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UTRECHT, KLEINFELD, FIORI, PARTNERS

ATTORNEYS AT LAW
1776 Eye Street NW, Tenth Floor, Washington, D.C. 20006
Main (202) 778-4000
Facsimile (202) 842-5825
www.up-law.com

July 30, 2018

Lisa J. Stevenson, Acting General Counsel
Office of the General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20001

via email, cela@FEC.gov

Re: MUR 7417, Jason Rittereiser for Congress and Jay Petterson, as Treasurer

Dear Ms. Stevenson:

This is the response of our clients, Jason Rittereiser for Congress and Jay Petterson, as Treasurer (hereinafter collectively, the "Committee" or "Respondents") to the Complaint filed in the above-captioned Matter Under Review ("MUR"). For the reasons stated below, the Committee respectfully requests that the Commission find no reason to believe that any violation of the Federal Election Campaign Act of 1971 ("Act"), as amended, or of the Commission's regulations, was committed by these Respondents and close this matter as it pertains to them as expeditiously as possible.

A. Background

Respondent Committee is the principal campaign committee of Jason Rittereiser, a candidate for the U.S. House of Representatives in the Eighth District of Washington. The upcoming Democratic primary election in this district will be held on August 7, 2018. In short, only one allegation in the broader Complaint pertains to these Respondents, specifically as it relates to an event attended by candidate Jason Rittereiser on March 3, 2018 at the Good Samaritan Episcopal Church ("Church") in Sammamish, Washington and purportedly hosted by Indivisible Washington's 8th District ("Indivisible WA-8"). Two other Democratic candidates for the same office attended the event in question. Complainant alleges that this event constitutes an in-kind contribution to Respondents and the other candidates that attended, namely because "money was expended to give specific partisan candidates an advantage..." Complaint at page 12. No specific expenses are listed in the speculative Complaint, or even referred to, other than mere statement that there was "likely" to have been a fee for the event site. Id.

In short and as more fully explained below, the event which Respondents attended is exempt from the definition of contribution pursuant to the exemption for events held in church community rooms, and hence, no in-kind contribution occurred. For the reasons stated herein, Respondents respectfully contend that no contribution was received by them.

B. Discussion

1. The event in a church community room is exempt from the definition of contribution under 11 CFR 100.76.

While under the Act and Commission regulations, a "contribution" is defined as a "gift, subscription, loan... advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office" 11 CFR 100.52(a), not every disbursement for these purposes constitutes a "contribution." Numerous exceptions are delineated in the law, see, e.g., 11 CFR 100.71-94, whereby the term "contribution" does not include payments, services or other things of value described in those subsections. Specifically, the use of a church room for candidate activity is not a contribution where the room is used on a regular basis for non-commercial purposes and the room is available for use without regard to political affiliation. 11 CFR 100.76. In addition, a nominal fee paid for the use of a church room is "not a contribution." Id.

As far as these Respondents knew, this event was an ordinary event under the "church room" exception of the Commission's regulations and perfectly permissible. The Church itself advertises the regular availability of its rooms and facilities to the community on its website. http://www.goodsamepiscopal.org/facilities/. Respondents were not involved with the logistics of the event, such as selecting the venue or the format or set up of the event. Respondents only involvement with the event was to accept an invitation to appear and to then appear and participate. Respondents had no knowledge or information indicating that a fee was paid for the room, but even if it was, the exception is applicable.

Upon information and belief, Respondents did not observe any activities or expenses that, in their view, fell outside the church room exception to the definition of contribution.[1] Where, as here, the appearances and circumstances clearly establish a permissible activity under the Commission regulations, a candidate or campaign should be entitled to rely upon the permissibility of the activity under the regulations where they have no information to the contrary. There could have been no knowing acceptance of an in-kind contribution here, as there was no information under which a reasonable person could have concluded that a contribution was made or even to inquire further.[2] Accordingly, Respondents' mere attendance at an event which, from all outward appearance appeared to be in full compliance with the rules, and their reliance upon the church room exception in doing so, should compel the Commission to find no reason to believe that Respondents knowingly committed any violation of the Act or Commission regulations in connection therewith.

