

Kathryn Ross

BEFORE THE FEDERAL ELECTION COMMISSION

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) **MUR 7339**
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**RESPONSE OF DONALD J. TRUMP FOR PRESIDENT, INC.; TRUMP VICTORY;
AND BRADLEY T. CRATE, AS TREASURER, TO THE COMPLAINT**

By and through undersigned counsel, Donald J. Trump for President, Inc. ("the Campaign"); Trump Victory; and Bradley T. Crate, as Treasurer of each committee (collectively, "Respondents"), submit this response to the Complaint in the above-captioned Matter Under Review. The Complaint recklessly asserts that, in 2016, Respondents took part in a "massive illegal money laundering scheme" to funnel contributions "earmarked" by donors for the benefit of the Campaign in circumvention of contribution limits under the Federal Election Campaign Act ("the Act"). That is false. All actions by Respondents were consistent with the Act and FEC regulations, as demonstrated by the Complaint's complete failure to put forth any factual support for its unfounded theories. For the reasons below, Respondents respectfully request that the Commission find there is no reason to believe Respondents violated the law, dismiss the Complaint, and close the file.

FACTUAL BACKGROUND

The Campaign and Trump Victory are authorized committees of President Donald J. Trump. The Campaign is President Trump's principal campaign committee. Trump Victory is a joint fundraising committee ("JFC") serving as a fundraising representative under 11 C.F.R. § 102.17. The JFC's current participants are the Campaign and the Republican National Committee ("RNC"). *See* Trump Victory Form 1 (Mar. 31, 2017).

Trump Victory was organized and registered with the FEC in May 2016 under a written joint fundraising agreement ("JFA") entered into by its participating committees. *See*

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Attachment, Affidavit of Bradley T. Crate [hereinafter Crate Affidavit] ¶ 4. At that time, in addition to the Campaign and the RNC, eleven Republican state party committees also agreed to participate in the JFC. Trump Victory Form 1 (May 25, 2016). During the remainder of 2016, ten more state party committees became participants under amended JFAs. See Trump Victory Second Amended Form 1 (Sept. 21, 2016).

In accordance with 11 C.F.R. § 102.17(c)(1), the governing JFAs set forth a formula for the allocation and distribution of Trump Victory fundraising proceeds. See Crate Affidavit ¶ 5. The allocation formulas were tied to the maximum contribution limits applicable to each participating committee, and although the participants amended the formula at times, the Campaign and the RNC's general operating account always were first and second, respectively, under the formula. *Id.* For example, the allocation formula applicable to an individual contribution in October 2016 was as follows: (i) the first \$2,700 to the Campaign; (ii) the next \$33,400 to the RNC's general operating account; (iii) the next \$210,000 split evenly among the 21 state party committee participants; (iv) the next \$100,200 to the RNC's Headquarters account; and (v) any remaining amount, up to \$100,200, to the RNC's Legal Proceedings account.

Trump Victory engaged in various fundraising activities to raise contributions for its participating committees in 2016. Consistent with 11 C.F.R. § 102.17(c)(2), all solicitations of contributions to Trump Victory included fundraising notices containing, among other information, the allocation formula in the JFA. Contributions raised by Trump Victory were allocated according to the JFA's fundraising formula (unless a contributor designated her contribution differently under 11 C.F.R. § 102.17(c)(2)(i)(C)), and the net proceeds were always distributed only to the depository account of the committee to which they had been allocated.

Crate Affidavit ¶¶ 6–7. Once funds were distributed, they came under the control of the recipient committee.

ARGUMENT

The Complaint alleges that in 2016 Trump Victory was a “money laundering scheme” to benefit the Campaign. Specifically, it asserts that the contributions Trump Victory distributed to state party committee participants were actually “earmarked” for the RNC to be spent directly on behalf of the Campaign in circumvention of federal contribution limits.¹ This must be true, according to the Complaint, simply because (i) many of the state party committee participants subsequently transferred similar amounts to the operating account of the RNC, and (ii) the RNC made some coordinated party expenditures in support of the Campaign during the same period.

