



January 5, 2016

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Donna Rawls, Paralegal
999 E Street, N.W.
Washington, D.C. 20436



Digitally signed
by Christal
Dennis
Date: 2017.01.09
15:10:36 -05'00'

RE: Response to MUR 7165 on behalf of Great America PAC and Eric Beach

Dear Ms. Rawls:

Please accept this response on behalf of Great America PAC (“GAP”) and Eric Beach in the above-captioned matter.

The Commission should reject the Campaign Legal Center’s baseless claims against these respondents because there is no reason to believe they violated federal campaign finance law. This Complaint is based solely on allegations contained in a poorly sourced article published in a United Kingdom newspaper and a highly edited online video detailing foreign reporters’ politically motivated and laughably inept attempt at a “sting” operation against organizations supporting President-Elect Donald J. Trump. *See Compl. ¶ 5; see also Investigations Team, Exclusive Investigation: Donald Trump Faces Foreign Donor Fundraising Scandal, THE TELEGRAPH (Oct. 24, 2016, 8:10 P.M.), (hereafter, “Foreign Donor Fundraising”) available at <http://www.telegraph.co.uk/news/2016/10/24/exclusive-investigation-donald-trump-faces-foreign-donor-fundrai/>.¹*

As the *New York Times* recognized, the video upon which the article rests does not “show the full exchange,” “does not show how the reporters identified themselves,” and “reflects only snippets of the reporters’ conversations,” thereby “making it difficult to verify exactly what . . . had [been] offered or whether any laws were broken.” Nicholas Confessore, *Consultant with Ties to Donald Trump Linked to Offer to Hide Source of Donations*, N.Y. TIMES, Oct. 24, 2016, http://www.nytimes.com/2016/10/25/us/politics/consultant-with-ties-to-donald-trump-linked-to-offer-to-hide-source-of-donations.html?_r=0. The Complaint’s fundamental allegation, based on the article, is that “[s]enior figures involved with the Great America PAC . . . sought to channel \$2 million from a Chinese donor into a campaign to elect the billionaire despite laws prohibiting

¹ A second article, Investigations Team & Ruth Sherlock, *Exclusive: Pro-Trump Campaign Group Should Face Inquiry Over “Foreign Donor,” Leading Election Lawyer States* (Oct. 25, 2016, 11:59 P.M.), <http://www.telegraph.co.uk/news/2016/10/25/exclusive-pro-trump-campaign-group-should-face-inquiry-over-fore/>, simply reiterates the allegations contained in the first article with additional commentary. It does not contain any additional facts or evidence.



donations from foreigners.” *Foreign Donor Fundraising, supra*; *see Compl. ¶ 2*. Virtually every assertion in this sentence is false.

First, the central figure at the heart of the article, Jesse Benton, had resigned from GAP long before the events at issue occurred. His resignation had been widely reported at the time.² At all times relevant to these allegations, he was acting solely in his personal capacity or on behalf of his own company, Titan Strategies LLC (hereafter, “Titan”), and not as an agent of GAP, GAP co-chair Eric Beach, or any other entity.

Second, the Complaint’s allegations themselves demonstrate that Beach consistently emphasized he wanted to ensure any transactions were fully legal.

Third, at least some permutations of the transactions Benton purportedly outlined in the article would not have violated federal law, even if they had occurred.

Fourth, GAP and Beach cannot be guilty of soliciting foreign nationals because the purported foreign national who was allegedly solicited—an unnamed fictitious Chinese businessman—did not exist. As the article itself admits, the businessman for whom the undercover reporters claimed to be acting as intermediaries was entirely fabricated. GAP and Beach cannot have solicited a non-existent person. Unlike criminal law, campaign finance law generally does not include inchoate offenses such as attempt.

Finally, and perhaps most importantly, the FEC should not allow itself to be manipulated and used as a political tool by indulging privately sponsored “sting” operation—particularly those instigated by foreign journalists seeking to influence the Presidential election. The Commission should focus its resources on actual violations of campaign finance statutes, rather than blunderbuss attempts to manufacture sham violations for transparently partisan reasons. Compelling public policy considerations strongly counsel in favor of dismissing the Complaint.