2. None of the circumstances cited by Complainant convert this exempt event into an in-kind contribution.

Complainant raise several "red herrings" that are not pertinent to the analysis as to the applicability of the church room exemption under 100.76 or to whether Respondents herein knowingly accepted an in-kind contribution, namely that (1) a banner was displayed at the event,

[1] Respondents recall that a small bottle of water was provided to each candidate.

[2] Even if the Respondents had inquired further, the event would have been permissible under 100.76. Respondents were under no obligation to decline participation in an otherwise permissible event.

(2) donations were solicited to "help defray the cost of the event," and (3) money was expended to give specific "partisan" candidates an advantage, to the exclusion of other candidates. None of these factors changes the ultimate conclusion that the event was permissible under 100.76 and that no in-kind contribution occurred, as explained below.

First, with respect to the banner, and as evidenced by the photograph supplied by Complainant, the banner does not refer to Respondents, or to any federal candidate, for that matter. If Indivisible WA-8 raised or expended funds for their own purposes or to promote their own group, then that expenditure is not in connection with any candidate or campaign under the Act, and in the absence of a clearly identified candidate, cannot constitute a contribution to any candidate. Respondents had no involvement with this banner and, upon information and belief, do not recall seeing any other banners or paraphernalia with Respondent's name on it, which is entirely logical given that none of the participants had been endorsed by Indivisible WA-8 at the time of the event. Accordingly, the banner promoting the event host does not give rise to a contribution to Respondents, nor does it change the applicability of the 100.76 exemption to the event in question.

Second, with respect to the fundraising, this, too, does not change the nature of the event, as the fundraising was not on behalf of any candidate or campaign. If Indivisible WA-8 raised funds for their own benefit or promotion, Respondents were not involved with this, and Respondents solicited no funds in connection with this event. Additionally, Respondents accepted no campaign contributions in connection with this event, again, as it was not a fundraiser for Respondents. As stated above, upon information and belief, Respondents understood this to be an event held in church room, as exempted from the definition of contribution, regardless of whether there was a cost incurred by the hosts to use the room or not. While the raising of funds may be relevant to Indivisible WA-8's status as a group or committee under the Act, this, alone, does not give rise to a contribution to Respondents, nor does it change the applicability of the 100.76 exemption to the event in question.

Finally, the contention that certain "partisan" candidates were included by the hosts to the exclusion of other candidates is clearly not pertinent to the conclusion that no contribution occurred. Nowhere does the Act or Commission regulations state that for the church room exemption to be applicable, all candidates from one party or from both parties must be invited to an event.[3] To the contrary, events held in church or community rooms are akin to events held in homes, namely, that the hosts may determine which and how many candidates to invite, and such determination does not negate the exemption. It is rather commonplace for house parties, and church and community room events to include only one candidate consistent with the exemption, and nothing about the inclusion of more than one candidate – or the exclusion of one or more

[3] By complaining that some candidates were excluded from the event, Complainant may be confusing the requirements of the church room exemption under 100.76 with the provisions of 11 CFR 110 and 114 pertaining to candidate participation in candidate debates. Should this event to be considered under the debate regulations, there is no violation by these Respondents. First, pre-primary debates may permissibly include candidates of one political party and exclude the candidates of other parties. 11 CFR 110.13(c). Second, the structure of a debate is left to the sponsoring organization, provided that "at least two candidates" are included, and the structure of the debate does not promote or advance one candidate over another. 11 CFR 110.13(b). Importantly, the Commission has interpreted these requirements to find debates to be permissible, even where some candidates are not included. See, e.g. MUR 4956, In re Manchester Union Leader Newspaper.

candidates – changes this.[4] In fact, candidates spend much of their time campaigning by going from event to event such as this, held in homes and churches throughout the country, and to assert that a candidate would be precluded from doing so without accepting a contribution would subject thousands of similarly situated events to in-kind rules when they are clearly exempt.

