



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 9, 1988

Donald M. Cinnamond, Clerk
United States District Court
for the Middle District of Florida
Box 3270
611 N. Florida Avenue, Room 105
Tampa, FL 33601

Re: Federal Election Commission v. Cesar
Rodriguez, No. 86-687-CIV-T-10 (M.D.Fla.
administratively closed June 5, 1987).

Dear Mr. Cinnamond:

Enclosed please find an original and two photocopies of the plaintiff Federal Election Commission's motion to reopen and to amend the complaint, which the Commission is submitting for filing in the above-captioned litigation.

Please file the original and one photocopy of the motion with the court. In addition, please date stamp the remaining photocopy of the motion and return it to us in the enclosed self-addressed, franked envelope.

Thank you in advance for your cooperation in this matter. If you should have any questions or problems, please contact me immediately at FTS 376-5690.

Sincerely

A handwritten signature in black ink, appearing to read "Robert W. Bonham, III".

Robert W. Bonham, III
Attorney

Enclosures.

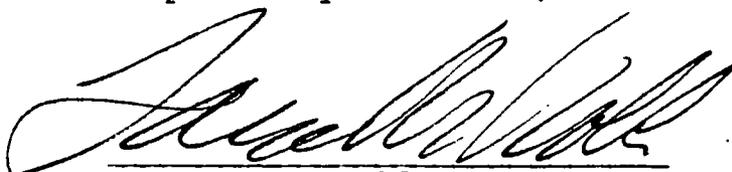
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FEDERAL ELECTION COMMISSION,)
) No. 86-687-CIV-T-10
 Plaintiff,)
) Hodges, J.
 v.)
) PLAINTIFF'S MOTION TO
CESAR RODRIGUEZ,) REOPEN AND TO AMEND ITS
) COMPLAINT
 Defendant.)

**PLAINTIFF FEDERAL ELECTION COMMISSION'S
MOTION TO REOPEN THE FILE IN THIS CASE AND
FOR LEAVE TO AMEND ITS COMPLAINT**

On June 5, 1987, the Court directed the Clerk to administratively close the file in this case, but allowed the parties six months to move to reopen or dismiss, or to seek an extension of time to do so, failing which the case would stand dismissed with prejudice and without further notice or order. Thereafter, on December 8, 1987, the Court extended the parties' time to take such action until and including June 5, 1988. Pursuant to those prior orders, the plaintiff Federal Election Commission (the "Commission") now moves for an order directing the Clerk to reopen the file in this case and granting the Commission leave to amend its complaint. In support of this motion, the Commission relies on the accompanying memorandum of points and authorities in support thereof. A proposed order is also attached.

Respectfully submitted,



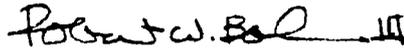
Lawrence M. Noble
General Counsel



Richard B. Bader
Associate General Counsel



Ivan Rivera
Assistant General Counsel



Robert W. Bonham, III
Attorney

May 9, 1988

FOR THE PLAINTIFF
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
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(202) 376-5690

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FEDERAL ELECTION COMMISSION,)
) No. 86-687-CIV-T-10
 Plaintiff,)
) Hodges, J.
 v.)
) MEMORANDUM IN SUPPORT OF
 CESAR RODRIGUEZ,) PLAINTIFF'S MOTION TO
) REOPEN AND TO AMEND
 Defendant.)

**PLAINTIFF FEDERAL ELECTION COMMISSION'S
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF ITS MOTION TO REOPEN THE FILE IN THIS CASE AND
FOR LEAVE TO AMEND ITS COMPLAINT**

By accompanying motion, the plaintiff Federal Election Commission (the "Commission" or "FEC") has moved for an order directing the Clerk to reopen the file in this litigation and granting the Commission leave to amend its complaint. In support of that motion, the Commission now states as follows:

1. On November 12, 1986, the Commission filed a motion for summary judgment against the defendant in this suit, Cesar Rodriguez. That motion and the Commission's prior complaint alleged that Rodriguez violated 2 U.S.C. § 441f by accepting contributions made in the name of others. However, on May 5, 1987, this Court denied the Commission's motion, holding that the Commission had prosecuted defendant Rodriguez under the wrong legal theory. In the Court's view,

Rodriguez aided and abetted a violation of the first clause of § 441f -- "No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution," rather than the last clause of § 441f -- "No

person shall knowingly accept a contribution made by one person in the name of another person."

