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May 4, 2018

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### VIA ELECTRONIC MAIL

Mr. Jeff S. Jordan  
Federal Election Commission  
Office of Complaints Examination and Legal Administration  
Attn: Kathryn Ross, Paralegal  
1050 First Street, NE  
Washington, DC 20463

**Re: MUR 7347**

Dear Mr. Jordan:

On behalf of End Citizens United and Deanna Nesburg, in her official capacity as Treasurer (collectively, the "Committee"), we write in response to the Complaint filed by Ms. Petra A. Mangini. The Complaint alleges that an email solicitation that the Committee sent on behalf of now-Representative Conor Lamb violated the Federal Election Campaign Act (the "Act") because, alternatively (1) it misrepresented itself as acting on behalf of Representative Lamb or (2) it contained an incorrect disclaimer. As described herein, the Complaint is based on a misunderstanding of the facts and applicable law, and should be promptly dismissed.

### **FACTUAL BACKGROUND**

End Citizens United is a multicandidate committee that is registered with the Commission. Its mission is to "end Big Money in politics and fix our rigged political system by electing campaign finance reform champions."<sup>1</sup> Consistent with this mission, the Committee only accepts contributions that fall within the contribution limitations and source restrictions of the Act into its federal account.

<sup>1</sup> See End Citizens United, About Us, at <https://endcitizensunited.org/about/> (last visited Apr. 30, 2018)

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One of the ways in which the Committee provides support to its endorsed candidates is by emailing fundraising solicitations to its subscriber list, soliciting funds for those candidates. The solicitations direct recipients to a landing page administered by the website ActBlue.com (“ActBlue”), where recipients may donate to the endorsed candidate.

The Committee followed this process in distributing the solicitation that is the subject of this Complaint. The Committee received the campaign’s advance consent before distributing the solicitation. And the solicitation directed recipients to an ActBlue page where they could donate to the Lamb campaign, as well as to the Committee. *See* Complaint, Exh. B.

### LEGAL ANALYSIS

The Complaint posits two contradictory theories by which the Committee may have violated the Act. First it alleges that, “[i]f Lamb neither sent nor authorized ECU’s e-mail, ECU fraudulently represented itself as acting on Lamb’s behalf for the purpose of soliciting contributions.” Second, it alleges that the email solicitation violated the Act because the disclaimer used on the email indicated that it was “not authorized by any candidate or candidate’s committee.” Neither allegation has merit.

*First*, the Complaint’s allegation that the Committee violated 52 U.S.C. § 30124 is based on factual error. That section provides that no person shall “fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate ... for the purpose of soliciting contributions or donations.” 52 U.S.C. § 30124(b). In fact, the Lamb campaign did consent to the email solicitation, and the solicitation directed donors to an ActBlue page where they could donate directly to the Lamb campaign. Accordingly, there was nothing fraudulent about the solicitation.

*Second*, the Complaint’s allegation that the Committee violated the Act’s disclaimer requirements misunderstands the applicable law. Commission rules require that, when a political committee distributes 500 or more substantially similar emails in a 30-day period, the emails must contain a disclaimer identifying that the committee paid for them. 11 C.F.R. § 110.11(a)(1). If paid for by a committee that is not a candidate’s authorized committee, the disclaimer must also indicate whether the communication was “authorized” by a candidate or candidate’s committee. 52 U.S.C. § 30120(a)(2), (3); 11 C.F.R. § 110.11(b)(2), (3). However, neither the Act nor the rules define the term “authorized”; accordingly, the term “authorized” can only be read in tandem with the closest analogous rule, the Commission’s coordinated communication regulation. Consistent with this reading, the Commission has

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declined to pursue enforcement when committees used the disclaimer found at section 110.11(b)(3) for issue advertisements that were not coordinated communications under section 109.21, on the basis that the disclaimer found at section 110.11(b)(2) is only required where a communication qualifies as a “coordinated communication.” Statement of Reasons of Commissioners Hunter, Petersen & McGahn, MUR 6037 at 8 (Merkley); *see* Statement of Reasons of Commissioners Walther, Petersen, Bauerly, Hunter & McGahn, MUR 6044, at 6 (Musgrove) (finding no reason to believe ad advertisement violated the Act when, *inter alia*, it was not a coordinated communication).

The Committee’s email fundraising solicitation was not a “public communication” and, therefore, not a coordinated communication under Commission rules. 11 C.F.R. §§ 100.26, 109.21(c). Accordingly, the Committee reasonably and appropriately included the disclaimer found at section 110.11(b)(3). This practice is consistent with the Act and Commission regulations, has been widely adopted by numerous unauthorized political committees, including the six major national political party committees, and the Commission should not disturb it. Accordingly, the Commission should find no reason to believe that the solicitation violated the Act’s disclaimer requirements.<sup>2</sup>

### CONCLUSION

For the reasons described above, the Commission should find that there is no reason to believe the Committee violated the Act, and it should promptly close the file.

Sincerely,



Andrew Harris Werbrock  
Counsel, End Citizens United

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<sup>2</sup> Even if the Commission concludes that this approach resulted in a technical violation of the Act, it should not pursue enforcement in this case. It has been the consistent practice of the Commission to dismiss matters alleging technical violations of the Act’s disclaimer requirements, so long as the communication contained language sufficient to avoid confusion about its sponsor. *See, e.g.*, MUR 7039 (Bernie 2016); MUR 7023 (Kinzler for Congress); MUR 7004 (Stars and Stripes Forever); MUR 6905 (Mayday PAC); MUR 6849 (Kansas for Tiahrt); MUR 6825 (Tom Macarthur for Congress Inc.); MUR 6814 (Erin Bilbray for Congress); MUR 6782 (Mark Pryor for US Senate); MUR 6438 (Arthur B. Robinson); MUR 6270 (Rand Paul for Senate).