

August 28, 2020

SENT VIA EMAIL

Federal Election Commission
Office of Complaints Examination & Legal Administration
Jeff S. Jordan, Assistant General Counsel
Attn: Christal Dennis, Paralegal
1050 First Street NE
Washington, DC 20463
Cela@fec.gov

RE: Response to MUR 7758

Dear Mr. Jordan:

On behalf of The Committee to Defend the President (“CDP”), please accept this Response to MUR 7758. The Complaint has incorrectly, and without factual basis or specificity, alleged CDP engaged in “improper coordination” with a litany of campaign committees. As discussed in detail below, CDP did not engage in “improper coordination” and, as a result, respectfully requests the Federal Election Commission (“Commission”) refrain from taking any further action and conclude there is no reason to believe CDP engaged in any “improper coordination.”

BACKGROUND

In accordance and compliance with the list rental arrangements discussed in Advisory Opinions 2002-14 and 2010-30, CDP elects to rent email lists solely from commercial vendors and does not rent any such lists from any individual campaigns, political parties, or other political entities. Here, the CDP email (“CDP Email”) was sent pursuant to such an arrangement. The Complaint provides, and relies on, exceptionally limited and speculative information to support the conclusion CDP engaged in coordinated communications with the specified campaign committees. In support of this “conclusion”, the Complaint includes a single email from CDP.¹ The email included the required disclaimer language indicating the communication was paid for by CDP and was not authorized by any candidate or candidate’s committee.² The Complaint, however, alleges that, because the domain name and sending email address are the same for emails sent from CDP and from other campaign committees, “[t]hese emails are evidence of *at least some* coordination between the three 527 organizations and the eight campaign committees...”³

DISCUSSION

To be a coordinated communication, the communication in question must satisfy a number of specific requirements, including satisfying at least one of the conduct standards specified in 11 C.F.R. § 109.21(d) (the conduct prong); CDP’s actions do not.

Other than the commonalities between the domain name and sending email address, the Complaint is devoid of any details to support the contention CDP had any interaction with any of the specified campaign committees in a manner that would satisfy 11 C.F.R. 100.21(d). CDP engaged a commercial vendor for email list rental purposes and the email in question was sent pursuant to that engagement. The complaint fails to allege – beyond a mere conclusory allegation - how the communication meets the conduct standards in 11 C.F.R. 100.21(d).

¹ Complaint, pg. 59-61

² 11 C.F.R. § 110.11(b)(3)

³ Complaint, pg. 1

A similar email list rental scenario was discussed in MUR 6775 (Ready for Hillary PAC, *et al.*), which was filed by respondent CDP itself (when previously named Stop Hillary PAC). There, the Commission analyzed an arrangement where an email list rental was managed by a third-party vendor and the email list at issue was owned by a candidate's former principal campaign committee (Friends of Hillary) and rented to a hybrid PAC seeking to encourage the future candidacy of that candidate (Ready for Hillary).

The Complaint alleges that Ready for Hillary PAC's use of an email list obtained from Friends of Hillary to distribute this email indicates that Clinton or her agents authorized the message, that the contributions and expenditures of Ready for Hillary PAC in collection with Clinton's possible candidacy therefore must be attributed to Clinton herself, and that Clinton triggered candidate status as a result.⁴

The Commission disagreed.⁵ In reaching such a conclusion, the Commission determined Ready for Hillary was a draft committee as it sought "to encourage Clinton to run and to build support for a potential Clinton candidacy, not an existing candidacy."⁶ Additionally, the content of the email and Clinton's own statements that she had not yet decided whether she would run for office supported the conclusion that "the actions of both Clinton and Ready for Hillary PAC are aimed at evaluating the feasibility of her candidacy and do not signify that Clinton has decided to become a candidate." Importantly, that the sending email address was "info@hillaryclinton.com"⁷ and the url (hillaryclinton.com) was registered to Friends of Hillary⁸ did not factor into the Commission's analysis in reaching such a determination.

Applied to the instant matter, that the domain and sending email address are the same is wholly insufficient to support the conclusion CDP's activities satisfy the conduct standards articulated in 11 C.F.R. 100.21(d). CDP engages in email list rental agreements with a commercial vendor that engages in similar transactions with other political committees and itself has control over the domain names and email addresses it uses to deploy such rentals. To assert such an immaterial commonality rises to the level of coordination fails to accord to the Commissions precedents.

CONCLUSION

The CDP Email in question does not meet the standards articulated in 11 C.F.R. 100.21 for coordinated communications. As such, CDP respectfully requests the Commission dismiss this matter at least as it relates to CDP, if not entirely.

Respectfully submitted,



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Counsel for The Committee to Defend the President and Dan Backer, Treasurer

⁴ MUR 6775, Respon. Hillary Clinton, Friends of Hillary, and Shelly Moskwa in her Official Capacity as Treasurer, pg. 1, lines 18-22.

⁵ *Id.*, pgs. 8-9.

⁶ *Id.*, pg. 8, lines 10-11.

⁷ *Id.*, pg. 3, line 7.

⁸ *Id.*, pg. 4, line 8.