

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**JACK and RENEE BEAM,**

**Plaintiffs,**

**Civil Action No. 07-cv-1227**

**Honorable Rebecca R. Pallmeyer**

**vs.**

**ALBERTO R. GONZALES, UNITED  
STATES ATTORNEY GENERAL, AND  
ROBERT LENHARD, CHAIRMAN OF THE  
FEDERAL ELECTION COMMISSION; AND  
UNKNOWN AGENTS OF THE FEDERAL  
BUREAU OF INVESTIGATION, In their  
individual and official capacities,**

**Defendants.**

\_\_\_\_\_ /

**FIRST AMENDED COMPLAINT AND APPLICATION FOR  
WRIT OF MANDAMUS AND JURY DEMAND**

Plaintiffs, Jack and Renee Beam, bring this Complaint against the above named Defendants seeking monetary damages, a writ of mandamus, and other relief under the Administrative Procedures Act and declaratory judgment. In support of their complaint, Plaintiffs state the following:

1. Plaintiffs Jack and Renee Beam are residents of Cook County, Illinois, located in the Northern District of Illinois, Eastern Division. Plaintiffs are the target of a politically motivated investigation initiated by Defendants because of Plaintiffs' political activities and support of former presidential and vice presidential candidate John Edwards.

2. Defendant Alberto R. Gonzales is the United States Attorney General who serves at the pleasure of President George W. Bush. Prior to his appointment as United States Attorney General,

Mr. Gonzales served as White House Counsel to President George W. Bush, and prior to that, he was appointed by then Governor George W. Bush to serve as a Justice of the Texas Supreme Court.

3. Defendant Robert Lenhard is the current Chairman of the Federal Election Commission. At the time that facts giving rise to Plaintiffs' complaint, the FEC was chaired by Michael E. Toner who was appointed by President George W. Bush. Prior to his appointment by President Bush, Toner served as Chief Counsel to the Republican National Committee, and prior to that Mr. Toner served as General Counsel of the Bush-Cheney Transition Team and General Counsel of the Bush-Cheney 2000 Presidential Campaign.

4. Jurisdiction is conferred upon this Honorable Court by 28 U.S.C. § 1331, this being a civil action arising under the Constitution and the laws of the United States. Jurisdiction is also conferred upon this Court by 28 U.S.C. § 1361, this being an action to compel the Chairman of the Federal Election Commission to perform nondiscretionary duties imposed on him by federal law.

5. Plaintiffs bring this action pursuant to 28 U.S.C. § 2201 & 2202, this being an action for declaratory judgment and equitable relief authorized by law to redress deprivations under color of law of rights, privileges, and immunities secured by the United States Constitution. Plaintiffs also bring this action pursuant to the Administrative Procedures Act, 5 U.S.C. §§ 701-705, which in conjunction with provisions of the Federal Campaign Finance Act, confers jurisdiction on this Court over the acts or omissions of the FEC.

6. At all times relevant to this Complaint, and in taking all of the actions described herein, Defendants have acted and threaten to act under color of law and were effecting, and will effect, the custom, policies, rules, and laws of the United States of America.

**FACTS GIVING RISE TO PLAINTIFFS' COMPLAINT**

7. In or around June 2005, Defendant Gonzales, by and through the Department of Justice and FBI, embarked on the largest politically motivated campaign finance investigation in the history of America.

8. Specifically, on November 30, 2005, Defendant Gonzales *personally* authorized an unprecedented nighttime raid upon the law offices of Fieger, Fieger, Kenney & Johnson whose president, Geoffrey N. Fieger, is a prominent Democrat and former Michigan gubernatorial candidate.

9. On the same evening, Defendant Gonzales authorized approximately 100 federal agents to simultaneously raid the homes of the associates and employees of the Fieger law firm. Plaintiff Jack Beam serves as *of counsel* to the Fieger law firm, and Plaintiff Renee Beam is the wife of Jack Beam.

10. The ostensible reason for this unprecedented massive raid was that the employees, associates, and family members of the Fieger law firm made contributions to leading Democratic presidential candidate John Edwards in his 2004 presidential bid.

11. While appearing at the homes of the Fieger firm employees, federal agents harassed the individuals about who they voted for in the 2004 presidential election and about their financial support of John Edwards. Federal agents also revealed that they had previously obtained the Fieger firm employees' and associates' financial records directly from their financial institutions. Federal agents had also revealed that they had obtained payroll records from the Fieger firm's financial institution.

12. To date, the government has never provided Plaintiffs, or any of the Fieger firm associates or employees, with notice that they had obtained their financial records. Such failure of notice is in violation of federal law.

13. In short, the government has secretly and illegally obtained private and confidential bank records for over 100 individuals none of whom has ever been provided with a subpoena, warrant, or any other document authorizing the government's acts.

