

Arnold & Porter

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September 4, 2020

VIA E-MAIL [CELA@FEC.GOV]

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

Re: MUR 7754 – Response of James P. Joseph

Dear Mr. Jordan:

On behalf of James P. Joseph, we write to respond to the complaint filed against the Pacific Environmental Coalition (“PEC”), Pacific Atlantic Action Coalition (“PAAC”), Matthew Cohler, in his official capacity as a Director and Chief Executive Officer of PEC and PAAC, and Tom van Loben Sels, in his official capacity as a Director of PAAC (collectively, the “PEC/PAAC Respondents”) by the Campaign Legal Center in the above referenced matter (the “Complaint”). Mr. Joseph received a letter on July 8, 2020, indicating that he had been named a respondent in this matter. The Complaint, this response, and any action taken thereon are confidential pursuant to 52 U.S.C. § 30109(a)(12) and 11 C.F.R. § 111.21.

As explained in the Response filed by the PEC/PAAC Respondents, the Complaint alleges that PEC, PAAC, and any persons who created, operated, or made contributions to PEC or PAAC, engaged in a “straw donor scheme” in violation of 52 U.S.C. § 30122 of the Federal Election Campaign Act, as amended (the “Act”), whereby donations were made to PEC and PAAC for the purpose of “secretly financing” contributions to super PACs, and PEC and PAAC knowingly permitted their names to be used to effect such contributions.¹ The Complaint does not make any allegations with respect to Mr. Joseph, nor is he named in any of the Complaint’s counts.

We concur with the Response filed by the PEC/PAAC Respondents that the Complaint is meritless, and incorporate their Response here by reference. In addition, we emphasize that there

¹ Complaint at 2, 11.

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is no basis for Mr. Joseph to be named as a respondent to the Complaint, and it should be immediately dismissed.

Mr. Joseph is co-chair of the tax practice at Arnold & Porter Kaye Scholer LLP.² He served on the IRS's Advisory Committee on Tax Exempt and Government Entities ("ACT") from 2009-2012. Appointed by the Secretary of the Treasury, ACT members advise the IRS on operational policies and procedures. Mr. Joseph also was Chair of the Tax Section of the District of Columbia Bar and is currently Chair of the American Bar Association's Section of Taxation, Exempt Organizations Committee, Subcommittee on Unrelated Business Income Tax.³ He has represented numerous nonprofits and tax-exempt organizations in tax and related matters, including the United Nations Foundation, the Smithsonian Institution, and the Lieber Institute for Brain Development.

Mr. Joseph is an experienced tax attorney, with particular expertise in advising nonprofits and tax-exempt organizations. In that capacity, he was retained by the PEC/PAAC Respondents to provide general tax, corporate, and legal advice, and to assist in establishing both organizations as California nonprofit public benefit corporations in 2018 and 2019. As set forth in the Complaint, Mr. Joseph incorporated PEC and PAAC on September 20, 2019, and May 21, 2018, respectively.⁴ Mr. Joseph has never held any role or authority, formal or informal, in the administration, management, or operation of either organization.

Indeed, the Complaint alleges no wrongdoing by Mr. Joseph. The Complaint makes no mention of Mr. Joseph's name other than in the two sentences that describe the incorporation of the entities.⁵ Since their incorporation, Mr. Joseph, as outside counsel, played no substantive role in the organizations and had no decision-making authority regarding their mission, goals, purpose of formation, political contributions, or grantmaking.

The Complaint does allege that unnamed individuals who "created" PEC and PAAC violated the Act, but Mr. Joseph's name was known to the Campaign Legal Center when it filed the Complaint. If it had specific allegations regarding Mr. Joseph, it should have named him in the Complaint's counts and detailed such allegations. While Mr. Joseph, as outside legal counsel to PEC and PAAC, acted as "incorporator" of the organizations, this is a ministerial service under California law typically provided by an attorney like Mr. Joseph in establishing organizations by filing their articles of incorporation.⁶ In any event, Mr. Joseph had no

² See James P. Joseph, <https://www.arnoldporter.com/en/people/j/joseph-james-p> (last visited September 2, 2020).

³ *Id.*

⁴ Complaint at 3, 5.

⁵ *Id.*

⁶ See California Corporations Code, § 5120(b).

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substantive role in the creation of the entities, is not alleged to have engaged in any wrongdoing in the Complaint, and has been erroneously named as a respondent in this matter.

Accordingly, we request that the Complaint be immediately dismissed with respect to Mr. Joseph.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicholas L. Townsend", is written over a horizontal line.

Nicholas L. Townsend and Tom McSorley
Counsel to Respondent