

LAW OFFICE OF
DOMINGO GARCÍA, P.C.
ATTORNEYS AND COUNSELORS AT LAW

400 S. ZANG BOULEVARD SUITE 600
DALLAS, TEXAS 75208

TELEPHONE (214) 941-8300
FAX (214) 943-7536
TOLL FREE (877) 794-6384
garciadt@aol.com

June 25, 2013

VIA CERTIFIED MAIL-RRR
No. 7012 1010 0000 1956 1095

Ellen C. Weintraub, Chairman
Federal Election Commission
999 E St., N.W.
Washington, D.C. 20463

Re: *Garcia for Congress and Swati Patel v. Federal Election Commission*; Civil
Action No. 3:13-CV-02401-K; Pending in the United States District Court
for the Northern District of Texas, Dallas Division

Dear Ms. Weintraub:

Enclosed please find in connection with the above-referenced matter a Summons with an
Original Complaint attached which is being served on you, as a representative of the Defendant,
pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure.

Please call if you have any questions.

Sincerely,



Mona L. Jones
Paralegal to Domingo Garcia

:mj
Enclosures

cc: Civil-Process Clerk
Office of the United States Attorney
For the Northern District of Texas
1100 Commerce St., 3rd Floor
Dallas, Texas 75242-1699
(via certified mail-rrr no.
7012 1010 0000 1956 1101)(w/encls.)



Ellen C. Weintraub, Chairman
Federal Election Commission
June 25, 2013
Page 2

Mr. Eric H. Holder, Jr.
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001
*(via certified mail-rrr no.
7012 1010 0000 1956 1118) (w/encls.)*

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Northern District of Texas

Garcia For Congress

Plaintiff

v.

Federal Election Commission

Defendant

Civil Action No. 3:13-cv-02401-K

Summons in a Civil Action

TO: Federal Election Commission

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

* NO ATTORNEY REPRESENTATION FOUND IN THIS CASE *

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

[Handwritten Signature]

Signature of Clerk or Deputy Clerk



DATE: 06/24/2013

Civil Action No. 3:13-cv-02401-K

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (I))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is designated
by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

other *(specify)* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GARCIA FOR CONGRESS AND SWATI PATEL,
Plaintiffs,

Vs.

FEDERAL ELECTION COMMISSION,
Defendant.

§
§
§
§
§
§
§

CIVIL ACTION NUMBER:

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW Plaintiffs GARCIA FOR CONGRESS and SWATI PATEL, who file this their Original Complaint against Defendant FEDERAL ELECTION COMMISSION and respectfully show this Honorable Court as follows:

1. Plaintiffs demand a jury trial on all issues triable to a jury.
2. This is a proceeding to appeal the final determination of Defendant that Plaintiffs violated 2 U.S.C. § 434(a) and assessing a civil money penalty of \$15,220.00, a photocopy of which is attached hereto as Exhibit 1, and to request that this Court conduct a judicial review under the Administrative Procedure Act and set aside or modify that final determination.
3. Plaintiffs have exhausted their administrative remedies prior to filing this complaint. Ex. 1 at pp. 1-2.
4. Plaintiffs' causes of action arise under 2 U.S.C. § 437g(a)(4)(C), for which this Court has original jurisdiction under the provisions of 5 U.S.C. §§ 702, 704, & 706.
5. Venue is proper in this Court pursuant to 2 U.S.C. § 437g(a)(4)(C)(iii) and 5 U.S.C. § 703 because Plaintiffs reside and/or transact business in the Northern District of Texas.

6. Summons is being issued for service upon Defendant's Chair Ellen C. Weintraub at 999 E St., N.W., Washington, D.C. 20463 with a photocopy to the United States Attorney for the Northern District of Texas in Dallas.

7. Defendant's finding that Plaintiffs violated 2 U.S.C. § 434(a) was based upon their failure to timely file 48-Hour Notices for the 2012 Texas Primary Election. Ex. 1 at p. 1. Domingo A. Garcia was a candidate for District 33 of the United States House of Representatives, who was defeated in the 2012 runoff election. Swati Patel was his campaign treasurer. Even though Plaintiffs filed the required disclosures and responded in writing to Defendant's reason-to-believe finding set forth in its February 8, 2013 notice letter, Defendant refused to modify the finding or the original civil money penalty calculated in accordance with the schedule of penalties at 11 C.F.R. § 111.44. *Id.*; 11 C.F.R. §§ 111.8(c). Defendant has exclusive jurisdiction regarding civil enforcement of the Federal Election Campaign Act ("FECA"), as amended by the Bipartisan Campaign Reform Act. 2 U.S.C. §§ 434 & 437c(b)(1). This Court has the right to review Defendant's action under the Administrative Review Act. 5 U.S.C. § 702.

8. Defendant ignored that the FECA contains a safe harbor provision, which makes exceptions to FECA's restrictions on contributions and expenditures and record-keeping and disclosure/reporting requirements in 2 U.S.C. §§ 432-34, including non-partisan activity designed to encourage individuals to vote or register to vote. 2 U.S.C. § 431(9)(B)(ii).

9. Defendant also ignored that Plaintiffs challenged the reason-to-believe finding and the fine assessed by explaining in writing their best, good-faith efforts to file the requisite reports in a timely manner and how they were prevented from doing so by reasonably unforeseen circumstances that were beyond their control.

10. In addition, the fine assessed as the remedy for the alleged statutory violation is grossly disproportionate to what Plaintiffs failed to timely disclose.

