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BY ELECTRONIC MAIL

Federal Election Commission
Office of Complaints Examination and
Legal Administration
Attn: Trace Keeys, Paralegal
1050 First Street, NE
Washington, D.C. 20463

Re: MUR 7860

On behalf of Jobs and Progress Fund, Inc., (“JPF”); Vaughn Church, in his official capacity as President of JPF and individually; Thomas Norris, in his official capacity as former President of JPF and individually; and Mark Miller, in his official capacity as former President of JPF and individually (together “Respondents”), this letter responds to the Complaint filed against them by Citizens for Responsibility and Ethics in Washington on behalf of Marc Kruman (together “CREW”).

The crux of the Complaint is that JPF qualified as a political committee under FECA as early as 2013 and failed to register and report as such with the FEC (Count I). The Complaint also includes related claims, all of which hinge on the allegation that JPF qualified as a political committee based on having the major purpose of the election or defeat of federal candidates: first, that JPF failed to file periodic reports with the FEC as a political committee (Count II), and second, that Vaughn Church, Thomas Norris, and Mark Miller, in their official capacities as President and former Presidents of JPF, respectively, and individually, are personally liable for failing to register JPF as a political committee and file periodic reports as such with the FEC (Counts III-V).

For the reasons set forth below, each of the claims is without merit and the Commission should dismiss the Complaint.

I. The Complaint fails to demonstrate that JPF is, or ever has been, a federal political committee.

Political committees are subject to burdensome and extensive registration and reporting requirements that stifle free political speech. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 338 (2010); *Davis v. FEC*, 554 U.S. 724, 744 (2008). As a result, before an organization may be burdened with “political committee” status under FECA, it must satisfy two criteria. First, the organization either must have made “expenditures” aggregating in excess of \$1,000 in a calendar year that expressly advocate for the election or defeat of federal candidates or it must have received “contributions” aggregating in excess of \$1,000 in a calendar year to support or oppose federal candidates. 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a). Second, the organization must also have the “major purpose” of nominating or electing federal candidates. *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

The Complaint must allege sufficiently supported facts to satisfy both criteria. It hasn’t. JPF has never made any federal contributions or expenditures (including independent expenditures) and JPF’s major purpose is not and never has been supporting or opposing federal candidates.

A. The Complaint fails to demonstrate that JPF has met the statutory threshold for political committee status.

As the Complaint concedes, JPF has made contributions to federal independent expenditure-only committees, but there is no evidence that it has ever received contributions or made expenditures as defined under FECA. Thus, JPF does not satisfy the statutory threshold for a “political committee” under 52 U.S.C. § 30101(4)(A).

The Supreme Court has limited the definition of expenditure “to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified federal candidate.” *Buckley*, 424 U.S. at 79-80. FECA also clearly differentiates between “contributions” and “expenditures” throughout its provisions. Making contributions to independent expenditure-only committees does not satisfy the threshold for making expenditures for purposes of the political committee definition. Because of this distinction, the Commission has found that a single transaction cannot be deemed both an expenditure and a contribution by the same entity. MUR 6872 (New Models), Controlling Statement of Reasons of Commissioners Hunter and Petersen at 19-20.

There is no claim or evidence that JPF made any independent expenditures of its own. JPF’s relevant spending on federal campaign activity consisted only in making contributions to several other organizations, some of which were registered federal political committees, some of which, in turn, did federal independent expenditures. Those contributions are not “expenditures made” under FECA. FECA clearly does not include “making contributions of \$1,000 or more” in its political committee definition. Thus, under the plain language of FECA, JPF did not receive

contributions or make expenditures of more than \$1,000. As a result, it was not required to register as a federal political committee.

