

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

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 14-1419 (CRC)
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	
)	
Defendant,)	
)	
AMERICAN ACTION NETWORK,)	ANSWER
)	
Intervenor-Defendant.)	
)	

DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint for Declaratory Judgment and Injunctive Relief filed by plaintiffs Citizens for Responsibility and Ethics in Washington (“CREW”) and Melanie Sloan. On August 13, 2015, this Court dismissed Counts 3 and 4 of plaintiffs’ complaint, which challenged the Commission’s dismissal of three administrative complaints as a “de facto regulation” under the Administrative Procedure Act (“APA”), as well as Counts 1 and 2 of plaintiffs’ complaint “to the extent that they rely on the APA.” (Mem. Op. at 12, Aug. 13, 2015 (Docket No. 20) (concluding that the “exclusive remedy for [plaintiffs’ legal challenges] . . . is under the judicial review provisions on the [Federal Election Campaign Act].”) Plaintiffs’ APA claims — “Counts Three and Four in their entirety, and . . . Counts One and Two to the extent that they rely on the APA” — are thus no longer part of this case and the Commission does not respond to them or to plaintiffs’

allegations alleged solely in support of those dismissed claims. (*Id.*) Any allegation not specifically responded to below is DENIED.

1. This paragraph summarizes plaintiffs' complaint, the allegations of which speak for themselves, and requires no response. To the extent a response is required, ADMIT that the Commission dismissed two administrative complaints filed by plaintiffs, in which American Action Network ("AAN") and Americans for Job Security ("AJS") were the respective respondents.

2. The allegations in this paragraph relate to plaintiffs' APA claims, which have been dismissed. (Mem. Op. at 12.)

3. ADMIT that the judicial review provision in the Federal Election Campaign Act ("FECA") at 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. DENY the remainder of this paragraph.

4. ADMIT that 52 U.S.C. § 30109(a)(8) provides for venue in the United States District Court for the District of Columbia. DENY the remainder of this paragraph.

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

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

7. 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 require no response. The Commission is without knowledge or information sufficient to admit or deny CREW's descriptions of its work in this paragraph.

8. The Commission ADMITS that CREW has filed administrative complaints with the FEC and is without knowledge or information sufficient to admit or deny CREW's allegations in this paragraph concerning when and why CREW files such complaints.

9. 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.

10. The Commission ADMITS that information about contributions to campaigns of Congressional candidates aids in detecting quid pro quos. The Commission is otherwise without knowledge or information sufficient to admit or deny the allegations in this paragraph.

11. This paragraph describes a report issued by CREW, which speaks for itself, and requires no response. 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.

12. This paragraph describes a report issued by CREW, which speaks for itself, and requires no response. 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.

13. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph concerning CREW's access to information concerning organizations' sources of money for unspecified "political purposes." The remainder of this paragraph is DENIED.

14. ADMIT that Melanie Sloan was formerly the executive director of CREW; DENY that Ms. Sloan is currently the executive director of CREW; the Commission is without

knowledge or information sufficient to admit or deny the remaining allegations in the first sentence of this paragraph. ADMIT that registered voters (and others) may legally review information that is publicly reported pursuant to FECA's disclosure requirements. The Commission DENIES that it 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 unspecified "political activities" of an unidentified political committee.

15. ADMIT that Ms. Sloan was one of the administrative complainants in this case and has filed other administrative complaints with the Commission. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

16. 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 and unspecified provisions of FECA. To the extent this paragraph alleges that the FEC has refused to enforce "FECA's mandatory disclosure requirements," or that the FEC's dismissal decisions at issue in this case were contrary to FECA, such allegations are DENIED.

17. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph concerning information about the sources of financing of unspecified "political activities." To the extent this paragraph alleges that any action by the FEC has caused plaintiffs' alleged harm, such allegations are DENIED.

18. The allegations in this paragraph relate to plaintiffs' APA claims, which have been dismissed. (Mem. Op. at 12.)

19. ADMIT.

20. ADMIT that FECA and FEC regulations contain provisions requiring groups meeting the definition of “political committee” to comply with certain organizational, registration, and disclosure requirements.

21. This paragraph quotes a provision of FECA and Commission regulations, which speak for themselves, and requires no response. 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.

