

PERKINScoie700 13th Street, NW
Suite 800
Washington, D.C. 20005-3960T +1.202.654.6200
F +1.202.654.6211
PerkinsCoie.comRebecca H. Gordon
RGordon@perkinscoie.com
D. +1.202.434.1676
F. +1.202.654.9666

February 11, 2021

BY ELECTRONIC MAIL: CELA@FEC.GOVJeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463**Re: MUR 7854**

Dear Mr. Jordan:

We write on behalf of Mark Zuckerberg and Dr. Priscilla Chan (collectively, “Respondents”) in response to the Complaint in MUR 7854.

Complainant alleges that donations Respondents made to two nonpartisan, Section 501(c)(3) charitable organizations, to help support the voting infrastructures of state and local governments during the global pandemic, constituted unlawful contributions to President Joseph R. Biden’s campaign. However, Complainant alleges no facts that support, or even suggest, any potential violation of federal campaign finance law. These donations to the Section 501(c)(3) charities were entirely nonpartisan. Notably, these donations were not made for the purpose of influencing any federal election, nor were they coordinated with the Biden campaign on which Complainant focuses or any other presidential campaign.

These donations to the Section 501(c)(3) charities were entirely lawful. They violated no provision of federal campaign finance law, and Complainant presents no colorable argument that any legal violation might have resulted from them. The Federal Election Commission (the “Commission”) should find no reason to believe Respondents violated the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 et seq. (the “Act”), or its implementing regulations, and therefore dismiss this matter.

February 11, 2021

Page 2

FACTUAL DISCUSSION

1. Background

State and local officials charged with administering our elections in 2020 faced unprecedented difficulties in addressing the challenges posed by the COVID-19 pandemic. The public health crisis forced unforeseen changes in election procedures, voting processes, and the equipment and facilities needed to conduct elections safely and accurately. Jurisdictions throughout the country needed additional equipment, staffing, and training in the months leading up to the November 3, 2020, general election.¹ Aware of these needs and wanting to help, in September of 2020, Respondents announced significant donations to two Section 501(c)(3) public charities—The Center for Technology and Civic Life (“CTCL”) and The Center for Election Innovation & Research (“CEIR”)—to help state and local government agencies conduct elections safely, securely, timely, and competently. These donations were made through a 501(c)(3) donor-advised fund (“DAF”), which made the grants to CTCL and CEIR. Respondents’ actions with respect to these donations were conceived of, and executed, independently of any presidential campaign.

2. The Donation Recipients

This assistance was provided in four separate commitments: up to \$250 million to CTCL and \$50 million to CEIR in September 2020, and up to another \$100 million to CTCL and \$19.5 million to CEIR in October 2020 (collectively, the “Donations”). CTCL and CEIR followed their own respective processes to grant the funds that they received to voting jurisdictions throughout the country.

Both CTCL and CEIR are nonpartisan, Section 501(c)(3) charitable organizations, prohibited by federal tax law from participating in or intervening in any election.

¹ See, e.g., Beth LeBlanc, *Benson wants \$40M from feds to hold election during COVID-19*, THE DETROIT NEWS (Jun. 3, 2020), <https://www.detroitnews.com/story/news/local/michigan/2020/06/03/jocelyn-benson-voting-rights-us-house-judiciary-panel/3133458001/> (“Michigan Secretary of State Jocelyn Benson told federal lawmakers Wednesday that the \$11.2 million in CARES Act Funding appropriated to Michigan for election challenges posed by the coronavirus is not enough”); Mike Ellis, *SC has poll worker shortage, unprecedented number of polling place changes due to coronavirus*, GREENVILLE NEWS (Jun. 1, 2020), <https://www.greenvilleonline.com/story/news/2020/06/01/coronavirus-sc-poll-worker-shortage-unprecedented-number-polling-place-relocations-due-covid-19/5262114002/> (“The state has never dealt with such a significant disruption to polling places... There have long been shortages of poll workers in many counties throughout the state, but this year will be worse and much of it is due to coronavirus concerns among poll workers, Whitmire said.”).