B. The Complaint fails to demonstrate that JPF's major purpose is nominating or electing federal candidates.

Whether or not JPF met the statutory threshold for a federal political committee, it does not have the major purpose of nominating or electing federal candidates. It is well settled that the Commission applies a multi-factored, case-by-case approach to make a major purpose determination. The analysis involves (1) consideration of the central organizational purpose and (2) a comparison of the organization's overall spending compared to its spending on matters expressly advocating for the election or defeat of federal candidates. *See* MUR 6081 (American Issues Project, Inc.), Statement of Reasons of Commissioners McGahn, Hunter, and Petersen at 9. No one factor is determinative, whether in favor of a finding of major purpose or against it. *See, e.g., Supplemental Explanation and Justification, Political Committee Status*, 72 Fed. Reg. 5601, 5605 (Feb. 7, 2007) ("2007 Supplemental E&J"); MUR 6872 (New Models), Controlling Statement of Reasons of Commissioners Hunter and Petersen at 21. Each is discussed below.

1. JPF's central organizational purpose is the promotion of social welfare.

In determining an organization's central organizational purpose, the Commission focuses on (i) the organization's formal organizational documents, such as its articles of incorporation, and (ii) the organization's own public statements, such as its website, solicitations, and press releases. MUR 6872 (New Models), Controlling Statement of Reasons of Commissioners Hunter and Petersen at 14.

As evidenced by its filings with the State of Ohio Secretary of State and the IRS, JPF's central organizational purpose is the promotion of social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code. 2017 Form 990. The Complaint contains no allegations, nor does it provide any evidence, that JPF has an organizational purpose, let alone the *central* organizational purpose, to elect or defeat federal candidates. In the absence of any evidence demonstrating a central organizational purpose of supporting federal candidates, the Commission should find that JPF's purpose is the promotion of social welfare. MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Commissioners Wold, Mason, and Thomas at 2 ("The burden of proof does not shift to a respondent merely because a complaint is filed.").

2. JPF's spending demonstrates that its major purpose is not, nor ever was, the nomination or election of federal candidates.

In addition to evaluating the organization's central organizational purpose, the Commission must evaluate whether an organization's spending is "so extensive that the group's major purpose may be regarded as [federal] campaign activity." *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 262 (1986). While neither the courts nor the Commission have defined how

extensive the spending must be to shift an organization's major purpose to federal campaign activity, in practice the Commission compares the organization's spending on federal campaign activity over its lifetime with its overall spending to determine if a majority of its spending is for supporting or opposing *federal* candidates. *See New Mexico Youth Organized v. Herrera*, 611 F.3d 669, 678 (10th Cir. 2010). Notably, spending related to the election of state candidates should not be included in this comparison. *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 862-65 (D.D.C. 1996).

Thus, in stark contrast to the myopic, single-year percentage routinely sought to be imposed by CREW (and repeatedly rejected by the Commission), "the determination of whether the election or defeat of federal candidates for office is *the* major purpose of an organization, not simply *a* major purpose, is inherently a comparative task, and in most instances it will require weighing the importance of some of a group's activities against others." *Real Truth About Abortion*, 681 F.3d 544, 556 (4th Cir. 2012). This determination involves an examination as to "whether the preponderance of expenditures is for express advocacy or contributions to candidates." *New Mexico Youth*, 611 F.3d at 678. Other federal courts have followed the same approach, examining the activities and statements as well as the spending of groups in order to determine if the major purpose is the election of federal candidates. *See, e.g., FEC v. Malenik*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2005); *GOPAC, Inc.*, 917 F. Supp. at 859. These courts have routinely upheld the multi-factor test.¹ In addition, this inquiry need not be intrusive, but can be accomplished by examining an entity's publicly available government filings and public statements. *Real Truth*, 681 F.3d at 558.

For purposes of the spending comparison, there is no authority to support CREW's proposed single-year evaluation. CREW's proposed evaluation purports to rely on *CREW v. FEC*, 209 F. Supp. 3d 77 (D.D.C. 2016), but the district court in that case agreed with the Commission that "a particular organization's full spending history" is relevant, just not the only or dispositive consideration. *Id.* at 94. This is consistent with "*Buckley's* concept [that] an 'organization' manifests its major purpose over its lifetime of existence and activities." MUR 6538 (Americans for Job Security), Statement of Reasons of Goodman, Hunter, and Petersen at 25 (designating an entity as a political committee based on "only a single year is misguided and renders an artificial and distorted picture of the organization's activities that could wrongly subject an issue-advocacy group to the regulatory burdens attendant to political-committee status"); MUR 6872 (New Models), Controlling Statement of Reasons of Commissioners Hunter and Petersen at 5, n.23 (timeframe for analysis "is not and has never been limited to a single calendar year").

