

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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CITIZENS FOR RESPONSIBILITY AND))	
ETHICS IN WASHINGTON, <i>et al.</i> ,))	
))	
Plaintiffs,))	Civ. No. 19-1650 (TJK)
))	
v.))	
))	
FEDERAL ELECTION COMMISSION,))	ANSWER
))	
Defendant.))	
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DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint for Injunctive and Declaratory Relief filed by plaintiffs Citizens for Responsibility and Ethics in Washington (“CREW”) and Noah Bookbinder (collectively, “plaintiffs”). Any allegation not specifically responded to below is DENIED.

1. This paragraph summarizes plaintiffs’ court complaint, the allegations of which speak for themselves, and therefore no response is necessary. To the extent a response is required, ADMIT that this action arises under the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30109(a)(8)(A), and that plaintiffs filed an administrative complaint with the FEC on August 9, 2018. This paragraph also contains plaintiffs’ characterizations of their administrative complaint, which speaks for itself, and so no response is required. DENY that the FEC has unreasonably delayed in its handling of plaintiffs’ administrative complaint.

2. ADMIT that 52 U.S.C. § 30109(a)(8) provides statutory jurisdiction, that 28 U.S.C. § 1331 provides federal question jurisdiction in the district court, and that the Court has personal jurisdiction over the Commission. ADMIT that 52 U.S.C. § 30109(a)(8) provides

for venue in the United States District Court for the District of Columbia. Plaintiffs' reliance on the Administrative Procedure Act, 5 U.S.C. § 702, was dismissed on September 12, 2019.

DENY the remainder of this paragraph.

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

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

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

6. To the extent this paragraph contains allegations about unspecified information on CREW's website and in unspecified reports and press releases, such sources speak for themselves, and so no response is required. The Commission is without knowledge or information sufficient to admit or deny CREW's descriptions of its work in this paragraph.

7. The Commission ADMITS that CREW has filed administrative complaints with the FEC, but is without knowledge or information sufficient to admit or deny CREW's allegations in this paragraph concerning the circumstances surrounding its decision to file such complaints.

8. The Commission is without knowledge or information sufficient to admit or deny the allegations in the first sentence of this paragraph. The remainder of the paragraph is DENIED.

9. This paragraph describes a report issued by CREW, which speaks for itself, and so no response is required. To the extent this paragraph sets forth allegations about how CREW

obtained information discussed in a report that it issued, the Commission is without knowledge or information sufficient to admit or deny such allegations.

10. This paragraph describes a blog post issued by CREW, which speaks for itself, and so no response is required. To the extent this paragraph sets forth allegations about how CREW obtained information discussed in a blog post, the Commission is without knowledge or information sufficient to admit or deny such allegations.

11. ADMIT that Noah Bookbinder is the executive director of CREW. The Commission is without knowledge or information sufficient to admit or deny the allegations concerning Mr. Bookbinder in the second sentence of this paragraph. ADMIT that registered voters (and others) may legally review information that is publicly reported pursuant to FECA's disclosure requirements. DENY that the Commission has failed to properly administer FECA. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, which are vague and refer, *inter alia*, to unspecified provisions of FECA and the activities of an unidentified political committee.

12. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph, which concern the thoughts and expectations of plaintiffs. To the extent this paragraph alleges that the FEC has refused to enforce "FECA's mandatory disclosure requirements," that the FEC's handling of the administrative matter at issue in this case was contrary to FECA, or that the FEC has otherwise acted contrary to law, such allegations are DENIED.

13. ADMIT.

14. ADMIT that FECA and FEC regulations contain provisions that impose certain disclosure requirements, including requirements concerning independent expenditures,

disclaimers, registration as a political committee, and the reporting of contributions. DENY that this paragraph sets forth all of the purposes underlying these provisions. DENY the last sentence, which is vague, refers to unspecified provisions of FECA and FEC regulations, and contains the term “true source,” a phrase that does not appear in FECA or any FEC regulatory provision at issue.

15. This paragraph quotes provisions of FECA and Commission regulations, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the quoted language in this paragraph appears in the statutory and regulatory definitions of the term “political committee,” but DENY that this paragraph sets forth all the requirements for constituting such a committee.

