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VIA EMAIL

Mr. Jeff S. Jordan, Esq.
 Office of Complaints Examination and Legal Administration
 Federal Election Commission
 1050 First Street, NE
 Washington, District of Columbia 20463

Attn: Christal Dennis, Paralegal

MUR 7933: Response of Alek Skarlatos, Alek for Oregon (Chris Marston, Treasurer), and 15:17 Fund

Dear Mr. Jordan:

On behalf of Alek Skarlatos ("Mr. Skarlatos"), Alek for Oregon (the "Committee"), its Treasurer, Chris Marston, and the 15:17 Fund (the "Organization"), we submit this response to the complaint filed in the above-referenced Matter Under Review.

End Citizens United ("ECU"), a PAC with a purported mission to "end the unlimited and undisclosed money in politics," commenced this matter by filing a complaint alleging what it apparently regards as a horror—specifically, that funds raised subject to the amount limitations, source prohibitions, and disclosure requirements of the Federal Election Campaign Finance Act (the "Act") were returned to the committee that raised them, where they will continue to be amount limited, source prohibited, and fully disclosed.¹

The Commission's regulations require that **every complaint must "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation** over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). If a complaint fails to state

¹ It's curious that ECU is advocating that the federally-permissible campaign funds at issue in this matter should stay with a so-called "dark money" organization, a position that seems counter to ECU's supposed mission.

REBEKAH MARINO

T 202-878-1320

E REBEKAH@ASHBY.LAW

S @ASHBYLAW

WWW.ASHBY.LAW

CAMPAIGN FINANCE

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LOBBYIST REGULATION

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such facts, “the General Counsel shall so notify the complainant . . . that no action shall be taken on the basis of that complaint.” 11 C.F.R. § 111.5(b) (emphasis added).

The complaint in this matter fails to meet that bare standard. End Citizens United attempts to conjure up an “illegal dark money corporate contribution” out of funds that are clearly federally-permissible funds of the Committee by stringing together incorrect factual assertions and other inconsequential information from news articles and campaign finance reports. Then, after fashioning the facts to its liking, ECU poorly attempts to construct a legal standard by cherry picking facts and legal conclusions from three Advisory Opinions, all of which very clearly were limited to the facts and circumstances upon which they were based. Despite the complaint’s factual contortions and conclusory legal allegations, **the complaint does not allege a single fact which, if true, would constitute a violation of the Act.**

FACTS

On February 17, 2021, following the conclusion of Mr. Skarlato’s unsuccessful 2020 campaign for Congress, the Committee donated \$93,000 in leftover campaign funds to the 15:17 Fund, a 501(c)(4) organization in which Alek Skarlato had no governing or paid role. Three months later, Mr. Skarlato decided to run for Congress again, and Alek for Oregon requested a refund of its contribution to the Organization. In the interim, the 15:17 Fund had raised \$1,855—all from individuals—and, by the Complaint’s own admission, spent \$14,760, mostly on fundraising.

On May 19, 2021—a mere twelve weeks after the funds at issue left the Committee’s account—the Organization refunded \$65,000 to the Committee. Given the amounts donated, raised, spent, and refunded, the refund was, on a first in first out basis, comprised entirely of the very same funds that were donated in the first instance—all funds that were subject to the Act’s limitations, prohibitions, and reporting requirements.

At the end of the day, no one gained any advantage from these transactions. Rather, the reason for them is simple. Alek for Oregon had begun to wind down before Mr. Skarlato decided to run in 2022. When Mr. Skarlato decided to run again, the Organization had done very little with the funds the Committee transferred, so the Committee asked for the funds back. And certainly, the Act’s public purpose was furthered when the Organization refunded the funds back to the committee that raised them, where they will continue to be disclosed and reported.

ANALYSIS

The Commission has approved a variety of ways in which an organization can return funds to a federal committee, each one unique and based upon the facts and circumstances at issue. ECU, for example, cites AOs 2010-28 (Hoosiers for Hill), 2002-08 (Vitter), 1995-43 (Packwood). In all three of these AOs, a change of circumstances led to the refund. For example, in AO 2002-08 (Vitter), Congressman Vitter’s campaign committee transferred money to a state exploratory committee, controlled by Congressman Vitter, as he explored a state office run. AO 2002-08 at 1. After Congressman Vitter decided he would not seek state office, his campaign committee asked the Commission if the state campaign committee could refund the money back to the federal committee. *Id.* The Commission concluded that “because the \$700,500 effectively



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remained Federal funds at all relevant times, they may be redeposited into the Federal Committee account...." *Id.* at 3. Over four months from the date of the transfer, Congressman Vitter's state committee returned \$700,500 to his federal committee. *Id.*

As in Vitter, "the funds in question here were raised in their entirety by a Federal committee under the limits and prohibitions of the Act." *Id.* at 2. Specifically, Alek for Oregon transferred \$93,000 in funds that had been subject to the Act's source, amount, and reporting requirements to the Organization. The Organization then began to operate slowly, raising a scant \$1,855 and spending only \$14,760, when Mr. Skarlatos, like Congressman Vitter, changed his mind. The Committee requested a refund and the Organization refunded \$65,000 to the Committee after three months and two days, a shorter time period than was the case in Vitter.

In addition, the \$1,855 in donations the Organization received after the Committee's \$93,000 transfer were consistent with the Act's source and limitation requirements, making them federally permissible. Even if the Committee's campaign funds were "comingled" with other non-campaign but still federally-permissible funds, the use of such funds by an organization that, by the Complaint's own characterization, "does not appear to have undertaken any activities other than fundraising" (Compl. at 3), did not transform the \$65,000 refund into funds that were suddenly not raised subject to the Act's amount, source, and reporting requirements. **Indeed, at the time of the \$65,000 refund, all funds in the Organization's account were federally permissible. By refunding the Committee, the Organization merely gave the funds back to the entity which originally raised the \$65,000, an entity that would continue to report and disclose under the Act.**

It is well settled that the Commission permits entities to "demonstrate through a reasonable accounting method" that funds are federally permissible even when those funds have been comingled with money not subject to the Act. *See* Advisory Opinions 2016-25 (Pence), 2014-01 (Solano County), 2007-26 (Schock), 2006-38 (Casey State Committee), 2006-25 (Kyl), 2006-21 (Cantwell 2006), and 2006-06 (Busby). "Comingling" is not a legal barrier. For example, in AO 2007-26, Aaron Schock was a federal candidate with a state campaign committee that had leftover funds. As a federal candidate, he was only permitted to raise and spend federally permissible funds and asked the Commission whether he could disburse monies from his state committee to non-federal accounts of a state party committee in Illinois, as well as to certain state candidate committees. AO 2007-26 at 1-2. The Commission approved the request, provided the committee used a "reasonable accounting method" to identify the federally permissible funds. AO 2007-26 at 3.

CONCLUSION

In the final analysis, the Commission clearly permits committees to receive refunds, and does so in a variety of circumstances, as long as a committee can demonstrate that the refund is comprised of federally permissible funds. In this case, the Committee transferred \$93,000 to the Organization, the Organization raised \$1,855 in federally-permissible funds, spent \$14,760, and refunded \$65,000. On a first in first out basis, the \$65,000 refund was comprised entirely of the \$93,000 transfer of funds that the Committee raised subject to the Act's amount, source, and



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reporting requirements. Moreover, the timeline of the entire transaction—about twelve weeks—is squarely in the zone of what the Commission has permitted in other matters.

For these reasons, I urge the Commission to dismiss the complaint and close the file in this matter.

Sincerely,

Rebekah Marino

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