

December 21, 2022

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

Re: Response of Let's Preserve the American Dream in MUR 8082

Dear Ms. Ross,

This response is submitted by the undersigned counsel on behalf of Let's Preserve the American Dream, Inc. ("LPAD") in connection with Matter Under Review 8082. The Complainant filed its Complaint on or about November 9, 2022. The Complaint, which makes allegations about a scheme to funnel contributions from unknown and undeclared sources through a series of section 501(c)(4) nonprofit organizations to recipient political committees, does not name LPAD as a Respondent, nor does it make any allegations that LPAD violated the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). Compl. ¶ 2. Rather, the named respondents are five Super PACs, certain 501(c)(4) nonprofit organizations that contributed to the Super PACs, and "Unknown Respondents" whom the Complainant believes were the true sources of the contributions at issue.

As explained in greater detail below, LPAD had no knowledge of any scheme like the one described in the Complaint, nor was it ever involved in any such plan. Furthermore, individuals or entities that donate funds directly to LPAD never exercise control over the final disposition of their donations. Rather, LPAD exercises total discretion over how to spend the funds it receives. Most importantly, LPAD never conferred with any of the Respondents named in the Complaint concerning how it should spend or donate its funds, nor did it otherwise seek their input when making those decisions. In short, LPAD did not, and has never, participated in any scheme to route contributions through nonprofit groups to Super PACs. For these reasons, the Federal Election Commission ("FEC" or the "Commission") should summarily dismiss the Complaint and close the file with respect to LPAD.

I. FACTUAL BACKGROUND

LPAD is a social welfare nonprofit organization that is recognized as tax-exempt under Section 501(c)(4) of the Internal Revenue Code. LPAD was incorporated in July 2013 as a Florida not-for-profit corporation. Ryan Tyson serves as LPAD's current executive director, and Nicholas

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Fugate, Tyler Riddle, and Trey Gardner compose LPAD's board of directors. None of LPAD's directors or officers have any involvement in, or control over, the other 501(c)(4) organizations or federal Super PACs named as Respondents in the Complaint.

II. LEGAL ANALYSIS**A. LPAD Was Not a Participant in Any Scheme to Conceal the Source of Political Contributions.**

According to the Complaint, LPAD was identified in a November 2019 memo produced by Jeff Pitts ("Mr. Pitts") as a potential intermediary in a scheme to route funds from Florida Power & Light ("FPL") through LPAD and other organizations to a variety of 501(c)(4) nonprofit organizations, which would then donate the funds to political action committees. Compl. ¶¶ 33-36. But as the Complaint itself acknowledges, the only factual allegation is that Mr. Pitts and his fellow political consultants "*pitched* one or more clients on their ability to funnel money through nonprofits as part of a funding structure that could be used, among other things, to make federal campaign contributions while evading public reporting[.]" *Id.* ¶ 2 (emphasis added). Although some of the nonprofit organizations identified in Mr. Pitts' memo eventually made contributions to certain political committees, that does not show that a plan resembling the one detailed in the flowchart was ever put into effect. Notably, the Complaint presents no evidence that the contributions at issue in this matter were made as part of an collaborative scheme to evade federal disclosure requirements.

The details of the alleged proposal described in the Complaint were never communicated directly to LPAD or its executive director, Ryan Tyson, by Mr. Pitts or any other individual. *See* Ex. A ¶ 13 (Tyson Affidavit). So far as LPAD's officers and directors are aware, the plan outlined in Mr. Pitts' 2019 memo was never implemented. *Id.* ¶ 17. Mr. Pitts has never been affiliated with LPAD, and he has had no involvement in or control over LPAD's decision-making. *Id.* ¶ 13. None of LPAD's officers, directors, or employees have ever communicated with Mr. Pitts or any of the other Respondents named in the Complaint concerning how LPAD should distribute or spend the funds it has received. *Id.* ¶ 13. Finally, LPAD has no information concerning communications or relationships between the named Respondents to which LPAD was not privy. *Id.* ¶ 18.