Order (May 5, 1987) at 3. The Court therefore directed the Commission to address the question of whether the agency "can effectively amend the complaint and go forward with this case, or whether it must begin again under the governing statute at the administrative level." Id. Subsequently, by memorandum dated May 20, 1987, the Commission informed the Court that, rather than immediately amending the complaint, the FEC would be reopening the administrative proceedings which led to this litigation in order to consider whether to pursue the violation under the theory suggested by the court. Thereafter, on June 5, 1987, the Court issued an order directing the Clerk of the court to administratively close the file in this case. That Order specified that the "parties shall have six (6) months from the DATE OF THIS ORDER TO FILE EITHER A MOTION FOR EXTENSION OR TO reopen or a motion to dismiss, failing which this case shall stand and be taken as Dismissed with prejudice and without further Notice or Order." Order (June 5, 1987) at 1.^{1/}

2. On August 4, 1987, the Commission reopened its administrative proceedings in this matter. Thereafter, on August 24, 1987, the Commission's General Counsel notified defendant by letter that the General Counsel was prepared to

^{1/} By order dated December 8, 1988, the parties' time to take such action was further extended to June 5, 1988.

recommend that the Commission find probable cause to believe that violations of the Act by defendant had occurred. This conclusion was premised on the theory that Rodriguez assisted in the making of contributions in the name of another. The General Counsel provided defendant with a brief stating the position of the General Counsel on the legal and factual issues of the case. See 2 U.S.C. § 437g(a)(3). Finally, on December 1, 1987, the Commission found probable cause to believe that Rodriguez violated the Act, and endeavored to correct the violations by the informal methods of conference, conciliation and persuasion, and to enter into an acceptable conciliation agreement with defendant. Unable to secure an agreement, the Commission, on March 15, 1988, authorized the initiation of civil suit against Rodriguez with respect to his violations. (Defendant was notified of these latter actions by letters dated December 7, 1987 and March 17, 1988, respectively.)

3. Now that the Commission has reconsidered the alleged violations by defendant under the legal theory that Rodriguez assisted in the making of contributions in the name of another, and again found probable cause to believe that violations of 2 U.S.C. § 441f by defendant occurred and authorized suit on those violations, this matter is ready for resubmission to this Court. Rather than moving to dismiss the present suit without prejudice and then filing a new suit, the Commission believes that the better course would be simply to administratively reopen

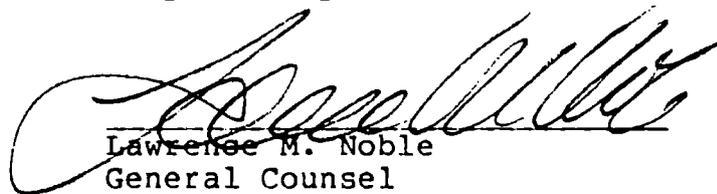
this suit and then amend its complaint. This procedure, for example, would reduce the amount of paperwork involved, and would significantly reduce the time necessary for the final disposition of this matter. Furthermore, neither party would be prejudiced by this procedure.

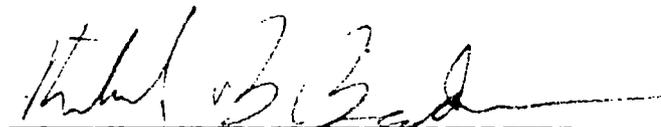
4. For the Court's information, a photocopy of the Commission's proposed amended complaint is attached as FEC Exhibit No. 1. If the Commission's instant motion is granted, the Commission would file the original of the amended complaint, and serve a copy thereof upon defendant Rodriguez, within 15 days after receiving notice of the Court's decision. See attached Proposed Order.

5. No prior application has been made for the relief sought herein.

WHEREFORE, the defendant Federal Election Commission requests that the Commission's motion be granted.