11. Furthermore, incumbent United States Senators, Congressmen, and Congresswomen and other candidates for the United States Congress have either filed campaign disclosure reports late or completely failed to file them, and Defendant has assessed a much smaller penalty or fine for those violations, even when the amount not disclosed or not timely disclosed greatly exceeded what Plaintiffs failed to timely report or disclose. One example is when former United States Attorney General John Ashcroft was a candidate for the United States Senate from Missouri in 2000, and neither his campaign nor his political action committee reported contributions to Defendant. Nonetheless, Defendant subsequently entered into a Conciliation Agreement with the respondents. Legal commentators have noted that the vast majority of Defendant's sanctions punish rather trivial violations of FECA technicalities and that the penalties imposed by Defendant often vary greatly and fail to differentiate between the seriousness of the violations involved. The inconsistency of Defendant's conduct between those precedents and this case is a factor for this Court to assess in weighing the deference due to the final determination in this case, as that inconsistency indicates unreasonableness. If this Court finds that Defendant's constructions of the relevant statutes and regulations was inconsistent with the statutory mandate or frustrates the policy which Congress sought to implement, that is yet another reason for this Court to reject Defendant's final determination in this case for being contrary to the law. Ex. 1 at pp. 1-2. Consequently, this Court should find that there was factual or legal error in Defendant's finding and/or a miscalculation of the fine assessed by Defendant against Plaintiffs.

12. Plaintiffs are entitled to judicial review of the final determination by Defendant because they

have identified some agency action which negatively affects them. 5 U.S.C. § 702. This Court should not assume that an adequate explanation exists for the final determination by Defendant and insist that Defendant prove that. This Court should also review the record and find that no reliable and substantial evidence with rational probative force supports Defendant's analysis and final determination and that Defendant has not articulated a satisfactory explanation and a rational connection between the facts found and the choice made. This Court, accordingly, should conclude that Defendant's findings and fine assessed were arbitrary or capricious or that Defendant abused its discretion with regard to Plaintiffs because Defendant has not shown a coherent and reasonable explanation for its exercise of that discretion and that its final determination is, therefore, contrary to law.

13. Plaintiffs, accordingly, request that this Court set aside or modify the final determination set forth in the attached Exhibit 1. Alternatively, Plaintiffs request that this Court set aside that final determination and remand the case for a new determination.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be summoned to appear and answer in this cause and that, after a trial by jury, Plaintiff be awarded a Final Judgment against Defendant, which sets aside or modifies the final determination set forth in the attached Exhibit 1.

Plaintiffs alternatively pray that this Court set aside that final determination and remand the case for a new determination by Defendant.

Plaintiffs further pray for such other and further relief to which they may be justly entitled

at law or in equity, specific or general.

Dated: June 24, 2013.

Respectfully submitted,

LAW OFFICES OF DOMINGO A. GARCIA, P.C.

By: /s/Domingo A. Garcia
Domingo A. Garcia
State Bar No. 07631950

600 Bank of America Tower - Oak Cliff
400 S. Zang Blvd.
Dallas, Texas 75208
Telephone: (214) 941-8300
Facsimile: (214) 943-7536

ATTORNEYS FOR PLAINTIFFS_

Exhibit "1"



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 23, 2013

VIA OVERNIGHT DELIVERY

Swati Patel, in official capacity as Treasurer
Garcia for Congress
400 South Zang Boulevard, Suite 600
Dallas, TX 75208

C00515114
AF#: 2636

Dear Ms. Patel:

On February 7, 2013, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Garcia for Congress and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) for failing to file 48-Hour Notices for the 2012 Texas Primary Election. By letter dated February 8, 2013, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$15,220 in accordance with the schedule of penalties at 11 C.F.R. § 111.44. On March 1, 2013, the Office of Administrative Review received your written response, challenging the RTB finding.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and the written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Garcia for Congress and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty in the amount of \$15,220 in accordance with 11 C.F.R. § 111.44. A copy of the Reviewing Officer Recommendation (ROR) was sent to you on March 11, 2013.

On May 20, 2013, the Commission adopted the Reviewing Officer's recommendation and made a final determination that Garcia for Congress and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assessed a civil money penalty of \$15,220. It is based on the same factors used to calculate the civil money penalty at RTB. A copy of the final determination recommendation is attached.

At this juncture, the following courses of action are available to you:

1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the district court of the United States for the district in which the committee or you reside, or transact business, requesting that the final determination be modified or set aside. See 2 U.S.C. § 437g(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 2 U.S.C. § 437g. 11 CFR § 111.38.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Appeal

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 *et seq.* If you do not pay this debt within 30 days (or file a written petition to a federal district court - see below), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Within 5 days of the transfer to Treasury, Treasury will contact you to request payment. Treasury currently charges a fee of 28% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency ("PCA"). If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken to enforce recovery of a delinquent debt by Treasury may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

~~**3. If You Choose to Pay the Civil Money Penalty**~~

~~If you should decide to pay the civil money penalty, send the enclosed remittance form, along with your payment, to the address on page 4 within 30 days of receipt of this letter.~~

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assessed upon making a final determination.

5. Settlement Offers

If you make a payment in an amount less than the civil money penalty as an offer to settle or compromise a debt owed to the Commission, the offer is herewith rejected despite any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. The file will be made a part of the public record pursuant to 11 CFR § 111.42(b). Although the file must be placed on the public record within thirty (30) days from the date of the Commission's notification, this could occur at anytime following certification of the Commission's vote.

If you have any questions regarding the payment of the civil money penalty, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Ellen L. Weintraub
Chair