

BIIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT C. MCCHESENEY, et al,

Plaintiffs,

v.

MATTHEW S. PETERSEN, et al,

Defendants.

No. 8:16-CV-168 LSC-FG3

**NOTICE OF DISMISSAL WITHOUT
PREJUDICE OF DEFENDANT UNITED
STATES OF AMERICA ONLY**

Plaintiffs, Robert C. McChesney, in his official capacity as Treasurer of Bart McLeay for U.S. Senate, Inc., and Bart McLeay for U.S. Senate, Inc., pursuant to Fed. R. Civ. P 41(a)(1)(A)(i), hereby gives a notice of dismissal without prejudice of Defendant United States of America (“United States”).

The United States acknowledges “Plaintiffs’ allegations and causes of action in their Complaint are clearly based upon final agency action and decisions taken by the FEC” ([Filing No. 26](#) at 2). Accordingly, Plaintiffs intend to pursue the action only against Matthew S. Petersen in his official capacity as Chair of the Federal Election Commission and the Federal Election Commission (collectively “FEC”) and reserve their right to bring this action later against the United States.¹

¹ Plaintiffs take issue with several arguments made by the United States including but not limited to its suggestion Plaintiffs have brought a civil action against the United States that “exceeds the \$10,000 jurisdictional threshold” under “the Little Tucker Act” because the “Complaint specifically references the fine issued by the FEC to be in the sum of \$12,122” ([Filing No. 26](#) at 8). The United States’ argument is misplaced. Plaintiffs seek various forms of specific relief but they have not made an affirmative claim to recover “\$12,122” from the United States ([Filing No. 1](#) at 1-20). *See Bowen v. Massachusetts*, 487 U. S. 879, 910 (1988) (“[S]ince the orders are for specific relief (they undo the Secretary’s refusal to reimburse the State), rather than for money damages (they do not provide relief that substitutes for that which ought to have been done), they are within the District Court’s jurisdiction under § 702’s [APA] waiver of sovereign immunity”). *Id.* at 8.

Plaintiffs are entitled to file notice of dismissal without prejudice since the United States has served neither an answer nor a motion for summary judgment.

Dated this 28th day of July, 2016.

Respectfully submitted,

ROBERT C. MCCHESENEY, in his official capacity as Treasurer of Bart McLeay for U.S. Senate, Inc., and BART MCLEAY FOR U.S. SENATE, INC., Plaintiffs,

By: s/L. Steven Grasz

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2016, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which sends notification of such filing to the following CM/ECF participant in this case:

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s/ L. Steven Grasz

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