



May 15, 2023

**VIA E-MAIL (CELA@FEC.GOV)**

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

**Re: MUR 8123 – Response of Russell Travers**

Dear Ms. Dennis:

On behalf of Respondent Russell Travers ("Mr. Travers"), the undersigned respectfully submits the following response to the complaint filed with the Federal Election Commission ("FEC") in MUR 8123 (the "Complaint").

The Complaint focuses on a two-page statement, dated October 19, 2020, signed by Mr. Travers and others regarding their views, at the time, about media coverage concerning Hunter Biden's emails (the "Statement"). The Complaint baselessly alleges that Mr. Travers, who was retired from the federal government when the Statement was made, violated the prohibition against federal contractors making campaign contributions or expenditures, 52 U.S.C. §30119(a) and 11 C.F.R. §115.2. The Complaint also alleges that Mr. Travers, an individual, violated 52 U.S.C. §30118(a) and 11 C.F.R. §114.2, which proscribes conduct by banks, corporations, and labor organizations. To support these alleged violations, the Complaint claims that the Statement constituted an in-kind contribution and an expenditure.

The Commission should find no reason to believe that Mr. Travers violated the Federal Election Campaign Act of 1971 (the "Act") and dismiss the Complaint because it fails to state a violation under the Act. **First**, any claim that the Statement constituted an in-kind contribution or expenditure under the Act is meritless. The Statement was an exercise of a group of individuals' First Amendment rights, and, beyond its constitutional protections, it does not constitute an expenditure or contribution under the FEC's exemption for uncompensated Internet activity by individuals, see 11 C.F.R. §100.155 and §100.94. **Second**, Mr. Travers was not a federal contractor at the time of the Statement, rendering the federal contractors ban, 52 U.S.C. §30119(a) and 11 C.F.R. §115.2, wholly inapplicable. **Third**, Mr. Travers, either individually or in conjunction with the Statement's other signatories, does not qualify as a corporation, national bank, or labor organization, thereby 52 U.S.C. §30118(a) and 11 C.F.R. §114.2 are also wholly inapplicable.

### **Factual Background**

On October 14, 2020, the New York Post published an article describing emails and other material found on Hunter Biden's laptop. Subsequently, on October 19, 2020, the aforementioned Statement was published.

The Statement, entitled "Public Statement on the Hunter Biden Emails," explained that the arrival of the Hunter Biden emails had "all the classic earmarks of a Russian information campaign."<sup>1</sup> The Statement also "emphasize[d]" that the signatories "do not know if the emails, provided to the New York Post by President Trump's personal attorney Rudy Giuliani, are genuine or not and that [they] do not have evidence of Russian involvement." The Statement was signed by Mr. Travers and fifty other individuals. Mr. Travers had no role in drafting the Statement, organizing the signatories to the Statement, or publishing the Statement.

More than two years later, Donald J. Trump filed the instant Complaint with the FEC, alleging, *inter alia*, that the Statement constituted an in-kind contribution and expenditure, and that Mr. Travers and the Statement's other signatories violated the federal contractors' ban, 52 U.S.C. §30119(a) and 11 C.F.R. §115.2, and the Act's prohibitions concerning corporations, national banks, and labor organizations, 52 U.S.C. §30118(a) and 11 C.F.R. §114.2. See Complaint at 17, ¶¶45-50. As previewed above, these allegations lack merit.

### **Legal Application**

#### **1. Mr. Travers's Exercise of his First Amendment Rights Does Not Violate the Act and the FEC's Internet Exemption Further Confirms that the Statement is Not a Contribution or Expenditure**

The Complaint's allegations that the Statement constitutes an in-kind contribution or expenditure under the Act completely disregard Mr. Travers's unbridled First Amendment rights.

As the Supreme Court has explained:

Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people." . . . Although First Amendment protections are not confined to "the exposition of ideas," . . . "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. . . . of course includ[ing] discussions of candidates" . . . This no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."

*Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (internal citations omitted).

Indeed, the First Amendment "prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." *Citizens United v. Fed.*

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<sup>1</sup> The Statement can be found online at: <https://www.politico.com/f/?id=00000175-4393-d7aa-af77-579f9b330000>.

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*Election Comm'n*, 558 U.S. 310, 349 (2010). Stated another way, “[t]he First Amendment safeguards an individual's right to participate in the public debate through political expression and political association. . . . First Amendment rights are important regardless whether the individual is, on the one hand, a ‘lone pamphleteer[ ] or street corner orator[ ] in the Tom Paine mold,’ or is, on the other, someone who spends ‘substantial amounts of money in order to communicate [his] political ideas through sophisticated’ means.” *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 203 (2014). Because Mr. Travers’s First Amendment right to associate with his peers and sign a statement cannot be confined by the Act or otherwise, the Complaint should be dismissed.