Despite its overheated rhetoric, the Complaint describes nothing but a series of independent transactions legal on their face and thus insufficient to establish reason to believe. *See, e.g.*, First General Counsel’s Report, MUR 5406 (Hynes for Senate), at 7–8 (Jan. 27, 2005). Intraparty transfers are permitted without limit under 11 C.F.R. § 110.3(c)(1), while coordinated party expenditures are authorized under 11 C.F.R. § 109.32, and the Complaint does not offer a shred of actual proof supporting its allegations of earmarking. Instead, it rests entirely on a collection of speculation, bald assertions, and misleading inferences in an effort to force Respondents to prove a negative. The Commission has never found this to be an adequate foundation on which to base an investigation, and it should dismiss this matter immediately. *See*

¹ The earmarking rules apply only to “contributions by a person made on behalf of or to a candidate.” First General Counsel’s Report, MUR 7081 (Floridians for a Strong Middle Class et al.), at 9 n.30 (Dec. 21, 2016). Therefore, to the extent the Complaint alleges that contributions were “earmarked” to the RNC for its benefit, and not for the benefit of the Campaign – and at times it is not always clear – those allegations have no merit as a matter of law and must be dismissed. *See* First General Counsel’s Report MUR 6276 (Weiser et al.), at 10 (Jan 31, 2011) (finding earmarking rules inapplicable to contributions to RNC and state party committees) (quoting Explanation & Justification for Affiliated Committees, *Transfers, Prohibited Contributions, Annual Contribution Limitations, and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989)).

First General Counsel's Report, MUR 5467 (Michael Moore), at 5 (July 22, 2004) ("Purely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred."); *see also* *Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) ("[M]ere 'official curiosity' will not suffice as the basis for FEC investigations.").

I. THE COMPLAINT DOES NOT OFFER ANY EVIDENCE OF EARMARKING IN CIRCUMVENTION OF CONTRIBUTION LIMITS.

The Commission should dismiss the Complaint because, despite its allegations of a sprawling earmarking enterprise, it presents no evidence of any Trump Victory donor having actually earmarked contributions to the Campaign through any other JFC participant. *See, e.g.*, Statement of Reasons of Comm'rs Smith & Toner (Mo. Democratic State Committee et al.), at 3 (Dec. 1, 2003) ("Under the Act, a contribution subject to our earmarking rules must *in fact* be earmarked by the person making the contribution." (emphasis in original)).

Under FEC regulations, a contribution is "earmarked" only when there is a "designation, instruction, or encumbrance, whether direct or indirect, express or implied, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1). In prior matters, "the Commission has determined that contributions were earmarked [only] where there was clear documentary evidence demonstrating a designation or instruction by the donor." First General Counsel's Report, MUR 6221 (Transfund), at 11 (Mar. 30, 2010) (citing MURs 4831/5274 (Nixon), 5732 (Matt Brown for U.S. Senate), 5520 (Republican Party of Louisiana/Tauzin) & 5445 (Davis)). The Commission has consistently rejected earmarking allegations when there was no such evidence, even where circumstantial factors indicated that donors could have reasonably expected or believed their contributions would be used to benefit a

specific candidate. *See, e.g.*, First General Counsel's Report, MUR 4643 (Democratic Party of N.M.), at 20–21 (June 29, 1999).

The Complaint offers no evidence of any such designation, instruction, or encumbrance by a Trump Victory donor. The best it can muster is a disingenuously presented quotation from a donor named Peter Zieve, who according to the Complaint said, “I remember thinking I wouldn't give [Republican operatives] money, but then 'realized that I have never ever been as excited about a candidate as I've been about Donald Trump.’” (Compl. 6 (alteration in original).) Yet the original source of the quotation shows that Mr. Zieve was not even discussing Trump Victory or the RNC, but rather an independent expenditure-only committee named “Rebuilding American Now.”² Even still, if some donors contributed to Trump Victory based on Mr. Trump being the party's nominee, or under a belief that their contributions would be used by party committee participants to benefit his candidacy, that would not constitute earmarking under the Act and FEC regulations. *See, e.g.*, First General Counsel's Report, MUR 4643 (Democratic Party of N.M.), at 20–21; Statement of Reasons of Comm'rs Smith & Toner (Mo. Democratic State Committee et al.), at 2 (“[U]nless the donor specifically earmarks his gift, we do not impose the original donor's limit on party spending, even though[] the donor believed that by giving to the party he could assist the party's nominees.”); *see also* *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 462 (2001) (“Donations are made to a party by contributors who favor a party's candidates in races that affect them.”). The Complaint simply proffers no creditable evidence of earmarking by any donor to Trump Victory – because there

² *See* Theodore Schleifer, *Trump spent massive amounts in September just before donors grew jittery*, CNN (Oct. 21, 2016) (“I remember thinking I wouldn't give them money,” said Zieve, recalling a meeting with operatives from the super PAC *Rebuilding America Now* at the Republican National Convention. ‘And I realized that I have never ever been as excited about a candidate as I've been about Donald Trump.’” (emphasis added)).

was no such earmarking – and there is no basis on which to find reason to believe a violation of the Commission’s earmarking rules occurred.

