

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN, INC.,)
 1600 20th Street, NW,)
 Washington, DC 20009,)
)
 CRAIG HOLMAN,)
 309 Maryland Avenue, NE #3,)
 Washington, DC 20002,)
)
 and)
)
 TAYLOR LINCOLN,)
 207 Randolph Place, NE,)
 Washington, DC 20002,)
)
) *Plaintiffs,*)
 v.)
)
 FEDERAL ELECTION COMMISSION,)
 999 E Street, NW,)
 Washington, DC 20463,)
)
) *Defendant.*)
 _____)

FILED

APR 24 2009

**Clerk, U.S. District and
Bankruptcy Courts**

**Case: 1:09-cv-00762
Assigned To : Roberts, Richard W.
Assign. Date : 4/24/2009
Description: Admin. Agency Review**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This complaint is a petition for review under 2 U.S.C. § 437g(a)(8) of an order of the Federal Election Commission (the FEC or the Commission) dismissing an administrative complaint filed with the Commission by plaintiff Public Citizen, Inc., as well as individual plaintiffs Craig Holman and Taylor Lincoln. Public Citizen's administrative complaint sought action by the Commission against another organization, Americans for Job Security (AJS), on the ground that AJS had unlawfully failed to register with the FEC as a political committee and had violated other legal requirements of the Federal Election Campaign Act (FECA) applicable

to political committees. The Commission divided equally over whether there was reason to believe that AJS had violated the law, and as a result dismissed Public Citizen's complaint, with no explanation of the reasoning supporting the conclusion that the complaint lacked merit. The FEC's action was contrary to law, arbitrary and capricious, and an abuse of discretion, not only because the FEC failed completely to provide a reasoned explanation for its action, but also because the allegations of Public Citizen's complaint provided reason to believe that AJS had violated the law.

Jurisdiction

2. The Commission voted to dismiss Public Citizen's complaint on February 25, 2009. This action is being filed within 60 days of the Commission's vote, as required by 2 U.S.C. § 437g(a)(8)(B). *See Jordan v. FEC*, 68 F.3d 518 (D.C. Cir. 1995). This Court has jurisdiction over this action seeking review of the FEC's dismissal of Public Citizen's complaint under 2 U.S.C. § 437g(a)(8)(A) and 28 U.S.C. § 1331.

Parties

3. Plaintiff Public Citizen, Inc., is a nonprofit membership organization headquartered in Washington, DC. Public Citizen advocates the interests of consumers and members of the public before Congress, administrative agencies and the courts on a wide range of issues. Prominent among Public Citizen's concerns has been combating the corruption of our political system, and as a result Public Citizen has long supported campaign finance legislation and advocated its enforcement. In connection with those activities, Public Citizen studies and reports on the role of money in elections, and has an interest in access to information on the amounts of contributions and expenditures of organizations that seek to influence electoral outcomes. In addition, many of Public Citizen's members are registered voters, who similarly

have an interest in access to information about who is contributing and expending money in connection with elections in which they vote.

4. Plaintiff Craig Holman is employed by Congress Watch, a division of Public Citizen, as its Legislative Representative for Campaign Finance Reform. He has a Ph.D. in Political Science and has studied the impact of money on politics for many years, both before and after joining Public Citizen. Dr. Holman's duties, as well as his independent research interests, involve the study of contributions to and expenditures by political organizations of various types, including political committees that report contributions and expenditures to the FEC.

5. Plaintiff Taylor Lincoln is employed as Director of Research at Public Citizen's Congress Watch. In that role, he has devoted substantial time and effort to the study of the political activities of nonprofit organizations and has a strong interest in acquiring information about their contributions and political expenditures.

6. The Federal Election Commission is an independent regulatory agency of the government of the United States. It is responsible for the administration and enforcement of FECA, 2 U.S.C. §§ 431-457, which governs the financing of federal elections. The duties of the FEC are to disclose campaign finance information, to enforce the provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of Presidential elections. The FEC is headed by six Commissioners, no more than three of whom can be members of any one political party, and it cannot take official action without the votes of at least four Commissioners. Currently three of the Commissioners are Republicans and three are Democrats.

The Americans for Job Security Complaint

7. On April 11, 2007, Dr. Holman and Mr. Lincoln, together with Laura MacCleery, who was then Director of Public Citizen's Congress Watch, submitted a complaint to the FEC on behalf of Public Citizen against an organization called Americans for Job Security.

