JONES DAY

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September 10, 2018

CONFIDENTIAL
COMMUNICATION

VIA E-MAIL TO CELA@FEC.GOV

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

Re: Pre-Matter Under Review 611 & Matter Under Review 7425

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 Complaints in the above-captioned matters.

Very truly yours,

E. Stewart Crosland

Enclosure

cc: Megan Sowards Newton

BEFORE THE FEDERAL ELECTION COMMISSION

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) **PRE-MUR 611 / MUR 7425**
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RESPONSE OF DONALD J. TRUMP FOR PRESIDENT, INC. AND BRADLEY T. CRATE, AS TREASURER, TO THE COMPLAINTS

Donald J. Trump for President, Inc. and Treasurer Bradley T. Crate (collectively, "the Campaign") hereby respond to the Complaints in the above-captioned matters under review, which erroneously try to contort acts of charity into violations of federal campaign-finance law.

The facts are simple. In 2016, President Trump, in his capacity as a federal candidate, and certain individuals acting on his behalf raised millions of dollars for charities that support military veterans. While some of the funds raised for veterans' groups were temporarily deposited with the Trump Foundation (itself a 501(c)(3) organization) until worthy charities could be identified, all funds indisputably went to veterans' charities to support their overall operations as the donors intended. The Federal Election Campaign Act ("the Act") and FEC regulations expressly permit such charitable fundraising efforts without limitation, and the Commission should dismiss these matters immediately.

BACKGROUND

On January 28, 2016, when President Trump was a primary election candidate, the Campaign held, at its expense, a campaign event at Drake University in Des Moines, Iowa, which several television networks broadcast nationwide. *See* Compl., Pre-MUR 611, at 2; Compl., MUR 7425, ¶ 32; *see also* Donald J. Trump for President, Inc. Am. 2016 February Monthly FEC Form 3P at 402 (reflecting the Campaign's facility rental payment to Drake University). In the lead up to and during the event, the candidate and certain individuals acting on the candidate's behalf raised money to benefit charities supporting veterans of the U.S.

military. *See* Compl., Pre-MUR 611, at 3; Compl., MUR 7425, ¶¶ 8–10. Those efforts brought in approximately $5.6 million for veterans' groups. *See* Compl., Pre-MUR 611, at 3; Compl., MUR 7425, ¶ 8. About half of the funds raised were donated directly to veterans' charities the night of the event. *Id.* The rest were temporarily deposited with the Trump Foundation (a 501(c)(3) organization) until additional deserving charities could be identified, and then transferred in various amounts to those charities at later dates. *Id.* None of the funds raised are alleged to have been given to the Campaign, deposited in a Campaign bank account, or in any way used to defray Campaign expenses or obligations.

In all, approximately 40 veterans' charities across the country received funds to help them carry out their critical work for veterans. *See* Louis Jacobson, *A list of the veterans groups Donald Trump says he donated to*, PolitiFact (May 31, 2016), https://www.politifact.com/truth-o-meter/article/2016/may/31/list-veterans-groups-donald-trump-says-he-donated.[1] As the *Washington Post* reported, "[f]or the groups that received this money – often dealing with aging veterans from the Vietnam War, along with returning troops from Iraq and Afghanistan – the money was an enormous help." David A. Fahrenthold, *Trump said he raised $6 million for veterans. Now his campaign says it was less*, Wash. Post, May 21, 2016.

ARGUMENT

The Act and FEC regulations expressly allow, without limitation, federal candidates and their individual agents to make general solicitations of donations for charities (and other tax-exempt organizations) whose "principal purpose" is not to engage in federal election activity. *See* 52 U.S.C. § 30125(e)(4)(A); 11 C.F.R. § 300.65; *see also* 11 C.F.R. § 109.21(g)(2). Money

[1] *See also* http://web.archive.org/web/20160601083057/https://assets.donaldjtrump.com/veteran-fundraiser.pdf (last visited Sept. 4, 2018) (archive copy of May 30, 2016 Campaign release of all charities that received funds).

donated in response to such solicitations does not constitute either "soft money" or contributions made "for the purpose of influencing a federal election." *See* 52 U.S.C. § 30125(e)(4)(A); 11 C.F.R. § 300.65; *see also* 52 U.S.C. § 30101(8), 11 C.F.R. § 100.52(a) (defining "contribution"). The Commission indeed has admonished that the Act must "not be misinterpreted to prohibit candidates, officeholders, or their agents from soliciting funds for a 501(c) organization . . . such as the Red Cross." Explanation & Justification, *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule*, 67 Fed. Reg. 49,064, 49,109 (July 29, 2002).

