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BY ELECTRONIC MAIL

Federal Election Commission
Office of Complaints Examination and
Legal Administration
Attn: Kathryn Ross
999 E. Street, NW
Washington, D.C. 20436

Re: MUR 7422

Dear Ms. Ross:

On behalf of American Policy Coalition, Inc. ("APC"), this letter responds to the Complaint filed by Citizens for Responsibility and Ethics in Washington against numerous Respondents, including APC. As elaborated below, because the Complaint is based on pure speculation and lacks legal merit, the Commission should dismiss it against APC.

The Complaint alleges that the Respondents engaged in a deliberate conduit contribution scheme to conceal the identity of donors supporting the gubernatorial campaign of Eric Greitens in Missouri in 2016. More specifically, the Complaint alleges in Count II that APC knowingly permitted its name to be used to effect a contribution to Seals for Truth (a federal Super PAC) in the name of another person, in violation of 52 U.S.C. §30122 and 11 C.F.R. §110.4(b). (Compl., at ¶¶55-56.)

In support of this allegation, the Complaint relies primarily on the testimony of Michael Hafner. Mr. Hafner was a campaign aide to Greitens until March 2015, and later worked as a campaign aide to John Brunner, one of Greitens' opponents who he defeated in the Missouri governor's race. The Complaint cites to Hafner's testimony (in an unrelated investigation conducted by a committee of the Missouri House of Representatives) that he "believed" that "there was a strategy employed to conceal donors" by Respondents and the Greitens campaign and that he "believe[d] that it was an intention of the campaign's early on" to avoid disclosure. (Compl., at ¶¶22, 24.)

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Based solely on (i) what Hafner "believed" (as described above) and (ii) the campaign finance report filed by Seals for Truth (showing a contribution from APC to Seals for Truth and a disbursement from Seals for Truth to Greitens), Complainant leaps to the conclusion that APC received a donation from a person that not only was intended (*i.e.*, earmarked) for Seals for Truth, but was ultimately intended to be used to support Greitens' gubernatorial campaign. In other words, it is pure speculation to conclude from the allegations in the Complaint—even if they are assumed to be true—that APC accepted an earmarked donation (which, by the way, APC has a policy against) that was intended for Seals for Truth and the Greitens campaign.

Indeed, there are no other facts alleged in the Complaint that connect the dots between the disgruntled former aide's concealment theory and the contribution from APC to Seals for Truth and the disbursement from Seals for Truth to Greitens. The Complaint's conjectural appeal to an alleged scheme to hide donors falls far short of substantiating the legal claim that APC knowingly permitted its name to be used to conceal the true source of a donation.

The Commission has repeatedly taken the position that unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See, *e.g.*, MUR 4960, *Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas* (Dec. 21, 2001). The Complaint affords no basis for the Commission to conclude there is reason to believe a violation occurred, and the Complaint should be dismissed.

Moreover, even if the speculative conclusions in the Complaint are true (*i.e.*, APC was involved in a nefarious plot to contribute concealed donations to the Greitens campaign), APC could not, as a matter of law, be in violation of §30122 and §110.4(b), because the underlying purpose of the donation would have been to influence an election for a *state*, rather than a *federal* office. In other words, taking all the allegations in the Complaint as true, APC could not have knowingly permitted its name to be used to effect a "contribution," because it was not its purpose to make a "contribution" in the first place. *See Van Hollen v. FEC*, 811 F.3d 486, 488 (D.C. Cir. Jan. 21, 2016) ("[T]he FEC's purpose requirement is consistent with the purpose-laden definition of 'contribution' set forth in FECA's very own definitional section," which requires an intent for it to be used to influence a *federal* election); *see also* MUR 6485 MURs 6487 & 6488, MUR 6711, MUR 6930, *Supplemental Statement of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman* ("A purpose requirement is dictated by the plain text of the Act, court decisions, forty years of Commission practice, and common sense. Congress defined a 'contribution' as 'any 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.' *** Accordingly, the Commission and federal courts have consistently interpreted 52 U.S.C. § 30122, which prohibits making a contribution in the name of another, to require a specific purpose of funding a campaign contribution in another person's name.") (emphasis added).

Thus, the allegations do not approach the threshold requirement as found by the Commission under the applicable sections of FECA that require a specific purpose in funding a campaign contribution in another person's name. The Commission may find "reason to believe" only if the Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. The Complaint here fails that standard and should be dismissed.

If the Commission requires any additional information or clarifications from APC to evaluate the allegations in this matter, please do not hesitate to contact me.

Sincerely,

LANGDON LAW LLC

David R. Langdon
Counsel for American Policy Coalition