



December 17, 2021

**VIA E-MAIL**

Roy Q. Lockett, Acting Assistant General Counsel  
Christal Dennis, Paralegal  
Federal Election Commission  
Office of Complaints Examination and Legal Administration  
1050 First Street, NE  
Washington, DC 20463  
Email: [CELA@fec.gov](mailto:CELA@fec.gov)

**Re: MUR 7931 (Biden Victory Fund; Joseph Smolskis, Treasurer)**

Dear Mr. Lockett:

We write on behalf of Biden Victory Fund (“BVF”) and Joseph Smolskis in his official capacity as Treasurer (collectively, “Respondents”) in response to the complaint filed by Committee to Defeat the President in MUR 7931 (the “Complaint”).

The Complaint alleges that President Biden has met the definition of a candidate for the 2024 election under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Federal Election Commission (the “Commission”) regulations because BVF—a joint fundraising committee authorized by Biden for President (“BFP”); DNC Services Corp./Democratic National Committee (the “DNC”); and dozens of state Democratic Party committees (the “State Parties”)—continued to accept funds and make disbursements after November 3, 2020 (“Election Day”).<sup>1</sup> As to BVF specifically, the Complaint alleges that BVF was required to amend its Statement of Organization or otherwise accepted “impermissible contributions.”

As explained below, these allegations are meritless. As a factual matter, BVF has not made any disbursements or received any contributions related to any potential future candidacy of President Biden or indeed, received or transferred any contributions for or to BFP made after Election Day. The only funds it has transferred to BFP were for the 2020 primary or general election and were made from funds contributed to BVF on or before Election Day. Moreover, the Complaint’s only specified claim against BVF—that it failed to amend its Statement of Organization—is non-sensical. President Biden has not triggered candidacy for 2024, but regardless, that information simply does not appear on a joint fundraising committee’s Statement of Organization. There is nothing for BVF to amend. As such, the Commission should find no reason to believe that BVF violated the Act and close the file immediately.

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<sup>1</sup> With regard to the allegation that President Biden has triggered candidacy for 2024, Respondents understand that President Biden, Biden for President, and Andrea Wise in her official capacity as Treasurer will address those matters separately in their own response to the Commission.

## Statement of Facts

BVF is a joint fundraising representative of BFP, the DNC, and the State Parties.<sup>2</sup> It was established to raise funds for the party committees and for BFP in connection with the 2020 presidential election.

All funds raised by BVF for BFP were in connection with the 2020 presidential election and not for any other election.<sup>3</sup> All funds transferred from BVF to BFP were from contributions made to BVF on or before Election Day.<sup>4</sup>

BVF has not made any expenditures that advocate for President Biden's re-election in 2024 or that are otherwise in connection with that election.<sup>5</sup> BVF disbursed funds after Election Day to pay for services received prior to Election Day and for services received after Election Day to maintain BVF while winding down its operations. These maintenance costs include payment processing and bank fees, legal and compliance services, payroll to maintain these operations, and tax payments.<sup>6</sup>

BVF has continued to receive a relatively small trail of contributions after Election Day that resulted from pre-Election Day solicitations (e.g., fundraising solicitations mailed to individuals in the months before the election or emails sent to individuals prior to the election); however, none of the contributions made after Election Day were allocated or transferred to BFP.<sup>7</sup>

In the aftermath of the 2020 election, while BFP and the DNC were responding to numerous meritless challenges or demands to recount the results of the election, BVF also invited individuals to contribute via its online merchandise store for a period of time with the portion of the funds allocated to BFP designated for BFP's recount account. None of these funds were transferred to BFP. Only five donors made contributions with any portion of funds allocated to BFP's recount account, and the BFP portion of those individuals' contributions was refunded by BVF and never transferred to BFP.<sup>8</sup>

## Legal Analysis

### A. BVF is not required to amend its Statement of Organization.

The Complaint alleges that BVF was required to amend its Statement of Organization based on the incorrect assertion that President Biden triggered candidacy for 2024. However, this information is not requested on the form. There is nothing in the Act or Commission regulations requiring a joint fundraising committee to indicate on its Statement of Organization that it is

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<sup>2</sup> See Biden Victory Fund, Statement of Organization, FEC Form 1 (amended Sept. 1, 2020).

<sup>3</sup> Smolskis Decl. ¶ 5.

<sup>4</sup> *Id.* ¶ 7.

<sup>5</sup> *Id.* ¶ 5.

<sup>6</sup> *Id.* ¶ 4.

<sup>7</sup> *Id.* ¶¶ 7, 8.

<sup>8</sup> *Id.* ¶ 9.

raising funds in connection with any particular election or to indicate on its Statement of Organization which office in which election year its participating candidate committees are seeking.<sup>9</sup> There is simply no place to put this information on the Commission’s current version of FEC Form 1.<sup>10</sup> As such, BVF was not even required to disclose on its Statement of Organization that President Biden was running in the 2020 election last year, much less amend this information. In addition to being factually incorrect, the Complaint’s accusations are legally non-sensical. There is simply nothing to amend.

