



November 11, 2021

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463

VIA EMAIL at cela@fec.gov

Re: MUR 7937: Response of Greene for Congress, Representative Marjorie Taylor Greene, and Perry Greene in his official capacity as treasurer

Dear Ms. Dennis:

We represent Greene for Congress (the "Campaign"), Perry Greene in his official capacity as treasurer, and Representative Marjorie Taylor Greene, and we write in response to your letter regarding the Complaint filed in the above-referenced matter. The Complaint, filed by the obviously partisan Democratic Party of Georgia, alleges that the Campaign violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by coordinating ads with Georgia Senate candidate Herschel Walker and his campaign ("Team Herschel"). The Complaint, however, contains no factual evidence in any way suggesting that the Campaign coordinated ads with Team Herschel, which the Commission has made clear is a requirement for a reason to believe finding. Conversely, the Campaign has included a sworn declaration from the Campaign vendor who solely planned the posts, un rebutted evidence that no coordination occurred. In light of this, the Commission must find no reason to believe a violation occurred and close the file.¹

¹ To the extent that Complaint alleges, buried in footnote 16, that the social media posts were unreported independent expenditures, the Commission has declined to regulate such activity by an authorized committee. For instance, in MUR 6405 (Friends of John McCain), the Commission exercised its prosecutorial discretion and dismissed allegations that the McCain campaign ran unreported independent expenditures on behalf of two Arizona congressional candidates. The Commission reasoned that "[i]t is unlikely that independent spending by authorized committees would be deemed more potentially corrupting than independent expenditures by individuals, political parties, or corporations...." Factual and Legal Analysis at 10, MUR 6405. On at least one occasion, the Commission has considered implementing rules that would govern independent expenditures by authorized committees but declined to do so. See Draft Notice of Proposed Rulemaking for REG 2014-02, Agenda Document No. 18-01-A. Likewise, the Campaign could not have violated the Act by failing to file independent expenditure reports because "neither the regulations nor the Commission's reporting forms provide a mechanism for authorized committees to report independent expenditures." *Independent Expenditures by Authorized Committees; Reporting Multistate Independent Expenditures and Electioneering Communications*, 83 Fed. Reg. 3996, 3997 (Jan. 1, 2018). The Campaign properly reported the disbursements on its quarterly report.

MUR 7937
RESPONSE TO COMPLAINT

The factual allegations in the Complaint can be quickly summarized. At some point in the past, Rep. Greene and Mr. Walker posed for pictures together. The Campaign then posted those pictures to social media and paid to promote the posts. Complainant then speculates, hedging with ifs and maybes, that because 11 C.F.R. § 109.21 exists and defines coordinated communications, the Campaign's posts might meet that definition. The Complaint surmises, based on the amount allegedly spent to promote the posts, that because the posts *could* have been coordinated, they *could* have been excessive in-kind contributions to Team Herschel.

What the Complaint excludes is any evidence that the Campaign's posts satisfy the "conduct prong" of the coordinated communication regulation because no such evidence exists. Commission regulations set out six types of conduct that, if any one is present along with the payment and content standards, indicate a coordinated communication. The six types of conduct are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material.² Instead of including any evidence of these six types of conduct, the Complaint simply surmises that because Greene and Walker posed for pictures together, it is "highly likely" that "the two campaigns [were] participating in discussions and communicating about resources."

Unfortunately for Complainant's unsupported theory, "substantial discussion" is defined in Commission regulations and requires specific information about the campaign's "plans, projects, activities, or needs" to be conveyed to the payer, "and that information is material to the creation, production, or distribution" of the communication in question.³ The messaging of the communications here was of general political support, and the communications were posted on social media. As the Campaign's periodic reports reflect, the Campaign routinely pays to promote its social media posts, sometimes several times a week. It strains the imagination how any information about Team Herschel's plans, activities, or needs could have been material to the creation, production, or distribution of the communications, which are substantially similar to the activity the Campaign conducts on an ongoing basis.

