The FEC is without knowledge or information sufficient to admit or deny the allegations in this paragraph regarding the requesters’ motivations for filing the request.

20. ADMIT the first sentence. ADMIT that the FEC has not indicated that the FOIA request at issue from NRA-PVF “was not properly submitted as a FOIA request,” but the FEC is otherwise without knowledge or information sufficient to admit or deny the allegations in the second sentence.

21. The first sentence of this paragraph describes the FOIA request at issue in this case, which speaks for itself, and no response is necessary. To the extent a response is necessary, ADMIT that the FOIA requesters provided confidentiality waivers as to the identified MURs with the request. The FEC is without knowledge or information sufficient to admit or deny the allegations in the second sentence regarding the motivations for providing the waivers. DENY the third sentence.

22. This paragraph describes an FEC communication in response to the FOIA request at issue, which speaks for itself, and no response is necessary. To the extent a response is necessary, ADMIT that Exhibit B is a copy of the communication sent on January 3, 2022.

23. This paragraph describes the FEC response to the FOIA request at issue and an accompanying responsive record, which speak for themselves, and no response is necessary. To the extent a response is required, ADMIT that Exhibit C is a copy of the FEC's January 10, 2022 response and that Exhibit D is a copy of a responsive record as redacted and released in this matter.

24. This paragraph describes the FEC's FOIA response at issue in this case, which speaks for itself, and no response is necessary. To the extent a response is required, ADMIT that the FEC withheld the materials described as stated in Exhibit C.

25. This paragraph describes the FEC's FOIA response at issue in this case, which speaks for itself, and no response is necessary. With regard to the third sentence, DENY that all respondents in the MURs have waived FECA confidentiality.

26. This paragraph contains plaintiffs' legal conclusions and legal arguments, to which no response is necessary. To the extent a response is required, DENY that the FEC has failed to provide an adequate determination as to the FOIA request at issue and DENY that the FEC violated FOIA.

27. This paragraph describes a letter from the FOIA requesters, which speaks for itself, and no response is necessary. To the extent a response is required, ADMIT that Exhibit E is a copy of that letter. DENY that the FEC has failed to provide an adequate determination as to the FOIA request at issue. The FEC is without knowledge or information sufficient to admit or deny the allegations in this paragraph regarding the FOIA requesters' motivation in sending the letter.

28. ADMIT the FOIA requesters had the discussion in the first sentence. DENY the second sentence.

29. ADMIT that FEC counsel indicated in the January 27, 2022 telephone call with requesters' counsel that the agency would supplement its response to the FOIA request after the appeal of a second FOIA matter with similar issues was decided. DENY the remainder of the paragraph.

30. This paragraph describes email correspondence between the FEC and the FOIA requestors, which speaks for itself, and no response is necessary. To the extent a response is required, ADMIT that Exhibit F is a copy of that email exchange, and that in the email the requesters confirmed that their January 21, 2002 request for clarification was not a FOIA appeal. The FEC is without knowledge or information sufficient to admit or deny the allegations in this paragraph regarding the requesters' motivation in sending correspondence.

31. This paragraph describes an email to the FEC, which speaks for itself, and no response is necessary. To the extent that a response is required, ADMIT that Exhibit G is a copy of that email dated February 17, 2022.

32. ADMIT that counsel for the FEC and the FOIA requesters had the discussion described in this paragraph.

33. This paragraph describes an email to the FEC, which speaks for itself, and no response is necessary. To the extent a response is required, ADMIT that Exhibit H includes a copy of that email dated February 23, 2022.

34. This paragraph describes one of the FEC's responses to the FOIA request at issue, which speaks for itself, and no response is necessary. To the extent a response is necessary, ADMIT that Exhibit H includes a copy of the response sent by the FEC to the FOIA requesters on February 25, 2022.

35. This paragraph describes the requesters' administrative FOIA appeal, which speaks for itself, and no response is necessary. To the extent a response is necessary, ADMIT

that Exhibit I is a copy of the FOIA appeal received by the FEC on March 1, 2022, and that the FEC acknowledged receipt on March 2, 2022.

36. This paragraph describes an email from the FEC, which speaks for itself, and no response is necessary. To the extent a response is required, ADMIT that Exhibit J to plaintiffs' complaint is a copy of an email sent by the FEC on March 30, 2022. DENY that the FEC violated FOIA.

37. ADMIT that the FEC provided the requestors with 273 pages of responsive information, as reflected in Exhibits D, K, and M to plaintiffs' complaint, and that the agency has withheld about 30,000 pages of additional documents under FOIA Exemption 5, as indicated in Exhibit L. DENY that the FEC has failed to provide the requesters with information required by FOIA, including information regarding the bases for withholding information under Exemptions 3(A) and 5.

38. This paragraph contains plaintiffs' legal conclusions and legal arguments to which no response is necessary. To the extent a response is required, DENY that the FEC has failed to provide a basis for its withholding of information under FOIA Exemption 5, and DENY that the FEC has violated FOIA. The FEC is without knowledge or information sufficient to admit or deny the other allegations in this paragraph.

39. This paragraph contains plaintiffs' legal conclusions and legal arguments to which no response is necessary. To the extent a response is required, ADMIT that NRA-PVF has exhausted its administrative FOIA remedies as to the items at issue in its administrative appeal. DENY that NRA-PVF has otherwise exhausted its administrative remedies and deny that NRA has exhausted administrative remedies. DENY that the FEC has improperly withheld records or violated FOIA, and DENY that plaintiffs are entitled to the relief requested.

COUNT I
Violation of FOIA 5 U.S.C. § 552
(Wrongful Failure to Produce Records Pursuant to, [sic]
and Violation of the Provisions of FOIA)

40. The FEC incorporates its responses to paragraphs 1-39.

41. This paragraph contains plaintiffs' characterization and quotation of a provision of FOIA, and no response is necessary.

42. ADMIT that NRA-PVF requested records from the FEC under FOIA. DENY that the NRA has requested documents. To the extent the paragraph's use of the term "properly" is a conclusion of law regarding FOIA, no response is necessary. To the extent a further response is required, the FEC is without knowledge or information sufficient to admit or deny the allegation.

43. ADMIT that the FEC is an agency subject to FOIA. The remainder of this paragraph contains plaintiffs' characterization and conclusions of law regarding FOIA, and therefore no further response is necessary.

44-49. DENY.

50. ADMIT that NRA-PVF has exhausted administrative FOIA remedies as to the items at issue in its administrative appeal. DENY that NRA-PVF has otherwise exhausted administrative remedies and DENY that NRA exhausted administrative remedies.

51. DENY the factual allegations in this paragraph, and DENY that plaintiffs are entitled to the relief requested.

PRAYER FOR RELIEF

Defendant FEC DENIES that plaintiffs are entitled to the relief requested in paragraphs 1-7 under this heading.

DEFENSES

Defendant FEC 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 the FEC through the course of this litigation.

FIRST DEFENSE

Certain of the information sought by plaintiffs 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.

FOURTH DEFENSE

This court lacks subject matter jurisdiction over the NRA because it did not submit the FOIA request at issue in this case.

FIFTH DEFENSE

NRA-PVF did not exhaust its administrative remedies as to portions of its FOIA request.

Respectfully submitted,

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