The funds raised in 2016 for the veterans' charities fall squarely within this rule. The Complaints do not allege that the veterans' charities that received donations were organized to conduct federal election activity, and the solicitations did not specify how the groups would or should spend any donated funds. *See* Advisory Op. 2003-12 (Flake), at 12 ("[A] 'general solicitation' may be made on behalf of a 501(c) organization if two conditions are met: (1) the 501(c) organization does not have as its 'principal purpose' engaging in [federal election activity] . . . , and (2) the solicitation does not specify how the funds will or should be spent."). These were general solicitations, made to raise funds to support the overall operations of veterans' charities. *See, e.g.*, Advisory Op. 2003-5 (Nat'l Assoc. of Home Builders of the United States), at 6 (distinguishing general solicitations from specific solicitations). The monies raised in response thus were not prohibited under the Act.

Nonetheless, the Complaints challenge the legality of the donations that were temporarily deposited with the Trump Foundation before being transferred to veterans' charities. Those funds were not raised on behalf of the Trump Foundation for its use, and the Trump Foundation could only transfer the restricted funds to veterans' groups as donors intended. Accordingly,

those funds were no different from the approximately $2.8 million in donations given directly to charities the night of the event – which the Complaints implicitly acknowledge were lawful.

The Complaints misguidedly assert that the involvement of certain of the candidate's agents with the Campaign in selecting the charities either made the transfers "coordinated expenditures" or converted the funds into impermissible "soft money." *See, e.g.*, Compl., Pre-MUR 611, at 4, 6, 10; Compl., MUR 7425, ¶¶ 30–39. The mere transfer of funds designated for charity consistent with donor intent does not constitute an "expenditure" under the Act because the donations were given by the donors to support the general activities of a charity, not "for the purpose of influencing" a federal election.[2] Furthermore, the law necessarily recognizes that candidates and their agents must choose the specific charities for which they will raise money – just as the hypothetical candidate raising money for the Red Cross would have had to choose the Red Cross as his preferred charity. *See* Explanation & Justification, *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule*, 67 Fed. Reg. at 49,109. By the Complaints' logic, all recipient charities needed to be identified and receive the donations the night of the event. Yet the timing of the delivery of the charitable donations should make no difference from a campaign-finance perspective. "[T]he Federal candidate . . . solicitation restrictions in the Act with regard to 501(c) tax-exempt organizations apply only to Federal candidates . . . making solicitations for 501(c) tax-exempt organizations engaged in either Federal election activity or activities in connection with elections." Comment of McCain,

[2] The Complaint in Pre-MUR 611 wrongly relies on Advisory Opinion 1999-34 (Bilirakis) to support its argument that the January 28, 2016 campaign event, as well as subsequent campaign events where presentation checks were symbolically given, resulted in contributions from the Trump Foundation to the Campaign. Compl., Pre-MUR 611, at 9. That advisory opinion concerned whether a candidate committee received an illegal in-kind contribution from the candidate participating in an event financed in part by third-party, corporate sponsors. *See* Advisory Op. 1999-34, at 2; *see also, e.g.*, Advisory Op. 1978-15 (Fazio) (payments for event and related publicity made by third-party charity). Here, the campaign events were paid for by the Campaign, and 11 C.F.R. § 300.65 imposes no restrictions on raising funds for charities at campaign-funded events.

Feingold, Shays & Meehan., REG 2002-09 Non-Federal Funds, at 35–36 (Apr. 10, 200) ((emphasis added)). The funds here were raised to support the general activities of veterans' charities – not for federal election activity – and therefore complied with the Act.

The Complaints also erroneously contend that the candidate and his agents violated the law by trying to derive so-called "political benefit" from the veterans' fundraising effort. *See, e.g.*, Compl. Pre-MUR 611, at 8. The Complaints point to statements made by the candidate about the success of the fundraising, the use of prop presentation checks at other Campaign events, and comments made – as well as applause given – by supporters concerning the charitable fundraising. *See id.* at 4, 8. Essentially everything a federal candidate does may have some effect on that candidate's public image, and philanthropic activity is certainly no different. Nonetheless, the Act and regulations expressly permit candidates to engage in charitable fundraising without limit. 52 U.S.C. § 30125(e)(4)(A); 11 C.F.R. § 300.65. Whether those efforts result in some goodwill with the public is simply not a campaign-finance (or FEC) concern.[3]

* * *

The Complaints' efforts to vilify fundraising for charity fall flat on their face. The law allows candidates and their agents to engage in such activity. Accordingly, the Commission must dismiss these matters and close their files. *See* 11 C.F.R. § 111.4(d)(3) (complaints must set forth a "clear and concise recitation of the facts which describe a violation of statute or regulation over which the Commission has jurisdiction").

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[3] The Complaints suggest that if the Trump Foundation's transfers to the veterans' charities were "contributions" under the Act (they weren't), the value to the Campaign should be considered equal to the amounts transferred. *See, e.g.*, Compl., Pre-MUR 611, at 8 (asserting that the Trump Foundation made approximately $2.8 million in-kind contributions through transfers of donated funds). That makes no sense, as the funds provided to the charities did not defray Campaign expenses. At most, the "value" would be tied to some derivative amount of goodwill President Trump and the Campaign may have garnered from the transfers – an undefinable abstraction.