

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

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant,

CROSSROADS GRASSROOTS POLICY
STRATEGIES

1401 New York Ave., NW

Ste. 1200

Washington, DC 20005,

Proposed Intervenor-
Defendant.

Civil Action No. 1:16-cv-00259-BAH

**[PROPOSED] ANSWER AND AFFIRMATIVE DEFENSE OF
INTERVENOR-DEFENDANT CROSSROADS GRASSROOTS POLICY STRATEGIES**

By leave of the Court, Crossroads Grassroots Policy Strategies (“Crossroads GPS”) intervenes in this action as a party Defendant, and submits this Answer, denying each allegation of the Complaint except to the extent expressly admitted below:

1. Admitted that Plaintiffs have filed an action challenging the Federal Election Commission’s (“FEC” or Commission”) dismissal of an administrative complaint filed by Plaintiffs and the FEC’s promulgation of the regulation at 11 C.F.R. § 109.10(e)(1)(vi). To the extent that Paragraph 1 contains Plaintiffs’ characterizations and conclusions of law, no response is required. To the extent any response is required, Plaintiffs’ characterizations and conclusions of law are denied.

2. Admitted that Crossroads GPS received funds in excess of \$3 million from a donor in 2012. Admitted that Karl Rove is an unpaid, informal advisor to Crossroads GPS.

Admitted that Crossroads GPS sponsored independent expenditure television advertisements in Ohio in 2012. Admitted that Crossroads GPS did not report the identity of donors on independent expenditure reports filed with the FEC. Denied that Crossroads GPS was required to disclose donors on any independent expenditure reports filed with the FEC. To the extent that Paragraph 2 contains Plaintiffs' characterizations and conclusions of law, no response is required. To the extent any response is required, Plaintiffs' characterizations and conclusions of law are denied.

3. Admitted that Crossroads GPS received approximately \$1.3 million in "matching" funds from donors for its unspecified general use in Ohio, and that Crossroads GPS did not report the identity of any of those donors on independent expenditure reports filed with the FEC. Denied that Crossroads GPS was required to disclose any donors on any independent expenditure reports filed with the FEC. To the extent that Paragraph 3 contains Plaintiffs' characterizations and conclusions of law, no response is required. To the extent any response is required, Plaintiffs' characterizations and conclusions of law are denied.

4. Admitted that Crossroads GPS did not report the identity of any of its other donors on independent expenditure reports filed with the FEC. Denied that Crossroads GPS was required to disclose donors on any independent expenditure reports filed with the FEC. Denied that independent expenditure advertisements distributed subsequent to the event at issue [duplicated] the example advertisements shown at the event. Denied that Crossroads GPS brought contributors to a fundraiser held on August 30, 2012, provided materials for donating to the group, showed example independent expenditure advertisements to these donors, and then solicited funds from these donors for the purpose of funding particular independent expenditure advertisements. To the extent that Paragraph 4 contains Plaintiffs' characterizations and

conclusions of law, no response is required. To the extent any response is required, Plaintiffs' characterizations and conclusions of law are denied.

5. Paragraph 5 sets forth Plaintiffs' opinions and characterizations and conclusions of law to which no response is required. To the extent any response is required, these allegations are denied.

6. Admitted that venue in this district is proper pursuant to 52 U.S.C. § 30109(a)(8)(A) and 28 U.S.C. § 1391(e). Otherwise denied.

7. Admitted that Plaintiff operates pursuant to Section 501(c)(3) of the Internal Revenue Code.

8 – 10. Crossroads GPS lacks sufficient information to admit or deny CREW's generalized descriptions of itself and its purposes, nor is any response to these descriptions required.

11. Admitted that Plaintiff files complaints with the FEC. Crossroads GPS lacks sufficient information to admit or deny CREW's generalized descriptions of itself and its purposes, nor is any response to these descriptions required.

12 – 13. Crossroads GPS lacks sufficient information to admit or deny CREW's generalized descriptions of itself and its purposes, nor is any response to these descriptions required.

14 – 15. Crossroads GPS lacks sufficient information to admit or deny CREW's descriptions of its publications, nor is any response to these descriptions required.

16. Denied that Crossroads GPS refuses to comply with FEC's reporting and disclosure requirements. Crossroads GPS lacks sufficient information to admit or deny CREW's

generalized descriptions of itself and its purposes, nor is any response required. To the extent a response to these allegations is required, they are denied.

