

REED & DAVIDSON, LLP
ATTORNEYS AT LAW
515 SOUTH FIGUEROA STREET, SUITE 1110
LOS ANGELES, CA 90071
TELEPHONE (213) 624-6200
FACSIMILE (213) 623-1692
POLITICALLAW.COM

April 16, 2021

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: MUR 7881

Dear Ms. Dennis:

We represent Dr. Carol Folt, Governor Arnold Schwarzenegger, Dr. Christian Grose, Mr. Conyers Davis, and Dr. Dana Goldman (collectively, the “Respondents”) in the above-referenced matter. As explained below, none of the activity described in the complaint, which was limited to 33 county government grants in eight states, is subject to the jurisdiction of the Federal Election Campaign Act (“FECA” or the “Act”). Accordingly, the Federal Election Commission (“FEC”) should dismiss the complaint in its entirety and take no further action in connection with this matter.

Overview

On September 23, 2020, the University of Southern California (“USC”) Schwarzenegger Institute for State and Global Policy (the “Institute”) launched the Democracy Grants for Voting Access & Election Administration initiative (the “Democracy Grants Initiative”) to support nonpartisan efforts to open or keep open polling stations threatened with closure due to a lack of funding and increase voter access during the COVID 19 pandemic.

Governor Arnold Schwarzenegger, Chair of the USC Schwarzenegger Institute, launched the Democracy Grants Initiative to ensure that no American—regardless of party or candidate preference—would be denied the right to vote because of budget issues or lack of access to a polling site. The Institute provided grants directly to 33 counties in eight states previously subject to Section 5 of the Voting Rights Act to open polling stations and hire election workers. With the assistance of the grants from the Institute, participating counties opened 1,305 early voting and election day polling places.

On February 23, 2021, Mr. Stone filed this complaint naming the five Respondents identified above. The gravamen of the complaint is that Governor Schwarzenegger exceeded the

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individual per candidate contribution limit of \$2,800¹ to Presidential campaign committees by the Institute (which is not a named Respondent) providing election administration grants to counties. The complaint has no merit and should be dismissed out of hand.

First, it is simply common sense that donations to 33 counties in eight states to open polling stations and hire nonpartisan election workers is not a contribution to a Presidential campaign committee and therefore not in violation of the Act. That should end the inquiry. *Second*, the allegations as to Governor Schwarzenegger are simply wrong because the grants were not political contributions subject to FECA, and he did not determine the grant recipients. The grants were administered by a robust application process. Each grant application was reviewed by a committee of experts, including USC faculty, who determined each county's eligibility with key program criteria and demonstrated financial need. *Third*, and irrelevant to the alleged violation of the Act, the Democracy Grants Initiative was not administered for partisan purposes—namely to support the candidacy of President Biden. Every eligible county that applied for a grant received one; these included counties led by officials of both parties and with majorities of registered voters belonging to both parties. *Finally*, the allegations against the other four individual Respondents have no merit for both the reasons articulated above and because there are no allegations whatsoever as to their supposed individual wrongdoing.

The complaint does not allege any violation of the Act; rather, it merely alleges that the Institute made grants to help support democracy. Opening polling stations is not a contribution to a Presidential campaign. This matter should be dismissed without further inquiry.

The Institute's Grants Were Not Political Contributions Subject to FECA

The sole alleged violation of the Act is that Governor Schwarzenegger exceeded the individual per candidate contribution limit of \$2,800² to Presidential campaign committees by the Institute (which is not a named Respondent) providing election administration grants to counties.³ According to the complaint, the grants should be considered “contributions” to President Biden's campaign because the grants contributed to an increase in voter turnout, which, Mr. Stone asserts, ultimately benefitted the President's campaign. This flawed argument, however, appears to be based on a fundamental misunderstanding of the term “contribution” under FECA.

A “contribution” is anything of value given, loaned, or advanced to a candidate or committee to influence a Federal election.⁴ There are two types of contributions: monetary and nonmonetary. The Institute's election administration grants were neither.

¹ See 11 C.F.R. § 110.1(b).

² *Id.*

³ See Complaint at 31-32.

⁴ 11 C.F.R. § 100.52(a).

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A monetary contribution is a contribution of money made directly to a candidate or committee by check, cash (currency), credit card or other written instrument.⁵ There is not a single suggestion in Mr. Stone's 32-page complaint that the Institute provided money directly to the President's campaign committee or any campaign committee. Indeed, it did not.

A nonmonetary, or "in-kind" contribution, is a contribution of goods, services, or property to a candidate or committee offered free of charge or at less than the usual and normal charge.⁶ In-kind contributions also include payments made on behalf of, but not directly to, candidates and committees, such as payments for communications that are coordinated with a campaign or candidate for their benefit.⁷ Again, however, no such facts are alleged. And no such facts exist.

