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Federal Election Commission
Jeff S. Jordan, Assistant General Counsel
Office of Complaints Examination
and Legal Administration
999 E. Street, NW
Washington, DC 20463

Re: MUR 7079

Dear Mr. Jordan:

We represent Representative Suzan DelBene; DelBene for Congress and Mr. Jay Petterson in his official capacity as Treasurer; Friends of Patrick Murphy and Mr. Brian Foucart in his official capacity as Treasurer; Representative Patrick E. Murphy; Mrs. Leslie Murphy; Mr. Thomas P. Murphy; Dan Roberti for Congress and Daniel McClutchy in his official capacity as Treasurer; Mr. Dan Roberti; Representative Raul Ruiz; Dr. Raul Ruiz for Congress and John Pinkney in his official capacity as Treasurer; Mr. Kevin Strouse; Titus for Congress and Jennifer May in her official capacity as Treasurer; and Representative Dina Titus (together, the "Respondents") in the above-referenced matter. Because the Complaint presents no violation, the Commission should find no reason to believe any occurred, dismiss the allegations, and close the file.

The Complaint alleges that the family of Representative Ami Bera, a Member of Congress and candidate from California's 7th District, "instructed" Respondents, other candidates and their families to participate in a "massive shell game" and "make contributions in the names of other persons." Complaint at 3.¹ As to Respondents, the only evidence proffered in support of this allegation is a series of lawful and properly disclosed contributions. The Federal Election Commission ("FEC") has carefully and repeatedly distinguished permitted mutual support from prohibited contributions in the name of another.² It has rejected precisely analogous complaints based on exactly this type of allegation. Because the Complaint presents no violation, the Commission should dismiss the allegations.

I. Background

In May 2016, Babulal Bera, father of Representative Ami Bera, pled guilty to making excessive contributions and contributions in the name of another. Plea Agreement, *United States v. Bera*,

¹ The Complaint is styled as "[a]gainst Ami Bera; Janine Bera; Babulal Bera; Kanta Bera; Ami Bera for Congress; and Jennifer May." Compl. at 1.

² See, e.g., FEC Adv. Op. 1996-33 (Colantuono).

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No. 2:16-cr-00097-TLN (E.D. Cal. May 9, 2016), *available at* <https://www.justice.gov/usao-edca/file/850061/download>. None of those contributions is at issue in this Complaint. The Plea Agreement did not allege or refer to contributions by any of the Respondents or other federal candidates. Rather, the Complaint disputes a series of lawful contributions made and received by Respondents.

What the Complaint refers to repeatedly as a “shell game” is simply the allegation that one campaign encouraged its donors to give to another campaign, while the other campaign encouraged its donors to do the same. The Complaint puts scare quotes around the word “reimburse” for a reason (*see* Compl. at 3): it presents no single instance of any person providing another person with the funds to make a contribution, or to restore to a person funds he or she had already given. Over three footnotes, the Complaint presents string cites of unpaginated FEC reports, without specifying the contributions that purportedly violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1), except to highlight a subset of them as supposed examples. *See* Compl. at 2-3 n.8-11 (string cite of un-paginated FEC reports); *id.* at 4-6 (narrative regarding Sangisetty, Murphy and Peters campaigns). The Complaint does not explain how any one of the contributions constituted a violation, nor does it provide any evidence of a “scheme” involving Respondents besides the contributions themselves.

II. Legal Argument

There is no legal basis for the Complaint, which ignores the history, interpretation and enforcement of Section 30122. Through advisory opinion, the Commission approved a similar combination of lawful contributions. *See* FEC Adv. Op. 1996-33. In enforcement, when the Commission reviewed similar allegations of “quid pro quo” contributions, the General Counsel concluded that they did not “appear to violate the Act, even if they occurred exactly the way Complainant alleges.” First General Counsel’s Report, MUR 4783, at 31. The Complaint presents only lawful contributions that were properly reported to the FEC—not “a sufficiently specific allegation warranting a focused investigation.” *See* First General Counsel’s Report, Matter Under Review 5304 (Cardoza) at 9 (internal quotation marks and citations omitted).

