

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

PUBLIC CITIZEN, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civ. No. 14-148 (RJL)
)	
v.)	
)	
FEDERAL ELECTION COMMISSION,)	ANSWER
)	
Defendant.)	
)	

DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Complaint for Declaratory and Injunctive Relief filed by plaintiffs Public Citizen, Craig Holman, Protectoureelections.org, and Kevin Zeese. Any allegation not specifically responded to below is DENIED.¹

¹ This litigation is commenced against the Federal Election Commission (Commission) 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 this case and that the file was consequently closed. 2 U.S.C. § 437g(a)(8). The reason for the inaction of the Commission is 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 complaint, like any other, is judicially reviewable under Section 437g(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). The Commission has historically voted by a majority vote (pursuant to 2 U.S.C. §§ 437c(c) and

1. This paragraph summarizes plaintiffs' complaint, the allegations of which speak for themselves. ADMIT that the Commission dismissed an administrative complaint filed by plaintiffs, in which Crossroads Grassroots Political Strategies ("Crossroads GPS") was the respondent.

2. ADMIT that plaintiffs filed an administrative complaint with the Commission on October 14, 2010; the administrative complaint speaks for itself. The second sentence of this paragraph contains conclusions of law to which no response is required. To the extent a response is required, the second sentence of this paragraph is DENIED.

3. This paragraph contains plaintiffs' characterizations of unspecified judicial decisions and statutory provisions to which no response is required. To the extent a response is required, the Commission ADMITS the Supreme Court has found that certain disclosure and disclaimer laws further the important government interests referenced in the first sentence, and that democracy benefits from enforcement of FECA's disclosure requirements, but the allegations in this paragraph are too vague to enable the Commission to generally admit or deny them due to, *inter alia*, the failure to specify which laws and the imprecision of terms like "health."

4. ADMIT.

5. DENY.

6. DENY.

7. This paragraph summarizes plaintiffs' complaint, which speaks for itself.

437d(a)(6) to authorize the OGC's appearance on behalf of the Commission in suits commenced pursuant to 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 recommendation to find RTB or any of the reasons supporting it, which are part of the administrative record.

8. ADMIT that 2 U.S.C. § 437g(a)(8) provides statutory jurisdiction and that 28 U.S.C. § 1331 provides for federal question jurisdiction in the district court.

9. ADMIT that 2 U.S.C. § 437g(a)(8) provides for venue in the United States District Court for the District of Columbia.

10. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph. To the extent the sixth sentence summarizes the complaint, that document speaks for itself.

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

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

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

14. ADMIT.

15. ADMIT that American Crossroads is organized under section 527 and registered with the Commission as an independent-expenditure-only political committee, that Crossroads GPS is a nonprofit organization that was established in June 2010, and that there is some overlap between the employees of the two organizations. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

16. ADMIT the first sentence of this paragraph. The second sentence of this paragraph — which purports to paraphrase 26 U.S.C. § 501(c)(4) and unspecified IRS regulations, which speak for themselves — does not require a response. ADMIT that several letters challenging the classification of Crossroads GPS as a 501(c)(4) corporation have been

filed with the Internal Revenue Service. ADMIT the fourth sentence of this paragraph. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

17. This paragraph quotes a press report, which speaks for itself, and does not require a response; to the extent a response is required, ADMIT that the *Politico* article quoted in this paragraph contains the quoted text.

18. ADMIT that Crossroads GPS has spent tens of millions of dollars on independent expenditures since 2010, more as an absolute amount than many of the thousands of super PACs registered with the Commission. The Commission is without knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, in part because of the vagueness of the allegations.

19. ADMIT that in 2010, Crossroads GPS spent millions of dollars on independent expenditures, electioneering communications, and other communications. To the extent this paragraph alleges that certain specified and unspecified activities constitute “federal campaign activity,” that allegation is a legal conclusion and does not require a response. The second sentence of this paragraph characterizes the Commission’s First General Counsel’s Report, which speaks for itself, and does not require a response. To the extent a response is required, DENY that the Commission’s Office of General Counsel made any factual or legal “findings” in this or any other matter.

20. ADMIT that during the 2011-2012 election cycle, Crossroads GPS reported spending at least \$71 million on independent expenditures and electioneering communications. To the extent this paragraph alleges that certain other unspecified activities constitute “federal campaign activity,” that allegation is a legal conclusion and does not require a response.

