

**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. 16-259 (BAH)	
)		
v.)		
)	ANSWER	
FEDERAL ELECTION COMMISSION,)		
)		
Defendant.)		
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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 Nicholas Mezlak. Any allegation not specifically responded to below is DENIED.

1. This paragraph summarizes plaintiffs’ complaint, the allegations of which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the Commission dismissed an administrative complaint filed by plaintiffs, in which the respondents were Crossroads Grassroots Policy Strategies (“Crossroads GPS”), Steven Law, Karl Rove, Haley Barbour, and Caleb Crosby.

2. The Commission is without knowledge or information sufficient to admit or deny the allegations in the first sentence. The allegation in the second sentence that Crossroads GPS’s advertising was “extensive” is too vague to admit or deny. ADMIT that Crossroads GPS reported making \$6,363,711 in independent expenditures in the 2012 U.S. Senate race in Ohio. DENY the allegation in the third sentence that Crossroads GPS has admitted that independent

expenditures were its “primary” activity; Crossroads acknowledged that slightly more than half of its spending in Ohio for the 2012 election was for independent expenditures. The fourth sentence characterizes the statutory and regulatory disclosure requirements for independent expenditures, which speak for themselves and to which no response is required. DENY the portion of the last sentence stating that Crossroads GPS “admitt[ed] that this multi-million dollar contribution was made for the explicit purpose of electing a federal candidate and was used to fund independent expenditures for that same purpose.” ADMIT the portion of the last sentence stating that “Crossroads GPS never disclosed the identity of the contributor.” DENY the portion of the last sentence stating that Crossroads GPS argued that this lack of disclosure was because “the contributor did not specifically intend to further a particular independent expenditure in the exact form that Crossroads GPS eventually ran it in the state.”

3. ADMIT that Crossroads GPS did not disclose any contributors when reporting its expenditures in Ohio during the 2012 U.S. Senate race there. ADMIT that Crossroads GPS did not disclose the identities of donors whom it said provided approximately \$1.3 million for general use in the State of Ohio. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in the second sentence. The allegation in the third sentence that Crossroads GPS’s activities were “primarily” related to independent expenditures is too vague to admit or deny. Crossroads GPS has stated that slightly more than half of its spending in Ohio for the 2012 election was for independent expenditures.

4. ADMIT that Crossroads GPS did not disclose the identities of contributors that provided funds for its activities in the 2012 U.S. Senate races in Ohio, Virginia, Nevada and Montana. The Commission is without knowledge or information sufficient to admit or deny the allegations in the remainder of the first sentence. ADMIT the portion of the second sentence

stating that Crossroads GPS ran independent expenditures in those states. The allegation that the independent expenditures “echo[ed] the claims and arguments made in the example ads” is too vague to admit or deny. ADMIT that Crossroads GPS did not disclose the identities of donors that provided funds used in connection with its activities in the 2012 Senate races in Ohio, Virginia, Nevada and Montana to the FEC.

5. The first sentence of this paragraph contains legal conclusions and characterizes reporting requirements in the Federal Election Campaign Act (“FECA”), which speak for themselves, and so no response is required. With regard to the second sentence, ADMIT that voters have a general interest in disclosure regarding funds used in federal elections. The third and fourth sentences of this paragraph characterize FECA’s reporting requirements, which speak for themselves, and so no response is required. DENY the fifth sentence of this paragraph.

6. ADMIT that the judicial review provision 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. ADMIT that the Court has ruled that plaintiffs may pursue their challenge to 11 C.F.R § 109.10(e)(1)(vi) in this action under 5 U.S.C. § 702; the Commission respectfully preserves this issue for possible appeal. 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.

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

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

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

10. 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.

11. The Commission ADMITS that CREW has filed administrative complaints with the FEC. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

12. 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.

13. The Commission ADMITS that information about contributions to campaigns of Congressional candidates aids in detecting "pay-to-play" schemes. The Commission is otherwise without knowledge or information sufficient to admit or deny the allegations in this paragraph.

14. 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.

15. 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.

16. 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 "political activity." The remainder of this paragraph is DENIED.

17. ADMIT that registered voters (and others) may legally review information that is publicly reported pursuant to FECA's disclosure requirements. To the extent the paragraph alleges that the Commission has failed to properly administer FECA, that allegation is DENIED. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

18. 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. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, which concern the thoughts and expectations of plaintiffs and unspecified provisions of FECA.

19. ADMIT.

20. ADMIT that FECA and FEC regulations contain provisions requiring groups making independent expenditures to comply with certain disclosure requirements.

21. This paragraph and accompanying footnote quote 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 terms “independent expenditure” and “expressly advocating.”

22. This paragraph characterizes portions of FECA and FEC regulations regarding the disclosure of independent expenditures and the definition of “person,” which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the language in this paragraph paraphrases the cited provisions, but DENY that this paragraph sets forth the complete disclosure requirements for spending on independent expenditures.

