

# ROBBINS

LITIGATION AND REGULATORY LAW

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July 12, 2021

**Via Email**

Mr. Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
Office of Complaints Examinations  
& Legal Administration  
Attn: Kathryn Ross, Paralegal  
1050 First Street, NE  
Washington, DC 20463  
Email: cela@fec.gov

**RE: MUR 7894**

Dear Mr. Jordan:

The undersigned serves as legal counsel to Georgia Republican Party, Inc. and its Chairman, Mr. David Shafer (collectively, the “GAGOP”). This response is filed on behalf of the GAGOP to a complaint filed by Treanna Dennis, Common Cause Georgia, and Campaign Legal Center Action (the “Complainants”) on March 24, 2021 (the “Complaint”).

The Complaint fails to set forth sufficient specific facts, which, if proven to be true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), or the rules of the Federal Election Commission (the “Commission”). The Complaint is based on innuendo, but even if the factual allegations in the Complaint were true, it still falls as a matter of law because the GAGOP did not knowingly accept a contribution prohibited by 52 U.S.C. § 30118(a). Accordingly, for the reasons set forth below, the Commission should dismiss this matter without further action.

## LEGAL ANALYSIS

The Commission has regularly held that mere speculation and “unwarranted legal conclusions from asserted facts” will not be accepted as true.<sup>1</sup> Additionally, “[t]he Commission may find reason to

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<sup>1</sup> See FEC Matter Under Review 4869 (American Postal Workers Union), Statement of Reasons of Chairman Darryl R. Wold, Vice Chairman Danny L. McDonald, Commissioners David M. Mason, Karl J. Sandstrom and Scott E. Thomas (March 21, 2000); see also FEC Matter Under Review 4850 (Fossella), Statement of Reasons of Chairman Darryl R. Wold, Commissioners David M. Mason and Scott E. Thomas (July 20, 2000).

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believe only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”<sup>2</sup> The Complaint does not meet this standard and must be dismissed as such.

Complainants allege that the GAGOP “accepted illegal and unreported contributions from True the Vote in the form of coordinated expenditures” in violation of the Act.<sup>3</sup> The bases of the violations alleged in the Complaint are a “weekly update” email from True The Vote, Inc. (“TTV”) dated December 13, 2020, and a press release on TTV’s website dated December 14, 2020. Specifically, a “weekly update” email from TTV indicates the GAGOP requested that TTV provide “*publicly available nonpartisan* signature verification training, a 24x7 voter hotline, ballot-curing support, and more” in Georgia.<sup>4</sup> Additionally, Complainants point to a TTV press release referencing a “partnership” with the GAGOP in which TTV would engage in election integrity efforts in Georgia by providing “*publicly available* signature verification training, a statewide voter hotline, monitoring absentee ballot drop boxes, and other election integrity initiatives.”<sup>5</sup>

The statements relied on in the Complaint, however, do not give reason to believe a violation occurred. Moreover, reviewing the entire email and press release that Complainants rely on further belies the claims in this matter. The Complainants fail to meet the Commission’s “reason to believe” standard and must be dismissed.

#### **I. TTV’s Publicly Available Resources Were Not an In-Kind Contribution.**

The Complaint alleges that the GAGOP knowingly accepted an in-kind contribution from TTV in violation of 52 U.S.C. § 30118 and 52 U.S.C. § 30104(b)(3)(A).<sup>6</sup> The Act defines “contribution” to include “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.”<sup>7</sup> A “contribution or expenditure” also includes “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value” to any political party in connection with any election to any offices referenced in 52 U.S.C. § 30118.<sup>8</sup> “Anything of value” includes in-kind contributions—the provision of any goods or services at a charge that is less than the usual and normal charge for such goods or services is a contribution.<sup>9</sup>

<sup>2</sup> FEC Matter Under Review 4960 (Clinton for U.S. Exploratory Committee) Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas (December 21, 2000).

<sup>3</sup> Complaint at ¶ 38 (citing 52 U.S.C. § 30118(a) and 11 C.F.R. § 110.9).

<sup>4</sup> Complaint at ¶ 9 (quoting email from TTV dated Dec. 13, 2020) (emphasis added).

<sup>5</sup> Complaint at ¶ 10 (quoting TTV press release dated December 14, 2020) (emphasis added).

<sup>6</sup> Complaint at ¶ 2.

<sup>7</sup> 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C. 30118(b)(2); 52 U.S.C. § 30101(9)(A)(i) (similarly defining “expenditure”).

<sup>8</sup> 52 U.S.C. 30118(b)(2).

<sup>9</sup> 11 C.F.R. § 100.52(d)(1).

