

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 MUR: 7815
6 DATE COMPLAINT FILED: October 7, 2020
7 DATE OF NOTIFICATION: October 16, 2020
8 LAST RESPONSE RECEIVED: October 23, 2020
9 DATE ACTIVATED: February 2, 2021
10

11 ELECTION CYCLE: 2020
12 EXPIRATION OF SOL: October 6, 2025
13

14 **COMPLAINANTS:**

Tiffany Muller
End Citizens United

17 **RESPONDENTS:**

Darrell Issa for Congress and Jen Slater in her
official capacity as treasurer
Darrell Issa

21 **RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30125(e)(1)
11 C.F.R. § 300.62
11 C.F.R. § 300.64(b)-(c)

26 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

28 **FEDERAL AGENCIES CHECKED:**

None

29 **I. INTRODUCTION**

30 The Complaint in this matter alleges that, while running for election to Congress, Darrell

31 Issa and his congressional campaign, Darrell Issa for Congress and Jen Slater in her official
32 capacity as treasurer (the “Committee”), sent an email invitation to his campaign mailing list for
33 a fundraiser to benefit the Republican Party of San Diego County and various local candidates.

34 The Complaint further alleges that the invitation did not indicate that contributions were limited
35 to amounts and from sources that complied with the requirements of the Federal Election
36 Campaign Act of 1971, as amended (the “Act”) and, on that basis, alleges that Issa and the

MUR 7815 (Darrel Issa for Congress, *et al.*)

First General Counsel's Report

Page 2 of 8

- 1 Committee violated the prohibition against federal candidates soliciting such funds and
- 2 associated disclaimer requirements.

3 Although an initial email invitation to the event did not contain a disclaimer, Issa and the
4 Committee provide information demonstrating that other invitations sent soon after contained a
5 disclaimer explaining that attendees could make donations only in accordance with the amount
6 limitations and source prohibitions of the Act. It also appears that notices and an oral disclaimer
7 made at the event satisfy Commission regulations governing the solicitation of contributions by a
8 candidate at a non-federal event. Accordingly, we recommend that the Commission dismiss the
9 allegations that Issa and the Committee violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R.
10 §§ 300.62, 300.64(b)-(c).

11 **II. FACTUAL BACKGROUND**

12 Congressman Darrell Issa ran for California's Fiftieth Congressional District in the 2020
13 election cycle; his campaign committee was Darrell Issa for Congress.¹ On October 6, 2020,
14 while Issa was campaigning, the Committee sent out an email invitation to a fundraiser in
15 support of various local party candidates to take place on October 8 at a local Republican party
16 office.² The invitation asked recipients "to support East County Candidates that need your
17 help."³ It prominently displayed the Committee's name and logo and Issa's photograph and
18 stated that contributions "are payable to the Republican Party of San Diego County or to the

¹ Committee, Am. Statement of Organization (Jan. 8, 2020).

² Compl. Ex. A (Oct. 7, 2020).

³ *Id.*

MUR 7815 (Darrel Issa for Congress, *et al.*)

First General Counsel's Report

Page 3 of 8

1 candidate of your choice.”⁴ The invitation did not instruct recipients as to how to donate prior to
 2 the event, and it did not specify that there was a required or suggested donation to attend.⁵

3 Respondents then sent two subsequent email invitations later that day and the next day,
 4 which were substantially identical to the first except that they included the following disclaimer:
 5 “Contributions in connection with this invitation and event in excess of federally permissible
 6 amounts or from corporations, labor organizations, national banks, federal government
 7 contractors or foreign nationals are prohibited.”⁶ Respondents also represent and provide
 8 photographs from the event itself showing that they posted the same statement on “11x17 posters
 9 in 44 point font conspicuously in at least 8 prominent locations at the event.”⁷ Finally, a video of
 10 the event posted on YouTube by the Committee appears to show Issa verbally making
 11 approximately the same statement at the beginning of the event.⁸

12 The Complaint contends that Issa and the Committee violated the Act and Commission
 13 regulations prohibiting candidates from soliciting contributions on behalf of local parties and
 14 candidates outside of the contribution limits and source restrictions of the Act.⁹ It contends that
 15 the original invitation “plainly” violated this rule because it was a general request for
 16 contributions to local candidates, who were permitted by California law to accept donations in

⁴ *Id.*

⁵ The email, which was sent from Issa’s campaign’s email address, ends with what appears to be an automatically generated link to a donation page for Issa’s campaign. *Id.*

⁶ Issa and Committee Resp., Attachs. (Oct. 23, 2020).

