

**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,)	No. 18-cv-1861 (CRC)
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	ANSWER
)	
Defendant.)	
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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 (“Bookbinder”). (Complaint for Injunctive and Declaratory Relief, No. 18-cv-1861 (CRC) (D.D.C. filed Aug. 8, 2018) (Docket No. 1).) Any allegation not specifically responded to below is DENIED.

1. This paragraph summarizes plaintiffs’ complaint, the allegations of which speak for themselves, and therefore no response is necessary. To the extent a response is required, ADMIT that CREW and its past and current executive directors, Melanie Sloan and Noah Bookbinder, filed initial and amended administrative complaints in which Americans for Job Security (“AJS”) and Stephen DeMaura, individually and in his capacity as Treasurer of AJS, were named as respondents, but DENY that Bookbinder was a complainant on the initial administrative complaint. DENY that the Commission has failed to act on either the initial or amended administrative complaints.

2. 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 that the Administrative Procedure Act, 5 U.S.C. § 702, provides jurisdiction in this case and DENY the remainder of this paragraph.

3-5. The Commission is without knowledge or information sufficient to admit or deny the allegations in these paragraphs.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. ADMIT that Noah Bookbinder is the executive director of CREW. The Commission is without knowledge or information sufficient to admit or deny the allegations concerning Mr. Bookbinder in the second sentence of this paragraph. ADMIT that registered voters (and others), including Mr. Bookbinder, 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.

13. ADMIT that CREW and Melanie Sloan filed the initial administrative complainant against AJS and Stephen DeMaura, that CREW and Noah Bookbinder filed an amended administrative complaint, and that CREW and these individuals 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.

14. ADMIT.

15. 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.

16. 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.

17. 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).

18. 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.

19. 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.

20-21. 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 portions of these paragraphs generally describe portions of FECA's administrative enforcement procedures and a portion describes the current practice of staff in the Enforcement Division of the Office of General Counsel, who review publicly available information and may incorporate facts deriving therefrom in recommendations regarding whether there is "reason to believe" violations of FECA have occurred.

22. 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.

23. 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.

24. This paragraph repeats paragraph 20 of the complaint. The Commission incorporates its answer to paragraphs 20-21 of the complaint here.

25. This paragraph contains plaintiffs' descriptions of certain provisions of FECA, which speak for themselves, and require no response. To the extent a response is required, ADMIT that this paragraph describes the procedures for obtaining judicial review of a Commission dismissal decision in the circumstance in which such a dismissal decision is judicially reviewable, but DENY that this case involves a "dismissal of a complaint."

26-27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. ADMIT that on March 8, 2012, CREW and Melanie Sloan 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 the administrative complaint filed by CREW and Melanie Sloan alleged that AJS violated certain provisions of FECA.

33. 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.

34. 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.

35. 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.

36. 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.

37. ADMIT.

38-39. These paragraphs describe 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 require no responses. To the extent responses are required, ADMIT the court found the FEC’s dismissal of plaintiffs’ administrative complaint against AJS contrary to law, granted plaintiffs’ motion for summary judgement, and remanded the AJS matter to the FEC for further consideration.

40. DENY that the Commission was required to notify the Court, CREW, Sloan or Bookbinder (who was not a plaintiff to the litigation) by October 19, 2016 of Commission action taken on the administrative complaint following remand. ADMIT that on October 4, 2016, the Commission issued a press release announcing that it would not appeal the Court’s remand order referenced in the previous paragraph, *see* FEC Press Release, <https://www.fec.gov/updates/fec-will-not-appeal-district-court-decision-crew-v-fec/>, and 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). DENY the remainder of this paragraph.

41. ADMIT that CREW and Melanie Sloan filed a separate lawsuit against the Commission, *CREW v. FEC*, No. 16-2255 (CRC) (D.D.C. filed Nov. 14, 2016), but DENY that Noah Bookbinder was a plaintiff in that lawsuit. This paragraph characterizes the civil complaint in that lawsuit, which speaks for itself and therefore no response is necessary.

42. ADMIT that the Court entered a protective order in the referenced lawsuit, *see* Protective Order, *CREW v. FEC*, No. 16-2255 (CRC) (D.D.C. July 4, 2017) (Docket No. 26), that CREW and Sloan were parties to that litigation, and that the Commission submitted summary judgment briefs and declarations containing information that the Court, CREW, and Sloan received in accordance with the terms of that protective order. DENY that Bookbinder was a party to that litigation, though the FEC notes that he was an identified permitted recipient of 30109(a)(12)(A) Material in accordance with paragraph 4 of the aforementioned Protective Order.

43. ADMIT that CREW and Sloan stipulated to dismissal without prejudice of the portion of the referenced lawsuit regarding AJS, but DENY that Bookbinder was a party to that litigation. This paragraph characterizes the joint stipulation, which speaks for itself and therefore no response is necessary. To the extent a response is required, the remaining allegations of this paragraph are DENIED.