ALLEGATIONS

In or around October 2016, foreign reporters purporting to represent a wealthy Chinese businessman contacted Beach, GAP’s co-chair, claiming “a Chinese client wished to donate” to GAP “to support Mr. Trump’s campaign.” *Foreign Donor Fundraising, supra*; *see also Compl. ¶ 5*. Beach responded he “need[ed] to know the donor’s identity” and “rais[ed] concerns about his nationality.” Compl. ¶ 6; *accord Foreign Donor Fundraising, supra*. He likewise insisted he would “need to know the origins” of any money contributed to GAP. Compl. ¶ 6; *accord Foreign Donor Fundraising, supra*.

² See, e.g., Matea Gold, *Trump Supporters Ask Where to Send Money*, WASH. POST, May 17, 2016, at A1.



Neither the Complaint nor the article claims Beach ever solicited funds for GAP from the undercover reporters or otherwise encouraged the fictitious businessman to contribute to it. To the contrary, they allege Beach instead mentioned a potential course of action that would have been fully consistent with federal law. According to the Complaint, “[h]e suggested the donation could be put through a social welfare organization called a 501(c)(4)—or C4—which unlike a PAC is not subject to a blanket ban on receiving foreign money.” Compl. ¶¶ 6, 30; *accord Foreign Donor Fundraising, supra*. Beach further emphasized, “[A]ny path we recommend is legal.” Compl. ¶ 6; *accord Foreign Donor Fundraising, supra*. The article’s only imputation against Beach is that he was allegedly “ambivalent” and the reporters’ call to him “did not appear unwelcome.” *Foreign Donor Fundraising, supra*.

Because GAP could not legally accept contributions from foreign contributors, Beach made a normal business referral of the reporters to Benton. Compl. ¶ 6; *accord Foreign Donor Fundraising, supra*. Benton was operating his own independent political consulting company, Titan, at the time. He had resigned from GAP the previous May, *see supra* note 2; in Fall 2016, he was not an officer, agent, employee, or volunteer of GAP, or otherwise affiliated with it in any way. *Foreign Donor Fundraising, supra*. The article itself acknowledges Benton had been “a senior figure at the PAC **until being convicted in May** in connection with buying a senator’s endorsement on a prior campaign.” *Id.* (emphasis added). It goes on to quote both Benton and GAP as reiterating that he had not worked for GAP “at all since May.” *Id.* Benton was never asked to solicit direct or “indirect” contributions for GAP following his resignation.

The article falsely contends that, following Benton’s resignation, he “continued to work for [GAP] in a voluntary capacity.” *Id.* It does not cite a single source or piece of evidence for this incorrect assertion, however. It appears to exist solely for the purpose of bolstering the reporters’ fictitious narrative. The Complaint likewise asserts, “[A]fter his conviction in May on federal campaign finance charges Great America PAC has described him as a ‘volunteer.’” Compl. ¶ 4. The sole source the Complaint cites for this assertion is yet another newspaper article, Maggie Haberman, *A Donald Trump “Super PAC” Is Hit with Leadership Woes*, N.Y. TIMES (May 6, 2016). That article makes no such assertion, however. A later piece, *see* Maggie Haberman, *“Super PAC” Backing Donald Trump Reveals List of Supporters*, N.Y. TIMES (May 19, 2016), does make such a claim, but it does not cite a single source in support of that unfounded assumption. The only actual evidence discussed in either the Complaint, the main *Telegraph* article, or any other cited source confirms that, throughout the events in question, Benton was not an agent of GAP, but rather had resigned from the committee.

Beach’s referral to Benton was solely for the purpose of putting the non-existent Chinese businessman in touch with someone who might be able to facilitate legal avenues to engage in some sort of activity. Neither the Complaint nor the article contains a single piece of evidence beyond wholly unsupported, rampant speculation, fabrication, and selectively edited video that Beach referred the fictitious businessman to Benton to facilitate an illegal transaction.