Because the Complaint fails to allege any facts that would amount to a violation of the Act by BVF even if they were true, there is no reason to believe that BVF violated the law in any way.

## **B. BVF’s post-Election Day receipts and disbursements were permissible under the Act.**

The Complaint does not allege that BVF violated any other requirement of the Act or Commission regulations, but speculates that BVF somehow accepted “impermissible contributions” after Election Day because “[c]ontributions received thereafter, and expenditures made from such funds, would be allocated to . . . the 2024 presidential election.”<sup>11</sup> As a general matter, such unspecified and unsupported allegations cannot justify any further action from the Commission.<sup>12</sup> Moreover, there is simply no factual basis for this accusation. None of BVF’s post-Election Day receipts or disbursements were received for or spent to raise funds for a 2024 election and its handling of contributions received after Election Day was in full compliance with the law.

### **1. No BVF contributions made after Election Day were transferred to BFP for the 2020 or 2024 elections.**

All transfers from BVF to BFP made after Election Day were comprised of contributions made to BVF on or before Election Day.<sup>13</sup> BVF fundraising cannot raise issues for BFP regarding any future election, because all proceeds from BVF allocated to BFP were 2020 election contributions.

<sup>9</sup>52 U.S.C. § 30103; 11 C.F.R. §§ 102.2, 102.17.

<sup>10</sup> FEC Form 1, <https://www.fec.gov/resources/cms-content/documents/fecfrm1.pdf>; see also Instructions for Statement of Organization (FEC Form 1), <https://www.fec.gov/resources/cms-content/documents/fecfrm1i.pdf> (instructing joint fundraising representatives to only fill out the information in Line 5(g) or 5(h) unless the joint fundraising representative is also a participating committee).

<sup>11</sup> Compl. ¶ 23.

<sup>12</sup> 11 C.F.R. § 111.4(d)(3) (a valid complaint should contain “a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction”); MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, et al.), Statement of Reasons, Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000) (“The Commission may find ‘reason to believe’ *only if* a complaint sets forth sufficient *specific facts*, which, if proven true, would constitute a violation of the [Act].”) (emphasis added); MURs 6789/6852 (Special Operations for America, et al.), Statement of Reasons, Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter at 4 (May 28, 2019) (“We do not authorize Commission investigations based on mere speculation”).

<sup>13</sup> Smolskis Decl. ¶ 7.

While some funds did come into BVF after Election Day, no such contributions were allocated or transferred to BFP—either for the 2020 general election or any other future election. Instead, pursuant to the allocation formula set forth in BVF’s Joint Fundraising Agreement and its fundraising notices, all such funds were or will be transferred to the DNC or the State Parties.<sup>14</sup>

BVF received contributions after Election Day from solicitations that were made before Election Day. For example, after Election Day, donors continued to mail checks to BVF using contribution forms and pre-paid envelopes that they had received weeks before Election Day. Donors also continued to click on links to donation pages that had been emailed or texted to them prior to Election Day.<sup>15</sup> It is not unusual for contributions to trickle in during the weeks after an election in this way. However, pursuant to the notice provided on all pre-Election Day solicitations, which indicated that the allocation formula listed may change if following it would result in an excessive contribution, no BVF contributions received after Election Day were allocated or transferred to BFP.<sup>16</sup> Allocating any post-Election Day contribution to BFP’s general account would have resulted in an excessive contribution to BFP, so per Commission regulations and BVF’s allocation formula, such contributions were solely allocated to BVF’s party committee participants.<sup>17</sup>

There is nothing unusual or inappropriate about the volume of contributions BVF received after Election Day and nothing about the amount of these contributions in any way indicates that they were raised for the 2024 election. BVF was the primary vehicle for BFP and Democratic Party joint fundraising activities during the 2020 election. It raised hundreds of millions of dollars prior to Election Day, which resulted from millions of solicitations to high- and small-dollar donors alike through a variety of channels, including but not limited to direct mail, phone calls, emails, text messages, and an online merchandise store.<sup>18</sup> The volume of BVF’s solicitations made prior to Election Day and the resulting receipts that accordingly continued to trickle in after the election is standard for major party presidential campaigns.

## **2. BVF’s post-Election Day disbursements were not made to raise funds for a 2024 election.**

BVF has not spent any funds to raise for or otherwise influence a 2024 election. Indeed, all disbursements BVF made after Election Day related to fundraising for a 2020 candidacy and participating committees who fundraise on an annual basis or legitimate wind-down expenses.

Most of BVF’s disbursements made after Election Day were made to pay for products and services that BVF received prior to Election Day, and most of these payments were made in the two months immediately following the election as invoices continued to be received. However,

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* ¶ 8.