23. This paragraph characterizes the statutory and regulatory requirements for determining when independent expenditure reports must be filed, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the language in this paragraph paraphrases requirements stated in 52 U.S.C. § 30104(c)(1) and 11 C.F.R. § 109.10(b), but DENY that this paragraph sets forth the complete statutory or regulatory requirements.

24. This paragraph characterizes statutory and regulatory requirements for determining when independent expenditure reports must be filed, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the language in this paragraph paraphrases requirements stated in 52 U.S.C. §§ 30104(g)(1)(A), (g)(2)(A) and 11 C.F.R. § 109.10(c)-(d), but DENY that this paragraph sets forth the complete statutory or regulatory requirements.

25. This paragraph characterizes the statutory and regulatory requirements determining the content of independent expenditure reports, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the language in this paragraph paraphrases requirements stated in 52 U.S.C. § 30104(c)(2)(A) and 11 C.F.R. §

109.10(e), but DENY that this paragraph sets forth the complete statutory or regulatory requirements.

26. This paragraph quotes from a portion of the statutory requirements for the content of independent expenditure reports, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the language in this paragraph accurately quotes 52 U.S.C. § 30104(c)(1)(A), with noted omissions, but DENY that this paragraph sets forth the complete statutory or regulatory requirements.

27. This paragraph quotes from a portion of the statutory requirement for the content of independent expenditure reports, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the language in this paragraph accurately quotes 52 U.S.C. § 30104(c)(2)(C), with the noted alteration, but DENY that this paragraph sets forth the complete statutory or regulatory requirements.

28. This paragraph quotes from a portion of an FEC regulation describing the required content of independent expenditure reports, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the language in this paragraph accurately quotes 11 C.F.R. § 109.10(e)(1)(vi), with the noted alteration, but DENY that this paragraph sets forth the complete statutory or regulatory requirements.

29-34. These paragraphs describe FECA's statutory provisions governing 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 paragraph generally describe FECA's administrative enforcement procedures, including the procedures for obtaining judicial review of a Commission dismissal decision.

35. ADMIT.

36. ADMIT.

37. ADMIT.

38. ADMIT.

39. ADMIT.

40. ADMIT that a fundraiser was held on August 30, 2012 in Tampa, Florida, but the Commission lacks information sufficient to admit or deny whether that fundraiser was held by Crossroads GPS or American Crossroads or both. ADMIT that American Crossroads is registered with the FEC as an independent expenditure-only political committee. The allegation in the second sentence that Crossroads GPS and American Crossroads are “closely associated” is too vague to admit or deny. The Commission lacks information sufficient to admit or deny the allegations in the third sentence of this paragraph.

41. The Commission lacks information sufficient to admit or deny the allegations in this paragraph.

42. The Commission lacks information sufficient to admit or deny the allegations in this paragraph.

43. ADMIT that Karl Rove declared in an affidavit that he did speak to an unnamed donor and the description of this call in this paragraph is “substantially accurate.”

44. ADMIT.

45. ADMIT that Crossroads GPS filed ten reports disclosing independent expenditures opposing Senator Brown in 2012 and that these reports do not identify any donors. The Commission lacks information sufficient to admit or deny the allegation in the third sentence of this paragraph that there were unidentified donors “who contributed for the purpose of

furthering Crossroads GPS's independent expenditures and those who specifically contributed for the purpose of furthering these reported independent expenditures.”

46. ADMIT.

47. ADMIT that Crossroads GPS has stated that it screened 14 advertisements at the Tampa meeting on August 30, 2012. ADMIT that Crossroads GPS has stated that the screened ads included ads targeting Democratic U.S. Senate candidates in the states identified in the second sentence. ADMIT that Crossroads GPS has stated that it produced eleven of the ads and American Crossroads produced two of the ads.

48. ADMIT that Crossroads GPS has stated that all of the ads described in this paragraph were shown at the August 30, 2012 meeting. To the extent the paragraph characterizes the referenced ads, the ads speak for themselves, and so no response is required.

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

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

51. The Commission is without knowledge or information sufficient to admit or deny the allegations in the first two sentences of this paragraph. ADMIT the allegations in the third sentence that Crossroads GPS has stated “eleven of the fourteen ads . . . were produced by Crossroads GPS,” and that Crossroads GPS made independent expenditures subsequent to the August 30, 2012 meeting in five of the Senate races for which ads were shown. To the extent the fourth sentence quotes from a Crossroads GPS press release, that document speaks for itself, and so no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the allegations in this sentence.

52. The allegation in the first sentence of this paragraph that many of the independent expenditures by Crossroads GPS “mirrored” the ads shown at the August 30 meeting is too vague to admit or deny. To the extent the paragraph and its accompanying footnote characterize the referenced ads and reports to the FEC, those items speak for themselves, and so no further response is required.

