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BY ELECTRONIC MAIL

Lisa J. Stevenson, Esq.
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Federal Election Commission
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Re: MUR 7904

Dear Ms. Stevenson:

We write on behalf of Hansjörg Wyss, the Wyss Foundation, and Berger Action Fund (collectively, “Respondents”) in response to the complaint in MUR 7904 (the “Complaint”). The Complaint alleges that Respondents violated 52 U.S.C. §§ 30103(a), 30104, 30121, and 30122, and the Federal Election Commission (the “Commission”) regulations implementing those statutes, by engaging in a wide-ranging, ill-defined “scheme” to use foreign funds to influence federal elections and to conceal the source of the funds. Not only are these allegations baseless, but they are not even articulated with specificity or supported by facts in the Complaint.¹ Simply put, the Complaint attempts to create a shadowy conspiracy where none exists. The Complaint draws speculations from a selective reading of a handful of news articles, including an article based on the very same WikiLeaks documents that members of this Commission have declined to consider in past enforcement actions.² Contrary to the far-flung allegations in the Complaint,

¹ See Statement of Reasons (“SOR”) of Comm’rs Mason, Sandstom, Smith & Thomas at 2, 4, MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee) (Dec. 21, 2000) (stating that “[u]nwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true” and stating that complaints must make “a sufficiently specific allegation . . . so as to warrant a focused investigation” before there can be a reason-to-believe finding (internal citations omitted)).

² See Complaint (“Compl.”) ¶¶ 14, 16, 27 (May 14, 2021) (citing Kenneth P. Vogel & Katie Robertson, *Top Bidder for Tribune Newspaper Is an Influential Liberal Donor*, N.Y. TIMES (Apr. 13, 2021), which relies on a Hub Project business plan exposed “in a tranche of data made public by WikiLeaks”); see also SOR of Comm’r Weintraub at 3-4, MUR 7284 (AB PAC) (May 19, 2021) (“The Wikileaks material was not merely illegally obtained, it was derived from ‘active measures’ undertaken by a foreign government as part of ‘an aggressive, multifaceted effort to influence, or attempt to influence, the outcome of the 2016 presidential election.’ As the agency charged with civil enforcement of the foreign national political spending ban, it would be particularly inappropriate for the FEC to base an enforcement action on material derived from a violation of this law.”); SOR of Chair Broussard at 2, *id.* (May 18, 2021) (“I had equitable concerns about the use of illegally obtained WikiLeaks information by the Complainant.”); SOR of Vice Chair Petersen & Comm’r Hunter at 2 n.4, MURs 6940/7097/7146/7160/7193 (Correct the Record) (Aug. 21, 2019) (“Some of the complaints in these matters rely on information that was illegally obtained by

Page 2

Respondents have taken great care to avoid any participation in elections and to prevent Mr. Wyss's money from being used in connection with elections. They have taken precautions above and beyond what the law requires, and the Commission should dismiss the Complaint immediately.

FACTUAL BACKGROUND

While Mr. Wyss is a Swiss citizen and a foreign national within the meaning of the Federal Election Campaign Act of 1971,³ as amended (the "Act" or "FECA"), there is no "elaborate scheme to utilize a foreign national's funds to indirectly make contributions and expenditures" or otherwise violate the Act.⁴ Some background is required to clear up the misconceptions and inaccuracies contained in the Complaint.

A. The Wyss Foundation

The Wyss Foundation is a 501(c)(3) charitable organization to which Mr. Wyss donates some of his personal funds and sits on the board.⁵ The Wyss Foundation's mission is to support "innovative, lasting solutions that improve lives, empower communities, and strengthen connections to the land."⁶ The Wyss Foundation fulfills its mission by making grants to other 501(c)(3) charities that conserve lands and wildlife or have a focus on expanding economic opportunities and reducing inequalities.⁷ Together, the Wyss Foundation's grantees have conserved 64 million acres of land, including 22 million in the United States alone.⁸ They have also saved 494 million acres of the Earth's oceans (equivalent to 2 million square kilometers). The Wyss Foundation, through its support of these charitable organizations, has preserved more

