

# JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113  
 TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

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DIRECT NUMBER: (202) 879-3748  
 DMCGAHN@JONESDAY.COM

March 11, 2016

VIA ELECTRONIC MAIL

Jeff S. Jordan, Esq.  
 Assistant General Counsel  
 Complaints Examination & Legal Administration  
 Office of the General Counsel  
 Federal Election Commission  
 999 E Street, NW  
 Washington, DC 20463

Re: Response of Donald J. Trump for President, Inc. & Timothy Jost, as Treasurer  
 to MUR 6992

Dear Mr. Jordan:

Please find enclosed the response of behalf of our clients, Donald J. Trump for President, Inc. and Timothy Jost, as Treasurer, to the notification from the Federal Election Commission that a complaint and supplemental complaint were filed against them in the above-referenced matter.

Cordially,



Donald F. McGahn II  
*Counsel to Donald J. Trump for President, Inc.  
 & Timothy Jost, as Treasurer*

Enclosure

**BEFORE THE FEDERAL ELECTION COMMISSION**

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MUR 6992

**RESPONSE OF DONALD J. TRUMP FOR PRESIDENT AND TIMOTHY JOST, AS  
TREASURER, TO THE COMPLAINT AND SUPPLEMENTAL COMPLAINT**

By and through undersigned counsel, Donald J. Trump for President, Inc. (“Respondent”) responds to the Complaint and Supplemental Complaint in the above-captioned matter. We respectfully request that the Commission find there is no reason to believe a violation has occurred, dismiss the complaints, and close the file.

**I. BACKGROUND**

Donald J. Trump announced his candidacy for President of the United States on June 16, 2015. Mr. Trump’s principal campaign committee is Donald J. Trump for President, Inc. (the “Campaign”). Both a Form 2 (Statement of Candidacy), and a Form 1 (Statement of Organization) were timely filed on June 22, 2015 and June 29, 2015, respectively.<sup>1</sup> The Campaign is supporting Mr. Trump as a candidate for President. But Mr. Trump is many things beyond a candidate for President. In particular, he is the founder and Chief Executive of one of the world’s most successful businesses and he is the personification of the globally recognized, extraordinarily valuable “Trump” brand name. The Campaign represents the interests of Mr. Trump the presidential candidate, while the persons employed by that business—the Trump Organization and its various subsidiaries and related entities—presumably represent his interests as a business executive and the interests of the Trump Organization as a business entity. The

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<sup>1</sup> Although the Complaint purports to name Mr. Trump personally, there are no allegations that pertain to him personally. We request that Mr. Trump be dismissed from this matter; to the extent he is relevant to this matter, it is only in his capacity as a candidate whose principal campaign committee is Donald J. Trump for President, Inc.

Campaign and the Trump Organization are entirely separate and take affirmative steps to scrupulously maintain that separation. *See, e.g.*, Donald J. Trump for President, Inc., February 2016 Monthly FEC Form 3P, at 573-84 (Schedule B Entries Reporting Transactions with Trump Payroll for multiple staffers, Trump CPS LLC, Trump Plaza LLC, Trump Tower Commercial, LLC, Trump National Doral, Trump Restaurants LLC, Trump Old Post Office LLC, and Trump SoHo.

The Complaint and Supplemental Complaint were filed on behalf of Right to Rise PAC. Right to Rise PAC is the leadership PAC of Jeb Bush—an individual who was, at the time of the complaints, a rival candidate of Mr. Trump’s for President of the United States. The Complaint was signed by counsel to that leadership PAC, Charlie Spies. Mr. Spies, in addition to serving as counsel to the leadership PAC for Governor Bush, also serves as treasurer to Right to Rise USA, the supposedly “independent” expenditure-only PAC that supported Mr. Bush’s presidential bid. *See* Right to Rise USA, FEC Form 1 (as amended June 12, 2015). Though Mr. Spies’ complaints actually purport to be from the leadership PAC, this complaint was widely reported to be the work of the super PAC and, given Mr. Spies’ official and public role with the super PAC of roughly the same name, the media could be excused for their confusion about which entity filed the complaint.

