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By Electronic Mail

April 24, 2023

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 Keana Spencer in her official capacity as Treasurer of BFP, in response to the third supplement to the Complaint filed by the Committee to Defeat the President on February 14, 2023.

The original Complaint in this matter, filed eighteen months ago, made unsupported allegations that President Biden has become a candidate for the 2024 election but that he and BFP failed to file a statement of candidacy form required by the Federal Election Campaign Act of 1971, as amended (“the Act”).¹ This third supplement merely extends the flawed reasoning found in the Complaint and the two supplements before it—it does not contain any evidence to support the allegation that President Biden became a candidate by receiving contributions or making expenditures in excess of \$5,000 for the 2024 election.²

¹ Technically, the Complaint alleges Biden for President also needed to amend its Statement of Organization to designate it would be active in the 2024 election cycle. As we demonstrated in our December 17, 2021 filing, the date of the election cycle is not included on the Form 1.

² 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 Comm’rs Mason and Thomas at p. 2 (“The burden of proof does not shift to a respondent merely because a complaint is filed.”).

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This supplement from the Committee to Defeat the President offers only a single claim that relates in any way to raising or spending money. It claims that Vice President Kamala Harris’ “travel, hair, make-up, [and] clothing” for an appearance in a CNN interview amount to expenditures. This allegation is based on a misunderstanding of the meaning of an “expenditure.” The Vice President’s appearance was intended to advance the Administration’s position on a number of issues and largely focused on the Administration’s response to the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* and related questions of maternal and postpartum care, tax credits, prescription drug costs, and other topics.³ The Vice President’s response to a reporter’s single question about whether the President will be a candidate in the 2024 election, totaling thirty seconds of an at least twenty-minute interview, does not convert the costs associated with her appearance for the interview into an “expenditure” for the 2024 election. The Vice President also clarified that her statement in that interview was no different than what the President has said in the past—that while he has expressed a general intent to run for re-election, he had not decided for certain that he will do so.⁴

The remainder of the supplement is simply citations to quotes resembling the President’s past statements about his “intent” regarding the 2024 election, and even then, many of the statements are anonymously sourced or sourced to persons who do not speak for the President on this question.⁵ As with the similar quotes in the prior supplemental filings, the allegation that the President has stated a generalized intent to run for re-election does not change the conclusion that there is no evidence that he met the statutory test for registering a candidacy.

The only other allegation contained in the third supplement is that the continued existence of the Biden for President committee supports that the President is a candidate. To the contrary, the fact that BFP has not received any contributions nor made any expenditures for the 2024 election demonstrates that the President has not met the statutory test for candidacy. The Complaint and supplements continue to offer no evidence of any such raising or spending for the 2024 presidential election.

As noted in prior responses, Commission precedent dictates that reason to believe cannot be premised on speculation when there are contrary statements by persons with

³ Dana Bash Interview with Vice President Kamala Harris, CNN, June 27, 2022, <https://www.youtube.com/watch/2lKNTOv3XQE> and <https://www.youtube.com/watch/iGWG--qbEzA>.

⁴ Brett Samuels, “Harris Clarifies Biden’s Reelection Plans,” *The Hill*, June 29, 2022, <https://thehill.com/homenews/administration/3541750-harris-clarifies-bidens-re-election-plans/> (“Harris’s clarification noting that Biden intends to run, not that he is definitively running, mirrors what the White House has consistently said about the president’s plans for 2024.”)

⁵ We note that several items in the supplement are misleadingly cited as individual statements, but are actually just excerpts from the same sources.

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knowledge of the facts.⁶ 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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⁶ See MUR 7868 (Twitter), Statement of Reasons of Vice Chair Dickerson and Comm'r Trainor at 4 (Sept. 13, 2021) ("At the reason-to-believe stage, we cannot proceed to authorize an investigation based upon '[u]nwarranted legal conclusions from asserted facts or mere speculation.'") (quoting MUR 4960 (Clinton), Statement of Reasons of Comm'rs Mason, Sandstrom, Smith, and Thomas at 2 (Dec. 21, 2000)).