<sup>16</sup> *Id.* ¶ 7; *see also* 11 C.F.R. § 102.17(c)(2)(i)(D).

<sup>17</sup> There was, for a brief time, some BVF fundraising for BFP’s recount account through the BVF store. Campaigns are allowed to establish recount accounts to pay for expenses associated with recounts and post-election contests and fundraise for such accounts after the election. *See* FEC Adv. Op. 2006-24 (NRSC and DSCC). There is nothing inappropriate about a contributor donating to such an account through a joint fundraising committee. However, it is also not relevant here as no such funds were ever transferred to BFP.

<sup>18</sup> Smolskis Decl. ¶ 3.

Graham M. Wilson  
Andrea T. Levien  
*Counsel to Respondents*

Very truly yours,

For the foregoing reasons, the Commission should find no reason to believe that a violation of the Act has occurred, dismiss the Complaint, and promptly close this file.

The remaining disbursements are for a mix of expenses any large committee would incur from winding down its operations—for example, for compliance services, legal services, sales tax payments, final store operations, or other expenses that arose because donors continued to submit contributions in response to pre-Election Day solicitations. None of these expenses were incurred to raise funds for or influence any 2024 election. There is no basis to even allege that there was anything “impermissible” about any of BVF’s disbursements, made either before or after Election Day.

some invoices for products and services received prior to Election Day arrived in 2021 and were therefore paid in 2021. The \$100,000 payment to Vox Media, LLC for “online fundraising” referenced in the Complaint falls within this category. The online fundraising ads BVF ran through Vox Media, LLC were run in August 2020, but BVF received its invoice for this purchase in 2021.<sup>19</sup> As such, the payment was made and reported in 2021.

**BEFORE THE FEDERAL ELECTION COMMISSION**

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**In re MUR 7931** )  
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**DECLARATION OF JOSEPH SMOLSKIS**

I, Joseph Smolskis, declare as follows:

1. I am the treasurer of Biden Victory Fund ("BVF") as registered with the Federal Election Commission and have served in this role since BVF's formation.
2. BVF is a joint fundraising representative of Biden for President ("BFP"), DNC Services Corp./Democratic National Committee ("DNC"), and multiple state Democratic party committees. It allocates its receipts among its participating committees according to an allocation formula, or as otherwise designated by its contributors or as necessary to avoid an excessive contribution, distributing net proceeds after accounting for disbursements.
3. BVF was the primary vehicle for BFP and Democratic Party joint fundraising activities during the 2020 general election. It raised hundreds of millions of dollars prior to November 3, 2020 ("Election Day"), which resulted from millions of solicitations to high- and small-dollar donors alike through a variety of channels, including but not limited to direct mail, phone calls, emails, text messages, and an online merchandise store.
4. BVF disbursed funds after Election Day to pay for services received prior to Election Day and for services received after Election Day to maintain BVF while winding down its operations. These maintenance costs include but are not limited to payment processing and bank fees, legal and compliance services, payroll to maintain these operations, and tax payments.
5. I have not authorized, and to the best of my knowledge BVF has not made, any expenditures that advocate for President Biden's re-election in 2024 or that are otherwise in connection with any such election, and BVF has not raised any funds for President Biden or Biden for President in connection with any elections other than the 2020 presidential primaries and general election.
6. BVF made a disbursement of \$100,000 to Vox Media, LLC on March 1, 2021 for online fundraising costs related to advertising run in August 2020. BVF received an invoice for these costs in 2021.
7. All contributions transferred from BVF to BFP were comprised of contributions to BVF made on or before Election Day. Contributions made after Election Day were or will be transferred to the other participating committees according to BVF's allocation formula,


which informed contributors that the allocation formula may change if following it would result in an excessive contribution.

8. BVF continued to receive contributions via direct mail and online after Election Day that resulted from pre-Election Day solicitations (e.g., fundraising solicitations mailed to individuals in the months before the election or emails sent to individuals prior to the election). None of the contributions made after Election Day were transferred to BFP.
9. In the aftermath of the 2020 election, BFP and the DNC were responding to numerous meritless challenges or demands to recount the results of the election. During this period, BVF invited individuals to contribute via its online store, with the portion of the funds allocated to BFP designated solely for BFP's recount account. Only five store donors made contributions with any portion of their funds allocated to BFP's recount account, and the BFP portion of those individuals' contributions was refunded by BVF and never transferred to BFP.
10. BVF still has contributions made on or before Election Day that are allocated for, but not yet transferred to, BFP. It is necessary for BVF to ensure that it has received and paid all invoices related to its 2020 fundraising and subsequent winddown before it can make final transfers to its participating committees.
11. BVF has not received consent from President Biden or BFP to solicit or accept contributions on behalf of either for the 2024 election cycle. BVF has not accepted contributions that were allocated to BFP's general account since Election Day.

\* \* \*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: December 17, 2021

By:   
JOSEPH SMOLSKIS