This confusion is further understandable given the complicated overlapping structure between Governor Bush’s campaign, his leadership PAC, and his super PAC. Calling the lines between those three organizations “blurred” seems charitable. First, it appears that the Right to Rise USA super PAC was established by Governor Bush himself, according to Governor Bush’s confidant Mike Murphy: “One of the new ideas that, you know, the governor had—he’s such an innovator—is we’re going to be the first super PAC to really be able to do just positive

advertising.”<sup>2</sup> But it appears that Governor Bush was already a candidate at the time he established that super PAC; Governor Bush told Governor Mitt Romney in January 2015 that he was “all in and had a plan to win this.”<sup>3</sup> Although Mike Murphy told donors after Governor Bush’s announcement in June 2015 that the super PAC and campaign “can’t coordinate *anymore*,” Murphy was “well informed” up until immediately before Bush’s formal announcement.<sup>4</sup> Mr. Spies’ roles with both the leadership PAC and the super PAC confirm that the Bush campaign, leadership PAC, and super PAC were all intertwined. He has filed the current complaint as counsel to Governor Bush’s leadership PAC, yet he serves as treasurer for what can only be described as Governor Bush’s super PAC.

These complaints came as Mr. Spies and the Bush team were obviously feeling the pressure when voters were heading to the polls to vote for Governor Bush’s rivals. Perhaps revealing that the pressure became too much, Mr. Spies reportedly burst out with an expletive born of road rage during a super PAC conference call.<sup>5</sup> That someone working for Governor Bush’s leadership PAC was on a strategy call for a super PAC is cause for concern. Politically, the Bush campaign and Right to Rise were responding to multiple complaints concerning their structure and relationship. And news of a significant fine levied by the Commission against another super PAC to which Mr. Spies was treasurer in 2012 was about to come to light just after

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<sup>2</sup> Matea Gold, *It’s Bold, But Legal: How Campaigns and Their Super PAC Backers Work Together*, The Washington Post (July 6, 2015), [https://www.washingtonpost.com/politics/here-are-the-secret-ways-super-pacs-and-campaigns-can-work-together/2015/07/06/bda78210-1539-11e5-89f3-61410da94eb1\\_story.html](https://www.washingtonpost.com/politics/here-are-the-secret-ways-super-pacs-and-campaigns-can-work-together/2015/07/06/bda78210-1539-11e5-89f3-61410da94eb1_story.html).

<sup>3</sup> Nick Gass, *Jeb Bush Recounts Conversation with Mitt Romney*, Politico (Jan. 5, 2016), <http://www.politico.com/story/2016/01/jeb-bush-mitt-romney-217352>.

<sup>4</sup> Russ Choma, *Did Jeb Bush’s Campaign and Super-PAC Cross the Line on Coordination?*, Mother Jones (July 1, 2015) (emphasis added), <http://www.motherjones.com/politics/2015/06/jeb-bush-right-to-rise-mike-murphy>.

<sup>5</sup> Alex Isenstadt, *Bush Loyalists Concede the End May Be in Sight*, Politico (Feb. 7, 2016), <http://www.politico.com/story/2016/02/jeb-bush-end-2016-republicans-218889>.

the current complaint was filed.<sup>6</sup> But Mr. Spies, rather than ensuring his own house was in order, chose to train his attention to Mr. Trump in an apparent effort to win positive press for his own efforts as Mr. Bush's candidacy was floundering and his prior handiwork was resulting in Commission-imposed penalties.

With this background in mind, the Complainant has filed a Complaint and Supplemental Complaint alleging that the Trump Organization made illegal contributions to the Campaign because two individuals employed by the Trump Organization took various actions that the Complainant characterizes as supporting Mr. Trump's candidacy. The Complaint alleges that Mr. Alan Garten—the Trump Organization's general counsel—sent two cease-and-desist letters, one to a political advocacy group and one to the Complainant, demanding that the recipients immediately stop engaging in false, defamatory speech about Mr. Trump and his business ventures. It claims that because Mr. Garten challenged defamatory statements that injured the Trump Organization and its President, Donald J. Trump, he was somehow causing a contribution by the Organization to the Campaign. The Supplemental Complaint, for its part, alleges that Michael Cohen, the Trump Organization's Executive Vice President and Special Counsel, made various public statements defending Mr. Trump and promoting his candidacy. The Supplemental Complaint claims that because Mr. Cohen works for the Trump Organization, that entity somehow makes automatic contributions of unknown—perhaps unknowable—value whenever Mr. Cohen tells the media that he thinks his boss would make a great President.

