

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

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON,

Plaintiff,

v.

AMERICAN ACTION NETWORK,

Defendant.

Civil Action No. 1:18-cv-945 (CRC)

**AMERICAN ACTION NETWORK’S ANSWER AND AFFIRMATIVE DEFENSES**

Defendant American Action Network (“AAN”), by and through counsel, hereby answers the Complaint (Dkt. No. 1) filed by Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”), denying each allegation of the Complaint except to the extent expressly admitted below:

1. Admitted that Plaintiff has filed this action against AAN. All other allegations in this paragraph are denied. To the extent this paragraph alleges that AAN violated the Federal Election Campaign Act of 1971 (“FECA”) after June 2011, that claim has been dismissed, and no response is required.

2. Admitted that Plaintiff filed an administrative complaint with the Federal Election Commission (“FEC” or “Commission”) on or about June 7, 2012, alleging supposed violations of the FECA by AAN. All other allegations in this paragraph are denied.

3. Admitted that the FEC dismissed Plaintiff’s administrative complaint against AAN and that Plaintiff challenged the FEC’s dismissal in court. The judicial decisions cited by Plaintiff speak for themselves and require no response. To the extent a response to these allegations is required, denied. All other allegations in this paragraph are denied.

4. The judicial opinion cited by Plaintiff speaks for itself and requires no response. To the extent a response is required, denied. All other allegations in this paragraph are denied.

5. Admitted that the FEC had until April 19, 2018 to respond to the Court's Order. The judicial opinion cited by Plaintiff speaks for itself and requires no response. To the extent a response is required, denied. All other allegations in this paragraph are denied.

6. Admitted that the FEC did not act within 30 days of the Court's Order in *CREW v. FEC*, 299 F. Supp. 3d 83 (D.D.C. 2018). All other allegations in this paragraph are denied.

7. Admitted that Plaintiff has brought this action. All other allegations in this paragraph are denied. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

#### **JURISDICTION AND VENUE**

8. AAN denies the Court has subject-matter jurisdiction. The allegations in this paragraph otherwise call for a legal conclusion to which no response is required. To the extent a response is required, denied.

#### **PARTIES**

9.–12. Admitted that Plaintiff is an entity that sometimes makes public statements and files FEC complaints. AAN otherwise lacks sufficient information to admit or deny Plaintiff's description of its activities. To the extent a response is required, denied.

13. Denied. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

14.–15. AAN lacks sufficient information to admit or deny Plaintiff's description of its activities. To the extent a response is required, denied.

16. Admitted.

## **STATUTORY AND REGULATORY FRAMEWORK**

### *Political Committees*

17.–22. FECA’s statutory provisions, the Code of Federal Regulations, items published in the Federal Register, and the Supreme Court’s decisions in *Buckley v. Valeo*, 424 U.S. 1 (1976), and *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986), speak for themselves and require no response. To the extent these allegations constitute legal conclusions, no response is required. To the extent a response is required, denied.

23. This paragraph sets forth legal conclusions and legal arguments to which no response is required. To the extent a response is required, denied.

24.–25. FECA’s statutory provisions and the Code of Federal Regulations speak for themselves and require no response. To the extent a response is required, denied.

26. The Court’s opinion dated March 20, 2018, speaks for itself and requires no response. To the extent a response is required, denied.

27.–29. FECA’s statutory provisions and the Code of Federal Regulations speak for themselves and require no response. To the extent a response is required, denied.

### *Enforcement*

30.–35. FECA’s statutory provisions speak for themselves and require no response. To the extent a response is required, denied.

## **FACTUAL BACKGROUND**

### *AAN’s Activity*

36. Admitted as to AAN’s public statements describing its mission and primary goal. Denied that any of AAN’s “activities” or “non-public statements” evince a “true mission . . . to elect and defeat candidates for federal office.”