Neither the Commission nor any federal court has formally adopted a single-year approach. MUR 6538 (Americans for Job Security), Statement of Reasons of Goodman, Hunter,

¹ *See CREW v. FEC*, 209 F. Supp. 3d 77, 94 (D.D.C. 2017) (reasonable for the Commission to consider organization's "full spending history"); *Akins v. FEC*, 736 F. Supp. 2d 9, 20 (D.D.C. 2010) (considering organization's "focus on lobbying for more than forty years"); *see also Malenick*, 310 F. Supp. 2d at 233; *GOPAC*, 917 F. Supp. at 862-66.

and Petersen at 24 and n.146; MUR 6872 (New Models), Controlling Statement of Reasons of Commissioners Hunter and Petersen at 27-31. And this is for good reason, as focusing on a single year “flatly ignores the point of the major purpose test,” which is to restrict political committee burdens to those organizations that exist to influence federal elections while excluding those entities that only occasionally make regulated expenditures. MUR 6538 (Americans for Job Security), Statement of Reasons of Goodman, Hunter, and Petersen at 25. The “event-specific” independent expenditure reporting requirements in FECA are specifically designed to require disclosure but without the ongoing burden of registration and regular reporting. 11 CFR § 109.10; MUR 6872 (New Models), Controlling Statement of Reasons of Commissioners Hunter and Petersen at 8. Using a single-year approach to determine an organization’s major purpose would inevitably subject issue-based groups, in perpetuity, to the burdens of full political-committee status based on a short period of activity. 11 CFR § 102.3(a); MUR 6396 (Crossroads GPS), Statement of Reasons of Commissioners Goodman, Hunter, and Petersen at 22.

Several decisions by the Commission in matters alleging a similar violation support a finding of no reason to believe here.

In MUR 6872 (New Models), the Commission reiterated and described its comprehensive major purpose approach that focuses on a group’s public statements, organizational documents, and “overall spending history.” Statement of Reasons of Commissioners Hunter and Petersen at 1. In that review, the Commission considered New Models’ entire spending history of over 15 years when comparing its federal campaign activity with its other spending. *Id.* The Commission rejected the argument that New Models’ major purpose had shifted when it made contributions to Super PACs that made federal independent expenditures in a single calendar year because its overall spending in its lifetime was not federal campaign activity.

In MUR 6396 (Crossroads GPS), the Commission found no reason to believe that a group was a political committee because its organizational documents, mission statement, IRS tax status, and its primary political activities “since its inception” had been focused on public policy objectives rather than federal campaign activity. Statement of Reasons of Commissioners Goodman, Hunter, and Petersen at 11. Nothing in Crossroads GPS’s official documents—including its articles of incorporation, mission statement, and website—indicated that its central organizational purpose was the nomination or election of federal candidates. In the same way, the Complaint points to nothing in any of JPF’s official documents or statements that demonstrates that the group has any purpose other than social welfare.

In MUR 5754 (MoveOn.Org Voter Fund), the Commission determined that the respondent, a 527 entity that had not registered as a federal political committee, did have the major purpose of electing federal candidates based on its public statements and overall spending. Factual and Legal Analysis (Aug. 9, 2006) at 10-13. In stark contrast to JPF’s complete absence of public statements and low levels of federal electoral spending, MoveOn.Org Voter Fund’s fundraising solicitations were full of references to the 2004 election and specific candidates, so much so that the communications “clearly indicate that the sole objective of the organization was

to defeat George Bush.” *Id.* at 11-12. For example, an email solicitation stated simply: “Our objective is to challenge George Bush’s policies and record in order to reduce support for his re-election in 2004.” *Id.* at 12. Furthermore, the Commission found that the entity had spent “virtually all of its money on federal campaign activity.” *Id.* Significantly, MoveOn.org Voter Fund had not continued with non-election activity in the years following the 2004 election cycle, unlike JPF. JPF has made no such public statements and not even a preponderance of its lifetime spending was related to federal elections.