As the article in which Mr. Pitts' proposal was first publicized makes clear, "[i]t's not clear if Pitts ... put the plan into action." Orlando Sentinel (Dec. 17, 2021), <https://www.orlandosentinel.com/politics/os-ne-florida-power-and-light-matrix-dark-money-20211217-v64274eytjeb5hnstdognvqds4-story.html>. Furthermore, a spokesman for FPL quoted in the same article said that an internal investigation "found no evidence the company used [Mr. Pitts'] proposed funding structure in 2020." *Id.* This statement comports with the most likely explanation for why LPAD was never informed about the plan: it was proposed and rejected, and therefore, the plan was never put into action. And assuming *arguendo* that any part of the plan was ever effectuated, LPAD was not involved in any such scheme to shield the true source of political contributions, and it has no information concerning whether any planning occurred between the named Respondents that did not concern LPAD. Ex. A ¶¶ 17-18.

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC**B. LPAD Is Not Covered by Either 52 U.S.C. § 30122 or 11 C.F.R. § 110.4(b).**

The Act prohibits “mak[ing] a contribution in the name of another person or knowingly permit[ing one’s] name to be used to effect such a contribution,” as well as “knowingly accept[ing] a contribution made by one person in the name of another.” 52 U.S.C. § 30122. FEC regulations go further and also prohibit “[k]nowingly help[ing] or assist[ing] any person in making a contribution in the name of another.” 11 C.F.R. § 110.4(b)(1)(iii).¹ Even assuming for the sake of argument that the facts pleaded in the Complaint are true (which they are not), Complainant has not shown, nor even alleged, that LPAD violated any of the Act’s prohibitions, which is presumably why LPAD was not named as a Respondent in this matter.

According to the flowchart created by Complainant and reproduced as Figure 2 in the Complaint, Complainant asserts that LPAD served as an intermediary between the unspecified “True Sources of Funds” and some of the 501(c)(4) organizations that Complainant believes were participants in the alleged scheme. Compl. ¶ 42.² Even if this were true—which, for the reasons explained in the accompanying affidavit, it is not—this alone does not state a violation of 52 U.S.C. § 30122 because there is no allegation that LPAD itself either made a contribution in the name of another, knowingly permitted its name to be used to make such a contribution, or knowingly accepted a contribution made by another entity in the name of another.

The Complaint alleges three counts against the Respondents. First, it claims that Respondents violated the Act “by allowing their names to be used to effect one or more contributions to super PACs by Unknown Respondents who are the true source of the contributions.” Compl. ¶¶ 56-57. LPAD’s name was not used to effect *any* of the identified contributions to Super PACs; the names reported to the FEC as the sources of the identified contributions were those of other 501(c)(4) organizations—*i.e.*, the organizations that actually made the decision to make political contributions. In other words, LPAD did not serve as a “shield” to conceal the identity of any other entity, and therefore, this count has no application to LPAD.

Second, the Complaint alleges that the named Super PAC Respondents violated the Act by “knowingly accepting a contribution made by one person in the name of another” and failing to report the true source of those contributions. Compl. ¶¶ 70-71. This accusation likewise can be easily dispensed with, because on its face it does not claim a violation by LPAD or any other 501(c)(4) organization. Because LPAD is not a political committee, it has never accepted political contributions, nor has it had any obligation to report contributions to the FEC.

Finally, the Complaint alleges that certain “Unknown Respondents” were the true sources of contributions made to various super PACs using certain 501(c)(4) organizations as conduits, which contributions were falsely attributed to the 501(c)(4) organizations. Compl. ¶¶ 88-89, 92. Although LPAD did contribute \$1.15 million to Grow United and \$26,000 to Broken Promises (both of which are named as Respondents) in 2020, this is in no way evidence of a FECA violation.

¹ As explained later in this response, a federal district court has held that 11 C.F.R. § 110.4(b)(1)(iii) was an unlawful regulation and was ordered stricken from the Code of Federal Regulations.

