

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KEAN FOR CONGRESS)
COMMITTEE)
205 West Milton Avenue)
Rahway, NJ 07065)
)
Plaintiff,)
)
v.)
)
FEDERAL ELECTION COMMISSION)
999 E Street, N.W.)
Washington, D.C. 20436)
)
Defendant.)
_____)

Civil Action No.:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, the Kean for Congress Committee (“Kean Committee”), on information and belief alleges as follows:

INTRODUCTION

1. This action arises under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. (“FECA”). Plaintiff seeks review under 2 U.S.C. § 437g(8)(B) of the Federal Election Commission’s (“FEC” or “Commission”) dismissal of the Kean Committee’s administrative complaint dated May 31, 2000.

2. The Kean Committee’s administrative complaint challenged the actions of a Virginia corporation known as the Council for Responsible Government, and its so-called “Accountability Project” (collectively, “CRG”). In particular, the Kean Committee’s complaint

alleged that CRG secretly funded mailings which attempted to influence a New Jersey Congressional Seventh District Republican primary, in violation of federal law.

3. By letter dated November 10, 2003, counsel for the FEC advised that it “was equally divided on whether to find reason to believe the Counsel for Responsible Government, Inc. & its Accountability Project violated the Federal Election Campaign Act of 1971, as amended,” and that, “[a]ccordingly, on November 4, 2003, the Commission closed the file in this matter.”

4. The FEC’s November 10, 2003, letter further advised that “[a] Statement of Reasons providing a basis for the Commission’s decision will follow,” and that “dispositive portions of the file will be placed on the public record within 30 days.” The 30-day period in which the FEC must provide the basis for the Commission’s decision expired on December 10, 2003. Despite repeated inquiries to counsel for the FEC, as of the date of the filing of the instant Complaint, the FEC has still failed to meet the regulatory requirement that it supply information regarding the basis for the Commission’s decision.

5. Accordingly, this action seeks a judicial determination that the FEC’s dismissal of the Kean Committee’s complaint and its failure to provide a Statement of Reasons were based on an impermissible interpretation of the FECA, and were arbitrary, capricious, an abuse of discretion, and otherwise contrary to law. Plaintiff further seeks an order requiring the FEC to conform to that declaration.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 2 U.S.C. § 437g(a)(4)(C)(iii) and 28 U.S.C. § 1331.

7. Venue lies in this judicial district pursuant to 2 U.S.C. § 437g(a)(4)(C)(iii) and 28 U.S.C. § 1391(e).

PARTIES

8. Plaintiff Kean Committee is an unincorporated political association. The Kean Committee registered with the FEC pursuant to 11 C.F.R. § 102.1(a) on December 20, 1999. The Kean Committee's FEC Committee Identification Number is C00351742. Its treasurer is Matthew McDermott.

9. Defendant FEC is the federal agency charged with the administration and civil enforcement of the FECA. 2 U.S.C. § 437c(b).

BACKGROUND

10. In 2000, Tom Kean ran in the New Jersey Congressional Seventh Republican primary against Mike Ferguson, among other candidates. The New Jersey primary election was held on June 6, 2000.

11. In a May 24, 2000 Star-Ledger newspaper article, Gary Glenn is identified as a CRG board member and quoted as stating that "[t]he very purpose of our group is to influence the outcome of elections The outcome we hope to bring about is the election of a congressman whose values are consistent with our philosophy. Clearly, we believe Mr. Ferguson is a candidate whose record and philosophy is consistent with our philosophy." According to other newspaper reports, CRG spent over \$100,000 "to hurt the chances of Weingarten and Kean in June 6 primary, while boosting the chances of Warren Township educator Mike Ferguson."

12. In or about May of 2000, the CRG disseminated numerous advertisements advocating the defeat of Tom Kean. For example, the CRG claimed that "New Jersey Needs New Jersey Leaders" and that "Tom Kean moved to New Jersey to Run for Congress" and "We

can't afford on the job training." CRG further claimed that "Tom Kean may be a nice young man . . . but he needs more experience dealing with local issues and concerns." Mike Ferguson won the election and presently holds the Congressional seat sought by Mr. Kean.

13. On or about May 31, 2000, the Kean Committee filed with the FEC a sworn administrative complaint and supporting exhibits alleging that the campaign mailings disseminated by the CRG violated numerous provisions of the FECA. The Kean Committee's administrative complaint was filed pursuant to 2 U.S.C. § 437g(a) and all applicable FEC regulations.

