

LAW OFFICE OF JOHN FOGARTY, JR.
4043 North Ravenswood, Suite #226
Chicago, IL 60613
(773) 549-2647 (phone)

January 12, 2024

By e-mail to CELA@FEC.GOV

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Trace Keeys, Paralegal
1050 First Street, NE
Washington, DC 20002

Re: MUR 8110
Response of American Coalition for Conservative Policies and John Fogarty, Jr.

To whom it may concern:

This office represents American Coalition for Conservative Policies (“ACCP”) and John Fogarty, Jr. individually and in his capacity as President of ACCP (collectively, the “Respondents”). We write in response to the Amended Complaint filed in the above-referenced matter.

The Complainants in their Amended Complaint have added the Respondents to an elaborate array of allegations -- none of which are supported by anything other than innuendo and legal conclusions -- claiming that ACCP served as a conduit for contributions to be made in the name of another, and somehow directed the spending of monies that it dispersed to other organizations. The Complainants have offered no actual facts to support their claims, and therefore the Amended Complaint should be promptly dismissed, as it fails to meet the standard necessary to warrant an investigation by the Commission. The Respondents categorically deny the allegations against them contained in the Amended Complaint, and respectfully request that the Commission dismiss the Amended Complaint, and conclude that there is no reason to believe a violation of the Federal Election Campaign Act has occurred.

Background

ACCP was incorporated in the District of Columbia and began operations in the spring of 2020. Fogarty Aff. ¶ 3. ACCP was organized as a 501(c)(4) tax exempt organization. Fogarty Aff. ¶ 3. ACCP began winding down its affairs in 2022, and formally terminated its existence in the normal course of business in 2023. Fogarty Aff. ¶ 3.

Fogarty served as a director for the entirety of ACCP's existence, and during the timeframe of the activities alleged in the Amended Complaint, served as ACCP's president. Fogarty Aff. ¶ 2. Fogarty managed and oversaw the activities of the organization, including reviewing donations received and disbursements made. Fogarty Aff. ¶ 5. A practicing lawyer in this area, Fogarty has experience advising political committees and tax exempt entities as to their legal obligations regarding accepting donations and contributions and to making expenditures, and is familiar with the legal disclosure obligations applicable to ACCP. Fogarty Aff. ¶ 6.

In his accompanying affidavit, Fogarty states unequivocally that he is not aware of, nor does he have reason to believe that there exists, any fact or factual circumstance that would demonstrate a breach of the FECA or any other regulation with respect to any donation received by ACCP or expenditure made by ACCP. Fogarty Aff. ¶¶ 7 - 10.

As for the supposed conduit activity alleged in the Amended Complaint, Fogarty specifically states that he is unaware of and without reason to believe that there was any directive by any donor to ACCP as to specifically how any donation to ACCP was to be utilized. Fogarty Aff. ¶ 10. In fact, with regard to the donation to ACCP of which Mr. Shklovsky and Mr. Lewicki complain, ACCP warranted to the donor that the "contribution is not designated for, and has not been solicited for, any specific use or support of any third-party entity. The American Coalition for Conservative Policies will determine how to use your contribution in its sole discretion and in compliance with applicable law." Fogarty Aff. ¶ 10.

The Amended Complaint Should Be Dismissed As To ACCP and Fogarty Because It Alleges No Facts, Only Speculation and Innuendo

The Amended Complaint should be dismissed because it fails to plead facts that would constitute a violation. A "reason to believe" finding may only be made where a complaint alleges specific facts which, if proven to be true, would constitute a violation of the FECA. A complaint not based on personal knowledge "must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented." MUR 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas, at 1. Unwarranted legal conclusions and mere speculation cannot be accepted as true. MUR 4960 at 2. "A complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint." *Id.* While the Amended Complaint is lengthy, it offers no facts to their burden for a "reason to believe" finding. Rather, the Amended Complaint is filled with speculation and innuendo. The Respondents, on the other hand, by the attached affidavit, have refuted the allegations made as to ACCP and Fogarty.

The gravamen of the Amended Complaint is that ACCP has acted as a conduit for a donor to make a contribution in the name of another. However, the Amended Complaint doesn't come near the showing of knowing conduct required under the FECA. Per the FECA, "[n]o person shall make a contribution in the name of another person *or knowingly* permit his name to be used to effect such a contribution and no person shall *knowingly* accept a contribution made by one person in the name of another person." 52 U.S.C. 30122. (emphasis added) Accordingly,

in order for the Commission to find “reason to believe” against the Respondents, the Complainants must offer evidence demonstrating that ACCP knowingly accepted a donation that it knew was intended for a third party. The Amended Complaint does not come close to meeting the “knowing and willful” standard. In fact, the opposite is true. As Fogarty attests in his affidavit, with regard to the only donation of which the Complainants complain, ACCP warranted to the donor that the “contribution is not designated for, and has not been solicited for, any specific use or support of any third-party entity. The American Coalition for Conservative Policies will determine how to use your contribution in its sole discretion and in compliance with applicable law.” Fogarty Aff. ¶ 10.

