

October 23, 2020

Ronald M. Jacobs

T 202.344.8215
F 202.344.8300
RMJacobs@Venable.com

Via Email to cela@fec.gov

Federal Election Commission
Office of Complaints Examination & Legal
Administration
1050 First Street, NE
Washington, DC 20463

Attention: Kathryn Ross, Paralegal

Re: Response to MUR 7759

To whom it may concern:

Some complaints require lengthy responses to unpack detailed and factually supported allegations; others require short responses because the allegations are so spurious, outlandish, unsubstantiated, or meritless. The Complaint before the Commission falls squarely into the later. It is the kind of complaint that drives citizens out of the electoral process and causes good people to stay away from elected office. The complaint completely fails to allege any violation of the Federal Election Campaign Act (“the Act”), literally relies on “rumor” as the basis for its key factual assertion, and therefore should be dismissed immediately.

Reading through the piles of paper that are attached to the complaint, there appear to be two allegations made:

- 1.) That Dr. Fig for Congress retained and paid Matthew Hurley through either Landslyde Media Group, LLC or Southeastern Strategies without disclosing a payment to Mr. Hurley; and

Federal Election Commission
October 23, 2020
Page 2

- 2.) That “it has been rumored that Dr. Fig may also be making direct payments to Hurley through his medical practice.” (Complaint at 2)¹.

These allegations are both baseless and the Commission should dismiss the Complaint promptly.

DISCUSSION

I. Even if all facts were true, there is no reporting violation alleged.

The first allegation fails to state any violation of the Act at all. Assuming for the sake of the argument that Mr. Hurley was being compensated for his services through these entities, there is nothing impermissible about that. Consultants set up consulting companies (often limited liability companies) all of the time. If the campaign wanted to retain the services of Mr. Hurley, it could do so by retaining a company that he owns. The campaign’s reports would disclose the company as the payee, not Mr. Hurley and no additional reporting would be required. Thus, even if the allegation in the Complaint that the campaign hired Mr. Hurley through one or both of those companies were true, there would be no reporting violation. How Mr. Hurley gets compensated through a company is of no relevance to the Act.

To be clear, the campaign did not retain Mr. Hurley through those companies. It retained those companies to provide media buying and consulting services. In fact, the exhibits attached to the Complaint clearly show that Landslyde performed media buying services for the campaign. As the campaign’s reports show, it retained a number of consultants and disclosed all of the payments made to those companies. Southeastern and Landslyde were no different.

Mr. Hurley served in a volunteer capacity with the campaign. It is quite common that individuals volunteer their time with campaigns, sometimes fairly extensively. No reporting of in-kind volunteer personal services is required, as long as the person is not paid by others

¹ There is a similar statement in the “Summary” section of Addendum A. It is not clear why there is a long narrative in the Addendum, as opposed to in the body of the Complaint. The Commission should give no credence to any of the narrative in the Addendum, since it is not clear it is subject to the affirmation in the Complaint itself. This is much different from documentary evidence attached to a complaint that supports the sworn statements in the body of the complaint. Nonetheless, the allegation is basically a repeat of what is in the Complaint, namely that “it is alleged he is also paying Hurley through his medical practice.” There is no reference to who is making the allegation or on what basis that allegation has been made.

Federal Election Commission
October 23, 2020
Page 3

for those services. There are no allegations in the Complaint to suggest that Mr. Hurley was being compensated for his services.

II. The second allegation is based on “rumor” and not on any actual alleged fact.

The second allegation also fails. The complainant does not allege that he has any personal knowledge of Dr. Figlesthler paying Mr. Hurley for his services through the medical practice. He just says that “it is rumored” that Dr. Figlesthler has done so. Even with the piles of paper attached to the Complaint, the Complaint does not provide any source for the “rumor.” With this response, Dr. Figlesthler denies that he paid Mr. Hurley through his medical practice in any way.

Complaints that state charges “only in the most conclusory fashion,” without supporting evidence, are dismissed by the Commission. *In re Fed. Election Campaign Act Litig.*, 474 F. Supp. at 1047. And where “the record did not suggest” a violation had occurred and “respondents’ answers to the complaint adequately refuted the complainant’s allegations as to any presumed,” dismissal is likewise warranted. *Democratic Senatorial Campaign Comm.*, 745 F. Supp. at 744.² That is certainly the case with this allegation.

Moreover, it is important to remember that the Commission may only rely on two sources to determine whether it “has reason to believe that a person has committed ... a violation of [the Act].” 52 U.S.C. § 30109(a). First, the Commission may review the allegations in the complaint itself. *See id.* The Complaint itself is based only on “rumor.”

Second, the Commission may review “information ascertained in the normal course of its supervisory responsibilities.” *Id.* This second provision is narrow, as the Commission has no “roving statutory functions” to “gather and compile information and to conduct periodic investigations.” *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 387 (D.C. Cir. 1981) (“Machinists”). Instead, this statutory prong permits the Commission to review only information included in “other sworn complaints” or from evidence of actual “wrongdoing” learned in its routine review of reporting data. *In re Fed. Election Campaign*

² The Commission’s Guidebook explains that “a no reason to believe finding would be appropriate when (1) a violation has been alleged, but the respondent’s response or other evidence demonstrates that no violation has occurred, (2) a complaint alleges a violation but is either not credible or is so vague that an investigation would be unwarranted, or (3) a complaint fails to describe a violation of the Act.”

Federal Election Commission
October 23, 2020
Page 4

Act Litig., 474 F. Supp. 1044, 1046 (D.D.C. 1979); *see also FEC v. Nat. Republican Senatorial Comm.*, 877 F. Supp. 15, 18 (D.D.C. 1995) (“NRSC”).

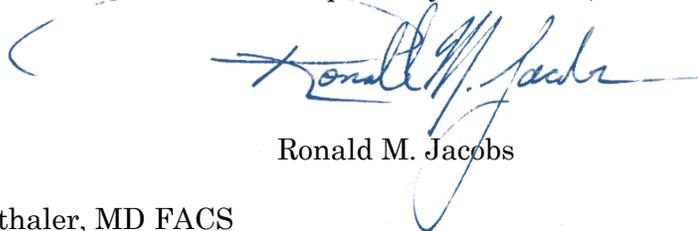
Accordingly, a “reason to believe” determination must be made “without any investigation” by the Commission, which precludes any type of independent inquiry into the substance of the allegations. *Stockman v. FEC*, 138 F.3d 144,147 n.2 (5th Cir. 1998).³ Given the lack of credible evidence in the Complaint, and what we presume to be the lack of any information in its records, there is no basis for any further investigation and the matter should be closed.

CONCLUSION

The Supreme Court reaffirmed that adjudications involving political speech must not entail “burdensome” inquiries, *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) (“WRTL II”), should “resolve disputes quickly without chilling speech,” *id.*, and “avoid threats of criminal liability and the heavy costs of defending against FEC enforcement” due to the uncertain application of federal law. *Citizens United v. FEC*, 558 U.S. 310, 335 (2010).

In sum, the Commission should promptly dismiss this wholly frivolous complaint. Weaponizing the Commission’s complaint process to smear candidates is entirely inappropriate and the Commission should send a clear signal that a complaint that fails to allege a violation based on the facts presented—even when those facts are wrong—and that is based on “rumor” will be dismissed promptly.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ronald M. Jacobs", is written over a large, light blue circular scribble. The signature is fluid and cursive.

Ronald M. Jacobs

cc: William Figlesthler, MD FACS

³ *See also NRSC*, 877 F. Supp. at 18 (“The FEC may not begin an enforcement investigation until after it finds reason to believe a violation has occurred.”).