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FEDERAL ELECTION
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OFFICE OF GENERAL
COUNSEL

June 10, 2011

Mr. Jeff Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street NW
Washington, DC 20463

RE: MUR 6470

Dear Mr. Jordan:

This letter responds on behalf of Romney for President, Inc. ("RFP"), RFP Treasurer Darrell Crate, and Mitt Romney to the Complaint filed by the New Hampshire Democratic Party and assigned MUR 6470. This also constitutes the response of Free and Strong America PAC, Inc. ("FSA"), which received a copy of the Complaint from the Commission, but was not named as a Respondent.

Respondents and FSA knew the law at issue here and complied with it. The New Hampshire Democratic Party filed this Complaint the day Mitt Romney visited New Hampshire for the first time as a newly-filed presidential candidate (after he severed all ties with the state PACs). The Complaint should be dismissed as the frivolous public relations stunt that it is.

FACTS

FSA is a federal nonconnected political action committee. Mitt Romney previously served as its honorary chair. RFP is Mr. Romney's principal campaign committee.

Until March 31, 2011, FSA was associated with five state political action committees registered in Iowa, South Carolina, New Hampshire, Michigan, and Alabama. On or before March 31, 2011, FSA and Mr. Romney severed ties with the state PACs, and individuals with continuing official roles at FSA resigned their positions with the state PACs. The state PACs are no longer affiliated even by name with FSA. Mitt Romney, his agents, and individuals with formal roles at RFP ended their roles with the state PACs by March 31, 2011. A handful of RFP employees and consultants have continued involvement in the federal PAC, but only to administer its shutdown, ensure proper accounting, and administer the sale of assets. FSA is effectively dormant; it is not actively raising funds and its expenditures relate only to its closure.

On April 11, 2011, Mr. Romney announced the formation of his 2012 presidential exploratory committee. On the same day, he filed a Form 2 letter, and RFP filed an amended Form 1 with the Commission. Shortly thereafter, RFP purchased various assets at fair market value from FSA, including computer equipment, lists, photographs and other intellectual property, and office furniture. RFP also took over, and properly paid for, a portion of FSA's office space before moving into more permanent headquarters in early May. All of this activity will be reported on the entities' upcoming reports to the Commission.

When FSA was associated with the state PACs, it maintained a federal account in accordance with Commission regulations, and each of the state PACs maintained an account in accordance with the applicable state's campaign finance laws. In addition, FSA maintained an allocation account to pay certain allocable administrative expenses.

FSA diligently applied Commission regulations to its expenditures, accounting, and reporting. Indeed, due to the complicated nature of FSA's reporting on Schedule H, FSA's chief operating officer frequently sought and followed guidance from the Commission's Reports Analysis Division. FSA's Schedule H filings have always provided a clear view of its accounting practices.

FSA paid its expenses under the following rules:

- Joint administrative expenses (including joint employee salaries and expenses) were split among FSA and the state PACs in accordance with Commission regulations. 11 C.F.R. § 106.6(b)(1).
- Compensation to fundraisers was paid on a "funds received" basis in accordance with Commission regulations. 11 CFR § 106.6(d).
- All fundraising event costs were paid 100% with federal funds.
- All website, email, and direct mail expenses were paid 100% with federal funds.
- Contributions to federal candidates were made 100% with federal funds.

FSA and the state PACs spent their funds in fully permissible ways: contributions to federal and state candidates, research to help those candidates communicate their positions on issues, travel around the country to assist candidates and build federal and state political parties, communications on important policy topics, and PAC staff and consultants to support these activities. All expenditures were properly reported to the Commission and state regulatory agencies.

LEGAL ANALYSIS

The New Hampshire Democratic Party's Complaint has no basis in law or fact. As recounted above, FSA went to great lengths to abide by the Commission's recommendations regarding allocation of expenses, despite the recent D.C. Circuit Court decision striking down certain germane regulations. *See EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009). Although the Commission has not yet provided revised regulations that take that decision into account, FSA followed the regulations as a safe harbor. With respect to each of Complainant's unique legal theories:

First, FSA did not violate federal contribution limits by accepting (fully legal) \$5,000 contributions from donors, and its related state PACs did not violate contribution limits by accepting contributions in accordance with applicable state laws. So-called "donor intent," to the extent it could be measured in the first place, is irrelevant to both FSA and RFP.

Second, under no circumstances did RFP accept *any* in-kind contributions from FSA or the state PACs, much less "excessive" in-kind contributions. Furthermore, at no point did the PACs make expenditures governed by 11 CFR § 110.2. As recounted above, and as upcoming reports will show, RFP properly compensated FSA for all FSA property the campaign is now utilizing.

Some former FSA staffers and consultants now work for RFP, but the allocated salaries, retainers, and reimbursements they received from FSA and the state PACs were compensation for services to the PACs. As recounted above, FSA carefully applied its allocation formula to such administrative expenses. Indeed, the Starbucks expense referenced by Complainant is evidence of FSA's careful attention to detail, not of any malfeasance.

Mr. Romney is certainly not the only current or former presidential candidate who previously chaired a political action committee for purposes of helping candidates and party committees across the country and advocating for policy change. The New Hampshire Democratic Party's assertion that FSA somehow "must" have engaged in wrongdoing by supporting a future presidential campaign is rhetorical and not substantive. The fact of the matter is that FSA's activities were both legal and commonplace.

Third, under Complainant's novel formulation of the law, any person ever associated with any non-dissolved, non-federal entity would be barred from *ever* running for federal office. If this were the legal standard, Complainant will no doubt be intellectually consistent and file additional complaints against a number of Democratic candidates, officeholders, and current and former members of the Obama Administration.

As recounted above, Mr. Romney ended his honorary affiliation with the state PACs prior to becoming a federal candidate. FSA, which is effectively dormant, is no longer even associated with the state PACs. Neither Mr. Romney, nor any agents acting on his behalf, has continuing affiliation with the state PACs. No such individuals have engaged in soliciting, receiving, directing, transferring, spending, or disbursing state PAC funds since before the commencement of Mr. Romney's 2012 candidacy.

CONCLUSION

For the aforementioned reasons, the New Hampshire Democratic Party's Complaint should be dismissed and no further action should be taken.

Sincerely,



Benjamin L. Ginsberg
(for FSA and Treasurer, RFP and Treasurer,
and Mitt Romney)



Kathryn E. Biber
(for RFP and Treasurer and Mitt Romney)



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(P) 857.288.3553

The above named individuals are hereby designated as counsel and are authorized to receive any notifications and other communications from the Commission and to act on behalf of Mitt Romney before the Commission.

6/8/2011

Date

A handwritten signature of Mitt Romney in black ink, written over a horizontal line.

Mitt Romney



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Romney for President, Inc. and Darrell Crate, Treasurer

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The above named individuals are hereby designated as counsel and are authorized to receive any notifications and other communications from the Commission and to act on behalf of Romney for President Inc., and Darrell Crate, Treasurer, before the Commission.

6-7-11
Date

Darrell A. Crate
Darrell Crate, Treasurer



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6-7-11
Date

Darrell Crate
Darrell Crate, Treasurer