22. This paragraph quotes portions of the statutory provision defining “expenditure,” and a Supreme Court decision construing that definition, which speak for themselves and require no response. To the extent a response is required, ADMIT that the quoted language in the first sentence of this paragraph appears in the statutory definition of the term “expenditure,” but DENY that the first sentence of this paragraph sets forth the complete or accurate statutory definition of that term, and ADMIT that the Supreme Court in *Buckley v. Valeo* construed “expenditure” to reach only “funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.” 424 U.S. 1, 80 (1976) (per curiam).

23. This paragraph quotes the statutory and regulatory definitions of “independent expenditure,” which speak for themselves and to which 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 “independent expenditure,” but DENY that this paragraph sets forth the complete statutory or regulatory definition of that term.

24. This paragraph quotes FECA’s definition of “contribution,” which speaks for itself and requires no response. To the extent a response is required, ADMIT that the quoted

language in this paragraph appears in the statutory definition of the term “contribution,” but DENY that this paragraph sets forth the complete or accurate statutory definition of this term.

25. 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.

26. This paragraph characterizes the legal requirements for determining whether a group is a political committee under FECA and the Supreme Court’s decision in *Buckley*, to which no response is required. To the extent a response is required, ADMIT that FECA sets forth the statutory definition of “political committee” and that *Buckley* imposes an additional “major purpose” requirement for certain organizations.

27. This paragraph paraphrases the Political Committee Status Supplemental Explanation and Justification, 72 Fed. Reg. 5595 (Feb. 7, 2007) (“Supplemental E&J”) and the Supreme Court’s decision in *FEC v. Massachusetts Citizens for Life Inc.*, 479 U.S. 238 (1986) (“*MCFL*”), which speak for themselves, and requires no response. To the extent a response is required, ADMIT that the Supplemental E&J provides guidance about how the Commission determines an organization’s major purpose, but DENY that this paragraph sets forth the complete explanation and justification set forth in the Supplemental E&J or the *MCFL* decision.

28. This paragraph paraphrases the Supplemental E&J which speaks for itself and requires no response. To the extent a response is required, ADMIT that the Supplemental E&J provides guidance about how the Commission determines an organization’s major purpose, and

DENY that this paragraph sets forth the complete explanation and justification set forth in the Supplemental E&J.

29. ADMIT that the Commission has declined to adopt a bright-line rule for determining an organization's major purpose. The remainder of this paragraph contains plaintiffs' vague characterizations of the Commission's alleged "periodic[]" consideration of unspecified "proposed rulemakings," to which no response is required.

30. This paragraph contains plaintiffs' characterizations of a judicial decision, to which no response is required. To the extent a response is required, ADMIT that the district court decision in *Shays v. FEC*, 424 F. Supp. 2d 100 (D.D.C. 2006), contains the quoted text and that the court in that case remanded the matter to the Commission.

31. This paragraph characterizes the Supplemental E&J which speaks for itself and require no response. To the extent a response is required, ADMIT that the Commission issued the Supplemental E&J following the district court's decision in *Shays v. FEC*, 424 F. Supp. 2d 100 (D.D.C. 2006), that the Supplemental E&J provides guidance about how the Commission determines an organization's major purpose, and that the Supplemental E&J contains the quoted text, but DENY that this paragraph sets forth the complete explanation and justification set forth in the Supplemental E&J.

32. This paragraph contains plaintiffs' characterization of a judicial decision, to which no response is required. To the extent a response is required, ADMIT that the district court in *Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007), upheld the FEC's case-by-case approach to determining a group's major purpose.

33. This paragraph contains plaintiffs' descriptions of certain provisions of FECA and Commission regulations, which speak for themselves and require no response. 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.

34. This paragraph contains plaintiffs’ descriptions of certain provisions of FECA and Commission regulations, which speak for themselves and requires no response. 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.

35. This paragraph describes the statutory and regulatory definitions of “electioneering communication,” which speak for themselves and require no response. To the extent a response is required, ADMIT that groups making electioneering communications are subject to certain reporting requirements, but DENY this paragraph to the extent that it alleges that all of the reporting requirements applying to political committees “extend to” groups that are not political committees when they make “electioneering communications.”

36-42. These paragraphs describe FECA’s statutory provisions governing the FEC’s administrative enforcement process, which speak for themselves and require no response. To the extent responses are required, ADMIT that these paragraph generally describe FECA’s administrative enforcement procedures, including the procedures for obtaining judicial review of a Commission dismissal decision.

