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August 5, 2020

CONFIDENTIAL
COMMUNICATION

VIA E-MAIL TO CELA@FEC.GOV

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, N.E.
Washington, DC 20463

Re: Matter Under Review 7758

Dear Office of Complaints Examination & Legal Administration:

Enclosed please find a response to the Complaint in the above-captioned MUR on behalf of Donald J. Trump for President, Inc., Trump Make America Great Again Committee, and Treasurer Bradley T. Crate.

Very truly yours,

/s/ E. Stewart Crosland

E. Stewart Crosland

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

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)) **MUR 7758**
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**RESPONSE OF DONALD J. TRUMP FOR PRESIDENT, INC.,
 TRUMP MAKE AMERICA GREAT AGAIN COMMITTEE, AND
TREASURER BRADLEY T. CRATE TO THE COMPLAINT**

Donald J. Trump for President, Inc., the Trump Make America Great Again Committee (“TMAGAC”) joint fundraising committee, and Treasurer Bradley T. Crate (collectively, “Respondents”) hereby respond to the Complaint in this MUR, which should be dismissed immediately.

The Complaint is confused as a matter of law and fact in alleging “at least some coordination” involving Respondents. This claim is based on nothing but a fundraising email sent to the complainant on behalf of TMAGAC from an email domain that the complainant alleges also emailed him solicitations from other campaigns and committees. TMAGAC’s fundraising email was sent to a contact list (which apparently includes the complainant’s email address) its list broker rented from a third-party list vendor. TMAGAC created the content of its email, but as is commonplace in the list-rental industry, the list owner carried out the mechanics of sending the email to its list using its own domain. While TMAGAC described the characteristics of the universe to which it wanted the communication sent, it did not determine and did not know the specific individuals who received the email. Under no scenario could this transaction be coordination, and that is especially true since emails cannot constitute “coordinated communications” under 11 C.F.R. § 109.21(a). *See, e.g.*, MUR 6657 (Akin for Senate), Factual & Legal Analysis 5–6; *see also* 11 C.F.R. §§ 100.26, 109.21(c). The Commission should dismiss the Complaint and close the file.

BEFORE THE FEDERAL ELECTION COMMISSION

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MUR 7758

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 violated the Federal Election Campaign Act of 1971, as amended (“FECA” or the “Act”) or FEC regulations, Respondents respectfully request that the Commission find no reason to believe Respondents committed a violation and close the file.

The Complaint alleges that email fundraising solicitations sent on behalf of America First Action and the Trump Make America Great Again Committee each using the domain info@keepingusgreat.com amount to “improper coordination” between the committees. Compl. ¶ 1. America First engaged a vendor to provide digital fundraising consulting, including the dissemination of fundraising solicitations to email lists rented by the outside vendor, and does not own or operate the domain @keepingusgreat.com. There is no reason to believe that digital fundraising solicitations disseminated on behalf of America First by an outside vendor via a list rented from a third party violates the coordination regulations or are otherwise unlawful.

Specifically, digital fundraising solicitations, such as those referenced in the Complaint, do not satisfy the content prong of the coordination regulations set forth in 11 C.F.R. § 109.21. Since all three prongs of the regulation must be satisfied in order to satisfy the regulation’s definition of a “coordinated communication,” the Commission must find no reason to believe a violation occurred. *See* 11 C.F.R. § 109.21(a)(1)–(3). To satisfy the content standard, the content in

question must be an “electioneering communication” or a “public communication.” *Id.* § 109.21(c). The emails at issue here are neither. An electioneering communication is “any broadcast, cable, or satellite communication” that refers to a clearly identified candidate for federal office; is publicly distributed within 60 days of the relevant general election or 30 days of the relevant primary election; and is targeted to the relevant electorate. *Id.* § 100.29(a). Emails cannot be electioneering communications because they are not distributed by broadcast, cable, or satellite.

A public communication means:

a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term general public political advertising shall not include communications over the Internet, except for communications placed for a fee on another person’s Web site.

Id. § 100.26. Since the plain meaning of the regulation does not encompass email communications that are not placed for a fee on another person’s web site, as a matter of law, a digital fundraising solicitation cannot come within the bounds of the coordination regulations at § 109.21. The Commission has long construed the content prong of the coordinated communication regulation to exclude internet communications such as email fundraising solicitations. *See, e.g.*, Factual & Legal Analysis at 4–6, MUR 6657 (Akin for Senate) (finding fundraising emails distributed by a Super PAC were not a coordinated communication because the content requirement was not satisfied); Statement of Reasons of Comm’rs Petersen & Hunter at 11, MURs 6940, 7079, 7160, and 7193 (Correct the Record *et al.*).

Additionally, the communications at issue do not satisfy the conduct prong of § 109.21(d). Every vendor providing services to America First is required to certify compliance with the coordination regulations and have a firewall policy in place that satisfies the safe harbor provision of § 109.21(h). Thus, the communications satisfy neither the content nor the conduct prongs.

Moreover, 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.” 11 C.F.R. § 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 (Michael Moore); *see also* Statement of Reasons of Comm’rs Petersen, Goodman, & Hunter at 8, MUR 6661 (Robert E. Murray *et al.*) (“[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, we respectfully ask that the Commission find no reason to believe America First violated the Act, dismiss America First as a Respondent in this matter, and close the file.

Respectfully submitted,



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