

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

_____)	
PUBLIC CITIZEN, INC., et al.)	
)	
Plaintiffs,)	
)	Case No. 09-cv-00762 (RWR)
v.)	
)	
FEDERAL ELECTION COMMISSION,)	ANSWER
)	
Defendant.)	
_____)	

**DEFENDANT FEDERAL ELECTION COMMISSION’S
ANSWER TO FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

By undersigned counsel, defendant Federal Election Commission (“FEC” or “Commission”) hereby answers the numbered paragraphs of plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief (Doc. #3). The Commission DENIES every allegation not specifically responded to below.

1. The first two sentences of this paragraph contain plaintiffs’ characterizations of their court complaint and administrative complaint, to which no response is required. As to the third and fourth sentences, the Commission ADMITS that it divided equally over whether to find reason to believe in the relevant matter, that it dismissed the administrative complaint, and that it had not yet provided an explanation of its reasoning at the time of the dismissal. The Commission further ADMITS that on April 28, 2009, the Commission provided a reasoned explanation for the decision to dismiss the complaint in the Statement of Reasons by Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, which is available on the Commission’s website. (To access the document, go to the FEC

Enforcement Query System, <http://eqs.nictusa.com/eqs/searcheqs>, type 5910 at the Case # box, and then press search; click on the appropriate document entry.) As to the last sentence, the Commission DENIES that its dismissal was contrary to law, arbitrary and capricious, or an abuse of discretion.

2. The Commission ADMITS the first and second sentences. The Commission ADMITS that this Court has jurisdiction to hear cases brought under the statutes plaintiffs cite, but the Commission DENIES that the Court has subject matter jurisdiction.

3. The Commission does not have sufficient knowledge or information on which to base a belief as to the truth of the assertions stated in this paragraph.

4. The Commission does not have sufficient knowledge or information on which to base a belief as to the truth of the assertions stated in this paragraph.

5. The Commission does not have sufficient knowledge or information on which to base a belief as to the truth of the assertions stated in this paragraph.

6. ADMIT the first four sentences, except that the Commission states that it is responsible for the civil enforcement of the Federal Election Campaign Act, 2 U.S.C. §§ 431-55, and that many of its official actions require the vote of at least four Commissioners. The Commission DENIES the last sentence because Chairman Steven T. Walther is an Independent.

7. ADMIT, except that the Commission is without knowledge sufficient to admit or deny plaintiffs' characterization of Laura MacCleery's employment.

8. The Commission ADMITS that the website <http://www.savejobs.org/aboutajs.php> (visited on June 4, 2009) does, among other things, contain the information stated in this paragraph. This paragraph also contains conclusions of law to which no response is required.

9. This paragraph contains characterizations and conclusions of law regarding the Federal Election Campaign Act and implementing regulations to which no response is required.

10. The Commission ADMITS that Americans for Job Security has not registered with the Commission as a political committee and has not reported its contributions and expenditures as required of political committees. The Commission also states that Americans for Job Security in 2008 filed numerous 24 Hour Electioneering Communications reports, which are available on the Commission's website. (To access the reports, go to the FEC Reports Index for Americans for Job Security, <http://query.nictusa.com/cgi-bin/fecimg/?C30001135>, and click on the appropriate report.) The Commission is without sufficient knowledge or information on which to base a belief as to the truth of the assertions in the second sentence.

11. This paragraph contains plaintiffs' characterizations of its administrative complaint, which speaks for itself, and conclusions of law to which no response is required. To the extent these characterizations and conclusions conflict with the explanation provided in the aforementioned Statement of Reasons by Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, they are DENIED.

12. The first sentence contains a conclusion of law to which no response is required. The Commission DENIES that it failed to act on plaintiffs' administrative complaint within 120 days, but the Commission ADMITS that more than 120 days elapsed between the time plaintiffs filed their administrative complaint and the time of the Commission's final disposition. The Commission does not have sufficient knowledge or information on which to base a belief as to the truth of the characterizations of Public Citizen's actions in the second half of the last sentence of this paragraph; however, the Commission ADMITS that plaintiffs did not file suit alleging delay.

13. The Commission DENIES the assertions of this paragraph as stated, but the Commission ADMITS that of the six Commissioners provided for in the FECA, one Commissioner resigned in February 2007, and the terms of three Commissioners expired on January 1, 2008. On June 24, 2008, the United States Senate confirmed five Commission appointments, providing the FEC with a full complement of six Commissioners. The Commission reiterates its answer to the last sentence of paragraph 6 and further states that the party affiliations and registrations of the individual Commissioners are a matter of public record.

14. The Commission DENIES plaintiff's vague characterizations, but ADMITS the Commission has divided equally as to whether to make certain findings in some enforcement matters since July 2008, including instances in which the General Counsel recommended that an enforcement matter should proceed, and that some matters have been dismissed as a result.

15. This paragraph characterizes the Commission's March 16, 2009 notification letter, which speaks for itself.

16. This paragraph characterizes the Commission's March 16, 2009 notification letter, which speaks for itself.

17. ADMIT.

18. Insofar as this paragraph characterizes the contents of the Commission's Certification, that document speaks for itself. The Commission ADMITS that the General Counsel's Factual and Legal Analysis, which appears as Attachment A to the Statement of Reasons by Chairman Steven T. Walther and Commissioners Cynthia L. Bauerly and Ellen L. Weintraub, dated April 23, 2009, was not placed on the Commission's website until April 28, 2009. (To access the document, go to the FEC Enforcement Query System, <http://eqs.nictusa.com/eqs/searcheqs>, type 5910 at the Case # box, and then press search; click on

the appropriate document entry.) Insofar as this paragraph characterizes the contents of the General Counsel's Factual and Legal Analysis, that document speaks for itself. The Commission DENIES that Chairman Walther is a Democrat; rather, he is an Independent.

19. ADMIT, except that to the extent the paragraph characterizes the Commission's Statements of Reasons, those documents speak for themselves and no response is required, and the Commission is without sufficient knowledge or information on which to base a belief regarding when the Statements of Reasons were made available to plaintiffs.

20. The Commission ADMITS the first sentence. The remainder of this paragraph contains plaintiffs' characterizations of the Statement of Reasons by Chairman Steven T. Walther and Commissioners Cynthia L. Bauerly and Ellen L. Weintraub and the General Counsel's Factual and Legal Analysis attached thereto, both of which speak for themselves, and no response is required.

21. This paragraph contains plaintiffs' characterizations of the Statement of Reasons by Chairman Steven T. Walther and Commissioners Cynthia L. Bauerly and Ellen L. Weintraub, which speaks for itself, and no response is required. The Commission DENIES that the three referenced Commissioners found that "it was reasonable to believe that AJS may have violated the law," but the Commission ADMITS that those Commissioners found "reason to believe that one or more violations of the Act occurred."

22. This paragraph contains plaintiffs' characterizations of the Statement of Reasons by Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, which speaks for itself, and no response is required.

23. This paragraph contains legal characterizations and conclusions to which no response is required.

24. DENY.

25. DENY.

RELIEF REQUESTED

No response is required, but the relief requested by plaintiffs should be denied.

AFFIRMATIVE DEFENSES

1. The Court lacks subject matter jurisdiction over the claims asserted.
2. Plaintiffs fail to state a claim upon which relief may be granted.

Respectfully submitted,

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