

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

CITIZENS FOR RESPONSIBILITY AND)	
ETHICS IN WASHINGTON, <i>et al.</i> ,)	
)	
Plaintiffs-Cross Appellants,)	Nos. 16-5300, 16-5343
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	
)	
Defendant-Appellee,)	
)	
AMERICAN ACTION NETWORK, INC.,)	MOTION TO DISMISS
)	
Intervenor Defendant-Appellant.)	

**APPELLEE FEDERAL ELECTION COMMISSION’S
MOTION TO DISMISS FOR LACK OF JURISDICTION**

Appellee Federal Election Commission (“FEC” or “Commission”) respectfully moves to dismiss the appeal and cross-appeal respectively filed by Intervenor Defendant-Appellant American Action Network, Inc. (“American Action Network”) and Plaintiffs-Cross Appellants Citizens for Responsibility and Ethics in Washington and Melanie Sloan (collectively, “CREW”), because this Court lacks jurisdiction over both appeals.

The Federal Election Campaign Act (“FECA” or the “Act”) sets forth a detailed statutory scheme for administrative enforcement proceedings pursuant to which private parties may file administrative complaints alleging violations of

FECA and Commission regulations. The Act also permits an administrative complainant to seek judicial review of a Commission decision dismissing that party's administrative complaint and a determination that the dismissal was "contrary to law." 52 U.S.C. § 30109(a)(8). These appeals challenge a district court decision finding certain FEC dismissals contrary to law and remanding those matters back to the Commission for further proceedings. This Court, however, lacks jurisdiction over these appeals.

As detailed below, both appeals are premature because they seek judicial review of the district court's non-final remand order. The non-finality of such orders is well established. *E.g.*, *N.C. Fisheries Ass'n v. Gutierrez*, 550 F.3d 16, 19 (D.C. Cir. 2008); *Pueblo of Sandia v. Babbitt*, 231 F.3d 878, 880 (D.C. Cir. 2000). And non-finality is especially clear here in light of the pendency of further district court proceedings — *initiated by CREW* — related to the Commission's actions taken in compliance with that remand order. Indeed, in apparent recognition that their appeals are premature, American Action Network and CREW have jointly asked this Court to hold these appeals in abeyance pending completion of the still-ongoing district court proceedings. Appellants' own actions in this Court thus demonstrate why their appeals are premature and improper.

In addition, the Commission's action on remand — dismissing CREW's administrative complaint against American Action Network based on a revised

analysis — left the parties without standing for their appeals of the district court’s remand order. If, in the future, American Action Network or CREW is ultimately unsatisfied with the final resolution of the underlying action, either party could seek this Court’s review of the district court’s remand order in connection with a future appeal of the final judgment in this case. The Court lacks jurisdiction over their appeals at this time, however, because the decision on appeal *granted* CREW the relief it sought and, as a result of the Commission’s post-remand dismissal, American Action Network is not currently facing any adverse action that could form the basis of a legally cognizable injury.

For these reasons and those detailed below, this Court should grant the Commission’s motion and dismiss American Action Network’s appeal and CREW’s cross-appeal.

BACKGROUND

I. THE FEC AND THE FEDERAL ELECTION CAMPAIGN ACT

The FEC is a six-member, independent agency of the United States government with “exclusive jurisdiction” to administer, interpret, and civilly enforce FECA. 52 U.S.C. § 30106(b)(1); *see also generally id.* §§ 30106, 30107.

FECA provides that decisions of the Commission “with respect to the exercise of its duties and powers under the provisions of th[e] Act shall be made by a majority vote of the members of the Commission,” and that certain specified

actions require “the affirmative vote of 4 members of the Commission.” *Id.* § 30106(c). As described further below, the decision to open an investigation or take other statutory steps to advance FECA’s administrative enforcement process thus requires the assent of at least four Commissioners. *Id.* §§ 30106(c), 30107(a)(6), (9).

FECA permits any person to file an administrative complaint with the FEC alleging a violation of the Act. *Id.* § 30109(a)(1); *see also* 11 C.F.R. § 111.4. After considering the complaint and any response thereto, the FEC determines whether there is “reason to believe” that FECA has been violated. 52 U.S.C. § 30109(a)(2). Any investigation under this provision is confidential until the administrative process is complete. *Id.* § 30109(a)(12).

