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February 8, 2023

Re: MUR 8099

Roy Q. Lockett
Acting Assistant General Counsel
Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Kathryn Ross, Paralegal
1050 First Street NE
Washington, DC 20463

Dear Mr. Lockett:

This response is submitted on behalf of the Honorable Kevin McCarthy (“Respondent”) with respect to a complaint designated as MUR 8099 (“Complaint”) that was filed with the Federal Election Commission (“Commission”) by Tiffany Muller and End Citizens United, a left-wing organization that has self-admittedly “assembled a team of veteran Democratic operatives to help get our message out about the influence of money in politics and how we’ll stop it.”¹ Based on this Complaint, it appears that part of that messaging strategy includes manufacturing facts up out of whole cloth and misstating the basics of campaign finance law. This response is timely submitted within 15 days of receipt. For the reasons discussed herein, the Commission should determine on the face of the Complaint that no law or regulation was violated by Respondent, and that the Complaint should be promptly dismissed.

The Complaint references a publicly announced agreement between two Super PACs – the Congressional Leadership Fund and the Club for Growth – over which the Respondent has no ability to direct or control. Respondent has no reason to believe that whatever agreement was reached between these two Super PACs was anything but an agreement between these Super PACs. The Complaint claims erroneously that “Representative McCarthy, and members of his staff, were directly involved in this decision,”² by referencing media posts stating things like it “likely required sign-off” from Representative McCarthy or his team,³ “McCarthy made the

¹ See <https://endcitizensunited.org/about-us/meet-our-team/> (visited on February 6, 2023).

² Complaint at 2.

³ *Id.* (citing Juliegrace Brufke, “McCarthy-aligned super PAC agrees not to interfere in primaries amid speaker stalemate,” Washington Examiner (Jan. 4, 2023), available at

concessions during negotiations late Wednesday after seeing his vote tally drop,”⁴ and concludes that “[r]eporting on the agreement indicates that Representative McCarthy, and members of his staff, were directly involved in this decision.”⁵ That conclusion, and the reporting that influenced it, are untrue. There is no evidence or substantiation for such false claims and unwarranted legal conclusions, which rely on pure speculation by third parties. Neither Respondent nor any members of his staff were involved in whatever agreement was or was not reached by these two Super PACs. Thus, as the Commission has made clear, “[p]urely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred.”⁶

Notwithstanding the lack of any factual basis for the Complaint, we do, as an editorial comment, take issue with “Legal Discussion” detailed in the Complaint. As stated in the Complaint, “the Congressional Leadership Fund (“CLF”) publicly agreed *not* to spend money in any ‘open-seat primaries in safe Republican districts’” and affirmed that it “will continue to support incumbents in primaries as well as challengers that affect the Majority...”⁷ Even if a federal candidate were involved in such a discussion, which did not occur here, on its face, a decision *not* to spend funds does not direct any expenditure of funds, let alone funds outside the federal limits or source prohibitions. Thus, such a discussion is not prohibited by 52 U.S.C. § 30125(e)(1)(A), 11 CFR §§ 300.60, 300.61, or any other provision of the Federal Election Campaign Act, 52 U.S.C. § 30101 *et seq.*), or any other regulations promulgated there under.

We therefore urge the Commission to dismiss this Complaint with prejudice. Please do not hesitate to contact me should you have any additional questions.

Very truly yours,



Elliot S. Berke

https://washingtonexaminer.com/news/house/mccarthy-aligned-super-pac-speaker-stalemate?utm_source=gazette.com&utm_medium=referral&utm_campaign=csg_news_feed.

⁴ *Id.* (citing Sara Dorn, McCarthy Agrees to These Concessions In His Quest To Become Speaker – But They May Not Be Enough (Jan. 5, 2023), available at <https://www.forbes.com/sites/saradorn/2023/01/05/mccarthy-agrees-to-these-concessions-in-his-quest-to-become-speaker-mbut-they-may-not-be-enough/?sh=426fe3c54510>).

⁵ *Id.* at 3.

⁶ MUR 5467 (Michael Moore), First General Counsel’s Report at 5 (quoting MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Comm.), Statement of Reasons of Comm’rs Mason, Sandstrom, Smith, & Thomas at 3).

⁷ *Id.* at 2-3.