Properly evaluated over the course of its lifetime, JPF’s spending is consistent with its central organizational purpose as a social welfare organization, and not a political committee. According to JPF’s tax returns filed with the IRS, and its campaign finance reports filed with the FEC and state campaign finance regulators, as well as campaign reports filed by Super PACs which received donations from JPF, JPF has received and spent the following amounts since its formation in 2011:

Tax Year (Oct 1 to Sept 30)	Gross Receipts	Total Expenses	Political Expenses (as reported on Sch C)	Federal election expenses	State election expenses	Percentage of Federal expenses
2012	\$912,780	\$630,113	\$0	\$0	\$0	0%
2013	\$3,229,318	\$3,217,826	\$1,815,000	\$1,815,000	\$0	56%
2014	\$4,922	\$299,081	\$0	\$0	\$0	0%
2015	\$0	\$0	\$0	\$0	\$0	0%
2016	\$0	\$0	\$0	\$0	\$0	0%
2017	\$452,300	\$297,403	\$175,000	\$75,000	\$100,000	25%
2018	\$200,000	\$264,030	\$0	\$0	\$0	0%
TOTAL	\$4,799,320	\$4,708,453	\$1,990,000	\$1,890,000	\$100,000	40%

As shown above, over the course of its history, only 40% of JPF’s overall spending has been to support or oppose federal candidates. Granted, in one year (Tax Year 2013), JPF’s political spending did exceed its non-political spending. Not only was this seven years ago and thus outside the statute of limitations (see *infra* at Section III), but when properly evaluated in

the context of its full spending history, JPF's spending in that isolated tax year does not demonstrate that it has the major purpose of electing federal candidates.

Furthermore, CREW erroneously alleges that JPF's federal campaign activity spending amounted to over two-thirds of its overall spending in Tax Year 2017. But more than half of its political spending that year, as reported on Schedule C of its tax return, was used for state campaign activity. Thus, CREW's assertion regarding Tax Year 2017 ignores critical evidence (which is publicly available and easily accessible by CREW) that most of JPF's political spending in that year was related to state, rather than federal, races. During Tax Year 2017, JPF contributed \$100,000 to Kansas First, a federal independent expenditure-only committee. According to Kansas First's FEC reports for that period, it spent \$0 on federal independent expenditures and \$100,000 on expenditures in state races.² Therefore, this spending by JPF should not be included on the federal campaign activity side of the major purpose spending comparison.

JPF's donation to Kansas First also is not a "contribution" under FECA. The fact that the PAC reported it as a contribution is not controlling. Rather, whether it was a "contribution" is based on JPF's intent; here, clearly the purpose was to support candidates in a state election, not to effectuate a "contribution" under FECA. *See Van Hollen v. FEC*, 811 F.3d 486, 488 (2016) ("[T]he FEC's purpose requirement is consistent with the purpose-laden definition of 'contribution' set forth in FECA's very own definitional section," which requires an intent for it to be used to influence a *federal* election); *see also* MUR 6485, MURs 6487 & 6488, MUR 6711, MUR 6930, Supplemental Statement of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 2 ("[A] purpose requirement is dictated by the plain text of the Act, court decisions, forty years of Commission practice, and common sense. Congress defined a 'contribution' as 'any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for *Federal* office.'" (italics added)).

JPF's spending record clearly demonstrates that although it has occasionally contributed to federal Super PACs in general support of their missions, and that in some years that spending has been greater than in other years, it clearly has not been *the* major purpose of the organization over its lifetime. Rather, JPF's major purpose has been consistent with its social welfare mission, as stated in its organizational documents. In other words, the occasional nature of JPF's federal spending does not support a decision by the Commission that would justify subjecting JPF to the burdens of political committee status.