⁷ Resp. at 1& Attachs. The disclaimer also was included in Facebook postings advertising the event. *Id.*

⁸ *Id.* at 1 (citing Congressman Darrell Issa, *Darrell Issa Disclaimer*, YOUTUBE (Oct. 16, 2020), <https://www.youtube.com/watch?v=wdOkUmnfej8&feature=youtu.be>). The event appears to have taken place in the parking lot outside the party office building.

⁹ Compl. at 2.

MUR 7815 (Darrel Issa for Congress, *et al.*)

First General Counsel's Report

Page 4 of 8

1 greater amounts than federally permitted and from federally-impermissible sources.¹⁰ The
 2 Response represents that: (1) the event was free to attend; (2) no specific dollar amount was
 3 mentioned or requested to be given by persons attending the event; (3) the Commission's chart
 4 of federally permissible contributions "was distributed to all candidates in attendance, posted
 5 conspicuously, and candidates were verbally instructed to accept contributions compliant with
 6 federal law only;" and (4) the various notices and disclaimers described above satisfy
 7 Commission regulations governing solicitations and attendance by federal candidates at non-
 8 federal fundraising events.¹¹

9 **III. LEGAL ANALYSIS**

10 The Act and Commission regulations prohibit federal candidates and officeholders from
 11 soliciting funds in connection with a non-federal election unless those solicitations are restricted
 12 to funds that are from sources permitted by the Act, that are in amounts that do not exceed the
 13 Act's contribution limits, and that are consistent with state law.¹² Federal candidates and
 14 officeholders may participate in fundraising events held in connection with a non-federal election
 15 at which federally non-compliant funds are solicited and in publicity for those events, but their
 16 participation is governed by Commission regulations at 11 C.F.R. § 300.64.¹³ Specifically,

¹⁰ *Id.* at 2–3.

¹¹ Resp. at 1.

¹² 52 U.S.C. § 30125(e)(1)(B); 11 C.F.R. §§ 300.60, 300.62; *see also* 52 U.S.C. §§ 30116(a)(1)(A), (a)(2)(B) (limiting per-election contributions to \$2,800 from individuals and \$5,000 from non-party multi-candidate political committees during the 2020 election cycle), 30118(a) (prohibiting corporate, labor organization, and national bank contributions), 30119 (prohibiting contributions from federal contractors and prohibiting any person from knowingly soliciting such contributions), 30121 (prohibiting contributions and donations from foreign nationals and prohibiting any person from soliciting, accepting, or receiving such contributions).

¹³ *See also* Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events, 75 Fed. Reg. 24,375, 24,377 (May 5, 2010) (Explanation & Justification) ("Non-Federal Fundraising Events E&J").

MUR 7815 (Darrel Issa for Congress, *et al.*)

First General Counsel's Report

Page 5 of 8

1 federal candidates and officeholders are permitted to attend, speak, or be a featured guest at
2 fundraising events for non-federal elections and may solicit funds, but they must limit any
3 solicitations to amounts and sources permissible under the Act.¹⁴ A federal candidate or
4 officeholder may limit his or her solicitation by displaying at the fundraiser a clear and
5 conspicuous written notice or by making a clear and conspicuous oral statement that the
6 solicitation does not seek funds in excess of the federal contribution limits and does not seek
7 funds from sources prohibited by the Act.¹⁵ The oral statement can be made by the federal
8 candidate or officeholder or an event official before any solicitations are made by the federal
9 candidate or officeholder, such as in opening remarks.¹⁶

10 Publicity for such a non-federal fundraising event, including “pre-event invitation
11 materials,” may feature the federal candidate under the following conditions: (1) if the publicity
12 does not itself contain a solicitation, the federal candidate’s name and likeness may be used
13 without further restriction; or (2) if the publicity does contain a solicitation, the federal
14 candidate’s name and likeness may be used only if the solicitation is “limited to funds that
15 comply with the amount limitations and source prohibitions of the Act” or the publicity “includes
16 a clear and conspicuous disclaimer that the solicitation is not being made by the [f]ederal
17 candidate” and the candidate is identified in a “manner not specifically related to fundraising.”¹⁷

18 The initial email invitation attached to the Complaint — which did not contain a
19 disclaimer or otherwise indicate that donations must be limited to the amount limitations and

¹⁴ 52 U.S.C. § 30125(e)(3); 11 C.F.R. § 300.64.

¹⁵ See 11 C.F.R. § 300.64(b)(2)(i).