February 11, 2021

Page 3

a. The Center for Technology and Civic Life

Founded in 2014, CTCL is a 501(c)(3) non-profit organization that focuses on using technology to help local governments communicate with citizens, including by providing tools and resources to help local officials disseminate election and voting information to the public. CTCL's election-related work includes training local officials on technology-related issues, making open-source election data available to the public, and providing grants to local governments to support the modernization of election infrastructure. Its trainings for local officials cover topics such as creating election information websites, collecting and publishing election data, cybersecurity, voter outreach to disseminate information regarding topics such as voter registration and other voter information, poll worker management, and post-election audits.

In 2020, CTCL made a significant number of grants to local governments through its COVID-19 Response Grant program, which began months before the Donations were made. The program was designed to help local election officials with the costs of administering the election during a pandemic, including costs associated with setting up polling places, purchasing and maintaining election equipment, obtaining personal protective equipment to protect poll workers and voters, setting up curbside voting and drop boxes, voter education regarding pandemic-related changes to the voting process, and poll worker recruitment and management. Through this program, CTCL made grants to over 2,500 local jurisdictions. A list of the jurisdictions that received these grants is available at

<https://docs.google.com/spreadsheets/d/1E7P3owIO6UlpMY1GaeE8nJVw2x6Ee-iI9d37hEEr5ZA/>.

b. The Center for Election Innovation & Research

CEIR is a 501(c)(3) non-profit organization that aims to increase voter trust in the election process, encourage voter engagement, and improve election administration. CEIR works with election officials to update and improve the accuracy of voter lists, improve the security of election technology, and educate voters on the election process. CEIR also publishes research regarding election security, voter registration, and voting issues.

In 2020, CEIR made grants to numerous state election administrators to support their nonpartisan voter education efforts, particularly with respect to changes in the voting process caused by the COVID-19 pandemic. The grants supported nonpartisan state government efforts to inform the public about voter registration deadlines and requirements, vote-by-mail rules, early voting, polling place information, and the vote counting process, including through mail, paid media, and electronic communications.

February 11, 2021

Page 4

c. The Donations to CTCL and CEIR

Respondents identified CTCL and CEIR as the recipients of the Donations because they are Section 501(c)(3) nonpartisan charities, and because each has extensive experience working directly with state and local jurisdictions on election administration. After extensive research, Respondents concluded that CTCL and CEIR were best positioned to support states and localities in running elections in the face of the pandemic's challenges. Respondents did not identify these entities based on any candidate- or party-related consideration. Nor did Respondents consult or coordinate with any presidential campaign regarding the Donations or the recipients' activities.

Once the Donations were made, CTCL and CEIR executed their own respective processes in making grants to various voting jurisdictions throughout the country. It is the understanding of the Respondents that these processes were executed by CTCL and CEIR in a nonpartisan manner. For example, CTCL and CEIR included in their 2020 grant programs an open-call process by which any jurisdiction in the U.S. could apply for grant funds. And, to the best of Respondents' knowledge, every jurisdiction that applied for funds from either organization received a grant.

Complainant's allegation that the Donations were made to assist one candidate or party is not supported by Complainant's personal knowledge, nor by any other source of information, other than the fact that some of the grants went to jurisdictions, particularly cities, with large proportions of Democratic voters. While the Complaint repeatedly asserts that CTCL and CEIR made grants to so-called "Democratic strongholds," it fails to present a complete picture of all of the grants made by CTCL and CEIR throughout the country and, importantly, offers absolutely no evidence from which any partisan motive on Respondents' part can be shown or even inferred. The Complaint does not provide any evidence—and, in fact, does not even allege—any coordination, any communication that expressly advocated the election or defeat of a clearly identified candidate or candidates of a clearly identified political party, or any instance in which the supported jurisdictions targeted voters of a particular political party. Indeed, there is no evidence to suggest that either charity coordinated its activities with any candidate or political party, included express advocacy in any of its materials or communications, or aimed its activities at voters supporting any particular political party.

LEGAL DISCUSSION

The Complaint alleges no violation of the Act by Respondents. Instead, it simply asserts that Respondents committed funds to two Section 501(c)(3) charities. Nowhere does the Complaint describe any conduct by Respondents or either charity that would represent a "contribution" or an "expenditure" under the Act.

