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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMON CAUSE,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil Action No. 87-22

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OFFICE OF GENERAL COUNSEL
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MEMORANDUM AND ORDER

This is a "failure to act" dispute brought by Common Cause ("CC") pursuant to the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 437g(a)(8). CC seeks declaratory and injunctive relief, claiming defendant Federal Election Commission ("FEC") should be required to act on the administrative complaint it filed with FEC. In November 1987, the Court scheduled a period of discovery to be followed by the submission of dispositive motions. The matter now comes before the Court on CC's motion to compel production of documents. Briefs have been submitted and oral argument heard on the motion.

Shortly after the scheduling conference initiating discovery, FEC responded to CC's service of interrogatories and request for production of documents by providing an expedited answer to plaintiff's Interrogatory 1. That answer consists of a chronology of all FEC actions on CC's administrative complaint. CC asserts that it cannot pursue its claim in a

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meaningful way without further discovery. FEC claims, however, that this chronology provides plaintiff with sufficient information for purposes of the "failure to act" litigation.

After CC filed its motion to compel, the FEC took further action on the administrative complaint. On January 28, 1988, FEC's Office of the General Counsel notified respondents named in the administrative complaint that the investigation was completed and that it would recommend a vote on probable cause be taken by the Commission. Pursuant to FECA, this notification included "a brief stating the position of the general counsel on the legal and factual issues of the case." 2 U.S.C. § 437g(a)(3).¹ Respondents now have 15 days from the receipt of the notification and brief to submit a reply brief setting forth their position and responding to the general counsel's brief. Id. The briefs then will be submitted to the Commission for determination of whether or not there is "probable cause to believe that any person has committed, or is about to commit, a violation" of the Act. Id. § 437g(4)(A)(i). Once this decision is made, statutory deadlines are triggered and certainty exists as to the final processing of the complaint. Id.

FEC argues that the briefing is a decisive step in the process and a final decision on the complaint by the Commission is in sight. Accordingly, it insists there is no need for further discovery since the Commission's investigation has been

¹At oral argument CC indicated its motion to compel would be satisfied if it was provided with this brief.

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terminated and therefore the question of delay during the investigatory phase of the process is moot. Plaintiff counters that there is no statutory requirement as to the length of time the Commission may take in deliberating over the probable cause issue and urges that without some deadline the FEC can drag its feet indefinitely. FEC, however, has assured the Court that there is no reason to believe it will handle CC's relatively straightforward complaint at this stage any more or less expeditiously than it has handled other similar cases. The Court of Appeals for this Circuit has signaled its approval of the Commission's routine manner of handling these cases. FEC v. Rose, 806 F.2d 1081, 1084, 1092 (D.C. Cir. 1986).

The Court sees no need for additional discovery focusing on delay during the investigatory phase. Accordingly, CC's motion to compel production of documents is denied, provided that FEC continues promptly to update its chronology. It is further ordered that the Commission promptly inform CC and the Court of the time it will require to reach its final decision once it has received the briefs of the parties to the administrative proceeding. Once these procedures are completed the complaint shall be dismissed.

SO ORDERED.

Richard A. Gerell
UNITED STATES DISTRICT COURT

February 8, 1988

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