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December 4, 2020

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Jeff S. Jordan, Assistant General Counsel
1050 First Street, NE
Washington, DC 20463

via email, cela@FEC.gov

Re: MUR 7839, Dr. Al Gross for US Senate, and Jay Petterson, as Treasurer

Dear Mr. Jordan,

This is the response of our clients, Dr. Al Gross for US Senate and Jay Petterson, as Treasurer (hereinafter collectively, the “Committee” or “Respondents”) to the Complaint filed in the above-captioned Matter Under Review (“MUR”). For the reasons stated below, the Committee respectfully requests that the Commission find no reason to believe that any violation of the Federal Election Campaign Act of 1971 (“Act” or “FECA”), as amended, or of the Federal Election Commission’s (“FEC” or “Commission”) regulations, was committed by these Respondents and close this matter as it pertains to them as expeditiously as possible.

A. Background

Respondent Committee is the principal campaign committee of Dr. Al Gross, a former candidate for the U.S. Senate in the State of Alaska.¹ Complainants allege that a business called Westerleigh Press and one or more “anonymous persons” paid for and distributed a mailer in Alaska attacking Dr. Gross’ opponent, Senator Dan Sullivan. Complainants further allege that the mailer in question lacked a disclaimer and, if coordination occurred between the Committee and the person or entities responsible for the mailer, resulted in an in-kind contribution. The allegations against the Committee are speculative, unsupported, and completely without merit.

In short and as more fully explained below, Respondents had no involvement with the mailer, are unaware of who sent the mailer, and did not knowingly engage in coordination with any person or entity as to the mailer. Because there is no information to the contrary in the Complaint, Respondents respectfully request that the Commission find no reason to believe that any violation occurred and close this matter as expeditiously as possible.

¹ Dr. Gross was a candidate in the general election held on November 3, 2020, but was not victorious.

B. Discussion

1. The Respondents were not involved with, did not request, suggest or discuss, or otherwise coordinate, the mailer in question.

First, Respondents did not pay for, prepare, produce or distribute the mailer, and hence, could not be one of the “anonymous persons” alleged in the Complaint. Westerleigh Press is not a vendor to the Committee, and the Committee had no contract, agreement or other arrangement with Westerleigh Press. This is confirmed by both the Committee’s Treasurer and its Campaign Manager. *See Exhibits A, Declaration of Jay Petterson, Treasurer, and B, Declaration of David Keith, Campaign Manager.* Neither the Treasurer nor the Campaign Manager recall even hearing of Westerleigh Press prior to the filing of the Complaint in this matter. *Id.* As a matter of process, Committee mailers were authorized by the Campaign Manager, and he neither saw nor authorized the mailer in question during the campaign. *Exhibit B, Declaration of David Keith.* The Committee made no payments to Westerleigh Press, and to the best of the Committee’s knowledge, none of its vendors or contractors made any payments to Westerleigh Press. *Exhibit A, Declaration of Jay Petterson.* Thus, the Committee is not one of the “anonymous persons” alleged in the Complaint.

Second, Respondents did not coordinate the production or distribution of the mailer in question with any other person or entity. *Exhibit B, Declaration of David Keith.* Specifically, none of the “conduct standards,” as contained in 11 CFR section 109.21 were engaged in by Respondents in connection with this mailer, namely, Respondents did not request or suggest the creation, production or distribution of the mailer, or otherwise assent thereto; were not involved in the content, intended audience, means or mode of communication, timing or frequency, or the size or prominence of the mailer; had no discussions about the creation, production or distribution of the mailer or otherwise knowingly conveyed material information about the Committee’s plans, projects, activities or needs to a person or entity paying for the mailer; as indicated above, had no common vendor relationship with Westerleigh Press; and are unaware of any former employee or contractor being involved with Westerleigh Press or the mailer.²

In addition to denying that it knowingly coordinated about the referenced mailer specifically with any outside person or entity, Respondents also deny knowingly coordinating generally with any outside person or entity making independent expenditures in connection with this race. Most importantly, absolutely no information to the contrary is alleged in or included with the Complaint. Accordingly, the information cited by Complainant is insufficient as a matter of law to the analysis as to whether coordination occurred and cannot support such a conclusion or even serve as the basis for further investigation.

2. Respondents did not knowingly accept or receive an in-kind contribution in this matter.

Because Respondents were unaware of the mailer and had no knowledge of or involvement with it, they did not knowingly accept or receive an in-kind contribution. Similarly,

² Respondents expressly reserve the right to make additional arguments with respect to the content of the mailer, but such arguments are not necessary at this time to conclude that this matter should be dismissed, given that Respondents had no involvement with the mailer.

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because Respondents did not knowingly coordinate with a person or entity paying for, preparing or distributing the mailer, they did not accept or receive an in-kind contribution.

More than likely the mailer was an independent expenditure by some person or entity unknown to these Respondents. No information is included in the Complaint that would support a contrary conclusion. Accordingly, the information cited by Complainant is insufficient as a matter of law to the analysis as to whether an in-kind occurred and cannot support such a conclusion or even serve as the basis for further investigation.