17. Crossroads GPS lacks sufficient information about Plaintiff Nicholas Mezlak to admit or deny the factual representations regarding Mr. Mezlak set forth in Paragraph 17. To the extent that Paragraph 17 contains Plaintiffs' characterizations and conclusions of law, no response is required. To the extent any response is required, Plaintiffs' characterizations and conclusions of law are denied.

18. Paragraph 18 contains Plaintiffs' characterizations and conclusions of law to which no response is required. To the extent any response is required, these allegations are denied.

19-34. FECA's statutory provisions, the Code of Federal Regulations, and the FEC's policy statements speak for themselves and require no response.

35-39. Admitted.

40. Denied that Crossroads GPS held a fundraiser at the Tampa Club in Tampa, Florida on August 30, 2012.

41. Admitted that a news media report indicates there were "about 70" attendees at the August 30, 2012 event hosted by American Crossroads. The rest of Paragraph 41 contains Plaintiffs' characterizations of attendees, to which no response is required.

42. Admitted.

43. Admitted that a news media report attributed the quoted statements and recollections to Mr. Rove. Admitted that Mr. Rove affirmed in an affidavit that was included with Crossroads GPS's response to CREW's administrative complaint filed in FEC Matter Under Review 6696, and which Plaintiffs have attached to their Complaint in this instant matter as

Exhibit I, that the news media reporter's account of Mr. Rove's statements was substantially accurate.

44. Crossroads GPS's reports filed with the FEC speak for themselves and require no response.

45. Denied that Crossroads GPS's independent expenditure reports filed with the FEC failed to disclose the names of any donors that were required to be disclosed by relevant FEC regulations and precedent. Crossroads GPS's independent expenditure reports filed with the FEC speak for themselves and require no response.

46. American Crossroads' reports filed with the FEC speak for themselves and require no response.

47. Admitted that fourteen television advertisements were shown to attendees at the August 30, 2012 event hosted by American Crossroads. Admitted that eleven advertisements had previously been paid for and publicly distributed by Crossroads GPS. Admitted that two advertisements had previously been paid for and publicly distributed by American Crossroads. Admitted that one advertisement had previously been paid for by American Crossroads and shown to a focus group, but not publicly distributed. To the extent that Paragraph 47 contains Plaintiffs' characterizations of those advertisements, no response is required. To the extent any response is required, Plaintiffs' characterizations are denied.

48. Crossroads GPS's advertisements speak for themselves and require no response. To the extent any response is required, Crossroads GPS denies that this paragraph fully and accurately conveys the content of the referenced advertisements.

49. Generally denied. Admitted that American Crossroads officials orally solicited contributions from attendees at the August 30, 2012, event.

50. Admitted that a news media report attributed the quoted material to Mr. Barbour. Plaintiffs' characterizations of those statements attributed to Mr. Barbour require no response.

51. Denied that Mr. Law and Mr. Barbour used the name "American Crossroads" to refer to both American Crossroad and Crossroads GPS. Admitted that Mr. Law and Mr. Barbour solicited contributions to American Crossroads at the August 30, 2012 event. Crossroads GPS's advertising in Florida and related press release attached as Exhibit D to Plaintiffs' Complaint speak for themselves and require no response. To the extent that Paragraph 51 contains Plaintiffs' characterizations and speculation about the event that appear to derive from a third-party news report attached to Plaintiffs' Complaint as Exhibit G, and which require no response To the extent any response is required, Plaintiffs' characterizations and speculation are denied.

52. Denied that advertising aired by Crossroads GPS duplicated the example advertisements shown at the August 30, 2012, meeting. Crossroads GPS's advertising and FEC filings speak for themselves and no response is required. Paragraph 52 contains Plaintiffs' characterizations of Crossroads GPS's advertisements, to which no response is required.

53. Denied that Crossroads GPS's independent expenditure reports filed with the FEC failed to disclose the names of any donors that were required to be disclosed by relevant FEC regulations and precedent. Crossroads GPS' independent expenditure reports filed with the FEC speak for themselves and require no response.

54. Admitted.

55. Admitted that Plaintiff filed an administrative complaint against Crossroads GPS with the FEC on November 14, 2012. The content of Plaintiffs' administrative complaint filed with the FEC speaks for itself and no response is required. To the extent any response is

required, Crossroads GPS generally denies the substantive allegations set forth in Plaintiffs' administrative complaint.