If at least four of the FEC’s six Commissioners vote to find reason to believe, the FEC may investigate the alleged violation; otherwise, it dismisses the administrative complaint. *Id.* §§ 30106(c), 30109(a)(2).¹

¹ If the FEC proceeds with an investigation, it then must determine whether there is “probable cause” to believe that FECA has been violated. 52 U.S.C. § 30109(a)(4)(A)(i). A probable cause determination also requires an affirmative vote of at least four Commissioners. *Id.* §§ 30106(c), 30109(a)(4)(A)(i). If the Commission so votes, it is statutorily required to attempt to reach a conciliation agreement with the respondent. *Id.* The FEC’s assent to a conciliation agreement requires an affirmative vote of at least four Commissioners, and such an agreement, unless violated, bars any further action by the FEC related to the violation underlying that agreement. *Id.* If the FEC is unable to reach a conciliation agreement, FECA authorizes the FEC to institute a de novo civil enforcement

If, at any point in the administrative process, the Commission determines that no violation has occurred or decides to dismiss the administrative complaint for some other reason, the administrative complainant may file suit against the Commission in the United States District Court for the District of Columbia to obtain a determination whether the Commission's dismissal was "contrary to law." *Id.* § 30109(a)(8)(A). If the court so finds, it is limited to remanding the case to the Commission and ordering the agency to "conform with" the court's order within 30 days. *Id.* § 30109(a)(8)(C). A court cannot mandate a particular outcome on remand because the Commission may reach the same outcome based on a different rationale. *FEC v. Akins*, 524 U.S. 11, 25 (1998); *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 315 (D.C. Cir. 2015). Should the Commission fail to conform with a contrary-to-law declaration, the administrative complainant may bring in their own name "a civil action to remedy the violation involved in the original complaint." 52 U.S.C. § 30109(a)(8)(C).

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. CREW's Administrative and Judicial Complaints

In administrative complaints filed with the Commission in March and June 2012, CREW alleged that Americans for Job Security and American Action

action in federal district court, upon an affirmative vote of at least four Commissioners. *Id.* §§ 30106(c), 30109(a)(6)(A).

Network had violated FECA by failing to register and report as political committees. *CREW v. FEC*, No. 14-cv-1419, ---F. Supp. 3d---, 2016 WL 5107018, at *3 (D.D.C. Sept. 19, 2016).² In June 2014, the Commission, by a vote of 3-3, did not find reason to believe that either Americans for Job Security or American Action Network had violated FECA's political committee registration and reporting requirements, and then voted 6-0 to close the file in both matters. *Id.* The Commissioners issued statements of reasons explaining their votes on both matters. *Id.* Because Chairman Petersen and Commissioners Hunter and Goodman voted against finding reason to believe that American Action Network and Americans for Job Security violated FECA, they were the "controlling group" in both matters and their statements of reasons "necessarily state[d] the agency's reasons for acting as it did." *FEC v. Nat'l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992); *see also* *CREW*, 2016 WL 5107018 at *1, *5.

CREW then filed an action under 52 U.S.C. § 30109(a)(8) for judicial review of the Commission's dismissals of its administrative complaints. After American Action Network intervened as a defendant and the district court dismissed improper Administrative Procedure Act claims CREW had attempted to

² In accordance with Federal Rule of Appellate Procedure 27(a)(2)(B)(iii) and Circuit Rule 27(g)(2), the Commission has included a copy of the district court's opinion and order on review as Exhibit 1 to this motion.

bring,³ the parties submitted cross-motions for summary judgment. *See CREW*, 2016 WL 5107018, at *1.