16. This paragraph quotes portions of the statutory provision defining “expenditure,” which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the quoted language in this paragraph appears in the statutory definition of the term “expenditure,” but DENY that the paragraph sets forth the complete statutory definition of that term.

17. This paragraph purports to describe the legal requirements for determining whether a group is a political committee based on the Supreme Court’s decision in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), to which no response is required. To the extent a response is required, ADMIT that the Supreme Court in *Buckley* adopted a “major purpose” requirement for certain organizations, but DENY that this paragraph sets forth a complete description of that analysis.

18. The first sentence of this paragraph describes the Supreme Court’s decision in *FEC v. Massachusetts Citizens for Life Inc.*, 479 U.S. 238 (1986), which speaks for itself, and so

no response is required. The second sentence of this paragraph contains plaintiffs' description of a Commission Explanation & Justification, which speaks for itself, and so no response is required. To the extent that a response is required, DENY that an organization's major purpose may be demonstrated merely by a statement that it has an organizational purpose of influencing elections, and DENY that the FEC document cited in the second sentence supports that allegation.

19. This paragraph contains plaintiffs' descriptions of a provision of FECA and a Commission regulation, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that FECA and Commission regulations require groups meeting the definition of "political committee" to file a statement of organization with the Commission within 10 days of becoming a political committee.

20. This paragraph contains plaintiffs' descriptions of certain provisions of FECA and Commission regulations, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that FECA and Commission regulations require groups meeting the definition of "political committee" to file periodic reports with the FEC that disclose the information described in this paragraph.

21. This paragraph contains plaintiffs' descriptions of certain provisions of FECA, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that FECA requires all persons to report certain independent expenditures to the Commission, and that FECA contains provisions stating that persons who do not meet the definition of "political committee" must file reports with the FEC that disclose, *inter alia*, contribution information, but DENY that this paragraph provides a complete and accurate statement of that requirement.

22. This paragraph contains descriptions of unspecified provisions of FECA and FEC regulations, and quotes portions of the statutory provision involving FECA's prohibition on contributions in the name of another, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the quoted language in the last sentence of this paragraph appears in 52 U.S.C. § 30122, but DENY that the remainder of this paragraph sets forth a complete or accurate description of the requirements that plaintiffs purport to describe, or that the term "true source" appears in the parts of FECA or FEC regulations at issue.

23. This paragraph contains descriptions of and quotes portions of the FEC regulatory provision that prohibits contributions in the name of another, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the quoted language in the last sentence of this paragraph appears in 11 C.F.R. § 110.4(b)(2)(i), and that Commission regulations prohibit the making or knowingly accepting of contributions in the name of another, and also prohibit knowingly permitting one's name to be used to effect such a contribution. DENY that the Commission is permitted to enforce 11 C.F.R. § 110.4(b)(2)(iii). *See FEC v. Swallow*, 304 F. Supp. 3d 1113, 1118-19 (D. Utah 2018).

24-25. These paragraphs describe FECA's statutory provisions and an FEC policy statement regarding the FEC's administrative enforcement process, which speak for themselves, and so no response is required. To the extent responses are required, ADMIT that these paragraphs generally describe portions of FECA's administrative enforcement procedures, but DENY that the paragraphs contain a complete or accurate statement of those procedures.

26. This paragraph contains plaintiffs' descriptions of certain provisions of FECA, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that FECA permits a complainant to file a petition in the U.S. District Court for the

District of Columbia upon “a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed,” 52 U.S.C. § 30109(a)(8)(A); that, if the Court determines that a failure to act is contrary to law, the Court may direct the Commission to conform to the declaration within 30 days, 52 U.S.C. § 30109(a)(8)(C); and that “failing [this] the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint,” *id.* DENY the remaining allegations in this paragraph, including that the citations support the propositions for which they are cited.

27. ADMIT that plaintiffs filed an administrative complaint with the FEC on August 9, 2018, and that the FEC designated it Matter Under Review (“MUR”) 7465. This paragraph also contains plaintiffs’ descriptions of their administrative complaint, which speaks for itself, and so no response is required. Deny that Exhibit 1 is a copy in all respects, including the verification and notarization, of any administrative complaint plaintiffs filed on August 9, 2018.

28. This paragraph describes allegations in plaintiffs’ administrative complaint, which speaks for itself, and so no response is required.

