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**COVINGTON**BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG  
LONDON LOS ANGELES NEW YORK PALO ALTO  
SAN FRANCISCO SEOUL SHANGHAI WASHINGTONCovington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 6000**By Electronic Mail**

October 21, 2022

Mr. Roy Lockett  
Federal Election Commission  
Office of Complaints Examination and Legal Administration  
1050 1st Street, NE  
Washington, D.C. 20463**Re: MUR 8059 (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 Complaint filed by Americans for Public Trust in MUR 8059.

The Complaint, like the one before it which the Federal Election Commission (“the Commission”) designated MUR 7931, should be dismissed because it fails to provide any facts to support an essential element of the alleged violation: that President Biden and BFP made expenditures in excess of \$5,000 to support a campaign for President in the 2024 election cycle.

The Complaint correctly notes that federal law requires that an individual file a Statement of Candidacy within fifteen days of becoming a “candidate.”<sup>1</sup> A candidate is defined as someone who accepts contributions or makes expenditures in excess of \$5,000 in an election cycle, or who consents to another person doing so on their behalf.<sup>2</sup> A candidate’s state of mind is insufficient to require one to file a Statement of Candidacy; one must begin raising and spending money in pursuit of that end.<sup>3</sup>

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<sup>1</sup> 52 U.S.C. § 30102(e); *see also* 11 C.F.R. § 101.1(a).

<sup>2</sup> 52 U.S.C. § 30101(2); *see also* 11 C.F.R. § 100.3(a).

<sup>3</sup> In addition to the Complaint’s misapplication of “private decision” standard, the Complaint is wrong on the related facts, as well. The President has repeatedly stated that he will make a final decision as to whether to run for re-election after the mid-term elections. He did so again last month when asked whether he was committed to running again: “[I]t’s much too early to make that kind of decision. And I’m a great respecter of fate, and so what I’m doing is I’m doing my job. . . . And within the timeframe that make sense after this next election cycle here going into next year, make a judgment on what to do.” Scott Pelley, *President Joe Biden: The 2022 60*

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The Complaint contains no evidence that President Biden, BFP, or Keana Spencer have done this. At best, the Complaint points to three facts: BFP has spent a total of more than \$5 million since January 20, 2021; \$1 million of that \$5 million was for “text message/email outreach”; and an additional \$250,000 of that \$5 million was for database subscriptions. The Complaint cites no evidence that any of those funds were for the 2024 presidential election.<sup>4</sup> Instead, it simply assumes that this must be so, given that the sums were spent after the Inauguration.

As to the statement that BFP spent in excess of \$5 million in the period after the inauguration, BFP had over \$1 billion in expenditures in the 2020 cycle, and consequently, it is not surprising that it had significant operating costs and 2020 election expenses to resolve after the Inauguration.<sup>5</sup> This included maintaining its business systems, legal and compliance costs, financial databases, cyber security, tax payments, and a diminishing payroll for employees to facilitate these operations.<sup>6</sup> BFP’s post-Inaugural activities included refunding nearly 1,500 contributions, providing funds to the Presidential Transition for COVID testing, and helping to resolve the legacy campaign debt of the Vice President’s primary campaign. All of these are normal post-election expenses associated with a modern presidential campaign, and the fact that certain expenses extended two years after the election is not extraordinary.

As to the reference to “text message/email outreach” expenses, these relate to ongoing communications by the President to his supporters who have opted-in to receive messages, encouraging them to make contributions to the Democratic National Committee (“DNC”) in 2021 and 2022.<sup>7</sup> These messages describe the success of the administration and encourage DNC contributions to help expand the Democratic majorities and elect Democrats in the 2022 election cycle. The messages make no reference to the 2024 election or the potential of President Biden running for re-election. The Complaint offers no evidence or allegations to the contrary.

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*Minutes Interview*, CBS News (Sept. 18, 2022), <https://www.cbsnews.com/news/president-joe-biden-60-minutes-interview-transcript-2022-09-18/>.

<sup>4</sup> In part, that is because the Complaint assumes that all expenditures after January 21, 2021 can be treated as for the purpose of influencing the 2024 election, and focuses on whether the President meets the “testing the waters” exception. As a consequence, the Complaint focuses on anonymously sourced news stories, musings by political insiders, and half-quotes from White House staff to try to prove the President should not be believed when he says that he will make a final decision about whether to run for re-election after the mid-term election.

<sup>5</sup> Decl. of Taryn Vogel ¶¶ 3, 4. Note: this figure appears to reflect a calculation of BFP’s operating costs, rather than total expenditures, which were approximately \$10,000,000 by the end of September 2022.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* ¶ 5.

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As to the reference to a “database subscription,” this reflects payments to NGP VAN Inc., for an accounting and compliance database subscription necessary to maintain records related to the 2020 election in order to comply with the Act.<sup>8</sup>

In short, BFP has not made any expenditures for the purpose of influencing the 2024 presidential election. Commission precedent dictates that reason to believe cannot be premised on speculation when there are contrary statements by persons with knowledge of the facts.<sup>9</sup>

For the reasons stated above, President Biden has neither made expenditures for the 2024 election cycle, nor has he decided or declared his candidacy for that election cycle. Accordingly, we respectfully request that the Commission dismiss the Complaint.

Respectfully submitted,



Robert Lenhard  
Derek Lawlor  
Elizabeth Upton

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<sup>8</sup> *Id.* ¶ 4; *see* 52 U.S.C. § 30102(c).

<sup>9</sup> *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)).

**BEFORE THE FEDERAL ELECTION COMMISSION**

**In re MUR 8059**

**DECLARATION OF TARYN VOGEL**

I, Taryn Vogel, declare as follows based on personal knowledge:

1. I am the founder of BlueBird Consulting LLC, a campaign and political compliance, reporting, and accounting firm. Through BlueBird, I provide compliance consulting services for Biden for President ("BFP"), including reviewing receipts and disbursements to ensure they are accurately and appropriately recorded, and ensuring receipts are permissible and in compliance with regulations.
2. BFP was the principal campaign committee of President Biden for the 2020 election cycle. President Biden has not authorized BFP to solicit or receive contributions or to make expenditures for the 2024 presidential election.
3. BFP's payments since Election Day 2020 have been for activity related to the 2020 election or expenses of winding down its 2020 activities. These include but are not limited to costs for databases and other business systems, legal fees, compliance costs, payroll to maintain these operations, tax payments, refunds, and resolution of primary debt of the Vice President's campaign. They also included expenses such as resolving primary campaign debt from the Vice President's campaign, affording the Presidential Transition with funds for COVID testing.
4. These operating costs include disbursements to NGP VAN Inc. to maintain and use an accounting and compliance database, which are described as "database subscriptions" on BFP's periodic disclosure reports to the Federal Election Commission ("Commission"). BFP uses this database for filing reports with the Commission, maintaining BFP's accounts, and other accounting and compliance needs.
5. The remainder of spending by BFP since Election Day was for text messages encouraging President Biden's supporters to donate to the Democratic National Committee ("DNC"). These costs are described as "text message/email outreach" on BFP's periodic disclosure reports to the Commission.
6. None of BFP's expenses since Election Day have been for the purpose of the 2024 presidential election.

\* \* \*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 10/21/22

By: *Taryn Vogel*

TARYN VOGEL