43-44. ADMIT that these paragraphs generally contain AAN’s self-description as set forth in its website and response submitted in MUR 6589.

45. The allegations in this paragraph that AAN spent certain amounts “largely” on certain advertisements in 29 unspecified primary and general elections are too vague to admit or

deny. ADMIT that AAN reported independent expenditures of approximately \$4,096,910 during the period alleged. The remaining allegations in this paragraph are DENIED.

46-47. ADMIT that AAN reported spending a total of \$1,430,000 on advertisements referencing Representatives Dina Titus (NV-03) and Ed Perlmutter (CO-07), and ADMIT that the advertisement referencing Rep. Ed Perlmutter included the first two quotations in paragraph 46. DENY that this paragraph includes a complete and accurate description of the referenced advertisements.

48. ADMIT that AAN reported spending the alleged amounts on advertisements that referenced Representatives Perlmutter and Mark Schauer (D-MI), respectively. DENY that this paragraph includes a complete and accurate description of the referenced advertisements.

49. ADMIT that AAN reported spending \$875,000 on an advertisement that included the quotations in this paragraph, and ADMIT that AAN reported spending \$225,000 on an advertisement referencing Mike Oliverio and Nancy Pelosi. DENY that this paragraph includes a complete and accurate description of the referenced advertisements. To the extent this paragraph contains allegations regarding other unspecified advertisements, such allegations are too vague to admit or deny.

50. This paragraph alleges the amounts AAN reported spending in tax returns filed with the IRS, which speak for themselves and require no response. To the extent a response is required, ADMIT that AAN reported spending the alleged amounts on the tax returns referenced in this paragraph.

51. The first sentence of this paragraph alleges the amounts ANN reported spending in tax returns filed with the IRS, which speaks for themselves, and requires no response. To the extent a response is required, ADMIT that AAN reported spending the alleged amounts on the

tax returns referenced in the first sentence of this paragraph. The remainder of this paragraph is DENIED.

52-53. ADMIT that these paragraphs generally contain AJS's self-description as set forth in its response submitted in MUR 6538, its website, and its 2009 tax return.

54. The allegations in this paragraph that AJS spent certain amounts "largely" on certain advertisements in 20 unspecified primary and general elections are too vague to admit or deny. The remaining allegations in this paragraph are DENIED.

55. ADMIT that AJS reported spending approximately \$4,414,524 on independent expenditures between January 15, and October 31, 2010, and approximately \$4,908,846 on independent expenditures for calendar year 2010. The remaining allegations in this paragraph are DENIED.

56. ADMIT generally that independent expenditures contain express advocacy for the election or defeat of a clearly identified federal candidate. The Commission has not evaluated the content of every advertisement AJS reported as an independent expenditure in 2010 and is thus without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

57. ADMIT that AJS reported spending \$479,268 on January 15, 2010, for an advertisement that contained the quoted text, and ADMIT that Scott Brown was a Republican candidate in the January 19, 2010 Massachusetts special election for United States Senate. To the extent this paragraph contains plaintiffs' characterizations of AJS's spending and the content of the quoted advertisement, no response is required.

58. ADMIT that AJS reported spending \$913,096 on May 3, 2010, for an advertisement that contained the text quoted in this paragraph, and ADMIT that Bill Halter was a

candidate in the June 8, 2010 Democratic primary election in Arkansas for United States Senate. To the extent this paragraph contains plaintiffs' characterization of the quoted advertisement, no response is required.

59. ADMIT that AJS reported spending \$490,000 on May 6, 2010, for an advertisement that contained the text quoted in this paragraph. To the extent this paragraph contains plaintiffs' characterization of the quoted advertisement, no response is required.

60. ADMIT that AJS reported spending approximately \$143,000 on June 24, 2010, for an advertisement that contained the text quoted in this paragraph, and ADMIT that Ken Buck was a candidate in the August 10, 2010 Republican primary election in Colorado for United States Senate. To the extent this paragraph contains plaintiffs' characterization of the quoted advertisement, no response is required.

61. ADMIT that AJS reported spending the amounts alleged in this paragraph on the alleged dates and for the alleged advertisements.

