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IN AND BEFORE THE
FEDERAL ELECTION COMMISSION

2016 DEC 15 AM 8:16

In Re:)
)
Rebuilding America Now)
Ryan Call, Treasurer, in)
his official capacity)
Respondent)

CELA

MUR 7180

RESPONSE TO COMPLAINT AND MOTION TO DISMISS

Rebuilding America Now through Ryan Call, in his official capacity as Treasurer of the Committee (the "Treasurer"), (collectively hereafter the "Respondent"), files this Response and Objections to the Complaint filed with the Federal Election Commission ("Commission" or "FEC") in the above-referenced Matter Under Review ("MUR") 7180 and denies the allegations contained in the Complaint and move for a dismissal of the Complaint.

The Complaint alleges that Respondent violated the Federal Election Campaign Laws, Title 52 United States Code, Subtitle III, Chapter 301, Subchapter I, and the regulations promulgated thereunder by the Federal Election Commission ("the FEC" or "the Commission"), ("FECA"), by knowingly soliciting a contribution from a federal contractor while that contractor was negotiating or performing a contract with the federal government. *See* 52 U.S.C. § 30119(a)(2); 11 C.F.R. § 115.2(c).

Respondent affirmatively states that neither the Committee nor its Treasurer has committed any violation of the Act.

First, the donor entity, GEO Corrections Holdings, LLC ("GEO Holdings"), is not itself a federal contractor, but rather is part of the same overall corporate structure as entities that hold federal contracts. A donation from a related entity does not violate FECA.

Second, the Complaint signally fails to allege any facts indicating that Respondent knowingly solicited a contribution from a federal contractor, and therefore the Complaint fails to properly allege a violation of FECA by the Respondent.

Finally, the application of 52 U.S.C. § 30119(a)(2) and 11 C.F.R. § 115.2(c) to independent expenditure groups, such as Rebuilding America Now, is likely unconstitutional. The Complaint should therefore be dismissed.

I. GEO Holdings is not a federal contractor

Respondent hereby incorporates by reference the factual information furnished to the Commission by Respondent GEO Holdings, and its related Respondents in this MUR. Those Respondents have provided ample factual information to the Commission to demonstrate that the source(s) of the donation(s) at issue were not from a federal contractor. Rebuilding America Now relied both at the time of the contribution(s) and now on the representations by the donor that the funds comprising the contribution(s) were not from a federal contractor and we hereby refer the Commission to the factual information provided by the donor Respondents in their response to the Complaint.

It has long been the case that FECA's contribution ban on contributions from federal contractors does not apply to "the stockholders, officers, or employees of a corporation." 11 C.F.R. § 115.2(6). The Commission has also consistently taken the position that the contribution ban does not extend to parent or related entities of a federal contractor, so long as (1) the subsidiary is a 'separate and distinct legal entity,' (2) the parent company has sufficient revenue derived from sources other than its contractor subsidiary to make the contribution." MUR 6726 (Chevron Corporation); *see also* FEC Adv. Op. 1998-11.

Because GEO Holdings was not a federal contractor, had sufficient revenue from non-contractor sources to make the contribution, and is a separate and distinct legal entity from any related companies which are federal contractors, it cannot have violated FECA's contribution ban. By extension, any solicitation by Respondent of a contribution from GEO Holdings was also lawful. For this reason, the Complaint should be dismissed.

II. Respondent did not knowingly solicit a contribution from a federal contractor.

Even assuming GEO Holdings was a federal contractor, the Complaint does not sufficiently allege a violation of FECA by the Respondent. The Complaint alleges that "there is reason to believe" that Respondent solicited a political contribution from GEO Corrections Holdings, Inc. Compl., ¶¶25-26, and that such a solicitation was unlawful under FECA. 52 U.S.C. § 30119(a)(2); 11 C.F.R. § 115.2(c) (making it unlawful to "knowingly solicit" a contribution from a federal contractor).

The Complaint alleges no facts, however, supporting the bare assertion that Respondent knowingly solicited a wrongful donation. Instead, the Complaint makes two broad, and ultimately unsupported, allegations. First, the Complaint assumes that the solicitation was "knowing" because GEO Holdings is "widely known" to be a federal contractor. *Id.* ¶25. This assertion is indefensible. GEO Holdings is just one subsidiary of GEO Group, a \$1.8 billion dollar company with myriad divisions, including construction and health care. In addition to its contracts with the federal Bureau of Prisons, GEO Group also has subsidiaries with state contracts that operate corrections facilities for the states of Florida, Indiana, Arizona, California, New Mexico, Georgia, Oklahoma, Louisiana, Texas, Alaska, and Virginia, as well as the nations of Australia and South Africa. There was no reason for Respondent to have "known" or "assumed" that GEO Holdings was a federal contractor, rather than a related entity for one of the other business entities.