Other than identifying monies received by and disbursed by ACCP that are disclosed in public filings, the Amended Complaint is completely bereft of any facts to support the conclusion that the Respondents engaged in a conduit transaction, or made any contribution in the name of another. Further, the Amended Complaint is completely devoid of any facts that could meet the “knowing and willful” standard.

Respondents did not violate the FECA. The Amended Complaint, supported only by speculation and innuendo, is without merit and must be dismissed.

The Amended Complaint Should Be Dismissed As To ACCP and Fogarty Because ACCP Has Dissolved

Not only should the Amended Complaint be dismissed as factually insufficient, the Commission should dismiss the Amended Complaint because ACCP has ceased its operations and has dissolved. ACCP began to wind down in 2022, and formally dissolved in 2023 in the normal course of business. Fogarty Aff. ¶ 4. Even as noted by the Complainants, ACCP has long been inactive. Amended Compl. ¶ 61.

The Commission has broad discretion in determining which enforcement matters to pursue, balancing not only whether a violation has occurred but whether agency resources are best used in pursuing a matter. The Commission has exercised discretion in not pursuing enforcement matters where a respondent is a terminated entity. As Commissioners Petersen, Hunter and Goodman noted in their Statement of Reasons in MUR 6391 for not pursuing an enforcement action, where an entity no longer existed, had no money and no one acting on its behalf, enforcement would be a “pyrrhic exercise.”

Here, ACCP has been all but inactive since 2021, and has dissolved in the normal course of its business. The entity no longer exists. As the Commission has done in past matters, it should exercise its discretion and decline to pursue an enforcement matter here.

Conclusion

The Amended Complaint makes bald allegations supported only by speculation and innuendo. The Amended Complaint falls far short of the Commission’s “knowing and willful”

pleading standard. Moreover, the facts alleged in the attached affidavit conclusively refute the Complainants' bald allegations. The Commission should not expend any more time on this matter, and it should be dismissed.

Very truly yours,

/s/ John Fogarty, Jr.

John G. Fogarty, Jr.

Encl.

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

AFFIDAVIT OF JOHN G. FOGARTY, JR.

I, John G. Fogarty, Jr., hereby affirm and certify, under penalty of perjury, that:

1. I am of legal age, and under no legal disability, if called to testify, could competently testify to the following facts, of which I have personal knowledge:

2. At all times relevant, I have served as a Director and officer of American Coalition for Conservative Policies (“ACCP”), and I have served as ACCP’s President during the time period at issue in the amended complaint made by Mr. Shklovsky and Mr. Lewicki and which serves as the basis of MUR 8110.

3. ACCP was incorporated in the District of Columbia and began operations in the spring of 2020. ACCP was organized as a 501(c)(4) tax exempt organization.

4. ACCP began winding down its affairs in 2022, and formally terminated its existence in the normal course of business in 2023.

5. As President of ACCP, my duties included managing and overseeing the activities of the organization, including reviewing donations received and disbursements made.

6. I have experience advising political committees and tax exempt entities as to their legal obligations regarding accepting donations and contributions and to making expenditures. I am familiar with the legal obligations applicable to ACCP.

7. I am not aware of, nor do I have reason to believe that there are any facts or factual circumstances that would make illegal any donation to or by ACCP.

8. I am not aware of, nor do I have reason to believe, that there was any intent on the part of ACCP or any of its officers or agents to violate, or to undertake any act that would have had the effect of violating, any federal campaign finance statute or regulation.

9. I am not aware of, nor do I have reason to believe, that there was any intent to act on the part of ACCP or any of its officers or agents to be party to or to facilitate a conduit contribution.

10. I am not aware of, nor do I have reason to believe, that there was any directive by any donor to ACCP as to specifically how any donation to ACCP was to be utilized. In fact, with regard to the donation to ACCP of which Mr. Shklovsky and Mr. Lewicki complain, ACCP warranted to the donor that the “contribution is not designated for, and has not been solicited for, any specific use or support of any third-party entity. The American Coalition for Conservative Policies will determine how to use your contribution in its sole discretion and in compliance with applicable law.”

11. I am not aware of, nor do I have reason to believe there was, any specific directive by ACCP or any of its officers or agents to PSAA or Right On Issues, Inc., or any of its officers or agents, with respect to how PSAA or Right On Issues, Inc. was to utilize the funds donated by ACCP.

12. I specifically deny the allegations in paragraphs 128, 155 and 194 of the amended complaint that I have personally violated and continue to violate any federal campaign finance statute or regulation.

I further declare under penalty of perjury under the laws of the United States of America as authorized by 28 U.S.C. § 1746 that the foregoing is true and correct.

Affiant further sayeth naught.

DATED this the 12th day of January, 2024.

John G. Fogarty, Jr.