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To: [CELA](#)
Cc: [Charles R. Spies](#)
Subject: Response from Truth Still Matters PAC MUR 7912
Date: Tuesday, September 7, 2021 10:44:36 AM
Attachments: [TSMP Response MUR 7912.pdf](#)

Good morning—

Please see attached for the Response from Truth Still Matters PAC in the above-referenced matter. Should you have any questions or concerns, please let me know.

Best,

Katie

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September 7, 2021

Federal Election Commission
Office of Complaint Examination
& Legal Administration
Attn: Roy Q. Lockett
1050 First Street NE
Washington, DC 20463

VIA EMAIL: cela@fec.gov.

Re: MUR 7912 Response for Truth Still Matters PAC

We represent Truth Still Matters PAC and Devy Enz in her official capacity as Treasurer (collectively “TSMP” or “Respondent”) in this matter. The Complaint alleges a creative, though ultimately defective, new theory alleging that the Respondent – along with apparently a long list of other super PACs representing a variety of political views – violated the Federal Election Campaign Act of 1971, as amended (“FECA”) and Commission regulations by not reporting a donor political committee as an affiliated committee on TSMP’s Statement of Organization filed with the Commission. There are several reasons why the Commission should dismiss this matter.

First, FECA, Commission regulations, and prior precedent do not support the Complainant’s assertion that the donor committee, an independent-only expenditure committee named “Future45” and TSMP are affiliated. Specifically, the regulations on affiliation have never been applied in the context of Super PACs, and for good reason – these regulations are only relevant when there are shared contribution limits at issue, and with Super PACs, there are no limits to share – or indeed, as the Supreme Court has repeatedly held, no limits at all. Second, even assuming *arguendo* that TSMP and Future45 could be treated as affiliated, and the concept of affiliation applies to Super PACs, there is no meaningful public disclosure information that has been withheld from the public and instead the alleged violation would be *de minimis* (*i.e.*, a box that Complainant asserts should have been checked) and therefore should be dismissed under *Heckler v. Cheney*.

I. FACTUAL BACKGROUND AND LEGAL ANALYSIS

TSMP was formed on October 19, 2020. During its existence, it received one contribution from Future45 of \$125,000, which was timely reported. TSMP filed a termination report on February 19, 2021, which was approved by the Commission.

Based solely on the above facts, the Complainant alleges that TSMP and Future45 were affiliated committees, which the Complainant claims should have been reported on both committees' Statement of Organization. The Commission's affiliation regulations, however, are not – and should not be – applicable here.

The basics of affiliation rules are that two organizations – such as party committees or traditional PACS – are generally considered “affiliated” when an organization is established, financed, maintained or controlled by another committee or sponsoring organization. This is important because one organization can't just form another one to get around contribution limitations. To avoid such evasion of contribution limits and determine “affiliation” between PACS or party committees, the Commission applies ten affiliation factors to the facts presented, and will conclude that two organizations are affiliated when there are more factors supporting affiliation than there are opposing affiliation.¹ If the Commission determines that two organizations are “affiliated”, the Commission will treat the committees as a single committee for the purpose of the contribution limits, meaning that all contributions made or received by the affiliated committees count against the same limits.² Of course, if two organizations are deemed “affiliated,” and sharing contribution limits, then Commission regulations also allow each committee to receive unlimited transfers of permissible funds from the other committee.³

Those rules and regulations on affiliation make sense for their intended purpose of preventing the evasion of contribution limits. In this case, however, both Future45 and TSMP are independent expenditure-only political committees and not subject to the contribution limits that are at the heart of the affiliation regulations. Even if Future45 were determined to be affiliated with TSMP, Future45 would not have been prohibited *in any way* from making its \$125,000 contribution to TSMP. In a different context where the affiliation test applied, Future45's contribution to TSMP would be one factor in favor of affiliation, but not a violation of any affiliation regulations.

Even assuming *arguendo* that Future45's contribution to TSMP should have triggered the two organizations having been treated as affiliated under the Commission's affiliation regulations, the only implication for Respondent of the organizations having been treated as affiliated would have been that Respondent would have checked a box for affiliation on its Statement of Organization. Checking that box would have had no impact on either organizations' disclosure obligations, and there are no contribution limits implicated by Future45's contribution to TSMP. Given the Commission's significant backlog and limited

¹ For example, in Advisory Opinion 2017-03 (American Association of Clinical Urologists, Inc.), the Commission found that two organizations were not affiliated because seven of the ten above-listed factors weighed against affiliation. In contrast, in Advisory Opinion 2002-15 (UROPAC), the Commission found that two organizations were affiliated when six of the ten factors supported affiliation between the two organizations.

² 52 U.S.C. § 30116(a)(4)-(5); 11 C.F.R. § 110.3.

³ 11 C.F.R. § 110.3(a)(1), (c)(1).

resources,⁴ the Commission certainly has higher priorities on its docket than subjecting a defunct committee to an extensive and time-consuming investigation on what is essentially a technicality (again, assuming if the rule applies).

It is unfortunate, to say the least, that the Complainant continues to waste the Commission's scarce time and resources by filing speculative, threadbare, and frivolous complaints. It is also unfortunate that TSMP – a committee that had already terminated with the Commission – had to resurrect from the dead to submit this Response. When considering the facts as alleged, the applicable law and prior precedent, it is clear that TSMP and Future45 are not affiliated. We respectfully request that the Commission find no reason to believe that TSMP violated FECA and/or Commission regulations and close the file.

Sincerely,



Charlie Spies
Katie Reynolds
Counsel to Truth Still Matters PAC

⁴ Almost every Commissioner has acknowledged the Commission's high backlog and a need to prioritize more significant violations of FECA and Commission regulations. Statement of Reasons of Chair Shana Broussard and Commissioner Ellen Weintraub, MUR 7395 (“Under these circumstances, and *in light of the imminent statute of limitations and other priorities on the Commission's docket*, we voted to dismiss the allegations as a matter of prosecutorial discretion.”) (emphasis added); Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean Cooksey and Trey Trainor, MUR 7265 (Donald J. Trump for President, Inc.) (“In this position, however, our agency's limited enforcement resources are better directed toward other investigations with better odds of success. Commission staff time and funds are especially precious in light of the significant backlog of enforcement cases that the Commission accrued while lacking a quorum.”) (citing Statement of Commissioner Ellen L. Weintraub On the Senate's Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020)).