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June 21, 2019

CONFIDENTIAL
COMMUNICATION

VIA E-MAIL TO CELA@FEC.GOV

Federal Election Commission
 Office of Complaints Examination & Legal Administration
 Attn: Kathryn Ross
 1050 First Street, N.E.
 Washington, DC 20463

Re: Matter Under Review 7340

Dear Office of Complaints Examination & Legal Administration:

On behalf of Donald J. Trump for President, Inc. and Treasurer Bradley T. Crate, enclosed is a response to the Supplemental Complaint in the above-captioned MUR.

Very truly yours,

/s/ E. Stewart Crosland

E. Stewart Crosland

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

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MUR 7340

**RESPONSE OF DONALD J. TRUMP FOR PRESIDENT, INC.
AND TREASURER BRADLEY T. CRATE TO THE SUPPLEMENTAL COMPLAINT**

Donald J. Trump for President, Inc. and Treasurer Bradley T. Crate (collectively, “the Campaign”) hereby respond to the Supplemental Complaint filed in the above-captioned MUR.

The Supplemental Complaint alleges that the Campaign violated the Bipartisan Campaign Reform Act’s (“BCRA”) prohibition on the solicitation of non-federal funds by identifying an independent outside group, America First Action, as a known and trusted organization (a well-known fact) in a statement broadly condemning misleading fundraising practices. These allegations have no merit—and complainants know it. Indeed, the very same individual who signed the Supplemental Complaint acknowledged as much publicly: “Pointing to a super PAC and saying, “That’s the one I approve of” doesn’t break the law.” Zach Montellaro, *Where’s the line between a campaign and a Super PAC?*, Politico (May 8, 2019) (quoting Paul S. Ryan, Common Cause).¹

The Campaign’s public statement rebuking deceptive fundraising activity “merely provid[ed] the identity of an appropriate recipient, without any attempt to motivate another person to contribute or donate funds” to America First Action. *See* Explanation & Justification, *Definitions of “Solicit” and “Direct”*, 71 Fed. Reg. 13,926, 13,933 (Mar. 20, 2006). The FEC has made clear that such a statement does not constitute either the “solicitation” or “direction” of soft-money under BCRA. *Id.* Thus, the Commission should dismiss these new allegations along with the meritless claims made in the original complaint addressed in the Campaign’s initial response in this matter.

¹ <https://www.politico.com/newsletters/morning-score/2019/05/08/wheres-the-line-between-a-campaign-and-super-pac-614412>.

BEFORE THE FEDERAL ELECTION COMMISSION

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MUR 7340

**RESPONSE OF AMERICA FIRST ACTION, INC., JON PROCH AS TREASURER AND
 AMERICA FIRST POLICIES, INC.**

By and through undersigned counsel, America First Action, Inc. and Jon Proch as Treasurer (“AFA”), and America First Policies, Inc. (“A1P”)¹ respond to the Supplemental Complaint filed in the above-captioned Matter Under Review. The Supplemental Complaint, signed by Paul S. Ryan, underscores the weakness of their original Complaint. The Supplemental Complaint recites nothing but tidbits that even Mr. Ryan has admitted do not describe a violation of law. Respondents thus again request that the Commission dismiss this matter.

The Supplemental Complaint’s only new “evidence” of a purported violation by the America First entities is a public statement by the Donald J. Trump for President campaign on May 7, 2019, which referenced AFA. The Trump campaign’s statement, which condemned deceptive fundraising organizations, simply noted that “. . . there is one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump’s policies and agendas.” AFA had no knowledge of the campaign’s statement prior to its release, and learned of it at the same time as the rest of the public. See Attachment, Declaration of Brian O. Walsh at ¶¶ 3-4 [hereinafter Walsh Decl.].

¹ It is unclear why America First Policies was generated as a respondent to the Supplemental Complaint at all. The sole additional “evidence” that Complainants cite in their supplemental filing is a press statement that refers only to America First Action. Indeed, the Complaint makes no reference to America First Policies except to reiterate the Complainants’ conclusory allegations that were already asserted in the initial Complaint.

