

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

HOLLY LYNN KOERBER and)	
COMMITTEE FOR TRUTH IN)	
POLITICS, INC.,)	
)	
Plaintiffs,)	No. 2:08-cv-00039-H
)	
v.)	
)	ANSWER
FEDERAL ELECTION COMMISSION,)	
)	
Defendant.)	
)	

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

Defendant Federal Election Commission (FEC or Commission) submits this answer to plaintiffs Holly Lynn Koerber and Committee for Truth in Politics, Inc.’s (CTP) Verified Complaint for Declaratory and Injunctive Relief. Any allegation not specifically responded to below is DENIED.

1. This paragraph contains plaintiffs’ characterizations of a judicial decision and conclusions of law, to which no response is necessary.
2. This paragraph contains plaintiffs’ characterizations of judicial decisions and conclusions of law, to which no response is necessary.
3. This paragraph contains plaintiffs’ characterizations of judicial decisions and conclusions of law, to which no response is necessary.
4. This paragraph contains plaintiffs’ characterizations of judicial decisions and conclusions of law, to which no response is necessary.

5. This paragraph contains plaintiffs' characterizations of judicial decisions and conclusions of law, to which no response is necessary.
6. ADMIT that CTP is a nonprofit North Carolina corporation. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in the first sentence of this paragraph. The second and third sentences quote a judicial decision, which speaks for itself.
7. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.
8. The Commission is without knowledge or information sufficient to admit or deny whether the advertisements were broadcast in the electioneering communications period. ADMIT that if the advertisements described in paragraphs 32 and 33 of the complaint were broadcast and could be received by 50,000 or more people during the electioneering communication period, the ads meet the definition of an electioneering communication.
9. This paragraph contains conclusions of law, to which no response is necessary.
10. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. To the extent this paragraph contains conclusions of law, no response is necessary.
11. DENY.
12. This paragraph contains plaintiffs' characterizations of legal claims in the complaint and provisions of the Federal Election Campaign Act, 2 U.S.C. §§ 431-55 (FECA), which speak for themselves.

13. This paragraph contains plaintiffs' characterizations of legal claims in the complaint and judicial decisions, which speak for themselves. DENY that the FECA disclosure requirements are unconstitutionally overbroad.
14. This paragraph contains plaintiffs' characterizations of the legal claims in the complaint, an FEC policy, and judicial decisions, which speak for themselves. DENY that the Commission's policy regarding political committee status employs "a vague and overbroad totality-of-the-circumstances test for determining major purpose."
15. This paragraph contains plaintiffs' characterizations of the legal claims in the complaint, which speaks for itself. DENY that the FEC's political committee status policy is unconstitutional or beyond the Commission's authority.
16. This paragraph contains plaintiffs' characterizations of the legal claims in the complaint, which speaks for itself.
17. This paragraph contains plaintiffs' characterizations of the legal claims in the complaint, which speaks for itself.
18. DENY that the Commission's political committee enforcement policy is reviewable under the Administrative Procedure Act, as the policy is not final agency action.
19. ADMIT that venue is proper in this Court.
20. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.
21. ADMIT that CTP is a nonprofit North Carolina corporation. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

22. ADMIT that the Commission is the federal government agency with civil enforcement authority over the FECA and that it is located in Washington, DC.

ADMIT that the Commission explained the enforcement policy at issue in this case, but because of this paragraph's vague use of the term "adopted," the Commission is unable to admit or deny that part of the paragraph.
23. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. DENY that CTP "will be silenced" in violation of the First Amendment, that Koerber reasonably fears such silence, and that Koerber's First Amendment rights are being violated.
24. ADMIT.
25. ADMIT that CTP is a nonprofit North Carolina corporation. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.
26. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.
27. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.
28. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph. To the extent the paragraph contains legal conclusions, no response is required.
29. This paragraph recites excerpts from CTP's Articles of Incorporation, which speak for themselves.

30. This paragraph recites excerpts from CTP's Articles of Incorporation, which speak for themselves.
31. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.
32. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.
33. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.
34. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.
35. ADMIT that if the advertisements described in paragraphs 32 and 33 of the complaint were broadcast and could be received by 50,000 or more people during the electioneering communication period, the ads meet the definition of an electioneering communication.
36. ADMIT that electioneering communications are subject to the disclaimer requirements of 2 U.S.C. § 441d(a). This paragraph contains conclusions of law and plaintiffs' characterizations of the complaint, to which no response is necessary.
37. ADMIT that if CTP has spent more than \$10,000 for electioneering communications in 2008, it is subject to reporting requirements set out at 2 U.S.C. § 434(f)(1). The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.
38. ADMIT that if CTP had reached the \$10,000 trigger amount on October 2, 2008, the report would have been due on October 3, 2008. The Commission is without

- knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.
39. ADMIT that if CTP had reached the \$10,000 trigger amount on October 2, 2008, the report would have been due on October 3, 2008. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.
40. ADMIT.
41. DENY that any FEC enforcement activity would violate CTP's constitutional rights.
42. DENY that the Commission's PAC enforcement policy is vague or overbroad. To the extent the paragraph contains conclusions of law, no response is necessary.
43. DENY that any FEC enforcement activity would violate CTP's constitutional rights. To the extent the paragraph contains conclusions of law, no response is necessary.
44. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph. To the extent the paragraph contains conclusions of law, no response is necessary.
45. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph. To the extent the paragraph contains conclusions of law, no response is necessary.
46. DENY that any risk of an investigation, enforcement action, or penalties constitutes "irreparable harm." DENY that CTP has no adequate remedy at law.
47. The Commission incorporates by reference all responses contained in the preceding paragraphs.

48. The first sentence of this paragraph characterizes the relief plaintiffs' seek in this case, which speaks for itself. The second sentence and the related footnote contain plaintiffs' characterizations of ongoing litigation in another district court in this Circuit, which speaks for itself. The Commission DENIES that it stated that the *Change* ad was "protected issue advocacy." The third sentence characterizes plaintiffs' legal argument, to which no response is necessary.
49. The Commission incorporates by reference all responses contained in the preceding paragraphs.
50. DENY.
51. DENY.
52. The Commission incorporates by reference all responses contained in the preceding paragraphs.
53. This paragraph contains plaintiffs' characterizations of Commission statements as to the enforcement of FECA, which speak for themselves. DENY that the Commission's enforcement policy as to political committee status is vague or overbroad.
54. This paragraph contains plaintiffs' characterizations of judicial decisions and Commission statements as to the enforcement of FECA, which all speak for themselves. DENY that there is "no authority" for the Commission's enforcement policy as to political committee status and the "major purpose" test.
55. This paragraph contains plaintiffs' characterizations of Commission statements as to the enforcement of FECA, which speak for themselves. DENY that any organization "was subjected to a burdensome, intrusive investigation."

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon counsel of record, Paul Stam, Jr., by electronically filing the same with the Court this date, using the CM/ECF system.

December 5, 2008

Claire N. Rajan /s/
Claire N. Rajan
Attorney
Federal Election Commission