Russian intelligence officers through hacking operations that targeted computers and networks used by Hillary for America and thereafter published on WikiLeaks. We believed that it would be inappropriate for the Commission to consider such information. Accordingly, we excluded from our deliberations the material stolen and disseminated by the Russian government." (internal citation omitted)); SOR of Chair Weintraub, *id.* (Sept. 20, 2019) (agreeing with the respondents' argument that the Commission should not rely on materials disseminated by Wikileaks, stating that "[t]he Commission is not in the business of rewarding foreign adversaries that hack American campaigns and interfere with U.S. elections").

³ See 52 U.S.C. § 30121(b)(1).

⁴ Compl. ¶ 24.

⁵ See Kenneth P. Vogel, *Swiss Billionaire Quietly Becomes Influential Force Among Democrats*, N.Y. TIMES (May 3, 2021).

⁶ *About Us*, WYSS FOUND., <https://www.wyssfoundation.org/about> (last visited June 27, 2021).

⁷ See *Philanthropy*, WYSS FOUND., <https://www.wyssfoundation.org/philanthropy> (last visited June 27, 2021). The Wyss Foundation sometimes makes grants to the foreign equivalents of 501(c)(3) organizations when it seeks to preserve lands outside the United States.

⁸ The grantees typically buy undeveloped lands and turn them into parks or monuments, or donate the land to a country's government so that the government can protect it. See, e.g., *Land*, WYSS FOUND., <https://www.wyssfoundation.org/land> (highlighting some of the environmental grantees' work).

land and sea than any group active today. And it has made significant inroads in fighting poverty and providing health and other critical resources to underprivileged communities.⁹

As a charitable organization, the Wyss Foundation is barred by the Internal Revenue Code from participating in elections, as are all of its grantees.¹⁰ Accordingly, the Wyss Foundation does not make any “contributions” or “expenditures” itself, or participate in elections in any other way, and it has compliance measures in place to prevent grant recipients from using its money on electoral activities. For this purpose, and to ensure that none of Mr. Wyss’s donations are used indirectly on electoral activities potentially in contravention of the Act’s foreign-national ban, the Wyss Foundation includes restrictive language in the agreement for every grant it makes. Each agreement requires the grantee to promise, with this specific language or a materially indistinguishable variation:

Not to use any funds from this grant for voter registration or Get-out-the-Vote (“GOTV”) activities, or to intervene in any election in support of or opposition to any candidate for public office or to support or oppose any political party, or to engage in any activities to influence a ballot measure that would be reportable to federal, state or local campaign finance authorities, that would require a disclaimer under federal, state or local campaign finance law, or that would otherwise be subject to regulation under federal, state or local campaign finance law.

These grant agreements are legally enforceable contracts and include a clause stating that the agreement is the full agreement between the parties. Thus, there are no additional, covert agreements about how the money should be used, as the Complaint would imply. While the Wyss Foundation has never had reason to think that a grantee was using its funds for electoral purposes, grantees have from time-to-time violated other clauses in a grant agreement, and the Wyss Foundation has acted swiftly to exercise its legal right—also set out in the agreement—to revoke the agreement and demand its money back. It would do the same should an organization ever violate the election-related covenants.

The Complaint focuses on grants made from the Wyss Foundation to New Venture Fund,¹¹ which is a 501(c)(3) charitable organization that runs various projects under its umbrella.¹²

⁹ See *Communities*, WYSS FOUND., <https://www.wyssfoundation.org/communities> (last visited July 7, 2021).

¹⁰ 26 U.S.C. § 501(c)(3); *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, IRS, <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations#:~:text=Under%20the%20Internal%20Revenue%20Code,candidate%20for%20elective%20public%20office> (last visited June 27, 2021) (“Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign . . .”).

¹¹ See generally Compl.

¹² *Who We Are*, NEW VENTURE FUND, <https://newventurefund.org/who-we-are/> (last visited June 27, 2021); *Our Model*, NEW VENTURE FUND, <https://newventurefund.org/how-we-work/our-model/> (last visited June 27, 2021).