II. THE COMPLAINT DOES NOT ESTABLISH ANY CONNECTION BETWEEN FUNDS DISTRIBUTED BY TRUMP VICTORY TO STATE PARTY COMMITTEE PARTICIPANTS AND SPENDING BY THE RNC ON BEHALF OF THE CAMPAIGN.

The Commission’s earmarking rules also make clear that for there to be a violation, any designation or encumbrance must “result[] in all or . . . part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.” 11 C.F.R. § 110.6(b). The Complaint, however, does not establish a direct connection between the funds allocated by Trump Victory to the state party committee participants and any funds spent by the RNC on behalf of the Campaign or President Trump as coordinated party expenditures. The Complaint also fails for this reason.

The Complaint asserts that “[b]etween September 30, 2016 and December 16, 2016, while funds were being transferred from [Trump Victory] to the state parties to the RNC, the RNC also engaged in coordinated expenditures with the Trump Campaign.” (Compl. 11.) These coordinated party expenditures, the Complaint contends, “establish” that the RNC was spending the money it received from the state party committee participants’ transfers “in cooperation with, or at the direction or suggestion of, the Trump Campaign.” (Compl. 12.) This conveniently drawn inference, however, ignores critical facts that show why it is absurd, including that:

- The RNC had other funds available in its general operating account at the same time – including more than \$30 million of fundraising proceeds distributed to the account by Trump Victory during the same period. *See* Crate Affidavit ¶ 8.
- As shown in the Complaint, the state party committee participants continued to make more than \$2 million in intraparty transfers to the RNC after Election Day 2016, while

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the RNC made only a minimal amount (approximately \$220,000) of additional party coordinated expenditures, starkly showing that the transfers were not tied to spending on behalf of the Campaign.

- While the RNC's coordinated authority limit in 2016 was just under \$24 million, it spent only about \$20 million on coordinated party expenditures, notwithstanding the over \$27 million in transfers from state party committee participants the Complaint claims it received. It simply defies plausibility to believe that the transferred funds were earmarked for coordinated expenditures benefiting the Campaign when nearly \$4 million in coordinated authority went unused.


The Complaint thus fails to draw any connection between funds distributed by Trump Victory to state party committee participants and the RNC's coordinated spending on behalf of the Campaign. This provides yet another reason why there is no basis to find that the funds were earmarked for that purpose.

* * *

For the foregoing reasons, the Commission should dismiss this matter and close the file. Although an investigation would show that Respondents engaged in no wrongdoing, additional resources should not have to be spent defending against the Complaint's unsubstantiated allegations. The Commission has made clear that such wishful legal theories, based on nothing but pure speculation and conjecture, will not support a "reason to believe" finding. The Commission must remain steadfast in this regard to avoid encouraging the filing of similar unfounded complaints and the further wasting of valuable committee resources.

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Respectfully submitted,



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*Counsel for Donald J. Trump for President, Inc.,
Trump Victory, and Bradley T. Crate, Treasurer*

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Attachment

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Commonwealth of Massachusetts
County of Essex

AFFIDAVIT OF BRADLEY T. CRATE

I, Bradley T. Crate, attest under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief:

1. I am President of Red Curve Solutions, LLC ("Red Curve"), a full-service consulting firm that provides treasury and accounting services to political committees registered with the Federal Election Commission ("FEC"), as well as other entities.

2. Red Curve has provided compliance and treasury services to Trump Victory ("TV"), a joint fundraising committee presently composed of Donald J. Trump for President, Inc. ("DJTFP") and the Republican National Committee ("RNC"), since TV's registration with the FEC in May 2016.

3. In 2016, in addition to DJTFP and the RNC, as many as 21 Republican state party committees participated in TV.

4. At all times, TV's joint fundraising activities have been governed by a written joint fundraising agreement.

5. The joint fundraising agreement sets forth a formula governing the allocation and distribution of TV's fundraising proceeds to participants, up to the relevant contribution limit. DJTFP and the RNC's general operating account at all times have been first and second, respectively, under the allocation formula.

6. At all times, contributions to TV have been allocated according to the fundraising formula in the joint fundraising agreement unless a contributor designated his or her contribution be allocated differently.

7. At all times, TV's net fundraising proceeds have been distributed only to the participating committee to which they were allocated in accordance with the joint fundraising agreement, and no funds allocated to a state party participant were ever distributed by TV to the RNC.

8. Trump Victory distributed \$31,027,675.66 in net fundraising proceeds to the RNC's operating account in 2016.


Bradley T. Crate

Subscribed and sworn to before me, this 22nd day of April, 2018.


NOTARY PUBLIC

My commission expires: 4/2/21, 2018.

SEAL:

