

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

_____)	
AB PAC,)	
)	
Plaintiff,)	Civ. No. 22-2139 (TJK)
)	
v.)	
)	ANSWER
FEDERAL ELECTION COMMISSION,)	
)	
Defendant.)	
_____)	

**FEDERAL ELECTION COMMISSION’S
ANSWER TO PLAINTIFF’S AMENDED COMPLAINT**

Defendant Federal Election Commission (“Commission” or “FEC”) submits this Answer to plaintiff AB PAC’s Amended Complaint for Declaratory and Injunctive Relief (“Amended Complaint” (Docket No. 14)) filed on October 14, 2022. On July 17, 2023, the Court dismissed the Amended Complaint “to the extent that it seeks any relief relating to Defendant’s failure to act on Plaintiff’s excessive-contributions claim set forth in its administrative complaint.” (Mem. Op. & Order at 11 (Docket No. 20).)¹ Because the excessive-contributions claim is no longer a part of this case, the Commission does not respond to plaintiff’s allegations alleged solely in support of that dismissed claim, as referenced further below. Any allegation not specifically responded to below is DENIED.

The Commission responds as follows to the paragraphs of the Amended Complaint:

¹ The Commission herein adopts by reference the Court’s definition of plaintiff’s “excessive-contributions claim” and “disclosure claim.” (Mem. Op. & Order at 2.)

“INTRODUCTION”

1. This paragraph summarizes an administrative complaint plaintiff allegedly filed, the allegations of which speak for themselves, and requires no response. Some of the allegations in this paragraph relate to plaintiff’s excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response.

2. Some of the allegations in this paragraph relate to plaintiff’s excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff’s characterizations and legal conclusions require no response. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

3. Some of the allegations in this paragraph relate to plaintiff’s excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff’s characterizations and legal conclusions require no response. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

4. DENY that the FEC has unreasonably delayed in its handling of plaintiff’s alleged administrative complaint. The Commission is without knowledge or information sufficient to admit or deny the level of plaintiff’s knowledge.

5. ADMIT that: (a) within 15 days after becoming a candidate, each candidate for the office of President must designate a political committee to serve as the candidate’s principal campaign committee, 52 U.S.C. § 30102(e)(1); (b) within 10 days after such designation, that principal campaign committee must file a statement of organization setting forth certain information, *id.* § 30103(a)-(b); and (c) the treasurer of this principal campaign committee is

required to file reports of receipts and disbursements with the FEC according to the schedules prescribed in FECA, *id.* § 30104(a)-(b). Plaintiff's characterizations and legal conclusions require no response. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

6. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's characterizations and legal conclusions require no response. DENY that: (a) the FEC has unreasonably delayed in its handling of plaintiff's alleged administrative complaint; and (b) any of the requested relief or any other relief should be granted to the plaintiff. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

7. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. The Commission ADMITS that plaintiff seeks the relief described in this paragraph, but DENIES that any of the requested relief or any other relief should be granted to plaintiff.

8. This paragraph summarizes plaintiff's Amended Complaint and alleged administrative complaint, the allegations of which speak for themselves, and requires no response. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. To the extent a response to this paragraph is required, the Commission: (a) ADMITS that this case is an action under 52 U.S.C. § 30109(a)(8)(A); (b) DENIES that the FEC has unreasonably delayed in its handling of plaintiff's alleged administrative complaint; (c) ADMITS that plaintiff seeks

the relief described in this paragraph; and (d) DENIES that any of the requested relief or any other relief should be granted to plaintiff.

9. This paragraph summarizes plaintiff's alleged administrative complaint, the allegations of which speak for themselves, and requires no response. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's legal conclusions require no response. The Commission is without knowledge of information sufficient to admit or deny the remaining factual allegations in this paragraph.

10. This paragraph summarizes plaintiff's alleged administrative complaint, the allegations of which speak for themselves, and requires no response. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response.

11. This paragraph contains plaintiff's description 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 an administrative 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).

12. DENY that the FEC has unreasonably delayed in its handling of plaintiff's alleged administrative complaint. DENY the remainder of this paragraph.

13. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's characterizations and legal conclusions require no response. DENY that the

FEC has unreasonably delayed in its handling of plaintiff's alleged administrative complaint. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

14. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's characterizations and legal conclusions require no response. DENY that the FEC has unreasonably delayed in its handling of plaintiff's alleged administrative complaint. The Commission ADMITS that plaintiff seeks the relief described in this paragraph, but DENIES that any of the requested relief or any other relief should be granted to plaintiff. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

“JURISDICTION AND VENUE”

15. ADMIT that FECA's judicial review provision, 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. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. DENY the remainder of this paragraph.

16. ADMIT that 52 U.S.C. § 30109(a)(8) provides for venue in the U.S. District Court for the District of Columbia.

“THE PARTIES”

17. ADMIT that plaintiff AB PAC is registered with the FEC as a multicandidate hybrid political action committee. The remainder of the paragraph contains plaintiff's

characterizations and legal conclusions which require no response. To the extent a response is required, ADMIT that a “hybrid PAC” is a committee that accepts funds and makes contributions to candidates subject to FECA’s amount and source limitations but that also maintains a separate bank account to deposit and spend unlimited funds on independent expenditures and from sources such as labor unions or corporations that would otherwise be barred from being contributed to candidates. *See Carey v. FEC*, 791 F. Supp. 2d 121, 131-32 (D.D.C. 2011).

18. ADMIT that, during 2019-2020, AB PAC reported to the FEC that it made approximately \$51 million dollars in independent expenditures opposing Presidential candidate Donald Trump and \$40,000 supporting Presidential candidate Joseph Biden. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

19. ADMIT that registered voters (and others) may legally review information that is publicly reported pursuant to FECA’s disclosure requirements. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

20. ADMIT that AB PAC is regulated by the Commission under FECA and Commission regulations. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

21. Some of the allegations in this paragraph relate to plaintiff’s excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff’s characterizations require no response. The Commission is without knowledge or information sufficient to admit or deny any remaining allegations in this paragraph.

22. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's characterizations and legal conclusions require no response. The Commission is without knowledge or information sufficient to admit or deny any remaining allegations in this paragraph.

23. ADMIT that the Commission is the independent agency of the United States government with statutory authority over the administration, interpretation, and civil enforcement of FECA, 52 U.S.C. §§ 30101-30146. *See id.* §§ 30106(b)(1), 30107(a)(7)-(8), 30109, 30111(a)(8).

“FACTUAL BACKGROUND”

24. The second sentence of this paragraph purports to characterize a news article relied on in the cited source (Lexi Lonas, *Trump Says He's Made Decision on 2024*, THE HILL (Jul. 1, 2021, 11 :36 AM), <https://thehill.com/homenews/campaign/561117-trump-says-hes-made-decision-on-2024> (last visited July 28, 2023)), which speaks for itself and is the best evidence of its contents, therefore no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

25. This paragraph purports to characterize a news article (Greg Evans, *Trump Claims He Is “Not Allowed to Say” if He Will Be Running for President in 2024*, INDY100 (Aug. 18, 2021), <https://www.indy100.com/news/trump-president-2024-interview-hannity-b1904465> (last visited July 28, 2023)), which speaks for itself and and is the best evidence of its contents, therefore no response is required. To the extent a response is required, the

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

26. This paragraph purports to quote a video, C-SPAN, *Former President Trump Visits New York City on September 11* (Sept. 11, 2021), <https://www.c-span.org/video/?c4976508/president-trump-visits-york-city-september-11> (last visited July 29, 2023), which speaks for itself and is the best evidence of its contents, therefore no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

27. This paragraph purports to characterize a news article (Cheryl Teh, *Trump Drops the-Biggest Hint Yet That He'll Be Running in 2024, Calling Himself the '45th and 47th President' in a Video*, BUSINESS INSIDER (Jan. 26, 2022, 10:00 PM), <https://www.businessinsider.com/trump-drops-hint-about-2024-run-calling-himself-47th-president-2022-1> (last visited July 28, 2023)), which speaks for itself and is the best evidence of its contents, no response is therefore required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