8. According to its website, www.savejobs.org, AJS "put[s] forth a pro-growth, pro-jobs message to the American people." AJS claims tax exemption under section 501(c)(6) of the Internal Revenue Code, which applies to "business leagues." Under IRS regulations, intervening in political campaigns may not be the primary activity of a 501(c)(6) tax-exempt organization.

9. FECA and implementing FEC regulations require organizations whose "major purpose" is to support or oppose the election of candidates to federal office and who receive political contributions or make political expenditures (as defined under FECA) exceeding \$1000 to register as political committees. Political committees are required to report contributions and expenditures to the FEC. Independent political committees (that is, those that are neither campaign committees of a candidate nor committees of a political party) are subject to a statutory \$5000 limit (adjusted for inflation) on the amount of contributions they may receive annually from any individual, and may not receive contributions from corporations or labor unions.

10. AJS is not, and has never been, registered with the FEC as a political committee, nor has it reported contributions and expenditures to the FEC under the rules applicable to political committees. On information and belief, AJS has accepted contributions from individuals that exceed the annual limits applicable to political committees and has received contributions from corporations.

11. Public Citizen's complaint asked the FEC to take action against AJS for failing to register as a political committee, failing to report contributions and expenditures, accepting contributions in excess of \$5000 from individuals, and accepting contributions from corporations. The complaint was supported by an extensive analysis of AJS's political advertisements during the 2000, 2002, and 2004 election cycles. That analysis showed that advertising made up the majority of AJS's budget, and that AJS's advertising was overwhelmingly aimed at supporting or opposing candidates for federal office. The complaint thus documented that AJS's "major purpose" was supporting or opposing candidates for political office, and it further demonstrated that AJS had engaged in substantial expenditures within the meaning of FECA and the FEC's implementing regulations, thus subjecting it to the requirements applicable to political committees.

The FEC's Action

12. Under 2 U.S.C. § 437g(a), any person who believes a violation of FECA has occurred may file a complaint with the FEC and may bring an action for review in this Court if the Commission fails to act on the complaint within 120 days. The FEC did not act on Public Citizen's complaint within 120 days, but Public Citizen chose to allow the FEC to complete its review and take action on the complaint rather than bringing an action based on the agency's delay.

13. During the many months in which Public Citizen's complaint was pending, the composition of the Commission changed with the advent of four new Commissioners, including three Republicans.

14. Since the new Commissioners took office, there have been a number of enforcement matters in which the Commission has deadlocked three-to-three on whether to

proceed with enforcement actions, with the three new Republican Commissioners voting not to proceed. As a result, those matters have been dismissed by the Commission. In at least some of those instances, the Commission's action was contrary to the advice of its own General Counsel.

15. On March 16, 2009, the FEC's Assistant General Counsel Sidney Rocke sent a letter to plaintiffs Lincoln and Holman, as well as Ms. MacCleery, informing them that the Commission had considered the allegations of Public Citizen's complaint (denominated by the Commission as "MUR 5910") and was "equally divided" on whether to find reason to believe that AJS had violated various provisions of FECA. The letter further stated that, "[a]ccordingly, on February 25, 2009, the Commission voted 4-2 to take no further action," and that, "[a]t the same time, the Commission closed the file in this matter." The letter went on to advise that "[t]he Federal Election Campaign Act allows a complainant to seek judicial review of the dismissal of this action."

16. The FEC's March 16, 2009, letter also stated that "[a] Statement of Reasons providing a basis for the Commission's decision will follow," and that "[d]ocuments related to the case will be placed on the public record within 30 days."

17. More than 30 days have passed since the March 16, 2009, letter, and nearly 60 days since the FEC's vote to dismiss the action. The Commission has not yet provided a statement of reasons for its actions. On April 23, 2009, the Commission placed certain documents related to the case on the public record, but those documents consisted only of the complaint, an appearance of counsel and request for extension of time on behalf of AJS, an order granting AJS an extension of time, three responsive documents submitted by AJS, copies of the March 16, 2009, letters sent to Public Citizen and to AJS notifying them of the dismissal of the complaint, and a document certifying the Commission's votes on February 25, 2009. None of

the materials placed in the public record as of the date of this complaint (which can be found by accessing the “enforcement query system” page of the FEC’s website (<http://eqs.nictusa.com/eqs/searcheqs>) and searching for materials using the number assigned by the FEC to Public Citizen’s complaint, 5910) sets forth the Commission’s reasons for dismissing the complaint.

