

August 1, 2016

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Lawrence H. Norton

T 202.344.4541
F 202.344.8300
lnorton@venable.com

CELA

Digitally signed by CELA
DN: cn=CELA, o, ou,
email=drawls@fec.gov, c=US
Date: 2016.08.02 09:43:53
-04'00'

**Re: MUR 7079 – Response from Mr. Babulal Bera and Mrs. Kanta Bera
MUR 6990 – Supplemental Response from Mr. Babulal Bera**

Dear Mr. Jordan:

This letter is submitted on behalf of our clients, Mr. Babulal Bera and Mrs. Kanta Bera (“Respondents”), in response to a complaint filed by the Foundation for Accountability and Civic Trust (“FACT”) with the Federal Election Commission (“FEC” or “Commission”) in Matter Under Review (“MUR”) 7079. This letter also supplements a response previously filed on behalf of Mr. Bera with respect to MUR 6990, which concerns common factual and legal allegations.¹

As explained below, there is no reason to believe that Respondents made a contribution in the name of another, in violation of section 30122 of the Federal Election Campaign Act of 1971, as amended (“FECA” or “Act”), because the Complaint is devoid of any facts indicating that they advanced funds or reimbursed anyone for making a contribution. Moreover, the Commission has recognized that “donor swapping,” which the Complaint alleges occurred here, is a lawful fundraising practice. Accordingly, the Complaint against the Beras should be dismissed.

I. DONOR SWAPPING ARRANGEMENTS DO NOT VIOLATE THE ACT.

The FECA prohibits a person from making “a contribution in the name of another person or knowingly permit[ing] his name to be used to effect such a contribution.”² In turn, the Commission’s regulations explain: “making a contribution . . . and attributing as the source of the money . . . another person when in fact the contributor is the source” is prohibited.³ As the Ninth Circuit observed, a violation of the prohibition on contributions in the name of another “occurs when A solicits B to transmit funds to a campaign in B’s name, subject to A’s promise to

¹ As used in this Response, “Complaint” refers to the complaint filed in MUR 7079.

² 52 U.S.C. § 30122.

³ 11 C.F.R. § 110.4(a)(2)(ii).

1704441-10N100

Jeff S. Jordan
August 1, 2016
Page 2

advance or reimburse the funds to B,” with the result being an “*indirect* contribution” flowing from one person, through another, to a campaign.⁴

The Commission has never found a straw donor violation where there has been no advance payment or reimbursement for making a contribution. Indeed, the Commission has specifically rejected the theory of liability the complainant advances here. In MUR 4783, the complaint alleged that contributors engaged in a “contribution swapping scheme” where contributors agreed to give to one another’s preferred candidate, but where no advance payment or reimbursement was involved.⁵ The General Counsel, whose recommendation was approved by a unanimous vote of the Commission, concluded that “neither of these sets of contributions themselves appear to violate the Act, *even if they occurred exactly the way the Complainant alleges.*”⁶

As a Commission spokesperson noted soon after MUR 4783 was closed in an article about an alleged donor swap, such an arrangement “would be legal as long as the contributors are voluntarily making the contributions from their own money.”⁷ Indeed, any other conclusion would put the Commission in the business of inquiring into the reasons an individual had for making a political contribution, delving into decisions that are often personal and complex. Such a result could not be reconciled with the Act, nor could it be reconciled with the First Amendment.

II. THE COMPLAINT IS BASED ON INFLAMMATORY RHETORIC AND SPECULATION, RATHER THAN FACT

Stripped of its inflammatory references to shell games and shadowy networks of congressional candidates and their families, the Complaint boils down to the allegation that Mr. and Mrs. Bera made contributions to certain candidates for Congress based on understandings with the relatives of those candidates that they would make contributions to Congressman Ami Bera, the Beras’ son. As explained above, even if such an understanding existed—and nothing of the kind is demonstrated by the Complaint—the alleged arrangement would not constitute a violation of the Act.

The complainant also attempts to bootstrap to its claim a plea agreement entered into by Babulal Bera in an unrelated criminal matter in which Mr. Bera has admitted to advancing funds

⁴ *U.S. v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010) (emphasis in original).

⁵ First Gen. Counsel’s Rpt. at 31, MUR 4783 (Cloeren).

⁶ First Gen. Counsel’s Rpt. at 31, MUR 4783 (Cloeren) (emphasis added); Certification of Commission, MUR 4783 (June 20, 1999).

⁷ Jim Puzzanghera, *Donors swapping their way around the campaign limit*, PHILADELPHIA INQUIRER (Dec. 9, 1999) available at http://articles.philly.com/1999-12-09/news/25482063_1_fund-raising-federal-candidates-individual-contributions.

Jeff S. Jordan
August 1, 2016
Page 3

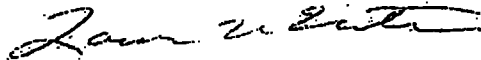
to family members and friends to support his own son's campaign.⁸ The Complaint in this matter involves entirely different facts, and does not point to any evidence indicating that funds were advanced by the Beras to any contributor, or that the Beras reimbursed any contributors.

As the Commission has recognized: "[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true."⁹ The Commission should not draw such conclusions here.

III. CONCLUSION

The Commission should find no reason to believe that Mr. and Mrs. Bera violated the Act. The Complaint should therefore be dismissed.

Respectfully submitted,



Lawrence H. Norton
William A. Powers

⁸ Plea Agreement, United States v. Bera, Docket No. 2:16-cr-00097-TLN (E.D. Cal. May 9, 2016). While the Federal Rules of Evidence do not govern Commission proceedings, the underlying principle that "[e]vidence of a crime, wrong, or other act" should not be used to "prove a person's character in order to show that on a particular occasion the person acted in accordance with the character" is equally relevant here. Cf. FED. R. EVID. § 404(b)(1)

⁹ MUR 4960 (Hillary Rodham Clinton), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 2.