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December 20, 2019

Graham M. Wilson
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F. +1.202.654.9154**BY HAND DELIVERY AND EMAIL**Jeff S. Jordan, Assistant General Counsel
Federal Election Commission
Office of Complaints Examination
and Legal Administration
1050 First Street, NE
Washington, DC 20463OFFICE OF
GENERAL COUNSEL
2019 DEC 20 PM 3: 29

Re: Matters Under Review 7638 & 7658

Dear Mr. Jordan:

We write as counsel to Cain for Congress (the "Committee") and Jeremy Fischer in his official capacity as treasurer (together, "Respondents") in response to the Complaints filed by Edward Youngblood and the Foundation for Accountability & Civic Trust on August 23, 2019 and October 31, 2019, respectively, in the above-referenced matters. Because the Complaints fail to set forth facts that, if true, would constitute a violation by Respondents of the Federal Election Campaign Act of 1971 (the "Act"), as amended, the Federal Election Commission ("FEC" or "Commission") should immediately dismiss the Complaints and close the files.

FACTUAL BACKGROUND

The Complaints allege that an individual contributor made, and the Committee accepted, contributions in the name of another from funds not subject to federal law's prohibitions and limitations.¹ Specifically, they allege that on September 30, 2015, Sara Gideon made a \$1,000 contribution to the Committee and was later reimbursed for that by contribution by Gideon Leadership PAC (the "PAC"), a state committee, and that on June 13, 2016, the Committee received a \$250 contribution from Gideon that was also reimbursed by the PAC.² Based solely on Cain for Congress's acceptance of these contributions, the Complainant in Matter Under Review 7658 alleges the Committee accepted illegal contributions.

Respondents had no contemporaneous knowledge of the PAC's reimbursements to Gideon. In early August 2019, Cain for Congress received a letter from Gideon Leadership PAC stating that as a result of incorrect guidance on how to process contributions, the PAC reimbursed Gideon

¹ See MUR 7638 Compl. at ¶¶ 9-10, 25; MUR 7658 Compl. at 2-4.

² See MUR 7638 Compl. at ¶¶ 9-10; MUR 7658 Compl. at 3.

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for the contributions.³ The letter further noted that Gideon disgorged the funds paid to her by the PAC to the U.S. Department of Treasury. Finally, it explicitly stated that the PAC had sufficient federally permissible funds at the time of each contribution to make the contributions directly to Cain for Congress. Following receipt of this letter, Cain for Congress publicly informed the FEC that the contributions were from Gideon Leadership PAC.⁴

LEGAL ANALYSIS

Under the Act, it is illegal to “knowingly accept a contribution made by any one person in the name of another person.”⁵ Neither Complaint points to a single piece of evidence to suggest that Cain for Congress knew of the PAC’s reimbursements to Gideon.⁶ To the contrary, when the Committee was made aware of the PAC’s reimbursements to Gideon, it disclosed the source of the funds in a public report to the FEC. The FEC has found no reason to believe campaign committees facing similar allegations violated the Act where there was no evidence the recipient committees knew that contributions were made in the name of another.⁷

Contrary to the Complaints’ assertions, the Committee also did not accept funds outside of the limits or prohibitions of federal law. The PAC represented to the Committee that it had sufficient federal funds, at the time each contribution was made, to make those contributions. A state committee may contribute to a federal committee provided it uses permissible funds to do so.⁸

Because the Committee did not knowingly accept a contribution in the name of another, and because to its knowledge the funds used to make the contributions were from permissible sources, Respondents respectfully request the Commission immediately find no reason to believe Respondents violated the Act and close the files in these matters. Additionally, even if the baseless allegations here are taken as true, these matters should nonetheless be dismissed. The Commission routinely dismisses allegations that do not merit further use of the Commission’s

³ See Exhibit A, Letter from Gideon Leadership PAC.

⁴ See Misc. Report of Cain for Congress (Nov. 1, 2019).

⁵ 52 U.S.C. § 30122.

⁶ The Complainant in MUR 7658 makes the nonsensical argument that because EMILY’s List, which employs Emily Cain as Executive Director, endorsed Sara Gideon, “it is probable that Cain for Congress was made aware of Gideon’s illegal contributions.” MUR 7658 Compl. at 5. Complainant is clearly grasping at straws in suggesting that such an endorsement has any connection at all to the contributions involved in these matters. The Commission does not accept “mere speculation” as true in enforcement matters. See FEC Matter Under Review 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 2 (Dec. 21, 2000).

⁷ See, e.g., MUR 5187 (Mattel, Inc.), First General Counsel’s Report at 22-23 (Feb. 14, 2002); MUR 5119 (Friends of John Hostettler), Second General Counsel’s Report at 2, 12-13 (Jan. 2, 2002).

⁸ See 11 C.F.R. § 300.61.

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resources.⁹ These matters involve a total of \$1,250 in contributions, a small amount in violation, and therefore warrant dismissal.

Thank you for your consideration in this matter.

Very truly yours,



Graham M. Wilson
Antoinette M. Fuoto
Counsel to Cain for Congress

⁹ See 72 Fed. Reg. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (Mar. 16, 2007) (stating standard for dismissals); *Heckler v. Chaney*, 470 U.S. 821 (1985).

EXHIBIT A

August 6, 2019

VIA MAIL AND EMAIL

Cain for Congress
Attn: Jeremy Fischer, Treasurer
PO Box 1523
Bangor, Maine 04402

Re: Gideon Leadership PAC Contributions

Dear Mr. Fischer:

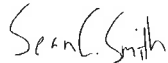
I write to provide you with additional information regarding two contributions received by Cain for Congress: (i) a \$1,000 contribution from Sara Gideon on September 30th, 2015; and (ii) a \$250 contribution from Sara Gideon on June 13, 2016.

As a result of incorrect guidance on how to process these contributions, Gideon Leadership PAC (the "PAC") reimbursed Sara Gideon for each contribution on October 28, 2015 and June 1, 2016, respectively. Sara Gideon wrote a check to the U.S. Department of the Treasury the week of July 29, 2019 to disgorge the funds paid to her by the PAC for these contributions.

The PAC had sufficient federally permissible funds at the time of each contribution to make the contribution directly to Cain for Congress.¹

Please let me know if you have any additional questions.

Sincerely,



Sean Smith
Treasurer, Gideon Leadership PAC

¹ The week of July 29, 2019, the PAC used a reasonable accounting method to confirm, based on currently available information, that the PAC had sufficient federally permissible funds at the time of each contribution to directly make the contribution.