While the Wyss Foundation has made grants to New Venture Fund, it has limited those grants to specific projects and used the restrictive language cited above in the grant agreements. In recent years, the Wyss Foundation has given money only to New Venture Fund for the benefit of its Andes Amazon Fund Project, which provides technical and other assistance to local groups in South America for protecting the Amazon rainforest and Andes mountain range.¹³ In 2016, however, the Wyss Foundation gave one single grant of \$25,000 to New Venture Fund for use on its Hub Education and Engagement Fund. This is the only grant the Wyss Foundation ever made to New Venture Fund for this purpose, and the grant contained the precise restrictive language quoted above. Therefore, contrary to the allegations in the Complaint, which were only supported by a WikiLeaks document and anonymous sources, the Wyss Foundation did not provide significant grants to establish what the Complaint calls “the Hub Project.”¹⁴ Moreover, it took all the steps within its power to prevent New Venture Fund from using any Wyss Foundation grant money in connection with electoral activities, including for use as part of contributions to super PACs like Change Now (which New Venture Fund could not even contribute to in the first instance as a result of its own 501(c)(3) status).

B. Berger Action Fund

Berger Action Fund is a 501(c)(4) social welfare organization that is related to the Wyss Foundation.¹⁵ Mr. Wyss is just one donor to Berger Action Fund, and he has only donated U.S.-sourced funds derived from the sale of a domestic asset to a U.S. company. Further, he does not sit on Berger Action Fund’s board or exercise any decision-making power over the Fund’s activities. All decisions made regarding grants, including overall budget and the recipients of individual grants from the Berger Action Fund, are made by United States citizens.

Berger Action Fund exists to make grants to other 501(c)(4) organizations that engage in lobbying and advocacy efforts in support of land and wildlife conservation and economic opportunity—the same causes the Wyss Foundation supports through direct philanthropic

¹³ See *Donors*, ANDES AMAZON FUND, <https://www.andesamazonfund.org/about/donors/> (last visited June 27, 2021); *Impact*, ANDES AMAZON FUND, <https://www.andesamazonfund.org/impact/> (last visited June 27, 2021).

¹⁴ See Vogel & Robertson, *supra* note 2. The article, in alleging that the Wyss Foundation created what it calls “the Hub Project,” cites “interviews with five people with knowledge of The Hub Project, an internal memo from another liberal group . . . and the appearance of The Hub Project’s business plan in a tranche of data made public by WikiLeaks.” *Id.* Respondents wish they could make a more specific refutation of the allegations in the article that the Complaint recycles, but Respondents do not know the identity of the five people or what they said, do not know what “liberal group” the articles references much less anything about its internal memos, and refuses to engage with a stolen document published on WikiLeaks, particularly when the document is not even alleged to have been created by Respondents. Respondents urge the Commission to treat this allegation with the same level of skepticism. See *supra* note 2; see also SOR of Chair Petersen & Comm’rs Hunter & Goodman at 7, MUR 6661 (Murray Energy Corp.) (June 2, 2016) (“[A]llegations based upon unsworn news reports, anonymous sources, and an author’s summary conclusions and paraphrases provide questionable legal basis to substantiate a reason to believe finding.”).

¹⁵ See Vogel, *supra* note 5.

efforts. All of the organizations receiving Berger Action Fund grants have a primary purpose and spend the majority of their budget on activities that are not electoral.