February 11, 2021

Page 5

The Commission has repeatedly made clear that private parties may provide resources to state and local election authorities to assist them in nonpartisan election administration without making contributions or expenditures under the Act. For example, in Advisory Opinion 1980-55, the Commission held that corporations may support states and municipalities in the conduct of nonpartisan voter registration drives, when the sponsor “does not support or endorse candidates or political parties, ... and if the services are made available without regard to a voter’s political preference.” *See* FEC Advisory Op. 1980-55 (Connecticut Secretary of State), at 2 (June 25, 1980).

Later, the Commission wrote regulations, still in effect, that permit a corporation or labor organization to “donate funds to State or local government agencies responsible for the administration of elections to help defray the costs of printing or distributing voter registration or voting information and forms.” *See* 11 C.F.R. § 114.4(c)(3)(iii). The conditions that the regulations impose are simply that the donating corporation or union may not expressly advocate the election or defeat of any clearly identified candidate or candidates of a clearly identified political party, may not encourage registration with any particular political party, and may not coordinate the reproduction or distribution of registration or voting information and forms with any candidate or party. *See id.* § 114.4(c)(3)(iv).

These regulations permit corporations and unions to support specific forms of nonpartisan election-related activity and reflect a broad judgment by Congress and the Commission that state and local activities designed to encourage election participation do not result in contributions or expenditures for the purpose of influencing an election, particularly when they do not involve express advocacy, coordination, or screening for partisan preference. *See, e.g.*, 52 U.S.C. § 30101(9)(B)(ii) (“nonpartisan activity designed to encourage individuals to vote or to register to vote” is not an expenditure); 11 C.F.R. § 100.133 (costs incurred to encourage voter registration and voting are not expenditures if no effort is made to determine the party or candidate preference of the individuals beforehand). *See also, e.g.*, FEC Advisory Op. 1999-07 (Minnesota Secretary of State) (permitting state election official to provide hyperlinks to candidate web sites as nonpartisan activity to encourage voting). *Cf.* 11 C.F.R. § 114.4(d) (permitting corporate voter registration and get-out-the-vote drives directed to the general public when, *inter alia*, there is no express advocacy, the drive is not directed to individuals registered or intending to register with a particular political party, and the services are made available without regard to the voters’ political preferences).

Even when an activity is conducted only in selected states or cities, which was not the case here, that fact alone is not enough to turn otherwise nonpartisan activity into “contributions” or “expenditures.” For example, the Commission dismissed a complaint against Citizen Change and Sean Combs over a get-out-the-vote campaign they undertook in connection with the 2004 presidential election. *See* FEC MUR 5684 (Citizen Change). Citizen Change, a 501(c)(3) organization established by Mr. Combs, sponsored a multi-faceted media campaign, including

February 11, 2021

Page 6

advertising and in-person rallies, to encourage minorities and young voters to register and vote. *See* FEC MUR 5684, First General Counsel’s Report, at 3 (July 31, 2006). Significantly, the campaign involved rallies in six cities—Milwaukee, Detroit, Cleveland, Pittsburgh, Philadelphia, and Miami—which could have been characterized as “Democratic strongholds” as easily as the jurisdictions the Complaint in this matter selectively identified. *See* FEC MUR 5684, Complaint, at 21 (Nov. 3, 2005). Relying on the organization’s nonpartisan goals and activities, and lacking evidence of coordination with the Democratic presidential nominee, the Commission found no reason to believe any violation occurred. *See* FEC MUR 5684, First General Counsel’s Report, at 4-7 (July 31, 2006).

The Complaint fails to present any credible allegation of a “contribution” or an “expenditure.” It identifies no communication containing express advocacy, alleges no coordination with any candidate or campaign, and fails to show that any activity that the Donations financially supported was undertaken with regard to any voter’s political views or preferences. The Complaint’s sole argument is that a portion of the nonpartisan activities supported by grants made by CTCL and CEIR occurred in states and cities that were so-called “Democratic strongholds,” a fact which, by itself, is not sufficient to result in a contribution or an expenditure. By the Complaint’s logic, nonpartisan voter registration or get-out-the-vote drives that take place in “deep red” rural areas or “deep blue” urban areas would become illegal under Commission rules, simply and solely because they occurred where they did.

