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September 11, 2018

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
VIA EMAIL at cela@fec.gov

Re: MUR 7422: Response to Complaint from Greitens for Missouri, Inc.

Dear Mr. Jordan:

We are writing this letter on behalf of Greitens for Missouri, Inc. and Jeff Stuermer in his official capacity as treasurer (collectively “GFM”) in response to the Complaint filed in the above-referenced matter by self-styled campaign “reform” group the Citizens for Responsibility and Ethics in Washington (“CREW”) and its Executive Director, Noah Bookbinder (collectively the “Complainants”), against SEALs for Truth and Nicholas Britt in his official capacity as treasurer, American Policy Coalition, Inc., LG PAC and Richard Monsees in his official capacity as treasurer, Freedom Frontier, and Unknown Respondents (the “Named Respondents”).

This response is limited to the propriety of the GFM’s status as a respondent. GFM is not named as a respondent in the Complaint, and there are no stated allegations of wrongdoing by GFM.¹ Apparently, the FEC’s Office of General Counsel (“OGC”) took it upon itself to attempt to also include GFM as a respondent, along with the multiple Named Respondents for which there are actually stated accusations against. The Complaint fails on its face to present a legal theory under which GFM could have possibly violated the Federal Election Campaign Act of 1971, as amended (the “Act”), or Commission regulations. Consequently, Greitens for Missouri,

¹ Although the Complaint includes allegations against “Unknown Respondents,” the Unknown Respondents are the persons alleged to have contributed funds to American Policy Coalition and Freedom Frontier. No reasonable reading of the Complaint could reach the conclusion that GFM is one of the Unknown Respondents.

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Inc. and Jeff Stuerman in his official capacity as treasurer should be immediately dismissed as a respondents.²

The Commission may find “reason to believe” only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. *See* 11 C.F.R. § 111.4(a), (d). In this case, despite naming several respondents, and Complainants’ vast resources and motivation to create some sort of scenario in the Complaint that, if proven, would constitute a violation of the Act by GFM, they were nonetheless unable to even assert a theory by which GFM could have violated the Act. Complainants frequently make public their disagreements with First Amendment protections for political speech and are committed advocates for restrictions on political speech. As such, CREW raises funds for its pro-regulatory lobbying efforts through periodically filing FEC complaints hyperbolically asserting violations of the Act by conservative-leaning organizations and candidates. We note this ideological agenda and practice not to pass judgment upon Complainants, but instead to reinforce that if CREW and Mr. Bookbinder could have come up with some sort of theory under which GFM might have violated the Act, they would have certainly named GFM as a respondent. However, Complainants did not file a complaint against GFM, and did not assert any facts which, if true, would constitute a violation of the Act by GFM.

² The Commission’s naming of Jeff Stuerman as a respondent in his official capacity as treasurer raises a separate concern. To be sure, the Commission’s policy is to name the treasurer in his or her official capacity when a political committee is alleged to have violated the Act. *See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 FR 3-01 (Jan. 3, 2005) (hereinafter, “Policy Statement”); *see also Combat Veterans for Cong. PAC. v. FEC*, 983 F. Supp. 2d 1 (D.D.C. 2013), *aff’d*, 795 F.3d 151 (D.C. Cir. 2015). But by the very terms of the Commission’s Policy Statement, it applies only to treasurers of *political committees*. *See* Policy Statement at 3 (“Specifically, when a complaint asserts sufficient allegations to warrant naming a *political committee* as a respondent, the committee’s current treasurer will also be named as a respondent in his or her official capacity.”) (emphasis added). “Political committee” is a defined term under the Act. *See* 52 U.S.C. § 30101(4). As discussed elsewhere in this response, GFM is not a “political committee,” and the Complaint does not allege that it is a “political committee.” Consequently, the Commission’s Policy Statement does not apply to Mr. Stuerman. The OGC staff deciding to *sua sponte* name him as a respondent anyway is not supported by law or Commission practice.

When looking at the Commission’s treatment of treasurers of non-federal committees like GFM that are not required to register with or report to the Commission, no congruent policy can be found. While there are examples of the Commission naming the treasurer of a non-federal committee in his or her official capacity, there are just as many examples of the Commission omitting them. *See, e.g.*, First Gen. Counsel’s Rpt., MUR 7323 (Friends of Mimi Walters for Senate 2012; Friends of Mimi Walters for Supervisor 2014); First Gen. Counsel’s Rpt., MUR 7246 (Friends of Buddy Carter for Senate; Millar for Senate; Loudermilk for State Senate; Committee to Re-Elect Ron Stephens; Committee to Elect Jeff Millis Ga St. Sen.; Ellis Black for State Senate, Inc.; Friends of Bruce Broadrick for the House); First Gen. Counsel’s Rpt., MUR 7123 (Jay Inslee for Washington); First Gen. Counsel’s Rpt., MUR 7114 (Tom Casperson for State Senate); First Gen. Counsel’s Rpt., MUR 7109 (Portantino for Senate 2016); First Gen. Counsel’s Rpt., MURs 7078 & 7084 (Scott Taylor for Delegate); First Gen. Counsel’s Rpt., MUR 6970 (DiCianni for DuPage County Board); First Gen. Counsel’s Rpt., MUR 6773 (Nestande for Assembly 2012; Brian Nestande Officeholder Committee, Assembly 2012). To our knowledge, the Commission has not issued any guidance on why it names non-federal committee treasurers as respondents in some matters, but not in others. In other words, the Commission is treating similarly-situated people differently under the law, and has provided no justification for that unequal treatment. Because of the Commission’s, at best, inconsistent, and at worst, arbitrary and capricious approach to (not) naming non-federal treasurers in their official capacity, Jeff Stuerman should immediately be dismissed as a respondent in this matter.

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The failure to name GFM as a respondent and/or assert any facts which, if true, would constitute a violation of the Act by GFM, is not merely a technical mistake. The contents of the complaint are sworn to and signed in the presence of a notary public as required by 11 C.F.R. § 111.4(b)(2). However, because the Complaint alleges violations only by the Named Respondents, GFM cannot after-the-fact be added as a respondent in this matter by Commission staff. To do so would broaden the Complaint beyond what has been sworn to and signed, which would be impermissible under 11 C.F.R. § 111.4(b)(2). The Commission has taken the position that unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001).

Additionally, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.* In the instant case, no allegations have been made regarding GFM, so there are no allegations to refute and no refutation is necessary.

The reason Complainants did not name GFM as a Respondent is because GFM is not alleged to have engaged in any activity that is governed by the Act. As the Complaint points out, it is a violation of the Act to knowingly accept a *contribution* made by one person in the name of another. *See* 52 U.S.C. § 30122. But “contribution” is a defined term meaning “any gift,... deposit of money or anything of value made by any person for the purpose of influencing any election for *Federal office*; or the payment by any person of compensation for the personal services of another person which are rendered to a *political committee* without charge for any purpose.” *Id.* § 30101(8)(A) (emphasis added). None of the funds GFM is alleged to have received were for the purpose of influencing a federal election. Moreover, GFM is not a political committee under the Act. Therefore, none of the funds GFM is alleged to have received are “contributions” under the Act. Accordingly, even if all the outlandish allegations made in the Complaint were true, GFM could not have violated the Act.

Consequently, we respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and dismiss Greitens for Missouri, Inc. and Jeff Stuermer in his official capacity as treasurer as respondents.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



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Derek H. Ross
Counsel to Greitens for Missouri, Inc.