While Berger Action Fund's tax status and decision-making structure would allow it to engage in some electoral activities, an important point noted in one article cited in the Complaint (but conveniently ignored by Complainant), is that Berger Action Fund does not exercise this option, and in fact has a "policy barring 'any of its funding from being used to support or oppose political candidates or electoral activities.'"¹⁶

Again, so that there can be no doubt it complies with the federal campaign finance laws, Berger Action Fund includes restrictive language in all of its *binding* grant agreements so that Mr. Wyss's money is not used, indirectly, to influence elections. Each grant agreement requires the grantee to represent that it "shall not use any portion of the Grant Funds for partisan voter registration, partisan 'Get-Out-the-Vote ('GOTV')' activities, or to intervene in any election in support of or opposition to any candidate for public office or to support or oppose any political party," or requires the grantee to adhere to similar language. There is also a clause stating that the grant agreement represents the entire agreement between the parties, and one giving Berger Action Fund the right to terminate the agreement and demand its money back if the grantee breaches any provision. Berger Action Fund is so serious about enforcing its self-imposed election restrictions that it also has a policy of orally informing potential grantees about the restrictions before engaging in grant discussions. If any grant recipient violated the prohibition, Berger Action Fund would terminate the agreement for cause and request its money back, as allowed by the agreement.

The Complaint focuses the allegations surrounding Berger Action Fund on grants it has made to Sixteen Thirty Fund,¹⁷ a 501(c)(4) organization that runs projects under its umbrella.¹⁸ The Complaint claims that, because Sixteen Thirty Fund engages in limited, permissible electoral activities, including through the Hub Project (which the Complaint incorrectly associated with New Venture Fund), Mr. Wyss's money must have been used to intervene in elections.¹⁹ However, as just noted, Berger Action Fund uses legally-binding agreements to bar all of its grantees, including Sixteen Thirty Fund, from using its money in any way to influence elections. Furthermore, Berger Action Fund is just one donor to Sixteen Thirty Fund, which has other revenue streams with which it can fund its electoral activities.²⁰

¹⁶ *See id.*

¹⁷ *See generally* Compl.

¹⁸ *How We Help*, SIXTEEN THIRTY FUND, <https://www.sixteenthrityfund.org/how-we-help/> (last visited June 27, 2021).

¹⁹ Compl. ¶¶ 19, 23.

²⁰ As noted above, the Wyss Foundation does not contribute to 501(c)(4) organizations. It has never made a grant to Sixteen Thirty Fund, much less one earmarked for the Hub Project. Likewise, because Berger Action Fund does not make grants to 501(c)(3) organizations, it has never provided funding to New Venture Fund, much less a grant

LEGAL ANALYSIS

A. Foreign National Allegations

The Act prohibits foreign nationals from, directly or indirectly, making “a contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election” and from making “an expenditure, independent expenditure, or disbursement for an electioneering communication.”²¹ The Commission’s regulations further prohibit any person from knowingly providing “substantial assistance in the making of an expenditure, independent expenditure, or disbursement” by a foreign national, or in the “making, acceptance, or receipt of a” prohibited foreign-national contribution or donation.²² Under the regulations, foreign nationals also cannot:

[D]irect, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation . . . with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office²³

The Complaint alleges that Respondents violated each of these prohibitions.²⁴ Respondents rebut each such allegation in turn.²⁵

1. The Spending Ban

The Complaint’s central claim is that Mr. Wyss donated his personal funds to the Wyss Foundation and Berger Action Fund, which passed his money through to New Venture Fund and Sixteen Thirty Fund, which, in turn, spent his money on electoral activities or passed his money on in subsequent transactions to affiliated groups that make independent expenditures.²⁶ The

earmarked for New Venture Fund’s Hub Education and Engagement Fund. Both the Wyss Foundation and Berger Action Fund provide their Form 990s—which include a complete list of their grantees—when requested, as required by law. *See* 26 U.S.C. § 6104(d).

²¹ 52 U.S.C. § 30121(a)(1)(A), (C).

²² 11 C.F.R. § 110.20(h).

²³ *Id.* § 110.20(i).

²⁴ *See generally* Compl. To the extent the Complaint alleges that Mr. Wyss made direct contributions to federal candidates, those allegations involve conduct that occurred roughly 20 to 30 years ago—far outside the Act’s 5-year statute of limitations. *See* 52 U.S.C. § 30145(a); Compl. ¶ 23. The Commission must dismiss those claims.

