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November 9, 2018

Federal Election Commission
 Office of Complaints Examination
 & Legal Administration
 Attn: Donna Rawls
 1050 First Street, NE
 Washington, DC 20463

2018 NOV 14 PM 11:20

OFFICE OF
GENERAL COUNSEL

Re: *Response of Rick Scott for Florida, Salvatore Purpura, in his official capacity as Treasurer of Rick Scott for Florida, and Governor Rick Scott in MUR 7496*

Dear Ms. Rawls,

This response is submitted by the undersigned counsel on behalf of Rick Scott for Florida, Salvatore Purpura, in his official capacity as Treasurer of Rick Scott for Florida (the “Campaign”), and Governor Rick Scott (together, “Respondents”), in connection with the complaint designated as Matter Under Review 7496 (“Complaint”). The Complaint contains allegations of improper coordination between Rick Scott and the New Republican PAC (NR PAC). Like its predecessor,¹ however, the Complaint is riddled with speculation and contains no semblance of evidentiary support. Accordingly, the Commission should find no reason to believe that Respondents violated the Federal Election Campaign Act of 1971, as amended (the “Act”), or any Commission regulation (“Regulations”) and promptly dismiss the Complaint.

The Complaint alleges that two independent expenditures sponsored by New Republican PAC were made in conjunction with Scott – and, therefore, “coordinated” – simply based on Scott’s previous involvement with NR PAC. Specifically, Complainants surmise that the communications, disseminated on May 3rd and June 11th, respectively, were made using “strategic campaign information” obtained through Scott’s dealings with the PAC. Complaint at 4. This charge is not only blatantly false, but also devoid of any credible bases whatsoever. Indeed, Complainants present absolutely no evidence to support such a claim.

¹ End Citizens United filed a similar complaint with the Commission in April of 2018. That complaint, designated as MUR 7370, contained similar allegations and relied on similar information, however questionable. Because much of the relevant factual background and analysis applies in the instant matter, our response to MUR 7370 is attached hereto.

I. Factual Background

Rick Scott is the current Governor of Florida and a candidate for U.S. Senate. He officially became a candidate on March 26, 2018, with a formal announcement following on April 9, 2018. Scott filed his FEC Form 2 on April 8, 2018, designating Rick Scott for Florida as his principal campaign committee. The Campaign filed its Form 1 Statement of Organization on April 10, 2018.

New Republican PAC is a registered Super PAC established in May 2013.² Rick Scott served as Chair of NR PAC from May 11, 2017 to early December 2017,³ after which date the committee operated independently of Scott, even updating its website to reflect the change. MUR 7370, Response of Rick Scott for Florida at 2. Aside from attending a limited number of NR PAC events as a “special guest” after his departure as Chair, including a paid “conference call” on August 29, 2018, Scott has had no further involvement with the PAC. *See id.*

Prior to becoming a candidate, Scott engaged in various exploratory activities to determine the viability of a potential campaign. These “testing the waters” activities began in January 2018, and included consulting, focus groups, polling, research, and travel through March 2018. MUR 7370, Response of Rick Scott for Florida at 2. The associated expenses, totaling in excess of \$166,500, were invoiced to and paid by Scott personally. *Id.* He conducted no fundraising for these “testing the waters” endeavors. *Id.*

Since Scott’s departure from NR PAC and later declaration of candidacy, NR PAC has sponsored several independent expenditures opposing Bill Nelson, Scott’s opponent. Two television advertisements, in particular, were aired on May 3, 2018, and June 11, 2018, respectively. Each of these was conceived of, created, produced and distributed by NR PAC wholly independently of, and without any consultation with, Scott or the Campaign. There is no evidence that Scott has in any way ever communicated with NR PAC regarding any aspect of his campaign, nor otherwise assented to expenditures on his behalf.

II. Legal Analysis of Allegations

The Complaint revisits many of the stale, discredited allegations raised in MUR 7370, but now attempts to ultimately tie them to the May 3rd and June 11th independent expenditures sponsored by NR PAC. It is clear, however, that Complainants have done nothing more than string together unrelated pieces of information to form a baseless theory that, in Complainants’ words, “appears” to be “suggestive of” coordination. Complaint at 5, 6. Unfortunately for Complainants, such speculation fails to meet the Commission’s requisite standard of scrutiny.

² *See* New Republican PAC, Statement of Organization (May 8, 2013).

³ New Republican Press Release, *Governor Scott to Chair “New Republican” Federal Super PAC; PAC Focused on Rebranding the Republican Party, Deregulating America’s Economy & Reinventing Government* (May 11, 2017).

A. Lack of Information Sharing Between Scott and NR PAC

Complainants first make a misguided claim that Scott was actively engaged in testing the waters activities during his time as NR PAC Chair, thereby “infecting” NR PAC with strategic campaign information. Complaint at 2. The factual timeline upon which this claim is based is simply incorrect. Scott did not step down as Chair in February 2018, as Complainants contend; rather, this departure occurred in early December 2017, well before any of his January exploratory activities commenced. MUR 7370, Response of Rick Scott for Florida at 2; *see also* MUR 7370, Response of New Republican PAC at 4. Despite Complainants’ assertion that Scott was “highly likely to have engaged in ‘substantial discussion’ about his future campaign’s ‘plans, projects, activities, or needs’” with NR PAC, therefore, that would have been impossible. No campaign – not even a prospective one – existed. Even assuming *arguendo* that Scott *had* been testing the waters during his time as Chair, that fact alone is hardly even remotely “suggestive of” the idea that discussions regarding a potential candidacy took place between Scott and NR PAC. Complaint at 6. Complainants fail to present even a shred of evidence to support such a drastic, conclusory leap other than their biased interpretation of the optics.