Second, the Complaint alleges that Respondent solicited the contribution from GEO Holdings specifically because the contribution was received “on the same day as several other contributions from Florida-based corporations, suggesting the contribution was made at a Florida fundraiser where Rebuilding America Now agents solicited contributions.” *Id.* This assumption is similarly spurious. The Complaint points to no actual evidence that there was a specific event or solicitation made to any specific business entity. Further, on the same day that Respondent received the GEO Holdings contribution, it also received contributions from donors in Connecticut and Washington totaling over \$400,000. Without more, there is no reason to assume that Respondent solicited the contribution specifically from any entity, whether GEO Holdings or any other, nor that there was any “knowing” solicitation of an impermissible contribution.

In fact, prior to making the contribution, attorneys for both the donor and Rebuilding America Now were consulted regarding the question of whether an entity that is NOT a federal contractor but which is related to a federal contractor is permitted to make a contribution to an Independent Expenditures Only PAC. Counsel for the donor *and* Respondent Rebuilding America Now separately researched the guidance and prior decisions of the FEC and independently determined that such a contribution is permissible provided that the source of the funds is *not* an entity that is, itself, a federal contractor, as well as the other factors that allow for such a contribution. Upon confirmation of the permissibility of the contribution, the donor proceeded to make the contribution to Rebuilding America Now, from a permissible source in keeping with the advice and counsel provided by attorneys for both the donor and the PAC.

III. Applying the federal contractor ban to contributions made to independent expenditure groups such as Rebuilding America Now is likely unconstitutional.

Even if the complainants could show that GEO Holdings is a federal contractor and that Respondent knowingly solicited the contribution from GEO Holdings (neither of which is true), the federal contractor contribution ban is likely unconstitutional as applied to political committees making only independent expenditures. While the D.C. Circuit recently upheld the constitutionality of the federal contractor ban as applied to contributions to political candidates, political parties, and directly affiliated committees, *see Wagner v. FEC*, 793 F.3d 1 (D.C. Cir. 2015), the question of whether the ban can constitutionally apply to independent expenditure groups was explicitly not decided. *Id.* at 4-5.

The distinction between political candidates and their committees on the one hand, and independent expenditure groups on the other, is critically important.¹ Contractors giving money directly to candidates who oversee federal contracts while in office raises corruption concerns. *Id.* at 8. These concerns, along with ensuring the protection of merit-based public administration, were “sufficiently important” interests to support the contribution ban in *Wagner*. *Id.*

¹ “The term ‘independent expenditure’ means an expenditure by a person—(A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.” 52 U.S.C. § 30101(17).

These interests are absent, however, in the case of independent expenditure groups. Indeed, “the government has no anti-corruption interest in limiting contributions to an independent expenditure group.” *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (*en banc*) (citing *Citizens United v. FEC*, 558 U.S. 310 (U.S. 2010)). Similarly, there can be no concerns regarding public administration where no public officials are directly involved. As the district court in the *Wagner* case itself noted, “*SpeechNow* creates substantial doubt about the constitutionality of any limits on Super PAC contributions – including § 441c’s ban on contributions by federal contractors.” *Wagner v. FEC*, 901 F. Supp. 2d 101, 107 (D.D.C. 2012).

It is therefore doubtful that, properly construed, a federal contractor would be barred from contributing to Rebuilding America Now. By extension, it would further not be unlawful to knowingly solicit such a contribution.

CONCLUSION

There are no facts to support a finding of reason to believe a violation of federal law has occurred with respect to the allegations in the Complaint. Further, even if there were such facts present (which there are not), the statute and application of the statute to this contribution and these Respondents is constitutionally suspect.

As result, the Complaint should be dismissed, as there is no reason to believe that a violation of law has occurred.

Respectfully submitted,



Cleta Mitchell, Esq., Counsel
Rebuilding America Now
Ryan Call, Treasurer,
in his official capacity

Dated this 14th day of December, 2016