

December 3, 2016

**CONFIDENTIAL**

*Via Email*

Federal Election Commission  
Office of Complaints Examination and Legal  
Administration  
Attn: Donna Rawls, Paralegal  
999 E Street, NW  
Washington, DC 20463

Re: MUR 7101

Dear Ms. Rawls:

This letter is on behalf of Defending Main Street SuperPAC (“DMSS”), a named respondent in the complaint filed July 7 by several persons, including Free Speech for People and Campaign for Accountability. It also is on behalf of Sarah Chamberlain who has been named by your office only in her official capacity as Treasurer. On November 7, I became aware of the complaint by reading a *BNA Money & Politics* news item mentioning it, and that same day my client DMSS advised me it had no record of having received such complaint. Your office kindly forwarded such complaint that same day, and this response is designed to provide a brief explanation why the complaint should be dismissed summarily:

The complainants essentially are asking the Federal Election Commission to use the enforcement process to prospectively opine that contributions to ‘superPACs’ are subject to the \$5,000 per year limit that applies to other types of PACs. Complainants hope to suddenly have contributions to superPACs be deemed a violation of law going forward, without using the appropriate procedures for attempting to achieve that result.

Commissioners hardly need to be reminded that the advisory opinion issued after the *Citizens United* decision to Commonsense Ten (Advisory Opinion 2010-11) provides legal protection to persons acting in similar circumstances. The statute laying out the advisory opinion process, 52 U.S.C. § 30108, specifies:

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*(c) Persons entitled to rely upon opinions; scope of protection for good faith reliance*

**(1) Any advisory opinion rendered by the Commission under subsection (a) may be relied upon by-**

**(A) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered; and**

**(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.**

**(2) Notwithstanding any other provisions of law, any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of paragraph (1) and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of title 26. [emphasis added]**

Since the issuance of the Commonsense Ten advisory opinion, it has been the FEC's clear-cut legal position that contributions to superPACs are **not** subject to any dollar limit. Thus, there is simply no way that the Commission legally can impose any sanction regarding the contribution receipts of the superPAC respondents named in the MUR 7101 complaint.

As for the future, the Commission's only rational recourse to change the current legal landscape regarding superPACs is to undertake a rulemaking procedure that results in a general rule of law superseding the prior advisory opinion guidance, **or** to lose the litigation brought by the complainants herein seeking a declaratory judgment that the legal underpinnings of the Commission's posture are faulty.<sup>1</sup> Whatever the odds of heading in either of those directions, the matter before the Commission herein simply is **not** the appropriate vehicle for the Commission to veer sharply from its established course.<sup>2</sup>

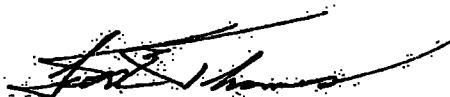
<sup>1</sup> *Lieu et al. v. Fed. Elec. Comm.*, Civ. Action No. 16-cv-2201 (D.D.C. filed 11/4/16).

<sup>2</sup> Without a carefully-considered policy change that is subject to public comment and substantial advance notice before implementation, the Commission almost certainly would not be able enforce any purported violations of law because of due process considerations. See *General Electric Co. v. EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995) (company could not be held liable for lack of fair warning); *Puerto Rico Sun Oil Co. v. EPA*, 8 F.3d 73, 77 (1st Cir. 1993) (company could not be held liable where agency reasoning had not yet been adopted); *Satellite Broadcasting Co., Inc. v. FCC*, 824 F.2d 1, 3 (D.C. Cir. 1987) (company could not be held liable without providing adequate notice of substance of rule).

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For the foregoing reasons, the complaint in MUR 7101 should be summarily dismissed.

Respectfully submitted,



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FEDERAL ELECTION COMMISSION  
 999 E Street, NW  
 Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL  
 Please use *one* form for each Respondent/Entity/Treasurer  
 FAX (202) 219-3923

MUR # 7101

NAME OF COUNSEL: Scott E. Thomas

FIRM: Blank Rome LLP

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TELEPHONE- OFFICE (202) 420-2601

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

1/11/14  
Date

[Signature]  
Respondent/Agent -Signature

Treasurer  
Title(Treasurer/Candidate/Owner)

RESPONDENT: Defending Main Street Super PAC Inc.  
 (Committee Name, Company Name, or Individual Named in Notification Letter)

MAILING ADDRESS: 325 7th St., NW, Suite 610, Washington, DC 20007  
 (Please Print)

TELEPHONE- HOME ( ) \_\_\_\_\_  
 BUSINESS (202) 661-4153

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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