Nor were the grants independent expenditures or payments for communications expressly advocating the election or defeat of a clearly identified candidate.⁸ In short, the complaint provides no basis for establishing that the grants are subject to FECA.

As demonstrated by the complaint's exhibits, the grants were provided to county governments for the sole purpose of increasing voter access in Federal and state elections, not to influence the outcome of any particular Federal election.⁹ This funding is inherently nonpartisan and in no way directly or indirectly funded any partisan political activity, nor encouraged the election or defeat of any candidate. In the grant agreement, the Institute expressly prohibited recipients from using grant funds to support or oppose any specific candidate or political party.¹⁰ As a 501(c)(3) nonprofit organization, moreover, USC and the Institute do not make contributions or engage in any activities supporting or opposing candidates for public office. Indeed, the funding provided by the Institute supported election administration in the funded counties at the federal, state, and local level. Accordingly, the grants were not political "contributions" subject to the provisions of FECA, and the complaint should be dismissed for failure to state a violation of law.

The Democracy Grants Initiative Was Administered by a Robust Application Process

The complaint alleges that Governor Schwarzenegger deliberately directed the use of the nonpartisan grant funds.¹¹ This is simply wrong. While the Democracy Grants Initiative would not have been possible without the vision or generosity of Governor Schwarzenegger, he did not determine the grant recipients.

⁵ *Id.*; see also *id.* § 9034.2(b).

⁶ *Id.* § 100.52(d).

⁷ *Id.* § 109.21(b).

⁸ See *id.* § 100.16(a).

⁹ See Complaint at 57-58.

¹⁰ *Id.*

¹¹ *Id.* at 7.

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The Institute made the funding available to all counties in states previously subject to Section 5 of the Voting Rights Act and invited county election administrators in those states to apply for funding on a publicly accessible website. Each grant application was reviewed through a three-step process. First, a committee of experts, including USC faculty and staff, conducted an initial review to determine each county's eligibility with key program criteria and demonstrated financial need. Second, the committee consulted individual faculty members from USC and other universities specializing in the areas of election administration, voting rights, law, and public policy to review and make recommendations concerning each funding request. Finally, the committee utilized nonpartisan, objective criteria, including each county's population size and the total amount of its requested budget to ensure the funds awarded were fair and proportionate among eligible counties. Some requests were partially funded, and others were fully funded, depending on scope and other evaluative criteria such as the ratio of the funds requested and size of the county. Ultimately, every eligible county (those in states with jurisdictions previously protected by Section 5 of the Voting Rights Act) that applied for a grant received one.

The Institute's Democracy Grants Initiative Was Nonpartisan

Notwithstanding that the FEC has no jurisdiction to review non-political grants to county governments, the complaint also inaccurately alleges that the Institute's Democracy Grants Initiative was administered for partisan purposes—namely to support the candidacy of President Biden. In support of this claim, the complaint notes that significant funds were provided to counties in the states of Arizona, Georgia, and North Carolina that proved to be important, but not determinative, to the outcome of the Presidential election. The complaint then includes a lengthy and haphazardly constructed series of arguments, including baseless conspiracy theories aimed at suggesting that the Institute's purpose was partisan. None of these theories has any merit.

Arizona

The complaint claims the Institute exercised “improper influence” on the results of the Presidential election in Arizona because 60% of the votes cast in the state came from Maricopa County, which received a grant of \$41,857 from the Institute to support the opening of 14 drive-through ballot drop box centers at sports stadiums and other large venues.¹² It is hardly surprising that 60% of the votes cast in the Presidential election in Arizona came from Maricopa County given that is where more than 60% of registered voters in Arizona reside.¹³ However, it

¹² *Id.* at 15-16.

¹³ See Maricopa County Election Facts: Voting Equipment & Accuracy, available at <https://www.maricopa.gov/5539/Voting-Equipment-Facts> (last visited April 14, 2021).

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neither provides any support nor bears any connection to Mr. Stone's claim of improper influence. Further, no other counties in Arizona applied for funding from the Democracy Grants Initiative.

Georgia

Mr. Stone devotes nearly six pages in his complaint in a failed attempt to argue that the Institute's election administration grants in Georgia should be considered partisan political contributions to the Biden campaign.¹⁴ One of the primary allegations cited in support of this absurd claim is that all ten of the Institute's grants awarded in Georgia went to counties carried by President Biden.¹⁵ In fact, one-third of the grants the Institute awarded in Georgia went to counties carried by President Trump—specifically, the counties of Early, Lamar, and Lee.¹⁶ And of course, we do not know how voting would have been different in those counties but for the grants.

