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575 SEVENTH STREET NW WASHINGTON, DC 20004
T 202.344.4000 F 202.344.8300 www.Venable.com

September 23, 2016

CELA

Lawrence H. Norton

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

T 202.344.4541
F 202.344.8300
lhnorton@venable.com

**Re: MUR 7102 – Response from Keefe, Keefe & Unsell, P.C.; Thomas Q. Keefe, Jr.;
Thomas Q. Keefe, III; and Samantha S. Unsell**

Dear Mr. Jordan:

This letter is submitted on behalf of Keefe, Keefe & Unsell, P.C. (“Firm”) and its partners, Thomas Q. Keefe, Jr., Thomas Q. Keefe, III, and Samantha S. Unsell (collectively “Respondents”), in response to a complaint filed by the Foundation for Accountability and Civic Trust (“Complainant”) with the Federal Election Commission (“FEC” or “Commission”) in the above-captioned Matter Under Review (“MUR”).

I. Introduction

The complaint alleges that the Firm or its partners reimbursed contributions made by the Firm’s employees in violation of 52 U.S.C. § 30122 of the Federal Election Campaign Act of 1971, as amended (the “Act”), and used corporate resources in furtherance of their alleged scheme, in violation of 52 U.S.C. § 30118 of the Act. In lieu of presenting facts or evidence, the complaint relies on irrelevant assumptions and unsupported charges that the alleged reimbursements are part of a conspiracy involving the local legal community.

Because the complaint is based on nothing more than speculation, the Commission should find no reason to believe that Respondents violated the Act and dismiss the complaint.



Jeff S. Jordan
 September 23, 2016
 Page 2

II. There is no Reason to Believe that Respondents Violated the Act

The complaint alleges that Respondents reimbursed six Firm employees \$2,700 each for contributions made on March 2, 2016, to Friends of CJ for Congress, the principal campaign committee for C.J. Baricevic. In support, the complaint asserts that in light of their job titles and alleged income, these employees could not have made these contributions without incurring “extremely significant financial hardship.”

The Commission has never found reason to believe that an individual was reimbursed for a campaign contribution based merely on the individual’s job title or income. Subjecting individuals to a government investigation based on such a showing would offend First Amendment principles and run counter to the longstanding requirement that “[c]omplaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented.”¹

Further, a reason to believe finding requires more than merely stating a claim upon which relief can be granted.² That is why, in contexts similar to this one, the Commission has given “little, if any, weight” to evidence that employees made contributions to a candidate committee on the same day:

If the Commission were to accept th[e] circumstance [of a same day contribution] as sufficient evidence to make RTB findings of conduit contributions, we would have time for investigations of little else. The fact that several employees of the same company make contributions even on the same day, often after a fundraising drive, should raise no eyebrows.³

¹ MUR 4960 (Clinton), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1.

² MURs 5977, 6005, and 6094 (American Leadership Project), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter, and Donald F. McGahn II at 4, n.12 (“[T]he standard for finding reason to believe — which is necessary for the Commission to conduct any type of investigation or take any discovery — is higher than the Federal Rules of Civil Procedure standard regarding sufficiency of a complaint, which allows discovery on virtually every complaint that identifies any potential legal or equitable claim.”). This view is consistent with the Commission’s description of a “no reason to believe finding” in its Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process. 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (“The Commission finds ‘no reason to believe’ when the complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred . . .”).

³ MUR 4850 (Deloitte & Touche LLP), Controlling Statement of Reasons (SOR) of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2. Unlike the present matter, the contributors in MUR 4850 did not make the maximum permissible contribution. While the Controlling SOR noted that conduit contribution schemes tend to



Jeff S. Jordan
 September 23, 2016
 Page 3

Even in the context of contributions made in the name of another, the Commission has concluded that contributions made by “individuals employed by the same company, for the same amount, and on the same date” are insufficient to support a reason to believe finding without other factors indicating that the contributions are “facially questionable.”⁴

Here, without providing any evidence, Complainant points to salaries posted by an online jobs board for “similar administrative positions” as those held by employees of the Firm, and asserts that the Firm’s employees could not have afforded to make these contributions to the Baricevic campaign. The data, however, show no such thing. The salary figures cited in the complaint are mere averages and are “[not] based on survey data.”⁵ In fact, “only about 20%” of the job postings from which the data is culled even contain salary information.⁶ When salary information cannot be found for a job posting, the online jobs board reports that it uses estimates that “are not endorsed by the companies offering these positions and may vary from actual salaries.”⁷ These averages, by definition, do not indicate how common it is for employees with the same job title to make more or less than the listed salary. In addition, there is no indication that the positions from which the salary data are derived are similar at all to the positions held by Firm employees. For example, a legal secretary may command a higher salary than secretaries in other settings, and the title of legal assistant is used to apply to paraprofessionals with widely ranging skills, backgrounds, and roles.

Most importantly, the Firm’s employees are individuals, not averages. Like any employee, their compensation, such as salary and bonuses, may be based on job performance, tenure, specialized skill, and the financial success of the Firm.

Lacking facts or evidence, Complainant attempts to bootstrap this jobs board data to allegations of a widespread conspiracy. The complaint asserts that the “local legal community, including [the Firm],” made contributions to “take advantage of a young attorney [Mr. Baricevic] in order to curry favor with his father, who, as chief judge [in state court] not only hears a significant number of cases but also assigns cases to each of the judges he oversees.” The news story relied on by Complainant, however, does not refer to anyone who alleges such a

involve the contribution limit, the primary ground for dismissal was the determination that contributions made on the same day do not support a finding that there was a conduit scheme.

⁴ MUR 5279 (Bradley for President), Factual and Legal Analysis, at 4, n.2.

⁵ About Salary Search, INDEED, (last visited Sept. 23, 2016), http://www.indeed.com/jsp/about_salary.jsp.

⁶ What is Salary Estimate?, INDEED, (last visited Sept. 23, 2016), http://www.indeed.com/jsp/about_salary_estimate.jsp.

⁷ *Id.*

VENABLE[®]
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Jeff S. Jordan
September 23, 2016
Page 4

conspiracy, but rather notes that “[n]o one has alleged that Judge Baricevic has improperly meddled in case assignments.”⁸

Between irrelevant jobs board data and a purely conjectural conspiracy theory, Complainant asks the Commission to find that Respondents perpetrated a “focused and highly organized strawman scheme.” The complaint also asserts that the Baricevic campaign was aware of the alleged scheme but retained the employees’ contributions “to keep the gravy train flowing,” again without providing evidence. None of these allegations is supported by personal knowledge, or by any facts or evidence from which reasonable conclusions could be drawn. At the reason to believe stage, “[u]nnwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true.”⁹ Accordingly, the Commission should find no reason to believe Respondents have violated the Act and dismiss the complaint.

Thank you for your consideration. If you have any questions, please contact me at (202) 344-4541.

Respectfully submitted,



Lawrence H. Norton
William A. Powers

⁸ Kevin McDermott, *Lawyers shower campaign money on 12th District candidate who is the son of chief judge*, S. ILLINOISAN (May 23, 2016), http://thesouthern.com/news/local/govt-and-politics/lawyers-shower-campaign-money-on-th-district-candidate-who-is/article_05028760-da77-5512-9233-16def3f02c78.html.

⁹ MUR 4960 (Clinton), Statement of Reasons at 2.