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Jeff S. Jordan
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6937

Dear Mr. Jordan:

We write as counsel to NextGen Climate Action Committee ("NextGen Climate") and Rita Copeland in her official capacity as Treasurer ("Respondents"), in response to the complaint filed by the Foundation for Accountability and Civic Trust on May 4 (the "Complaint"). The Complaint is speculative and fails to set forth sufficient facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") or Commission rules.[1] Accordingly, the Complaint should be dismissed and the Commission should close the file.

Legal Analysis

The Commission may find "reason to believe" only if a complaint sets forth specific unrebutted facts, which, if proven true, would constitute a violation of the Act.[2] Additionally, "unwarranted legal conclusions from asserted facts" and mere speculation will not be accepted as true.[3] The Complaint fails to meet this standard and therefore must be dismissed.

The complaint filed concerns a data acquisition agreement that was executed in February of 2015, well after the November 2014 election. The Complaint alleges that as an independent expenditure-only committee, NextGen Climate made an illegal contribution to then-Congressman Bruce Braley's 2014 campaign for the United States Senate in Iowa, Braley for Iowa (the "Campaign"), by purchasing a mailing list from the Campaign in excess of the "usual and normal charge."[4] However, the Complaint's allegations are purely speculative and are contravened by the facts.

[1] *See* 11 C.F.R. § 111.4(d)(3).
[2] *See* Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, MUR 4960 (Dec. 21, 2000); *see also* 11 C.F.R. § 111.4(d)(3).
[3] Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, MUR 4960 (Dec. 21, 2000).
[4] *See* Complaint at 2 (quoting 11 C.F.R. § 100.52(d)).

The Commission's precedent permits a political committee to rent a list that was developed by the committee for its own purposes to third parties, including from sources and amounts beyond those permitted as contributions by the Federal Election Campaign Act .[5] So long as the list is leased at the normal and usual charge in a bona fide, arm's length transaction, and is used in a commercially reasonable manner, the funds received by the committee as a result of the purchase are not deemed a "contribution" under the Act or Commission rules.[6]

That is precisely what happened here. In early 2015, NextGen Climate anticipated that it might conduct programs in Iowa in connection with the upcoming presidential election and, accordingly, wished to acquire a list of potential supporters in that state. To that end, NextGen Climate spoke to the Iowa-based Campaign about potentially acquiring portions of its list. The Campaign offered to do so for a price of $177,817.60 and, believing that the offering price was reasonable, NextGen Climate accepted the offer. NextGen Climate and the Campaign then negotiated and executed a Data Acquisition Agreement, in which, among other things, the Campaign represented and warranted that the fee paid by NextGen Climate represented the fair market value of the data it acquired.[7]

The Complaint presents no facts that suggest otherwise. It fails to present any gap between what a similarly situated consumer would have paid for a similar list, and what NextGen Climate actually paid.[8] Instead, it merely cites to an unrelated matter in which a different committee acquired a different list, of unspecified size or quality, for less money than NextGen Climate paid.[9] But the Complaint does not present any facts to suggest that the list acquired in that matter was similar in size or quality to the list that NextGen Climate acquired, nor does it present any facts showing what a list of similar size and quality would cost in Iowa. Without such facts, the Complaint's claim that NextGen Climate did not pay fair market value is mere speculation, and the Complaint must be dismissed.[10]

[5] *See, e.g.*, Advisory Opinion 2002-14.
[6] *Id.*
[7] See Data Acquisition Agreement, § 3.7 (attached as Exhibit A).
[8] *See* 11 C.F.R. § 100.52(d)(2).
[9] Complaint at 3.
[10] *See* Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, MUR 4960 (Dec. 21, 2000).

Conclusion

The facts show that NextGen Climate acquired a portion of the Campaign's list through an arm's length transaction for the normal and usual charge, and for its own political purposes unrelated to advancing Congressman Braley's election. The Complaint presents no specific facts that suggest otherwise, and as such does not meet the Commission's reason to believe standard. For these reasons, we respectfully request that the Commission dismiss this matter and take no further action.

Very truly yours,

Marc E. Elias
Ezra W. Reese
Andrew H. Werbrock
Colin Z. Allred
Counsel to Respondents