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June 7, 2017

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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 7097

Dear Mr. Jordan:

We write as counsel to Hillary for America (the "Committee"), the authorized campaign committee of Secretary Hillary Clinton, and Jose Villarreal in his official capacity as Treasurer (together "Respondents") in response to the complaint filed by Dr. Jack A Shulman ("Complainant") on July 6, 2016 (the "Complaint"). As the Complaint fails to set forth sufficient facts which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, the Federal Election Commission ("FEC") should immediately dismiss the Complaint and close the file.¹

LEGAL ANALYSIS

"The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act]."² "Unwarranted legal conclusions from asserted facts" or "mere speculation" are not accepted as true.³ As the Complaint offers nothing beyond such conclusions and speculation, it cannot establish reason to believe that Respondents violated the Act.

The Complaint vaguely contends, without substantiation, that the Committee may have benefitted from foreign national contributions. However, it does not set forth specific facts establishing that the Committee received foreign national contributions. Nor does the Complaint provide specific facts showing that any other entity received foreign national contributions. As a result, the Commission should dismiss this misleading and fictitious claim.

¹ See 11 C.F.R. § 111.4(d)(3).

² FEC Matter Under Review 4960 (Clinton for U.S. Exploratory Committee), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000).

³ *Id.*

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IDENTIFICATION

The Complaint also falsely alleges that the Committee impermissibly coordinated with Correct the Record ("CTR") in that organization's efforts to post positive information about Secretary Clinton through online platforms, such as Facebook, Twitter, and blogs. The production and dissemination of a coordinated communication results in an in-kind contribution to a campaign.⁴ Under FEC rules, a communication is coordinated if it meets three prongs: (1) it is paid for by a person other than the candidate, authorized committee, or political party; (2), it satisfies one or more content standards; and (3) it satisfies one of several conduct standards.⁵ As the Complaint does not specify a single communication to which the coordinated communications rules apply, it fails to set forth specific facts that could constitute a violation of the Act.

The Complaint's vague description of messages disseminated on Facebook, Twitter, and blogs cannot satisfy the "coordinated communications" test because such messages do not trigger the content prong. The content prong can be satisfied in five ways.⁶ First, a communication satisfies this prong if it qualifies as an "electioneering communication," a "broadcast, cable, or satellite communication" that refers to a clearly identified candidate for federal office and is distributed during certain pre-election periods.⁷ As the Complaint does not allege that the Committee engaged in coordination with respect to any television or radio advertisements that would qualify as electioneering communications, it does not set forth facts that could result in a violation of the Act.

The remaining four ways to satisfy the content prong require that the communication be a "public communication,"⁸ a term defined as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public or any other form of general public political advertising."⁹ Exempt from the term "general public political advertising" are "communications over the Internet, except for communications placed for a fee on another person's Web site."¹⁰ Thus, online content cannot be a "public communication" unless a fee is paid to post it on another's Web site.¹¹ This exemption extends to circumstances in which an entity incurs costs to produce

⁴ See 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 109.20.

⁵ See 11 C.F.R. § 109.21.

⁶ *Id.* § (c).

⁷ See 11 C.F.R. §§ 109.21(c)(1), 100.29(a), (b)(1).

⁸ *Id.* §§ 109.21(c)(2)-(5).

⁹ 52 U.S.C. § 30101(22).

¹⁰ 11 C.F.R. § 100.26.

¹¹ See *Internet Communications*, 71 Fed. Reg. 18589, 18595 (May 12, 2006) ("[P]osting a video on a Web site does not result in a 'public communication' unless it is placed on another person's Web site for a fee," even if costs were incurred to film the video); FEC Matter Under Review 6722 (House Majority PAC), General Counsel's Report (Aug. 6, 2013) (video placed on YouTube is not a public communication); FEC Matter Under Review 6522 (Lisa Wilson-Foley for Congress) General Counsel's Report at 7 (Feb. 5, 2013) (YouTube and Facebook postings and a website fail the content prong of the coordinated communications test because they are not placed for a fee on another's Web site and are therefore not public communications); FEC Matter Under Review 6477 (Turn Right

or distribute online content.¹² As the Complaint does not identify any online public communications for which a fee was paid, it fails to provide specific facts indicating that Respondents engaged in, or benefitted from, the production or distribution of coordinated communications.

CONCLUSION

Respondents respectfully request 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,



Marc E. Elias
Counsel to Hillary for America

USA), General Counsel's Report at 8 (Dec. 27, 2011) (video posted on a website for which respondent paid no fee did not satisfy the content prong of the coordinated communication test); FEC Matter Under Review 6657 (Akin for Senate), General Counsel's Report at 6-7 (May 16, 2013) ("The Commission has narrowly interpreted the term Internet communication 'placed for a fee,' and has not construed that phrase to cover payments for services necessary to make an Internet communication," including renting an email list); FEC Matter Under Review 6414 (Carnahan in Congress Committee), General Counsel's Report at 12 (Apr. 11, 2012) (a website is not a public communication even though researchers were paid to help build it).

¹² 71 Fed. Reg. at 18595; FEC Matter Under Review 6657 (Akin for Senate), General Counsel's Report at 6-7 (May 16, 2013) ("The Commission has narrowly interpreted the term Internet communication 'placed for a fee,' and has not construed that phrase to cover payments for services necessary to make an Internet communication," including renting an email list); FEC Matter Under Review 6414 (Carnahan in Congress Committee), General Counsel's Report at 12 (Apr. 11, 2012) (a website is not a public communication even though researchers were paid to help build it).