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January 28, 2019

BY ELECTRONIC MAIL

Federal Election Commission
Office of Complaints Examination and
Legal Administration
Attn: Kathryn Ross
1050 First Street, NE
Washington, D.C. 20463

Re: MUR 7542; *Campaign Legal Center, et al. v. MeToo Ohio, et al.*

Dear Ms. Ross:

On behalf of MeToo Ohio this letter responds to the complaint filed by the Campaign Legal Center and Margaret Christ. For the following reasons, the Commission should dismiss the complaint.

- 1. The public communications produced by Majority Strategies for MeToo Ohio and the Renacci campaign were not coordinated through the use of a common vendor.**

The complaint alleges that MeToo Ohio, an independent expenditure-only committee registered with the Commission, unlawfully coordinated certain of its public communications with the campaign of Renacci for U.S. Senate in violation of 11 CFR 109.21 through use of a common vendor, Majority Strategies, LLC.

The complaint does not allege facts based on personal knowledge or on information and belief. Instead, based on news reports, the complaint asserts that both MeToo Ohio and Renacci for U.S. Senate hired Majority Strategies to produce and run ads around the same time and that this bare fact “cannot be a coincidence.” According to the complaint, these facts alone establish that there is “reason to believe” that the communications were coordinated between MeToo Ohio and the Renacci campaign, resulting in unlawful in-kind contributions from MeToo Ohio. The complaint alleges no evidence that Majority Strategies actually used or conveyed to MeToo Ohio any of the Renacci campaign’s plans, projects, activities, or needs. When the complaint is boiled down, all that remains is an accusation that coordination must have occurred because a Super

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PAC and a campaign both aired ads around the same time featuring a subject that was contemporaneously receiving widespread media coverage.

To begin with, the complaint treats the ads as if they existed in a vacuum. The confirmation of Justice Kavanaugh received widespread media coverage in September and October 2018. Sen. Sherrod Brown voiced his opinion on the Kavanaugh accusations, which were also reported in the media. Accordingly, the fact that both a Super PAC and a campaign opposing Senator Brown's re-election should make the incumbent's reaction to a major national issue in the Senate a campaign issue around the time that it was exploding in the media does not suggest coordination.

Second, the complaint alleges that MeToo Ohio and the Renacci campaign engaged in unlawful coordination because each of them reported expenditures to the same media firm, Majority Strategies, for the ads they ran. The facts presented alone, however, are insufficient to establish coordination under the "common vendor" subsection of the coordination regulation. *See* 11 CFR 109.21(d)(4). Under this subsection, for the "common vendor" conduct standard to be satisfied, MeToo Ohio and the Renacci campaign not only would have had to employ the same vendor, but that vendor (Majority Strategies) would have had to use or convey to MeToo Ohio information (i) that was material to the creation, production, or distribution of the communication at issue, and (ii) that either was about the campaign plans, projects, activities, or needs of the Renacci campaign, or was used previously by the vendor in providing services to the Renacci campaign. *See id.* The complaint contains no such allegations and, in any event, Majority Strategies did not convey or use any applicable information in its work for MeToo Ohio.

Moreover, the activities in question satisfy two of the safe harbors available under 11 CFR 109.21.

The safe harbor in 11 CFR 109.21(h) was satisfied here. Majority Strategies had established and implemented a firewall that prevented any information that may have been obtained from the Renacci campaign in working on its projects from being used in MeToo Ohio projects, and vice versa.

The safe harbor in 11 CFR 109.21(d)(3) was also satisfied. The standard for use of a common vendor is not satisfied if the information used in creating or distributing the communication was obtained from a publicly available source. The information presented in MeToo Ohio's ads was very much a matter of public knowledge and the court documents referred in them were public record.

For the foregoing reasons, the allegations in the complaint that MeToo Ohio coordinated with the Renacci campaign through Majority Strategies should be dismissed.

2. Majority Strategies did not make unreported contributions to MeToo Ohio and did not otherwise make unreported independent expenditures.

The complaint further alleges that Majority Strategies made unreported contributions to MeToo Ohio by producing and distributing the public communications in question on credit. In the alternative, the complaint alleges that, for the same reason, the public communications were attributable to Majority Strategies itself and that Majority Strategies therefore made unreported independent expenditures. The sole basis for these allegations is the supposition that Majority Strategies has not done ads “on credit” for any other clients in the past.

First of all, at the time that the complaint was filed, MeToo Ohio had not filed its post-election report. Therefore, the reporting coverage period only extended to October 17, 2018. As shown in MeToo Ohio’s post-election report, all invoices and debts incurred by MeToo Ohio for its independent expenditures in the 2018 election were paid in full by November 2, 2018. It is not outside normal business practices for production companies to do ads on a post-paid basis. According to the reports, no credit was extended from Majority Strategies to MeToo Ohio for longer than two months and all invoices were paid for in full before the election. This is not a longer period of time than is normally practiced in this trade.

Secondly, the complaint alleges that Majority Strategies does not extend such credit in its ordinary course of business because the Complainants could find no other example of post-paid production of ads in FEC filings. Complainants’ failure to find any examples does not demonstrate the absence of Majority Strategies’ ordinary business practices. If this were true, no business could ever start extending credit to political committees if it had not yet done it in the past.

In any event, Majority Strategies has, on more than one occasion, extended credit to its clients. For example, Majority Strategies has regularly extended credit to another Ohio Super PAC, Ohio Conservatives for a Change, FEC Id. No. C00638502 (“OCC”). OCC has reported obligations owed to Majority Strategies on each of its reports filed in 2018. This is just one example. Majority Strategies does ads for clients on a post-paid basis in the ordinary course of business.

In determining whether an extension of credit was in the ordinary course of business, the Commission considers whether the vendor followed established procedures and past practices in making the extension of credit, whether the vendor received prompt payment in full, and whether the extension of credit conformed to the usual and normal practice in the industry. All of these are true here. As the Commission has frequently held, a committee’s prompt repayment of credit demonstrates that the extension of credit was a commercially reasonable transaction.

For the foregoing reasons, the allegations in the complaint that Majority Strategies made unreported contributions to MeToo Ohio or made unreported independent expenditures should be dismissed.

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Based on the foregoing, the complaint against MeToo Ohio should be dismissed.

Sincerely,

LANGDON LAW LLC



David R. Langdon
Counsel for MeToo Ohio

Under 28 U.S.C. § 1746, I declare under penalty of perjury that each of the factual statements in this letter concerning MeToo Ohio is true and correct.



Lisa Lisker, Treasurer