In any event, the Complaint misstates the scope and nonpartisan focus of the activities that the Donations helped to fund. For example, the Complaint alleges that CTCL provided grants “only” to Democratic-leaning jurisdictions in Iowa. This is completely false—of the 67 Iowa jurisdictions receiving grants from CTCL, 61 voted for Donald Trump in 2016. The list of states in which CTCL made grants included putative “Republican strongholds,” such as Alabama, Arkansas, Idaho, Indiana, Kansas, Kentucky, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and Utah. *See* Center for Tech and Civic Life, Grants Awarded: CTCL COVID-19 Response Grant Program, <https://docs.google.com/spreadsheets/d/1E7P3owIO6UlpMY1GaeE8nJVw2x6Ee-i9d37hEEr5ZA> (last visited Feb. 11, 2021) (hereinafter, the “CTCL Grant List”).

Even in other states, the facts surrounding the grants made by CTCL belie the claim of partisan targeting. A comparison of the CTCL Grant List with state-published 2016 election data yields the following (represented visually at Exhibit A):

- In Georgia, as of October 29, 2020, CTCL had awarded grants to 43 counties, 27 of which voted for Donald Trump over Hillary Clinton in the 2016 presidential election. CTCL Grant List; *see also* Georgia Secretary of State, *General Election - November 8, 2016 Statewide Results*, <https://results.enr.clarityelections.com/GA/63991/184321/en/summary.html>.

February 11, 2021

Page 7

- As noted above, in Iowa, as of October 29, 2020, CTCL had awarded grants to 67 counties, 61 of which voted for Donald Trump over Hillary Clinton in the 2016 presidential election. CTCL Grant List; *see also* Iowa Secretary of State, *2016 General Election Canvass Summary*, <https://sos.iowa.gov/elections/pdf/2016/general/canvsummary.pdf>.
- In Pennsylvania, as of October 29, 2020, CTCL had awarded grants to 23 counties and the Pennsylvania Department of State. Fourteen of these counties voted for Donald Trump over Hillary Clinton in the 2016 presidential election, with seven of those fourteen voting more than two-to-one for Trump. *Id.*; *see also* Pennsylvania Department of State, *2016 Presidential Election Results*, <https://www.electionreturns.pa.gov/General/SummaryResults?ElectionID=54&ElectionType=G&IsActive=0>.
- In South Carolina, as of October 29, 2020, CTCL had awarded grants to 43 counties, almost all of the 46 counties in the state. Twenty-eight of the 43 voted for Donald Trump over Hillary Clinton in the 2016 presidential election. CTCL Grant List; *see also* South Carolina State Election Commission, *2016 Statewide General Election Results*, <https://www.enr-scvotes.org/SC/64658/183653/en/summary.html>.

In Wisconsin, 214 cities, towns, and villages received CTCL grant funds. Likewise, hundreds of jurisdictions in Michigan received funds. Most jurisdictions accepting CTCL funds served fewer than 25,000 registered voters.

Multiple press accounts attest to the success of these programs and the crucial role that they played in filling the unexpected gap in funding and resources that the pandemic presented.² The Complaint ignores Respondents' clear, uncontroverted philanthropic purpose and achievement of helping state and local officials most burdened with executing our elections, during an unprecedented worldwide pandemic, to conduct their responsibilities. Instead, the Complaint relies on vague, unsupported accusations and grievances, which are not sufficient for