The Trump campaign's statement about AFA is a truism. AFA was founded in 2017 and is "the primary super PAC dedicated to electing federal candidates who support the agenda of the Trump-Pence Administration." *See, e.g.*, August 17, 2017 Press Release of America First Action available here: <https://www.alapac.org/news/alapac-announces-corey-lewandowski-as-a-senior-advisor-and-spokesman>. The PAC has repeatedly made clear to donors and the media that in 2020 it will operate as the primary Super PAC in support of President Trump's reelection campaign. Indeed, in response to press inquiries regarding the Trump campaign's statement, Brian O. Walsh, the President of AFA, issued a public statement that said in part, "America First Action is steadfast in our support of President Donald J. Trump and unwavering in our commitment to seeing him re-elected in 2020." *See* Walsh Decl. at ¶ 5. Moreover, President Trump and Vice President Pence have appeared as special guests at PAC events, as is permitted by law. Therefore, it is hardly surprising the President's reelection campaign would consider AFA a trusted supporter of President Trump's policies and agendas. That is a fact.

The Supplemental Complaint never attempts to explain how an independent statement of fact issued by the Trump campaign supports Complainants' spurious allegations in this MUR. To the contrary, mere days before signing the Supplemental Complaint, Paul S. Ryan openly acknowledged that the opposite is true:

It pains me to say it, but ***I don't think [the statement itself] is a legal problem,***" Common Cause's Paul Ryan told Score ... Pointing to a super PAC and saying, '***That's the one I approve of***' ***doesn't break the law.***

See Zach Montellaro, *Where's the line between a campaign and a Super PAC?*, Politico (May 8, 2019) (emphases added), <https://www.politico.com/newsletters/morning-score/2019/05/08/wheres-the-line-between-a-campaign-and-super-pac-614412>. Mr. Ryan's inexplicable about-

face shows beyond doubt that this entire MUR is a cynical political stunt that the Commission must dismiss immediately.

Respectfully submitted,



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*Counsel for America First Action, Inc. and
Jon Proch as Treasurer
Counsel for America First Policies, Inc.*

BEFORE THE FEDERAL ELECTION COMMISSION

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) MUR 7340 (America First Action, Inc.)
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DECLARATION OF BRIAN O. WALSH

I, Brian O. Walsh, declare as follows:

1. My name is Brian O. Walsh. I am the President of America First Action, Inc., a Virginia nonstock corporation that is registered with the Federal Election Commission as an independent expenditure-only committee. My business address is 1400 Crystal Drive, Suite 850, Arlington, Va. 22202. I have personal knowledge of the facts described in this Declaration.

2. I first learned from media reports that the Donald J. Trump for President campaign had issued a press release on May 7, 2019 that stated in part:

In addition, there is one approved outside non-campaign group, America First Action, which is run by allies of the President and is a trusted supporter of President Trump's policies and agendas.

3. I did not request or suggest that the Trump campaign issue this statement.

4. No representative of the Trump campaign consulted me or any other representative of America First Action about the content of the statement before it was issued.

5. I received several media inquiries about the Trump campaign statement after it was issued. I provided a statement in response to those inquiries that said in full:


America First Action is steadfast in our support of President Donald J. Trump and unwavering in our commitment to seeing him re-elected in 2020. While America First is an independent organization, we are honored to have the trust and confidence of President Trump and to welcome him, Vice President Mike Pence, Donald Trump Jr., and other senior officials as specially invited guests at our events.

6. I did not discuss or coordinate my statement with the Trump campaign or any individual acting as the campaign's representative or agent.

7. My statement was reported by news outlets including *Politico*, which published an article on May 8, 2019 that quoted it in part. The article is available here: <https://www.politico.com/newsletters/morning-score/2019/05/08/wheres-the-line-between-a-campaign-and-super-pac-614412>.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 10, 2019.



Brian O. Walsh