28. This paragraph purports to characterize a news article (Kadia Goba, *CPAC Republicans Are All In-For Trump After He Hinted at Running in 2024*, BUZZFEED NEWS (Feb. 27, 2022, 5:53 PM; updated Feb. 28, 2022, 7:58 AM), <https://www.buzzfeednews.com/article/kadiagoba/cpac-trump-2024-desantis-presidential-election> (last visited July 28, 2023)), which speaks for itself, therefore no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

29. This paragraph purports to characterize a news article (Olivia Nuzzi, *Donald Trump on 2024: 'I've Already Made that Decision,'* N.Y. MAG. (July 14, 2022), <https://nymag.com/intelligencer/article/donald-trump-2024-decision.html> (last visited July 28, 2023)), which speaks for itself and is the best evidence of its contents, therefore no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

30. This paragraph purports to characterize a series of news articles in the underlying source, which speak for themselves and are the best evidence of their contents, therefore no response is required. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's characterizations and legal conclusions require no response. To the extent a response is required, ADMIT that Save America is registered with the Commission as a multicandidate leadership political action committee, with former President Donald Trump as its sponsor. The paragraph's citations to the news article for characterizations of Save America's FEC disclosure reports are too vague and imprecise for a response. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

31. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's characterizations and legal conclusions require no response. This paragraph characterizes the cited news article, Alex Isenstadt, *Trump discussing 2024 plans at secret donor dinners*, POLITICO (July 13, 2022 4:52 PM), <https://www.politico.com/news/2022/07/13/trump-2024-secret-donor-dinners-00045665> (last visited July 29, 2023), which speaks for itself and is

the best evidence of its contents, therefore no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

32. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's characterizations and legal conclusions require no response. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

33. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. This paragraph characterizes a news article relied on in the cited source, which speaks for itself and is the best evidence of its contents, therefore no response is required. Plaintiff's characterizations and legal conclusions require no response. The cited source's citations' reliance on a news article for characterizations of FEC disclosure reports are too vague and imprecise for a response. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

34. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's characterizations and legal conclusions require no response. The paragraph cites a news article (*Zach Everson, Trump Super PAC Charges \$100,000 For Candlelight Dinner With Former President At His Club*, Forbes (Aug. 23, 2022), <https://www.forbes.com/sites/zacheverson/2022/08/23/trump-super-pac-charges-100000-forcandlelight-dinner-with-former-president-at-his-club/?sh=35add488737f> (last visited

July 29, 2023)), which speaks for itself and is the best evidence of its contents, no response is therefore required. DENY that former President Trump has not filed a statement of candidacy with the Commission at this juncture. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

35. DENIED.

“LEGAL BACKGROUND”

36. This paragraph quotes part of 52 U.S.C. § 30101(2), which speaks for itself, contains legal conclusions, and requires no response. To the extent a response is required, DENY that *id.* § 30101(2) is quoted entirely accurately.

37. This paragraph quotes portions of the statutory provision defining “expenditure,” which speaks for itself, contains legal conclusions, 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. The remaining allegations in this paragraph characterize the contents of an FEC regulation, which speaks for itself and is the best evidence of its contents, therefore no response is required.

38-39. The allegations in these paragraphs characterize the contents of FEC regulations and advisory opinions, which speak for themselves and are the best evidence of their contents, as well as plaintiff’s legal conclusions, therefore no response is required.

40-42. The allegations in these paragraphs contain legal conclusions and characterize the contents of provisions of FECA and FEC regulations, which speak for themselves and are the best evidence of their contents, therefore no response is required. To the extent that a response is required, ADMIT that: (a) within 15 days after becoming a candidate, each candidate for the

office of President must designate a political committee to serve as the candidate's principal campaign committee, 52 U.S.C. § 30102(e)(1), 11 C.F.R. §§ 101.1(a), 102.12(a); (b) within 10 days after such designation, that principal campaign committee must file a statement of organization setting forth certain information, 52 U.S.C. § 30103(a)-(b), 11 C.F.R. §§ 102.1(a), 102.2; and (c) the treasurer of this principal campaign committee is required to file reports of receipts and disbursements with the FEC according to the schedules prescribed in FECA, 52 U.S.C. § 30104(a)(1), (a)(3), (b), 11 C.F.R. §§ 104.1(a), 104.3, 104.5(b).

