

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

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant,

CROSSROADS GRASSROOTS POLICY  
STRATEGIES

1401 New York Ave., NW

Ste. 1200

Washington, DC 20005,

Intervenor-Defendant.

Civil Action No. 1:16-cv-00259-BAH

**CROSSROADS GRASSROOTS POLICY STRATEGIES’  
NOTICE OF JOINDER AND SUPPLEMENTATION OF  
FEDERAL ELECTION COMMISSION’S PARTIAL MOTION TO DISMISS AND  
MEMORANDUM IN SUPPORT THEREOF**

Crossroads Grassroots Policy Strategies (“Crossroads GPS”) respectfully files this Notice of Joinder and Supplementation of the Federal Election Commission’s (“Commission” or “FEC”) Partial Motion to Dismiss, pursuant to the Court’s April 29, 2016 Order granting Plaintiffs’ Consent Motion to Modify the Briefing Schedule on the same.

Crossroads GPS joins the FEC’s Partial Motion to Dismiss Claim Two of Plaintiffs’ Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for the reasons set forth in the FEC’s Motion and memorandum in support thereof.

In addition, pursuant to Federal Rule of Civil Procedure 12(b)(6), Crossroads GPS hereby moves for an order dismissing the portions of Plaintiffs’ Claims One and Three, and, in the event Claim Two is not dismissed in its entirety, the portion of Claim Two that seek relief pursuant to

the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, all of which fail to state a claim upon which relief can be granted. The Federal Election Campaign Act, as amended ("FECA" or "Act"), 52 U.S.C. § 30109(a)(8), provides the exclusive avenue for review of the FEC's dismissal of the administrative complaint that Plaintiffs challenge in this action and precludes judicial review of the same under the APA.

A proposed order accompanies this motion.

## **I. STANDARD OF REVIEW**

Dismissal of a complaint is appropriate where, assuming the factual allegations are true and all reasonable inferences are construed in a plaintiff's favor, the complaint nonetheless fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Nurriddin v. Bolden*, 2016 U.S. App. LEXIS 6174 (D.C. Cir. 2016) at \*10 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Sissel v. U.S. Dep't of Health & Human Servs.*, 760 F.3d 1, 4 (D.C. Cir. 2014)).

## **II. SECTION 30109 OF THE FECA PRECLUDES JUDICIAL REVIEW OF FEC ENFORCEMENT DECISIONS UNDER THE APA.**

Judicial review of federal agency actions under the APA is available only where "there is no other adequate remedy in a court." 5 U.S.C. § 704. A recent opinion and order issued by this Court involving a matter similar to this one, and including one of the identical Plaintiffs, established that, "[b]ecause FECA provides the exclusive avenue of judicial review for parties seeking to challenge FEC enforcement decisions, [Citizens for Responsibility and Ethics in Washington] may not challenge these decisions under the APA." *Citizens for Responsibility and Ethics in Washington, et al. v. FEC*, No. 1:14-cv-01419-CRC (*hereinafter*, "CREW"), slip op. at 7 (D. D.C. Aug. 13, 2015). That holding should apply in this matter as well.

In that other matter, as here, Plaintiff Citizens for Responsibility and Ethics in Washington ("CREW") sought judicial review of the FEC's dismissal of two administrative

complaints under both the FECA, 52 U.S.C. § 30109(a)(8), and the APA, 5 U.S.C. § 706, on the grounds that the agency's dismissal was "arbitrary, capricious, an abuse of discretion, and contrary to law." Compl. at 1, *CREW* (D. D.C. 2014).

As this Court explained:

APA review is not available when Congress has created another specific, "adequate remedy." . . .

Under the system of judicial review established by FECA, the Court can override the FEC's decision to dismiss a complaint if "the dismissal was based on an 'impermissible interpretation of [FECA] . . . or was arbitrary or capricious, or an abuse of discretion.'" *This alternative, comprehensive judicial review provision precludes review of FEC enforcement decisions under the APA.* Because FECA includes a private cause of action, along with "a detailed mechanism for judicial consideration of particular issues at the behest of particular persons," that remedy is the exclusive means to enforce the Act . . .

Like any party aggrieved by FEC enforcement decisions, *CREW* may of course claim that the basis on which the FEC reached its decisions was arbitrary or unsound. But also like any aggrieved party, *CREW's exclusive remedy for its disagreement with the FEC's rationale is to challenge those particular decisions under the judicial review provision of FECA.*

*CREW*, slip op. at 9-11 (D. D.C. Aug. 13, 2015) (internal citations and quotations omitted) (emphasis added).

Accordingly, this Court dismissed all of the portions of *CREW's* complaint that sought relief pursuant to the APA. *CREW* (D. D.C. 2015) (order granting motion to dismiss).

### **III. THE PORTIONS OF PLAINTIFFS' COMPLAINT THAT SEEK RELIEF UNDER THE APA SHOULD BE DISMISSED.**

Plaintiffs seek a declaratory order that the FEC acted "in violation of its statutory responsibilities under 52 U.S.C. § 30109(a)(8) and 5 U.S.C. § 706" in dismissing Plaintiffs' administrative complaint alleging that Crossroads GPS violated certain regulatory and statutory requirements for reporting independent expenditures – specifically, 11 C.F.R. § 109.10 (Claim One), 52 U.S.C. § 30104(c)(2) (Claim Two), and 52 U.S.C. § 30104(c)(1) (Claim Three).

Compl. ¶¶ 111, 116, 118, 124, 126, and 131 (emphasis added).

Crossroads GPS moves to dismiss the portions of Plaintiffs' Claims One and Three, as well as the portion of Plaintiffs' Claim Two to the extent Claim Two is not dismissed in its entirety,<sup>1</sup> that are brought pursuant to the APA, 5 U.S.C. § 706. For the reasons set forth above, these portions of the Complaint fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

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May 16, 2016

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<sup>1</sup> Plaintiffs' Claim Two improperly attempts to bootstrap to a challenge of the FEC's dismissal of an administrative complaint a time-barred challenge to an FEC regulation that Plaintiffs seek this Court to declare is "unlawful and invalid." Compl. ¶ 124. Crossroads GPS joins the FEC's Partial Motion to Dismiss Claim Two in its entirety for the reasons set forth in the FEC's Memorandum of Points and Authorities in support thereof.

**CERTIFICATE OF SERVICE**

I hereby certify that, on May 16, 2016, I served a true and correct copy of Crossroads Grassroots Policy Strategies' Notice of Joinder and Supplementation of Federal Election Commission's Partial Motion to Dismiss and Memorandum in Support Thereof, by means of electronic filing, on:

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Lisa J. Stevenson  
Kevin Deeley  
Harry J. Summers  
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/s/ Thomas W. Kirby  
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