The Complaint and article claim that, as a result of this referral, the reporters received an e-mail from Benton. Compl. ¶¶ 6, 31; *accord Foreign Donor Fundraising, supra*. During their ensuing conversation, Benton explained the need for Beach to have a “deliberate disengagement” from any contributions the hypothetical Chinese businessman may choose to make. *Id.* Benton allegedly suggested the businessman’s “Singapore-based communications consultancy” could pay \$2 million to Titan Strategies LLC, Benton’s public affairs firm, which had no connection whatsoever to GAP. *Id.* He was allegedly noncommittal about how those funds would be spent. *Id.* Benton mentioned the firm *might* contribute those funds to two 501(c)(4) organizations (which would be legal), which might in turn choose to make contributions to GAP or instead fund projects he believes GAP supported, such as grassroots campaigning or advertising. Compl. ¶¶ 7, 9; *accord Foreign Donor Fundraising, supra*. There is no evidence of any kind Benton ever communicated with either entity or with Beach about any of this.

One of the 501(c)(4) entities Benton allegedly mentioned was Vision for America (“VFA”), which Beach allegedly runs. Compl. ¶ 8; *accord Foreign Donor Fundraising, supra*. There is no reason to believe that Benton is or ever was an agent, employee, officer, or consultant for VFA, or that he was ever authorized to raise funds for VFA. Neither the Complaint nor article contain any allegations or evidence to establish that Benton’s decision to mention VFA was anything other than entirely unsolicited, unexpected, and unilateral. Thus, neither Beach, GAP, nor VFA may be subject to legal liability as a result of Benton’s musings alleged statement.

Benton allegedly assured the reporters Trump would know they have been “participating indirectly or directly” and their generosity would be “whispered into Trump’s ear.” Compl. ¶ 10; *accord Foreign Donor Fundraising, supra*. Neither the article nor Complaint contend Benton suggested that GAP or Beach would have any involvement in conveying such information to Trump. Moreover, the article quoted Benton as stating he had been assured by his attorney the proposed transactions would be legal. *Foreign Donor Fundraising, supra*; *see also* Compl. ¶ 15. He later reemphasized, “[E]verything that we’re doing is legal.” Compl. ¶ 11; *accord Foreign Donor Fundraising, supra*. It seems apparent that, once he and the apocryphal businessman had agreed on a potential plan, he would have sought further legal counsel to ensure it was executed in a legally permissible manner.

The Complaint alleges that Beach was taped speculating—without even being aware of the contours of the various possible transactions Benton was considering—“I just think that there’s no way that this group, and you guys have been participating indirectly or directly, won’t be remembered.” Compl. ¶ 14; *accord Foreign Donor Fundraising, supra*. This alleged speculation would be, at most, a constitutionally protected expression of personal opinion based on his political experience and would not come close to approximating an improper promise or solicitation.

Benton allegedly encouraged the reporters to attend a highly publicized and free party GAP was hosting in Las Vegas on October 19. Compl. ¶ 11; *accord Foreign Donor Fundraising, supra*.



Benton himself did not go. Compl. ¶ 11. No one, including the reporters, was required or asked to make any contributions or payments as a condition for attending this extremely successful event. The Complaint confirms that no illegal activity was contemplated. It alleges that Beach stated, “[A]ny path we recommend is legal,” and further insisted he “would never let you guys give to the PAC, to give to the C4, because that’s illegal. . . . See the C4 is technically not illegal, but it’s not—it’s just not the best way to go.” Compl. ¶ 13; *accord Foreign Donor Fundraising, supra*. Recognizing the paucity of incriminating evidence in the article, Campaign Legal Center is forced to deliberately falsify its alleged contents in a desperate attempt to bolster its anemic case. The Complaint alleges, “Beach said he needed to be kept ‘deliberately ignorant’ of the ‘exact arrangements,’ but indicated he was aware of the plan discussed with Benton.” Compl. ¶ 12. The article, however, makes clear that **Benton** told the reporters Beach “needed to be kept ‘deliberately ignorant’ of the ‘exact arrangements.’” *Foreign Donor Fundraising, supra*. The Complaint goes on to selectively excerpt snippets—sometimes as short as three or four words—from the Article’s quotes from Beach to further place his activities in a misleadingly negative light. *Id.* ¶ 32. Thus, not even the selectively edited video is a sufficient foundation for the Campaign Legal Center’s groundless allegations; it is forced to misrepresent and distort an already manipulated source to attempt to cobble together a tenuous claim, solely to bolster its own fundraising on behalf of shadowy left-wing dark money organizations.