² Note that Complainant has only identified two contributions from LPAD to any of the named Respondent 501(c)(4) organizations, however, and it does not explain how, or if it believes, any funds were transferred to the other three. *Id.*

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There is nothing remarkable about one 501(c)(4) organization donating funds to another 501(c)(4) organization. As a matter of course, whenever it has received donations, LPAD confirms in writing that any decisions concerning the disposition of the funds are left solely to LPAD's discretion, and the donor plays no further role in how the funds are ultimately utilized. Ex. A ¶ 5-6. Likewise, whenever LPAD has donated to other organizations (including when it made the two donations identified above), a contemporaneous assurance letter confirms that the recipient is vested with sole discretion over the use of the donated funds. *Id.* ¶ 7. Because LPAD's donations were not "contributions" as defined in the Act, see 52 U.S.C. § 30101(8)(A), and because LPAD was in no way the true source of the contributions at issue in this matter, this count is also irrelevant with respect to LPAD.

One final point bears mention. The prohibition on "[k]nowingly help[ing] or assist[ing] any person in making a contribution in the name of another" contained in 11 C.F.R. § 110.4(b)(1)(iii) is no longer valid after having been determined to be unlawful by a federal district court. The court held that "the Commission ... had no authority to write a regulation that went beyond the Act itself." *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1115 (D. Utah 2018). The court clarified that FECA's giving-in-the-name-of-another prohibition only applies to the following three categories of individuals: "1) a person who makes a contribution in the name of another; 2) a person who knowingly allows his name to be used by the contributor; and 3) a candidate who knowingly accepts such a contribution." *Id.* As that court correctly held, "[n]owhere in the language of section 30122 is there any room for adding a fourth category consisting of secondary actors," and so it enjoined the Commission's continuing enforcement of 11 C.F.R. § 110.4(b)(1)(iii). *Id.* The Commission did not appeal that decision or the accompanying injunction order, and so it remains in effect today.

Here, even if the facts pleaded in the Complaint are true (which, again, they are not for the reasons explained in the attached affidavit), LPAD would still only qualify as the kind of "secondary actor" that the Commission could not pursue, per the *Swallow* decision. LPAD did not make any contributions in the name of another, knowingly permit its name to be used to effect such a contribution, or knowingly accept a contribution made by one person in the name of another. In short, LPAD does not fit within any of the three categories of individuals identified in *Swallow* that are subject to FECA's giving-in-the-name-of-another prohibition. That ends the inquiry. Therefore, the Commission should close the file as to LPAD in this matter since it has not violated the Act.

III. CONCLUSION

The Complaint makes no allegations of FECA violations against LPAD, nor does it name LPAD as a Respondent. LPAD has never participated in any scheme to conceal the source of political contributions, and there is no theory advanced in the Complaint under which LPAD could be found to have violated 52 U.S.C. § 30122 or its implementing regulations. Accordingly, the Commission should summarily dismiss the Complaint and close the file with respect to LPAD.

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Sincerely,

A handwritten signature in blue ink that reads "Matt Petersen". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Matthew Petersen
Counsel to Let's Preserve the American Dream

EXHIBIT A**DECLARATION OF RYAN TYSON ON BEHALF OF LET'S PRESERVE THE AMERICAN DREAM**

Comes now Ryan Tyson, executive director of Let's Preserve the American Dream, Inc., and states as follows:

1. I am the executive director of Let's Preserve the American Dream, Inc. ("LPAD"), a section 501(c)(4) social welfare non-profit organization. I am authorized to make these statements on behalf of LPAD.
2. I make the statements below based on my personal knowledge, information, and belief.
3. I have reviewed the Complaint and am familiar with the contents therein.
4. As a standard business practice, every time that LPAD receives a donation from any source, LPAD requires the donor to sign an assurance letter.
5. Such assurance letters communicate that the donor will exercise no control over the disposition of any funds that it donates to LPAD, and that any decision concerning the ultimate use of the funds is left to the sole discretion of LPAD.
6. After a donor has makes a donation to LPAD, LPAD engages in no further discussions with that donor concerning how it utilized the donation.
7. Likewise, when LPAD makes a donation to a recipient nonprofit organization, LPAD will sign an assurance letter relinquishing any control over the disposition of its donation and vesting the recipient with the sole discretion to determine the best use of the funds.
8. LPAD has no further discussions with the recipient concerning the disposition or use of any of the funds LPAD has donated to other 501(c)(4) nonprofit organizations or political committees.
9. Requests for donations from LPAD are documented in writing.

