

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

<hr/>)	
FEDERAL ELECTION COMMISSION,))	
))	
Plaintiff,))	
))	No. 1:15-cv-00017-LPS
v.))	
))	
CHRISTINE O’DONNELL, <i>et al.</i> ,))	ANSWER TO COUNTERCLAIMS
))	
Defendants.))	
<hr/>)	

**PLAINTIFF FEDERAL ELECTION COMMISSION’S
ANSWER TO DEFENDANTS’ COUNTERCLAIMS**

Plaintiff Federal Election Commission (“Commission”), through its undersigned counsel, responds as follows to the counterclaims asserted by Christine O’Donnell, Friends of Christine O’Donnell, and Chris Marston, in his official capacity as treasurer of Friends of Christine O’Donnell (collectively “defendants”) in Defendants’ Answer and Counterclaims, filed April 17, 2015 (D.I. 9). Any allegation not specifically responded to below is DENIED. The Commission responds as follows:

1. This paragraph contains defendants’ characterizations of the matters complained of and the relief sought in this counterclaim, as well as defendants’ conclusions of law. The paragraph therefore requires no response. To the extent that a response may be deemed necessary, the allegations are DENIED.

2. This paragraph contains defendants’ characterizations of the matters complained of and the relief sought in this counterclaim, as well as defendants’ conclusions of law. The paragraph therefore requires no response. To the extent that a response may be deemed necessary, the allegations are DENIED.

3. This paragraph contains defendants' characterizations of the matters complained of and the relief sought in this counterclaim, as well as defendants' conclusions of law. The paragraph therefore requires no response. To the extent that a response may be deemed necessary, the allegations are DENIED.

"JURISDICTION AND VENUE"

4. ADMIT that the counterclaims seek declaratory relief. ADMIT that 28 U.S.C. § 1331 confers subject matter jurisdiction. DENY that 28 U.S.C. §§ 1338(a) or 2201 confers jurisdiction for the counterclaims.

5. ADMIT.

"COUNT I – DECLARATORY JUDGMENT"
"NO STATUTORY VIOLATION"

6. DENY.

7. ADMIT that 52 U.S.C. § 30114(b) bars the conversion of funds contributed to a federal candidate to pay expenses that would exist irrespective of the candidate's campaign or duties as a federal office holder, including rent and utilities. Otherwise DENIED.

8. DENY.

9. ADMIT that Christine O'Donnell's reimbursements to Friends of Christine O'Donnell for her use of a portion of the space reduced the net costs to the Committee for that space. DENY that Friends of Christine O'Donnell would have incurred the same or greater costs but for O'Donnell's decision to sublease a portion of the space.

10. DENY.

11. To the extent that this paragraph contains defendants' conclusions of law, no response is required. The Commission regulations referenced in this paragraph speak for themselves. To the extent that a response may be deemed necessary, the Commission DENIES

that its regulations permit a candidate to sublease from her campaign committee a portion of the campaign headquarters for use as a residence. The Commission is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in the paragraph regarding defendants' reliance upon Commission regulations.

12. DENY.

“COUNT II – DECLARATORY JUDGMENT”
“11 C.F.R. § 113.1(g)(1)(i)(E) IS FACIALLY UNCONSTITUTIONAL”

13. This paragraph contains defendants' conclusions of law. The paragraph therefore requires no response. To the extent that a response may be deemed necessary, the allegation that the cited scrutiny level is applicable here is DENIED.

14. This paragraph contains defendants' conclusions of law. The paragraph therefore requires no response. To the extent that a response may be deemed necessary, DENY the allegation that all expenditures, even coordinated ones, do not corrupt and the apparent allegation that the cited Supreme Court discussion addressing certain other campaign finance provisions is applicable here.

15. DENY.

16. To the extent that this paragraph contains defendants' conclusions of law, no response is required. The Commission Advisory Opinions referenced in this paragraph speak for themselves. DENY that there is a less restrictive means to further the articulated interest.

17. DENY.

“COUNT III – DECLARATORY JUDGMENT”
“52 U.S.C. § 30111(e) [sic] IS UNCONSTITUTIONAL AS APPLIED”

18. This paragraph contains defendants' conclusions of law. The paragraph therefore requires no response. To the extent that a response may be deemed necessary, the allegation that the cited scrutiny level is applicable here is DENIED.

19. To the extent that this paragraph contains defendants' conclusions of law, no response is required. To the extent that a response to these legal conclusions may be deemed necessary, they are DENIED. The factual allegations in the paragraph are DENIED.

20. DENY.

21. DENY.

DEFENDANTS' PRAYER FOR RELIEF

The Court should deny defendants' requested relief.

**PLAINTIFF FEDERAL ELECTION COMMISSION'S
AFFIRMATIVE DEFENSE**

Defendants' counterclaims fail to state a claim upon which relief can be granted.

Respectfully submitted,

Lisa J. Stevenson
Deputy General Counsel – Law
lstevenson@fec.gov

Kevin Deeley
Acting Associate General Counsel
kdeeley@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

Robert W. Bonham III
Senior Attorney
rbonham@fec.gov

/s/ Seth Nesin

Seth Nesin

Attorney

snesin@fec.gov

August 14, 2015

FOR THE PLAINTIFF
FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463
(202) 694-1650