

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

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 16-2255 (CRC)
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	ANSWER
)	
Defendant.)	

FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Amended Complaint for Injunctive and Declaratory relief filed by plaintiffs Citizens for Responsibility and Ethics in Washington (“CREW”) and Melanie Sloan. Any allegation not specifically responded to below is DENIED.¹

¹ This litigation is commenced against the Federal Election Commission (Commission) following a remand order in another action, *Citizens for Responsibility and Ethics in Wash. (“CREW”) v. FEC*, No. 14-1419 (D.D.C. Sept. 19, 2016). The same plaintiffs brought that earlier *CREW* case on the grounds that the Commission did not approve a recommendation of the Commission’s Office of General Counsel (OGC) to find “reason to believe” (RTB) that a violation of the FECA or of its regulations occurred in that case and that the file was consequently closed. 52 U.S.C. § 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)).

The reason for the initially challenged inaction of the Commission was because there were not four or more Commissioners’ votes to proceed on the RTB recommendation. Courts have held that, in order to properly review the inaction of the Commission, the court must be supplied with a “statement of reasons” of those Commissioners who voted against, or abstained from voting for, the OGC recommendation, who the court has called the “controlling group.” *See Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1132 (D.C. Cir. 1987); *FEC v. Nat’l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) (“[W]hen the Commission deadlocks 3-3 and so dismisses a complaint, that dismissal, like any other, is judicially reviewable under Section [30109(a)(8)]. . . . [T]o make judicial review a meaningful exercise, the three Commissioners who voted to dismiss must provide a statement of their reasons for so voting. Since those Commissioners constitute a controlling group for purposes of the decision, their rationale necessarily states the agency’s reasons for acting as it did.”);

1. This paragraph summarizes plaintiffs' amended complaint, the allegations of which speak for themselves, and require no response. To the extent a response is required, ADMIT that the Commission dismissed the administrative complaint filed by plaintiffs, in which American Action Network ("AAN") was the respondent and DENY that the Commission has failed to act on the administrative complaint in which Americans for Job Security ("AJS") was the respondent.

2. This paragraph describes portions of this Court's Memorandum Opinion in *Citizens for Responsibility & Ethics in Washington v. FEC*, 209 F. Supp. 3d 77 (D.D.C. 2016) ("CREW"), which speaks for itself and requires no response. To the extent a response is required, ADMIT that the decision contains the quoted text and sets forth the reasons the Court determined that the dismissals of the AJS and AAN matters were contrary to law. ADMIT that, in accordance with section 30109(a)(8)(C), the Court remanded the matters to the agency to conform with its decision. DENY the remainder of this paragraph.

3. ADMIT that on remand, the Commission dismissed plaintiffs' administrative complaint against AAN. DENY the remainder of this paragraph.

Common Cause v. FEC, 655 F. Supp. 619 (D.D.C. 1986), *rev'd on other grounds*, 842 F.2d 436 (D.C. Cir. 1988).

The Commission has historically voted by a majority vote (pursuant to 52 U.S.C. §§ 30106(c) and 30107(a)(6) (formerly 2 U.S.C. §§ 437c(c) and 437d(a)(6))) to authorize the OGC's appearance on behalf of the Commission in suits commenced pursuant to 52 U.S.C. 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)). Accordingly, the views of the Commissioners who voted to pursue enforcement are not defended by the OGC, although their statements of reasons are part of the administrative record and available for the Court's consideration. Furthermore, the OGC's representational role in this matter does not change OGC's earlier recommendation to find RTB or any of the reasons supporting it, which are part of the administrative record.

4. ADMIT that on remand, by a vote of 3-3, the Commission did not find reason to believe that AAN had violated Federal Election Campaign Act's ("FECA") registration and reporting requirements for political committees. DENY the remainder of this paragraph.

5. ADMIT that plaintiffs filed their original administrative complaint against AJS on March 8, 2012, that this Court remanded the AJS matter to the FEC in an order issued on September 19, 2016, and that the FEC has taken no final action with respect to AJS subsequent to the remand. DENY the remainder of this paragraph.

6. The Commission is without knowledge or information sufficient to admit or deny the allegations regarding plaintiffs' motivation in bringing this action. DENY the remainder of this paragraph.

7. 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. 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.

8-10. The Commission is without knowledge or information sufficient to admit or deny the allegations in these paragraphs.

11. 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.

12. The Commission ADMITS that CREW has filed administrative complaints with the FEC, but is without knowledge or information sufficient to admit or deny CREW's

allegations in this paragraph concerning the circumstances surrounding its decision to file such complaints.

13. 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.

14. 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.

15-17. These paragraphs describe reports issued by CREW, which speak for themselves, and require no response. To the extent the paragraphs set forth allegations about how CREW obtained information discussed in reports it has issued or discuss CREW's web-posting practices, the Commission is without knowledge or information sufficient to admit or deny such allegations.