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As the record indicates, TTV did not provide anything of value to the GAGOP. The election integrity resources referenced in the Complaint were “publicly available” resources, which Complainants recognized in the Complaint.<sup>10</sup> TTV’s publicly available election integrity resources were *free*.<sup>11</sup> Additionally, TTV was conducting the election integrity efforts referenced in the Complaint prior to the purported “request” by the GAGOP.<sup>12</sup> As stated in TTV’s “weekly update” email on December 13, 2020 relied upon by Complainants, TTV was already “supporting Georgia voters with a Georgia Voter Election Integrity Hotline;” “supporting Georgia election workers with Signature Verification Training;” “working to gain access to ballot drop-box security camera feeds in order to livestream in the interest of transparency;” “working to assist Georgia voters in curing ballot discrepancies;” and “leading webinars and FAQ sessions for government leaders in support of their constituents.”<sup>13</sup>

Because the election integrity resources at issue in the Complaint were publicly available free resources, the GAGOP did not knowingly receive anything for less than the normal amount charged by TTV for such goods or services. Thus, the GAGOP did not knowingly accept or receive a contribution prohibited by 52 U.S.C. § 30118 and 11 C.F.R. 110.9, and in turn, the GAGOP did not fail to report the alleged in-kind contribution pursuant to 52 U.S.C. § 30104(b)(3)(A).

## **II. The Georgia Republican Party Did Not Receive In-Kind Contributions from True The Vote In The Form Of Coordinated Expenditures.**

Complainants make unwarranted legal conclusions that TTV made in-kind contributions to the GAGOP in the form of coordinated expenditures. Despite the muddled discussion of coordinated expenditures in the Complaint, the specific facts alleged do not support the allegations of coordinated expenditures or coordinated communications. As stated above, the free election integrity resources referenced in the Complaint were already being provided by TTV in Georgia prior to the alleged request by the GAGOP.<sup>14</sup> Further, none of the alleged coordinated expenditures or coordinated communications involved voter registration or get-out-the-vote communications or expenditures, or any other the of communication described in 11 C.F.R. § 114.4.

The referenced communications and resources pertained to election protection efforts, not get-out-the-vote efforts or voter registration. Complainants understand this difference, as Common Cause claims to engage in similar efforts alongside its partners in Georgia.<sup>15</sup> Put simply, the specific facts alleged in

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<sup>10</sup> See Complaint at ¶¶ 9-10.

<sup>11</sup> See TTV Response at 8; *see also* 11 C.F.R. 100.52(d)(1).

<sup>12</sup> See Decl. of Catherine Englebrecht at ¶¶ 10-13, attached as Exhibit 1 to TTV’s Response.

<sup>13</sup> See Complaint at n.3 (citing email from TTV dated December 13, 2020).

<sup>14</sup> See *id.*; *see also* Decl. of Catherine Englebrecht at ¶¶ 10-12, attached as Exhibit 1 to TTV’s Response.

<sup>15</sup> According to a recent lawsuit filed by Common Cause in Georgia, “Common Cause, alongside other partners in Georgia, created a program to help recruit volunteers to monitor local board of elections meetings. Common Cause also works with these partners in election protection efforts during both midterm and presidential elections.” Complaint at ¶ 50, *Georgia NAACP, et al. v. Raffensperger, et al.*, No. 1:21-cv-01259-JPB at ¶ 50 (N.D. Ga. March 28, 2021). However, Common Cause also provides food

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the Complaint do not support Complainants' allegations that TTV made in-kind contributions to the GAGOP in the form of coordinated communications or coordinated expenditures. Accordingly, the Commission should dismiss the Complaint.

### CONCLUSION

The Complaint fails as a matter of law because the GAGOP did not knowingly accept an in-kind contribution from TTV. The alleged in-kind contribution had no value because the election integrity resources referenced in the Complaint were publicly available, free resources for any organization that wanted them. Further, as demonstrated in the Complaint, the election integrity resources at issue are not the type of election-related activities, such as voter registration or get-out-the-vote communications or materials, otherwise prohibited by FECA or the Commission's regulations.

The Commission has broad discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985), to determine how to proceed with respect to complaints, and the Commission regularly exercises its prosecutorial discretion under *Heckler* to dismiss matters that do not merit the additional expenditure of Commission resources. In consideration of the specific facts and allegations in the Complaint, as well as the Commission's time and resources, we respectfully request the Commission to dismiss this matter in its entirety. Should the Commission need anything further, please do not hesitate to contact me.

Sincerely yours,



Vincent R. Russo

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and drinks to voters to encourage them to vote. Amended Complaint at ¶ 57, *Georgia NAACP, et al. v. Raffensperger, et al.*, No. 1:21-cv-01259-JPB at ¶ 50 (N.D. Ga. May 28, 2021).