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January 7, 2013

VIA HAND DELIVERY

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6678—Response to Complaint

Dear Mr. Jordan:

We are writing on behalf of our client, Fabian Thylmann ("Respondent"), in response to the Complaint filed in the above-referenced matter by Michael Weinstein ("Complainant"). For the reasons set forth below, the facts do not support a "reason to believe" finding in this matter and the Complaint should be dismissed.

The Complaint claims that contributions allegedly made to support a Los Angeles County ballot measure violate the Federal Election Commission ("Commission") ban on contributions made by a foreign national relating to a Federal, State or local election. However, as several Commission advisory opinions make clear, "contributions or expenditures relating only or exclusively to ballot referenda issues, and not to elections to any political office, do not fall within the purview of the [Federal Election Campaign] Act." FEC Advisory Opinion 1989-32 (McCarthy) at 3.

I. The Complaint Fails To Set Forth Facts Constituting A Violation Of The Federal Election Campaign Act And Must Be Dismissed

Only when a complaint sets forth sufficient specific facts, which, if established, would constitute a violation of the Federal Election Campaign Act ("FECA") may the Commission find "reason to believe." See 11 C.F.R. §§ 111.4(a), 111.7. Here, the facts alleged in the Complaint, even if accepted as true for the purpose of this response, fail to set forth a violation of FECA. Accordingly, the Commission should find that there is

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no reason to believe that a violation has been committed and dismiss the Complaint. See 11 C.F.R. § 111.7(a).

A. The Complaint Pertains Solely To A County Level Ballot Measure

The Complaint filed in this matter alleges that Mr. Thylmann, as well another individual, several corporate entities and a ballot measure committee have violated the "prohibition against foreign national contributions contained in [FECA] and Commission regulations."¹ Complaint at 1. Specifically, 2 U.S.C. Section 441e prohibits foreign nationals from making contributions or providing other support in Federal, State and local elections. See also 11 C.F.R. § 110.20.

Although the Complaint's recitation of the statute and regulations applicable to participation of foreign nationals in Federal, State and local elections may be accurate as a general matter of law, the factual allegations in the Complaint fail to establish a legal violation. Specifically, the Complaint alleges that a contribution to the "No On Government Waste. No On B Committee" made by Manwin USA, Inc. violated section 441e.² Complaint at 3-4. As the Complaint states, the "No On B Committee is a local ballot measure committee formed to oppose the passage of [Los Angeles County] Measure B." *Id.* at 2. It is here that the Complaint's legal analysis breaks down.

B. It Is Long Established That Ballot Initiatives Are Not Subject To the Federal Elections Campaign Act

The applicable statutes, regulations and advisory opinions definitively establish that local ballot measures, such as the Los Angeles County ballot measure at issue here, do not fall under the Commission's definition of an "election" and, thus, are not subject to section 441e's prohibition on participation by foreign nationals.

As the Complaint states, Section 441e(a) prohibits a foreign national from contributing to, or otherwise offering support "in connection with a Federal, State, or local election." See also 11 C.F.R. § 110.20(i), (h). However, for purposes of this

¹ Although the Complaint identifies additional respondents, it appears that the Commission has provided only Mr. Thylmann with notice of the Complaint filed in this matter. See 11 C.F.R. § 111.5(a) (FEC shall notify each respondent that complaint has been filed). The defects in the Complaint, however, apply with equal weight to all parties named in the Complaint.

² Given the fundamental jurisdiction flaws in the Complaint, Respondent does not challenge the Complaint's factual allegations, solely for the purpose of this response. Respondent, however, does not accept that these factual allegations are accurate and reserves his right to challenge such allegations in this or any other proceeding.

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prohibition, Commission regulations define an "election" as "the process by which *individuals* . . . seek nomination for election, or election to Federal office." 11 C.F.R. § 100.2(a) (emphasis added). While not confined to Federal office, FECA's statutory definition of "election" is also limited to the process of selecting an *individual* for a specific office. See 2 U.S.C. § 431(1).

Longstanding Commission advisory opinions confirm this application of the statute and regulations:

The Commission has previously recognized the distinction between a candidate-related "election to any political office," as used in 2 U.S.C. 441e and other provisions of the Act, and issue-related ballot initiatives. *The Commission has stated that contributions or expenditures relating only or exclusively to ballot referenda issues, and not to elections to any political office, do not fall within the purview of the Act.* Advisory Opinions 1984-62, fn.2, and 1980-95. See also Advisory Opinion 1982-10.

FEC Advisory Opinion 1989-32 (emphasis added).

C. *Allegations Pertaining To Respondent's Actions With Respect To Proposition B, Even If True, Would Not Constitute A Violation Of The Federal Election Campaign Act*

As the Complaint in this matter acknowledges, Los Angeles County Measure B is a local ballot referendum and does not relate in any way to an individual's election for political office. See Complaint at 1-2. Moreover, as the Complaint sets forth, the alleged contribution was made to the No on Measure B Committee formed to oppose the local ballot measure. *Id.* As such, the Commission's prohibition on support by foreign nationals in Federal, State or local elections does not apply to this matter.

II. The Complaint Must Be Dismissed

Accordingly, the Complaint has not and cannot set forth facts sufficient to establish "reason to believe" that a violation of FECA or Commission regulations has occurred. Pursuant to 11 C.F.R. § 111.7, Respondent respectfully requests that the Commission immediately dismiss the Complaint and take no further action.

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Sincerely,

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Andrew D. Herman
Counsel to Fabian Thylmann

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