Accordingly, Count I of the Complaint should be dismissed.

² Kansas First, FEC Form 3X, [2017 Year-End Report](#); [2018 April Quarterly Report](#); [2018 July Quarterly Report](#); [2018 October Quarterly Report](#).

II. Because JPF is not, and never has been, a political committee under FECA, Respondents have not failed to file reports with the FEC.

Because JPF is not a political committee under FECA, it was not required to file periodic reports with the FEC under 52 U.S.C. § 30104(a)(4), (b), or 11 C.F.R. §§ 104.1(a), 104.8. For the same reason, Respondents Church, Norris, and Miller, each of whom is named in the Complaint in his official capacity as a former officer of JPF and also in his personal capacity, did not fail to file reports under these sections. Thus, Counts II, III, IV, and V of the Complaint should also be dismissed.

III. The alleged violations that occurred prior to 2016 are time barred.

An additional reason to dismiss the Complaint (or at least portions of it) is that the alleged violations occurred beyond the statute of limitations. Under 28 U.S.C. § 2462, “an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued.” The standard rule is that a claim accrues “when the plaintiff has a complete and present cause of action.” *Citizens for Responsibility & Ethics v. Am. Action Network*, 410 F. Supp. 3d 1, 23 (D.D.C.2019) (quoting *Gabelli v. SEC*, 568 U.S. 442, 448, 133 S. Ct. 1216, 185 L.Ed.2d 297 (2013)); see also *FEC v. Natl. Right to Work Comm.*, 916 F. Supp. 10, 13 (D.D.C. 1996) (holding that the period of limitations begins to run when the alleged offense is committed).

Several counts in the Complaint stem from circumstances that occurred more than five years ago, putting them outside the federal statute of limitations. Specifically, portions of Count I, ¶¶ 27, 29-30, 36, 39, and 41-44, portions of Count II, ¶¶ 47-50, portions of Count IV, ¶¶ 59-60, 62, and 65-68, and all of Count V claim that violations occurred prior to 2016. Under 28 U.S.C. § 2462, as elaborated in greater detail below (Section III.A), these claims are unactionable, and none of the recognized exceptions apply (Section III.B).

A. The alleged violations that occurred prior to 2016 may not be entertained by the Commission.

1. Count I: Failure to register as a political committee.

The Complaint cites to expenditures that were made up to seven years ago (¶¶ 23-26, 29-30, and 36) in order to claim that JPF met the statutory and major purpose tests for political committee status in 2013 and 2014. As a result, the Complaint concludes that JPF failed to register as a political committee and failed to terminate its political committee status with the FEC (¶ 39), thereby violating 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(d). Insofar as these claims accrued before 2016, they are unactionable under 28 U.S.C. § 2462. 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(d) require committees to file a statement of organization within 10 days after becoming a political committee within the meaning of 52 U.S.C. § 30101(4). This violation

allegedly occurred, and the claim first accrued, 10 days after JPF allegedly failed to register as late as 2014, well outside the statute of limitations.

2. Count II: Failure to file reports as a political committee.

The Complaint reiterates its unactionable claim that JPF became a political committee in 2014 (¶ 45) in order to further claim that JPF should have filed disclosure reports, beginning in 2014, which it failed to do in violation of 52 U.S.C. § 30104(a)(4), (b), and 11 C.F.R. §§ 104.1(a), 104.8 (¶ 48-50). These separate and distinct violations allegedly occurred, and the individual claims first accrued, upon the date each report would have been due had JPF registered as a political committee. Insofar as these separate and distinct violations occurred before 2016, they are unactionable under 28 U.S.C. § 2462.

