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November 22, 2019

BY HAND DELIVERY AND EMAIL

Jeff S. Jordan
 Assistant General Counsel
 Federal Election Commission
 Office of Complaints Examination & Legal Administration
 1050 First Street, NE
 Washington, DC 20463

Re: MUR 7658

Dear Mr. Jordan:

We write as counsel to Sara Gideon, Gideon Leadership PAC (the "Nonfederal PAC"), and Sean Smith, in his official capacity as Treasurer to Gideon Leadership PAC (collectively, "Respondents"), in response to the complaint filed by the Foundation for Accountability and Civil Trust dated October 31, 2019 (the "Complaint") against the Maine Democratic Party and Cain for Congress (the "Recipient Committees"), which Respondents received on November 7, 2019.

As Respondents explained in their response to the complaint filed in MUR 7638, which they submitted to the Commission on September 18, 2019 and which is attached to this response as Exhibit A, as soon as Respondents were alerted to the potential issues involved with the contributions listed in the Complaint, they took prompt and full remedial action. First, Gideon immediately disgorged the payments she received from the Nonfederal PAC to the United States Department of Treasury. Second, Respondents notified the Recipient Committees of the circumstances surrounding the contributions.

When Respondents notified the Recipient Committees of the circumstances surrounding the contributions, the Respondents also informed each Recipient Committee that during the week of July 29, 2019, the Nonfederal PAC used a reasonable accounting method to confirm, based on currently available information, that the Nonfederal PAC had sufficient federally permissible funds at the time of each contribution to the Recipient Committee to directly make the contribution.

The Complaint alleges no conduct that was not already alleged in the complaint in MUR 7638. Therefore, for the same reasons set forth in Respondents' response to the complaint in MUR 7638, the Commission should find no reason to believe or dismiss the allegations in the Complaint and close the file on this matter.

2019 NOV 25 PM 6:46
 OFFICE OF
 GENERAL COUNSEL

Jeff S. Jordan
November 22, 2019
Page 2

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jacquelyn K. Lopez". The signature is fluid and cursive, with the first name "Jacquelyn" written in a larger, more prominent script than the last name "Lopez".

Marc E. Elias
Jacquelyn K. Lopez
Andrea T. Levien
Counsel to Respondents

OFFICE OF
GENERAL COUNSEL

2019 NOV 25 PM 6:40

EXHIBIT A



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September 18, 2019

BY HAND DELIVERY AND EMAIL

Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination & Legal Administration
1050 First Street, NE
Washington, DC 20463

Re: MUR 7638

Dear Mr. Jordan:

We write as counsel to Sara Gideon, Gideon Leadership PAC (the "Nonfederal PAC"), and Sean Smith, in his official capacity as Treasurer to Gideon Leadership PAC (collectively, "Respondents"), in response to the complaint filed by Edward Youngblood dated August 22, 2019 (the "Complaint").

This matter is about a total of \$2,750 in contributions, made by nonfederal officeholder Gideon, which the Nonfederal PAC publicly disclosed at that time as reimbursed to her. The Complaint belies its own claim of a "conduit-contribution scheme."¹ It alleges that the Nonfederal PAC—for which Gideon was the "principal officer and decision-maker"—forthrightly disclosed the reimbursements. Neither Gideon, a nonfederal candidate, nor the Nonfederal PAC had any special reason to be familiar with the Commission's detailed rules governing the making of contributions through intermediaries. Finally, the record shows that the Nonfederal PAC could have made the contributions directly without violating its contribution limits to the recipients, and without registering as a political committee with the Commission. Because the amount involved is so small, and because the Complaint shows that Respondents sought to comply in good faith, the Commission should dismiss the Complaint and take no further action.

FACTUAL BACKGROUND

Sara Gideon is the Speaker of the Maine House of Representatives. In June 2019, years after the events at issue in this Complaint, she became a candidate for United States Senate.² Gideon Leadership PAC is a nonfederal political action committee that was registered with the state of Maine and is now terminated.³ The Complaint alleges that, over thirteen months in 2015 and

¹ Compl. at ¶ 1.

