

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JACK BEAM and RENEE BEAM,

Plaintiffs,

v.

DONALD F. McGAHN II, FEDERAL
ELECTION COMMISSION CHAIRMAN,

Defendant.

Civil No. 07cv1227

Judge Pallmeyer
Mag. Judge Cole

ANSWER

**DEFENDANT FEDERAL ELECTION COMMISSION'S ANSWER
TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendant Federal Election Commission (Commission or FEC) submits its Answer to Plaintiffs' Second Amended Complaint. The Commission responds to plaintiffs' preliminary allegations and to Count I, alleging a violation of the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401 *et seq.*, which is the only Count remaining in this case following entry of this Court's October 15, 2008, Memorandum Opinion.

1. ADMIT that Cook County is located within the boundaries of the Northern District of Illinois. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

2. DENY that plaintiffs "are the target of a politically motivated investigation initiated by" the Commission or any Commission personnel. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

3. ADMIT that Michael Mukasey was the Attorney General of the United States at the time plaintiffs filed their Second Amended Complaint in March 2008; that Alberto Gonzales was appointed Attorney General by then-President George W. Bush and served in that position from 2005 to 2007; that Mr. Gonzales served as White House Counsel from 2001 to 2005; and that Mr. Gonzales was appointed by then-Governor George W. Bush to the Texas Supreme Court in 1999. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

3.¹ ADMIT that David Mason served as Chairman of the FEC at the time plaintiffs filed their Second Amended Complaint in March 2008; that Michael E. Toner served as Chairman of the FEC in 2006; that Mr. Toner was appointed to the Commission by then-President George W. Bush; and that Mr. Toner had previously served as Chief Counsel to the Republican National Committee, General Counsel of the Bush-Cheney Transition Team, and General Counsel of the Bush-Cheney 2000 Presidential Campaign. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

4. ADMIT that jurisdiction is conferred upon Count I of this action by 28 U.S.C. § 1331.

5. The Commission is not required to respond to the allegations of this paragraph regarding a statutory basis for claims dismissed by this Court.

6. ADMIT that the Commission acts under color of law and that its actions implement laws and regulations of the United States of America. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, which is also objectionable because it is vague and ambiguous.

¹ Paragraph misnumbered in the Second Amended Complaint.

7. ADMIT that plaintiffs made contributions to the 2004 presidential campaign of John Edwards. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

8. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

9. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

10. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

11. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

12. The Commission incorporates by reference its responses to paragraphs 1 through 11 as if fully set forth herein.

13. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

14. This paragraph contains legal conclusions to which the Commission is not required to respond.

15. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

16. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

17. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

18. DENY.

19. DENY that the Commission has violated the RFPA or any other law. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

20. DENY that the Commission has violated the RFPA or any other law. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

21-36. No response is required because these paragraphs describe claims dismissed by the Court on October 15, 2008.

PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim.

Respectfully submitted,

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General Counsel

/s/ David Kolker
David Kolker
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/s/ Harry J. Summers
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February __, 2009

FOR THE DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on February __, 2009, I electronically filed the foregoing Defendant Federal Election Commission's Answer to Second Amended Complaint. The Court's Commission/ECF system will send notification of such filing to the following counsel of record:

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