62. ADMIT that AJS reported spending \$318,874.30 on July 13, 2010, and \$175,956.60 on July 20, 2010, for an advertisement that contained the text quoted in this paragraph, and ADMIT that Jane Norton opposed Mr. Buck in the August 10, 2010 Republican primary election in Colorado for United States Senate. To the extent this paragraph contains plaintiffs' characterization of the quoted advertisement, no response is required.

63. ADMIT that AJS reported spending \$585,800 on July 26, 2010, for an advertisement that contained the text quoted in this paragraph. To the extent this paragraph contains plaintiffs' characterization of the quoted advertisement, no response is required.

64. ADMIT that AJS reported spending \$45,100 on July 26, 2010, for an advertisement that contained the text quoted in this paragraph, and ADMIT that Billy Long was a

candidate in the August 3, 2010 Republican primary election in Missouri for United States House of Representatives. To the extent this paragraph contains plaintiffs' characterization of the quoted advertisement, no response is required.

65. ADMIT that AJS reported spending \$54,572 on September 7, 2010, for an advertisement that contained the text quoted in this paragraph, and ADMIT that former Representative Harry Teague was a candidate in the November 2, 2010 general election in New Mexico for United States House of Representatives. To the extent this paragraph contains plaintiffs' characterization of the quoted advertisement, no response is required.

66. ADMIT that AJS reported spending \$980,256 on October 20, 2010, for an advertisement that contained the text quoted in this paragraph, and ADMIT that former West Virginia Governor Joe Manchin was a candidate in the November 2, 2010 general election in West Virginia for United States Senate. To the extent this paragraph contains plaintiffs' characterization of the quoted advertisement, no response is required.

67. ADMIT that AJS reported spending \$72,100 on September 3, 2010, for an advertisement that discussed Pat Toomey, and ADMIT that Pat Toomey was a candidate in the November 2, 2010 general election in Pennsylvania for United States Senate. To the extent this paragraph contains plaintiffs' characterization of the referenced advertisement, no response is required.

68. ADMIT that AJS reported to the IRS spending a total of \$12,417,809 from November 1, 2009 through October 31, 2010, and ADMIT that AJS's reported spending on independent expenditures and electioneering communications for this period comprised approximately 72 percent of that amount.

69. ADMIT that on June 7, 2012, plaintiffs filed an administrative complaint that was designated by the Commission as MUR 6589. The remainder of this paragraph describes the administrative complaint, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that plaintiffs' administrative complaint alleged that AAN violated certain provisions of FECA.

70. ADMIT.

71-73. These paragraphs describe portions of the First General Counsel's Report, which speaks for itself, and require no responses. To the extent responses are required, ADMIT that the Commission's First General Counsel's Report contains the statements and quoted language alleged in these paragraphs.

74. This paragraph purports to describe portions of the First General Counsel's Report, which speaks for itself and requires no response. To the extent a response is required, ADMIT that the First General Counsel's Report concluded that certain AAN advertisements that lacked express advocacy could nevertheless be considered as evidence of AAN's major purpose. To the extent this paragraph purports to allege facts regarding "specific electioneering communications," which the paragraph does not identify, the Commission is unable to admit or deny such vague allegations.

75. This paragraph describes portions of the First General Counsel's Report and a statutory provision, which speak for themselves, and requires no response. To the extent a response is required, ADMIT that the First General Counsel's Report contains the quoted language; DENY that the last sentence of this paragraph is an accurate or complete description of the definition of "political committee."

76-77. These paragraphs describe portions of the First General Counsel's Report, which speaks for itself, and require no responses. To the extent responses are required, ADMIT that the First General Counsel's Report contains the statements in these paragraphs.

78. ADMIT that on June 24, 2014, the Commission considered the allegations in plaintiffs' administrative complaint and, by a 3-to-3 vote, did not find reason to believe AAN violated FECA; further ADMIT that the Commission then voted 6 to 0 to close the file. This paragraph is otherwise DENIED.

79. ADMIT the first sentence of this paragraph. The second sentence of this paragraph describes portions of the Statement of Reasons of then-Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen in MUR 6589, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the Statement of Reasons of then-Chairman Goodman and Commissioners Hunter and Petersen is the "controlling" explanation for the decision in MUR 6589 and that their Statement of Reasons contains the quoted language.