All of the alleged conversations that underlie the Complaint were complete shams – there was no Chinese donor and no money ever changed hands. None of the people or entities at issue—including Beach, Benton, GAP, VFA, or Titan—ever received any funds from the reporters or the chimerical businessman. There is no reason to believe GAP or Beach ever solicited the reporters posing as a representatives of the fictitious Chinese donor. Even Benton, at most, allegedly sought to develop ideas to be reviewed by his own legal counsel for permissibility. The Complaint offers no reason to believe he was acting as an agent of GAP or Beach or with their knowledge, cooperation, or authorization. It likewise provides no reason to believe Beach or any GAP personnel ever recommended or expressed a willingness to receive contributions from a foreign national, either directly or indirectly. To the contrary, the Complaint alleges only that Beach referred the reporters to Benton for Benton’s own benefit, and that he had no intention of engaging in or facilitating any illegal activity.

Thus, CLC’s Complaint is exclusively based on nothing more than subpar journalism – highlighting precisely why such paltry material is a wholly inadequate basis to institute an investigation or find reason to believe a violation of any law occurred. The entire purported “sting” operation was concocted by foreign nationals in an attempt to influence the course of a federal election. The FEC should direct its resources to investigating actual violations of campaign finance laws as opposed to manufactured allegations that did not involve any actual money or contributors, particularly when they rest solely on heavily edited video, the entirety of which has never been released to the public or, despite its repeated requests, to GAP.



I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE, AS THE COMPLAINT ITSELF ADMITS, NO FOREIGN NATIONAL WAS EVER DIRECTLY OR INDIRECTLY SOLICITED

Perhaps the most fundamental defect in CFC's claim GAP solicited a foreign national is that there was never any foreign national to be solicited. The reporters who contacted Beach as part of this hoax were not agents of a foreign national; to the contrary, the article CFC cites candidly admits the reporters were "purporting to represent [a] fictitious donor." *Foreign Donor Fundraising, supra*. The Federal Election Campaign Act ("FECA") makes it illegal for a person to "solicit" a "foreign national, directly or indirectly, to make a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election." 52 U.S.C. § 30121(a)-(b); *accord* 11 C.F.R. § 110.20(g); *see also* Compl. ¶¶ 16, 19. Federal regulations go on to prohibit a person from "knowingly provid[ing] substantial assistance" in making such solicitations. 11 C.F.R. § 110.20(h)(1); *see also* Compl. ¶ 20.

Both FECA and federal regulations expressly define "foreign national" as a "foreign principal" under the Foreign Agents Registration Act of 1938, *see* 22 U.S.C. § 611(b), or an individual who is not a U.S. citizen, national, or lawful permanent resident. 52 U.S.C. § 30121(b)(1)-(2); 11 C.F.R. § 110.20(a)(3); *see also* Compl. ¶ 18. This definition does not include either people pretending to be foreign nationals or hypothetical, non-existent people who are fabricated solely to facilitate a supposed "sting" operation. There is no reason to believe any of the respondents solicited a foreign national in violation of 52 U.S.C. § 30121 or 11 C.F.R. § 110.20(g)-(h) because the essential element of that offense—the foreign national ostensibly being solicited—was conspicuously absent in this case. The alleged solicitations of the fabricated Chinese businessman could not have violated these provisions because he did not exist.³ Consequently, this matter should be dismissed.