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

19. ADMIT that Melanie Sloan was formerly the executive director of CREW; the Commission is without knowledge or information sufficient to admit or deny the allegations concerning Ms. Sloan in the second sentence of this paragraph. ADMIT that registered voters (and others) may legally review information that is publicly reported pursuant to FECA's disclosure requirements. DENY that the Commission 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.

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

21. ADMIT that CREW and Ms. Sloan are the administrative complainants in this case and have 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.

22. ADMIT.

23. 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.

24. 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.

25. 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” in certain contexts 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).

26. 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.

27. This paragraph describes the Supreme Court’s decision in *FEC v. Massachusetts Citizens for Life Inc.*, 479 U.S. 238 (1986) (“*MCFL*”), which speaks for itself and requires no response.

28. The first sentence of this paragraph, to the extent it is factual allegation, is too vague to admit or deny. The remainder of 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 the quoted language in this paragraph appears in the statutory and regulatory definitions of the term “independent expenditure” and “electioneering communication,” but DENY that this paragraph sets forth the complete statutory or regulatory definition of those terms. ADMIT that groups making electioneering communications or independent expenditures are subject to certain reporting requirements, but DENY this paragraph to the extent that it suggests that all of the reporting requirements applying to political committees extend to groups that are not political committees when they make independent expenditures or electioneering communications.

29. 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 a statement of organization with the Commission within 10 days of becoming a political committee.

30. 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.

31-37. 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.

38-39. ADMIT that these paragraphs generally contain AAN's self-description as set forth on its website and response submitted in MUR 6589.

40. 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.

41. ADMIT that AAN reported spending \$725,000 on advertisements referencing Representative Ed Perlmutter (CO-07), and ADMIT that the advertisement referencing Rep. Ed

Perlmutter included the first two quotations in paragraph 41. DENY that this paragraph includes a complete and accurate description of the referenced advertisement.

42. This paragraph contains allegations regarding unspecified advertisements being similar in an unspecified way to the example it cites and is too vague to admit or deny.

43. This paragraph references AAN's spending reported in tax returns filed with the IRS, which speak for themselves, and requires no response. The FEC is without knowledge or information sufficient to admit or deny the allegations in this paragraph regarding information in plaintiffs' possession.

44. This paragraph alleges the amounts AAN reported spending in tax returns filed with the IRS, which speak for themselves, and requires no response. This paragraph also alleges amounts AAN reported spending on independent expenditures and electioneering communications in disclosure reports filed with the FEC, which also speak for themselves and require no response. To the extent a response is required, ADMIT that AAN reported spending a total of \$25,692,334 on its 2010 tax return. ADMIT that AAN reported to the FEC spending approximately \$17,796,000 on independent expenditures and electioneering communications in its 2010 fiscal year.

45. The allegations in this paragraph regarding amounts that AAN "may have spent . . . on politics" or "political activity" are too vague to admit or deny. This paragraph further alleges the amounts AAN reported spending in tax returns filed with the IRS and disclosure reports filed with the FEC, which speak for themselves, and requires no response. To the extent a response is required, ADMIT that AAN reported spending the alleged amount on the tax return. ADMIT that AAN reported to the FEC spending approximately \$17,796,000 on

independent expenditures and electioneering communications in its 2010 fiscal year. The remaining allegations in the paragraph is DENIED.

46. This paragraph alleges the amounts ANN reported spending in tax returns filed with the IRS and disclosure reports filed with the FEC, filings which speak 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. ADMIT that AAN reported spending a total of \$1,446,675 on all activities on its 2009 tax return. ADMIT that AAN reported spending a total of \$25,692,334 on its 2010 tax return. The remaining allegations in this paragraph are DENIED.

47. This paragraph alleges the amounts AAN reported spending in tax returns filed with the IRS, which speak for themselves, and requires no response. To the extent a response is required, ADMIT that AAN reported spending \$185,108 on political expenses on its 2009 tax return referenced in this paragraph. The allegations in this paragraph regarding “political spending” are too vague to admit or deny. The remainder of this paragraph is DENIED.

48. 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.

49. ADMIT the first sentence. This paragraph describes portions of the First General Counsel’s Report, which speaks for itself, and requires no response. To the extent a responses is required, ADMIT that the Commission’s First General Counsel’s Report contains the statements alleged in this paragraph.

50. ADMIT that on June 24, 2014, the Commission considered the allegations in plaintiffs' administrative complaint against AAN and, by a 3-3 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.

51. 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 that Statement of Reasons was the "controlling" explanation for the decision in MUR 6589 and that the Statement contains the quoted language.

52. 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 did not include genuine issue advocacy in its application of the major-purpose test and did not limit its analysis to a single calendar year. The remaining allegations are DENIED.