44. ADMIT that CREW and Bookbinder submitted an amended administrative complaint regarding AJS to the FEC and that Exhibit 1 to plaintiffs' complaint is a copy of that amended administrative complaint. ADMIT that the amended administrative complaint attempted to include as a complainant Noah Bookbinder rather than Melanie Sloan and that the allegations against the Respondent were identical. The Commission is without knowledge or information sufficient to admit or deny the extent of CREW's purposes for submitting the amended administrative complaint. DENY that the attempted substitution of administrative respondents creates rights for the newly added complainant that are identical to the previously included complainant.

45. DENIED.

46-47. ADMIT that the Commission has confirmed receipt to CREW of the filing of its amended complaint, including in the form of an acknowledgement letter and when contacted by counsel for CREW.

48. ADMIT that the Commission has not taken final action with respect to AJS subsequent to the remand decision identified above in response to paragraphs 38-39 of the complaint. 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) and that the FEC has provided CREW, Sloan, and the Court with information regarding that matter as necessary to defend against the challenges in *CREW v. FEC*, No. 14-1419 and *CREW v. FEC*, No. 16-2255 pursuant to protective orders that have been entered in those cases. *See* Protective Order, *CREW v. FEC*, No. 14-1419 (CRC) (D.D.C. Dec. 12, 2016) (Docket No. 63); Protective Order, *CREW v. FEC*, No. 16-2255 (CRC) (D.D.C. July 4, 2017) (Docket No. 26). DENY the remaining allegations of this paragraph.

49. DENY that “[m]ulti-year delays in acting on a pending complaint are not uncommon at the Commission.” This paragraph quotes and characterizes a Statement of Reasons issued by one FEC Commissioner in a different FEC enforcement matter, which speaks for itself and therefore no response is necessary. To the extent a response is required, the allegations in this paragraph are DENIED.

50-52. Deny the first sentence of paragraph 50. Paragraphs 50 through 52 contain plaintiffs’ conclusions and characterizations of certain other FEC enforcement matters and litigation CREW has initiated against the FEC. The referenced materials speak for themselves and therefore no response is necessary. To the extent that responses are required, ADMIT that CREW and one or more individuals filed the referenced administrative complaints with the FEC

and has since litigated these matters, but DENY that plaintiffs' characterizations and quotations fully and accurately summarize what occurred in those matters. The remaining allegations are DENIED.

53. DENY that "[s]uch delays," and the potential for documents to be destroyed or memories to fade, due to the passage of time, "commonly impact the FEC's ability to carry out its enforcement function." ADMIT that there is a five-year statute of limitations applicable to FECA violations, which by definition, effectuates Congress's intent to constrain enforcement of FECA.

54. DENIED.

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

56. ADMIT that the Commission received the initial administrative complaint concerning AJS and Stephen DeMaura filed by CREW and Melanie Sloan on March 8, 2012.

57. ADMIT that CREW and Sloan have initiated two lawsuits against the FEC that concerned, in part, the administrative complaint they filed concerning AJS. The second sentence describes the Court's merits decision in *CREW v. FEC*, No. 14-1419 (CRC), published at 209 F. Supp. 3d 77 (D.D.C. 2016), and CREW's subsequent court complaint in *CREW v. FEC*, No. 16-2255 (CRC), both of which speak for themselves and therefore no response is necessary. To the extent a response is required, the remaining allegations of this paragraph are DENIED.

58. This paragraph states one or more legal conclusions, to which no response is required. To the extent a response is required, the allegations are DENIED.

59. The first sentence is DENIED. ADMIT that the Commission has not taken final action with respect to the AJS matter and that the FEC has provided CREW, Sloan, and the

Court with information regarding that matter as necessary to defend against the challenges in *CREW v. FEC*, No. 14-1419, and *CREW v. FEC*, No. 16-2255, pursuant to protective orders that have been entered in those cases. *See* Protective Order, *CREW v. FEC*, No. 14-1419 (CRC) (D.D.C. Dec. 12, 2016) (Docket No. 63); Protective Order, *CREW v. FEC*, No. 16-2255 (CRC) (D.D.C. July 4, 2017) (Docket No. 26). DENY the remaining allegations of this paragraph, including that the referenced November 2017 sealed filing was an affidavit.

60. DENIED.

61. This paragraph describes 52 U.S.C. § 30109(a)(8), which speaks for itself, and therefore no response is required. To the extent a response is required, ADMIT that 52 U.S.C. § 30109(a)(8) provides a procedure by which certain parties can attempt to challenge an alleged delay by the FEC in court.

62-64. These paragraphs contain plaintiffs' conclusions of law and characterization of the matters complained of, to which no responses are necessary. To the extent responses are required, ADMIT that thorough investigations of administrative complaints and timely action by the FEC in making final determinations is in the public interest. The allegations are otherwise DENIED.

REQUESTED RELIEF

The Court should deny plaintiffs' requested relief.

DEFENDANT FEDERAL ELECTION COMMISSION'S AFFIRMATIVE DEFENSES

1. The Administrative Procedure Act, 5 U.S.C. § 702, does not provide jurisdiction for plaintiffs' claims.

2. One or both plaintiffs lack standing to bring their claims, including for the reason that Noah Bookbinder was not a party to the administrative complaint CREW and Melanie Sloan submitted to the FEC.

Respectfully submitted,

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