In an opinion and order issued September 19, 2016 (collectively, the “Remand Order”), the district court granted CREW’s motion for summary judgment and denied the cross-motions filed by the Commission and American Action Network. *Id.* at *13. The court found that the FEC’s dismissal decisions were contrary to law, and it remanded the matters to the Commission for further proceedings consistent with the court’s opinion. *Id.* at *7-12. The FEC determined, by a vote of 3-3, not to appeal the Remand Order.⁴ American Action Network did appeal that ruling, and CREW has cross-appealed.⁵

B. FEC Actions on Remand

On remand, the Commission reconsidered the American Action Network matter in light of the district court’s Remand Order and, on October 19, 2016, by a

³ *CREW v. FEC*, 164 F. Supp. 3d 113 (D.D.C. 2015). CREW has not indicated that it is challenging that decision in its cross-appeal.

⁴ Letter to Noah Bookbinder and Melanie Sloan, from Kathleen Guith, FEC Acting Associate General Counsel for Enforcement, Re: MUR 6589R (American Action Network), Oct. 12, 2016, Ex. 1 to Mot. to Hold Case in Abeyance by Plaintiffs-Cross-Appellants and Intervenor Defendant-Appellant (“Abeyance Mot.”), at ECF p. 50 (filed Nov. 15, 2016) (Doc. #1646225).

⁵ Notice of Appeal by Intervenor-Defendant American Action Network, Doc. # 1642533, at ECF p. 10; Notice of Cross-Appeal by Plaintiff CREW, Doc. # 1647155, at ECF p. 11.

vote of 3-3, the Commission did not find reason to believe that American Action Network had violated FECA's political committee registration and reporting requirements. *See In the Matter of Am. Action Network*, Matter Under Review 6589R, Certification (Oct. 19, 2016), <http://eqs.fec.gov/eqsdocsMUR/16044401006.pdf>.⁶ The controlling group of Commissioners that voted not to find reason to believe issued a statement of reasons explaining their rationale for reaching that decision. *In the Matter of Am. Action Network*, Matter Under Review 6589R, Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman (Oct. 19, 2016), <http://eqs.fec.gov/eqsdocsMUR/16044401031.pdf> ("Remand Statement of Reasons").⁷

At this time, there is no publicly available information regarding the remanded Americans for Job Security matter.

⁶ *See also* Letter to Noah Bookbinder and Melanie Sloan, from Kathleen Guith, FEC Acting Associate General Counsel for Enforcement, Re: MUR 6589R (American Action Network), Oct. 19, 2016, Ex. 1 to Abeyance Mot., at ECF p. 29.

⁷ A copy of the Remand Statement of Reasons is attached hereto as Exhibit 2 in accordance with Circuit Rule 27(g)(2), and was also included as part of the exhibit to the Abeyance Motion, at ECF pages 31-49.

C. Matters Currently Pending Before the District Court

After the Commission reconsidered and again dismissed CREW's administrative complaint against American Action Network, CREW filed a motion with the district court in the underlying case requesting that the court order the FEC to show cause why the Commission should not be held to have violated the court's Remand Order. *See* Pls.' Mot. for an Order to Def. FEC to Show Cause, attached as Ex. 1 to Abeyance Mot., at ECF pp. 2-27 ("Show-Cause Motion"). CREW's motion argues, *inter alia*, that the Remand Statement of Reasons is contrary to law and inconsistent with the district court's Remand Order. *Id.* at ECF pp. 5-24. CREW and American Action Network have asked this Court "to hold in abeyance all proceedings in [these] appeals" pending the district court's final disposition of CREW's Show-Cause Motion "and any Order to Show Cause proceedings . . . that may result from it." Abeyance Mot. at 2.

In addition to seeking further relief in the underlying action, CREW also filed a new lawsuit under section 30109(a)(8), alleging that the FEC's post-remand dismissal of the American Action Network matter was contrary to law, and that the agency has unlawfully delayed the Americans for Job Security matter on remand. Compl., *CREW v. FEC*, No. 16-cv-2255 (D.D.C. filed Nov. 14, 2016), Doc. No. 1, available at http://www.fec.gov/law/litigation/crew_162255_fec_complaint.pdf.

STANDARD OF REVIEW

The party invoking this Court's jurisdiction bears the burden of establishing that the Court has jurisdiction over the appeal. *Sierra Club v. EPA*, 292 F.3d 895, 899 (D.C. Cir. 2002).

