

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

STOP HILLARY PAC and DAN BACKER,)	
)	
Plaintiffs,)	Civ. No. 1:15-1208 (GBL-IDD)
)	
v.)	
)	ANSWER
FEDERAL ELECTION COMMISSION,)	
)	
Defendant.)	

DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) through its undersigned counsel responds as follows to plaintiffs’ Verified Complaint. Everything not given a specific response is DENIED.

Introduction. The first two paragraphs of plaintiffs’ introduction contain characterizations of FECA and Commission regulations to which no response is required. To the extent a response is deemed required, ADMIT that the cited provisions of FECA and Commission regulations prohibit unauthorized committees from using the name of a candidate in their registered names. The Commission is without knowledge or information sufficient to admit or deny the third sentence of the fourth paragraph, which concerns the state of mind of various unspecified persons regarding the candidate-authorization status of Stop Hillary PAC. The remainder of the introduction is DENIED.

1. ADMIT.
2. This paragraph contains plaintiffs’ characterizations of a provision of FECA to which no response is required. To the extent a response is deemed required, ADMIT that 52

U.S.C. § 30110 contains the quoted language in this paragraph, but DENY that this paragraph sets forth completely and accurately the full content of that statutory provision.

3. ADMIT that venue is proper in this District.

4. ADMIT that Plaintiff Stop Hillary PAC has registered with the Commission as a non-connected hybrid political committee, that it listed an Alexandria, Virginia address on its registration form, and that political committees are sometimes “colloquially referred to as . . . ‘political action committee[s]’” or “PACs.” The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

5. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

6. ADMIT the first sentence of this paragraph, and further ADMIT that the Commission is a federal agency created by the Federal Election Campaign Act (“FECA” or the “Act”), 52 U.S.C. §§ 30101-30146, and that the Commission is responsible for the civil enforcement and administration of the Act. DENY that the FEC has general authority “for enforcing federal election law.”

7. This paragraph contains conclusions of law and plaintiff’s characterizations of provisions of FECA to which no response is required. To the extent a response is deemed required, DENY that this paragraph accurately or completely describes the circumstances under which a group is required to register as a federal political committee.

8. This paragraph purports to summarize provisions of FECA to which no response is required. To the extent a response is deemed required, ADMIT that the first and second sentences of this paragraph accurately describe certain legal duties of political committee

treasurers. The third sentence of this paragraph appears to be incomplete and is too vague to either admit or deny.

9. This paragraph quotes portions of a provision of FECA, which speaks for itself, and to which no response is required. To the extent a response is deemed required, ADMIT that section 30102(e)(4) contains the language quoted in the paragraph, but deny that this paragraph completely or accurately describes the full content of that provision.

10. This paragraph characterizes and summarizes portions of FEC regulations, which speak for themselves, and to which no response is required. To the extent a response is deemed required, ADMIT that subsections (a)-(c) of this paragraph generally describe exceptions to the Commission's regulation implementing FECA's political committee name identification requirement.

DENY plaintiffs' heading on page 4: "The FEC's Threats Against Plaintiffs for Incorporating a Candidate's Name into the Name of Stop Hillary PAC."

11. ADMIT that plaintiff/counsel Dan Backer serves as counsel and treasurer for multiple political committees. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

12. ADMIT the first two sentences. The Commission is without knowledge or information sufficient to form a belief as to the allegations in the fourth sentence regarding Backer's continuing relationship with Stop Hillary PAC and whether he supports the committee. DENY that a copy of the Statement of Organization is attached either to the copy of the complaint available electronically through the Court's ECF system or the copy mailed to the Commission.

13. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph, which concern Backer's state of mind.