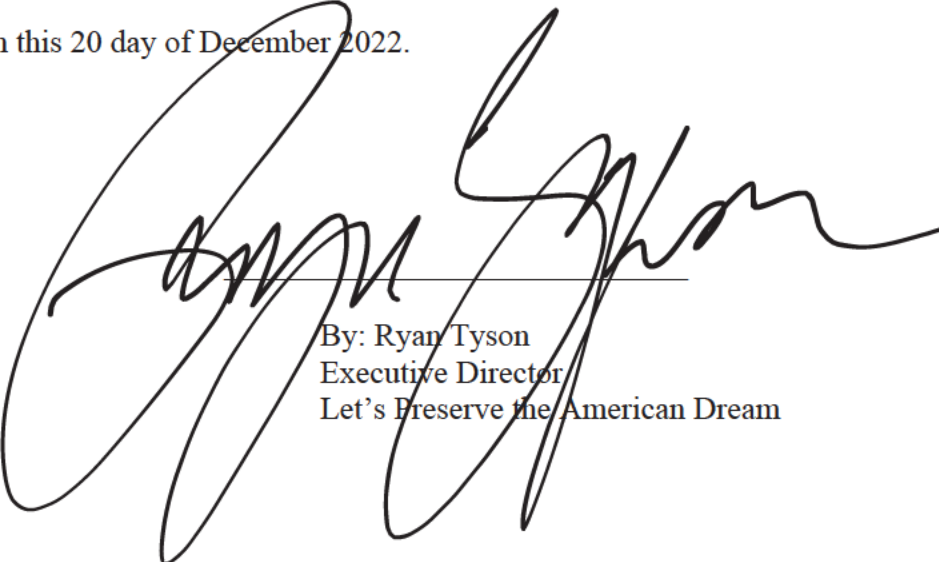
10. I first saw the flowchart depicted on page 15 of the Complaint when it was published in the Orlando Sentinel on December 17, 2021. The chart was never shared with me prior to its publication in the media, nor was I ever aware of any plan similar to the one depicted in the flowchart.
11. Neither LPAD nor I consented to, or otherwise authorized LPAD's inclusion in, the plan depicted in the flowchart, nor am I aware of any reason why LPAD was included in the flowchart.
12. Jeff Pitts ("Mr. Pitts"), the individual who allegedly produced the memo described on pages 13-18 of the Complaint, has never held any official position with LPAD, nor does he have any insight into how LPAD makes internal decisions about the disposition of the funds it receives.
13. Neither Mr. Pitts nor any other individual ever contacted LPAD concerning any proposal to route contributions from Florida Power & Light through LPAD (among others) to other 501(c)(4) organizations with the ultimate intention of making contributions to political action committees.
14. Neither Mr. Pitts nor any other individual has ever suggested to me that LPAD should contribute to a particular cause or political candidate.
15. I had never heard of any business called "SUN Marketing & Advertising" until I read the story published in the Orlando Sentinel on December 17, 2021.
16. LPAD has never received a donation or any other payment from any business by the name of "SUN Marketing & Advertising," nor has it communicated with any business by that name.

17. Upon information and belief, LPAD had no involvement in the alleged scheme detailed in the Complaint, nor do I have any reason to conclude that any plan like the one proposed by Mr. Pitts was ever implemented.

18. Neither LPAD nor I have any knowledge of communications or relationships between and among the Respondents named in the Complaint.

Further Affiant sayeth naught.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20 day of December 2022.

A large, stylized handwritten signature in black ink, appearing to read "Ryan Tyson", is written over a horizontal line. The signature is fluid and cursive, with a prominent loop at the end.

By: Ryan Tyson
Executive Director
Let's Preserve the American Dream