Beyond Mr. Travers’s sound First Amendment protections, the Statement also fits squarely within the FEC’s exemption for uncompensated Internet activity by an individual or a group of individuals. Under 11 C.F.R. §100.155 and §100.94, “[a]n uncompensated individual or group of individuals may engage in Internet activities for the purpose of influencing a federal election without restriction. The activity would not result in a “contribution” or an “expenditure” under the Act, and would not trigger any registration or reporting requirements with the FEC.” *Internet Communications and Activity*, FEC Brochure (May 1, 2006), *available at* <https://www.fec.gov/updates/internet-communications-and-activity/>. The definition of “Internet activities” includes “any [ ] form of communication distributed over the Internet.” 11 C.F.R. §100.155; §100.94. Therefore, the Statement, an uncompensated communication distributed over the Internet that was signed by a group of individuals, cannot be deemed a contribution or expenditure under the Act. Accordingly, the Complaint’s dismissal is warranted.<sup>2</sup>

## **2. Mr. Travers Could Not Have Violated the Federal Contractors’ Ban While Retired**

Moreover, the Complaint’s claim that Mr. Travers violated the ban on campaign contributions and expenditures by federal contractors, pursuant to 52 U.S.C. §30119(a) and 11 C.F.R. §115.2, is nonsensical. Mr. Travers retired from the federal government on July 3, 2020. See Affidavit of Russell Travers, ¶3 (attached hereto). The Statement was published on October 19, 2020. Mr. Travers did not return to federal service until January 2021. *Id.*, ¶6. Because Mr. Travers was not employed by or contracted to do work for the federal government at the time of the Statement, the Complaint’s claim that he violated the federal contractors’ ban should not be entertained.

The statute and regulation prohibiting contributions and expenditures by federal contractors makes clear that the prohibition applies while an individual is actually engaged in working for the government, not after. See 52 U.S.C. §30119(a)(1); 11 C.F.R. §115.1(b). The governing regulation explains:

The period during which a person is prohibited from making a contribution or expenditure is the time between the earlier of the commencement of negotiations or when the requests for proposals are sent out, and the later of—1.The completion of performance under; or 2.The termination of negotiations for, the

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<sup>2</sup> To the extent the Complaint can be read to assert that the Statement constituted an in-kind coordinated contribution with the Biden campaign, which the Biden campaign should have reported, the Complaint fails to assert any personal liability as to Mr. Travers. And, in any event, Mr. Travers, in signing the Statement, did not engage in any coordination about the Statement with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing, see 11 C.F.R. §109.21(a).

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contract or furnishing of material, supplies, equipment, land, or buildings, or the rendition of personal services.

*Id.*

Caselaw further illustrates this well-established and obvious parameter. See *Wagner v. Fed. Election Comm'n*, 793 F.3d 1, 4 (D.C. Cir. 2015) (holding that the challenge to the federal contractors ban, 52 U.S.C. §30119(a)(1), by certain individuals was moot because those individuals “completed their federal contracts and hence are once again free to make campaign contributions”); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-72 (1997) (holding that the plaintiff’s departure from her position as a state employee mooted her First Amendment challenge to a law regulating the speech of state employees).

Although the Complaint, at numerous points, posits that Mr. Travers should be deemed to have a “lifelong contractual obligation with the Federal Government,” because of his “employment background,” Complaint, ¶7, ¶26, ¶36, such an unsupported legal theory does not comport with the governing statute and regulation, and impedes on fundamental principles of personal freedom. Additionally, the Complaint’s insinuation that an ongoing obligation of Mr. Travers’s federal employment renders him a federal contractor, *id.*, ¶26, is baseless. Mr. Travers’s was a federal employee, not a federal contractor. Any obligations arising out of his federal employment do not transform his status as a former federal employee into a lifelong federal contractor.

### **3. Mr. Travers, an Individual, Could Not Have Violated the Prohibition Against Contributions or Expenditures by National Banks, Corporations, or Labor Organizations**

Further, the Complaint also seems to assert that Mr. Travers, in his individual capacity, somehow violated 52 U.S.C. §30118(a) and 11 C.F.R. §114.2. See Complaint at 17, ¶49. Those provisions make it unlawful for “any national bank,” “corporation,” or “labor organization,” to make contributions or expenditures. 52 U.S.C. §30118(a); 11 C.F.R. §114.2. Mr. Travers, either alone, or together with the Statement’s other fifty signatories, is not a national bank, corporation, or labor organization, and thus does not fit within the scope of 52 U.S.C. §30118(a) and 11 C.F.R. §114.2.

### **Conclusion**

In light of the above, the Commission should find that there is no reason to believe that Mr. Travers violated the Act and should dismiss the Complaint.

Sincerely,

COZEN O'CONNOR



By: Samantha Rubin Stratford  
Barbara “Biz” Van Gelder  
*Attorneys for Respondent Russell Travers*

**AFFIDAVIT OF RUSSELL TRAVERS**

RE: MUR 8123

I, **Russell Travers**, hereby declares as follows pursuant to 28 U.S.C. §1746:

1. I submit this Affidavit in response to the complaint filed with the Federal Election Commission ("FEC") in MUR 8123, in which I am named as a respondent.
2. I have full knowledge of the facts set forth herein.
3. I officially retired from the federal government on July 3, 2020.
4. I had no role in drafting the October 19, 2020 statement that is the subject of the complaint, (the "Statement"). Additionally, I had no role in organizing signatories to the Statement or publishing the Statement.
5. I did not engage in any coordination about the Statement with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing.
6. I returned to work for the federal government in January 2021.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 8, 2023.



**RUSSELL TRAVERS**