² See Sara Gideon FEC Statement of Candidacy (June 24, 2019).

³ See Gideon Leadership PAC, July Quarterly Report (June 20, 2019).

Jeff S. Jordan
 September 18, 2019
 Page 2

2016, Gideon made four contributions to federal committees, aggregating \$2,750, for which the Nonfederal PAC reimbursed her.

The facts alleged by the Complaint and on the public record undermine the Complaint's repeated claims of a "scheme"⁴ and confirm that the Respondents thought they were complying with the law in good faith:

- There was no concealment. The Nonfederal PAC contemporaneously, forthrightly, and explicitly reported reimbursements to Gideon for the disputed contributions on its own Maine state campaign finance reports.⁵
- There was no evasion of the limits. Each of the contributions fell within the amount that either Gideon or the Nonfederal PAC could have given directly.
- There was no violation of the source restrictions. The Commission has long held that nonfederal political committees may make federal contributions if they have sufficient lawful funds on hand. The Nonfederal PAC's nonfederal filings show that it indeed had permissible funds with which to give.⁶
- There was no evasion of any Commission registration requirement on the part of the Nonfederal PAC. Even when giving in excess of the \$1,000 statutory threshold for political committee registration, an organization must still have the "major purpose" of nominating or electing federal candidates to trigger registration. Since 2014, Gideon Leadership PAC has contributed \$134,000 to state-level candidates and committees,⁷ and the Complaint makes no allegation of a federal major purpose.⁸

Finally, when the reported reimbursements became a matter of public controversy, and Respondents were alerted to the issues involved, they took prompt and full remedial action. Gideon immediately disgorged the payments she received from the Nonfederal PAC to the

⁴ Compl. at ¶¶ 1, 17. The Complaint points to language on the Maine Democratic Party online contribution form to suggest that Respondents should have understood the federal prohibition on conduit contributions. *Id.* at ¶18; Exhibit G. Yet, the Complaint does not provide any evidence to suggest that Respondents would have known how the disclaimer language on the online contribution form applied to the specific factual situation alleged in the Complaint.

⁵ *Id.* ¶¶ 9-12.

⁶ See generally Gideon Leadership PAC Campaign Finance Reports, available at <https://mainecampaignfinance.com>. Likewise, the Nonfederal PAC had sufficient permissible funds to make two separate contributions it made to federal committees the Complaint suggests were improper. See *id.*; Compl. ¶ 13.

⁷ See Gideon Leadership PAC Campaign Finance Reports, available at <https://mainecampaignfinance.com>.

⁸ Ignoring the additional "major purpose" requirement, the Complaint speculates that Respondents schemed to keep the Nonfederal PAC's federal contributions below the \$1,000 threshold. Compl. ¶ 22. But the Complaint's own factual allegations undercut this speculation, and show the absence of any such scheme. The Complaint alleges that the Nonfederal PAC made \$1,000 in federal contributions on August 21, 2016, but that several of the reported reimbursements occurred *before* that date. See Compl. ¶ 13. The Complaint offers no reason why the Nonfederal PAC would have reimbursed Gideon for contributions it could have made itself, while still staying inside the \$1,000 threshold.

Jeff S. Jordan
 September 18, 2019
 Page 3

United States Department of Treasury. Respondents also informed the recipient committees of the circumstances so that they could ensure that the public record was complete.

LEGAL ANALYSIS

The Commission should dismiss the Complaint and take no further action. The Commission routinely dismisses allegations that are not in its interests to pursue.⁹ It is appropriate to dismiss enforcement actions if doing so “best fits the agency’s overall policies” and fits within a “proper ordering of its priorities.”¹⁰ Commission policy says that it “will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation . . . For example, a dismissal would be appropriate when . . . the size or significance of the apparent violation is not sufficient to warrant further pursuit by the Commission.”¹¹

This matter warrants dismissal. Here, the alleged amount in violation is modest—only \$2,750. The reimbursements did not cause Respondents to exceed contribution limits, use impermissible funds to make federal contributions, or otherwise evade any other requirements of the Act. And, far from trying to circumvent reporting rules, the Respondents publicly reported the reimbursements when they occurred. Any error involving the contributions was of a *de minimis* nature and has been remedied by corrective actions.