3. Counts III, IV, and V: Alleged violations by the officers of JPF.

The Complaint claims that Vaughn Church, who has been the President of JPF since 2017, failed to cause JPF to register with the FEC and file disclosure reports as required by FECA, and is thus liable both in his official capacity as President and personally for JPF's alleged violations of 52 U.S.C. §§ 30103(a), 30104(a)(4), (b), and 11 C.F.R. §§ 102.1(d), 104.1(a), 104.8 (¶ 55-58). These claims against Mr. Church in his official and personal capacities under 52 U.S.C. § 30103(a) would have first accrued 10 days after JPF allegedly failed to register and failed to report in 2014, well outside the statute of limitations. Insofar as these alleged violations occurred before 2016, they are unactionable under 28 U.S.C. § 2462.

The entirety of Count V relies on circumstances that began as early as 2013 and ended as late as 2014, well outside the statute of limitations. If Mark Miller, who was the President of JPF in 2013-14, was required to register JPF as a political committee and file reports with the FEC, that obligation ended when Mr. Norris replaced him as President in 2014. Thus, no alleged violation occurring during that time is actionable against Mr. Miller in either his official or personal capacity under 28 U.S.C. § 2462. Additionally, no alleged violation occurring prior to 2016 is actionable against Mr. Norris in either his official or personal capacity.

B. No exception to the statute of limitations applies.

There are three recognized exceptions to FECA's five-year statute of limitations. First, in cases where there is a significant risk of future harm, the law may allow the FEC to grant equitable relief notwithstanding the expiration of the statute of limitations. *See FEC v. Christian Coalition*, 965 F. Supp. 66, 71 (D.D.C.1997). Second, the statute of limitations may be tolled during periods of "continuing violations" of unlawful activity. *See Earle v. District of Columbia*, 707 F.3d 299, 306-307 (D.C. Cir. 2012). Third, the statute of limitations may be tolled when a defendant fraudulently conceals its wrongdoing through deception that is separate from the wrongful act itself. *See Sprint Communs. Co., L.P. v. FCC*, 76 F.3d 1221, 1226 (D.C. Cir. 1996). As discussed below, none of these exceptions to the statute of limitations apply in the present case.

1. There is no significant risk of future harm.

In cases where there is a significant risk of future harm, the law may allow the FEC to grant equitable relief notwithstanding the expiration of the statute of limitations. *CREW*, 236 F. Supp. 3d at 392. Leaving aside the issue of whether the FEC retains the authority to grant equitable relief under 28 U.S.C. § 2462, the Complaint presents no facts demonstrating any significant likelihood of future harm.

2. There are no continuing violations that would toll the statute of limitations.

The statute of limitations may be tolled during periods of “continuing violations” of unlawful activity. *Id.* The doctrine may apply in cases where “the text of the pertinent law imposes a continuing obligation to act or refrain from acting,” which is a question of statutory construction. *Id.* Although FECA does require periodic filing of information, the sections that JPF is alleged to have violated do not impose a continuous requirement. This precise issue was addressed in *CREW v. FEC*, 236 F. Supp. 3d at 392-393.

In *CREW v. FEC*, CREW challenged the FEC’s decision to exercise prosecutorial discretion by dismissing a matter against the Commission on Hope, Growth and Opportunity (“CHGO”). The FEC had observed that the prosecution of the “obvious” violations by CHGO was likely barred by the statute of limitations. *Id.* at 391. CREW contended that the continuing violation exception applied “because FECA imposes a ‘continuing obligation’ to disclose the identities of donors.” *Id.* at 392. The court noted that not only did CREW fail to cite to any case applying the doctrine to FECA in such a manner, “no section cited by either party appears to impose a continuous reporting requirement.” *Id.* The court specifically referenced 52 U.S.C. § 30104(a)(1), and 52 U.S.C. § 30103(a) had been cited by CREW. *Id.*; Reply to Opp’n Mot. For Summ. J. at 26, *CREW v. FEC*, 236 F. Supp. 3d 378 (D.D.C. 2017). The court granted the FEC’s motion for summary judgment, finding that “the text of FECA does not clearly establish that entities have a continuous obligation to report information. If it did, it seems the statute of limitations would be largely irrelevant in cases of alleged non-disclosure or failure-to-register.” *Id.* at 393.

