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October 12, 2023

VIA EMAIL at cela@fec.gov

Wanda D. Brown
Assistant General Counsel
Federal Election Commission
Complaints Examination & Legal Administration
1050 First Street, NE
Washington, DC 20463

Re: MUR 8146: Response of Trump Save America Joint Fundraising Committee et al.

Dear Ms. Brown:

This firm represents Trump Save America Joint Fundraising Committee, Make America Great Again PAC, and Bradley Crate in his official capacity as treasurer of both committees (the "Committee"), and we write in response to your letter regarding the complaint in MUR 8146 (the "Complaint"). In your letter, you state that the Federal Election Commission (the "Commission"), "received a complaint that indicates [the Committee] may have violated the Federal Election Act of 1971, as amended (the 'Act')." We respectfully disagree. No reading of the Complaint could lead to the conclusion that the Committee may have violated the Act. In fact, no reading of the Complaint could lead to the conclusion that the *complainant* believes the Committee may have violated the Act.

The Complaint is clearly aimed at ECN Capital Corporation and various related entities, and there is no indication that the complainant intended to allege any wrongdoing by the Committee, much less include it as a respondent. In the 156 pages of allegations and exhibits, the Committee is mentioned on one page under Exhibit J and nowhere else. Because there are no allegations made against the Committee, its unclear how the Commission expects the Committee to respond. The Commission has a long record of casting an overly broad net when naming respondents, forcing obviously uninvolved parties to incur legal fees defending themselves against imaginary charges. This is the latest example.

Beyond the waste of time and resources, the Commission's actions run afoul of well-established concepts of due process and risk chilling free speech. "Due process requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties

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of the pendency of the action and afford them an opportunity to present their objections.”¹ “[W]hen a notice requires its target to guess among several possible bases for adverse government action, it has not served those fundamental purposes.”² Because “the [Commission] has as its sole purpose the regulation of core constitutionally protected activity ... vagueness and notice concerns carry special weight[.]”³ The Committee here is left with no option but to guess what violations the Commission believes may have occurred.

To the extent that the Commission believes the Committee may have violated the Act’s foreign contribution prohibition, that issue can be easily dispelled. The Act and Commission regulations prohibit the making of, or **knowing** acceptance of, contributions from foreign nationals.⁴ FEC regulations define “knowingly” as having actual knowledge or having awareness “of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national” or being “aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national” but failing to inquire.⁵

There is absolutely no information in the Complaint to suggest that the Committee knowingly accepted a prohibited contribution from a foreign national. It is clear from the Complaint that the complainant has no idea whether the donor in question is a foreign national, instead relying on innuendo and assumptions that “one or more of ECN Capital’s officers” may be a foreign national.⁶ The Commission has made clear that unsupported allegations cannot provide the basis for a reason to believe finding. “[P]urely speculative charges ... do not form an adequate basis to find reason to believe that a violation of the [law] has occurred.”⁷ “The standard, after all, is ‘reason to believe,’ not reason to question.”⁸ “The burden of proof does not shift to a respondent merely because a complaint is filed.”⁹

¹ *Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 599 (D.C. Cir. 1993), as amended on denial of reh’g (Mar. 26, 1993).

² *Id.*

³ *Campaign Legal Ctr. v. FEC*, 312 F. Supp. 3d 153, 164 (D.D.C. 2018) (citations omitted).

⁴ *See* 52 U.S.C. 30121(a); 11 C.F.R. § 110.20.

⁵ *See* 52 U.S.C. 30121(b); 22 § U.S.C. 611(b).

⁶ Compl. at 16.

⁷ Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor III at fn. 31 (Oct. 8, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, et al.) (quoting Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 3 (Dec. 21, 2000), MUR 4960 (Hillary Rodham Clinton for Senate)).

⁸ *Id.*

⁹ Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (July 20, 2000), MUR 4850 (Deloitte & Touche, LLP, et al.)

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As discussed, the Commission had no basis to *sua sponte* name the Committee as a respondent in this matter. That it did presents, at best, a severe breakdown in internal processes, and at worst, a violation of the Committee's constitutionally protected due process rights. In any event, there is no evidence to support a finding that the Committee knowingly accepted a foreign contribution, and the Commission must, therefore, find no reason to believe a violation occurred and close the file.

Respectfully submitted,



Justin Clark



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

E-MAIL: cela@fec.gov

AR/MUR/RR/P-MUR# 8146

Name of Counsel: Justin Clark

Firm: Elections LLC

Address: 1050 Connecticut Ave NW Suite 500
Washington DC 20036

Office#: _____ Fax#: _____

Mobile#: _____

E-mail: justin.clark@electionlawllc.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/13/2023

Date

(Signature - Respondent/Agent/Treasurer)

Bradley T. Crate

(Name – Please Print)

Treasurer

Title

RESPONDENT: Trump Save America Joint Fundraising Committee

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 138 Conant St, Ste 401
(Please Print)

Beverly, MA 01915

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: saveamericajfc@redcurve.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.