²⁵ Respondents note that the Complaint does not urge, and the law does not support, any conclusion that foreign-national spending or involvement in issue advocacy and other forms of policy debate are unlawful. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 284 (D.D.C. 2011) (“This statute, as we interpret it, does not bar foreign nationals from issue advocacy”), *aff’d*, 565 U.S. 1104 (2012) (affirming without opinion).

²⁶ *See generally* Compl.

Complaint argues that, through these complex transactions, Mr. Wyss indirectly made prohibited donations, contributions and/or expenditures in connection with elections.²⁷

However, the Complaint's conclusion is speculative and rests on an incomplete understanding of the facts. As described in detail above, the Wyss Foundation and Berger Action Fund do not spend money on elections, and they require every organization accepting their money to represent and warrant in a grant agreement that the money will not be used in connection with any election. The restrictive language in the agreements is broad and clearly covers contributions and donations, electioneering communications, independent expenditures, and any other election-influencing activity. Respondents designed the language precisely to ensure that Mr. Wyss remains beyond reproach, and they have never had a reason to suspect that any grantee has violated the plain language of an agreement's election prohibitions. The agreements are legally binding and, as written in the agreements themselves, represent the entire understanding between the parties. There are no other agreements, explicit or implicit, about how grantees should use the money, and the Complaint has presented no evidence to the contrary. Respondents accordingly urge the Commission to find no reason to believe that Mr. Wyss violated the prohibition on foreign national electoral spending.

2. Substantial Assistance

While the Complaint in no way articulates a cogent claim that any Respondent provided substantial assistance to a foreign national in violating the spending ban, the Complaint at times appears to be trying to allege that the Wyss Foundation and Berger Action Fund—by granting Mr. Wyss's money, directly or indirectly, to electorally-active organizations—knowingly assisted Mr. Wyss in violating FECA.²⁸ Though a response to a baseless and insufficiently articulated allegation is not required, Respondents point again to the restrictive language in their grant agreements. The agreements not only show that Mr. Wyss did not violate the spending ban, but that the Wyss Foundation and Berger Action Fund took precautions beyond those even required by the law to make sure no grant recipient used Mr. Wyss's money on electoral activity. They have not violated the Act by assisting in any prohibited foreign political spending.

3. The Participation Ban

Similarly, the Complaint loosely argues that Mr. Wyss participated in the Wyss Foundation, Berger Action Fund, and potentially the Hub Education and Engagement Fund or Hub Project's decisions with regard to what it deems election-related spending.²⁹ However, as noted above, because Respondents wanted to exercise caution concerning Mr. Wyss's status as a foreign national, and because of the Wyss Foundation's IRS status, neither the Wyss Foundation nor

²⁷ *Id.*

²⁸ *See id.* ¶ 25.

²⁹ *See id.*

Berger Action Fund engage in any electoral activities or grant money for use in elections. Therefore, neither organization has made any election-related decisions in which Mr. Wyss could even participate. (Not to mention that Mr. Wyss is not on the board of Berger Action Fund and does not participate in any of its decisions.)

Furthermore, as the Complaint openly admits, the Hub Education and Engagement Fund is not controlled by Mr. Wyss or any Wyss-related entity; it is a project of New Venture Fund. The Complaint makes no showing that Mr. Wyss is in a position to have any involvement in its decisions, and indeed he has not participated in New Venture or Sixteen Thirty Funds' decisions. This is another baseless allegation that must be dismissed.

B. Conduit Allegations

Another provision of the Act states that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another.”³⁰ Generally, when a person provides money to a corporation, the money “become[s] the corporation’s funds and are no longer those of the corporation’s” donor.³¹ Should the corporation choose to donate the funds to a super PAC, the corporation is the contributor.³² However, if a person gives funds to a corporation with instructions to contribute them to the super PAC, and the corporation makes the contribution in its own name, then a contribution in the name of another has occurred because the individual was the true donor and evaded the Act’s reporting requirements.³³ The Commission will find a corporation to be a straw donor only where “specific evidence demonstrates” that the corporation was a conduit.³⁴

While the Complaint alleges that illegal conduit contributions occurred, it provides no relevant, much less specific, evidence of a violation. The Complaint claims that because Mr. Wyss’s alleged connections to the Hub Education and Engagement Fund or the Hub Project and a super PAC, Change Now, are not clear from their websites or other public sources, he was making contributions in the name of another.³⁵ However, 52 U.S.C. § 30122 violations have nothing to do with what a group publicizes on its website; the relevant question is only whether a donor passed funds through a conduit so that the recipient political committee would not know or disclose the true source of the contribution. Here, where there is no evidence in the Complaint suggesting that Mr. Wyss earmarked his donations to the Wyss Foundation and Berger Action

³⁰ 52 U.S.C. § 30122.