## COUNT I

### VIOLATION OF RIGHT TO FINANCIAL PRIVACY ACT

14. Plaintiffs incorporate by reference paragraphs 1 through 13 above as though fully set forth herein.

15. In order to determine how the government secretly obtained their financial records, Plaintiffs Jack and Renee Beam asked their financial institution, pursuant to 12 U.S.C. § 3404, to provide them with copies of the subpoena, warrant, or other document used by the government to obtain their private banking records. Plaintiff's financial institution refused to respond to Plaintiffs' request.

16. Under the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3401 *et. seq.*, a customer of a financial institution has a "right, unless the Government . . . obtains a court order . . ., to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority" 12 U.S.C. § 3404(c).

17. The only exception that allows a financial institution to avoid the mandatory disclosure requirement of § 3404(c) is when a court has signed a gag order every 90 days requiring non-disclosure of a government subpoena or warrant. 12 U.S.C. § 3413(I).

18. In order for the government to obtain such a gag order, it must prove, *inter alia*, that disclosure of such actions will “endanger life or physical safety of any person; flight from prosecution, destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or official proceeding . . .” 12 U.S.C. § 3409(a)(3)(A)-(E). Such a court issued gag order remains in effect for only 90 days unless the government renews its request to suppress notice of disclosure by meeting the requirements of § 3409(a)(3)(A)-(E).

19. Here, none of the statutory requirements allowing the government to obtain a gag order remotely apply to a case involving campaign finance disputes. Indeed, virtually 99% of campaign finance cases are resolved civilly by the FEC and without the intervention or interference of the Attorney General.

20. Defendants are investigating Plaintiffs for frivolous allegations that they may have violated campaign finance laws in 2003-2004. This case cannot possibly involve endangering life or the physical safety of any person.

21. Defendants have obtained private and confidential financial records for at least 100 people none of whom are a risk of “flight from prosecution.”

22. The financial records secretly obtained by Defendants are in the possession of financial institutes and thus not subject to “destruction.”

23. The government cannot claim in good faith that it is necessary to secretly obtain Plaintiffs’ financial records in order to prevent jeopardizing a campaign finance investigation or the intimidation of witnesses.

24. The only other method by which Defendants could have secretly obtained Plaintiffs' financial records is under a provision of the USA Patriot Act<sup>1</sup> which allows FBI agents to obtain financial records simply upon certification that the information is sought

for foreign counterintelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States. 12 U.S.C. § 3414(a)(5)(A).

25. Defendants cannot invoke national security, foreign counterintelligence, or international terrorism as a basis for secretly discovering whether Plaintiffs made a contribution to the John Edwards 2004 presidential campaign.

26. Defendants' act of secretly accessing Plaintiffs' financial records and/or suppressing the existence of its acts is a gross violation of federal law.

27. If gag orders have been continually sought and granted, then Defendants' actions described herein have violated Plaintiffs' constitutional and federally secured rights by obtaining a court issued gag order through false or fraudulent information.

28. As a result of Defendants' conduct described herein, Plaintiffs have been injured.

29. Section 3417 of the RFPA authorizes civil penalties (including actual and punitive damages) to be imposed on Defendants' for their misuse and/or failure to comply with the provisions of the RFPA.

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<sup>18</sup> The term "USA PATRIOT ACT" is an acronym for the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

**COUNT II**

**RETALIATION FOR ENGAGING IN  
CONSTITUTIONALLY PROTECTED ACTIVITY**

30. Plaintiffs incorporate by reference paragraphs 1 through 29 above as though fully set forth herein.

31. Upon information and belief, sometime after Defendant Gonzales and his agents secretly obtained Plaintiffs' private banking records, Defendant Gonzales and his agent transmitted such illegally gathered documents to the Federal Election Commission.

32. Thereafter, Defendant Gonzales and the FEC conspired to retaliate against Plaintiffs Jack and Renee Beam for exercising their First Amendment rights to freely engage in political speech.

33. Since June 2005, Defendant Gonzales, by and through the Department of Justice, FBI, and United States Attorneys, has undertaken the largest and most extensive politically motivated campaign finance investigation in the history of America based on frivolous allegations of campaign finance violations. Furthermore, the government's alleged violations in this matter do not remotely meet Department of Justice criteria for criminal investigation and/or prosecution.

34. Defendants Gonzales and the FEC have made frivolous allegations of campaign finance abuse as a pretext for their politically motivated investigation.

35. In the course of this politically motivated investigation, federal agents under the direction of Defendant Gonzales have compelled numerous individuals to appear before a federal grand jury at which time they were forced to reveal for whom they voted in the 2004 presidential election. Such strong arm tactics on the part of federal agents reeks of totalitarianism and serves no legitimate governmental purpose.

