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A T T O R N E Y S   A T   L A W

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June 7, 2024

**Via email at cela@fec.gov**

Wanda D. Brown  
Assistant General Counsel  
Federal Election Commission  
Complaints Examination & Legal Administration  
1050 First Street, NE  
Washington, DC 20463

***Re: MUR 8243 – Response of Brandon Herrera, Brandon Herrera for Congress, Because Real Americans Never Doubt Our Nation PAC, Brandon Herrera Victory Committee and Thomas Datwyler in his official capacity as Treasurer***

Dear Ms. Brown:

On behalf of Brandon Herrera, Brandon Herrera for Congress, Because Real Americans Never Doubt Our Nation PAC, Brandon Herrera Victory Committee and Thomas Datwyler in his official capacity as Treasurer (collectively, the “Respondents”), I submit this response to the Complaint filed on or about April 18, 2024 and designated as Matter Under Review 8243.

The Complaint appears to allege that Brandon Herrera Victory Committee (the “JFC”) and Thomas Datwyler in his official capacity as Treasurer may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by paying for certain expenses beyond the scope of the JFC’s authority under the law. For the reasons explained below, the allegations in the Complaint are baseless because they are premised on an incorrect reading of the Act, and more specifically, 11 C.F.R. 102.17. As such, the Complaint lacks any merit and it should be dismissed in its entirety.

### Analysis

The Commission should dismiss the Complaint because, no matter how favorably it is read, there is no reason to believe that a violation of the law has occurred in this matter. In the past, the Commission has routinely found that purely speculative charges “do not form

## ZAINO HALL & FARRIN LLC

the adequate basis to find reason to believe that a violation of [law] has occurred.”<sup>1</sup> Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true.<sup>2</sup>

In the Complaint, Monica Rojas (the “Complainant”) alleges that Respondents violated the Act because the JFC made improper expenditures that only the principal campaign committee was authorized to make.<sup>3</sup> Specifically, the Complainant takes issue with a total of \$267,000 in payments for “Campaign Consulting”, “Media Placement” and “Texting” that were reported on the JFC’s April 15, 2024 Quarterly Report.<sup>4</sup> The Complainant believes the JFC was illegally used “to pay directly for [those] campaign expenses instead of using [the] principal campaign committee to do so.”<sup>5</sup> That legal conclusion is based on the Complainant’s belief that “[t]he FEC’s rules at 11 C.F.R. § 102.17 allow JFCs to act **only** as a fundraising vehicle.”<sup>6</sup>

These allegations fail because they are premised on a fundamental misunderstanding of the Act and the Commission’s regulations involving joint fundraising committees. To begin with, joint fundraising by political committees other than separate segregated funds is set forth in the Commission’s regulations.<sup>7</sup> These regulations allow a political committee to “engage in joint fundraising with other political committees or with unregistered committees or organizations.”<sup>8</sup> Contrary to the Complainant’s assertion, a joint fundraising committee is **not** “only [ ] a fundraising vehicle.” Yes, a joint fundraising committee is established “to act as [a] fundraising representative for all participants.”<sup>9</sup> But that is not the only purpose for a joint fundraising committee. As the Commission has previously recognized, a joint fundraising committee can serve as a vehicle for the payment of fundraising, advertising, administrative and/or personnel costs.<sup>10</sup> Consequently, contrary to the Complainant’s assertion, a joint fundraising committee can do more than just serve as a “fundraising vehicle”.

Most importantly though, the Complainant’s allegation that the JFC illegally paid for campaign expenses that only the principal campaign committee could pay completely misstates the law. As noted above, the Complainant believes that only Mr. Herrera’s principal campaign committee – Brandon Herrera for Congress – may pay for campaign expenses, and not the JFC. This may be true if the participating committees in a joint fundraising committee

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<sup>1</sup> MUR 5467 (Michael Moore), First General Counsel’s Report at 5 (quoting MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee), Statement of Reasons of Comm’rs Mason, Sandstrom, Smith & Thomas at 3).

