

**SENT BY EMAIL (cela@fec.gov)**

Mr. Jeff S. Jordan  
Office of Complaints Examination and Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463  
Attn: Ms. Kathryn Ross, Paralegal

**Re: MUR 7854 - The Center for Election Innovation & Research and  
David Becker, Executive Director**

Dear Mr. Jordan:

On behalf of The Center for Election Innovation & Research (“CEIR”) and David Becker, the Executive Director of CEIR (collectively “Respondents”), we are replying to your notification, dated November 9, 2020, regarding the complaint (“Complaint”) filed by Jay Stone (“Complainant”) alleging that CEIR and David Becker violated the Federal Election Campaign Act of 1971, as amended (“FECA” or “the Act”). For the reasons set forth below, we respectfully request that the Federal Election Commission (“FEC” or “Commission”) find no reason to believe that Respondents violated FECA or the FEC’s regulations and dismiss the Complaint with no further action.

**The Complaint fails to state a violation over which the FEC has jurisdiction (or a violation of any other law) and is mere speculation unsupported by any facts and therefore insufficient to find reason to believe that Respondents violated the FECA or the FEC’s regulations.**

Under the standards it has established for evaluating alleged violations of FECA, the Commission must dismiss the Complaint. A complaint must “contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.” 11 C.F.R. § 111.4(d)(3).<sup>1</sup> Applying this standard, the Commission has previously concluded that a “reason to believe” finding is justified only if a complaint sets forth sufficient specific facts which if proven true would constitute a violation of FECA, and has stated that unwarranted legal conclusions from asserted facts or mere speculation in a complaint would not be accepted as true. *See, e.g.*, MUR 5141, Statement of Reasons of Commissioners Mason, Sandstrom, McDonald, Smith, Thomas, and Wold (April 17, 2002) (emphasis added).

Complainant falls far short of this standard, failing to set forth any facts that, if proven true, would constitute a violation of the FECA. Nor does Complainant refer to any provision of

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<sup>1</sup> The Commission’s 2007 Statement of Policy further states that “a reason to believe finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred.” Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12546 (March 16, 2007).

FECA or the Commission's regulations. Complainant's baseless allegation appears to be that CEIR's program to assist states throughout the country to educate voters about voting procedures constituted an in-kind contribution to Biden for President. He does not explain, nor is there any possible explanation, how providing grants to state governments across the country to support their official, governmental efforts to educate voters and provide information and communications to promote safe and secure participation in the 2020 elections could constitute a contribution to any political campaign, let alone Biden for President.

First, Complainant argues that CEIR has no medical credentials to make these grants, but not only was the grant program not medical in nature, this is irrelevant to the Commission's consideration. Second, he incorrectly speculates that "CEIR has no prior grant distribution experience," which even if true (it is not) has no relevance under FECA. Finally, Complainant suggests that some of Mr. Becker's personal social media posts that were critical of the policies and statements concerning voting procedures of President Trump, Attorney General Barr, or the Trump Administration, converted CEIR grants to support states' preparedness for the election into contributions to Biden for President, but Complainant provides no evidence whatsoever to connect CEIR's grants to state election agencies with Mr. Becker's expressed views on public policy, let alone to connect them in a manner within the Commission's purview.

In fact, Complainant's allegations about CEIR's grants are made in a complete factual vacuum about those grants: he states that "CEIR has yet to announce the recipients of CEIR's grants," see Complaint at 33, so *he apparently has no idea what, if anything, CEIR actually did*. As the Commission has consistently maintained, a complaint that provides no specific facts, relying instead purely on speculation, "do[es] not form an adequate basis to find reason to believe that a violation of the FECA has occurred." MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas at 3 ("[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred."). Accordingly, the Commission should find no reason to believe that CEIR or Mr. Becker violated the Act.

For the Commission's information, we next explain what this grant program actually entailed and how CEIR participated in it – events that simply are not regulated by the Act.

**CEIR's 2020 program was conducted in furtherance of and consistent with its nonpartisan mission to improve the efficiency of elections administration, increase voter participation and engagement and educate voters about the election process.**

CEIR's 2020 program, including the grants that it made to states, was conducted in furtherance of its longstanding mission to support fair and secure elections.

***Background on CEIR's Programs.*** In 2016, Mr. Becker established CEIR in response to the historic decline in voter turnout and eroding trust and confidence in U.S. elections. CEIR, a public charity exempt from tax under Internal Revenue Code ("IRC") section 501(c)(3), works nationally in a non-partisan manner to foster the overarching goals of building voter trust and confidence, improving the efficiency of elections administration, increasing voter participation

and engagement, and educating voters about the election process. Its programs are driven by the idea that democracy is strongest when all citizens are invested and engaged in the success of government. As a public charity, CEIR is absolutely prohibited from engaging in any activities to attempt to influence the outcome of any election, or to participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

Mr. Becker is a national expert in elections administration, with more than two decades of experience in the field. Prior to founding CEIR, Becker was Director of the elections program at The Pew Charitable Trusts, a 501(c)(3) public charity, where he studied and drove reforms in election administration, including using technology to provide voters with information they need to cast a ballot; assessing election performance through better data; and upgrading voter registration systems.