29. This paragraph describes allegations in plaintiffs’ administrative complaint, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that Freedom Vote reported to the FEC that it spent \$174,607.55 on independent expenditures in 2014. The Commission is otherwise without knowledge or information sufficient to admit or deny the described allegations.

30. This paragraph describes allegations in plaintiffs’ administrative complaint, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that Fighting for Ohio Fund reported receiving \$1,975,000 from Freedom Vote between

December 2015 and October 2016. The Commission is otherwise without knowledge or information sufficient to admit or deny the described allegations.

31. This paragraph describes allegations in plaintiffs' administrative complaint, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that Fighting for Ohio Fund reported receiving \$1,975,000 from Freedom Vote between December 2015 and October 2016, and that Fighting for Ohio Fund reported spending more than \$9.2 million in independent expenditures opposing Ted Strickland in the 2016 U.S. Senate race in Ohio. The Commission is otherwise without knowledge or information sufficient to admit or deny the described allegations.

32. This paragraph describes an alleged letter from the FEC, and any such letter speaks for itself and therefore no response is necessary.

33. ADMIT.

34. This paragraph contains plaintiffs' descriptions of a federal statute and plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, ADMIT the first sentence.

35. DENY that "[s]ignificant delays in acting on a pending complaint are not uncommon at the FEC." This paragraph also quotes and characterizes a Statement of Reasons issued by one FEC Commissioner in a different FEC enforcement matter, which speaks for itself and therefore no response is necessary.

36-38. Deny the first sentence of paragraph 36. Paragraphs 36 through 38 contain plaintiffs' conclusions and characterizations of certain other FEC enforcement matters and litigation CREW has initiated against the FEC. The referenced materials speak for themselves and therefore no response is necessary. To the extent that responses are required, ADMIT that

CREW and one or more individuals filed the referenced administrative complaints with the FEC and have since litigated these matters, but DENY that plaintiffs' characterizations and quotations fully and accurately summarize what occurred in those matters. The remaining allegations are DENIED.

39. DENY that the FEC has unlawfully delayed the resolution of administrative complaints. The remainder of this paragraph contains plaintiffs' characterizations of a response by the FEC to congressional questions, which speaks for itself, and so no response is required. To the extent that a response is required, DENY that plaintiffs' characterizations fully and accurately summarize the referenced material.

40. DENY the first sentence of this paragraph. The remainder of the paragraph contains plaintiffs' conclusions and characterizations of materials issued by the FEC, which speak for themselves, and so no response is required. To the extent that responses are required, DENY that plaintiffs' characterizations fully and accurately summarize the referenced materials.

41. The first sentence of this paragraph characterizes testimony by one FEC Commissioner, which speaks for itself, and therefore no response is necessary. The second sentence of this paragraph is DENIED.

42. DENY.

43. DENY that "[s]uch delays," and the potential for documents to be destroyed, memories to fade, or organizations to cease operations due to the passage of time, "commonly impact the FEC's ability to carry out its enforcement function." ADMIT that there is a five-year statute of limitations applicable to FECA violations which, by definition, effectuates Congress's intent to constrain enforcement of FECA.

44. DENY.

45. This paragraph incorporates by reference all preceding paragraphs. The Commission likewise incorporates by reference its preceding responses.

46. ADMIT.

47. This paragraph contains plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, the paragraph is DENIED.

48. DENY that the FEC has failed to act in a timely manner on the administrative complaint. ADMIT that the FEC has not disclosed having taken final action on the administrative complaint.

49. DENY.

50. This paragraph characterizes a provision of FECA, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that a party who has filed an administrative complaint may petition the Court for a declaration that the FEC's alleged failure to act on the complaint is contrary to law and for an order that the FEC conform to this declaration within 30 days.

51. This paragraph contains plaintiffs' speculation regarding hypothetical future events in connection with an administrative complaint, and so no response is required. To the extent a response is required, ADMIT that in some circumstances the FEC may require an administrative respondent to register as a political committee and file required disclosures, and may make referrals to the Department of Justice for possible criminal prosecution.

52. DENY.

53. DENY that the FEC has delayed the handling of plaintiffs' administrative complaint. The remaining allegations of this paragraph are plaintiffs' characterizations and legal conclusions, to which no response is required.

REQUESTED RELIEF

The Court should deny plaintiffs' requested relief.

Respectfully submitted,

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