37. Admitted that AAN received total funds exceeding \$1,000 in 2009. AAN's FEC reports of its independent expenditures speak for themselves and require no response. Plaintiff's assertions that AAN's "contributions" and "expenditure[s]" caused it to "meet[] the FECA's threshold for political committee status" state a legal conclusion to which no response is required. To the extent a response to these allegations is required, denied. All other allegations in this paragraph are denied.

38. Admitted that AAN was founded in 2009. Funds received by AAN and disclosed on its tax returns speak for themselves and require no response. All other allegations in this paragraph are denied.

39. This paragraph sets forth legal conclusions and legal arguments to which no response is required. To the extent a response is required, denied.

40. AAN's FEC reports speak for themselves and require no response. To the extent a response is required, denied. All other allegations in this paragraph are denied.

41. Admitted that AAN reported an independent expenditure of \$29,000 for an advertisement that supported candidate Tim Burns. Plaintiff's statement that "AAN met the statutory qualification for political committee status . . . no later than May 6, 2010" is a legal conclusion to which no response is required. To the extent a response is required, denied. All other allegations in this paragraph are denied.

42. Admitted that AAN reported independent expenditures that opposed U.S. Senator Russ Feingold and candidates Bill Keating, Bryan Lentz, Dan Seals, and Chad Causey. AAN's FEC reports speak for themselves and require no response. All other allegations in this paragraph are denied.

43. Admitted that AAN reported \$514,894 in total independent expenditures to support candidate Kelly Ayotte in 2010. The materials and advertisements speak for themselves and require no response. All other allegations in this paragraph are denied.

44. Denied.

45. Admitted that AAN reported a disbursement of \$725,000 for an advertisement that referenced Representative Ed Perlmutter that speaks for itself. All other allegations in this paragraph are denied.

46. Denied.

47. Admitted that AAN reported a disbursement of \$705,000 for an advertisement that referenced Representative Dina Titus that speaks for itself. All other allegations in this paragraph are denied.

48. Admitted that AAN reported a second disbursement of \$725,000 for an advertisement that referenced Representative Perlmutter that speaks for itself. Admitted that AAN reported a disbursement of \$370,000 for an advertisement that referenced Representative Mark Schauer that speaks for itself. All other allegations in this paragraph are denied.

49. Admitted that AAN reported a disbursement of \$875,000 for an advertisement that referenced Annie Kuster that speaks for itself. Admitted that AAN reported a disbursement of \$225,000 for an advertisement that referenced Mike Oliverio that speaks for itself. AAN's FEC reports speak for themselves and require no response. All other allegations in this paragraph are denied.

50. This paragraph sets forth legal conclusions and legal arguments to which no response is required. To the extent a response is required, denied.

51. AAN's tax returns and FEC reports speak for themselves and require no response. All other allegations in this paragraph are denied.

52. AAN's tax returns and FEC reports speak for themselves and require no response. Plaintiff's reference to AAN's position "in previous proceedings" is vague and does not permit admission or denial; however, the administrative and judicial records of "previous proceedings" related to this matter speak for themselves and require no response. All other allegations in this paragraph are denied.

53. Denied.

54. AAN's tax returns and FEC reports speak for themselves and require no response. All other allegations in this paragraph are denied.

55. AAN's tax returns and FEC reports speak for themselves and require no response. All other allegations in this paragraph are denied.

56. AAN's tax returns and FEC reports speak for themselves and require no response. All other allegations in this paragraph are denied.

57.–58. Denied.

59. To the extent that Plaintiff's table includes figures reported by AAN on its tax returns and FEC reports, those figures speak for themselves and require no response. All other allegations in this paragraph are denied.