Both sets of allegations are meritless and do not give reason to believe a violation has occurred. Both complaints should be dismissed.

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<sup>6</sup> Nik DeCosta-Kilpa, *Mitt Romney Super PAC Pays \$50,000 Fine for Illegal TV Ad*, Boston.com (Dec. 13, 2015), <http://www.boston.com/news/local/massachusetts/2015/12/13/mitt-romney-super-pac-pays-fine-for-illegal/qxVzHnzPePGnxO5kE08KZP/story.html>.

## II. ANALYSIS

The Commission has long made clear that speculation by a complainant is insufficient, and that when a complaint fails to carry its burden and does not establish there is reason to believe that a violation of the Act has occurred, the matter must be dismissed. Similarly, the Commission has held that the burden does not shift to a respondent in an enforcement action merely because a complaint has been filed and accusations made—especially where, as here, the complaint fails to allege facts that state a violation under the Act or Commission regulations. *See, e.g.*, MUR 4850 (Deloitte & Touche, LLP, et al.), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 (“The burden of proof does not shift to a respondent merely because a complaint is filed.”).

Moreover, a reason to believe finding is warranted only if a complaint sets forth specific credible facts, which if true, would constitute a violation of the Act. *See, e.g.*, MUR 6554 (Friends of Weiner), Factual & Legal Analysis at 5 (“The Complaint and other available information in the record do not provide information sufficient to establish [a violation].”). Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true and cannot support a finding of reason to believe. *See, e.g.*, 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.” (internal citations omitted)); MUR 4869 (American Postal Workers Union), Statement of Reasons of Chairman Darryl R. Wold, Vice Chairman Danny L. McDonald, and Commissioners David M. Mason, Karl J. Sandstrom and Scott E. Thomas at 2 (complaint failed to alleged violation of the Act). But here, unwarranted legal conclusions and baseless speculation is all that Complainant offers—a facially deficient showing under the Commission’s well-established standards. The Commission should

therefore find no reason to believe that a violation has occurred, dismiss the Complaint and Supplemental Complaint, and close the file.

**A. The Complaint Attacking Two Short Letters Alan Garten Sent To Defend The Trump Organization Is Legally and Factually Baseless.**

The Complaint attacking two short letters sent by Mr. Garten is legally and factually deficient and must be dismissed. Mr. Garten is general counsel to the Trump Organization, which has been publicly disclosed as being a single-member LLC owned solely by Mr. Trump. *See Donald J. Trump's Executive Branch Personnel Public Financial Disclosure Report at A37.* It is presumably Mr. Garten's job to—like most in-house counsel—zealously protect the Trump Organization's interests and to defend the valuable Trump brand. That sort of obligation does not disappear simply because the Trump Organization's founder and Chief Executive has decided to run for President. Mr. Garten was thus fully entitled to send letters threatening legal action in response to public statements that he believed were defamatory and otherwise harmful to the Trump Organization and the Trump brand. The letters were not sent at the request or suggestion of the campaign.

**1. The Trump Organization is Free to Defend Itself.**

It is clear that Mr. Garten's letters were intended to defend the Trump Organization rather than make a contribution to the campaign. As the Trump Organization explained in a public statement released immediately after the Complaint:

The Trump Organization has vigorously policed Mr. Trump's brand and business interests for many years. Those rights are not forfeited by virtue of Mr. Trump's candidacy. Going forward, the company will continue to zealously protect Mr. Trump's brand and business interests wherever and whenever necessary. This is in no way any form of campaign activity and does not run afoul of federal election laws.

Isaac Arnsdorf, *Trump's Threat to Sue Bush Donor Backfires*, POLITICO (Dec. 9, 2015). Mr. Garten's letters were thus part and parcel with his pre-Campaign practices.

The interests of Mr. Trump, the Trump Organization as an entity, and the Trump brand that Mr. Trump personifies are often intertwined. As a result, the efforts of counsel (like Mr. Garten) to zealously protect the Trump Organization and preserve the value of the Trump brand may sometimes overlap with efforts to promote or protect Mr. Trump as an individual. After all, Mr. Trump is the President of the Trump Organization, which is, in turn, a single-member LLC owned by Mr. Trump. Now, for the last eight months, the President of the Trump Organization has happened to be a federal candidate. But that does not somehow make everything Mr. Trump or the Trump Organization does an in-kind contribution to the campaign.