II. BEACH NEVER SOLICITED OR ASSISTED IN SOLICITING A FOREIGN NATIONAL FOR DIRECT OR INDIRECT CONTRIBUTIONS TO GAP.

Even putting aside that fundamental flaw in the Complaint, it also fails to provide reason to believe Beach ever solicited or substantially assisted in the solicitation of a contribution from a foreign national in violation of 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g)-(h). The Complaint itself alleges that Beach insisted he "need[ed] to know the donor's identity" and "the origins" of any contributions to GAP, and "rais[ed] concerns" about the fabricated businessman's "nationality." Compl. ¶ 6; *accord Foreign Donor Fundraising, supra*. It further alleges that Beach

³ Even if the reporters could be considered "foreign nationals," there is no evidence they themselves were asked for, or made, contributions. The alleged communications with them were solely in their capacity as fictitious agents for the non-existent businessman.



emphasized that “any path we recommend is legal,” and mentioned the fully legal possibility of contributing to a 501(c)(4) organization as one possible alternative to contributing to GAP. Compl. ¶¶ 6, 30; *accord Foreign Donor Fundraising, supra*. At most, the Complaint contends that Beach referred the reporters to Benton, who ran an independent political consulting business, with the expectation that Benton could independently form his own business relationship to provide guidance to these potential clients of Benton on legal ways of participating in the political process. The Complaint contains no credible allegation that Beach either solicited the reporters for contributions to GAP or knowingly provided substantial assistance to any solicitations by Benton to directly or indirectly contribute to GAP.

Beach’s only other alleged interaction with the reporters was at an event GAP held in mid-October in Las Vegas. The Complaint claims that Beach speculated Trump would be likely to “remember[]” them if they “participat[ed] indirectly or directly” in some way. Compl. ¶ 14; *accord Foreign Donor Fundraising, supra*. Beach’s alleged speculation is not a “solicitation. His purported statement did not amount to “a clear message asking, requesting, or recommending that another person make a contribution.” 11 C.F.R. § 300.2(m); *see also id.* § 110.20(a)(6). At most, it was a fairly self-evident observation about politicians’ typical behavior and reactions, made in the course of what Beach believed to be pleasant small talk at a political event.

Moreover, the Complaint’s allegations fail to suggest that Beach’s alleged statements were made to substantially assist any purported solicitation by Benton. Most basically, the Complaint does not contend Benton and the reporters had agreed on any particular plan or that Beach was aware of, or a party to, any such plan. Furthermore, to the extent the Complaint alleges Benton had contrived to funnel the fictitious businessman’s contributions through 501(c)(4) groups to GAP, the article the Complaint relies on specifies that Beach expressly repudiated any such idea during the conversation in Las Vegas. According to that article, Beach stated “I would never let you guys give to the PAC, to give to the C4, because that’s illegal. See the C4 is technically not illegal, but it’s not—it’s just not the best way to go.” *Foreign Donor Fundraising*. The Campaign Legal Center chose to omit the complete language of this clearly exculpatory quotation from the Complaint in an apparent attempt to mislead the Commission and camouflage the glaring gaps in its allegations; *cf.* Compl. ¶ 13. For these reasons, the Commission should not find reason to believe Beach solicited or substantially assisted in the solicitation of a foreign national.

III. JESSE BENTON’S RELATIONSHIP WITH GREAT AMERICA PAC TERMINATED IN MAY 2016, AND HE HAS NOT BEEN AN AGENT FOR GREAT AMERICA PAC SINCE THAT TIME

The Complaint and article focus primarily on Benton’s statements and potential plans. Even if the Complaint established that Benton engaged in improper solicitations (it doesn’t), none of his alleged actions may be attributed to GAP or Beach. By October 2016, when Benton interacted with the reporters, he was no longer associated in any way with GAP. The article that forms the basis for the Complaint recognized he had resigned from GAP in May 2016, *Foreign*



Donor Fundraising, supra—a point Campaign Legal Center craftily omits from its Complaint—and neither the Complaint nor the article provide any reason to believe, beyond baseless, unsupported declarations, Benton remained a volunteer or agent of GAP’s after that point.

