

ELECTIONS, LLC**Attorneys at Law**
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November 23, 2021

Via Email to: cela@fec.govFederal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463**Re: MUR 7937: Response of Team Herschel, Inc. and Jason D. Boles in his official capacity as Treasurer**

Dear Ms. Dennis:

This firm represents Georgia United States Senate candidate Herschel Walker, Team Herschel, Inc. and Jason D. Boles as Treasurer (collectively, "Respondents"). We have been made aware that the Democratic Party of Georgia ("Complainant") has filed yet another baseless, partisan, media-driven, complaint with this office, this time alleging that Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act") by coordinating ads produced and disseminated by Greene for Congress ("Greene"). The Complaint contains no factual evidence in any way suggesting Respondents coordinated ads with Greene, which the Commission has made clear is a requirement for a reason to believe finding. Accordingly, the Commission must find no reason to believe a violation occurred and close the matter.

Complainant's factual background for the Complaint is as follows: at some point in time Rep. Greene and Mr. Walker were photographed together, Greene later posted the photographs on social media and paid to promote the posts, accordingly. From this commonplace fact pattern, Complainant saw fit to allege that the ads *could* be coordinated and they *could* be excessive in-kind contributions from Greene to Respondents. However, Complainant's fail to provide any evidence to support its allegations that the ads satisfy the conduct prong of 11 C.F.R. § 109.21, because no such evidence exists. As the Commission is well aware, 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. 11 C.F.R. § 109.2(1)-(6). The Democratic Party of Georgia is unable to make any allegations satisfying any of these criteria. Since no evidence of coordination exists, but desiring to file a complaint of some sort nonetheless, Complainant instead basis the allegations in this complaint on the belief that because Rep. Greene and Mr. Walker took a photograph together it is "highly likely" that "the two campaigns [were] participating in discussions and communicating about resources." (Complaint, p. 5).

Complainant is unable even to allege adequate interaction between the parties to trigger Commission review here. Commission regulations clearly define "substantial discussion" and clearly require specific information to be conveyed to the payer about the campaign's plans,

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projects, activities, or needs and such information must be material to the creation, production, or distribution of the communication at issue. 11 C.F.R. § 109.2(d)(3). Complainant's offer no evidence to support its unfounded allegations that the post(s) must have been coordinated because the two politicians were in a photograph together.

A Commission investigation cannot be justified by partisan-based allegations relying on ifs and maybes. In previous, similarly frivolous cases, the Commission has clearly admonished complainants that "The standard, after all, is 'reason to believe,' not reason to question."¹ "[M]ere 'official curiosity' will not suffice as the basis for FEC investigations."² "The burden of proof does not shift to a respondent merely because a complaint is filed."³ Complainant here offers no evidence of a violation of the Act by Respondents. Accordingly, the Commission should find no reason to believe that Respondents violated the Act and close the matter.

Respectfully submitted,



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Herschel, Inc. and Jason D. Boles, as
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¹ 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.*).

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

³ 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.*).