BEFORE THE FEDERAL ELECTION COMMISSION

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)	**MUR 7340**
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RESPONSE OF DONALD J. TRUMP FOR PRESIDENT, INC. AND BRADLEY T. CRATE, AS TREASURER, TO THE COMPLAINT

Donald J. Trump for President, Inc. and Bradley T. Crate, as Treasurer (collectively, "the Campaign"), by and through undersigned counsel, respond to the Complaint in the above-captioned MUR. The Complaint, a procedurally defective tome of speculation based on unreliable news accounts, makes three fallacious accusations against the Campaign. First, it asserts that President Trump and the Campaign "established, financed, maintained, or controlled" two outside organizations. Second, it argues that the Campaign violated the prohibition on the solicitation of non-federal funds under the Bipartisan Campaign Reform Act ("BCRA"). Third, it alleges that the Campaign coordinated certain polling costs paid by A1P. These claims have no merit, and the Campaign respectfully requests that the Commission dismiss the Complaint – either for its procedural deficiencies alone or on its merits – and close the file.

I. THE COMPLAINT DOES NOT SET FORTH SUFFICIENT SPECIFIC FACTS THAT, IF PROVEN TRUE, WOULD CONSTITUTE A VIOLATION OF LAW.

As a threshold matter, the Complaint should be dismissed as procedurally defective. A complaint must contain a "clear and concise recitation of the facts which describe a violation of statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3); *see also*, *e.g.*, Factual & Legal Analysis, MUR 6554 (Friends of Weiner), at 5 ("The Complaint and other available information in the record do not provide information sufficient to establish" a violation of the Federal Election Campaign Act ("the Act").); Factual & Legal Analysis, MUR 5845 (Citizens for Truth), at 6, 6 n.8 ("The Commission may find reason to believe if a complaint sets forth sufficient specific facts which, if proven true, would constitute a violation of the Act. Unwarranted legal

conclusions from asserted facts or mere speculation, however, will not be accepted as true."). The Complaint fails to meet this necessary condition and, therefore, must be dismissed.

The Complaint consists of nothing but speculation and conclusory allegations based on information culled entirely from news articles, which the Commission has declared provides an inadequate basis for reason to believe. *See, e.g.*, First General Counsel's Report, MUR 5467 (Michael Moore), at 5 ("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." (citation omitted)); Statement of Reasons of Comm'rs Mason, Sandstrom, Smith & Thomas, MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.), at 2 ("Unwarranted legal conclusions from asserted facts . . . will not be accepted as true."). A "reason-to-believe finding by the Commission must be based on specific facts from reliable sources." Statement of Reasons of Comm'rs Petersen, Hunter & McGahn, MUR 6002 (Freedom's Watch, Inc.), at 6, 6 n.31 (citing MURs). Allegations like those in the Complaint that are "based upon unsworn news reports, anonymous sources, and an author's summary conclusions and paraphrases provide questionable legal basis to substantiate a reason to believe finding." Statement of Reasons of Comm'rs Petersen, Goodman & Hunter, MUR 6661 (Robert E. Murray), at 8. The reason is obvious: the "probative and evidentiary value of [such sources of information] is quite limited, *id.* at 7, and their "credibility and accuracy . . . difficult to ascertain." Statement of Reasons of Comm'rs Petersen, Hunter & McGahn, MUR 6002 (Freedom's Watch, Inc.), at 6; *accord* Factual & Legal Analysis, MUR 5866 (Conrad Burns - 2006), at 5.

Due process and fundamental fairness demand dismissal of fanciful complaints such as this one. The mere filing of a complaint without presenting "sufficient specific facts" in support cannot shift the burden of proof to the respondent to have to prove negatives in order to avoid a wasteful investigation. *See, e.g.*, Statement of Reasons of Comm'rs Wold, Mason & Thomas, MUR 4850

(Deloitte & Touche, LLP), at 2 ("A mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents."). Indeed, "the [reason-to-believe] standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges." Statement of Reasons of Comm'rs Petersen, Hunter & McGahn, MUR 6056 (Protect Colorado Jobs, Inc.), at 2. Simple "'official curiosity,'" in other words, "will not suffice as the basis for FEC investigations." *Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981). The Complaint's procedural deficiencies alone thus demand its dismissal.

II. THE CAMPAIGN IS NOT INVOLVED IN THE GOVERNANCE OR ACTIVITIES OF THE TWO OUTSIDE GROUPS DISCUSSED IN THE COMPLAINT.

The Complaint claims that the two America First organizations described in the Complaint are entities acting on behalf of or "directly or indirectly established, financed, maintained or controlled by" Trump Campaign. This is completely false and unsupported by any facts. In actuality, the Campaign has not provided any funding to either of those entities, and no employee of the Campaign has any involvement in – let alone actual control over – the governance or decisionmaking of those outside groups. *See* 11 C.F.R. § 300.2(c)(2) (setting forth the ten affiliation factors to be examined by the Commission "in the context of the overall relationship"). While the Campaign understands that Mr. Parscale formerly provided digital consulting services to each of the America First entities through his consulting firm, Parscale Strategy LLC, the America First entities terminated that consultancy upon the announcement of Mr. Parscale's hiring as the Campaign's Campaign Manager in February 2018. Mr. Parscale's previous work as an independent contractor for the America First entities clearly is not a sufficient basis on which to deem them "affiliated" with the Campaign, and the Commission should dismiss this flawed theory. *See, e.g.*, First General Counsel's Report, MUR 7070 (Congressional Leadership Fund), at 6 (finding "additional

enforcement proceedings . . . [un]warranted" in light of the Complaint's lack of information regarding a majority of the affiliation factors, the ambiguity of the complaint's allegations asserted, and direct denials of candidate "control over [the outside group]"); *see also Final Rule on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49,064, 49, 083 (July 29, 2002).