3. Respondents are not responsible for the disclaimer or absence thereof on the mailer.

For the reasons stated above, Respondents are not one of the “anonymous persons” referenced in the Complaint, and hence, are not responsible for the disclaimer or lack thereof on the mailer. Under 11 CFR section 110.10, the person making the communication is responsible for the inclusion and placement of the disclaimer. Respondent neither made nor paid for the mailer, and thus, is not responsible for the disclaimer. Nothing in the Complaint supports a conclusion to the contrary.

C. Conclusion

In sum, with respect to the Respondents Dr. Al Gross for US Senate and Jay Petterson, as Treasurer, the Complaint and the information provided therein is purely speculative and untrue with respect to these Respondents and clearly does not support a violation of the Act by them. These Respondents were neither the “anonymous person” who paid for, produced or distributed the mailer, nor did they knowingly coordinate with anyone else who may have been such person. Complainant would have the Commission infer this through speculation and innuendo, but zero information has been provided, precisely because it did not occur here.

For these reasons, and as demonstrated above, Respondents respectfully request that the Commission find no reason to believe that they violated any provision of the Federal Election Campaign Act of 1971 (the “Act”), as amended, or the Commission regulations and close this MUR as it pertains to these Respondents as expeditiously as possible.

Respectfully submitted,



Eric Kleinfeld
Adam Clark
Utrecht, Kleinfeld, Fiori Partners
Counsel for Dr. Al Gross for US Senate, and
Jay Petterson, as Treasurer

Exhibits

EXHIBIT A

BEFORE THE FEDERAL ELECTION COMMISSION

_____))
 _____))
In re MUR 7839, Dr. Al Gross for U.S. Senate))
 _____))
 _____))

DECLARATION OF JAY PETTERSON

I, Jay Petterson, do hereby certify:

1. I am Treasurer for Dr. Al Gross for U.S. Senate ("Committee") and a Principal in Blue Wave Political Partners, LLC ("Firm"), a political consulting firm specializing in compliance and fundraising for federal candidates.
2. As Treasurer of the Committee, I am responsible for bookkeeping, including reviewing vendor contracts and invoices and preparing checks for Committee disbursements, and for the preparation of Committee reports of receipts and disbursements ("FEC reports"). In this role, I am familiar with vendors to the Committee, as well as the disbursements made to them.
3. I have no information relating to the vendor named in the complaint filed in this manner, Westerleigh Press, and, upon information and belief, had not heard of this vendor prior to the filing of the complaint. To the best that I can recall and determine at this date, I, on behalf of the Committee, received neither a contract for services nor any invoices from this vendor.
4. As I am responsible for making and reporting Committee disbursements, I am aware of no Committee disbursements to Westerleigh Press during the campaign and thereafter, up until the current date. As I would also be responsible for reporting any permissible in-kind contributions, I am aware of no information about third party payments to Westerleigh Press.
5. As Treasurer, I can also confirm that Westerleigh Press does not appear as a vendor or recipient of Committee payments on the Committee's FEC reports, nor, upon information and belief and to the best that I can recall and determine at this date, was Westerleigh Press a subcontractor to any vendor of the Committee.
6. Upon information and belief, and to the best that I can recall and determine at this date, the Committee had no vendor or other relationship with Westerleigh Press, made no disbursements to and received no correspondence from them, nor otherwise was the knowing recipient of any in-kind contribution from them or for their services.

I declare under penalty of perjury that the foregoing is true and correct.

Signed: 
 Jay Petterson

Date: 11/23/2020

EXHIBIT B

BEFORE THE FEDERAL ELECTION COMMISSION

_____)
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In re MUR 7839, Dr. Al Gross for U.S. Senate)
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DECLARATION OF DAVID KEITH

I, David Keith, do hereby certify:

1. I was Campaign Manager for Dr. Al Gross for U.S. Senate ("Committee").
2. As Campaign Manager of the Committee, I was responsible for authorizing vendor contracts, including direct mail vendors, and for approving direct mail pieces.
3. I have no information relating to the vendor named in the complaint filed in this manner, Westerleigh Press, and, upon information and belief, had not heard of this vendor prior to the filing of the complaint. To the best that I can recall and determine at this date, I, on behalf of the Committee, did not receive, approve or authorize a contract for services from this vendor.
4. As I am responsible for approving direct mail pieces, upon information and belief, and to the best that I can recall at this date, I did not approve the mailer referred to in the complaint, nor did I have advance knowledge of such mailer.
5. Finally, to the best that I can recall at this date, I did not have any discussions about, did not make any request or suggestion for, nor was I involved in the preparation or dissemination of the mailer referenced in the complaint, either with Westerleigh Press or another person or group.

I declare under penalty of perjury that the foregoing is true and correct.

Signed: _____

David Keith

Date: _____

11/30/2020