14. ADMIT that Hillary Clinton filed a Form 2 Statement of Candidacy with the Commission on April 13, 2015. The third sentence of this paragraph contains conclusions of law, to which no response is required. To the extent a response is deemed required, the Commission is without knowledge or information sufficient to form a belief as to the allegations in the second and third sentences in this paragraph, which concern Backer's state of mind.¹

15. ADMIT that the Commission sent a Request for Additional Information ("RFAI") to Dan Backer, Stop Hillary PAC's treasurer, on April 27, 2015. *See* Letter from Laura Sinram, Sr. Campaign Finance & Reviewing Analyst, FEC, to Dan Backer, Treasurer, Stop Hillary PAC (Apr. 27, 2015), <http://docquery.fec.gov/pdf/454/15330081454/15330081454.pdf>. DENY that a copy of the RFAI is attached either to the copy of the complaint available electronically through the Court's ECF system or the copy mailed to the Commission. The remainder of this paragraph purports to quote and/or paraphrase the RFAI, which speaks for itself and to which no response is required. To the extent a response is required, ADMIT that the RFAI advised that if Stop Hillary PAC is not a candidate-authorized committee, its Statement of Organization must be amended so that the committee's name does not include the name of a federal candidate, but DENY that this paragraph accurately or completely describes or quotes the full content of the cited RFAI.

¹ As to the footnote to paragraph 14 of the complaint, ADMIT that in January 2014, Stop Hillary PAC filed an administrative complaint with the FEC, that it subsequently filed an action for judicial review related to the pendency of its administrative complaint, that the FEC dismissed the administrative complaint, and that Stop Hillary PAC voluntarily dismissed its lawsuit. The remainder of this footnote contains plaintiffs' characterizations of its administrative and judicial complaints to which no response is required. To the extent a response is deemed required, the remainder of this footnote is DENIED.

16. ADMIT that plaintiff/counsel Dan Backer responded to the RFAI on June 1, 2015. The remainder of the first sentence of this paragraph contains plaintiffs' characterizations of Dan Backer's June 1, 2015 response to the Commission's April 27, 2015 RFAI, which speaks for itself and requires no response. *See* Miscellaneous Text (FEC Form 99) (June 1, 2015), <http://docquery.fec.gov/pdf/074/15951448074/15951448074.pdf>. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

17. ADMIT that FEC staff contacted Backer by telephone on June 4, 2015, and informed him that if Stop Hillary PAC did not change its name the matter would be referred for further Commission action. The Commission further ADMITS that Backer has refused to change the committee's name, *see* Miscellaneous Text (FEC Form 99) (June 11, 2015), <http://docquery.fec.gov/pdf/755/15951466755/15951466755.pdf>, and that Backer rejected an invitation to participate in Alternative Dispute Resolution. The Commission is without knowledge or information sufficient to admit or deny the allegations in the fourth sentence of this paragraph. The remainder of this paragraph, including plaintiffs' characterizations of the June 4, 2014 telephone communication, is DENIED.

18. ADMIT that the Commission sent a letter to Stop Hillary PAC and Dan Backer on or about September 8, 2015. The remainder of the first sentence of this paragraph contains plaintiffs' characterizations of that letter, which speaks for itself and to which no response is required. To the extent a response is deemed required, ADMIT that the letter contained the quoted language in this paragraph, but DENY that this paragraph accurately or completely describes or quotes the full content of the letter. As to the second sentence of this paragraph, DENY that a copy of the September 8, 2015 letter described in this paragraph is attached either

to the copy of the complaint available electronically through the Court's ECF system or the copy mailed to the Commission.

19-21. These paragraphs purport to summarize and characterize the contents of the September 8, 2015 letter referenced in paragraph 18 of plaintiffs' complaint, which speaks for itself and to which no response is required. To the extent a response is deemed required, ADMIT that the letter informed plaintiffs that "the Committee has been referred [to the Office of General Counsel for possible enforcement action] for failing to remove the Federal candidate's name from the name of the committee when the candidate referenced, Hillary Rodham Clinton, became an official Federal candidate, in violation of 52 U.S.C. § 30102(e)(4)," explained that [t]he Act affords [plaintiffs] the opportunity to demonstrate in writing that no action should be taken against the Committee in this matter," and advised the Committee of the possibility that if it failed to file a response, the Commission "may take further action." The remainder of these paragraphs, including plaintiffs' characterizations of the September 8, 2015 letter, is DENIED.