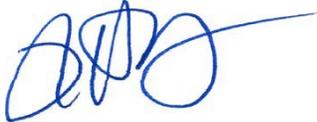
² *See, e.g.*, Kirk Brown, *Donation from Facebook founder Mark Zuckerberg helps Greenville pay poll workers more*, GREENVILLE NEWS (Oct. 7, 2020), <https://www.greenvilleonline.com/story/news/local/2020/10/07/greenville-county-sc-poll-workers-earn-up-100-extra-pay-election-day/5904049002/> (“It is going to tremendously benefit poll workers,” [Greenville County Elections Director] Belangia said... Besides boosting the pay of poll workers, some of the grant money will be spent to hire additional staff and buy equipment to handle an expected influx in absentee voting for next month’s election, Belangia said.”); Jetske Wauran, *Woodbury County receives \$156K election grant*, CBS14/FOX44 SIOUXLAND NEWS (Sept. 29, 2020), <https://siouxlandnews.com/news/local/woodbury-county-receives-156k-election-grant> (“I’m very excited that we were made aware of this grant through the secretary of state’s office and it’s one that’s going to help us get through the general election in pretty good financial condition,” County Auditor Pat Gill said. The money will help cover the increased costs of setting up and staffing polling places due to the pandemic, including buying personal protective equipment for poll workers.”).

February 11, 2021
Page 8

investigation. Commission regulations require a complaint to include 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). The Complaint has completely failed to meet this burden. Indeed, the only specific conduct in which Mr. Zuckerberg and Dr. Chan are alleged to have engaged was identifying two charities to recommend receiving Donation funds and announcing the Donations—neither of which presents any violation of the Act.

CONCLUSION

For the foregoing reasons, the Commission should find no reason to believe Respondents violated the Act, should dismiss the Complaint, and should take no further action on this matter.
Very truly yours,

A handwritten signature in blue ink, appearing to be 'R. Gordon', with a long horizontal line extending to the right.

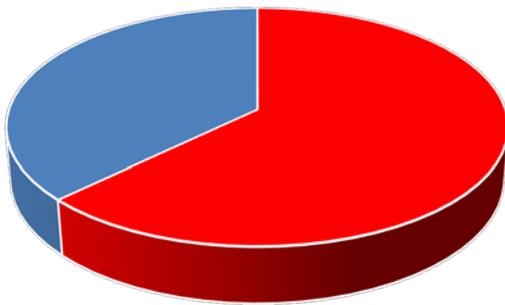
Rebecca H. Gordon
Brian G. Svoboda
Varoon Modak

Counsel to Respondents

Enclosed: Exhibit A

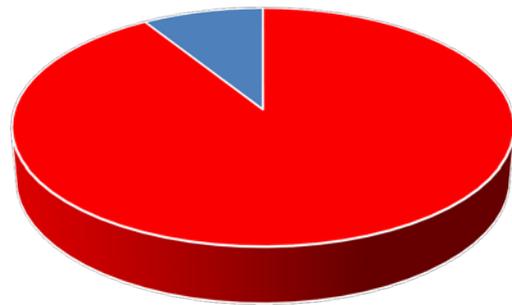
Exhibit A

Georgia Grant Distribution



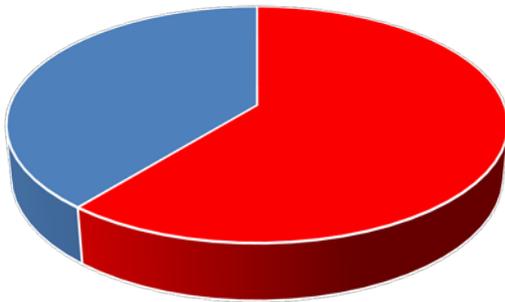
■ 2016 "Red" Counties ■ 2016 "Blue" Counties

Iowa Grant Distribution



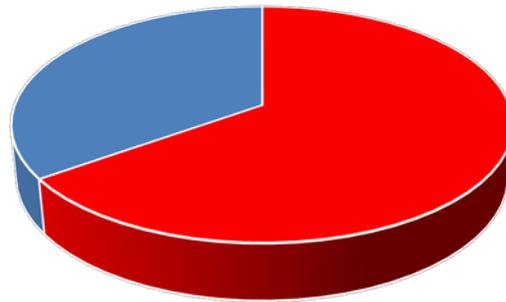
■ 2016 "Red" Counties ■ 2016 "Blue" Counties

Pennsylvania Grant Distribution



■ 2016 "Red" Counties ■ 2016 "Blue" Counties

South Carolina Grant Distribution



■ 2016 "Red" Counties ■ 2016 "Blue" Counties