<sup>2</sup> MUR 5845 (Citizens for Truth), Factual & Legal Analysis at 6 n. 8 (“Unwarranted legal conclusions from asserted facts or mere speculation … will not be accepted as true.”).

<sup>3</sup> See Complaint, p. 1, ¶ 5.

<sup>4</sup> *Id.*, p. 1, ¶ 3.

<sup>5</sup> *Id.*, p. 2, ¶ 9.

<sup>6</sup> *Id.*, p. 2, ¶ 10 (emphasis added).

<sup>7</sup> See 11 CFR 102.17.

<sup>8</sup> 11 CFR 102.17(a)(1)(i).

<sup>9</sup> *Id.*

<sup>10</sup> Advisory Opinion 2007-24 (Burkee / Walz).

## ZAINO HALL & FARRIN LLC

are *not* affiliated.<sup>11</sup> However, if participating committees in a joint fundraising committee *are* affiliated committees, the JFC is not required to allocate those expenses and may therefore pay for them. That is because 11 C.F.R. § 102.17(c)(ii) states as follows:

(ii) ***If participating committees are affiliated*** as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, ***expenses need not be allocated among those participants***. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.<sup>12</sup>

When the Complaint in this matter was filed on or about April 18, 2024, the JFC had two participating committees: (1) the principal campaign committee – Brandon Herrera for Congress, and (2) the leadership PAC – Because Real Americans Never Doubt Our Nation PAC. Both participating committees are maintained and controlled by the same person, namely, Brandon Herrera. Consequently, pursuant to 11 C.F.R. § 110.3, these two participating committees are affiliated.<sup>13</sup> Because the JFC’s participating committees were affiliated committees at that time under 11 C.F.R. § 112.07(c)(7)(ii)<sup>14</sup>, the JFC was not required to allocate expenses to its participating committees, and the JFC could pay for a committee’s expenses.

Finally, although it is not clear on the face of the Complaint, it appears that the Complainant seems to be suggesting that funds attributable to the leadership PAC – Because Real Americans Never Doubt Our Nation PAC – were improperly spent on “Campaign Consulting”, “Media Placement” and “Texting” for the principal campaign committee – Brandon Herrera for Congress.<sup>15</sup> To the extent that argument is being made, and to ensure there is 100% clarity on that issue, there were no funds allocated or attributable to the leadership PAC – Because Real Americans Never Doubt Our Nation PAC – that were used to pay for any expenses of the principal campaign committee – Brandon Herrera for Congress.

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<sup>11</sup> See 11 C.F.R. § 102.17(c)(7)(i).

<sup>12</sup> Emphasis added.

<sup>13</sup> See 11 C.F.R. § 110.3(a)(2) (“Affiliated committees ... include all of the committees established, financed, maintained or controlled by ... the same person or group of persons.”).

<sup>14</sup> On May 8, 2024, the JFC filed an Amended Statement of Organization to add the Republican Party of Texas as a 3<sup>rd</sup> participating committee. Before May 8, 2024, the two participating committees were Brandon Herrera for Congress and Because Real Americans Never Doubt Our Nation PAC, both of which were established and controlled by Brandon Herrera. The Complaint was filed with the Commission on or about April 18, 2024. Because the Complaint was filed prior to the May 8<sup>th</sup> filing that added the Republican Party of Texas to the JFC, this Response speaks to the participants of the JFC as of April 18, 2024, not on or after May 8, 2024.

<sup>15</sup> See Complaint, p. 2, ¶ 12.

## ZAINO HALL & FARRIN LLC

### Conclusion

No matter how favorably it is read, the Complaint fails to establish a reason to believe there was any violation of law in this matter. The Complaint's allegations are not supported by any actual facts or evidence that the Respondents acted in violation of the Act. As such, the Commission should find no reason to believe a violation of the Act occurred, and therefore, dismiss the Complaint in its entirety.

Respectfully,



Frank M. Strigari

*Counsel to Brandon Herrera,  
Brandon Herrera for Congress,  
Because Real Americans Never Doubt Our Nation PAC,  
Brandon Herrera Victory Committee and  
Thomas Datwyler, in his official capacity as Treasurer*