Complainants then proceed to flesh out this flawed timeline, next using it to assert that Scott remained “involved” with NR PAC well into his candidacy, again “infecting” NR PAC with strategic campaign information. The Complaint specifically points to Scott’s participation in a paid conference call sponsored by NR PAC on August 29, 2018, on which Scott appeared as a “special guest.” *Id.* At 2-3. Despite Complainants’ attempts to frame this as substantive “involvement” with NR PAC, this activity alone indicates nothing of the sort and is expressly permitted by 11 C.F.R. § 300.64. The “publicly available information” that forms the basis of this claim is itself insufficient to demonstrate the relationship that the Complaint alleges existed between Scott and NR PAC. Absent any additional facts indicative of an exchange of material campaign information, this allegation, too, amounts to nothing more than speculation.

B. Lack of Coordination Between Scott and NR PAC

In its final leap of logic, the Complaint rolls the foregoing claims into a larger allegation of coordination of the two advertisements sponsored by NR PAC, thereby resulting in an impermissible excessive contribution to the Campaign. Complaint at 4. Because the advertisements fail to meet the legal criteria required to qualify it as a coordinated communication, this claim should be given no further consideration.

Under the Act, communications or other expenditures coordinated with a candidate are treated as contributions to that candidate. 52 U.S.C. § 30116(a)(7)(B); Advisory Opinion 2016-21 (Great America PAC). The Regulations set forth a three-part test to determine whether coordination exists, which includes 1) payment; 2) content; and 3) conduct. 11 C.F.R. § 109.21(a). Under this test, a communication is “coordinated” when it is paid for by someone other than the candidate, and satisfies one of the criteria in *each* the content and conduct prongs of § 109.21(a). The conduct standard is met, among other things, when 1) the communication is created, produced, or distributed at the request or suggestion of a candidate; or 2) when a

substantial discussion regarding the campaign's plans, projects, activities or needs has taken place. § 109.21(d). That is not the case here.

As discussed above, the Complaint uses various press accounts – however questionable – of Scott's past interactions with NR PAC as *per se* evidence of the “request or suggestion” and “substantial discussion” required to satisfy § 109.21(d). Doing so, however, necessitates outlandish assumptions extrapolated from the mere existence of a prior relationship. The Commission has rejected such stretches of reason in the past, stating that “[p]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe that a violation of the [Act] has occurred,” and that “[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true.” MUR 5467 (Michael Moore), First General Counsel's Report at 5; MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1-2. Indeed, a complaint must give rise to more than just unanswered questions before the Commission may vote to commence an investigation. MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 n.12.

The Complaint fails to provide any evidence to establish the conduct it less-than-confidently contends took place. In Complainants' own words, the timeline they have concocted is merely “*highly suggestive*” of the fact that substantial discussions between Scott and NR PAC “*may have*” taken place, and the NR PAC advertisements at issue only “*appear*” to have been made at the request or suggestion of Scott. Complaint at 5, 6, 7 (emphasis added). Indeed, the Complaint lacks evidence because no such evidence exists. There is no actual evidence that Scott or his Campaign ever communicated with NR PAC regarding any material aspect of the candidacy, nor is there evidence they have they ever requested or suggested that NR PAC take any action to support it. Prior to their respective dates of dissemination, there is no evidence that Scott and the Campaign had any knowledge of the advertisements at issue.

Because the sheer conjecture underlying this allegation falls far short of any evidentiary standard prescribed by the Commission, the Complaint fails to satisfy the conduct prong at § 109.21(d). The advertisements, therefore, are not coordinated communications under the Act, and no impermissible contribution from NR PAC was made to the Campaign.

III. Conclusion

Contrary to what Complainants contend, the timeline does not, in fact, “speak[] for itself.” *See* Complaint at 6. It speaks to nothing more than speculative theories of occurrences they present no corroboration of. Such a lack of concrete evidence, does, in fact, make it “difficult to believe” that the alleged coordination conduct between Scott and NR PAC ever took place. *Id.* at 7.

The Commission itself has stated that the Act's “limits on Commission investigative authority serve no purpose if the Commission proceeds anytime it can imagine a scenario under which a violation may have occurred.” Statement of Reasons of Vice-Chair Caroline C. Hunter

and Commissioners Donald F. McGahn and Matthew S. Petersen, MUR 6296 (Buck for Colorado). Finding a reason to believe that a violation of the Act occurred in this instance would undoubtedly require a healthy imagination, and “mere ‘official curiosity’ will not suffice as the basis for FEC investigations.” *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380,388 (D.C. Cir. 1981). Because the speculation permeating the Complaint falls short of the Commission’s evidentiary standards, we respectfully request that this Complaint be promptly dismissed and that no further action be taken on the matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Torchinsky". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jason Torchinsky
Counsel to Respondents