53. ADMIT that Crossroads GPS filed the independent expenditure reports identified in this paragraph and that those reports do not identify any donors.

54. ADMIT.

55. ADMIT that on November 14, 2012, plaintiff CREW, along with Melanie Sloan and Jessica Markey, filed an administrative complaint that was designated by the Commission as MUR 6696. The remainder of this paragraph and its accompanying footnote describe the administrative complaint and press articles, which speak for themselves, and so no response is required. To the extent a response is required, ADMIT that the administrative complaint alleged that Crossroads GPS and the other respondents violated certain provisions of FECA.

56. ADMIT that on January 17, 2013, Crossroads GPS, Karl Rove, Steven Law, Haley Barbour, and Caleb Crosby responded to the administrative complaint and included an affidavit from Mr. Rove. The remainder of this paragraph describes the response to the administrative complaint, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the response to the administrative complaint and Mr. Rove’s affidavit addressed the allegations in the administrative complaint and that the quotations in this paragraph are accurate.

57. This paragraph describes a portion of Mr. Rove's affidavit, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the quotation in this paragraph is accurate, with the addition of the bracketed text.

58. This paragraph describes a portion of the response to the administrative complaint, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that this paragraph paraphrases assertions in the response.

59. This paragraph describes a portion of the response to the administrative complaint, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that portions of this paragraph quote and paraphrase several assertions in the response.

60. This paragraph describes a portion of the response to the administrative complaint, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that portions of this paragraph quote and paraphrase several assertions in the response. The allegation in the fourth sentence of this paragraph that Crossroads GPS's response "defined that purpose in the narrowest and most cramped terms" is too vague to admit or deny.

61. This paragraph describes a portion of the response to the administrative complaint, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that this paragraph quotes accurately from the response.

62. ADMIT that American Crossroads reported running ads in the 2012 U.S. Senate races in Montana and Florida subsequent to August 30, 2012, but did not report any ads in the races for Senate in Virginia, Ohio, Massachusetts, or Nevada. ADMIT the allegation in the third sentence that Crossroads GPS reported making independent expenditures subsequent to the

August 30, 2012 meeting in five of the Senate races for which ads were shown, and that it issued a press release indicating that it was running issue ads in the sixth state.

63. ADMIT.

64-69. These paragraphs describe portions of the Commission's First General Counsel's Report, which speaks for itself, and so no response is required. To the extent responses are required, ADMIT that the First General Counsel's Report contains the statements and quoted language alleged in these paragraphs, except DENY that the Report "acknowledged" that 11 C.F.R. § 109.10 "conflicted" with FECA's requirements, as alleged in paragraph 65.

70. ADMIT.

71. ADMIT.

72. ADMIT that the three Commissioners who voted against finding "reason to believe" did not issue a separate Statement of Reasons, as is the general practice when actions of a controlling group of Commissioners are consistent with the Office of General Counsel's recommendations, which then provide the basis for any judicial review of a dismissal.

[There are no paragraphs 73-109 in the complaint.]

Claim One Heading: DENIED.

110. The Commission incorporates by reference all preceding paragraphs of its answer as if fully set forth here.

111. DENIED.

112. DENIED.

113. DENIED.

114. The first sentence is DENIED. The second sentence is ADMITTED except (1) the phrases "significant majority" in parts (a) and (b) and "echoed" in part (c) are too vague to

admit or deny and (2) the Commission lacks information sufficient to admit or deny whether Crossroads GPS “solicited those attendees for contributions to pay for the higher advertising rates to air such ads” or received funds “to air independent expenditures.”

115. DENIED.

Claim Two Heading: DENIED.

116. DENIED.

117. The Commission incorporates by reference all preceding paragraphs of its answer as if fully set forth here.

118-24. DENIED.

Claim Three Heading: DENIED.

125. The Commission incorporates by reference all preceding paragraphs of its answer as if fully set forth here.

126. DENIED.

127. This paragraph paraphrases and quotes portions of the First General Counsel’s Report, which speaks for itself, and so no response is required. To the extent responses are required, ADMIT that the Commission’s First General Counsel’s Report contains quoted language alleged in this paragraph.

128. The first sentence of this paragraph is DENIED. The second sentence of this paragraph paraphrases and quotes portions of the First General Counsel’s Report, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the Commission’s First General Counsel’s Report contains quoted language alleged in this paragraph.

129. The first sentence of this paragraph paraphrases and quotes portions of the First General Counsel's Report, which speaks for itself, and so no response is required. To the extent a response is required, ADMIT that the Commission's First General Counsel's Report contains quoted language alleged in this paragraph. With respect to the second sentence, ADMIT that Crossroads GPS made the quoted statement. The Commission lacks knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph, and plaintiffs' legal conclusions require no response. To the extent a response is required, DENIED.

130. DENIED.

131. DENIED.

REQUESTED RELIEF

The Court should deny plaintiffs' requested relief.

Respectfully submitted,

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