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OFFICE OF GENERAL COUNSEL

June 21, 2022

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

VIA EMAIL: cela@fec.gov.

Re: MUR 7990 Response for Kimberly Klacik and Kim Klacik for Congress

We represent Kimberly Klacik, as well as Kim Klacik for Congress (“KKFC”) and Bradley Crate in his official capacity as Treasurer (collectively “the Respondents”), in this matter. This Complaint is an unfortunate attempt by Candace Owens and her lawyers to smear the professional and personal reputation of Ms. Klacik and KKFC in the midst of a defamation trial. This complaint alleges that Ms. Klacik is using campaign funds for personal use by paying legal expenses associated with Ms. Klacik’s defamation litigation against Ms. Owens. Notably, the Complainant in this matter is Ms. Owens’ attorney in the defamation case. This complaint has no legal merit, as the Commission has consistently allowed campaigns to pay for legal expenses, so long as the litigation involves allegations directly relating to the candidate’s campaign. This lawsuit would have never occurred but for Ms. Owens’ false allegations against Ms. Klacik and her campaign based specifically on expenses paid for by KKFC. Therefore, the Commission should promptly find no reason to believe against the Respondents and close the file.

Factual Background and Legal Analysis

On June 22, 2021, Ms. Owens published a live video on her Instagram and Facebook accounts, accusing Ms. Klacik of engaging in criminal activity, and using KKFC as a vehicle for such activity. Specifically, Ms. Owens made demonstratively false allegations that Ms. Klacik “used campaign money to do cocaine,” participated in “money laundering, tax fraud, and campaign fraud,” paid vendors through KKFC in order to “move money off the books,” and a variety of other accusations of using KKFC for criminal activity. As a result of such allegations, Ms. Klacik filed a lawsuit against Ms. Owens for defamation in Tennessee.

Ms. Owens has built her public persona, in part, by spreading disinformation on a variety of issues, including COVID-19, vaccines, and most recently, the Russia-Ukraine conflict. When others, such as Ms. Klacik, push back on Ms. Owens' disinformation campaigns, she targets them by maliciously and publicly spreading lies about them. There is a significant record of such behavior by Ms. Owens. As a result of Ms. Klacik pushing back on claims made by Ms. Owens, Ms. Owens publicized false information regarding Ms. Klacik and KKFC, guising it as an "investigation." She then told her followers to "investigate" such claims, an open invitation for her followers to attack Ms. Klacik and KKFC. Ms. Klacik, as well as KKFC, suffered significant losses as a direct result of Ms. Owens' conduct, including loss of business for both KKFC and Ms. Klacik. We have attached the complaint that was filed in Tennessee, as well as Ms. Owens response to Ms. Klacik's complaint, to this Response so you are aware of the relevant facts.

Legal Analysis

The Act and Commission regulations prohibit the conversion of campaign funds to personal use.¹ The Act further specifies that conversion to personal use occurs when a contribution or amount is used "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office."² The Act and Commission regulations provide a non-exhaustive list of items that would constitute *per se* personal use. If a specific expense is not considered *per se* personal use, the Commission determines on a case-by-case basis whether an expense would fall within the definition of "personal use."³ Commission regulations specifically provide that "legal expenses" are subject to a case-by-case determination.⁴

The Commission has long recognized that if it can be "reasonably show[n] that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use."⁵ Specifically, when considering legal fees, the Commission has concluded that the use of campaign funds for legal fees and expenses does not constitute personal use when the legal proceedings involve allegations *directly relating* to the candidate's campaign or duties as a Federal officeholder.⁶ On the other hand, legal fees and expenses will not be treated as though they are campaign or officeholder related merely because the underlying proceedings have some impact on the campaign or the officeholder's status.⁷ For example, legal expenses associated with a divorce proceeding or charges of driving under the influence of alcohol would be considered personal expenses.⁸

¹ 52 U.S.C. § 30114(b)(1), 11 C.F.R. § 113.1(g).

² 52 U.S.C. § 30114(b)(2), 11 C.F.R. § 113.1(g).

³ 11 C.F.R. § 113.1(g)(1)(ii).

⁴ 11 C.F.R. § 113.1(g)(1)(ii)(A).

⁵ Explanation and Justification for Final Rules on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

⁶ *See, e.g.*, Advisory Opinion 2011-07 (Fleischmann); Advisory Opinions 2009-20 (Visclosky), 2009-10 (Visclosky), 2008-07 (Vitter), 2006-35 (Kolbe), 2005-11 (Cunningham), and 2003-17 (Treffinger).

⁷ Explanation and Justification for Final Rules on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 FR 7862, 7868 (Feb. 9, 1995).

⁸ *Id.* at 7867.

There would not be a lawsuit but for Ms. Owens' false allegations regarding Ms. Klacik's campaign activities. Specifically, Ms. Owens accused Ms. Klacik of "using campaign funds to do cocaine," using KKFC to engage in money laundering by paying campaign vendors, and specifically accusing her of campaign finance violations, such as falsifying campaign finance reports. These allegations, which have no merit and are based on zero evidentiary support, would not have been made against Ms. Klacik if she had never decided to run for federal office. Therefore, consistent with long-standing Commission precedent, KKFC's payment for legal fees associated with the defamation litigation does not constitute personal use.

Before concluding, we would like to ensure the Commission that should Ms. Klacik prevail in the litigation or otherwise settle the dispute with Ms. Owens, any funds provided to Ms. Klacik will be disbursed in accordance with FECA and Commission regulations, and will not violate the Commission's personal use regulations. Ms. Klacik has made clear from the start that her primary goal in filing this lawsuit is to restore public confidence in how her campaign was conducted, and therefore, has no intention in personally recouping any additional funds beyond the campaign being reimbursed for legal fees.

Conclusion

Make no mistake—this Complaint was not filed based on a citizen's legitimate concerns regarding a campaign committee's expenditures. Rather, this Complaint was maliciously filed by Candace Owens' lawyer as an attempt to bolster false accusations against KKFC and prevent her campaign from funding litigation to defend itself against defamation. It is unfortunate, to say the least, that KKFC, and now the Commission, are caught in the crossfires of this "petty Twitter feud," as her own actions were described by Ms. Owens. However, the law and prior precedent on this issue is clear—if the legal expenses are *directly related* to the campaign's activities, campaign funds may be used. Therefore, consistent with this long-standing approach, we ask that the Commission find no reason to believe and close the file.

Sincerely,



Charlie Spies
Katie Reynolds
Counsel to Respondents