Accordingly, then, the facts and circumstances cited by Complainant are irrelevant and insufficient as a matter of law to the analysis as to whether a contribution occurred and cannot support such a conclusion. None of these alleged facts negate the applicability of 100.76 to the event in question and the resulting determination that Respondents did not knowingly accept a contribution in connection therewith.

3. Even if the Commission were to find that a de minimis in-kind contribution occurred, this matter should be dismissed as a matter of discretion under past Commission precedent pertaining to similar circumstances.

As demonstrated above, none of the contentions by Complainant changes the conclusion that the event in question was permissible and did not constitute an in-kind contribution to Respondents. However, should the Commission decide to the contrary, then Respondents urge the Commission to exercise its discretion and close the matter with regards to these Respondents, based on the reasoning and criteria that the Commission has used in similar matters in the past.

Specifically, under the Enforcement Priority System, the Commission often decides when and how to allocate its resources and to pursue certain matters while closing others. The factors for this determination include: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. See, e.g., MUR 7278, *In re McClintock for Congress*, General Counsel's Report, Page 1 It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances, or to find no reason to believe that the Act was violated. *Id.* (Commission voted 5-0 to adopt the report and close the matter.) See, also, MUR 6459, *In re Iowa Faith and Freedom Coalition* (Commission exercised discretion to dismiss matter due to low amount in violation), and MUR 5642, *In re George Soros*, (Commission exercised discretion to dismiss matter due to de minimis nature of violations).

Applying the Commission's factors to the present matter, (1) the amount in violation is clearly de minimis, given that the rental fee, if any, is permissible under 100.76, and that there were no ostensible large expenditures, (2) the gravity of the violation, being a grassroots event held in a church community room, is similarly inconsequential, and (3) the impact on the electoral process is negligible, given the number of house parties and similar events occurring

[4] By complaining that some candidates were excluded from this event, Complainant may also be confusing the event with the requirements for candidate appearances under 11 CFR Part 114. Should the Commission determine not to dismiss this matter as it pertains to Respondents for the reasons stated herein, Respondents hereby reserve the right to argue that no contribution occurred under the provisions of Part 114 of the Commission's regulations permitting a membership organization to host a candidate appearance and to bar other candidates from appearing, without a contribution occurring. See 11 C.F.R. 114.3(c)(2). However, Respondents contend that this analysis is not necessary for the dismissal of this matter at this time.

through the district and the fact that no endorsement was made at this event, nor has the election even been held yet. All of these factors compel a conclusion that this matter is particularly suited, in the case of Respondents, to be dismissed in the exercise of the Commission's prosecutorial discretion.

MUR 6590, *In re Columbus Metropolitan Club*, is particularly instructive here. A non-profit corporation held a forum in Ohio with appearances and discussion by the chairs of the Ohio Republican and Democratic state parties. A complaint with the FEC was filed claiming that this was an impermissible corporate contribution to the party committees. The amount paid for the event was $2740, which would have been split between the two groups. On page 8 of the OGC report, OGC states that even if there was a violation, the amount is de minimis and the FEC should exercise prosecutorial discretion in dismissing the complaint. The Commission voted 5-0 to dismiss the case and find no contribution while also approving the analysis in the OGC report. Respondents urge both OGC and the Commission to adopt the same position here.

C. Conclusion

In sum, with respect to the Respondents Jason Rittereiser for Congress and Jay Petterson, as Treasurer, the Complaint and the information provided therein is purely speculative and clearly does not support a violation of the Act by these Respondents. The event which Respondents attended is exempt from the definition of contribution pursuant to the exemption for events held in church community rooms, and hence, no in-kind contribution occurred. Even if the Commission disagrees, the amount of the in-kind would be so de minimis as to be negligible.

For this reason, and as demonstrated above, Respondents respectfully request that the Commission find no reason to believe that they violated any provision of the Federal Election Campaign Act of 1971 (the "Act"), as amended, or the Commission regulations and close this MUR as it pertains to these Respondents as expeditiously as possible.

Respectfully submitted,

Eric Kleinfeld
Adam Clark
Utrecht, Kleinfeld, Fiori Partners
Counsel for Jason Rittereiser for Congress, and
Jay Petterson, as Treasurer