Respectfully submitted,


Lawrence M. Noble
General Counsel


Richard B. Bader
Associate General Counsel


Ivan Rivera
Assistant General Counsel

Robert W. Bonham III

Robert W. Bonham, III
Attorney

May 9, 1988

FOR THE PLAINTIFF
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999 E Street, N.W.
Washington, D.C. 20463
(202) 376-5690

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FEDERAL ELECTION COMMISSION,)
999 E Street, N.W.)
Washington, D.C. 20463)
(202) 376-5690,)
)
Plaintiff,) No. 86-687-CIV-T-10
)
v.)
) AMENDED COMPLAINT
CESAR RODRIGUEZ)
2510 South Dundee Street)
Tampa, Florida 33620)
)
Defendant.)

AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE
AND OTHER APPROPRIATE RELIEF^{*}

Jurisdiction

1. This action seeks declaratory, injunctive and other appropriate relief pursuant to the express authority granted the Federal Election Commission (the "Commission" or "FEC") by sections 307(a)(6) and 309(a)(6)(A) of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), codified at 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6)(A) 431 et seq. This court has original jurisdiction over this suit pursuant to 28 U.S.C. § 1345 as an action brought by an agency of the United States expressly authorized to sue by an Act of Congress.

2. Venue is properly found in the Middle District of Florida, in accord with 2 U.S.C. § 437g(a)(6)(A) as ~~all~~ the defendants can be found, resides or transacts business in this district.

^{*}/ Changes in the text are indicated as follows: insertions are underlined; deletions are stricken.

Parties

3. Plaintiff Federal Election Commission is the agency of the United States government empowered with exclusive primary jurisdiction to administer, interpret and enforce the Federal Election Campaign Act of 1971, as amended. See generally 2 U.S.C. §§ 437c(b)(1), 437d(a) and 437g. The FEC is authorized to institute investigations of possible violations of the Act, 2 U.S.C. § 437g(a)(2), and has exclusive jurisdiction to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act. 2 U.S.C. §§ 437c(b)(1) and 437d(e).

4. During the time in question, the defendant Cesar Rodriguez was an individual businessman living in Tampa, Florida.

Administrative Proceedings

5. Acting upon information ascertained in the normal course of carrying out its supervisory responsibilities, the Commission, by the affirmative vote of at least four of its members, found reason to believe on January 3, 1984, that the defendant violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and initiated an investigation of that violation. The defendant was notified of the Commission's determination by letter dated January 5, 1984. See 2 U.S.C. § 437g(a)(2).

6. On September 27, 1985, the Commission's General Counsel notified the defendant that he was prepared to recommend that the Commission find probable cause to believe that violations of the

Act by defendant had occurred. The General Counsel provided the defendant with a brief stating the position of the General Counsel on the legal and factual issues of the case. See 2 U.S.C. § 437g(a)(3).

7. On November 19, 1985, the Commission, by the affirmative vote of at least four of its members, found probable cause to believe that the defendant violated provisions of the Act and thereafter endeavored for a period of not less than thirty (30) days to correct such violations by the informal methods of conference, conciliation and persuasion, and to enter into a conciliation agreement with the defendant. Defendant was notified of the Commission's action by letter dated December 11, 1985. See 2 U.S.C. § 437g(a)(4)(A)(i).

8. Unable through informal methods to secure an acceptable conciliation agreement, the Commission, on April 1, 1986, determined, by the affirmative vote of at least four of its members, to authorize the initiation of this civil suit for relief in federal district court against the defendant. See 2 U.S.C. § 437g(a)(6). Defendant was notified of the Commission's action by letter dated April 4, 1986.

9. On August 4, 1987, the Commission reopened its administrative proceedings with respect to defendant. Subsequently, the Commission's General Counsel notified defendant by letter dated August 24, 1987 that the General Counsel was prepared to recommend that the Commission find probable cause

to believe that violations of the Act by defendant had occurred. That letter enclosed a brief stating the position of the General Counsel on the legal and factual issues of the case. See 2 U.S.C. § 437g(a)(3).

