

SANDLER REIFF

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September 29, 2021

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, N.E.
Washington, D.C. 20463

VIA E-mail to CELA@fec.gov

Re: MUR 7915

Dear Ms. Dennis:

The undersigned serve as counsel to Civic Nation, When We All Vote, Stephanie Young, Laura Miller, Kyle Lierman, Erin Hannigan, Andrew Amore, Valerie Jarrett, Tina Tchen, and Pete Rouse (collectively, “Respondents”). This letter responds on behalf of the Respondents to the Commission’s notification that it received a complaint (the “Complaint”) alleging that the Respondents violated the Federal Election Campaign Act (the “Act”) and Federal Election Commission (the “Commission”) regulations.

Introduction

Civic Nation is a public charity organized under Section 501(c)(3) of the Internal Revenue Code. The organization received its determination letter confirming its status as a public charity on July 23, 2015. As a non-profit, non-partisan public charity, Civic Nation serves as a home for changemakers who inspire, educate, and activate people around issues that will define this generation. The organization empowers and educates individuals, companies, institutions and organizations to drive culture, systems and policy change, working towards a more inclusive and equitable America. To serve this mission, Civic Nation currently houses six initiatives, including When We All Vote.¹ When We All Vote seeks to change the culture around voting and to increase participation in each and every election by helping to close the race and age gap. To do this, When We All Vote engages in non-partisan voter registration activities

¹ When We All Vote was originally established in 2018 as a separate organization and received its own IRS determination letter confirming its status as a public charity under Section 501(c)(3) of the Internal Revenue Code. Effective January 1, 2021, Civic Nation acquired When We All Vote.

aimed at registering new voters across the country, civic education efforts directed towards voters of every age to build an informed and engaged electorate, and advocacy for voting rights.²

In part, this Complaint alleges that during the 2020 election cycle, When We All Vote engaged in partisan voter registration and get-out-the-vote activities aimed at helping to elect Joe Biden. The Complaint argues that because When We All Vote was founded by Michelle Obama and works alongside several other volunteer co-chairs who publicly supported Joe Biden in the 2020 presidential election, the organization was incapable of operating in a non-partisan manner. That is patently untrue.

First, the co-chairs named in the Complaint are volunteers of When We All Vote and do not serve in decision-making roles. These co-chairs were free to also volunteer for political campaigns outside of their volunteer activities for When We All Vote. The co-chairs should not have been named in the personal capacities in this Matter and any and all allegations against them should be dismissed outright by the Commission.

Second, under Section 501(c)(3) of the Internal Revenue Code, Civic Nation is prohibited from engaging in political campaign activity, but *is permitted* to engage in non-partisan voter education, voter registration, and voter turnout activities. Civic Nation and When We All Vote take their obligations to remain non-partisan very seriously and only engage in neutral, unbiased election activities. As evidenced by the Complainant's Exhibits, WWAV's activities are non-partisan and unbiased, targeted solely on increasing voter education, registration, and turnout. As described below, the nonpartisan nature of Civic Nation's activities, coupled with its failure to engage in any federal campaign activity, unequivocally establish that Civic Nation is not a political committee subject to the Commission's jurisdiction. Additionally, the Complaint contains a number of additional allegations that are outside of the purview of the Commission. Accordingly, the Commission should find no reason to believe a violation of the Act or Commission regulations has occurred and dismiss this Matter against the Respondents.

Political Committee Status

Despite its length, the Complainant only makes one specific allegation that is governed by the Act and Commission regulations: that When We All Vote should have been required to register as a political committee with the Commission.³ The Act and Commission regulations define a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year."⁴ This broad definition of "political committee" has been limited by courts to only require registration when

² Stephanie Young, Laura Miller, Kyle Lierman, Erin Hannigan, and Andrew Amore are current or former employees of Civic Nation.

³ Complaint at 5.

