

**IN AND BEFORE THE
FEDERAL ELECTION COMMISSION**

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|----------------------------|---|-----------------|
| Leah Vukmir and |) | |
| Leah for Senate, Travis |) | MUR 7535 |
| Kabrick, Treasurer, in his |) | |
| official capacity |) | |

**RESPONSE OF LEAH VUKMIR AND LEAH FOR SENATE
AND MOTION TO DISMISS COMPLAINT**

Leah Vukmir, (“Vukmir”), and Leah for Senate (“the Committee”) through its Treasurer, Travis Kabrick, in his official capacity as Treasurer of the Committee (“Treasurer”), (collectively hereafter “Vukmir Respondents¹”), file this Response to the complaint filed with the Federal Election Commission (“Commission” or “FEC”) by Deanna Nesburg and End Citizens United (“Complainant”) (“the Complaint”).

The Complaint alleges that the Vukmir Respondents have violated the Federal Election Campaign Laws, Title 52 United States Code, Subtitle III, Chapter 301, Subchapter I (“the Act”) and the regulations promulgated thereunder by the Commission.

The Vukmir Respondents affirmatively state that they did not engage in any conduct that constituted a violation of the Act, nor do the facts asserted in the Complaint demonstrate a violation of the Act or the Commission’s regulations. Accordingly, there is no reason to believe that a violation has occurred and the Complaint should be dismissed.

Allegations in the Complaint Do Not Describe a Violation of the Act

¹ The Vukmir Respondents include only Vukmir and the Leah for Senate Committee, who have had no communications with either of the other named Respondents and, therefore, are not representing them in this Response. The allegations of coordination with the other named Respondents are ludicrous, as neither Vukmir nor the Committee have interacted with either Restoration PAC or America’s PAC on any subject, at any time.

The factual basis of the Complaint are two radio interviews with Leah Vukmir following her Republican primary victory in August 2018 in the US Senate race in Wisconsin. The flimsy basis of the Complaint is not particularly clear, but apparently the radio interviews with Vukmir constituted either a ‘solicitation’ of a contribution in excess of the permissible amount or else her responses to questions posed by radio hosts to Vukmir converted third party independent expenditures for communications that referenced her candidacy into coordinated public communications. Both theories are unsupported by the facts or the law and the Complaint has no merit.

The transcripts of the two radio interviews attached to the Complaint vindicate Vukmir and clearly demonstrate there is no legal violation.

Additionally, the statements under oath by Respondent Vukmir demonstrate unequivocally that the allegations and inferences in the Complaint are false. See *Affidavit of Leah Vukmir*.

The transcripts speak for themselves and indicate no violation of law.

Transcript #1, Mark Belling Show - August 15, 2018:

BELLING: “...Do you have any information as to whether or not they’re going to come around and back you, so you can unify the party not just the two of you candidates, but get the kind of money that’s necessary to beat Baldwin?”

VUKMIR: [10:26] Well we are already reaching out to Dick Uihlein and I hope that he will want to continue with his commitment, let’s face it, he wants to defeat Tammy Baldwin, and so I look forward to having that conversation with him.”

What exactly is wrong with that statement? A candidate who has just won her party’s nomination is asked if the person who was the chief supporter of her primary opponent is going to support her in the general election. The candidate answers that she has reached out to him and she hopes that he will want to continue his commitment to defeating the incumbent Democratic Senator.

Vukmir’s comments are not a solicitation nor did she request or suggest any action, expenditure, or communication by any third party. She said she was trying to reach out to a major donor to her primary opponent to ask for his support in the general election. Nothing in that statement is even close to a legal problem or issue under the law.

Transcript #2, Up Front with Mike Gousha - August 19, 2018

“GOUSHA: [01:38] I have to ask you, you said \$11 million [was] spent against you. It was spent largely by one person, Richard Uihlein, who is a prominent Republican, conservative donor. Do you anticipate he will ultimately support your campaign, ultimately spend money on your behalf?”