CEIR uses several data-driven strategies to accomplish its goals including research, direct consultation with election officials, a variety of educational initiatives, and convening meetings of officials and other experts in elections to discuss topics of shared interest. The goal of CEIR's research agenda is to educate and inform: 1) election officials and policy makers, and encourage them to implement consensus, non-partisan solutions that make elections more accessible and more secure; and 2) the media and citizens, to foster trust and understanding of election procedures. For example, in September 2020, CEIR published a "New Voter Registration in 2020" report showing that in the months following the pandemic, several states experienced a decline in their new voter registration numbers, a trend especially notable when compared with new voter registration numbers from the months leading up to the 2016 presidential election.

Since inception, CEIR has worked extensively with Secretaries of State and other election officials, irrespective of party affiliation, in states throughout the country to:

- establish best practices for voter list maintenance; secure their election technology against interference and to ensure that voters understand the voting process, have confidence that the systems are secure and that their votes will be counted accurately;
- protect the entire election infrastructure, including voter databases, election results systems, election management systems, and voting machines and tabulators; and
- implement paper ballots and audits. Advocating for audits is particularly important to CEIR's mission to improve voter confidence because they not only verify election outcomes, but they also provide an automatic method to correct them, if necessary, and they are practical in any state with paper ballots. They have bipartisan credibility and provide security against both malicious actors and human error.

***CEIR's 2020 Program.*** Given its proven expertise, and contrary to Complainant's baseless speculation and allegations, CEIR was well-situated to be a leader in the national conversation around the impact of the pandemic on election administration and the response as election officials grappled with unprecedented disruptions caused by the coronavirus pandemic. Right from the start, and well before it instituted the grant program described below, CEIR recognized that the pandemic had the potential to further erode trust, confidence, and engagement in the electoral system. Mr. Becker's opinion piece that appeared in the *Washington*

*Post* in March, 2020 is just one example of CEIR's early initiative. See <https://www.washingtonpost.com/opinions/2020/03/18/mail-in-ballots-avoid-coronavirus-yes-heres-how-minimize-chaos-unfairness/>.

As an expert in election administration, CEIR recognized that a significant change in voting procedures would be a massive operational undertaking, particularly in states with little to no experience handling large numbers of mail ballots. The pandemic also created even more uncertainty for voters, with delayed primary elections, and the prospect of polling place changes and closures. CEIR began working with states to maximize voter choice, with plenty of options for mail voting as well as safe, convenient in-person voting, in an effort to provide voters with the ability to cast a ballot with as few hurdles as possible. While states were in need of support before the COVID-19 pandemic, the pandemic increased demand as additional, wide-sweeping changes were enacted to address public health and logistical concerns.

The grant from a 501(c)(3) donor-advised fund supported and augmented CEIR's ongoing initiatives to provide voter education, information and communication to ensure safe, secure and informed November 2020 elections, particularly in the face of the challenges posed by the COVID-19 pandemic. Specifically, CEIR granted funds to states to pay for communications to provide:

- information regarding voter registration and deadlines;
- information regarding mail voting;
- instructions for mail voting specifically targeted to reduce ballot rejection;
- early voting opportunities;
- polling place locations and hours; and
- vote counting updates.

Consistent with CEIR's exempt status and the grant restrictions, and contrary to Complainant's unsupported allegations of partisanship, CEIR awarded grants to states based on objective, nonpartisan criteria. Key factors that informed the grant program included: the degree to which the election laws had changed since the last election and/or as a result of the pandemic; an assessment of the significant need for financial resources in light of the stresses placed on the system due to the pandemic; and independent of, but also interrelated with the other factors, the potential for a poorly administered election in the state to further erode voter confidence in U.S. elections. With the hope of encouraging all states to apply to the extent they recognized a need, CEIR reached out to key stakeholders, including the National Association of Secretaries of State and the National Association of State Election Directors, as well as election officials throughout the country, to inform them about the grant program.

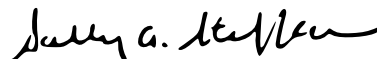
States were encouraged to apply for grants and permitted to request an amount deemed necessary to conduct their nonpartisan voter education programs addressing new voting procedures and COVID-related issues with the potential to cause voter confusion as well as providing specific information on locations, times and other logistical issues for voting. All fifty states and the District of Columbia were directly contacted and encouraged to apply for the grants, and twenty-four states actually applied. CEIR engaged in a rigorous and neutral review

process, applying the above-referenced factors as well as considering the size of voting age population in each applicant state. *Ultimately, all of the states, but one that withdrew from consideration,<sup>2</sup> that requested funds were awarded grants at the levels requested.* Any suggestion that the grants were made based on partisan considerations or the alleged political leanings of individuals at CEIR, or that the grants were made only to “Democratic strongholds,” is unsupported by Complainant and patently false in fact.

### **Conclusion**

Complainant offers baseless factual speculation in support of a legal theory that does not describe a violation of the Act. Respondents directly refute those facts and explain the Complaint’s legal deficiencies. CEIR made grants to state election agencies so they could educate and inform all voters to increase their participation and confidence in the election. Those grants were not contributions to Biden for President. We respectfully request that the Commission find no reason to believe that Respondents violated the Act and dismiss the complaint.

Very truly yours,



Sally A. Steffen



B. Holly Schadler  
*Counsel to Respondents*

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<sup>2</sup> CEIR awarded grants in the following states and the District of Columbia: Arizona, Connecticut, Florida, Georgia, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, and Washington. After applying for and being awarded a grant, Louisiana withdrew its request, citing potential issues regarding the state’s authorization to receive such grants under state law.