Likewise, neither the Complaint nor the article provide reason to believe Beach knew what Benton was contemplating or that Beach intended to be a party to any potentially illegal conduct. Indeed, there is no reason to believe Beach knew Benton was contemplating any conduct involving either GAP or Beach subsequent to the business referral. To the contrary, the Complaint alleges Beach repeatedly exhorted that any arrangements be fully legal. *Id.*; *see also* Compl. ¶¶ 6, 13, 15. Moreover, the article underlying the Complaint contends Benton insisted that Beach be kept in the dark about the structure of any transaction to which the phantasmal Chinese businessman might agree. *Foreign Donor Fundraising, supra* (discussing Benton’s caution that Beach “needed to be kept ‘deliberately ignorant’ of the ‘exact arrangements’”). Indeed, the article further recognizes that, during the second and last interaction between Beach and the reporters, he did not believe the businessman’s funds would go to either GAP or a (c)(4) organization. *Id.* (“I would never let you guys give to the PAC, to give to the C4, because that’s illegal. See the C4 is technically not illegal, but it’s not—it’s just not the best way to go.”). In short, there is simply no reason to believe Beach or GAP had any involvement with any potentially improper plans Benton may have considered or devised on his own behalf, in furtherance of his own political consulting firm, Titan.

IV. BENTON NEVER DEFINITIVELY PROPOSED AN ILLEGAL TRANSACTION INVOLVING GAP

Another fatal deficiency in the Campaign Legal Center’s allegations is that the article upon which they rely does not contend Benton proposed a particular illegal transaction involving GAP. To the contrary, the article claims Benton discussed a range of possible alternatives, some of which may have raised serious legal concerns, while others would not have involved GAP. On the one hand, Benton discussed the possibility of the non-existent businessman’s company paying Benton’s firm, which would then make contributions to 501(c)(4) groups, which may then decide to contribute to GAP. *See* Compl. ¶ 7; *accord Foreign Donor Fundraising, supra*. On the other hand, he mentioned the possibility the 501(c)(4) companies would simply independently choose to spend the money on things GAP had planned to do itself.⁴ In short, the article and selectively edited video do not suggest Benton had ever settled upon or suggested a particular, definitive course of action, or that he would have pursued any such course of action had his attorney determined it was illegal. At most, the article and video show early-stage “spit-balling” of possible

⁴ While such an arrangement might constitute a coordinated communication, and hence an in-kind contribution, if made relative to a candidate or political party committee, 52 U.S.C. § 30116(7)(B), no such doctrine applies to non-connected political committees, including SuperPACs, such as GAP. In the absence of a statute or regulations concerning coordination, simply spending money on things GAP may or may not support, or on which it might otherwise have spent its own funds, generally does not constitute a direct or indirect “contribution” to GAP. *See* 52 U.S.C. § 30101(8) (defining term).



ways of complying with the arcane, complex body of campaign finance law that presents virtually limitless traps for the unwary. Consequently, the Commission should not find reason to believe this ill-conceived “sting” operation elicited any violations of campaign finance law.

V. AS A MATTER OF PROSECUTORIAL DISCRETION, THE FEC SHOULD NOT INDULGE PRIVATELY SPONSORED “STING” OPERATIONS, PARTICULARLY WHEN INITIATED BY FOREIGN NATIONALS.

Perhaps the most salient reason the Commission should decline to take further action in this case is to avoid opening the floodgates to a potentially limitless deluge of politically motivated, poorly executed “sting” operations run by well-funded candidates, political parties, media conglomerates, foreign governments, and others seeking to manipulate the electoral process through the release of limited, self-serving snippets of information. Proceeding further will give stakeholders an incentive to organize ever-more-elaborate sting operations in an effort to embarrass political adversaries and force them to devote limited time, resources, and money to defending against wholly manufactured charges. The Commission’s investigative and prosecutorial resources are extremely limited. It should confine itself to pursuing actual violations of campaign finance law, rather than indulging unilateral attempts by private actors to entice or entrap others into committing potentially technical violations of arcane campaign-finance restrictions.

CONCLUSION

For these reasons, the Commission should not find reason to believe GAP or Beach violated any campaign finance statutes or regulations and dismiss the claims against them in this matter.

Dan Backer

Digitally signed by Dan
Backer
DN: cn=Dan Backer, o=DB
Capitol Strategies PLLC, ou,
email=dbacker@DBCapitolSt
ategies.com, c=US
Date: 2017.01.05 14:10:58
-05'00'

Respectfully submitted,

Dan Backer

Dan Backer
*Counsel for Great America PAC
and Eric Beach*