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Via email to cela@fec.gov

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

Re: Response of Larry Pfeiffer to Complaint (MUR #8123)

Dear Ms. Dennis:

On behalf of my client Larry Pfeiffer, this letter is in response to the complaint filed by Donald J. Trump in the above-referenced matter. For the reasons set forth below, Mr. Pfeiffer denies the allegations against him in the complaint, there is no "reason to believe"¹ he has violated the Federal Election Campaign Act ("FECA"), and the Federal Election Commission ("Commission") should dismiss the complaint.

Mr. Trump alleges that Mr. Pfeiffer violated FECA by co-signing an October 19, 2020 "Public Statement on the Hunter Biden Emails" with other former national security officials (hereafter "Public Statement") that was published in the news media the following day. The Public Statement, co-signed by 51 former U.S. intelligence officials, expressed concerns that press reporting about emails attributed to Hunter Biden were cause for suspicion that the Russian government was conducting an information campaign.

Mr. Trump's theory of liability under FECA is that the Public Statement constituted an in-kind contribution by Mr. Pfeiffer and other co-signatories to the Public Statement to the presidential campaign of then-candidate Joseph R. Biden, and that these "contributions" were unlawful because the co-signatories -- as purported federal contractors governed by security agreements they signed during their government service -- were prohibited from making campaign contributions of any kind.

¹ 2 U.S.C. § 437g(a)(2) (a finding of "reason to believe that a person has committed, or is about to commit, a violation" of FECA is a precondition to opening an investigation into an alleged violation; see https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf (FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" at 12 (May 2012)).

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Mr. Trump's allegations plainly fail as a matter of law. First, the Public Statement did not constitute a "contribution" under FECA. FECA defines a "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."² The Commission has characterized in-kind contributions as "[g]oods or services offered free or at less than the usual charge."³ Examples of in-kind contributions described by the Commission are paying for consulting or polling, contributing office supplies, sponsoring a fundraising event, and paying for a campaign advertisement.⁴

The Public Statement does not come within the scope of the term "contribution" as a matter of law or policy. By its express terms, the Public Statement was an expression of jointly held concerns by seasoned former U.S. national security officials about a potential threat to U.S. national security, and it expressly noted (repeatedly, and in multiple ways) that the views expressed were not based on specific knowledge but rather on their opinion as former intelligence professionals.⁵ Particularly insofar as the signatories wanted to ensure that the American people had the benefit of their views, the Public Statement represents protected political speech, which the Supreme Court has held to be at the core of the First Amendment.⁶ We are unaware of any prior enforcement action by the Commission treating

² 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a), 100.54.

³ <https://www.fec.gov/help-candidates-and-committees/filing-reports/in-kind-contributions/>.

⁴ <https://www.fec.gov/help-candidates-and-committees/making-disbursements-ssf-or-connected-organization/making-in-kind-contributions-ssf/>.

⁵ See *Public Statement on the Hunter Biden Emails* (Oct. 19, 2020) ("[T]he arrival on the US political scene of emails...has all the *classic earmarks* of a Russian information campaign....We want to emphasize that....*we do not have evidence* of Russian involvement...Such an operation would *be consistent with* Russian objectives....") (emphases added), available at <https://www.politico.com/f/?id=00000175-4393-d7aa-af77-579f9b330000>. It is also doubtful whether an expression of speech like the Public Statement here constitutes "anything of value" for purposes of FECA. 52 U.S.C. § 30101(8)(A)(i).

⁶ See *Meyer v. Grant*, 486 U.S. 414, 425 (1988) (First Amendment protection is "at its zenith" where core political speech is at issue).

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a public statement, and one constituting pure political speech, as an in-kind contribution under the FECA.

Moreover, as a factual matter Mr. Pfeiffer in no way coordinated his involvement with the Public Statement with the Biden campaign, or had any contemporaneous knowledge that the Public Statement was coordinated with the Biden campaign.

Second, the notion that Mr. Pfeiffer is a federal contractor is untethered to law or facts. The statutory prohibition on contributions by contractors applies only to those who contract to provide personal services or furnish materials, supplies, or equipment, or who sell land or buildings to the United States, in exchange for congressionally appropriated funds.⁷

Like thousands of other former employees of U.S. intelligence agencies, Mr. Pfeiffer signed secrecy agreements governing his disclosure of classified information when he left positions in government. Nothing in the body of those agreements, and nothing in statute or regulation, transforms those kinds of agreements into federal government “contracts” for purposes of federal procurement laws or federal campaign finance laws.

Further, as a factual matter Mr. Pfeiffer held no contracts with the Federal government in October 2020, and he is not a government contractor now. Mr. Pfeiffer currently serves as the Director of the Michael V. Hayden Center for Intelligence, Policy, and International Security at George Mason University’s Schar School of Policy and Government. He also has a consulting firm.

In sum, Mr. Trump’s complaint is frivolous and wholly without merit, there is no “reason to believe” that Mr. Pfeiffer has committed any violation of FECA, and we urge the Commission to exercise its discretion to dismiss the complaint without any further action.

⁷ 52 U.S.C. § 30119(a); 11 C.F.R. § 115(a)(1).

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Respectfully submitted,

/s/David H. Laufman

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