VUKMIR: [01:53] Well that is ultimately what we want. We signed a unity pledge. There was a unity dinner recently and we are looking forward to working together. Kevin was gracious in calling me the night of election, offered to help and I think that's ultimately what's so important here, is Kevin and I both got into this race because we wanted to defeat Tammy Baldwin. We believe that she's not right for Wisconsin and now we need to unify and ultimately finish the work that we started."

The Complaint states that these interview responses "appear" to violate the Act – because Vukmir stated her hope that Mr. Uihlein would support her in the general election after having supported her primary opponent. Every general election candidate hopes that his/her opponent's primary backers will support them in the fall election and stating that publicly in a radio interview does not constitute a violation of the Act.

Even the "facts" upon which the Complainant relies raise no legal concerns.

LEGAL ANALYSIS

The Facts Do Not Constitute a Violation of the Act

There is no violation of law based on the facts presented by the Complaint. Vukmir's comments did not constitute a solicitation as that term is defined in the Commission's regulations, nor did Vukmir's statements qualify as 'conduct' converting independent public communications by the referenced PACs into coordinated public communications.

A. Vukmir's Statements in Response to Questions in a Public Forum Did Not Constitute a Solicitation of Impermissible Contributions.

The Commission's regulations at 11 C.F.R. §300.2 (m) delineate what statements do (and do not) constitute a solicitation under the Act. "...to solicit means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value....a solicitation does not include mere statements of political support...". (emphasis added).

Vukmir's responses to the questions in her radio interviews are mere statements in which she 'hopes' for political support from a donor who had previously supported her primary opponent. Such statements are not solicitations under the law.

According to the *Explanation & Justification of the Commission's BCRA regulations*, 67 Fed. Reg. 49086 (July 29, 2002), the original Notice of Proposed Rulemaking ("NPRM") "proposed a definition of "to solicit or direct" a contribution or donation, which would be located at 11 CFR 300.2(m).... [and] included a request, suggestion, or recommendation to make a contribution or donation, including those made through a conduit or intermediary. The Commission's final rule defines "to solicit" as "to ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary."

During the promulgation of the Commission's regulations under the Bipartisan Campaign Reform Act of 2002 ("BCRA"), the Commission spent many months developing the precise language defining such terms as 'solicitation'. There was a deliberate intent to ensure that the definition of 'solicit' would relate to concrete statements to avoid substantial Commission inquiry into the motives and intent of federal candidates and officeholders. *Supra @ 49087.*

The statements Vukmir made in response to questions about whether she would have the support in the general election of her primary opponent's chief supporter did not constitute her "ask(ing) another person to make a contribution or donation, or to transfer funds, or to provide anything of value". She expressed a general statement that she was seeking his support, and general statements of support are specifically excluded from the definition of a solicitation.

There was no solicitation of Mr. Uihlein for a contribution during her radio interviews, as the term "solicitation" is defined in the Commission's regulations.

B. *Vukmir's Public Statements Encouraging Support from Mr. Uihlein Were Not 'Conduct' As Defined in the Commission's Coordinated Public Communications Regulations.*

The only other potential legal basis that can be discerned from the Complaint is that Vukmir's expressions of hope for support in the general election from her primary opponent's chief backer is that it constituted 'conduct' that converted expenditures by America's PAC and Restoration PAC to coordinated public communications regarding the Vukmir candidacy.

The 'conduct' prong of the Commission's regulations governing coordinated public communications (11 CFR §109.21(d)(1) describes the only conduct that could be inferred under the facts of the Complaint. Presumably, Complainant is alleging (but with no supporting facts) that Vukmir's response(s) to the radio interviewers' questions as to whether Dick Uihlein was going to support her candidacy in the general election constitute a request or suggestion to him to make a public communication regarding her candidacy. The problem with the Complaint is that merely expressing publicly a hope that a major donor will support her general election campaign is insufficient to trigger the conduct prong required to create a legal issue.

The conduct must be tied to a public communication that is 'created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party;' *See* 11 CFR §109.21(d)(1).

