

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EMILY’S LIST,)	
)	
Plaintiff,)	Civ. No. 05-0049 (CKK)
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	ANSWER
)	
Defendant.)	

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

Defendant Federal Election Commission (“FEC” or “Commission”) through its undersigned counsel responds as follows to the original complaint in this litigation, denying everything not given a specific response.

1. This paragraph describes plaintiff’s judicial complaint, a document that speaks for itself, and no response is required.
2. This paragraph describes the Federal Election Campaign Act, as amended, 2 U.S.C. 431-455 (“FECA”), which speaks for itself, and no response is required. To the extent this paragraph attempts to describe Congress’s intent in creating the FEC, that legislative history speaks for itself.
3. The Commission ADMITS that it initiated a rulemaking in 2004 and issued final rules on November 23, 2004. See Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected

Committees, Final Rules and Explanation and Justification, 69 Fed. Reg. 68056 (Nov. 23, 2004) (“Final Rules” or “E&J”). The remainder of the paragraph is DENIED.

4. DENY.

5. The Commission is without knowledge or information sufficient to form a belief as to the truth of any of these allegations.

6. This paragraph contains plaintiff’s legal conclusions, which do not require a response.

7. ADMIT.

8. This paragraph characterizes the plaintiff’s judicial complaint, which speaks for itself, and no response is required. ADMIT that this Court has statutory jurisdiction under 28 U.S.C. 1331.

9. ADMIT.

10-12. No response is necessary to the allegations in these paragraphs that contain plaintiff’s legal conclusions. To the extent these paragraphs describe various statutes and regulations, those provisions speak for themselves. The Commission is without knowledge or information sufficient to form a belief as to the truth of the remainder of these allegations.

13. This paragraph describes 11 C.F.R. 106.6(c) (2004), which speaks for itself, and contains plaintiff’s legal conclusions, neither of which requires a response. To the extent this paragraph describes the public disclosure reports the plaintiff has filed with the Commission, the Commission ADMITS that those disclosure reports show that “EMILY’s List’s administrative expenses and the costs of its generic voter drives have been allocated between its federal and non-federal accounts using the ‘funds expended’

method.” The third sentence of the paragraph describes the rationale behind the “funds expended method,” which is explained in the Explanation and Justification issued by the Commission, which speaks for itself. See Regulations on Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting, 55 Fed. Reg. 26058 (June 26, 1990).

14. This paragraph describes 11 C.F.R. 106.6(d) (2004), which speaks for itself, and contains plaintiff’s legal conclusions, which do not require a response. To the extent this paragraph describes the public disclosure reports the plaintiff has filed with the Commission, the Commission ADMITS that those disclosure reports show that “EMILY’s List’s fundraising expenses have been paid for under the ‘funds received’ method.”

15. ADMIT the first sentence. The second sentence is DENIED. The Commission’s reasons for issuing the Notice of Proposed Rulemaking (“NPRM”) are explained in the NPRM, a document that speaks for itself. See Political Committee Status, 69 Fed. Reg. 11736 (March 11, 2004).

16–28. These paragraphs describe the NPRM, a document that speaks for itself, and no response is required.

29. ADMIT that the Commission invited public comments to be filed within 29 days.

30. ADMIT.

31. ADMIT that the General Counsel submitted Draft Final Rules to the Commission on August 12, 2004. Plaintiff’s characterization of these rules as “new”

does not require a response because the document speaks for itself. See FEC Agenda Document 04-75, Record at 2574.

32. ADMIT.

33. ADMIT.

34. ADMIT.

35. ADMIT.

36-37. These paragraphs describe 11 C.F.R. 100.57, a regulation that speaks for itself, and no response is required.

38-39. These paragraphs describe 11 C.F.R. 100.57, which speaks for itself, and contains plaintiff's legal conclusions, neither of which requires a response.

40. DENY. Plaintiff cites "69 Fed. Reg. at 69,057," which addresses United States Department of Agriculture regulations. To the extent this paragraph is meant to describe the E&J at 69 Fed. Reg. 68056, that document speaks for itself, and no response is required.

41-44. These paragraphs describe 11 C.F.R. 106.6, which speaks for itself, and contain plaintiff's legal conclusions, neither of which requires a response.

45. This paragraph purports to describe the E&J, a document that speaks for itself, and no response is required. See 69 Fed. Reg. 68056 (Nov. 23, 2004).

COUNT I

46. This paragraph incorporates paragraphs 1 through 45 of plaintiff's complaint. The Commission likewise incorporates its earlier responses to paragraphs 1 through 45 as if set forth in full.

47. This paragraph describes 5 U.S.C. 706(2)(C), a statutory provision that speaks for itself and for which no response is necessary.

48. The first two sentences of this paragraph describe regulations and statutory provisions, which speak for themselves, and contain plaintiff's legal conclusions, neither of which requires a response. The third sentence of this paragraph is DENIED.

49. DENY.

50. DENY.

51. DENY.

52. DENY.

53. DENY.

COUNT II

54. This paragraph incorporates paragraphs 1 through 53 of plaintiff's complaint. The Commission likewise incorporates its earlier responses to paragraphs 1 through 53 as if set forth in full.

55. The first sentence of this paragraph describes 5 U.S.C. 553(b), a statutory provision that speaks for itself. The second sentence of this paragraph is DENIED.

56-61. These paragraphs describe the NPRM and Final Rules, documents that speak for themselves, and no response is required. To the extent these paragraphs also contain plaintiff's legal conclusions, no response is necessary.

62. DENY. To the extent that this paragraph describes the NPRM and Final Rules, those documents speak for themselves, and no response is required.

63. DENY.

COUNT III

64. This paragraph incorporates paragraphs 1 through 63 of plaintiff's complaint. The Commission likewise incorporates its earlier responses to paragraphs 1 through 63 as if set forth in full.

65. This paragraph describes 5 U.S.C. 706(2)(A), a statutory provision that speaks for itself.

66. DENY. To the extent this paragraph describes the "solicitation regulation," that provision speaks for itself.

67. DENY. To the extent that this paragraph describes the "allocation regulations," those provisions speak for themselves.

68. DENY.

69. The first clause of this sentence is DENIED. To the extent this paragraph attempts to describe the E&J, at 69 Fed. Reg. 68056, that document speaks for itself and, therefore, no response is required.

70. DENY.

71. DENY.

COUNT IV

72. This paragraph incorporates paragraphs 1 through 71 of plaintiff's complaint. The Commission likewise incorporates its earlier responses to paragraphs 1 through 71 as if set forth in full.

73. This paragraph describes legal authority that speaks for itself, and no response is required. To the extent this paragraph contains plaintiff's legal conclusions, no response is necessary.

74. DENY.

75. DENY. To the extent this paragraph describes the “solicitation regulation,” that provision speaks for itself.

76. DENY. To the extent this paragraph describes the “solicitation regulation,” that provision speaks for itself.

77. DENY. To the extent this paragraph describes the “allocation regulation,” that provision speaks for itself.

78. DENY. To the extent this paragraph describes the “allocation regulation,” that provision speaks for itself.

79. DENY.

Plaintiff’s prayer for relief does not require a response, but insofar as an answer is deemed necessary, the Commission DENIES that plaintiff is entitled to the requested relief or to any relief whatsoever.

Respectfully submitted,

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