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LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

Via Electronic Mail

January 25, 2021

Mr. Jeff S. Jordan
Federal Election Commission
Office of Complaints Examination
and Legal Administration
1050 1st Street NE
Washington, DC 20463

Re: Response of Biden for President – MUR 7863

Dear Mr. Jordan:

We write on behalf of our client, Biden for President ("the Committee"), in response to your letter dated December 11, 2020 and the accompanying complaint. The Commission should find no reason to believe that Biden for President violated the Act, and dismiss the complaint because it fails to allege any facts, much less facts based on personal knowledge, that would constitute a violation of the Federal Election Campaign Act of 1971, as amended ("the Act").

I. Factual Background

On November 18, 2020, Richard I. Turner of Greenbank, Washington filed a complaint against various Democratic candidates for federal office "for direct and serious violations of the Federal Election Campaign Act." Mr. Turner's minimalist complaint alleges that Astrid Silva, who is the "founder, executive director and C.E.O. of Dream Big Nevada is a foreign national illegal alien and has used Dream Big Nevada to Campaign for, fund and influence Democratic Party Presidential candidates." The complaint also states that Dream Big Nevada is "a registered 501(c)(3)," that it "participated in the 2020 Nevada Democratic Presidential Caucuses," and that "as [it] is founded, and headed by a foreign national illegal alien their [*sic*] is undue influence over its electioneering activities."

Although the complaint does not cite any law, or any basis for its factual allegations (much less personal knowledge), the essence of Mr. Turner's complaint is that the Committee violated the Act because now-President Biden and now-Vice President Harris "[met] with [Ms. Silva] while campaigning prior to the 2019 Las Vegas, Nevada debate and the 2020 Nevada caucus," and thereby received a "thing of value" from a foreign national.

II. Analysis

The complaint lacks any factual predicate for an investigation, or any legal theory that a violation of FECA occurred. Indeed, the Commission should dismiss Mr. Turner's complaint on the basis that it alleges no facts supporting the bare assertion that the Committee received a "thing of value" from Ms. Silva simply by virtue of meeting with her. In addition, Mr. Turner's allegations directly contradict longstanding Commission precedent and binding judicial decisions governing interactions between federal candidates, or their committees, and foreign nationals.

The Act prohibits any foreign national from making "a contribution or donation of money or other thing of value" in connection with a federal, state, or local election, 52 U.S.C. § 30121(a)(1)(A), or making an "an expenditure, independent expenditure, or disbursement for an electioneering communication." 52 U.S.C. § 30121(a)(1)(C); *see also* 11 C.F.R. § 110.20(b). The Act also prohibits any person "solicit[ing], accept[ing] or receiv[ing]" such a contribution or donation from a foreign national. 52 U.S.C. § 30121(a)(2); *see also* 11 C.F.R. § 110.20(g). The Commission and the courts have long interpreted this prohibition carefully, permitting foreign nationals to engage in a wide range of activities with respect to federal elections, while prohibiting the making of "contributions" and "expenditures".

First, the U.S. Court of Appeals for the District of Columbia Circuit has found that the prohibition applies only to bar foreign nationals from (1) making direct contributions to candidates or committees, (2) "making expenditures to expressly advocate the election or defeat of a political candidate," and (3) "making donations to outside groups when those donations in turn would be used to make contributions to candidates or parties or to finance express-advocacy expenditures." *Bluman v. FEC*, 800 F. Supp. 2d 281, 284 (D.D.C. 2011) (Kavanaugh, J.), *aff'd* 556 U.S. 1104 (2012). The court's opinion in *Bluman* further emphasizes that foreign nationals *may* engage in issue advocacy under current law, "that is, speech that does not expressly advocate the election or defeat of a specific candidate," *id.*, and that despite "concern[s] that Congress might bar [foreign nationals] from issue advocacy and speaking out on issues of public policy . . . [its] holding should not be read to support such bans." *Id.* at 292.

The complaint here makes no allegations that the Committee accepted any contributions from Ms. Silva or Dream Big Nevada—other than a meeting—or that Ms. Silva or Dream Big Nevada ever made any expenditures for any express advocacy on behalf of President Biden or Vice President Harris that would result in a contribution to the Committee. Rather, as a well-known advocate for the Deferred Action for Childhood Arrivals program ("DACA"), Ms. Silva's meeting with leading presidential candidates qualifies as issue advocacy permitted of foreign nationals under the Act, and of the sort the *Bluman* court found lawful under the Act. Indeed, as one of his first official acts, President Biden issued a Presidential Memorandum "Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA),"[1] the very issue for which Ms. Silva and her organization advocate.

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[1] *See* Mem. for the Att'y Gen. and the Sec'y of Homeland Sec. re Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), Jan. 20, 2021,

Second, the Act and Commission regulations permit foreign nationals to engage in a broad range of political activities on a volunteer basis. The Act expressly provides that "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee" are not "contributions." 52 U.S.C. § 30101(8)(B)(i); *see also* 11 C.F.R. § 100.74.

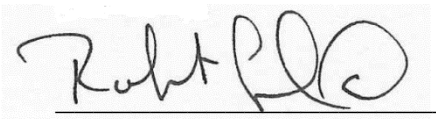
The Commission has long held that a foreign national "may volunteer his or her uncompensated services to a candidate without making a contribution to that candidate," so long as they act as "uncompensated volunteers," and "do[] not participate in the Committees' decision-making processes." Advisory Op. 1987-25 (Otaola) at 2, and Advisory Op. 2004-26 (Weller), at 3. Specifically, the Commission has permitted foreign nationals to (1) attend campaign events, such as campaign rallies, debates, other public appearances, and fundraisers, (2) as an uncompensated volunteer, solicit funds from persons who are not foreign nationals, and (3) attend meetings with [the candidate] and Committee personnel regarding Committee events or political strategy," so long as they are not "involved in the management of the Committees." *Id.*; *see also* Advisory Op. 2007-22 (Hurysz) (further upholding campaign-related volunteer activities by foreign nationals). The Commission has found that a concert performance at Radio City Music Hall by Elton John, himself a foreign national, in support of a presidential campaign was not a "contribution" within the meaning of the Act. *See* Factual & Legal Analysis at 6, MURs 5987, 5995, & 6015 (Hillary Clinton for President) (Feb. 30, 2009).

Here, the sole factual allegation in Mr. Turner's complaint—that then-candidates Joe Biden and Kamala Harris may have received a "thing of value" because they met with Ms. Silva during the campaign—(1) fails to allege sufficient facts to describe any violation of the Act; (2) involves issue advocacy that the *Bluman* court held to be outside the scope of the foreign national contributions ban; and (3) describes alleged conduct that may fall within the broad volunteer services exception. The complaint must therefore be dismissed.

III. Conclusion

The complaint in this matter lacks any sworn allegations that, even if true, would suggest that the Committee has solicited, accepted, or received a contribution from a foreign national, or committed any other violation of the Act. The Commission should therefore find no reason to believe that Biden for President has violated the Act and dismiss the complaint.

Respectfully submitted,



Robert D. Lenhard
Derek Lawlor
Matthew S. Shapanka
COVINGTON & BURLING LLP

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https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/.

850 Tenth Street NW
Washington, DC 20001
(202) 662-5940

Counsel for Biden for President