36. Defendants' acts are designed solely to threaten, intimidate, and chill the exercise of free speech under the First Amendment.

37. Under the First Amendment to the United States Constitution, Plaintiffs are free to support, financially or otherwise, the political candidates of their choice without fear of retribution or retaliation by the government.

38. Compelling individuals to appear, under a threat of compulsion, and disclose their political preferences, their voting record, and their history of political contributions strikes at the heart of American democracy and signals the demise of individual liberties and constitutional rights.

39. Secretly collecting individuals' private banking records to determine whether citizens are contributing financial support to political candidates is a dangerous departure from the protections offered by the First Amendment.

40. Collectively, the Attorney General and the FEC have conspired to retaliate against Plaintiffs for no crime other than exercising their constitutional rights.

### **COUNT III**

#### **VIOLATION OF FEDERAL ELECTION CAMPAIGN ACT**

41. Plaintiffs incorporate by reference paragraphs 1 through 40 above as though fully set forth herein.

42. Under the Federal Election Campaign Act, the only method by which the Federal Election Commission can refer to the Attorney General an alleged violation of the Act is by "an affirmative vote of 4 of its members." 2 U.S.C. § 437g(a)(5)(C).

43. The Act also imposes on the FEC a duty not to disclose any information regarding the targets of its investigations. 2 U.S.C. § 437g(a).



44. As a matter of custom and policy, the FEC and Attorney General routinely violate both the referral and the confidentiality provisions of the Act by secretly sharing and exchanging information.

45. By secretly and informally sharing and exchanging information about alleged violations of the Act, the FEC and Attorney General have effectively avoided the referral provision which is a procedural safeguard of the Act designed to prevent the type of politically motivated investigation as is occurring here.

#### **COUNT IV**

##### **ADMINISTRATIVE PROCEDURES ACT**

46. Plaintiffs incorporate by reference paragraphs 1 through 45 above as though fully set forth herein.

47. By statute, once the FEC has found reason to believe that an individual has committed a violation of the Act and notifies the individual involved, the FEC “shall make an investigation of such alleged violation.” 2 U.S.C. § 437g(a)(2). On September 19, 2006, the FEC found reason to believe that Plaintiffs may have violated provisions of the Act.

48. To date, the FEC has utterly failed, or refused, to comply with the statutorily mandated requirement that it conduct an investigation.

49. The FEC’s failure to comply with the law, in order to aid the politically motivated investigation of Defendant Gonzales, is a violation of the Administrative Procedures Act, 5 U.S.C. §§ 701-706.

**COUNT V**

**WRIT OF MANDAMUS**

50. Plaintiffs incorporate by reference paragraphs 1 through 49 above as though fully set forth herein.

51. The FEC is wilfully failing to abide by the provisions of the Federal Campaign Finance Act. Instead, the FEC is abdicating its affirmative duty to conduct a civil investigation in order to violate Plaintiffs' federally secured rights and assist the Attorney General in his extra-jurisdictional, illegal, and unconstitutional investigation.

52. Under 28 U.S.C. § 1361, "[t]he district court shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

**RELIEF REQUESTED**

\_\_\_\_\_ For the reasons stated herein, Plaintiffs are entitled:

(a) a declaration that Defendants' conduct is unlawful, unconstitutional, and contrary to the provisions of the Federal Election Campaign Act;

(b) monetary damages as authorized by law;

(c) a writ of mandamus compelling the Federal Election Commission to comply with the congressionally mandated procedures set forth in the Federal Election Campaign Act;

(d) any other relief, injunctive or otherwise, as the Court deems just and equitable including costs and attorney fees;

Respectfully submitted,

FIEGER, FIEGER, KENNEY & JOHNSON, P.C.

/s/ Michael R. Dezsi

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Dated: June 29, 2007

**JURY DEMAND**

Plaintiffs hereby demand trial by jury in the above-captioned matter.

Respectfully submitted,

FIEGER, FIEGER, KENNEY & JOHNSON, P.C.

/s/ Michael R. Dezsi

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Dated: June 29, 2007

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 29, 2007 she electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Eric J. Beane at [eric.bean@usdoj.gov](mailto:eric.bean@usdoj.gov)

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*Attorneys for Robert Lenhard/Federal Election Commission*

and via certified mail (w/2 copies of Waiver of Service of Summons and return envelope) upon:

Federal Bureau of Investigation  
c/o Civil Process Clerk  
United States Attorney's Office  
Northern District of Illinois, Eastern Division  
219 S. Dearborn Street, 5<sup>th</sup> Floor  
Chicago, IL 60604

Federal Bureau of Investigation  
c/o Alberto R. Gonzales  
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s/ Julie A. Nardone

JULIE A. NARDONE