When determining its own jurisdiction, the Court may consider documents outside of the administrative record. *Id.* at 900; *Manguriu v. Lynch*, 794 F.3d 119, 121 (1st Cir. 2015) (collecting cases). And the Court may take judicial notice of facts on the public record, including in other proceedings. *Covad Commc'ns Co. v. Bell Atl. Corp.*, 407 F.3d 1220, 1222 (D.C. Cir. 2005); *Conecuh-Monroe Cmty. Action Agency v. Bowen*, 852 F.2d 581, 583 (D.C. Cir. 1988) (taking judicial notice of administrative ruling issued after district court's decision); *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) ("Courts may take judicial notice of official court records . . .").

ARGUMENT

I. THE APPEAL AND CROSS-APPEAL ARE PREMATURE BECAUSE THE DISTRICT COURT'S REMAND ORDER IS NOT FINAL

As private parties, American Action Network and CREW cannot seek this Court's review of the district court's interlocutory remand order. "It is well settled that, as a general rule, a district court order remanding a case to an agency for significant further proceedings is not final." *Pueblo of Sandia*, 231 F.3d at 880 (internal quotation marks omitted). This rule, this Court has observed, "promotes

judicial economy and efficiency by avoiding the inconvenience and cost of two appeals: one from the remand order and one from a later district court decision reviewing the proceedings on remand.” *Sierra Club v. U.S. Dep’t of Agric.*, 716 F.3d 653, 656 (D.C. Cir. 2013).

The circumstances surrounding these appeals underscore the non-finality of the underlying proceedings and the prudence of the rule precluding American Action Network’s and CREW’s appeals at this time. CREW, while seeking to maintain its cross-appeal, is simultaneously challenging the controlling Commissioners’ Remand Statement of Reasons, both in the underlying litigation here and in a new section 30109(a)(8) lawsuit. Indeed, in plain recognition of the fact that the district court’s resolution of CREW’s pending Show-Cause Motion may affect these appeals, CREW and American Action Network have asked this Court to hold their appeals in abeyance until the district court’s final disposition of that motion, including “any Order to Show Cause proceedings . . . that may result from it.” Abeyance Mot. at 2.

In other words, all parties *agree* that appellate review is not appropriate at this time, but appellants improperly seek to maintain their premature appeals as placeholders for any *future* challenges they *may* wish to pursue following the conclusion of post-remand proceedings in the district court. That approach is plainly improper because this Court lacks jurisdiction over these appeals now. *See*

Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998) (“Without jurisdiction the court cannot proceed at all in any cause.”).

Importantly, American Action Network and CREW are not permanently barred from seeking this Court’s review of the district court’s Remand Order. While their appeals are premature *at this time*, if either party is unsatisfied with the ultimate resolution of the underlying action, that party would be free to challenge the Remand Order in a future appeal of a judgment in this case that is actually final. *Lakes Pilots Ass’n v. U.S. Coast Guard*, 359 F.3d 624, 625 (D.C. Cir. 2004) (holding that a party aggrieved by the outcome on remand may “seek judicial review, including review in the court of appeals, raising not only new issues but all those on which it got no satisfaction in its original challenge”); *Occidental Petroleum Corp. v. S.E.C.*, 873 F.2d 325, 330 (D.C. Cir. 1989) (holding that, while a party cannot appeal from a non-final remand order, “a party claiming to be aggrieved by final agency action can appeal, if still aggrieved, at the conclusion of the administrative proceedings on remand”). Of course, whether American Action Network or CREW will ultimately wish to pursue such a challenge remains unclear at this time — as their Abeyance Motion highlights — because the post-remand district court proceedings remain pending. Dismissing their premature appeals accounts for the possibility that no appeal will be taken and that the ultimate resolution of the proceedings in the court below satisfies all parties.

Because the court lacks jurisdiction over American Action Network's and CREW's premature appeals of an interlocutory remand order, the appeals should be dismissed. *See Democratic Nat'l Comm. v. FEC*, No. 99-5123, 1999 WL 728351, at *1 (D.C. Cir. Aug. 4, 1999) (per curiam) (dismissing appeal of district court order remanding to the Commission because the order was not final).

