

July 30, 2020

Sent via email to cela@fec.gov

Office of Complaints, Examination & Legal Administration
Federal Election Commission
Attn: Kathryn Ross, Paralegal
1050 First Street, N.E.
Washington, D.C. 20463

**Re: MUR 7754, Unite the Country and
Michael Morris in his official capacity as Treasurer**

Dear Ms. Ross:

We respond to the complaint in this matter (“the Complaint”) on behalf of respondent Unite the Country and Michael Morris in his official capacity as Treasurer (“UTC”). We respectfully submit that the Office of General Counsel (“OGC”) should not have added UTC as a respondent in this matter, and the Federal Election Commission (“the Commission” or “FEC”) should find no reason to believe that UTC violated the Federal Election Campaign Act (“the Act”).

Complainant Campaign Legal Center (“CLC”) (which employs complainant Margaret Christ, see <https://campaignlegal.org/staff/maggie-christ>) is of course an experienced complainant before the Commission, a frequent litigant against the Commission when the Commission declines to find reason to believe its allegations, and a general advocate of far-reaching applications of the Act to politically active organizations and individuals. Yet in this matter CLC alleges violations only by the Pacific Atlantic Action Coalition (“PAAC”), the Pacific Environmental Coalition (“PEC”) and, as “John Does” and “Jane Does,” any other persons who “created and operated” PAAC or PEC and “made contributions” to UTC, an FEC-registered independent-expenditure committee, and two other unrelated such committees.

In fact, not only does CLC not name UTC as a respondent, it does not allege any conduct whatsoever by UTC. The Complaint mentions UTC only in alleging that on February 13, 2020 PEC contributed \$300,000 to UTC. See Complaint ¶¶ 2, 11, 23, 24. CLC then alleges various circumstances, none involving UTC, that it asserts “strongly suggest[] that [PEC] received funds for the purpose of making [this and another] contribution[],” *id.*, ¶24, and that PEC failed to “disclos[e] [to UTC and another committee] the true source of [the] money at the time of [the] making [of] the contributions,” *id.*, ¶ 26, in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(2)(i), which preclude any person from “mak[ing] a contribution in the name of another person or knowingly permit[ting] his name to be used to effect such a contribution.”

The applicable enforcement regulation provides that a complainant “should clearly identify *as a respondent* each person or entity who is *alleged to have committed a violation.*” 11 C.F.R. § 111.4(d)(1) (emphasis added). CLC does so. The Commission has described OGC’s prerogative to add as respondents “only those parties that were either specifically identified by the complaint to have violated the FECA or were shown to have a clear nexus to the alleged

violation in a complaint.” FEC, Notice of Public Hearing and Request for Public Comments, “Agency Procedures,” 73 Fed. Reg. 74495, 74498 (December 8, 2008). The Complaint of course does not identify UTC as a violator, and the mere fact of UTC’s receipt of the facially lawful PEC contribution does not provide the “clear nexus” to *unlawful* activity that might warrant respondent status and subjection to the Commission’s enforcement process, as CLC itself recognized even under its aggressive interpretation of the known facts.

UTC’s role would violate the Act only if it “knowingly accept[ed] a contribution by one person in the name of another person.” 52 U.S.C. § 30122. The Complaint contains not a single fact to suggest any such knowledge, and, to be clear, UTC emphatically disclaims any such knowledge. The Complaint alleges *with respect to PEC* only the following circumstances to “strongly suggest” that PEC in fact was the conduit of someone else’s deliberate contribution to UTC: (1) PEC is a California nonprofit public benefit corporation that was incorporated on September 20, 2019, five months prior to its contribution to UTC; (2) PEC’s chief executive officer (CEO) is Matt Cohler, and its secretary, chief financial officer and registered agent is Melissa Carrig, an attorney with Apercen Partners (a tax compliance and consulting firm); (3) PEC made the \$300,000 contribution to UTC and a \$250,000 contribution to the unrelated VoteVets on February 13, 2020; (4) there is currently, five months later, no other publicly-available information regarding PEC’s activities; and (5) PEC shares an address, incorporator, CEO and board members with PAAC, which the Complaint alleges committed the same kind of violation by contributing to another independent-expenditure committee that too is unrelated to UTC. See Complaint ¶¶ 2, 5-13. CLC concludes that “the evidence indicates that PEC and PAAC were part of a similar straw donor scheme, potentially involving the same true source of funds,” whose identity CLC does not state. *Id.*, ¶ 25.

Whatever the significance of these facts and the accuracy of CLC’s speculation, none of UTC’s brief interactions in securing PEC’s \$300,000 contribution suggested that it was made in the name of another. On or around January 31, UTC learned of Mr. Cohler’s possible interest in supporting UTC. UTC’s executive director spoke with Mr. Cohler, who identified PEC as an Internal Revenue Code § 501(c)(4) organization that might contribute to UTC, and he did not say anything about PEC’s sources of funds. At no time did Mr. Cohler mention PAAC or other potential recipients of PEC contributions, and UTC had no independent knowledge of either. UTC performed some Internet research about PEC and found little about it, including nothing favorable or unfavorable. It did the same with respect to Mr. Cohler and found from the Commission’s public records that he personally had been a substantial and frequent contributor to Democratic Party candidates and committees for years.

Mr. Cohler invited UTC to direct information about contributing to Apercen, which UTC did shortly thereafter. UTC subsequently provided Apercen with its standard donor form that all UTC contributors are asked to complete. That form included the following language:

Contributions may not be made in the name of another. Thus, the person making this contribution is the true source of the funds and has not and will not be reimbursed, paid, or otherwise compensated by another person for making the contribution.

On February 13, 2020, UTC received a \$300,000 wire transfer from PEC, and a subsequent e-mail from Apercen to confirm UTC's receipt of the funds included a completed donor form.

Nothing in any of UTC's exchanges with Mr. Cohler or Apercen suggested that PEC's representation on this form was inaccurate. Indeed, with respect to Mr. Cohler himself, for example, he was the only PEC official with whom UTC dealt, and the many public disclosures of his political contributions and UTC's ability to accept contributions in unlimited amounts from U.S. sources gave no reason to suspect, let alone actual knowledge, that Mr. Cohler was using PEC as a conduit for his own contributions to UTC. (And, to be clear, UTC still has no reason to believe that is the case.) Under these circumstances, nothing in the Act or its regulations imposed a further obligation on UTC to seek to *confirm* that PEC, Mr. Cohler or other persons unknown to UTC were complying with 52 U.S.C. § 30122 with respect to the PEC contribution.

Accordingly, we respectfully submit that the Commission should determine that there is no reason to believe that UTC violated the Act. Thank you for your consideration.

Sincerely,

William Farah

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