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December 14, 2018

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**VIA E-MAIL TO
CELA@FEC.GOV**

Federal Election Commission
Office of Complaints, Examination
and Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: MUR 7535: Response of Americas PAC and its Treasurer Tom Donelson

Ms. Dennis:

Pursuant to 11 C.F.R. § 111.6, Americas PAC and its Treasurer Tom Donelson (collectively, "Americas PAC") respectfully submit this letter setting forth reasons why the Commission should take no action on the Complaint in MUR 7535, other than to dismiss it.

I. THE COMPLAINT MAKES NO ALLEGATIONS AGAINST AMERICAS PAC AND THEREFORE THE COMMISSION CAN TAKE NO ACTION AGAINST AMERICAS PAC

The Complaint segregates the respondents into two categories: the "Vikmur Respondents" and the "Super PAC Respondents." Americas PAC is a "Super PAC Respondent" in the Complaint's categorization. The Complaint alleges no unlawful behavior on behalf of Americas PAC. Rather, the entire thesis of the Complaint is that Senate candidate Leah Vikmur "solicited" or "received" unlawful contributions. As examples:

- **Complaint Page 1-2:** "The Vikmur Respondents appear to have improperly (1) solicited contributions in excess of applicable contribution limits, and received illegal in-kind contributions in the form of coordinated communications from the Super PAC Respondents."

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- **Complaint Page 2:** “Vikmur solicited funds. . . .”
- **Complaint Page 2:** “Vikmur publicly admitted to soliciting contributions. . . .”

Indeed, the Complaint **never** even alleges a violation of law by Americas PAC. The “LEGAL DISCUSSION” section of the Complaint is introduced with this language: “The Vikmur Respondents appear to have violated the Act and Commission regulations. . . .” Two critical points are worth emphasis: (1) the Complainant was unable to assert any violation by Americas PAC; and (2) Complainant was unwilling to go so far as to allege a violation by “Vikmur” – only an “appearance” thereof. Accordingly, there is no action that the Commission could take against Americas PAC on this Complaint.

II. THE COMPLAINANT IS FACIALLY DEFECTIVE FOR FAILURE TO COMPLY WITH THE COMMISSION’S REGULATIONS

By regulation, the contents of a complaint “shall be sworn to and signed in the presence of a notary public and shall be notarized.” *C.F.R. § 111.4; 52 U.S.C. § 30109(a)(1)*. The Complaint here was not and should be dismissed for that reason alone. *See 11 C.F.R. § 111.5* (failure to engage in technical compliance with 11 C.F.R. § 111.4).

III. THE ALLEGATIONS IN THE COMPLAINT, EVEN IF ASSUMED TO BE TRUE, DO NOT AMOUNT TO A VIOLATION OF LAW

The crux of the Complaint is that Leah Vikmur engaged in unlawful coordinated communications with persons affiliated with Americas PAC (and another PAC). A “coordinated communication,” is one “with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing where the communication” (1) is paid for by someone else; (2) satisfies one of the content standards; and (3) satisfies one of the conduct standards. *11 C.F.R. § 109.21(a)*. The content standard requires electioneering, republication, express advocacy, or a reference to certain candidates or entities. *11 C.F.R. § 109.21(c)*. The conduct standards require (1) a communication created, produced or distributed at the suggestion of a candidate or committee; or (2) assent to communication by the candidate or committee. *11 C.F.R. § 109.21(d)*.

The allegations in the Complaint fall far short of meeting the legal test for coordination.

First, the Complaint never alleges that Americas PAC even made a communication, let alone a coordinated one.

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Second, there is no allegation as to the content standard. The Commission could not possibly conclude that the section 109.21(c) content standard was met, because there is no content alleged.

Third, the allegations fail to meet the section 109.21(d) conduct standard. At most, Ms. Vikmur is alleged to have said the following on a podcast (her comments are bolded) with my commentary after each quotation:

1. **“We are already reaching out.”** The question is “reaching out” about what? “Reaching out” is no offense, so this fails both the content and conduct standards.
2. **“I hope that he will want to continue with his commitment.”** The commitment could be anything – to express First Amendment rights by speaking, to make fully legal independent expenditures, to make a within-limit contribution to the candidate committee, or even do something unrelated to the campaign. Moreover, there is no allegation that the “commitment” (whatever it was) was executed. Again, neither the content nor conduct standard is satisfied.
3. **“I look forward to having that conversation with him.”** This is fundamentally identical to Allegation 1 quoted above. “Reaching out” and “having that conversation” are not offenses.
4. In response to the question “Do you anticipate he will ultimately support your campaign, ultimately spend money on your behalf?” Response: **“Well that is ultimately what we want.”** Wanting something to happen is not the same as suggesting or even assenting to it. Moreover, “spending money” is not an offense. Indeed, the First Amendment protects “spending money.” The suggestion that a candidate violates the law by wishing for independent expenditures is absurd. Moreover, “supporting” a campaign spending money on behalf of a campaign could well mean making a within-limit contribution to the candidate committee.
5. **“We are looking forward to working together.”** Of course, this could mean anything, and is not even connected to the campaign. It utterly fails to allege a violation of the content or conduct standards.

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IV. CONCLUSION

The Complaint fails for the reasons set out above. Pursuant to 52 U.S.C. § 30109(a)(1) and 11 C.F.R. § 111.6, Americas PAC respectfully asks that the Commission should take no action on the Complaint and also dismiss it.

Sincerely,

A handwritten signature in black ink that reads "Lowell Pearson". The signature is written in a cursive, flowing style.

LOWELL PEARSON

LDP:cst