The Commission, the Department of Justice (“DOJ”), and federal courts have all affirmed that Section 30122 of the Federal Election Campaign Act (“FECA”) does not reach contributions that are made in the donor’s true name, where there is no straw donor or conduit, and where there is no reimbursement for a contribution. Rather, violations of the statute “occur when a person gives money to straw donors, or conduits, for the purpose of having the conduits pass the funds on to a specific federal candidate as their own contributions” or when an entity “reimburses” a donor for making a contribution. Dept. of Justice, *Federal Prosecution of Election Offenses* (7th ed. 2007) at 166-67. FECA’s “giving-in-the-name-of-another prohibition focuse[s] on the ‘true source’ of a contribution; in other words, whether a person passed funds through a straw donor to make a contribution.” Statement of Reasons, MUR 6485/6487/6711/6930; *see also* FEC Adv. Op. 1986-

41 (Air Transport) (employer may not reimburse employee contributions). The statute has never been extended to cover conduct beyond the use of false names, straw donors, and contribution reimbursements. *See, e.g., United States v. O'Donnell*, 608 F.3d 546, 548-50 (9th Cir. 2010).

The Commission has repeatedly found that a violation of the statute requires the true donor to actually provide funds to the putative donor—which the Complaint in this matter never alleges. In Advisory Opinion 1996-33, the Commission distinguished permitted mutual support from prohibited reimbursements. It allowed Thomas Colantuono, a New Hampshire state legislator and Congressional candidate, to give from his nonfederal campaign committee to other state legislators' campaigns, and then to solicit those same legislators for personal funds for his federal campaign, so long as the nonfederal campaigns did not reimburse the legislators for their personal contributions. FEC Adv. Op. 1996-33. The Commission would not approve Colantuono's request to solicit the nonfederal campaign committees, but it permitted him to solicit the legislators themselves for personal funds, even though his nonfederal campaign proposed to give to their nonfederal campaigns: "Such contributions would not have originated with their committees, which would have received funds from Mr. Colantuono's State committee." *Id.* The transactions the Commission approved for Mr. Colantuono were not materially different than those alleged here. *See* 52 U.S.C. § 30108(c)(1)(B) (allowing respondents to rely on a Commission advisory opinion when the alleged conduct is materially indistinguishable).

The Commission has drawn the same, critical distinction between prohibited reimbursement and permitted mutual support in enforcement actions, repeatedly dismissing allegations like those made by the Complaint. For instance, MUR 4783 involved an alleged "quid pro quo contribution scheme," in which contributions to the Babin committee were said to be exchanged for contributions by other donors to the Thurmond and Gill committees. Based on records of lawful contributions, the Complainant alleged that donations were provided with the express understanding that donors to the Thurmond and Gill committees would give to the Babin committee. First General Counsel's Report, MUR 4783 at 29-30. The General Counsel found that:

[N]either of these sets of contributions themselves appear to violate the Act, even if they occurred exactly the way Complainant alleges. These contributions do not appear to have been contributions made in the name of another, because Mr. Cloeren did not reimburse either Mr. Averyt or the Gill contributors for their contributions to the Babin Committee . . . [the] transactions do not appear to have been indirect illegal contributions [] and do not violate the Act.

Id. at 31..

In MUR 5304, it was alleged that multiple candidates conspired to launder donations through a "contribution exchange scheme," based on records of lawful contributions. The Commission dismissed the pertinent allegation, stating:

The only facts provided by Complainant, derived from public disclosure records, show a series of contributions between respondents that are legal on their face. Proof that these contributions were actually made, therefore, would not be sufficient to show violations of the Act. From these facts, Complainant speculates or draws unwarranted legal conclusions that respondents engaged in an illegal reciprocal scheme to convert nonfederal funds from Cardoza's state committee to contributions to his federal committee. Contrary to Complainant's allegations, however, there is nothing—including their timing or amounts—that indicates that these contributions were made a manner that raises suspicion.

First General Counsel's Report, MUR 5304, at 8-9. A similar result was reached in MUR 5406. See Certification, MUR 5406.

Just as in MUR 4783, 5304 and 5406, the contributions at issue in this Complaint were lawful and reported to the FEC. The Complaint does not present any contributions involving Respondents that were given by "false name" donors, straw donors, or putative donors who were later reimbursed. There is nothing to substantiate or indicate that the contributions were "made in a manner that raises suspicions." First General Counsel's Report, MUR 5304 at 8-9. On their face, the contributions do not "appear to violate the Act, even if they occurred exactly the way Complainant alleges." First General Counsel's Report, MUR 4783 at 31. Because the Complaint misreads 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1), ignores the Commission's interpretive and enforcement history, and relies on nothing except "unwarranted legal conclusions and mere speculation," the Commission should dismiss it. Matter Under Review 5304 (Cardoza) at 9 (internal quotation marks and citations omitted).

Respondents respectfully request that the Commission promptly find no reason to believe any violation occurred, dismiss the matter and close the file. We appreciate the Commission's consideration of this response.

Very truly yours,



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