The complaint also attempts to cast suspicion on the fact that slightly more than half of the grant funding the Institute provided went to counties in Georgia.¹⁷ Prior to the U.S. Supreme Court's 2013 decision in *Shelby County, Alabama v. Holder*¹⁸, states subject to Section 5 of the Voting Rights Act were prohibited from changing voting procedures or closing polling locations without first obtaining approval from the U.S. Department of Justice to ensure the changes did not disenfranchise voters because of race or color. The Court's decision in *Shelby County* rendered this pre-clearance requirement unenforceable, and studies have shown that states previously subject to that requirement have since enacted changes to voting laws and procedures that have effectively disenfranchised voters, particularly voters of color.¹⁹

A June 2020 analysis showed that polling closures in Georgia, Louisiana, Mississippi, and South Carolina—all states with substantial Black populations and previously subject to Section 5 of the Voting Rights Act—caused the number of voters assigned to a polling place to significantly increase in the years after the Court's decision in *Shelby County*.²⁰ The COVID 19 pandemic greatly exacerbated this situation by forcing even more polling station closures due to budget

¹⁴ See Complaint at 9-15.

¹⁵ *Id.* at 12.

¹⁶ See Georgia Secretary of State, November 3, 2020 General Election Results by County (November 20, 2020), available at <https://results.enr.clarityelections.com/GA/105369/web.264614/#/access-to-races>.

¹⁷ See Complaint at 14.

¹⁸ *Shelby County, Ala. v. Holder*, 570 U.S. 529 (2013).

¹⁹ See, e.g., Brennan Center for Justice at New York University School of Law: *The Effects of Shelby County v. Holder* (August 6, 2018), available at <https://www.brennancenter.org/our-work/policy-solutions/effects-shelby-county-v-holder>.

²⁰ Hannah Klain, et al., *Waiting to Vote: Racial Disparities in Election Day Experiences*, Brennan Center for Justice at New York University School of Law (June 3, 2020), available at <https://www.brennancenter.org/our-work/research-reports/waiting-vote>.

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constraints on local agencies. By June 2020, there were 331 fewer polling places in Georgia than in 2012, and thousands of voters were forced to wait hours in long lines in the heat to exercise their right to vote.²¹ Given that demonstrated need, it is unsurprising—and entirely appropriate—that 10 of Georgia’s 159 counties applied for and received grants for the November 2020 election. But again, we do not know how voting would have been different but for the grants.

North Carolina

The complaint claims the Institute targeted North Carolina counties for election administration grants for two reasons: (1) the Institute’s Academic Director, Dr. Christian Grose, is originally from North Carolina; and (2) to “cover-up [sic] its biased Georgia grants”²² Both reasons are absurd. As previously noted, every eligible county that applied for a grant received one; Dr. Grose’s North Carolina roots were not a factor. (It is also worth noting that even if the Institute had selected grant recipients based on the hometown origins of an Institute decisionmaker, it might have been inappropriate or ineffective to the purposes of the funding, but would not subject that grant funding to regulation by the FEC.) As noted above, Georgia counties were funded because county officials in Georgia applied for funding and every eligible applicant for funding received it. The same goes for North Carolina.

Moreover, President Trump carried eight of the 10 North Carolina counties that applied for and received grants—specifically, the counties of Graham, Greene, Haywood, Jackson, McDowell, Onslow, Surry, and Swain.²³ And again, we do not know how voting would have been different in those counties but for the grants.

Other Claims

Mr. Stone devotes nearly four pages of discussion, including columns and tables full of speculative and incomplete figures, comparing the Institute’s Democracy Grants Initiative with a private election administration grant program administered by the Center for Tech and Civic Life.²⁴ These comparisons are entirely irrelevant to the allegations raised in his complaint.

²¹ Stephen Fowler, *Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Too Few Polling Places*, NPR (October 17, 2020), available at <https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl>.

²² Complaint at 16.

²³ See *North Carolina Election Results*, N.Y. Times, available at <https://www.nytimes.com/interactive/2020/11/03/us/elections/results-north-carolina.html> (last visited April 14, 2021); North Carolina State Board of Elections, *Historical Election Results*, available at <https://www.ncsbe.gov/results-data/election-results> (last visited April 14, 2021).

²⁴ Complaint at 18-22.

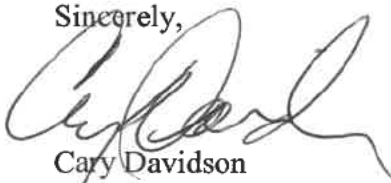
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Similarly, Mr. Stone notes that USC is the only private university in the United States that distributed election administration grants in the 2020 election.²⁵ While USC is unaware of election administration grant programs provided by other academic institutions, it takes great pride in the efficacy and impact of its Democracy Grants Initiative, which will enable scholars and practitioners to use the information gathered to evaluate public policy and determine ways to improve future elections.

* * *

We appreciate your review of this matter and expect there will be no need for further correspondence regarding these unfounded claims. However, we would be happy to discuss any of these issues or provide additional information. Please contact me at (213) 624-6200 if you have any questions.

Sincerely,



Cary Davidson
Legal Counsel

²⁵ *Id.* at 22.