21. The Commission is without knowledge or information sufficient to admit or deny the allegations in the first and fourth sentences of this paragraph. The second sentence is a legal conclusion and does not require a response. ADMIT that Crossroads GPS has sought tax-exempt status under section 501(c)(4) of the Internal Revenue Code, and ADMIT that Crossroads GPS contends that it is not a political committee under FECA and that Crossroads GPS has not registered with the Commission and reported as a political committee. To the extent the allegations in this paragraph purport to paraphrase the requirements of 26 U.S.C. § 501(c)(4) and 2 U.S.C. § 434, those provisions speak for themselves and no response is required; to the extent a response is required, DENY that this paragraph completely and accurately describes the content and requirements of the referenced statutory provisions.

22. ADMIT that FECA contains provisions requiring groups that meet the definition of “political committee” to comply with certain organizational, registration, and disclosure requirements.

23. This paragraph purports to quote certain provisions of FECA, which speak for themselves and require no response. To the extent a response is required, ADMIT that the quoted language in this paragraph appears in the statutory definitions of the terms “political committee,” “contribution,” and “expenditure,” respectively, but DENY that this paragraph sets forth the complete statutory definitions or judicial interpretations of any of those terms.

24. This paragraph contains plaintiffs’ characterizations of judicial decisions, to which no response is required. To the extent a response is required, ADMIT that the cited cases contain the quoted text.

25. This paragraph purports to characterize the requirements for determining whether a group is a political committee under 2 U.S.C. § 431(4)(A) and the Supreme Court’s decision in

Buckley v. Valeo, 424 U.S. 1 (1976), to which no response is required. To the extent a response is required, ADMIT that 2 U.S.C. § 431(4)(A) sets forth part of the statutory definition of “political committee” and that *Buckley* contains the quoted language regarding an organization’s “major purpose.”

26. ADMIT that the Commission determines groups’ “major purpose” on a case-by-case basis. The remainder of this paragraph contains plaintiffs’ characterizations of judicial decisions, to which no response is required. To the extent a response is required, ADMIT that the decisions cited in this paragraph upheld the Commission’s case-by-case approach to determining a group’s major purpose.

27. ADMIT that the Commission issued its Political Committee Status Supplemental Explanation and Justification, 72 Fed. Reg. 5595 (Feb. 7, 2007) (“Political Committee Status Supplemental E&J”), in 2007. The remainder of this paragraph purports to paraphrase the Political Committee Status Supplemental E&J, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the Political Committee Status Supplemental E&J provides guidance about how the Commission determines an organization’s major purpose, and DENY that this paragraph sets forth the complete explanation and justification set forth in the Political Committee Status Supplemental E&J.

28. ADMIT that on October 14, 2010, plaintiffs filed a sworn administrative complaint that was designated by the Commission as MUR 6396. 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 Crossroads GPS violated certain provisions of FECA.

29-31. ADMIT that these paragraphs and the subparagraphs therein generally describe allegations contained in plaintiffs' administrative complaint.

32. ADMIT.

33. This paragraph purports to paraphrase portions of the Commission's First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, ADMIT that the first sentence of this paragraph paraphrases a statement in the Commission's First General Counsel's Report and DENY the second sentence of this paragraph.

34. This paragraph purports to paraphrase portions of the Commission's First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, DENY that the Commission's Office of General Counsel made any factual or legal "findings" in this or any other matter, ADMIT that the Commission's First General Counsel's Report contained the quoted language — but not the bracketed alterations — in this paragraph, and ADMIT that this paragraph otherwise generally describes portions of the Commission's First General Counsel's Report.

35. This paragraph purports to paraphrase portions of the Commission's First General Counsel's Report, 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 contained the quoted language — but not the bracketed alterations — in this paragraph, and ADMIT that this paragraph generally describes statements in the Commission's First General Counsel's Report.

36. This paragraph purports to paraphrase portions of the Commission's First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, DENY that this paragraph accurately describes the cited portions of the Commission's First General Counsel's Report.