80. DENIED.

81. ADMIT that then-Vice Chair Ann M. Ravel, Commissioner Steven T. Walther, and Commissioner Ellen L. Weintraub voted to find reason to believe and initiate investigations in MUR 6538 and MUR 6589, and that those Commissioners issued a Statement of Reasons related to those MURs on July 30, 2014. The remainder of this paragraph describes portions of the Commissioners' Statement of Reasons, which speaks for itself and requires no response. To the extent a response is required, ADMIT that the Statement of Reasons issued by those Commissioners contains the quoted language, except that the last sentence of this paragraph is missing a closing quotation mark at the end of the sentence.

82. This paragraph describes portions of the Statement of Reasons issued by Commissioners Ravel, Walther, and Weintraub, which speaks for itself and requires no response. To the extent a response is required, ADMIT that the Statement of Reasons contains the quoted language.

83. ADMIT that on March 8, 2012, plaintiffs filed an administrative complaint that was designated by the Commission as MUR 6538. The remainder of this paragraph describes the administrative complaint, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that plaintiffs' administrative complaint alleged that AJS violated certain provisions of FECA.

84. This paragraphs describe portions of the First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the Commission's First General Counsel's Report contains the recommendations described in this paragraph.

85-86. These paragraphs describe portions of the First General Counsel's Report, which speaks for itself, and require no responses. To the extent responses are required, ADMIT that the Commission's First General Counsel's Report contains the statements and quoted language alleged in these paragraph.

87. This paragraph describes portions of the First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, DENY that the quoted language appears as set forth in this paragraph, but ADMIT this paragraph generally describes portions of the report.

88. This paragraph purports to describe portions of the First General Counsel's Report, which speaks for itself and requires no response. To the extent a response is required,

ADMIT that the First General Counsel's Report concluded that certain AJS advertisements that lacked express advocacy could nevertheless be considered as evidence of AJS's major purpose. To the extent this paragraph purports to allege facts regarding "specific electioneering communications," which the paragraph does not identify, the Commission is unable to admit or deny such vague allegations.

89. This paragraph describes portions of the First General Counsel's Report and a statutory provision, which speak for themselves, and requires no response. To the extent a response is required, ADMIT that the First General Counsel's Report contains the quoted language; DENY that the last sentence of this paragraph is an accurate or complete description of the definition of "political committee."

90. This paragraph describes portions of the First General Counsel's Report, which speaks for itself and requires no response. To the extent a response is required, ADMIT that the First General Counsel's Report contained the statements in this paragraph.

91. ADMIT that on June 24, 2014, the Commission considered the allegations in plaintiffs' administrative complaint and, in a 3 to 3 vote, did not find reason to believe AJS violated FECA, and then voted 6-to-0 to close the file. This paragraph is otherwise DENIED.

92. ADMIT the first sentence of this paragraph. The second sentence of this paragraph describes portions of the Statement of Reasons of then-Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen in MUR 6538, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the Statement of Reasons of then-Chairman Goodman and Commissioners Hunter and Petersen is the "controlling" explanation for the decision in MUR 6538 and that the referenced Statement of Reasons contains the quoted language.

93. DENIED.

94. ADMIT that then-Vice Chair Ann M. Ravel, Commissioner Steven T. Walther, and Commissioner Ellen L. Weintraub voted to find reason to believe and initiate investigations in MUR 6538 and MUR 6589, and that those Commissioners issued a Statement of Reasons related to those MURs on July 30, 2014. The remainder of this paragraph describes portions of the Commissioners' Statement of Reasons, which speaks for itself and requires no response. To the extent a response is required, ADMIT that the Statement of Reasons issued by those Commissioners contains the quoted language.

95. This paragraph describes portions of the Statement of Reasons issued by Commissioners Ravel, Walther, and Weintraub, which speaks for itself and requires no response. To the extent a response is required, ADMIT that the Statement of Reasons contains the quoted language.

96-98. The allegations in these paragraphs relate to plaintiffs' APA claims, which have been dismissed. (Mem. Op. at 12.)

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

100. DENIED.

101. DENIED.

102. DENIED.

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

104. DENIED.

105. DENIED.

106. DENIED.

107-22. The allegations in these paragraphs relate to plaintiffs' APA claims, which have been dismissed. (Mem. Op. at 12.)

PRAYER FOR RELIEF

Plaintiffs' fifth and sixth requests for relief relate to their APA claims, which have been dismissed. The Court should also deny the rest of plaintiffs' requested relief.

Respectfully submitted,

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