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December 23, 2014

BY HAND DELIVERY

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

Re: MUR 6888 – Elise Stefanik, Elise for Congress, and James Morris, as
Treasurer

Dear Mr. Jordan:

This office represents Representative-Elect Elise Stefanik, Elise for Congress, and James Morris, in his official capacity as Treasurer (collectively, “Respondents”), in the above-captioned MUR.

We have reviewed the Complaint filed on October 23, 2014 and the Supplemental Complaint filed on November 3, 2014 by the American Democracy Legal Fund (“Complainant”). The Supplemental Complaint alleges with no supporting evidence that the Respondents violated the Federal Election Campaign Act of 1971, as amended (“FECA” or “Act”), and Federal Election Commission (“FEC” or “Commission”) regulations by providing non-public material information through a common vendor to entities that made independent expenditures in connection with Ms. Stefanik’s campaign for the U.S. House of Representatives.

The Supplemental Complaint fails to meet the “reason to believe” standard as a matter of law. In addition, Complainant’s own allegations clearly demonstrate that the Respondents could not possibly have provided non-public material information through a common vendor to any of the entities identified in the Supplemental Complaint that made independent expenditures in connection with Ms. Stefanik’s campaign. Accordingly, there is no reason to believe that the Respondents violated the Act or Commission regulations, and the Commission should promptly dismiss the Supplemental Complaint with respect to the Respondents.

I. Factual Background

Ms. Stefanik was a candidate for the U.S. House of Representatives in New York’s 21st Congressional District in 2014. Ms. Stefanik’s principal campaign committee,

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Elise for Congress ("Campaign"), entered into an arms-length, commercial vendor relationship with i360, LLC ("i360") for data subscription and management services in connection with Ms. Stefanik's primary and general election campaigns. The Campaign paid fair-market value for the data subscription and management services that it received from i360, and the Campaign duly reported its payments to i360 on the Campaign's disclosure reports. The Campaign did not have a vendor relationship with the GOP Data Trust, LLC ("Data Trust").

The Campaign's contract with i360 required the Campaign to provide data and data enhancements to i360. As explained below, however, the Complainant's own allegations and the public record both clearly demonstrate that the Respondents could not possibly have provided non-public material information through i360 to American Crossroads—which is the only entity identified in the Supplemental Complaint that made independent expenditures in connection with Ms. Stefanik's race—for American Crossroads to use in connection with the independent expenditures it made opposing Ms. Stefanik's opponent. *See* FEC, 2014 House Independent Expenditures – State: New York, District: 21, http://www.fec.gov/data/IndependentExpenditure.do?format=html&id=ieState&election_yr=2014&candidateOfficeState=NY&candidateOfficeDistrict=21&candOffice=H.

II. The Supplemental Complaint Should Be Dismissed Because It Fails to Meet the "Reason to Believe" Threshold as a Matter of Law.

The Commission should dismiss the Supplemental Complaint with respect to the Respondents because it fails to meet the Commission's well-established "reason to believe" threshold in two ways. First, the allegations in the Supplemental Complaint are based upon pure speculation and fail to include any credible evidence that the Respondents provided non-public material information through a common vendor to any of the entities identified in the Supplemental Complaint that made independent expenditures in connection with Ms. Stefanik's candidacy. Second, the allegations in the Supplemental Complaint and the public record demonstrate that the Respondents could not possibly have provided non-public material information through a common vendor to American Crossroads.

A. The Supplemental Complaint is Based Upon Speculation and Innuendo.

The Complainant contends that the Respondents must have "pass[ed] on crucial, nonpublic voter information to i360's other 'independent' clients" simply because



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“[r]eports filed with the Commission have revealed [that Elise for Congress has] us[ed] i360’s voter database services.” Supplemental Complaint at 6. However, the Commission’s regulations make clear that a public communication is coordinated through a common vendor only if:

- (1) The vendor actually “uses or conveys to the person paying for the communication [i]nformation about the campaign plans, projects, activities, or needs of the clearly identified candidate . . . or [i]nformation used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication;” and
- (2) “[T]hat information is material to the creation, production, or distribution of the communication.”

11 C.F.R. § 109.21(d)(4). The Complainant has not alleged that i360 *actually* used or conveyed to its “independent clients” any data obtained from the Campaign. Nor has the Complainant alleged how any data obtained from the Campaign was material to an independent expenditure disseminated in connection with Ms. Stefanik’s race. In adopting the common vendor standard, the Commission explained that the standard does not “create[] any ‘prohibition’ on the use of common vendors” or “establish[] a presumption of coordination.” *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 436 (Jan. 3, 2003). Instead, the Commission’s common vendor standard “addresses only the use or conveyance of information material to the communication.” *Id.*

A “reason to believe” finding cannot be made based upon such rank speculation. Rather, a “reason to believe” finding is only appropriate when a complaint sets forth specific facts that, if proven true, would constitute a violation of the Act. 11 C.F.R. § 111.4(a), (d). The Commission has emphasized repeatedly that “unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true.” MUR 5878 (Arizona State Central Democratic Committee), Statement of Reasons of Vice Chairman McGahn and Commissioners Hunter and Petersen, at 7 n.23 (citing MUR 4869 (American Postal Workers Union), Statement of Reasons of Chairman Wold, Vice Chairman McDonald, and Commissioners Mason, Sandstrom, and Thomas; MUR 4850 (Fossella), Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas). *See also* MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee), Statement of Reasons of

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Commissioners Mason, Sandstrom, Smith, and Thomas, at 2 (quoting same). Moreover, “[p]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe that a violation of the FECA has occurred.” MUR 6296 (Buck), Statement of Reasons of Vice Chair Hunter and Commissioners McGahn and Petersen, at 5 (quoting MUR 5467 (Michael Moore), First General Counsel’s Report, at 5).

The Supplemental Complaint contains nothing more than rank speculation and innuendo concerning the Respondents, which is rebutted herein. Because the Supplemental Complaint fails to meet the “reason to believe” threshold as a matter of law, the Commission should dismiss the Supplemental Complaint with respect to the Respondents.

B. The Supplemental Complaint’s Allegations Demonstrate That the Respondents Could Not Possibly Have Provided Non-Public Material Information to an Entity that Made Independent Expenditures in Connection with Ms. Stefanik’s Race.

As noted above, the Campaign retained i360 for data subscription and management services in connection with the 2014 primary and general election campaigns. The only entity identified in the Supplemental Complaint that made independent expenditures in connection with Ms. Stefanik’s race, American Crossroads, “made substantial payments to the Data Trust” for its data services. Complaint at 8-9. The Complainant did not allege that American Crossroads was ever an “independent client” of i360, nor does the public record disclose any payments from American Crossroads to i360. As a client of the Data Trust, American Crossroads could not have had access to any data the Campaign provided to i360 until the Data Trust and i360 commenced their “historic data sharing partnership” on August 28, 2014. Complaint at 6. By that time, American Crossroads had long ceased making independent expenditures in connection with Ms. Stefanik’s race. *See* Complaint, Exhibit D at 8-9 (detailing that American Crossroads made independent expenditures opposing Ms. Stefanik’s opponent, Matthew Doheny, from May 30, 2014 – June 17, 2014).

Given that the Respondents could not possibly have provided non-public material information through i360 or the Data Trust to American Crossroads for American Crossroads to use in connection with its independent expenditures opposing Ms. Stefanik’s opponent, there is no reason to believe that the Respondents violated

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FECA or Commission regulations and the Supplemental Complaint with respect to the Respondents should be promptly dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael E. Toner".

Michael E. Toner
Brandis L. Zehr

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