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December 7, 2018

**VIA U.S. MAIL AND E-MAIL**

Jeff S. Jordan  
Assistant General Counsel  
Office of Complaints Examination and Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20436  
Email: CELA@fec.gov

Re: **FEC MUR 7522**

Dear Mr. Jordan:

We are writing as counsel to Congresswoman Maxine Waters, her campaign committee, Citizens for Waters and its Treasurer, David L. Gould (“the Respondents”) in response to the complaint filed by National Legal and Policy Center on or about October 18, 2018 (“the Complaint”), in MUR 7522.

**Introduction**

Congresswoman Waters is the U.S. Representative from the 43rd Congressional District of California. Each election cycle, Citizens for Waters produces and distributes a slate mailer that expressly advocates the election of clearly identified Federal and non-Federal candidates. Consistent with the Federal Election Commission’s advice in Advisory Opinion 2004-37, Citizens for Waters is reimbursed for full production and distribution costs of the slate mailer attributable to each candidate. In this instance, the slate mailer featured Antonio Villaraigosa, a candidate for Governor of California in the June 2018 Primary Election. The costs attributable to feature Mr. Villaraigosa in the slate mailer were paid by Families and Teachers for Antonio Villaraigosa for Governor 2018 (“Families and Teachers Committee”), an independent expenditure committee that was established under California law.

The Complaint alleges that the slate mailer payment was an “improper campaign contribution to a federal campaign exceeding campaign finance limits,” in violation of the Federal Election

Jeff Jordan  
 December 7, 2018  
 Page 2

Campaign Act of 1971, as amended (“the Act”) and Commission regulations. The Complaint does not provide *any* legal basis for asserting a violation of the Act or Commission regulations. Consequently, there is no reason to believe that Congresswoman Waters, Citizens for Waters or Mr. Gould violated any provision of the Act, and the Commission should dismiss the complaint with respect to all Respondents.

### Analysis

Citizens for Waters (FEC ID No. C00167585) (“the Committee”) is the principal campaign committee of Congresswoman Maxine Waters, and David L. Gould serves as the Committee’s Treasurer. In accordance with California law, Citizens for Waters produces and distributes a “slate mailer” known as the Congresswoman Maxine Waters Sample Ballot and Voter Recommendations, featuring federal and non-federal candidates appearing on the ballot.

As a federal candidate, Congresswoman Waters and Citizens for Waters may accept contributions of up to \$2,700 per donor, per election from federally permissible sources. Under the Act, a “contribution” includes “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.” (*See* 52 U.S.C. § 30101(8)(A).) In 2004, Citizens for Waters asked the FEC whether it may produce and distribute a slate mailer featuring federal and non-federal candidates and be reimbursed for the such costs. Specifically, the Committee asked whether such reimbursement would constitute a contribution to Citizens for Waters subject to the limits. The FEC concluded that:

reimbursements by the authorized committees of the Federal candidates listed in the brochure in amounts equal to the attributable costs associated with each candidate’s listing would not constitute support of [Citizens for Waters] ... because, in this situation, mere reimbursement of the costs associated with the production and distribution of the proposed brochure within a reasonable period of time would not constitute “anything of value” to [Citizens for Waters]... Therefore, such reimbursements would not be subject to the Act’s limits ... To the extent that any reimbursement by a candidate’s authorized committee exceeds the costs attributed to that candidate, such excess reimbursement would constitute a contribution [] to [Citizens for Waters] ... and would be subject to the Act’s applicable contribution limit.

(*See* Advisory Opinion 2004-37 (emphasis added).)

For the June 5, 2018 Primary Election, Citizens for Waters featured Antonio Villaraigosa, a candidate for California Governor, in the slate mailer. The Committee was paid \$25,000 from the Families and Teachers Committee for featuring Mr. Villaraigosa. Citizens for Waters disclosed that payment as “Slate Mailer Payment” on Schedule A, Line 15 (“Other Receipts”) of its July Quarterly Report.

Jeff Jordan  
December 7, 2018  
Page 3

The Complaint appears to allege, based on a misreading of Advisory Opinion 2004-37, that because the payment at issue was made from someone other than the candidate supported by the slate mailer (Mr. Villaraigosa), the payment should be considered a contribution to Citizens for Waters, subject to the contribution limits. This allegation completely misses the point of the Advisory Opinion. The Opinion provides that as long as Citizens for Waters is reimbursed for the cost of production and distribution attributable to each candidate featured in the slate mailer within a reasonable period of time, the payment is not considered a “contribution.” This conclusion does not turn, as the Complaint suggests, on whether the reimbursement is made by the featured candidate. Rather, the important factor is that Citizens for Waters receive reimbursement only for the proportionate share attributable to that candidate — which is exactly what happened here.<sup>1</sup> Thus, the reimbursement received from the Families and Teachers Committee is not a contribution to Citizens for Waters and not subject to the Act’s contribution limits.

Citizens for Waters has consistently complied with the advice provided in Advisory Opinion 2004-37 in producing and distributing its slate mailers each election cycle, including the Commission’s advice on reimbursement and disclosure. The Complaint does not provide any basis for asserting a violation of the Act or Commission regulations. It is based solely on a misreading of the Commission’s advice in Advisory Opinion 2004-37 and — along with the prior complaint filed by the same Complainant against Congresswomen Waters and her committee (*See* MUR7448) — appears to be politically motivated.

### Conclusion

For the reasons described herein, the Complaint does not contain any legal basis for asserting a possible violation of the Act by Respondents. Therefore, we respectfully request that the Commission find no reason to believe a violation has occurred and immediately dismiss this Complaint in its entirety with no further action against Congresswoman Waters, Citizens for Waters and Mr. Gould.

Very truly yours,



Stephen J. Kaufman

SJK:vcc

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<sup>1</sup> In fact, after doing an accounting of all of the costs associated with the production and distribution of the slate mailer, Citizens for Water issued partial refunds to the Families and Teachers Committee and other committees for the portion of their initial payments exceeding their proportionate shares.