



November 15, 2022

BY EMAIL

cela@fec.gov

Roy Q. Lockett
Acting Assistant General Counsel
General Counsel's Office
Complaints Examination & Legal Administration

1050 First Street, NE
Washington, D.C. 20463

Re: Federal Election Commission Matter Under Review 7772

Dear Mr. Lockett,

Enclosed please find the Response of AP Engineering, Inc., to the Complaint filed in this Matter Under Review 7772.

Please contact us if you have any comments or questions.

Sincerely,

Ferdinand Ocasio, Esq.

BEFORE FEDERAL ELECTION COMMISSION

COMITE AMIGOS WANDA VAZQUEZ
Ave. Roosevelt 1127
San Juan, Puerto Rico 00917

Jorge Dávila
Ave. Roosevelt 1127
San Juan, Puerto Rico 00917

MUR No. 7772

COMITE AMIGO PEDRO PIERLUISI, INC.
PO BOX 920485
San Juan, PR 06992

SALVEMOS A PUERTO RICO, PAC
1001 19th St. N Suite 1200
Arlington, VA 22209
(571) 384-7941

FOUNDATION FOR PROGRESS
PO BOX 10195
San Juan Puerto Rico 00908

FOUNDACION PRO IGUALDAD
PO BOX 10195
San Juan Puerto Rico 00908

RESPONSE TO COMPLAINT

On behalf of AP Engineering, Inc. ("Respondent"), the undersigned counsel hereby responds to the Complaint filed with

the Federal Election Commission ("Commission") by Jorge Davila. This response is submitted pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6.

Respondent respectfully requests, for the reasons outlined below, that the Commission find no reason to believe that Respondent has violated or is likely to violate the Federal Election Campaign Act, as amended (the "Act"), and that the Commission take no action on the basis of the Complaint. Absent the existence of a violation of the Act, or facts indicating that a violation of the Act is likely to occur, the Commission should find no reason to believe that further proceedings are warranted in this matter.

THE COMPLAINT

The Complaint alleges that Pedro Pierluisi Urrutia and the independent-expenditure-only political committee "Salvemos a Puerto Rico" presumably violated the Act's reporting requirements by laundering unlimited disbursements through "Salvemos a Puerto Rico".

In particular, the Complaint mentions that "there is reason to believe" that "Foundation for Progress" and "Fundación Pro Igualdad" were created as IRC 501(c)(4) organizations with the purpose of promoting the common good and general welfare of the people of the community but that allegedly their only purpose was

to donate directly to "Salvemos a Puerto Rico" for spending on campaign ads in favor of Pedro Pierluisi, and against his opponent in the 2020 Puerto Rico primary elections. (Cmplt. ¶ 20-25).

The Complaint seems to imply that the mentioned nonprofit entities were required to itemize disbursements in excess of \$200, together with the "purpose" of the disbursements, pursuant to 52 U.S.C. §§ 30104(b)(5), (b)(6)(B)(v), and 11 C.F.R. § 104.3(b)(4)(i).

DISCUSSION

A. The complaint does not impute conduct to Respondent either directly or indirectly

On its face, the Complaint does not mention or identify Respondent. The allegations in the Complaint are directed at supposed acts of the campaign committee "Comité Amigos Pedro Pierluisi", the independent-expenditure-only political committee "Salvemos a Puerto Rico", and the nonprofit organizations "Foundation for Progress" and "Fundación Pro Igualdad".

There are no facts or claims imputed to the conduct of Respondent nor is there any indication of improper action on its part.

This alone is enough to dismiss the present Complaint against Respondent.

B. The obligation to report contributions to the Commission does not fall on Respondent

The reporting requirements under the Act and Commission regulations are intended to ensure public disclosure of "where political campaign money comes from and how it is spent." *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (*Per Curiam*). Disclosure requirements also "deter[] and help[] expose violations" of the Act and Commission regulations. *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (*En Banc*).

The Act defines the term "political committee" to mean "any committee, club, association, or other *group of persons* which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5(a). Groups who meet the definition of a "political committee" have to comply with the reporting requirements set out in Section 30104, Title 52, of the United States Code. To implement the reporting provisions of the Act, the Commission promulgated the regulation at 11 C.F.R. Part 104. In regard to political committees, the regulation states that the responsibility to report falls on the treasurer of a political committee. See 11 C.F.R. 104.1(a).

Furthermore, although not within the definition of a "political committee", there are certain situations where other people need to comply with the reporting requirements of Section 30104. Specifically, the Act provides that every person (other than a political committee) who makes "independent expenditures" in an aggregate amount or value in excess of \$250 during a calendar year must report those "independent expenditures". 52 U.S.C. § 30104(c)(1). The Act and Commission regulations define an "independent expenditure" as an *expenditure for a communication* that (i) expressly advocates for the election or defeat of a clearly identified candidate, and (ii) is not coordinated with a candidate or candidate's authorized committee, a political party committee, or any agent of a candidate or political party committee. 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16(a). On their "independent expenditure" reports, these persons must disclose the same information about their receipts as required of political committees under 52 U.S.C. § 30104(b)(3)(A), including the identification of each person who made a "contribution" to it in excess of \$200 during the calendar year "for the purpose of furthering an independent expenditure." 52 U.S.C. § 30104(c)(2)(C).