37. This paragraph purports to paraphrase portions of the Commission's First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, DENY that the Commission's Office of General Counsel made any factual or legal "findings" in this or any other matter, ADMIT that the Commission's First General Counsel's Report contained the quoted language, but not the added emphasis, in this paragraph, and ADMIT that this paragraph generally describes portions of the Commission's First General Counsel's Report.

38. This paragraph purports to describe a portion of the Response that Crossroads GPS filed with the Commission in MUR 6396, as that Response was described in the Commission's First General Counsel's Report. Both Crossroads GPS's Response and the Commission's First General Counsel's Report speak for themselves and require no response. To the extent a response is required, ADMIT that Crossroads GPS's Response and the Commission's First General Counsel's Report contained the cited spending amounts, and ADMIT that this paragraph generally describes statements in the Commission's First General Counsel's Report.

39. This paragraph purports to paraphrase portions of the Commission's First General Counsel's Report, 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 contained the quoted language and included as an attachment the text of ten advertisements, and ADMIT that this paragraph describes portions of the Commission's First General Counsel's Report, except DENY that the page citation in the last sentence of this paragraph is accurate.

40. This paragraph characterizes and purports to paraphrase and quote portions of the Commission's First General Counsel's Report, which speaks for itself, and requires no response.

To the extent a response is required, DENY that the Commission's Office of General Counsel or its First General Counsel's Report made any factual or legal "findings" in this or any other matter, ADMIT that the Commission's First General Counsel's Report contained the quoted language — but not the bracketed alterations — in this paragraph, and ADMIT that this paragraph otherwise generally describes portions of the Commission's First General Counsel's Report.

41. This paragraph characterizes and purports to paraphrase portions of the Commission's First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, DENY that the Commission's Office of General Counsel made any factual or legal "findings" in this or any other matter, and ADMIT that this paragraph otherwise generally describes portions of the Commission's First General Counsel's Report.

42. This paragraph characterizes and purports to paraphrase portions of the Commission's First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, DENY that the Commission's Office of General Counsel made any factual or legal "findings" in this or any other matter, and ADMIT that this paragraph otherwise generally describes portions of the Commission's First General Counsel's Report.

43. This paragraph characterizes and purports to paraphrase and quote portions of the Commission's First General Counsel's Report, which speaks for itself, and requires no response. To the extent a response is required, DENY that the Commission's Office of General Counsel made any factual or legal "findings" in this or any other matter, ADMIT that the Commission's First General Counsel's Report contained the quoted language — but not the bracketed alterations — in this paragraph, and ADMIT that this paragraph otherwise generally describes portions of the Commission's First General Counsel's Report.

44. This paragraph purports to paraphrase and quote portions of the Commission's First General Counsel's Report, 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 contained the quoted language in this paragraph, and ADMIT that this paragraph generally describes portions of the Commission's First General Counsel's Report.

45. ADMIT that on December 3, 2013, the Commission failed by a vote of 3 to 3 to find reason to believe that Crossroads GPS violated 2 U.S.C. §§ 432, 433, and 434 and closed its file, thereby dismissing the administrative complaint. DENY the remainder of this paragraph to the extent it characterizes the Office of General Counsel's recommendation or the Commission's vote on that recommendation.

46. ADMIT.

47. ADMIT that the Commission publicly released the Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen in MUR 6396 on January 8, 2014, and ADMIT that these three Commissioners voted against finding reason to believe that Crossroads GPS violated FECA as alleged in the administrative complaint; DENY the remainder of this paragraph.

48. ADMIT.

49. ADMIT that Vice Chair Ann M. Ravel, Commissioner Steven T. Walther, and Commissioner Ellen L. Weintraub voted to find reason to believe and initiate an investigation in MUR 6396, that the Statement of Reasons issued by those Commissioners contains the quoted language — but not the bracketed alterations — in the first two sentences of this paragraph, and that this paragraph otherwise generally describes portions of the Statement of Reasons of Vice

Chair Ann M. Ravel, Commissioner Steven T. Walther, and Commissioner Ellen L. Weintraub in MUR 6396.

50. ADMIT that the Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen in MUR 6396 concludes that Crossroads GPS did not have the major purpose of nominating or electing federal candidates; DENY the remainder of this paragraph and the subparagraphs therein.

51. DENY.

52. DENY.

REQUESTED RELIEF

The Court should deny plaintiffs' requested relief.

Respectfully submitted,

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April 8, 2014