III. THE CAMPAIGN HAS NOT VIOLATED BCRA'S PROHIBITION ON THE SOLICITATION OF NON-FEDERAL FUNDS.

The Complaint also erroneously contends that Mr. Parscale's work for the America First entities violated BCRA's prohibition on "agent[s] acting on behalf of a Federal candidate or individual holding Federal office" soliciting non-federal funds. *See* 11 C.F.R. §§ 300.10, 300.61.[1] As noted in Section II, Mr. Parscale, through Parscale Strategy LLC, provided digital consulting services to those groups as an independent contractor – just as he did for the Campaign prior to his being hired as Campaign Manager in February 2017. Though Mr. Parscale allegedly consulted on certain of the America First entities' online fundraising activities, it is unclear how such behind-the-scenes services, without direct donor interaction, could violate BCRA's restriction on the solicitation of non-federal funds.

Nonetheless, the Commission has long established that even if those activities for the America First entities were subject to BCRA, the law "'does not prohibit individuals who are agents of the foregoing from also raising non-Federal funds for . . . outside groups.'" Advisory Op. 2015-09 (Senate Majority PAC), at 7 (quoting *Definition of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures*, 71 Fed. Reg. 4,975, 4,979 (Jan. 31, 2006). Rather, "to preserve an individual's ability to raise funds for multiple organizations, the Commission's . . . regulations specifically require an agent to be acting on behalf of a candidate or

[1] An "agent" of a federal candidate or officeholder is defined as "any person who has actual authority, either express or implied . . . [t]o solicit, receive, direct, transfer, or spend funds in connection with any election." 11 C.F.R. § 300.2(b)(3).

party committee to be subject to [BCRA's] soft money prohibitions." 71 Fed. Reg. at 4,979 n.9; *accord* Advisory Op. 2015-09, at 7. This enables such individuals to wear "two hats" and thus raise funds for different entities "at different times," so long as any fundraising on behalf of an outside group is done "exclusively on behalf of" that organization and "not on the authority of" a candidate. Advisory Op. 2003-10 (Nevada State Democratic Party et al.) at 5. For there to be reason to believe, there must be a showing that the individual "ha[d] actual authority to act on behalf of [the candidate] when soliciting non-federal funds [for another entity]." *Id.* at 4–5.

The Complaint can point to nothing indicating that Mr. Parscale performed his independent contractor work for the America First entities on behalf of the Campaign. There is no suggestion that he ever held himself out to donors or potential donors as acting on the Campaign's behalf during the course of such work. *See, e.g.*, Advisory Op. 2003-10 (Nevada State Democratic Party et al.) at 7. In fact, Mr. Parscale and the Campaign understood that any work Mr. Parscale or Parscale Strategy LLC performed for other clients would be done solely on behalf of the other clients. This understanding ultimately was set forth in Parscale Strategy LLC's contract with the Campaign, which provided:

> While performing services for any other political committees, entities, or individuals, [Parscale Strategy LLC] shall have no authority, actual or apparent, to act on behalf of [the Campaign] and shall not be an agent of [the Campaign] or hold itself out, or otherwise represent itself, as an agent of [the Campaign].

Thus, there is simply no merit to the Complaint's assertions that Mr. Parscale acted as an agent of the Campaign when consulting for the America First entities. As a result, even if the Commission were to deem an outside vendor's behind-the-scenes digital consulting services to fall within the scope of BCRA's prohibition on the solicitation of non-federal funds, it must dismiss this claim.

IV. THE CAMPAIGN HAS NOT COORDINATED ANY SPENDING WITH THE AMERICA FIRST ENTITIES.

The Complaint's final claim against the Campaign asserts that the Campaign engaged in coordinated spending on polling undertaken by one of the America First entities under the general coordination regulation, under 11 C.F.R. § 109.20(b). This too is baseless. Out-of-cycle polling by an outside group cannot possibly be deemed an in-kind contribution made to influence the election of a candidate not on the ballot for more than two years. *See, e.g.*, 11 C.F.R. § 109.21(c)(4)(ii); Explanation & Justification, *Coordinated Communications*, 71 Fed. Reg. 33,190, 33,197–99 (June 8, 2006). Nevertheless, the Campaign has had no involvement whatsoever in any of the America First entities' activities – let alone their polling efforts – and the Complaint offers nothing to support its accusations. The Complaint, in fact, presents no factual allegation indicating that any activity of America First was done "in cooperation, consultation or concert with, or at the request or suggestion of" the Campaign, the *sine qua non* of a coordination theory under § 109.20(b). The Commission has repeatedly made clear that such bald assertions of coordination will not justify a reason-to-believe finding. *See, e.g.*, Factual & Legal Analysis, MUR 5943 (Giuliani), at 11–12 (dismissing coordination allegations for lack of evidence). It likewise must reject this wildly conclusory claim.

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In short, the Complaint fails to demonstrate any reason to believe that the Campaign has violated the law, and for the aforementioned reasons, the Campaign respectfully requests that the Commission dismiss the Complaint and close the file.

Respectfully submitted,

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