The Commission regulation found at 11 C.F.R. § 104.14(d) further provides that "[e]ach treasurer of a political committee,

and any other person required to file any report or statement under these regulations and under the Act, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it".

In the case of Respondent, it is a person that did not solicit or receive contributions from others for purposes of political advocacy. Rather, Respondent is but a donor who made donations to third parties from its personal funds. Seeing as Respondent is neither a political committee nor is there an allegation that it directly made any "independent expenditure" from its own funds, Respondent falls outside the scope of the people having to meet any of the reporting requirements under the Act.

Donations that may have been made by Respondent were made to either political or non-political committees whose reporting duties regarding the receipt, disbursement, and use of funds rest with them and their treasurers.

Consequently, the cause of action presented by Claimant should be dismissed as it relates to Respondent.

C. Any donations made by Respondent to political committees, or to non-political organizations for purposes of furthering an "independent expenditure", are a valid exercise of its First Amendment rights under the US Constitution

In further support of our request for dismissal of the Complaint, in this section we address the allegations concerning a supposed "coordinated expenditure contribution in the form of expenditures for specific advertising attacking candidate Wanda Vazquez Garced to air negative ads and support Pedro Rafael Pierluisi Urrutia campaign". (Cmplt. ¶ 24). The Complainant implies that direct contribution limits are applicable to the expenditures made by the independent-expenditure-only political committee "Salvemos a Puerto Rico" because it was supposedly working in coordination with other entities to further the referenced political campaign.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." Political Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Citizens United v. FEC*, 558 U.S. 310, 339 (2010). For these reasons, laws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.

In *Citizens United v. FEC*, supra, the U.S. Supreme Court decided that, under the First Amendment, corporate funding of independent political broadcasts in candidate elections cannot be limited. Therefore, independent-expenditure-only political committees are allowed to accept unlimited contributions.

Notwithstanding the foregoing, the Supreme Court upheld the ban on direct contributions to candidates from corporations and unions. In this respect, campaign finance law has long prohibited corporations from donating to campaigns. See *FEC v. Beaumont*, 539 U.S. 146, 152-53 (2003). In the *Bipartisan Campaign Reform Act of 2002*, Congress specified that any electioneering communication that a corporation makes in coordination with a campaign constitutes a prohibited donation. 52 U.S.C. § 30116(a)(7)(C). This effectively bans "coordinated communications". 11 C.F.R. § 109.21(a). See *Brown v. Fed. Election Comm'n*, 386 F. Supp. 3d 16, 21 (D.D.C. 2019). As established in 11 C.F.R. § 109.20(a), "coordinated" means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee.

To determine whether a communication constitutes a "coordinated communication," Commission regulations apply a three-prong test. 11 C.F.R. § 109.21(a). Under that test, a communication must satisfy a "content prong," a "conduct prong," and a "payment

prong". 11 C.F.R. § 109.21(a), (c), (d). The first prong of the "coordinated communication" test specifies that the communication is paid for by "a person other than that candidate [or] authorized committee." 11 C.F.R. § 109.21(a)(1). The second prong of the "coordinated communication" test is a "conduct standard" that focuses, in relevant part, on whether the candidate or the candidate's agents "request or suggest" or are "materially involved" in the making and airing of a communication, or engage in "substantial discussion" about the communication. 11 C.F.R. § 109.21(a)(3) and (d)(1) through (3). The last prong of the "coordinated communication" test is the "content standard." See 11 C.F.R. § 109.21(a)(2). Four types of communications satisfy the "content standard": (1) a public communication that expressly advocates (or equivalent thereof) the election or defeat of a clearly identified Federal candidate (no matter when made); (2) a public communication that disseminates, distributes or republishes campaign materials (no matter when made); (3) electioneering communications; and (4) a public communication that refers to a political party or clearly identified Federal candidate that is disseminated 120 days or fewer before a primary, general, special or runoff election and is directed to voters in the candidate's jurisdiction. See 11 C.F.R. § 109.21(c). Under Commission regulations, a communication must satisfy all three prongs to be

deemed a "coordinated communication." See *Advisory Opinion* FEC 2005-07.

The Complaint currently before the Commission lacks any allegation or fact supported by personal knowledge of expenditures that were coordinated or communications that meet any of the three prongs mentioned above.

Furthermore, in this case there is no evidence, not even an allegation, of any fact that constitutes or may constitute a violation of the Act due to a coordinated expense between Respondent and any of the named entities in the present case.

CONCLUSION

For all the preceding reasons, Respondent requests that the Commission find that there is no reason to believe that a violation of the Act has occurred or will occur with respect to the allegations of the Complaint, and that it proceeds to close the file in this matter as it pertains to Respondent.

Respectfully submitted,

By: Ferdinand Ocasio, Esq.
Ocasio Law Firm, LLC
PO Box 192536
San Juan, PR 00919-2536
Tel.: (787) 710-7160
focasio@ocasiolawfirm.com