18. The Certification of the Commission’s February 25, 2009, vote that has now been placed in the public record reveals that the Commission’s staff had prepared a “Factual and Legal Analysis” supporting proposed findings that there was reason to believe that AJS had violated numerous provisions of FECA by not registering as a political committee, not reporting contributions and expenditures, accepting contributions in excess of \$5000 and prohibited corporate contributions, and making expenditures for express campaign advocacy. The certification also shows that the staff had recommended issuing compulsory process to AJS and witnesses to gather evidence concerning these suspected violations. The Commission has not made the staff’s analysis supporting the recommended actions available to the public. According to the certification, the three Democratic members of the Commission voted to make the proposed findings, approve the staff’s analysis, and issue compulsory process, while the three Republican members voted not to. Following the deadlock, the certification shows that one of the Democratic Commissioners joined with the three Commissioners who had voted not to proceed in order to provide the needed fourth vote for a decision to take no further action, following which all six Commissioners voted to close the file.

Claim for Relief — 2 U.S.C. § 437g(a)(8)(C) — Dismissal Contrary to Law

19. Under 2 U.S.C. § 437g(a)(8)(A), any party aggrieved by the Commission’s dismissal of a complaint may petition this Court for review, and the Court shall grant the petition

upon a showing that the dismissal of the complaint is “contrary to law.” 2 U.S.C.

§ 437g(a)(8)(C). Dismissal of a complaint is “contrary to law” if it rests on an impermissible interpretation of FECA or its implementing regulations or if it is otherwise arbitrary and capricious or an abuse of discretion. *See Orloski v. FEC*, 795 F.2d 156 (D.C. Cir. 1986).

20. Plaintiffs Public Citizen, Holman, and Lincoln are aggrieved by the FEC’s dismissal of the complaint.

21. The FEC’s dismissal of the complaint is arbitrary and capricious because the Commission has provided no reasoned explanation for it — indeed, no explanation at all.

22. The FEC’s dismissal of the complaint is also contrary to law because the allegations of the complaint, and the information provided to the FEC in support of it, are sufficient to provide reason to believe that AJS is a political committee and therefore has violated FECA by not registering as such, not complying with its obligations to report contributions and expenditures, and not complying with FECA’s limits on amounts and sources of contributions.

Relief Requested

Wherefore, the plaintiffs pray for the following relief as authorized by 2 U.S.C.

§ 437g(a)(8)(C):

- i. an order declaring that the dismissal of Public Citizen’s complaint is contrary to law;
 - ii. an order directing the FEC to conform to the Court’s declaration within 30 days;
- and
- iii. all other proper relief.

Respectfully submitted,



Scott L. Nelson, DC Bar No. 413548
Adina H. Rosenbaum, DC Bar No. 490928
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009
(202) 588-1000



Attorneys for Plaintiffs

April 24, 2009

C
09-762
RWR

CIVIL COVER SHEET

JS-44
(Rev. 1/05 DC)

I (a) PLAINTIFFS Public Citizen, Inc., Craig Holman, Taylor Lincoln (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) <u>11001 U.S.A.</u>	DEFENDANTS Federal Election Commission COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) <u>U.S.A.</u> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
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(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Scott L. Nelson Adina H. Rosenbaum Public Citizen Litigation Group 1600 20th Street, NW, Washington, DC 20009 202-588-1000	Case: 1:09-cv-00762 Assigned To : Roberts, Richard W. Assign. Date : 4/24/2009 Description: Admin. Agency Review
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II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act Social Security: <input type="checkbox"/> 861 HIA ((11395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g) Other Statutes <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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E. General Civil (Other) OR **F. Pro Se General Civil**

Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Bankruptcy <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	Forfeiture/Penalty <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other Other Statutes <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

Y. ORIGIN

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 2 U.S.C. 437g(a)(8); action for review of Federal Election Commission's dismissal of complaint

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ N/A Check YES only if demanded in complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form.

DATE April 24, 2009 **SIGNATURE OF ATTORNEY OF RECORD** *Robert H. Rosen*

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

KB