53. This paragraph describes plaintiffs' complaint filed in *CREW v. FEC*, No. 14-1419 (CRC) (D.D.C.), which speaks for itself, and requires no responses. To the extent a response is required, ADMIT that the complaint was filed on August 20, 2014, pursuant to 52 U.S.C. § 30109(a)(8), and named the FEC as a defendant.

54. This paragraph quotes portions of the district court's decision in *CREW v. FEC*, 209 F. Supp. 3d 77 (D.D.C. September 19, 2016), 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 decision.

55. ADMIT that on October 19, 2016, the FEC notified plaintiffs that, by a vote of 3-3, the Commission did not find reason to believe that AAN had violated FECA's registration and reporting requirements for political committees. The remainder of this paragraph describes the Statement of Reasons of then-Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Goodman in MUR 6589R ("Petersen, Hunter, and Goodman Statement of Reasons"), which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the Petersen, Hunter, and Goodman Statement of Reasons in MUR 6589R was authored by the same Commissioners that authored Statement of Reasons reviewed in *CREW*, No. 14-1419. This paragraph is otherwise DENIED.

56. This paragraph describes and quotes portions of the Petersen, Hunter, and Goodman Statement of Reasons in MUR 6589R, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the Petersen, Hunter, and Goodman Statement of Reasons contains the quoted language.

57. This paragraph describes and quotes portions of the Petersen, Hunter, and Goodman Statement of Reasons in MUR 6589R, which speaks for itself, and requires no response. To the extent a response is required it is DENIED.

58. This paragraph describes and quotes portions of the Petersen, Hunter, and Goodman Statement of Reasons in MUR 6589R, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the quoted text appears in the statement and that the Commissioners found, after conducting a fact-intensive case-by-case

analysis, that less than half of AAN's spending indicated a major purpose of nominating or electing candidates.

59-60. 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.

61. 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.

62. 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 the first sentence are DENIED. ADMIT the last sentence of this paragraph.

63. 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.

64. 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. The FEC is without knowledge or information sufficient to admit or deny the allegations in the second and third sentence of this paragraph because the terms "political expenditures" and "political expenses" are too vague to permit a response.

65. 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.

66. This paragraph describe portions of the First General Counsel's Report in MUR 6538, 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 statements in this paragraph, including the calculation that AJS spent a total of \$4,598,518 on electioneering communications in 2010. The FEC avers that it has since determined that the \$4,598,518 calculation was incorrect, and that the correct total of AJS's spending on electioneering communications in 2010 was \$4,556,518.

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

68. 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 ("Goodman, Hunter, and Petersen Statement of Reasons"), which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the Goodman, Hunter, and Petersen Statement of Reasons in MUR 6538 was the "controlling" explanation for the decision in MUR 6538 and that it contains the quoted language.

69. This paragraph describes portions of the Goodman, Hunter, and Petersen Statement of Reasons in MUR 6538, which speaks for itself, and requires no response. To the extent a response is required, DENY plaintiffs' characterization of the statement.

70. ADMIT.

71. This paragraph describes portions of the district court's decision in *CREW v. FEC*, 209 F. Supp. 3d 77 (D.D.C. September 19, 2016), which speaks for itself, and requires no responses. To the extent a response is required, ADMIT the court found the FEC's dismissal of plaintiffs' administrative complaints contrary to law, granted plaintiffs' motion for summary judgement, and remanded the matters to the FEC for further consideration.

72. ADMIT that the FEC has complied with its statutory obligation not to publicly disclose information regarding the remanded AJS matter, *see* 52 U.S.C. § 30109(a)(12). The FEC has provided plaintiffs with information regarding that matter as necessary to defend against plaintiffs' challenge in *CREW v. FEC*, No. 14-1419, pursuant to a protective order entered in that case. *See* Protective Order, *CREW v. FEC*, No. 14-1419 (CRC) (D.D.C. Dec. 12, 2016) (Docket No. 63).

73. ADMIT that AJS filed an amended disclosure report with the FEC on February 16, 2017. That disclosure report speaks for itself and requires no response. To the extent a response is required, ADMIT that AJS's amended disclosure report showed a contribution from the Center to Protect Patient Rights on August 24, 2010, for \$46,518.98. ADMIT that plaintiffs filed an administrative complaint with the Commission against AJS, the Center to Protect Patient Rights, and other groups, which was designated as MUR 6816, and which resulted in a publicly available conciliation agreement. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

74. ADMIT that the Commission has not taken final action with respect to AJS subsequent to the remand. This paragraph is otherwise DENIED.

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

76. DENIED.

77. The first sentence quotes portions of the decision in *CREW*, 209 F. Supp. 3d 77, which speaks for itself and requires no response. To the extent a response is required, ADMIT that the quoted language in this sentence appears in decision. This paragraph is otherwise DENIED.

78-82. DENIED.

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

84-85. DENIED.

REQUESTED RELIEF

The Court should deny plaintiffs' requested relief.

Respectfully submitted,

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April 28, 2017

/s/ Greg J. Mueller
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