⁴ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a).

an organization’s “major purpose” is federal campaign activity.⁵ In 2007, the Commission stated that the major purpose determination is a “fact-intensive inquiry” that includes examination of an organization’s public statements, spending on federal campaign activities, and fundraising appeals.⁶ Over the years, the Commission has applied this fact-intensive, case-by-case analysis on multiple occasions, concluding that the following activities weigh in favor of finding that an organization’s “major purpose” is federal campaign activity:

1. Solicitations that “indicate[] that the funds received would be used to support or defeat a Federal candidate”;
2. “Express advocacy” communications;
3. Contributions to candidates, PACs, or parties;
4. “Electioneering communications” – television or radio advertisements mentioning a candidate close to an election.⁷

The Complaint details a lot of activities undertaken by When We All Vote in 2020, but not a single activity that falls into one of these four categories. In fact, the Complainant has attached over one hundred exhibits to this Complaint. None of the materials produced or disseminated by When We All Vote mentions support or opposition to a federal candidate. The Exhibits actually show that When We All Vote conducted itself in an entirely non-partisan, unbiased manner without regard to any candidate running for office. Without any specific allegations or facts supporting a violation of the Act, the Commission must dismiss this Complaint.⁸

⁵ Buckley v. Valeo, 424 U.S. 1 at 79 (1976) (“political committee” is defined only in terms of amount of annual “contributions” and “expenditures,” and could be interpreted to reach groups engaged purely in issue discussion. . . . To fulfill the purposes of the Act they need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.”); FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 262 (1986) (if a group’s independent expenditures “become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.”); Real Truth About Abortion v. FEC, 681 F.3d 544, 556-57 (4th Cir. 2012) (upholding a case-by-case “major purpose” test).

⁶ FEC, Political Committee Status: Supplemental Explanation and Justification, 72 FR 5595, 5601 (2007).

⁷ *See*, MURs 5754 (MoveOn.org Voter Fund), 5511 and 5525 (Swiftboat Vets an POWs for Truth); and 5753 (League of Conservation Voters 527) all finding that the organizations should have been political committees where the organizations spent more than 50% of their budget on supporting or opposing federal candidates); *see also*, MURS 6396, 6596, 6612 / 6696 (Crossroads GPS), 6589 (American Action Network), 6538 (Americans for Job Security); 6872 (New Models) all finding that the organizations were *not* political committees.

⁸ *See*, MUR 5950 (Hillary Clinton for President) where the Commission found no reason to believe a violation occurred when the Complaint failed to provide any specific allegations or factual information to support the alleged violation; *see also*, Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III (MUR 7501) reiterating the Commission’s position that a Complaint filed based on mere speculation and directly refuted by Respondents without any facts in the record to contract is “insufficient to support a reason to believe finding, let alone [a] costly and invasive investigation.”

If you have any questions regarding this Response, my daytime number is (202) 479-1111. My email address is lindenbaum@sandlerreiff.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dara Lindenbaum', with a long horizontal flourish extending to the right.

Dara Lindenbaum
Erin Tibe
Counsel to Respondents



FEDERAL ELECTION COMMISSION
1050 First Street, NE
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STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

AR/MUR/RR/P-MUR# 7915

Name of Counsel: Dara Lindenbaum and Erin Tibe

Firm: Sandler Reiff Lamb Rosenstein & Birkenstock

Address: 1090 Vermont Ave NW Suite 750

Washington, DC 20005

Office#: 202-479-1111 Fax#: _____

Mobile#: _____

E-mail: Lindenbaum@sandlerreiff.com, Tibe@sandlerreiff.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

9/29/2021
Date

DocuSigned by:
Valerie Jarrett
8879997149B24DD...gnature - Respondent/Agent/Treasurer)

Self
Title

Valerie Jarrett
(Name – Please Print)

RESPONDENT:
Valerie Jarrett
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: C/O Civic Nation
(Please Print)

1156 15th Street NW, 1000

Home#: _____ Mobile#: _____

Office#: 202-908-5226 Fax#: _____

E-mail: operations@civiction.org

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.



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E-mail: Lindenbaum@sandlerreiff.com, Tibe@sandlerreiff.com

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9/29/2021

Date

DocuSigned by:

Pete M Rouse

AADC32E504284A1...

 re - Respondent/Agent/Treasurer)

Self

Title

Pete Rouse

(Name – Please Print)

Pete Rouse

RESPONDENT:

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

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Date

DocuSigned by:

Tina Tchen

4579BE46B8004DC..._ature - Respondent/Agent/Treasurer)

Self

Title

Tina Tchen

(Name – Please Print)

Tina Tchen

RESPONDENT:

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: C/O Civic Nation
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