In similar matters, the Commission has dismissed allegations like these. In Matter Under Review 6074 (Jacobs Engineering Group, Inc.), for example, the Commission dismissed allegations involving \$1,800 in contributions made in the name of another in part because the amount in violation was low, all reimbursed contributions were publicly reported, Respondents did not attempt to disguise the contributions, and Respondents took corrective actions.¹² And, in Matter Under Review 5797 (Guillaume de Ramel), the Commission dismissed an allegation involving a \$1,000 reimbursement in light of the *de minimis* nature of the allegations and in furtherance of the Commission’s other priorities.¹³ Likewise, in Matter Under Review 6160 (Scott Pace), the Commission dismissed a reimbursement violation following Respondent’s corrective actions, and in Matter Under Review 6028 (Drew Edmonson), the Commission dismissed an allegation that a state candidate committee reimbursed a state candidate for contributions where such reimbursements were made by mistake.¹⁴ Dismissal is equally warranted here, where the alleged amount is low, the reimbursements were executed in error, Respondents reported the reimbursements when they occurred, the public record is clear, and Respondents disgorged the reimbursements.

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

¹⁰ *Heckler*, 470 U.S. at 831-32.

¹¹ Statement of Policy at 12546.

¹² See Factual & Legal Analysis, MUR 6074 (Jacobs Engineering Group, Inc.).

¹³ See General Counsel’s Report (Enforcement Priority System Dismissal), MUR 5797 (Guillaume de Ramel).

¹⁴ See General Counsel’s Report (Enforcement Priority System Dismissal), MUR 6160 (Scott Pace); General Counsel’s Report (Enforcement Priority System Dismissal), MUR 6028 (Drew Edmonson).

Jeff S. Jordan
 September 18, 2019
 Page 4

While the facts alleged by the Complaint and on the public record demonstrate Respondents' good faith efforts to comply, the Complaint repeatedly resorts to unwarranted legal conclusions and speculation. The Complaint misstates the law in suggesting that the state PAC was required to segregate federally permissible funds from its non-permissible funds. Contrary to the Complaint's assertion, state committees may contribute to federal candidates if the funds that comprise the contribution come from permissible sources.¹⁵ Further, the Complainant provides *no* actual evidence of insufficient permissible funds. The Nonfederal PAC's publicly filed reports demonstrate that it did have sufficient permissible funds to make the contributions at issue.¹⁶

Finally, the Complaint presents no reason to believe the Nonfederal PAC is a political committee. It provides no evidence that the Nonfederal PAC had a major purpose to nominate or elect federal candidates. The Supreme Court has said that the Commission may only mandate registration of "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate."¹⁷ Further, the Commission has confirmed that "only organizations whose major purpose is Federal campaign activity can be considered political committees under the Act."¹⁸ The Nonfederal PAC's clear major purpose was to support *state* candidates, as evidenced by its spending on state races.¹⁹ Even if the PAC had qualified as a federal committee—which it decidedly did not—the Commission would still ordinarily take no action under these circumstances.²⁰

For these reasons, we respectfully ask that the Commission find no reason to believe or dismiss the allegations and close the file on this matter.

Very truly yours,



Marc E. Elias
 Jacquelyn K. Lopez
 Antoinette M. Fuoto
 Counsel to Respondents

¹⁵ See generally 11 C.F.R. § 102.5(b); FEC Adv. Op. 1982-38 (Moynihan).

¹⁶ See generally Gideon Leadership PAC Campaign Finance Reports, available at <https://mainecampaignfinance.com>.

¹⁷ *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

¹⁸ Political Committee Status, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007).

¹⁹ See General Counsel's Report (Enforcement Priority System Dismissal), MUR 6686 (Vance State Committee) (finding that contributions to a federal candidate from a state committee did not show a major purpose of electing a federal candidate).

²⁰ See Factual & Legal Analysis at 2, MUR 6021 (The Ballot Project) (dismissing political committee allegation where respondent organization was defunct).