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By Electronic Mail

July 29, 2022

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

Re: MUR 7931 (Joseph R. Biden, Jr., et al.)

Dear Mr. Lockett:

We write on behalf of Respondents President Joseph R. Biden, Jr.; Biden for President (“BFP”); and Andrea Wise in her official capacity as Treasurer of BFP, in response to the two supplements to the Complaint filed by the Committee to Defeat the President on June 9 and June 22, 2022.

The Complaint alleged that President Biden or BFP failed to file two forms required by the Federal Election Campaign Act of 1971, as amended (“the Act”). Neither supplement contains any evidence to support the allegations in the Complaint.¹

The first form that the Committee to Defeat the President, alleges is late is a Statement of Candidacy. By statute and regulation, a person is a “candidate” when he or she has received contributions or made expenditures in excess of \$5,000 in pursuit of election to federal office, or given his or her consent to another person to do so.² Once the person has met those monetary

¹ The Commission has long held that a complaint must present facts sufficient to show a violation has occurred. Mere conclusory allegations without supporting evidence do not shift the burden of proof to the respondents. *See, e.g.*, FEC MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Wold, and Commissioners Mason and Thomas at p. 2 (“The burden of proof does not shift to a respondent merely because a complaint is filed.”).

² 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

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thresholds, they are obligated to file a Statement of Candidacy within 15 days.³ Neither supplement contains any facts that support the notion that President Biden has met that test.⁴

The second form that the Committee to Defeat the President alleges is late is an amended Statement of Organization by BFP. As we noted in our initial response, that form does not require the campaign committee to identify the election for which the candidate seeks office. Thus, even if the Complaint was correct as to the first point, BFP would not need to amend its Statement of Organization.

The Committee to Defeat the President's first supplement quotes from a news story that contends, based almost entirely on unnamed sources, that those who attended the Democratic Governors Association winter retreat were uncertain if President Biden would be the party's standard bearer in 2024, and if not, who would.⁵ This story repeats several of the President's statements – widely reported elsewhere – that while he has a general intent to run for re-election, he has not decided for certain that he will do so. The first supplement to the Complaint also points to claims in the news story that the President has increased his efforts to raise funds for the Democratic National Committee. It does not speculate, much less provide evidence, that any of these funds were for the purpose of influencing the 2024 presidential election.

The second supplement to the Complaint is limited to a copy of a Tweet by the President's press secretary providing a truncated description of the President's off-repeated position that while he has a general intent to run for re-election, he will reach a final decision next year on whether to become a candidate or not.

None of the material in the supplemental filings has any bearing on the question at issue here: Has President Biden raised in excess of \$5,000 in contributions or made in excess of \$5,000 in expenditures for a 2024 presidential campaign, either directly or by authorizing others to do so on his behalf? As to the two supplemental filings, neither the allegation that the President has a generalized intent to run for re-election and awaits the new year to make a final

³ 52 U.S.C. § 30102(e)(1); 11 CFR § 102.12(a).

⁴ The original Complaint also included no such evidence, instead confusing BFP's 2020 wind-down costs for 2024 spending.

⁵ The flaw in relying on press stories that are based on unsourced information is highlighted by a subsequent story in the Washington Post, on July 20, 2022, describing similar unnamed persons stating the President will postpone until the end of the year deciding whether to run or not. Matt Viser, *As Biden Eyes 2024, One Person Weighs Heavily: Trump*, Washington Post, July 19, 2022. The fact that one can infer opposite conclusions from two unsourced news stories highlights the FEC's general requirement that the complaint contain actual knowledge of facts that would support a conclusion that the statute has been violated. See, e.g., MUR 6540, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter at 11; and MUR 7135, Statement of Reasons of Chair Hunter and Commissioner Petersen at 1, 5.

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decision, or that he supports his party's fundraising efforts, change the conclusion that there is no evidence that he has met the statutory test for registering a candidacy.

The Complaint should be dismissed with no further action because the Committee to Defeat the President has presented no facts that amount to a violation of the Act.

Respectfully submitted,



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