10. On December 1, 1987, the Commission, by the affirmative vote of at least four of its members, found probable cause to believe that defendant violated provisions of the Act and thereafter endeavored for a period of not less than thirty (30) days to correct such violations by the informal methods of conference, conciliation and persuasion, and to enter into a conciliation agreement with the defendant. Defendant was notified of the Commission's actions by letter dated December 7, 1987. See 2 U.S.C. § 437g(a)(4)(A)(i).

11. Unable through informal methods to secure an acceptable conciliation agreement, the Commission, on March 15, 1988, determined, by the affirmative vote of at least four of its members, to authorize the initiation of this civil suit against the defendant. Defendant was notified of the Commission's action by letter dated March 17, 1988. See 2 U.S.C. § 437g(a)(6).

9. 12. The plaintiff Commission has satisfied all jurisdictional requirements which are prerequisites to filing this suit.

Statement of Claims

COUNT 1

10. 13. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 9 12, inclusive.

~~11~~ 14. The FECA at 2 U.S.C. § 441f, prohibits any person from making or accepting a contribution made by one person in the name of another person.

~~12~~ 15. During the 1980 election, the defendant, on behalf of Allen Wolfson, approached various individuals and solicited contributions to the Carter/Mondale Presidential Committee. The defendant promised each individual that he would be reimbursed for the contribution. The defendant subsequently reimbursed each individual for his contribution.

~~13~~ 16. The defendant ~~accepted contributions made by one person in the name of another~~, knowingly assisted in the making of contributions in the name of another in violation of 2 U.S.C. § 441f.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff Federal Election Commission prays that this court:

(1) Declare that defendant Cesar Rodriguez violated 2 U.S.C. § 441f by ~~accepting contributions made by one person in the name of another person~~, knowingly assisting in the making of contributions in the name of another.

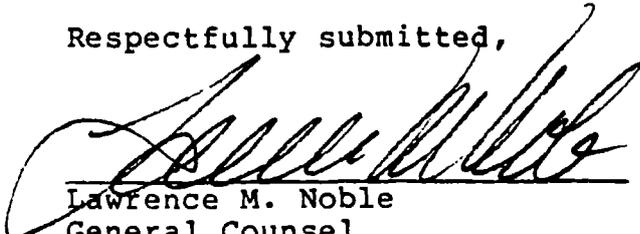
(2) Assess a civil penalty of the greater of five thousand dollars (\$5,000), or an amount equal to 100 percent of the amounts involved in the violations, against the defendant Cesar Rodriguez for violations of 2 U.S.C. § 441f. See 2 U.S.C. § 437g(a)(6)(B).

(3) Permanently enjoin defendant from further similar violations of the Federal Election Campaign Act of 1971, as amended;

(4) Award the plaintiff Federal Election Commission its costs and attorneys' fees in this action; and

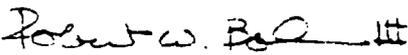
(5) Award such other and further relief as the court deems appropriate.

Respectfully submitted,


Lawrence M. Noble
General Counsel


Richard B. Bader
Associate General Counsel


Ivan Rivera
Assistant General Counsel


Robert W. Bonham, III
Attorney

May 9, 1988

FOR THE PLAINTIFF
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FEDERAL ELECTION COMMISSION,)	
)	
Plaintiff,)	No. 86-687-CIV-T-10
)	
v.)	Hodges, J.
)	
CESAR RODRIGUEZ,)	ORDER
)	
Defendant.)	

ORDER

Upon consideration of the plaintiff Federal Election Commission's motion for an order directing the Clerk to reopen the file in this litigation and granting the Commission leave to amend its complaint, it is hereby ORDERED that the plaintiff's motion be and the same hereby is GRANTED. The Commission shall file and serve its amended complaint within 15 days from the date plaintiff receives notice of this order.

IT IS SO ORDERED.

DONE and ORDERED at Tampa, Florida, this _____ day of May, 1988.

UNITED STATES DISTRICT JUDGE

Copies to:

Robert W. Bonham
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999 E Street, N.W.
Washington, D.C. 20463
(Counsel for Plaintiff),

and

CESAR RODRIGUEZ
2510 South Dundee Street
Tampa, FL 33620
(Defendant).

