BEFORE THE FEDERAL ELECTION COMMISSION

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) **MUR 7207**
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RESPONSE OF DONALD J. TRUMP FOR PRESIDENT, INC, AND BRADLEY T. CRATE, AS TREASURER, TO THE COMPLAINT

This responds on behalf of our clients, Donald J. Trump for President, Inc., and Bradley T. Crate, Treasurer (collectively "Campaign or "Respondents"), to the notification from the Federal Election Commission ("Commission" or "FEC") that a Complaint was filed against them in the above-captioned matter. As described in further detail below, the Complaint --- which is devoid of any facts and riddled with faulty legal arguments --- is nothing more than an exercise by two partisan groups designed to garner headlines. In short, the Complaint fails to allege that the Campaign engaged in any activities that violate the Federal Election Campaign Act of 1971, as amended (the "Act") and regulations, and is therefore legally deficient. Thus, the Commission must dismiss the Complaint, close the file, and take no further action against the Campaign.

1. **THE COMPLAINT IS LEGALLY DEFICIENT AND MUST BE DISMISSED BECAUSE IT FAILS TO CLEARLY AND CONCISELY RECITE ANY FACTS THAT CONSTITUTE A VIOLATION OF THE ACT OR COMMISSION REGULATIONS BY THE CAMPAIGN.**

Under the Act and Commission regulations, a complaint must satisfy specific requirements in order to be deemed legally sufficient. Specifically, a complaint must contain a "clear and concise recitation of the facts which describe a violation of statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). Indeed, absent such a "clear and concise recitation of the facts," a complaint is legally deficient and must be dismissed. *See* MUR 6554 (Friends of Weiner), Factual and Legal Analysis at 5 ("The Complaint and other available information in the record do not provide information sufficient to establish [a violation]."). The Complaint, which contains

nothing more than a string of news articles and rank speculation, is hardly a "clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction" as required by 11 CFR 111.4(d)(3). For this reason alone, the Complaint must be dismissed.

Indeed, consistent with these regulatory requirements, the Commission has already made clear that simple speculation by a complainant is insufficient and does not establish that there is reason to believe a violation occurred. MUR 5467 (Michael Moore), First General Counsel's Report at 5 ("Purely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred." (quoting MUR 4960 Statement of Reasons at 3)). Due process and fundamental fairness dictate that the burden must not shift to a respondent merely because a complaint is filed with the Commission. *See* MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (rejecting the Office of General Counsel's recommendation to find reason to believe because the respondent did not specifically deny conclusory allegations, and holding that "[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents."). This is especially the case where the complaint does not contain sufficient information to establish an alleged violation or provide the respondent with sufficient information to meaningfully respond to the allegations. *See* MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2 ("Unwarranted legal conclusions from asserted facts . . . will not be accepted as true.").

Furthermore, "the RTB standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges [. . .] . The Commission must have more

than anonymous suppositions, unsworn statements and unanswered questions before it can vote to find RTB and thereby commence an investigation." *See* MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 2.

The Complaint in the instant matter fails these rudimentary regulatory requirements and is a dishonest attempt to shift the burden to the Respondents through the use of innuendo and conjecture. It makes spurious claims and fails to include any facts to support such claims. Furthermore, its faulty legal theories do not satisfy the Commission's regulatory requirements to support a reason to believe finding. *Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) ("[M]ere 'official curiosity' will not suffice as the basis for FEC investigations").

2. THE COORDINATION ALLEGATIONS IN THE COMPLAINT ARE MISPLACED BECAUSE THEY FAIL TO SATISFY BOTH THE CONTENT AND CONDUCT STANDARDS.

The pertinent allegation in the Complaint against the Campaign is that it received an in-kind contribution in the form of coordinated public communications. Specifically, Complainants argue that hacked emails published on the website Wikileaks and social media posts on Twitter and other sites constitute a "coordinated communication" as defined by FECA. Commission regulations establish a three-pronged test to determine whether a public communication can be considered coordinated with a campaign and, therefore, constitute an in-kind contribution to a campaign. The first test is whether the public communication is paid for by a person other than the candidate's campaign or the candidate referenced in the public communication. The second test is whether the communication at issue satisfies one of the enumerated content standards. The third and final test is whether a conduct standard is met regarding the interactions between the entity paying for the public communication and the candidate or political party committee. All three tests must be

satisfied and if the allegation fails to satisfy one test, the complaint must be dismissed. *See* 68 Fed. Reg. 421, 426 (Jan. 3, 2003).

Under this regulatory regime, the Complaint in the instant matter is legally deficient for several reasons. First, the emails and tweets that the Complaint alleges are "coordinated communications" within the meaning of the coordination regulations do not satisfy the content standard. The content standard makes clear that the types of communications covered by the regulation must be either an "electioneering communication" as defined by 11 CFR 100.29 or a "public communication" as defined by 11 CFR 100.26. Of course, the hacked emails and social media posts that are vaguely referenced in the Complaint do not come close to meeting the definition of either type of communication. As the Commission well knows, an "electioneering communication" as defined in the regulation must be "publicly distributed" via "broadcast, cable or satellite." 11 CFR 100.29. The regulatory definition would not encompass internet activity such as social media posts or content published on a website. Similarly, a "public communication" as defined in 11 CFR 100.26 specifically excludes "communications over the Internet, except for communications placed for a fee on another person's Web site." 11 CFR 100.26. There is no allegation that the web posts referenced in the Complaint were a paid digital advertising and therefore neither regulatory definition would encompass the types of communications which Complainants allege were coordinated with the Campaign. As such, a plain reading of the regulations makes clear that their argument fails to satisfy the content prong of the coordination regulations. For this reason alone, the Complaint is legally deficient as applied against the Campaign, does not satisfy the threshold burden for the Commission to find reason to believe that a violation occurred, and must be dismissed. 68 Fed. Reg. at 430 ("In this light, the content standard may be

viewed as a 'filter' or a 'threshold' that screens out certain communications from even being subjected to analysis under the conduct standards.").

Second, even if the Complaint did identify specific public communications that satisfy the content standards under the Commission's coordinated communications rule—which it does not—it does not proffer any evidence that the conduct standard was satisfied. Instead, it erroneously argues that Donald J. Trump made a request or suggestion within the meaning of FECA when he made an offhand remark about locating emails erased from Hillary Clinton's email server and it strings together a litany of speculative news articles purported to demonstrate links between the Campaign and its employees and the Russian government. In neither instance does the conduct alleged come close to describing any conduct that could be construed by the Commission to satisfy the conduct standards under the regulation. Indeed, Complainants' argument is internally inconsistent. Complainants' assert that hacked DNC emails posted on the website wikileaks constituted the "coordinated communication" at issue. Yet the quote by Donald J. Trump that they cite as a so-called "request or suggestion" concerned emails erased from Hillary Clinton's home server, not the hacked DNC emails. Similarly, Complainants' allegations that members of the Campaign coordinated with the Russian Federation are based on unsubstantiated news reports. At bottom, Complainants are asking the Commission to launch an investigation in order to develop evidence that would support their claim that the Campaign satisfied the conduct standard of the coordination regulations. But, in light of the precedent articulated above, the plain meaning of the regulations and the allegations leveled against the Campaign, the Complaint simply does not constitute a sufficient basis for a reason to believe recommendation by the OGC, let alone a vote by the Commission in this matter.

3. CONCLUSION

For all of the reasons stated above, there is no factual or legal basis for finding reason to believe a violation was committed by the Campaign. Accordingly, we respectfully request that the Commission dismiss the Complaint against the Campaign, close the file, and take no further action.

Respectfully,

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