II. AMERICAN ACTION NETWORK LACKS STANDING TO PURSUE ITS APPEAL BECAUSE IT HAS NO INJURY TRACEABLE TO THE ORDER BELOW

Because the American Action Network matter was again dismissed on remand, American Action Network has, in fact, suffered no legally cognizable injury from the district court's Remand Order. American Action Network thus also lacks standing to pursue its appeal.

Article III's case-or-controversy requirement mandates that a party invoking this Court's jurisdiction establish standing to pursue any appeal. *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013) (“[S]tanding ‘must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.’” (quoting *Arizonaans for Official English v. Arizona*, 520 U.S. 43, 64 (1997))). And that standing must exist throughout the life of the appeal. *Wittman v. Personhuballah*, 136 S. Ct. 1732, 1736-37 (2016). Where, as here, the party on whose side intervention was permitted did not appeal, an intervenor-appellant must independently establish standing to prosecute its appeal. *Id.* at 1736; *Diamond v.*

Charles, 476 U.S. 54, 68 (1986) (“[A]n intervenor’s right to continue a suit in the absence of the party on whose side intervention was permitted is contingent upon a showing by the intervenor that he fulfills the requirements of Art. III.”).

To establish standing, a litigant must show: (1) “injury in fact,” *i.e.* “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”; (2) causation, *i.e.* the injury is “fairly traceable” to the challenged conduct; and (3) redressability, *i.e.* the injury will likely be “redressed” by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The Supreme Court recently emphasized that the asserted injury must be “real, and not abstract”; “it must actually exist.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (internal quotation marks omitted).

American Action Network possessed a legally cognizable injury when challenging the agency’s initial action in the district court, *Crossroads Grassroots Political Strategies*, 788 F.3d at 316-19, but American Action Network at this juncture has no such injury traceable to the Remand Order. The organization thus cannot establish that this Court possesses jurisdiction over its appeal. On remand, the Commission considered the district court’s order, did not find reason to believe American Action Network violated FECA, and dismissed CREW’s allegations against American Action Network. In light of that dismissal, American Action

Network is not currently suffering any actual, concrete injury that is fairly traceable to the district court's Remand Order. Nor can American Action Network claim any injury due to potential *res judicata* effects of the district court's Remand Order. *Res judicata* only attends final judgments, and, as explained *supra* Section I, the Remand Order is not final. *Am. Haw. Cruises v. Skinner*, 893 F.2d 1400, 1403 (D.C. Cir. 1990) (per curiam) (holding that remand orders are not *res judicata* because they are not "final" judgments). Any *anticipatory* harm that American Action Network imagines *may* result from the district court's *future* review of the Remand Statement of Reasons is abstract and hypothetical and cannot be the basis of this appeal. Without an injury traceable to the ruling it purports to appeal, American Action Network cannot establish standing. For this reason too, American Action Network's appeal must be dismissed.⁸

⁸ Because the Remand Statement of Reasons supersedes the initial statement of reasons that was the subject of the district court opinion on appeal here, some decisions from this Court suggest AAN's appeal should be dismissed as moot. *See Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 79 (D.C. Cir. 2011) (dismissing as moot an appeal regarding a superseded agency decision because the Court "can neither invalidate, nor require the [agency] to adhere to, a Record of Decision that has disappeared into the regulatory netherworld") (internal quotation marks omitted); *Ctr. for Sci. in the Pub. Interest v. Regan*, 727 F.2d 1161, 1164 (D.C. Cir. 1984) (dismissing appeal as moot where the rule that was the basis of the proceedings before the district court had been superseded because "[a]ny further judicial pronouncement [regarding that superseded rule] would be purely advisory").

III. ABSENT AMERICAN ACTION NETWORK, CREW LACKS STANDING TO PURSUE ITS CROSS-APPEAL OF THE DISTRICT COURT RULING IN ITS FAVOR

Because CREW prevailed in the district court, its cross-appeal is “conditional only,” meaning this Court only considers the cross-appeal if and when the Court decides to reverse or modify the judgment below. *Breeden v. Novartis Pharm. Corp.*, 646 F.3d 43, 49 (D.C. Cir. 2011). As American Action Network’s appeal must be dismissed for the multiple independent reasons detailed above, *supra* Sections I-II, CREW’s cross-appeal must, in turn, be dismissed for lack of standing. As the prevailing party below, CREW has not suffered an injury from the district court’s Remand Order sufficient to establish the standing necessary to prosecute its appeal in the absence of American Action Network.