22. This paragraph contains characterizations of multiple provisions of FECA, which speak for themselves and to which no response is required. To the extent a response is deemed required, the Commission ADMITS that FECA authorizes the FEC to pursue civil enforcement for violations of FECA, DENY that the second sentence of this paragraph accurately or completely describes what "the FEC . . . believes" regarding the scope of its referral authority under the Act, and DENY that the cited "Ex. 3" is attached either to the copy of the complaint available electronically through the Court's ECF system or the copy mailed to the Commission, *see supra* ¶ 18.

23. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph, which concern Dan Backer's intentions and state of mind.

24-27. The Commission is without knowledge or information sufficient to admit or deny the allegations in these paragraphs, which concern the anticipated “mission and purpose” of certain alleged not-yet-established political committees, and Backer’s alleged wishes and expectations regarding the formation of and his expected service to such committees.

28. In this paragraph, plaintiffs incorporate and reallege paragraphs 1-27. Likewise, the Commission incorporates its responses to paragraphs 1-27.

29. ADMIT that plaintiff Stop Hillary PAC has registered with the Commission as a non-connected, unauthorized political committee and that it incorporates the name of candidate Hillary Clinton in its registered name.

30. This paragraph purports to describe a provision of FECA, which speaks for itself and requires no response. To the extent a response is deemed required, ADMIT that 52 U.S.C. § 30102(e)(4) provides that an unauthorized political committee “shall not include the name of any candidate in its name.”

31. This paragraph contains plaintiffs’ characterizations of a provision of FECA, which speaks for itself and to which no response is required. To the extent a response is deemed required, ADMIT that 52 U.S.C. § 30102(e)(4) provides that an unauthorized political committee “shall not include the name of any candidate in its name,” but DENY that this paragraph accurately describes the Commission’s interpretation and application of 52 U.S.C. § 30102(e)(4).

32. The first sentence of this paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, the allegation in the first sentence that the name of a political committee is entitled to “maximum protection under the First Amendment” is DENIED. ADMIT generally that FECA and Commission regulations require political committees to include their registered name in statutorily required FEC filings

and disclaimers, but DENY that the second sentence of this paragraph accurately or completely identifies or describes the sources of such requirements.

33. The first sentence of this paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, ADMIT that political committees have the major purpose of nominating or electing one or more federal candidates and that such groups are forms of political association; DENY the allegation that political committees are entitled to “maximum protection under the First Amendment.” The second and third sentences refer generally to the unidentified name of an unspecified committee and are too vague to admit or deny.

34. ADMIT.

35. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph, which concern the “mission and objective” of plaintiff Stop Hillary PAC.

36. This paragraph contains conclusions of law to which no response is required.

37. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph, which concern the state of mind of various persons regarding the status and objectives of Stop Hillary PAC.

38. ADMIT that candidates do not typically adopt names for their authorized committees that clearly and unambiguously oppose their own candidacies.

39. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph, which concern the relationship between Stop Hillary PAC’s registered name and its “mission, purpose, and values.”

40. ADMIT that the Commission has informed plaintiffs that Stop Hillary PAC's registered name violates FECA and Commission regulations, advised them to comply with the law, and informed them of possible legal consequences of their violation. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph concerning any costs purportedly incurred by plaintiffs as a result of their intentional violation of FECA and FEC regulations. The remainder of the paragraph, including the allegation that the FEC "has threatened Stop Hillary PAC," is DENIED.

41. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

42. In this paragraph, plaintiffs incorporate and reallege the preceding paragraphs of their complaint. Likewise, the Commission incorporates its responses to the preceding paragraphs.

43. ADMIT that Backer is identified in Stop Hillary PAC's FEC filings and in court papers in this case as the committee's counsel and treasurer. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, which concern the extent of Backer's support for Stop Hillary PAC and the committee's alleged objective.

44. ADMIT that "Hillary" is the first name of presidential candidate Hillary Rodham Clinton. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, which concern Backer's state of mind.

45. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, the Commission is without knowledge or information

sufficient to admit or deny the allegations in this paragraph, which concern Backer's state of mind.

46. ADMIT that the Commission has informed plaintiffs that Stop Hillary PAC's registered name violates FECA and Commission regulations, advised them to comply with the law, and informed them of possible legal consequences of their violation. The remainder of this paragraph, including plaintiffs' characterization of the Commission's communications, is DENIED.

47. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph, which concern Backer's alleged intentions regarding the formation of other political committees committees that are not parties to this action.

48. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph, which concern the relationship between Stop Hillary PAC's registered name and Backer's state of mind regarding Hillary Clinton.

49. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

50. In this paragraph, plaintiffs incorporate and reallege the preceding paragraphs of their complaint. Likewise, the Commission incorporates its responses to the preceding paragraphs.

51. This paragraph contains plaintiffs' characterizations of a provision of FECA to which no response is required. To the extent a response is deemed required, DENY that plaintiffs' summary sets forth completely and accurately the statute's "stated purpose."

52. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, ADMIT that, relative to other unauthorized committees

hypothetically employing candidate names, an unauthorized committee name that clearly and unambiguously opposes a candidate may pose a diminished risk of misleading the public to believe that the committee is authorized to act on behalf of the named candidate; this paragraph is otherwise DENIED.

53. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

54. In this paragraph, plaintiffs incorporate and reallege the preceding paragraphs of their complaint. Likewise, the Commission incorporates its responses to the preceding paragraphs.

55. ADMIT that plaintiffs have violated FECA and Commission regulations and have refused to comply with the political committee name identification requirement. DENY that Backer was required to violate FECA in order to bring his constitutional challenge, and otherwise DENY the remainder of this paragraph, including its apparent allegation that FECA is unconstitutional or otherwise unlawful.

56. DENY that the FEC has threatened plaintiffs and further DENY that section 30102(e)(4) is unconstitutional or otherwise unlawful. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, which concern Backer's state of mind.

57. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

58. In this paragraph, plaintiffs incorporate and reallege the preceding paragraphs of their complaint. Likewise, the Commission incorporates its responses to the preceding paragraphs.

59. This paragraph contains plaintiffs' quotations and characterizations of a Commission regulation that speaks for itself and to which no response is required. To the extent a response is deemed required, ADMIT that the second sentence accurately reproduces 11 C.F.R. 102.14(b)(1), (2) and (3); this paragraph is otherwise DENIED.

60. DENIED.

61. In this paragraph, plaintiffs incorporate and reallege the preceding paragraphs of their complaint. Likewise, the Commission incorporates its responses to the preceding paragraphs.

62. This paragraph contains plaintiffs' characterizations of a Commission regulation and legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

63. In this paragraph, plaintiffs incorporate and reallege the preceding paragraphs of their complaint. Likewise, the Commission incorporates its responses to the preceding paragraphs.

64. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, ADMIT that equal protection analysis under the Fifth Amendment is the same as that under the Fourteenth Amendment.

65. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

66. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

67. In this paragraph, plaintiffs incorporate and reallege the preceding paragraphs of their complaint. Likewise, the Commission incorporates its responses to the preceding paragraphs.

68. ADMIT that, relative to other unauthorized committees hypothetically employing candidate names, an unauthorized committee name that clearly and unambiguously opposes a candidate may pose a diminished risk of misleading the public to believe that the committee is authorized to act on behalf of the named candidate; this paragraph is otherwise DENIED.

69. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

70. This paragraph contains legal conclusions to which no response is required. To the extent a response is deemed required, this paragraph is DENIED.

PRAYER FOR RELIEF

1-4. No response is required to Paragraphs 1 through 4 of the plaintiffs' prayer for relief. However, if an answer may be deemed necessary to any of these paragraphs or subparagraphs, the Commission DENIES that any of the requested relief should be granted to the plaintiffs or against the Commission.

Respectfully submitted,

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**Admitted Pro Hac Vice*