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February 19, 2016

VIA ELECTRONIC AND CERTIFIED MAIL

Mr. Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Attn: Donna Rawls, Paralegal
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6995—Response of Heather Oaks, LLC

Dear Mr. Jordan:

In December 2015, Citizens for Responsibility and Ethics in Washington ("CREW") filed a complaint with the Commission against various entities and individuals. Amongst its allegations, CREW surmises that a contribution made by Heather Oaks, LLC to Right to Rise Super PAC, Inc. in March 2015 might have come "from another individual or organization" and therefore might have been a contribution "made in the name of another in violation of the law."[1] This is in fact not the case, as described in detail herein on page 4.

CREW's allegation against Heather Oaks, LLC is entirely unsupported. Indeed, it appears CREW merely repackaged conjecture in a *Mother Jones* news article into a complaint, simply stating that Heather Oaks, LLC made a contribution after it formed and then speculating that it "does not have any known business activity." This alone, in CREW's opinion, is sufficient to conclude that Heather Oaks, LLC existed "solely as a conduit" for the contribution at issue.[2]

CREW may not yet have accepted that following the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), the U.S. Court of Appeals for the District of Columbia Circuit's decision in *SpeechNow.org v. FEC*, F.3d 686 (D.C. Cir. 2010), and a Commission advisory opinion issued in 2010,[3] it is now lawful for a business entity like Heather

[1] Fed. Election Comm'n, MUR 6995, Complaint at 2, 9 (Dec. 10, 2015). Right to Rise Super PAC, Inc. amended its Statement of Organization to change its name to Right to Rise USA on June 12, 2015. *See* Right to Rise USA, *FEC Form 1, Statement of Organization* (June 12, 2015) available at http://docquery.fec.gov/pdf/367/15951468367/15951468367.pdf.

[2] MUR 6995, Complaint at 2. This is consistent with CREW's purely partisan character since it was taken over by a Hillary Clinton operative in 2014. *See* Kenneth P. Vogel, *David Brock expands empire*, POLITICO, Aug. 13, 2014, available at http://www.politico.com/story/2014/08/david-brock-citizens-for-responsibility-and-ethics-in-washington-110003. It now appears that CREW's entire reason for existence is to attack political committees and causes it opposes, presumably in an attempt to deter financial support for non-Clinton and non-Democratic entities.

[3] Fed. Election Comm'n, Adv. Op. 2010-11 (Commonsense Ten) (July 22, 2010).

Oaks, LLC to contribute its funds in unlimited amounts to an independent expenditure-only political committee. And Heather Oaks, LLC did, in fact, avail itself of these rights to make a lawful disbursement of corporate funds from its account[4] to Right to Rise Super PAC, Inc, which is a duly registered and qualified independent expenditure-only political committee.[5] Heather Oaks, LLC, as the donating entity, was properly listed as the donor on Right to Rise Super PAC's reports.

CREW's complaint alleges that Heather Oaks, LLC may have made a contribution in the name of another. The Federal Election Campaign Act of 1971 (the "Act"), as amended, provides that "[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"[6] and the Commission's regulations implementing this provision prohibit a person from "knowingly permit[ting] his or her name to be used to effect" such a contribution, or "knowingly help[ing] or assist[ing] any person in making a contribution in the name of another . . . ."[7] This prohibition ensures the disclosure of accurate contributor information, and most importantly, prevents circumvention of the Act's contribution limits and source prohibitions.[8] The Commission's history of enforcing the prohibition has almost exclusively involved situations in which contributions were made in the names of other persons in order to conceal prohibited sources of funds, or to evade the applicable contributions limits.[9] As noted, corporate funds are now possible sources of contributions to independent expenditure-only committees.

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[4] *See* Attachment – Copy of check from Heather Oaks, LLC to Right to Rise Super PAC, Inc.

[5] *See* Right to Rise Super PAC, Inc., *FEC Form 1, Statement of Organization* (Jan. 6, 2015), available at http://docquery.fec.gov/pdf/818/15031363818/15031363818.pdf (notifying the Commission of its intent "to make independent expenditures").

[6] 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f).

[7] 11 C.F.R. § 110.4(b)(1)(ii), (iii).

[8] *See e.g.*, Goland v. United States, 903 F.2d 1247, 1251 (9th Cir. 1990) (describing 2 U.S.C. § 441f as prohibiting the use of "conduits" to circumvent the Act's "restrictions"); and Fed. Election Comm'n, MUR 5818, General Counsel's Report # 2 at 4 (July 27, 2009), available at http://eqs.fec.gov/eqsdocsMUR/29044253378.pdf (stating that violations of 2 U.S.C. § 441f "strike[] at the heart of the Act's purpose, in that it deprives the public of accurate information as to the identity of contributors, and allows the true source of such funds to circumvent applicable limitations and prohibitions.").

