

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

EMILY’S LIST,	)	
	)	
Plaintiff,	)	Civ. No. 05-0049 (CKK)
	)	
v.	)	
	)	
FEDERAL ELECTION COMMISSION,	)	STATEMENT OF
	)	GENUINE ISSUES AND
Defendant.	)	OBJECTIONS

**DEFENDANT FEDERAL ELECTION COMMISSION’S  
STATEMENT OF GENUINE ISSUES  
AND OBJECTIONS**

Pursuant to Local Civil Rules (“LCvR”) 7(h) and 56.1, defendant Federal Election Commission (“FEC” or “Commission”) submits the following Statement of Genuine Issues and Objections to Plaintiff’s Statement of Material Facts, filed May 16, 2005 (“Plaintiff’s Statement”). This statement contains the Commission’s responses and objections to the evidence adduced by plaintiff in support of its motion for summary judgment.

The Commission generally objects to Plaintiff’s Statement because it presents allegations and assumes facts without any evidentiary support; indeed, most facts fail to include any citation whatsoever. The plaintiff is “obligated, pursuant to Local Rule [7(h)], to identify the material facts and point to the evidence of record that supports [its] positions.” Heasley v. D.C. General Hospital, 180 F.Supp.2d 158, 163 (D.D.C. 2002) (citing cases). The moving party must direct “the district judge and the opponent of summary judgment to the parts of the record which the movant believes support his statement.” Jackson v. Finnegan, Henderson, Farbarow, Garrett, and Dunner, 101 F.3d 145, 150-51 (D.C. Cir. 1996). The Court may deny plaintiff’s motion for

summary judgment on the basis of this failing alone. “[F]ailure to file a proper Rule [7(h)] statement may be fatal to the delinquent party’s position” and the plaintiff “may not be heard to complain that the district court has abused its discretion by failing to compensate for counsel’s inadequate effort.” Id. at 151 (quotation marks omitted).

In addition to this general objection, specific responses and objections are presented below in numbered paragraphs tracking the numbering scheme in Plaintiff’s Statement.

1. This paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, the allegations in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

2. The Commission does not dispute that EMILY’s List is registered as a political committee with the Commission and that the organization’s activities are subject to the source and amount restrictions in the Federal Election Campaign Act. However, this paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

3. The Commission does not dispute that EMILY’s List maintains a nonfederal account. However, this paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

4. The Commission does not dispute that plaintiff has filed two Internal Revenue Service Form 990’s that are available on the IRS website at

<http://forms.irs.gov/politicalOrgsSearch/search/submitBasicSearch.action>. The Commission is without knowledge as to whether these two reports constitute “[a]ll of EMILY’s List’s disclosure reports ... to the ... IRS” as the plaintiff alleges. The Commission does not dispute that plaintiff has filed disclosure reports with the Commission and those reports dating back to 1993 are available on the Commission’s website. However, this paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, the allegations in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

5. This paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, the allegations in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

6. The Commission objects to this paragraph because it appears to be based purely on speculation. This paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, the allegations in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

7. The Commission does not dispute the general proposition that the plaintiff has administrative and overhead costs. However, this paragraph is not supported by any citation

whatsoever in violation of LCvR 7(h). See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

8-10. The Commission’s prior allocation regulations, to which these paragraphs appear to allude, speak for themselves. See, e.g., 11 C.F.R. 106.6 (2000). To the extent that these paragraphs contain legal argument about what these regulations required, such legal argument is not properly included in a LCvR 7(h) Statement. To the extent these paragraphs make any factual allegation, it is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, any factual allegation in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

11. This paragraph is controverted in the record. The FEC’s Statement of Material Facts, filed June 6, 2005 (“FEC Facts”), at ¶¶ 9-18, describe in detail many of the areas that were addressed in this rulemaking. Plaintiff presents no support for the proposition that the rulemaking proceeding was “established primarily” to address any one of the particular areas that was on the table during the rulemaking. Furthermore, this paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, the allegations in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

12-13. The Commission objects to these allegations as mere opinion and based entirely on speculation. This paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, the allegations in this paragraph cannot be evaluated or

properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

14. This purported statement of fact merely purports to describe FEC Advisory Opinion 2003-37, which speaks for itself. To the extent that this paragraph contains legal argument, it is also not properly included in a LCvR 7(h) Statement.

15. The quoted text supplied by plaintiff does not appear on the page cited or anywhere within the document it cites. See Agenda Doc. No. 04-48, at 7 (May 11, 2004) available at <http://www.fec.gov/agenda/2004/mtgdoc04-48.pdf>. Absent any evidentiary support, the allegations in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”). Moreover, a description by the Commission’s staff of an advisory opinion is immaterial in this case.

16. The Commission admits that “[o]n March 11, the Commission issued a wide-ranging proposal of new regulations ... [that] addressed a variety of topics ....” To the extent this paragraph purports to describe the NPRM issued by the Commission, it describes a legal document that speaks for itself.

17. This paragraph merely purports to describe the NPRM and Advisory Opinion 2003-37 issued by the Commission, legal documents that speak for themselves.

18. No response.

19. No response.

20. FEC Facts 19-27 controvert plaintiff’s assertion that the Commission did not receive “significant comment” on the portion of the rulemaking that resulted in the regulations subject to challenge in this lawsuit. These facts describe the significant and wide ranging

comments and testimony the Commission received on the portion of the rulemaking addressing the definition of “contribution,” “expenditure,” and the allocation requirements for nonconnected committees. There is no support for plaintiff’s proposition that the rulemaking proceeding was “focus[ed]” on any one of the particular areas that were on the table during the rulemaking. Furthermore, this paragraph is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, plaintiff’s allegations in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

21-25. No response.

26-28. These paragraphs purport to describe regulatory provisions that speak for themselves. To the extent this paragraph contains any factual allegations, it is not supported by any citation whatsoever in violation of LCvR 7(h). Absent any evidentiary support, plaintiff’s allegations in this paragraph cannot be evaluated or properly considered as part of a statement of facts. See LCvR 7(h) (statement of material facts “shall include references to the parts of the record relied on to support the statement”).

29. No response.

Respectfully submitted,

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June 6, 2005