60. This paragraph sets forth legal conclusions and legal arguments to which no response is required. To the extent a response is required, denied. All other allegations in this paragraph are denied. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

61. Denied. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

62.–63. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

64. Denied that AAN has ever “qualif[ied] as a political committee.” Therefore, AAN denies that it is subject to any of the political committee registration, reporting, or termination requirements recited by Plaintiff. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

65. AAN lacks knowledge of what CREW is “unaware.” All other allegations in this paragraph are denied.

***Exhaustion of Administrative Remedies***

66. Admitted that, on or about June 7, 2012, Plaintiff filed an administrative complaint with the FEC alleging supposed violations of the FECA by AAN. The administrative complaint speaks for itself. All other allegations in this paragraph are denied. The administrative complaint did not “ma[k]e the same allegations contained” in the Complaint.

67. The FEC OGC’s recommendation speaks for itself and no response is required.

68. Admitted that the FEC dismissed Plaintiff’s complaint because it did not find reason to believe that a violation had occurred. All other allegations in this paragraph are denied.

69. Admitted that Plaintiff brought suit to challenge the FEC’s dismissal of the administrative complaint. The Court’s decision dated September 19, 2016, speaks for itself and requires no response. All other allegations in this paragraph are denied.

70. AAN lacks knowledge to admit or deny Plaintiff’s statements regarding the communications it may have received from the FEC.

71. Admitted that Plaintiff brought suit to challenge the FEC's second dismissal of the administrative complaint. The Court's decision dated March 20, 2018, speaks for itself and requires no response. All other allegations in this paragraph are denied.

72. Admitted.

73. Admitted that the FEC did not act on the Court's judgment by April 19, 2018.

### **PLAINTIFF'S CLAIMS FOR RELIEF**

#### **CLAIM ONE**

74. AAN incorporates its responses in all preceding paragraphs as if fully set forth herein.

75. Denied. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

76.-77. FECA's statutory provisions and the Code of Federal Regulations speak for themselves and require no response.

78. Admitted that AAN made expenditures aggregating in excess of \$1,000 during 2010. AAN's FEC reports speak for themselves and require no response.

79. Admitted that AAN received total funds exceeding \$1,000 in 2009. To the extent this paragraph seeks to characterize funds received by AAN as "contributions" within the meaning of FECA, it states a legal conclusion to which no response is required. To the extent a response is required, denied.

80. FEC and judicial precedent speaks for itself and requires no response. This paragraph also sets forth legal conclusions and legal arguments to which no response is required. To the extent a response is required, denied.



81. This paragraph sets forth legal conclusions and legal arguments to which no response is required. To the extent a response is required, denied.

82. Plaintiff's assertion that "AAN's major purpose in 2010 was the nomination or election of federal candidates" states a legal conclusion to which no response is required. To the extent a response is required, denied. All other allegations in this paragraph are denied.

83. This paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, denied. All other allegations in this paragraph are denied.

84. FECA's statutory provisions and the Code of Federal Regulations speak for themselves and require no response.

85. Admitted with respect to the time period prior to July 2011. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

86. This paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, denied. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

87. This paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, denied. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

## **CLAIM TWO**

88. AAN incorporates its responses in all preceding paragraphs as if fully set forth herein.

89. This paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, denied.

90.–92. This paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, denied. To the extent this paragraph alleges that AAN violated the FECA after June 2011, that claim has been dismissed, and no response is required.

**AFFIRMATIVE DEFENSES**

1. Plaintiff lacks standing.
2. The Court lacks subject-matter jurisdiction.
3. Plaintiff has failed to state a claim.
4. The action is barred by the statute of limitations.
5. Plaintiff's asserted cause of action, 52 U.S.C. § 30109(a)(8)(C), is unconstitutional.

WHEREFORE, AAN requests that the Complaint be dismissed with prejudice and that the Court award it all other lawful and proper relief.

Respectfully submitted,

By: s/ Stephen Obermeier  
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Dated: October 28, 2019

*Counsel for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 28, 2019, a true and correct copy of the foregoing was served electronically on all registered counsel of record via ECF and is available for viewing and downloading from the ECF system.

s/ Stephen Obermeier  
Stephen Obermeier