56-61. Admitted that Crossroads GPS filed a response to Plaintiffs' administrative complaint with the FEC on January 17, 2013, and that this response included an affidavit signed by Mr. Rove. Plaintiffs' characterizations of Crossroads GPS's FEC response and Mr. Rove's affidavit require no response. To the extent any response is required, Plaintiffs' characterizations of Crossroads GPS's response are denied to the extent that those characterizations vary from Crossroads GPS's response.

62. Admitted that American Crossroads paid for and distributed advertising in connection with the U.S. Senate races in Montana and Florida, as well as in Wisconsin, Indiana, and Nebraska, subsequent to the August 30, 2012 meeting. Admitted that American Crossroads did not report spending any money on advertising subsequent to the August 30 meeting in connection with the U.S. Senate races in Massachusetts, Nevada, Ohio, or Virginia. Admitted that, subsequent to the August 30, 2012 meeting, Crossroads GPS paid for and distributed independent expenditures in connection with the U.S. Senate races in Massachusetts, Nevada, Ohio, and Virginia, as well as in North Dakota, Wisconsin, Montana, Indiana, Maine, and New Mexico.

63. Admitted.

64-69. Admitted that the FEC's Office of General Counsel issued a First General Counsel's Report that is date-stamped March 7, 2014. This First General Counsel's Report speaks for itself, and Plaintiffs' characterizations of the Report require no response. To the extent any response is required, Plaintiffs' characterizations of the First General Counsel's

Report are denied to the extent that those characterizations vary from First General Counsel's Report itself.

70-71. Admitted that the FEC voted on the recommendations made by the Office of General Counsel in the First General Counsel's Report. The official FEC records regarding the FEC's votes speak for themselves and require no response.

72. Admitted that the controlling Commissioners have not issued a Statement of Reasons in connection with MUR 6696.

[Paragraph numbers 73 through 109 are omitted in the Complaint.]

110. Crossroads GPS incorporates its responses in all preceding paragraphs as if fully set forth herein.

111. Denied.

112. Admitted that the three Commissioners who voted against finding reason to believe that Crossroads GPS violated the law have not issued a separate Statement of Reasons. Denied that these Commissioners failed to provide an explanation for their vote(s). Denied that the Office of General Counsel's First General Counsel's Report is insufficient to justify dismissal of the enforcement matter.

113-116. Denied.

117. Crossroads GPS incorporates its responses in all preceding paragraphs as if fully set forth herein.

118. Admitted that the three Commissioners who voted against finding reason to believe that Crossroads GPS violated the law have issued no separate Statement of Reasons. Denied that these Commissioners failed to provide an explanation for their vote(s). Denied that

the Office of General Counsel's First General Counsel's Report is insufficient to justify dismissal of the enforcement matter.

119-124. The First General Counsel's Report, Code of Federal Regulations, and FECA speak for themselves. To the extent these Paragraphs contain Plaintiffs' characterizations and conclusions of law, no response is required. To the extent any response is required, Plaintiffs' characterizations and conclusions of law are denied.

125. Crossroads GPS incorporates its responses in all preceding paragraphs as if fully set forth herein.

126. Admitted that the three Commissioners who voted against finding reason to believe that Crossroads GPS violated the law have issued no separate Statement of Reasons. Denied that these Commissioners failed to provide an explanation for their vote(s). Denied that the Office of General Counsel's First General Counsel's Report is insufficient to justify dismissal of the enforcement matter.

127-130. The First General Counsel's Report, Code of Federal Regulations, FECA, and Crossroads GPS's response to the administrative complaint speak for themselves. To the extent these Paragraphs contain Plaintiffs' characterizations and conclusions of law, no response is required. To the extent any response is required, Plaintiffs' characterizations and conclusions of law are denied.

131. Denied.

AFFIRMATIVE DEFENSES

1. The Administrative Procedure Act ("APA") does not provide an avenue for relief where other adequate bases for relief from administrative action are available. Because the FECA otherwise provides relief from improper dismissal, no APA remedy is available here.

2. Plaintiffs' challenge to the FEC's promulgation of 11 C.F.R. § 109.10(e)(1)(vi), which was promulgated on March 7, 1980 (and was numbered 11 C.F.R. § 109.2 at the time), is time-barred under 28 U.S.C. § 2401(a).

WHEREFORE, Crossroads Grassroots Policy Strategies requests that the complaint be dismissed with prejudice and that the Court award it all other lawful and proper relief.

/s/ Thomas W. Kirby

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