14. The FECA prohibits contributions or expenditures by corporations in federal elections, 2 U.S.C. §§ 431-455, and requires that any communication advocating the election or defeat of a clearly-identified candidate contain a disclaimer stating whether the communication was authorized by any candidate, *id.* § 441d. The federal election laws also require that independent expenditures in support of, or in opposition to, a federal candidate and costing in excess of two hundred and fifty (\$250) dollars be publicly disclosed in a filing with the FEC, 11 C.F.R. § 109.2; and that any group of persons whose principal purpose is to influence federal elections register with the FEC as a federal political committee and disclose its contributions and expenditures, *see* 2 U.S.C. § 431(4). The challenged communications by the CRG, which was formed in or about May of 2000 for the express purpose of making political expenditures, violated each and every one of these legal requirements.

15. The Kean Committee, its candidate, and supporters suffered direct political injury by the actions of the CRG which targeted Tom Kean's campaign for the New Jersey Congressional Seventh District Republican primary. The CRG's campaign ads competitively disadvantaged Tom Kean, the candidate supported by the Kean Committee, and palpably

impaired his ability to compete on equal footing in the 2000 election. Mr. Kean is currently a state senator in the 21st district in New Jersey and is active in New Jersey public policy and politics. The CRG's failure to include in its challenged campaign communications a disclaimer stating whether the communications were authorized by any candidate as required by 2 U.S.C. § 441d, and its failure to publicly disclose its contributions and expenditures under 11 C.F.R. § 109.2 and 2 U.S.C. § 431(4), also deprived the Kean Committee, its candidate and its supporters of information to which it is entitled under the FECA.

16. As a committee that is registered with the FEC and regularly files reports with the FEC, the Kean for Congress Committee is established and operated to participate in federal elections. Accordingly, by its administrative complaint, Kean for Congress urged the FEC to take any and all action within its power to correct and prevent the illegal activities of the CRG, including requirements that it register with the FEC, that it report its contributions and expenditures, and that it identify in any future campaign communications whether they were authorized by any candidate. Such information will enable the Kean Committee to evaluate and ascertain CRG's impact in 2000 and thus its ability to influence future federal elections. Moreover, the required disclosures will assist the Kean Committee in determining whether CRG is an organization that enjoys wide support by multiple donors or has relatively few, but larger, funding sources. Finally, the disclosures will reveal whether CRG's support comes primarily from in-state or out-of-state contributors/voters.

17. The FEC failed to act on the Kean Committee's administrative complaint for more than 120 days. Accordingly, as an aggrieved party, the Kean Committee challenged the Commission's inaction under 2 U.S.C. § 437(g)(1), by filing a Complaint with this Court on September 18, 2001. See Kean for Congress Committee v. Federal Election Commission, Civ.

No. 01-1979 (JDB). Thereafter, upon consultation with counsel for the FEC regarding the status of the Kean Committee's administrative complaint, the Kean Committee filed an unopposed Notice of Dismissal of the Complaint on February 4, 2002.

18. By letter dated November 10, 2003, the FEC advised that the Commission was "equally divided" on whether to find reason to believe the CRG and its Accountability Project violated the FECA, and closed the file on November 4, 2003. As of the date of the instant Complaint, the FEC has failed to provide a Statement of Reasons setting forth a basis for the Commission's decision, in violation of FEC regulations. See 11 C.F.R. § 5.4(a)(4) (requiring that Commissioners' opinions be placed on the public record no later than 30 days from the date on which respondents were notified that the Commission has voted to close an enforcement file).

CAUSE OF ACTION

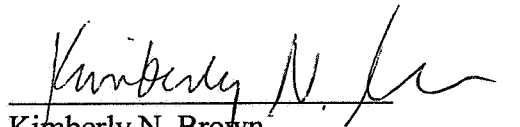
19. The Commission's decision to close the file on the Kean Committee's administrative complaint, thereby dismissing the complaint, and its failure to provide a Statement of Reasons for its decision, were based on an impermissible interpretation of the FECA, and were arbitrary and capricious, an abuse of discretion, and otherwise contrary to law.

WHEREFORE, Plaintiff, by its undersigned counsel, respectfully requests that the Court grant the following relief:

- a) Declare that the FEC's dismissal of the Kean Committee's administrative complaint and failure to provide a Statement of Reasons for its decision was based on an impermissible interpretation of the FECA, was arbitrary and capricious, was an abuse of discretion, and was otherwise contrary to law;

- b) Order the FEC to conform with such declaration within 30 days, see 2 U.S.C. § 437g(8)(B);
- c) Award legal fees and costs of suit incurred by Plaintiff; and
- d) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



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January 5, 2004

Counsel for the Kean Committee