**2. The Commission has Recognized that Candidates Can Wear Different Hats.**

The fact that the efforts of the Trump Organization to protect itself may implicate politics in some amorphous way is the inevitable byproduct of Mr. Trump wearing the different hats of presidential candidate, business executive, and personification of an international brand. The Commission's regulations recognize that individuals often "wear multiple hats," FEC Advisory Opinion 2003-10 (Rory Reid) (quoting 67 Fed. Reg. at 49,083), such that activities taken because of one hat (business executive or brand personification) do not trigger the Act just because Mr. Trump sometimes wears a different hat (federal candidate). Mr. Trump's status as a candidate for the past few months has not converted everything his company does—particularly when it comes to protecting their assets such as the Trump brand—into in-kind political contributions. Such activity has occurred and presumably will continue to occur irrespective of Mr. Trump's candidacy. *See* 11 C.F.R. § 113.1(g). Mr. Garten's efforts pertain to the "president of the Trump Organization" hat (rather than the "candidate" hat), are consistent with appears to be his longstanding practices, and are entirely separate and independent from the Campaign. Complainant's own statements make this clear. And consistent with their soundbite over



substance approach, the Complainant's letter to Mr. Garten is riddled with sarcastic references to numerous business issues that predate Mr. Trump's candidacy by decades<sup>7</sup>—making clear that Mr. Garten's efforts were directed at protecting the business interests of the Trump Organization. Thus, those actions do not violate the Act.

### **3. The Complaint Fails to Allege Actual Funds Were Spent.**

Regardless of the purpose of the letters, the Complaint does not allege that the Trump Organization expended any funds or used any business resources in preparing the letters. Even if it were true that Mr. Garten sent his letters in order to support the Campaign, that would make no difference. The Complaint does not allege that Mr. Garten expended the LLC's resources on the letters and the Campaign thus received nothing of value as a result of his sending them. For that reason, too, the Commission should find no reason to believe a violation has occurred and should dismiss the Complaint.

#### **B. The Complaint Attacking Scattered Public Statements By Michael Cohen on Cable News Is Likewise Legally and Factually Baseless.**

The Supplemental Complaint regarding various public statements by Michael Cohen is likewise legally deficient and must be dismissed. Mr. Cohen does not work for the Campaign. Mr. Cohen has no formal relationship with the Campaign. As Mr. Cohen himself explained in the article that was attached as Exhibit A to the Supplemental Complaint, "I do not speak for Mr. Trump or the campaign." Supplemental Complaint, Exhibit A. When Mr. Cohen speaks publicly about Mr. Trump or his candidacy, Mr. Cohen is simply exercising his First Amendment right to support his preferred candidate, as he is unquestionably entitled to do. That is not a violation of the Act.

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<sup>7</sup> Chris Cillizza, *The absolutely epic trolling letter Jeb Bush's leadership PAC sent to Donald Trump's lawyer*, The Washington Post (Dec. 10, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/12/10/the-absolute-epic-letter-jeb-bushs-super-pac-sent-to-donald-trumps-lawyer/>.

The Supplemental Complaint speculates that Mr. Cohen is performing “continuous and substantive Campaign work that is subsidized by the Trump Organization,” Supplemental Complaint at 3, but it provides no detail to substantiate that claim. That is because the speculation is baseless. Mr. Cohen has played no role in the Campaign and appears to be an executive at the Trump Organization who sets his own hours and who has control over his own schedule. His public support for Mr. Trump’s candidacy is indistinguishable from the multitude of others across the country who have publicly voiced support for Mr. Trump’s candidacy. For that reason, too, the Commission should therefore find no reason to believe a violation has occurred and should dismiss the Supplemental Complaint.

### III. CONCLUSION

The Complaint and Supplemental Complaint are long on innuendo and heavy on sarcasm, but they come nowhere close to alleging any actual—or even potential—violations of the Act. We thus respectfully request that the Commission find no reason to believe a violation has occurred, dismiss the Complaint and Supplemental Complaint, and close the file.



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Donald F. McGahn II  
JONES DAY  
51 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 879-3939

*Counsel for Donald J. Trump for President, Inc.  
and Timothy Jost as Treasurer*