

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

<hr/>		
CITIZENS FOR RESPONSIBILITY AND)	
ETHICS IN WASHINGTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 18-76 (RC)
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	ANSWER
)	
Defendant.)	
<hr/>		

DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this Answer to the Complaint for Injunctive and Declaratory Relief filed by plaintiffs Citizens for Responsibility and Ethics in Washington (“CREW”) and Noah Bookbinder on January 12, 2018. Any allegation not specifically responded to below is DENIED.¹

¹ The Federal Election Commission (Commission) has historically voted by a majority vote (pursuant to 52 U.S.C. §§ 30106(c) and 30107(a)(6)) to authorize an appearance by the Office of General Counsel (OGC) on behalf of the Commission in a suit commenced pursuant to 52 U.S.C. § 30109(a)(8). There are, however, two general categories of cases that may come before a court in which there are insufficient votes to pursue a matter arising from an administrative complaint. In the first category of cases, litigation is commenced against the Commission after it does not approve a recommendation by OGC to find “reason to believe” that a violation of the FECA or of its regulations occurred, and the file was consequently closed. 52 U.S.C. § 30109(a)(8). In the second category of cases, the litigation is commenced against the Commission after OGC recommends dismissing the matter, and the Commission closes the file after three or more Commissioners approve OGC’s recommendation or there are otherwise three or fewer Commissioners voting to find reason to believe. In both instances, the reason for the inaction of the Commission is that there were not four or more Commissioners’ votes to find “reason to believe” regarding the allegations in the administrative complaint.

Judicial review of the FEC dismissal of an administrative complaint requires the Court to examine the agency’s reasoning as expressed by Commissioners or, in some circumstances, by OGC. *See Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1134 (D.C. Cir. 1987). In the first category of cases described above, the court must be supplied with a “statement of reasons” of those Commissioners who voted against, or abstained from voting for, the OGC

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 an administrative complaint filed by plaintiffs, which plaintiffs amended, alleging that New Models violated certain provisions of the Federal Election Campaign Act ("FECA").

2. This paragraph purports to describe portions of the First General Counsel's Report, which speaks for itself, and thus requires no response. To the extent a response is required, ADMIT that the First General Counsel's Report recommended finding that there was reason to believe that New Models was a political committee in 2012.

3. ADMIT that the Commission considered the allegations in plaintiffs' administrative complaint and, by a 2-to-2 vote, did not find reason to believe New Models violated FECA; further ADMIT that the Commission then voted 4-to-0 to close the file.

recommendation, who the court has called the "controlling group." *Id.*; *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."); *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).

In the second category of cases described above, any member or members of the group of Commissioners who approve OGC's dismissal recommendation may issue their own statement(s) of reasons to provide the basis for his or her action. If one or more members who supported dismissal do not file a statement containing the basis of his or her action, the rationale provided in OGC's report shall be among those considered by the Court. *See FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 38 & n.19 (1981) (staff report may provide a basis for the Commission's action). Although the views of the Commissioners who voted to pursue enforcement are not defended by OGC, their statements of reasons are made part of the administrative record as long as they are filed by the time the record is certified, and when filed shall be available for the Court's consideration.

4. ADMIT that, on December 20, 2017, then-Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman issued a statement of reasons explaining why they did not vote to find reason to believe New Models violated FECA. The second, third, and fourth sentences of this paragraph describes this statement of reasons, which speaks for itself, and requires no response. DENY that the reasoning set forth in this statement of reasons is contrary to law.

5. This paragraph purports to identify errors contained in the statement of reasons issued by then-Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman, which speaks for itself, and requires no response. To the extent a response is required, it is DENIED.

6. 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, that 52 U.S.C. § 30109(a)(8) provides for venue in the United States District Court for the District of Columbia, and that the Court has personal jurisdiction over the Commission. DENY the remainder of this paragraph.

7-9. The Commission is without knowledge or information sufficient to admit or deny the allegations in these paragraphs.

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

11. ADMIT 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. DENY the remainder of the paragraph.

13. ADMIT 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.

14. 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.

15. This paragraph describes a blog post made 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 blog post, 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 need to access certain information. DENY the remainder of this paragraph.

17. ADMIT the first sentence of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the allegations in the second sentence of this paragraph. ADMIT that registered voters (and others) may legally review information that is publicly reported under 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 allegations in the third, fourth, and fifth sentences of this paragraph, which

are vague and refer, *inter alia*, to unspecified provisions of FECA and the unspecified contributions to an unidentified political committee.