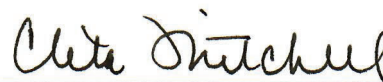
There is no reference in the Complaint to any specific communication by any third party, either by the two referenced superPAC respondents or any other person. There is no evidence presented that in any way ties Vukmir or her campaign to whatever communications complainants are concerned about. The Vukmir Respondents have no idea what communications the complaint is even referencing. The complaint is devoid of any facts that would give rise to any reason to believe a violation has occurred.

There are no allegations or facts in the Complaint describing conduct by anyone related to a single communication that would implicate the Commission's regulations governing coordinated public communications, and no such facts exist.

CONCLUSION

In summary, the Complaint must be dismissed because it fails to state a single fact in support of its allegations. There is no reason to believe that a violation has occurred and the complaint against Leah Vukmir and Leah for Senate must be dismissed.

Respectfully submitted,



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Counsel for Respondents Leah Vukmir
and Leah for Senate, Travis Kabrick, in
his official capacity as Treasurer

Submitted this 15th day of January, 2019

ATTACHMENT A

AFFIDAVIT OF LEAH VUKMIR

County of Milwaukee

State of Wisconsin

Affidavit of Leah Vukmir

I, Leah Vukmir, of lawful age and a resident of the State of Wisconsin, do hereby affirm and state:

1. I was the GOP nominee for the US Senate in Wisconsin in the 2018 General Election.
2. During the GOP primary, one donor, Dick Uihlein, contributed approximately \$11 million to various entities that made independent expenditures against my candidacy and/or for my opponent in their efforts to defeat me in the GOP primary.
3. Mr. Uihlein is a generous conservative donor to many GOP candidates and conservative causes.
4. My primary campaign was outspent roughly 5 to 1.
5. Despite the deluge of Mr. Uihlein's funds spent by various groups to defeat me in the primary, I still won the GOP nomination.
6. After the primary, I reached out to try to speak to Mr. Uihlein as well as to speak to others who had supported my primary opponent, seeking their support in the general election.
7. I was not able to make contact with Mr. Uihlein and have never spoken to him, either before or after the 2018 election.
8. The Republican Party of Wisconsin held a Unity Dinner immediately after the August 2018 Republican primary, in order to bring all factions of the party together for the 2018 general election.
9. Mr. Uihlein was a co-sponsor of the Unity dinner but he did not attend.
10. Had I spoken to Mr. Uihlein, I would have asked him to contribute the maximum permissible amount to my campaign and he ultimately did contribute the maximum amount for the general election of 2018, although I did not speak with him about that contribution.
11. I have no knowledge or information regarding any support or contributions he may have made to any third party entity other than what I have read or learned about after the fact from public sources.
12. My public statements regarding Mr. Uihlein's support for my candidacy as the GOP Senate nominee were not a solicitation.

- 13. The transcripts of my radio interviews clearly demonstrate that I did not solicit a contribution from any individual during the interview.
- 14. I did not speak privately with Mr. Uihlein or with any person from his organization about funding any third party effort.
- 15. I have never spoken to any person related to America's PAC or Restoration PAC nor do I have any knowledge about their making expenditures regarding my campaign nor have I ever solicited any contributions from anyone to contribute to either of those entities.
- 16. My comments in response to questions during my radio interviews clearly state that I was hoping that those who supported my opponent during the primary would support me in the general election.
- 17. My statements speak for themselves: that I would have hoped that those who supported my opponent would continue their commitment to defeat the Democratic incumbent Senator.
- 18. I did not request or suggest any expenditures or any public communications be made on my behalf, nor did I have any discussions or involvement whatsoever with America's PAC or Restoration PAC regarding public communications they may have made during the Wisconsin 2018 General Election.
- 19. I did not violate the federal campaign finance law either by soliciting impermissible contributions or by engaging in conduct of any kind that would have converted the independent expenditures by America's PAC or Restoration PAC into coordinated public communications about my campaign.
- 20. The Complaint's allegations of legal violations are false.

The above and foregoing statements are true and correct to the best of my knowledge and belief.


 Leah Vukmir

Leah Vukmir appeared before me personally on this 11 day of January, 2019 and did swear and affirm under penalty of perjury that the above and foregoing statements are true and correct to the best of her knowledge and belief.

Notary S E A L


 Notary Public

My Commission Expires: February 8, 2019