43. The allegations in this paragraph contain legal conclusions and characterize and quote the contents of provisions of FECA and FEC regulations, which speak for themselves are the best evidence of their contents, therefore no response is required. To the extent that a response is required, ADMIT that, for the 2023-2024 federal elections, a candidate may accept, in the aggregate, up to \$5,000 per election from a non-connected, multicandidate political action committee, 52 U.S.C. § 30116(a)(2)(A), and up to \$3,300 per election from a non-connected, non-multicandidate political action committee, *id.* § 30116(a)(1)(A), (c), 88 Fed. Reg. 7089-90 (Feb. 2, 2023). ADMIT that the quoted language in the last sentence of this paragraph appears in 11 C.F.R. § 100.5(e)(6).

44. The allegations in this paragraph contain legal conclusions and characterize the contents of provisions of FECA, which speak for themselves and are the best evidence of their contents, therefore no response is required. To the extent that a response is required, DENY that, for the 2023-2024 federal elections, an individual can only contribute, in the aggregate, up to \$2,900 per election to a candidate. *See* 52 U.S.C. § 30116(a)(1)(A), (c), 88 Fed. Reg. 7089-90 (Feb. 2, 2023). ADMIT that, for the 2023-2024 federal elections, an individual can contribute, in

the aggregate, up to \$5,000 per election to a non-connected, multicandidate political action committee. 52 U.S.C. § 30116(a)(1)(C).

45. This paragraph contains legal conclusions and quotes part of 52 U.S.C. § 30125, which speaks for itself, therefore no response is required. To the extent a response is required, ADMIT that *id.* § 30125(e)(1)(A) contains, with alterations, the quoted language.

46-48. These paragraphs contain legal conclusions and plaintiff's descriptions of certain provisions of FECA, which speak for themselves and are the best evidence of their contents, therefore no response is required. To the extent a response is required, ADMIT that FECA permits: any person who believes a FECA violation has occurred to file an administrative complaint with the Commission, 52 U.S.C. § 301019(a)(1); an administrative 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," *id.* § 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, *id.* § 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.*

"ADMINISTRATIVE PROCEEDINGS"

49. This paragraph summarizes plaintiff's alleged administrative complaint, the allegations of which speak for themselves, and requires no response. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. To the extent this paragraph incorporates by reference preceding paragraphs, the Commission likewise incorporates by reference its preceding responses.

50. This paragraph summarizes plaintiff's alleged administrative complaint, the allegations of which speak for themselves and are the best evidence of their contents, and requires no response. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's legal conclusions and characterizations require no response. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny any remaining factual allegations in this paragraph.

51. This paragraph summarizes plaintiff's alleged administrative complaint, the allegations of which speak for themselves and are the best evidence of their contents, and requires no response. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's legal conclusions and characterizations require no response. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny any remaining factual allegations in this paragraph.

52. This paragraph summarizes plaintiff's alleged administrative complaint, the allegations of which speak for themselves and are the best evidence of their contents, and requires no response. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. Plaintiff's legal conclusions and characterizations require no response. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny any remaining factual allegations in this paragraph.

53. The allegations in this paragraph relate solely to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response.

54. This paragraph describes an alleged communication from the FEC, which speaks for itself and is the best evidence of its contents, therefore no response is required.

55. DENY that the FEC has unreasonably delayed in its handling of plaintiff's alleged administrative complaint. The remaining allegations in this paragraph are DENIED.

“CAUSE OF ACTION”

“Count I: 52 U.S.C. § 30109(a)(8)(A)”

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

57. Some of the allegations in this paragraph relate to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11), and thus require no response. DENY the remainder of this paragraph.

“REQUESTED RELIEF”

1-4. No response is required to plaintiff's prayer for relief. However, if a response may be deemed necessary, the Commission DENIES that plaintiff is entitled to the relief requested or to any other relief. Further, some of the requested relief relates to plaintiff's excessive-contributions claim, which has been dismissed (Mem. Op. & Order at 11).

Respectfully submitted,

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July 31, 2023

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