

BEFORE THE FEDERAL ELECTION COMMISSION

)))
MUR 7613

RESPONSE OF AMERICA FIRST ACTION, INC., JON PROCH AS TREASURER

By and through undersigned counsel, America First Action, Inc. and Jon Proch as Treasurer (“America First”) respond to the Complaint filed in the above-captioned Matter Under Review. Because the Complaint does not allege any facts that indicate America First committed a violation of the Federal Election Campaign Act of 1971, as amended (“FECA” or the “Act”) or FEC regulations, Respondents respectfully request that the Commission find there is no reason to believe Respondents committed a violation and close the file.

FECA permits “a corporation organized under the laws of any State within the United States that has its principal place of business in the United States” to make contributions to independent-expenditure-only PACs. AO 2000-17 at 4; *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010). This Complaint concerns three contributions Wheatland Tube, LLC, a subsidiary of Zekelman Industries, made to America First in 2018. According to public records, Zekelman Industries is incorporated in Delaware and Wheatland Tube was formed in Pennsylvania. As American companies, both are permitted to contribute to independent-expenditure-only PACs, such as America First. Each contribution from Wheatland Tube was accompanied by a donor form signed by a representative of Wheatland Tube affirming that he is a “U.S. citizen or permanent resident (e.g. Green Card holder).” None of the indicia that the Commission considers relevant in determining whether a committee knowingly accepted a contribution from a foreign national were present on the donor forms or the face of the checks.

See 11 C.F.R. § 110.20(a)(5). Therefore, the Commission must dismiss the Complaint against the Respondents and close the file.

Tellingly, Complainants did not name America First as a Respondent in this matter as they likely recognize that the regulations define as a “respondent” only those parties alleged with specificity “to have committed a violation.” *Id.* § 111.4(d)(1). Indeed, the Commission may find a “reason to believe” only if a complaint contains factual allegations “which describe a violation of a statute or regulation over which the Commission has jurisdiction.” *Id.* § 111.4(d)(3). By contrast, “[p]urely speculative charges ... do not form an adequate basis to find reason to believe that a violation of [law] has occurred.” First General Counsel’s Report at 5, MUR 5467; *see also* Statement of Reasons of Comm’rs Petersen, Goodman, & Hunter at 8, MUR 6661 (“[U]nsworn news reports, anonymous sources, and an author’s summary conclusions and paraphrases provide questionable legal basis to substantiate a reason to believe finding.”). Accordingly, the Commission should dismiss America First as a Respondent in this matter and close the file.

Respectfully submitted,



Megan Sowards Newton
Stephen J. Kenny
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
Tel. (202) 879-3939
mnewton@jonesday.com

*Counsel for America First Action, Inc. and
Jon Proch as Treasurer*