[9] *See e.g.*, Fed. Election Comm'n, MURs 4250 (contributions from foreign nationals); 4322 (excessive contribution); 4530 (contributions from foreign nationals); 4568 (Triad Management Services, Inc.) (excessive contributions); 4583 (Embassy of India & D. Singh) (contributions from foreign nationals); 4646 (Amy Robin Habie) (excessive contributions); 4736 (Rick Hill for Congress Committee) (excessive contributions); 4748 (WPXI) (prohibited corporate contribution); 4818 (Roberts for Congress) (excessive contributions); 4834 (Howard Glicken) (contribution from foreign national); 4884 (Future Tech International) (prohibited corporate contributions); 4931 (Philip Christopher) (prohibited corporate contributions); 4935 (Dear for Congress) (prohibited corporate and excessive contributions); 5187 (Mattel, Inc.) (prohibited corporate contributions); 5335r (Geoff Davis for Congress Committee) (excessive contributions); 5357 (Centex Corporation) (prohibited corporate contributions); 5386 (Machinists Non Partisan Political League) (prohibited labor organization contributions); 5398 (LifeCare Management Services, LLC) (prohibited corporate contributions); 5504 (John P. Karoly) (prohibited corporate contributions); 5628 (AMEC Construction Management, Inc.) (prohibited corporate contributions); 5666 (MZM, Inc.) (prohibited corporate contributions); 5818 (Fieger, Fieger, Kenney and Johnson, P.C.) (prohibited corporate contributions); 5849 (Bank of America) (prohibited corporate contributions); 6215 (Tate Snyder Kimsey Architects, Ltd.) (prohibited corporate contributions); and 6465 (The Fiesta Bowl, et al.) (prohibited corporate contributions).

The remaining issue is therefore whether the naked allegation presented in the CREW complaint, which is denied in this response and rebutted by disclosure reports already filed with the Commission, provides the Commission grounds to find reason to believe that Heather Oaks, LLC knowingly permitted its name to be used to effect, or knowingly helped or assisted in the making of, a contribution by some other person in a manner violative of the Act or Commission regulations.

The Commission has consistently held that minimal evidence, like that asserted by CREW, does not provide reason to believe a violation occurred. The Commission has a longstanding policy of making a reason to believe finding "only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA" and that "[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true."[10] In MUR 5141, all six Commissioners issued a Statement of Reasons explaining that "[a] complainant's unwarranted legal conclusions from asserted facts, will not be accepted as true."[11]

This policy has repeatedly been applied by the Commission to dismiss unsubstantiated complaints similar to CREW's complaint here.[12] In doing so, the Commission has determined that "weak circumstantial evidence" such as "suspicious timing standing alone" is insufficient to justify a reason to believe finding.[13] For example, in MUR 4643, the Office of General Counsel

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[10] Fed. Election Comm'n, MUR 4960, Statement of Reasons at 1-2 (Dec. 21, 2000), available at http://eqs.fec.gov/eqsdocsMUR/0000263B.pdf. *See also* Fed. Election Comm'n, MUR 4850, First General Counsel's Report (June 8, 2000) (stating that "[g]iven the direct denials by the respondents, and the absence of any other information that would corroborate the complaint's allegations, this Office recommends that the Commission find no reason to believe [the respondents] violated 2 U.S.C. § 441b or 441f and close the file as to these respondents.").

[11] Fed. Election Comm'n, MUR 5141, Statement of Reasons (Mar. 11, 2002).

[12] *See e.g.*, Fed. Election Comm'n, MURs 5125, First General Counsel's Report at 9-11 (Dec. 20, 2002) (Rejecting the "bare allegations" in a complaint that the respondents had made a contribution in the name of another and recommending a no reason to believe finding. The Commission unanimously found no reason to believe a violation had occurred.); 5304, First General Counsel's Report at 8 (Jan. 21, 2004) ("The only facts provided by Complainant, derived from public disclosure records, show a series of contributions between respondents that are legal on their face. . . . Complainant's unwarranted legal conclusions and mere speculation should not be credited . . . . Accordingly, the complaint does not meet the threshold for finding reason to believe . . . .") (internal quotations omitted); 5350, First General Counsel's Report at 16-17 (June 21, 2004) (stating that pursuant to Commission precedent, an allegation "without any specifics . . . is too vague and speculative to provide a sufficient basis for proceeding with further enforcement action" and recommending the Commission find no reason to believe an impermissible contribution in the name of another had been made. The Commission unanimously found no reason to believe a violation had occurred.); 5582, First General Counsel's Report (Feb. 3, 2006) ("Because Complainant's allegations are speculative, we recommend that the Commission find no reason to believe that Respondents solicited or accepted excessive or prohibited campaign contributions, in violation of 2 U.S.C. §§ 441a, 441c, and 441f." The Commission unanimously found no reason to believe a violation occurred.); and 5866, Factual and Legal Analysis (June 27, 2007) ("unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true," and "[s]uch purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.").