18. ADMIT.

19. The first sentence of this paragraph quotes a provision of FECA and Commission regulations defining “political committee,” which speak for themselves, and requires 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 and regulatory definitions of the term “political committee,” but DENY that this paragraph sets forth all the requirements for constituting such a committee. The second sentence of this paragraph quotes portions of the statutory provision defining “expenditure,” which speaks for itself and requires no response. To the extent a response is required, ADMIT that the quoted language in the second sentence of this paragraph appears in the statutory definition of the term “expenditure,” but DENY that this sentence sets forth the complete or accurate statutory definition of that term. The third sentence of this paragraph purports to describe the legal requirements for determining whether a group is a political committee based on *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 FECA sets forth the statutory definition of “political committee” and that *Buckley* imposes an additional “major purpose” requirement for certain organizations, but DENY that this paragraph sets forth a complete description of that analysis.

20. This paragraph contains plaintiffs’ description 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.

21. This paragraph contains plaintiffs’ description 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 periodic reports with the FEC that disclose the information described in this paragraph.

22-24. These paragraphs describe FECA’s statutory provisions and an FEC policy governing the FEC’s administrative enforcement process, which speak for themselves, and require no response. To the extent responses are required, ADMIT that these paragraphs generally describe FECA’s administrative enforcement procedures, including the procedures for obtaining judicial review of a Commission dismissal decision.

25. ADMIT.

26. ADMIT that the complaint alleged the described FECA violations.

27. ADMIT that this paragraph generally describes plaintiffs’ administrative complaint.

28. ADMIT that, by letter dated November 5, 2017 from its counsel, New Models responded to plaintiffs’ administrative complaint. Also ADMIT that, in its response, New Models stated that it made certain contributions, as defined under FECA, of more than \$1,000 in 2012 and asserted that it did not have the major purpose of nominating or electing federal candidates. DENY the remainder of this paragraph.

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

required, ADMIT that the First General Counsel's Report identified certain contributions made by New Models and recommended finding that there was reason to believe that New Models was a political committee in 2012 and had violated FECA's registration and reporting requirements.

30. DENIED.

31. ADMIT that the Commission considered the allegations in plaintiffs' administrative complaint and, by a 2-to-2 vote on November 14, 2017, did not find reason to believe New Models violated FECA; further ADMIT that the Commission then voted 4-to-0 to close the file.

32. ADMIT that, on December 20, 2017, then-Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman issued a statement of reasons explaining why they did not vote to find reason to believe New Models violated FECA. The remainder of this paragraph describes this statement of reasons, which speaks for itself, and requires no response.

33. ADMIT that, on December 21, 2017, then-Commissioner Ellen L. Weintraub issued a statement of reasons explaining why she voted to find reason to believe New Models violated FECA. The remainder of this paragraph describes this statement of reasons, which speaks for itself, and requires no response.

34. This paragraph incorporates by reference all preceding paragraphs. The Commission likewise incorporates by reference its preceding responses, including that any allegation not specifically responded to therein is DENIED.

35. ADMIT that the statement of reasons of then-Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman is the "controlling" explanation for the Commission's dismissal decision. To the extent this paragraph describes this statement of reasons, which speaks for

itself, no response is required. DENY that the dismissal decision was arbitrary, capricious, an abuse of discretion, or contrary to law.

36. DENIED.

37. To the extent this paragraph describes portions of then-Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman's statement of reasons, which speaks for itself, no response is required. To the extent this paragraph also describes portions of *Citizens for Responsibility & Ethics in Washington v. FEC*, 209 F. Supp. 3d 77 (D.D.C. 2016), which speaks for itself, no response is required. To the extent a response is required, ADMIT that the cited case contains the quoted text. DENY the remaining allegations in this paragraph.

38. DENIED.

PRAYER FOR RELIEF

The Court should deny plaintiffs' requested relief.

Respectfully submitted,

Lisa J. Stevenson (D.C. Bar No. 457628)
Acting General Counsel
lstevenson@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

Charles Kitcher (D.C. Bar No. 986226)
Acting Assistant General Counsel
ckitcher@fec.gov

/s/ Haven G. Ward
Haven G. Ward (D.C. Bar No. 976090)
Attorney
hward@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
1050 First Street, N.E.
Washington, D.C. 20463
(202) 694-1650

March 26, 2018