“A party may not appeal from a judgment or decree in his favor.” *In re Reporters Comm. for Freedom of the Press*, 773 F.2d 1325, 1328 (D.C. Cir. 1985) (internal quotation marks omitted); *see also Mathias v. Worldcom Tech., Inc.*, 535 U.S. 682, 684 (2002) (per curiam) (“As a general rule, a party may not appeal from a favorable judgment simply to obtain review of findings it deems erroneous.”). This is because “prevailing parties lack standing to appeal.” *Sea-Land Serv., Inc. v. Dep’t of Transp.*, 137 F.3d 640, 647 (D.C. Cir. 1998); *see also Ezzell Trucking, Inc. v. Fed. Motor Carrier Safety Admin.*, 309 F.3d 24, 25-26 (D.C. Cir. 2002) (dismissing appeal for lack of standing because appellant had prevailed below and

thus suffered no injury in fact). Because “[t]his Court . . . reviews judgments, not statements in opinions,” *Black v. Cutter Laboratories*, 351 U.S. 292, 297 (1956), a party that obtains the relief it sought below no longer has any injury to redress. *Hollingsworth*, 133 S. Ct. at 2662 (noting that the party prevailing below “no longer had any injury to redress” because they had won).

In its complaint, CREW sought an order determining that the controlling Commissioners’ initial statements of reasons were contrary to law and directing the FEC to conform within 30 days. Compl., Prayer for Relief ¶¶ 1-4, *CREW v. FEC*, No. 14-cv-1419 (D.D.C. August 20, 2014), Doc. No. 1, available at http://www.fec.gov/law/litigation/crew141419_complaint.pdf. This is precisely the relief the district court awarded in its Remand Order. *CREW*, 2016 WL 5107018, at *12. While the district court may not have reached its decision using the precise rationale CREW would have preferred, that outcome “does not make it appropriate for this Court to rewrite the [lower court’s] decision, or for the prevailing party to request [the Court] to review it.” *California v. Rooney*, 483 U.S. 307, 311 (1987) (per curiam). Rather, the focus of the injury inquiry for purposes of determining standing on appeal is whether CREW obtained the relief it sought — not the rationale upon which it sought such relief. Because CREW obtained the relief it was seeking, it has not suffered a cognizable injury from the district court’s Remand Order. CREW’s cross-appeal should thus be dismissed for

the additional reason that CREW lacks standing to independently appeal the decision in its favor.

CONCLUSION

For the foregoing reasons, this Court should dismiss American Action Network's appeal and CREW's cross-appeal.

Respectfully submitted,

Lisa J. Stevenson
Acting General Counsel

Kevin Deeley
Associate General Counsel

Erin Chlopak
Acting Assistant General Counsel

December 8, 2016

/s/ Haven G. Ward

Haven G. Ward

hward@fec.gov

Greg J. Mueller

gmueller@fec.gov

COUNSEL FOR DEFENDANT-
APPELLEE FEDERAL ELECTION
COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

(202) 694-1650

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

I hereby certify, on this 8th day of December, 2016, that:

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. 32(f), this document contains 3,910 words.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in a 14-point Times New Roman font.

/s/ Haven G. Ward
Haven G. Ward

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2016, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the D.C. Circuit by using the Court's CM/ECF system.

Service was made on the following through the CM/ECF system:

Stuart C. McPhail
smcphail@citizensforethics.org
Adam J. Rappaport
arappaport@citizensforethics.org
Citizens for Responsibility and Ethics in Washington
455 Massachusetts Ave., N.W., Sixth Floor
Washington, D.C. 20001

Claire J. Evans
cevens@wileyrein.com
Jan Witold Baran
jbaran@wileyrein.com
Caleb P. Burns
cburns@wileyrein.com
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

/s/ Haven G. Ward
Haven G. Ward