¹⁶ Non-Federal Fundraising Events E&J, 75 Fed. Reg. at 24,380.

¹⁷ 11 C.F.R. § 300.64.

MUR 7815 (Darrel Issa for Congress, *et al.*)

First General Counsel's Report

Page 6 of 8

1 source restrictions of the Act — could be considered a solicitation. By inviting individuals to a
 2 fundraiser, the email is akin to an example of a solicitation provided in Commission regulations:
 3 “Group X is having a fundraiser this week; you should go.”¹⁸ It is also clear that invitees are
 4 being asked to donate to the local candidates and party at the event, as the event is called a
 5 “fundraiser” and the invitation included the statement: “Contributions accepted payable to the
 6 Republican Party of Sand Diego County or to the Candidate of your choice.”¹⁹

7 If the invitation is itself a solicitation, then Commission regulations would require that it
 8 be “limited to funds that comply with the amount limitations and source prohibitions of the Act”
 9 or specify that the candidate is identified in a “manner not specifically related to fundraising”
 10 and contain a disclaimer.²⁰ The invitation did not meet either of these requirements; however,
 11 we recommend that the Commission dismiss the allegation as a matter of prosecutorial discretion
 12 on the basis that: (1) the respondents sent a follow-on invitation hours later — and another on
 13 the day of the event — that included an adequate disclaimer; (2) adequate disclaimers were made
 14 at the event itself, as discussed below; and (3) there is no information suggesting that donations
 15 not in compliance with the Act’s source and amount limits were made at the event.²¹ Given

¹⁸ 11 C.F.R. § 300.2(m)(2)(viii).

¹⁹ Compl., Ex. A. We note that section 300.64 appears to presume that an invitation to a non-federal fundraising event, without more, is not a solicitation. The regulation specifically contemplates that federal candidates may attend fundraisers to solicit donations towards local candidates and local parties — so long as those donations are made within the source and amount limits of the Act — and specifies that “pre-event invitation materials . . . not containing a solicitation” may include a federal candidate’s name and likeness, whereas publicity that does contain a solicitation may only do so subject to certain restrictions and disclaimers. 11 C.F.R. § 300.64(c). The invitation at issue here does not provide any instructions or a link enabling an invitee to make a donation to these local candidates and party before attending the event, and it does not specify a minimum or suggested donation as a prerequisite to attending.

²⁰ *Id.* § 300.64(c)(2), (3)(i).

²¹ See *Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985); see also Factual and Legal Analysis at 3, MUR 6841 (Friends for Harry Reid, *et al.*) (dismissing allegation that solicitation from federal candidate that was not

MUR 7815 (Darrel Issa for Congress, *et al.*)

First General Counsel's Report

Page 7 of 8

1 these facts, it appears that the Commission's interest in ensuring that federal candidates do not
2 solicit funds outside the source restrictions and amount limitations of the Act was adequately
3 served, and this matter does not warrant the further use of Commission resources.

4 Further, the event itself appears to have complied with Commission regulations
5 governing the participation of a federal candidate at an event that solicits donations towards a
6 local party and local candidates. The video and photographs from the event show that both
7 Issa's statements and event signage satisfied the requirement that a federal candidate soliciting at
8 a non-federal event "display[] at the fundraising event a clear and conspicuous written notice, or
9 mak[e] a clear and conspicuous oral statement, that the solicitation . . . does not seek funds in
10 excess of \$[Federally permissible amount], and does not seek funds from corporations, labor
11 organizations, national banks, federal government contractors, or foreign nationals."²²

12 Accordingly, we recommend that the Commission dismiss the allegations that Issa and
13 the Committee violated 52 U.S.C. § 30125 and 11 C.F.R. §§ 300.62, 300.64(b)-(c).

14 **IV. RECOMMENDATIONS**

- 15 1. Dismiss the allegation that Darrel Issa and Darrel Issa for Congress and Jen Slater
16 in her official capacity as treasurer violated 52 U.S.C. § 30125(e)(1) and
17 11 C.F.R. §§ 300.62, 300.64(b)-(c);
18 2. Approve the attached Factual and Legal Analysis;
19 3. Approve the appropriate letters; and
20 4. Close the file.

specifically limited to contributions that complied with the Act where, among other reasons, the candidate sent "a follow-up email explaining that all contributions had to comply with the Act's limitations and source prohibitions").

²² 11 C.F.R. § 300.64(b)(2)(i) (brackets in original).

MUR 7815 (Darrel Issa for Congress, *et al.*)

First General Counsel's Report

Page 8 of 8

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Date: May 27, 2021

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