[13] *See* Fed. Election Comm'n, MUR 5732, Statement of Reasons of Vice Chairman David G. Mason (May 10, 2007) (noting that "[t]he Commission has rejected investigating allegations of earmarking unsupported by evidence or

("OGC") recommended finding, and the Commission found, no reason to believe a violation occurred where a complaint alleged suspicious timing of certain contributions made to the Democratic Party of New Mexico, but "there [was] no indication in the record that any of the contributors directed or controlled their contributions or took any action that might constitute a designation or instruction . . . ."[14] And in MUR 5033, all six Commissioners issued a Statement of Reasons explaining their rationale for not making a reason to believe finding against a political committee accused of impermissibly receiving contributions made in the name of another, writing that "[t]he fact that an authorized committee receives contributions from individuals employed by the same company, for the same amount, and on the same date, without other factors, is not sufficient to find reason to believe that a violation has occurred."[15]

MUR 5033 can be contrasted with MUR 5119, in which the Commission found reason to believe that an impermissible contribution in the name of another had been made, but unanimously decided to take no further action against the relevant respondents. In MUR 5119, the OGC noted four factors in addition to suspicious timing that justified the reason to believe finding: (1) the correlation in the amounts of the contributions at issue; (2) correspondence between the respondents mentioning the contributions; (3) the recipient's initial disclosure of the contribution as being made by another contributor; (4) a statement by respondents "that seemed akin to an admission"; and (5) an apparent motive for making a contribution in the name of another because of the recipient's policy of not accepting PAC contributions.[16]

Our client, Heather Oaks, LLC, denies that it impermissibly acted as a conduit for a contribution made by another person. Heather Oaks, LLC was formed and capitalized as a subsidiary of a longstanding business entity in early 2015 to engage in various activities. It has been considered as an entity for certain real-estate purchases, and it plans to continue to do business in the future. It is true that it made a contribution to Right to Rise Super PAC, Inc. after formation, but Heather Oaks, LLC made the decision to make this contribution pursuant to its own organizational documents, from a bank account in its own name, and with corporate funds under its control. The contribution was reported properly, listing Heather Oaks, LLC as the contributor and providing its correct address.[17] CREW may very well wish that Commission rules imposed a mandatory waiting period for business-entity contributions, required business-entity contributors to disclose their affiliates, or compelled PACs to list a business entity's directors and officers on reports, or mandated other requirements related to corporate contributions to independent expenditure-only committees, but the Commission has not done so.

CREW's simple suspicion does not mean that Heather Oaks, LLC acted impermissibly as a conduit for another person's contribution in violation of federal law or Commission

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where only weak circumstantial evidence existed. . . . suspicious timing alone, without any indication in the record that contributors directed, controlled, or took action to earmark their contributions, was insufficient to find reason to believe a violation occurred. . . .").

[14] Fed. Election Comm'n, MUR 4643, First General Counsel's Report at 20-21 (June 29, 1999).

[15] Fed. Election Comm'n, MUR 5033, Statement of Reasons at 2 (June 3, 2001).

[16] Fed. Election Comm'n, MUR 5119, General Counsel's Report # 2 at 1-2 (Dec. 28, 2001).

[17] *See* Right to Rise USA, Amended FEC Form 3X at 1319 (Dec. 5, 2015).

regulations. Nor does the evidence before the Commission, which now includes this rebuttal of the unsubstantiated charges made in the complaint, come close to providing grounds for a reason to believe finding that a violation occurred. Accordingly, we ask the Commission to find that there is no reason to believe a violation occurred and to dismiss this Matter without delay.

Respectfully Submitted,

Matthew T. Sanderson
Caplin & Drysdale, Chtd.

Bryson B. Morgan
Caplin & Drysdale, Chtd.

Enclosure: Copy of Contribution Check from Heather Oaks, LLC to Right to Rise Super PAC

18044444156

Heather Oaks LLC

61-1/620

DATE March 2, 2015

PAY TO THE ORDER OF Right to Rise Super PAC Inc. $ 100,000.00

One hundred thousand dollars and 00/100 ------------------------------ DOLLARS

REGIONS 09

FOR