If JPF was obligated to file any reports at all, each report due under 52 U.S.C. § 30104 would constitute a separate, not continuous, obligation. “[W]here misconduct amounts to discrete violations, some of which occurred during the limitations period, the claims commencing during the limitations period may proceed.” *United States SEC v. Place*, 2018 U.S. Dist. LEXIS 214828, at *17. Therefore, this exception does not apply to toll the statute of limitations for reports that were allegedly due prior to 2016.

3. JPF did not fraudulently conceal any of its activities.

A third circumstance in which the statute of limitations may be tolled is “when a defendant fraudulently conceals its wrongdoing through deception that is separate from the wrongful act itself.” *CREW*, 236 F. Supp. 3d at 392-93. This exception does not apply “in cases where the plaintiff discovered or, with due diligence, should have discovered the injury that is the basis of the action.” *Id.* at 393. “Generally, if a party discloses information to the FEC sufficient to show the alleged injury, the FEC ‘should have’ discovered the injury.” *Id.* at 393. As *CREW*’s Complaint shows, no concealment took place. The information giving rise to the alleged violation was accessible, as it was reported to the IRS by JPF on its information returns and to the FEC by the PACs that received donations from JPF. The accessibility of this information is demonstrated by *CREW*’s well-documented Complaint, which includes references and citations to the tax returns and FEC reports, all of which are public records and immediately available either online or to anyone requesting them. Clearly this exception does not apply.

IV. The Complaint fails to allege facts sufficient to support the conclusion that the individual Respondents should be personally liable for the alleged violations.

The Complaint claims that Respondents Church, Norris, and Miller, who were officers of JPF at various times, are *personally* liable for failing to register JPF as a political committee and for failing to file subsequent reports (§§ 55-57, 64-67, 72-75). While the Commission may take action against a treasurer in the treasurer’s personal capacity, in “the typical enforcement matter the Commission expects that it will proceed against treasurers only in their official capacities.” 70 Fed. Reg. 3 (Jan. 3, 2005). Treasurers are considered parties to enforcement proceedings in their personal capacities “where information indicates that the treasurer knowingly and willfully violated an obligation that the Act or regulations specifically impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the operative facts giving rise to the violation.” *Id.* at 3-4. As the Complaint points out, Mr. Church, Mr. Norris, and Mr. Miller have experience in the political realm and are probably aware of the obligations and potential liability of a committee treasurer. However, mere political experience and awareness of a treasurer’s general obligations does not support the claim that their supposed violations were automatically knowing and willful, reckless, or that they intentionally deprived themselves of the operative facts giving rise to the alleged violation.

The Commission may find “reason to believe” only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of FECA. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. Indeed, the Commission has repeatedly taken the position that unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See, e.g.*, MUR 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas (Dec. 21, 2001).

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The Complaint contains no factual allegations indicating that Respondents Church, Norris, and Miller knowingly and willfully committed violations of FECA, that they recklessly failed to fulfill duties specifically imposed on treasurers, or that they intentionally deprived themselves of the operative facts giving rise to the alleged violation. To the contrary, as demonstrated by this response, the individual Respondents each had good reasons to believe registration was not necessary or required. Thus, the Complaint affords no basis for the Commission to conclude there is a reason to believe a violation occurred. Accordingly, the Counts against each of them in their personal capacity should be dismissed.

* * * * *

The Commission may find “reason to believe” only if the complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. The Complaint here fails that standard, as the allegations do not demonstrate that JPF qualified as a political committee. Therefore, the Complaint should be dismissed.

If the Commission requires any additional information or clarifications from Respondents to evaluate the allegations in this matter, please do not hesitate to contact me.

Sincerely,

LANGDON LAW LLC



David R. Langdon
Counsel for Respondents Jobs and Progress Fund,
Inc., Vaughn Church, Thomas Norris, and
Mark Miller