The Complaint's theory suggests that two politicians simply being in the same room together establishes a likelihood of substantial discussion and supports a reason to believe finding. This is not a workable standard. Politicians interact with each other every day, posing for pictures together and even having private meetings behind closed doors. If this is evidence of anything, it is of politicians doing their jobs.

Creative theories, however imaginative, cannot justify an FEC investigation. "The standard, after all, is 'reason to believe,' not reason to question."⁴ "[M]ere 'official curiosity' will not suffice as the basis for FEC investigations."⁵ "The burden of proof does not shift to a respondent merely because a complaint is filed."⁶ There is absolutely no evidence of wrongdoing

² 11 C.F.R. § 109.2(d)(1)-(6).

³ *Id.* § 109.2(d)(3).

⁴ Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor III at fn. 31 (Oct. 8, 2021), MUR 7753 (Everytown for Gun Safety Action Fund, *et al.*)

⁵ *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981).

⁶ Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (July 20, 2000), MUR 4850 (Deloitte & Touche, LLP, *et al.*).

MUR 7937
RESPONSE TO COMPLAINT

here, and the Commission should decline to be dragged into the Georgia Democratic Party's obviously transparent, increasingly embarrassing, bad-faith political games.

In any event, as evidenced by the vendor's declaration, there was no coordination between the Campaign and Team Herschel.⁷ Instead, the vendor solely created by the communications with no input or discussion from Team Herschel.⁸ In light of this evidence, the only evidence before the Commission, a no reason to believe decision is warranted.

It is unfortunate that the Georgia Democratic Party continues to waste Commission resources by filing frivolous, evidence-free, political complaints, and we hope prompt closure by the Commission will discourage further waste.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'DHR', with a long horizontal stroke extending to the right.

Derek H. Ross
Scott Gast
*Counsel to Greene for Congress,
Perry Greene in his official capacity as treasurer
& Hon. Marjorie Taylor Greene*

⁷ See Exhibit A, Declaration of Isaiah Warton.

⁸ See *Id.*

Exhibit A

DECLARATION OF ISAIAH WARTMAN

I, Isaiah Wartman, do declare and state as follows:

1. I am familiar with the allegations contained in the complaint filed in FEC Matter Under Review 7937.
2. I serve as a political consultant for Greene for Congress, Inc. (the “Campaign”).
3. In this role as political consultant for the Campaign, I make strategic decisions on the creation, production, and distribution of Campaign communications.
4. In regard to the Campaign communications contained in the complaint in FEC Matter Under Review 7937 (the “Communications”), I was solely responsible for all strategic decisions about the Communications including their content, production, and distribution. This also includes the content of the Communications; intended audience; means or mode of the Communications; specific media outlet used; timing or frequency of the Communications; and the size, prominence, and duration of the Communications. Team Herschel, Inc. (“Team Herschel”), its officers, employees, or agents played no role in these decisions.
5. At no point did Team Herschel, its officers, employees, or agents request or suggest to me that the Campaign make the Communications.

6. I did not have any substantial discussion with Team Herschel, its officers, employees, or agents in regard to their plans, projects, activities, or needs that were material to the creation, production, or distribution of the Communications.

I declare under penalty of perjury that the foregoing is true and correct to the best my knowledge.

Executed this 09 day of November, 2021.

A handwritten signature in blue ink, reading "Isaiah Wartman", is written over a horizontal line.

Isaiah Wartman

RECEIVED

By OGC-CELA at 5:50 pm, Oct 27, 2021



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

AR/MUR/RR/P-MUR# Blanket

Name of Counsel: Scott Gast; Derek Ross

Firm: Compass Legal Services

Address: 300 Independent Ave. SE

Washington, DC 20003

Office#: 202.937.2309

Fax#: _____

Mobile#: _____

E-mail: sgast@compasslegal.org; dross@compasslegal.org

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.

10/26/21

Date

Marjorie Taylor Greene
(Signature - Respondent/Agent/Treasurer)

Member of Congress

Title

Hon. Marjorie Taylor Greene

(Name - Please Print)

Hon. Marjorie Taylor Greene

RESPONDENT:

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

Mailing Address: Contact through counsel
(Please Print)

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

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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