³¹ *SOR of Chair Petersen & Comm’rs Hunter & Goodman* at 11, MURs 6485/6487/6488/6711/6930 (W Spann LLC) (Apr. 1, 2016).

³² *See id.* 12-13.

³³ *See id.*

³⁴ *Id.* at 12; *see also* First Gen. Counsel’s Rpt. at 19, MUR 7314 (NRA) (May 28, 2019) (stating that the Commission requires specific information of a conduit scheme before it will find reason to believe).

³⁵ *Compl.* ¶¶ 26-27.

Fund for Change Now, any other political committee, or any nonprofit for the purpose of electioneering communications or independent expenditures, the Complaint has failed to state a claim. On top of that, Respondents have explained that they use grant agreements to bar all groups receiving grants that may include Mr. Wyss's money, including New Venture and Sixteen Thirty Fund, from passing any portion of the grants on to political committees or using the grants for reportable electoral activity. As Respondents have not even financed any electoral activity, much less secretly funneled money toward reportable electoral activity, the Commission must find no reason to believe a violation of 52 U.S.C. § 30122 occurred.

C. Political Committee Status Allegations

The Act and Commission regulations define “political committee” as any “association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.”³⁶ In *Buckley v. Valeo*, the Supreme Court held that this definition was overbroad and added that a group of persons, in order to be a “political committee,” must also have as its “major purpose” the “nomination or election of a candidate.”³⁷ Accordingly, under the statute as now construed, an organization must register as a political committee and file regular reports with the Commission only if it (1) crosses the \$1,000 threshold and (2) has as its major purpose the nomination or election of federal candidates.³⁸

The Commission analyzes an organization's major purpose on a case-by-case basis, looking at the organization's activities as a whole.³⁹ In doing so, the Commission considers the group's public statements about its mission, its organizational documents and government filings, its fundraising materials (to determine whether they indicate funds raised will be used to support or oppose candidates), and compares the group's election spending to its spending on activities that are not related to elections.⁴⁰

The Complaint appears to allege that the Wyss Foundation and Berger Action Fund qualified as political committees by virtue of their grants to Sixteen Thirty and New Venture Fund, which allegedly were used for electoral activities.⁴¹ It claims Respondents violated the Act by failing to register and file disclosure reports with the Commission.⁴² But this is another claim that finds no support in the Complaint or in reality. The Wyss Foundation is a charitable organization barred from participating in elections. It has not crossed the \$1,000 threshold because it has never

³⁶ 52 U.S.C. § 30101(4)(a); 11 C.F.R. § 100.5.

³⁷ 424 U.S. 1, 79 (1976).

³⁸ See 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

³⁹ Factual & Legal Analysis at 7, MUR 6538R (Americans for Job Security) (June 6, 2017).

⁴⁰ *Id.*

⁴¹ Compl. ¶¶ 28-29.

⁴² See *id.* ¶¶ 28-32.

Page 10

accepted a contribution or made an expenditure.⁴³ It also does not solicit funds with reference to elections; it has never reported an electioneering communication or independent expenditure; its public statements reference efforts aimed at conservation and economic opportunity, not elections; it only makes grants to other charitable organizations; and it actively restricts all of its grants from use in connection with elections. The Wyss Foundation is a purely philanthropic organization and does not meet either prong of the political committee test.

Likewise, Berger Action Fund has not accepted any contributions or made any expenditures.⁴⁴ It supports advocacy and lobbying efforts surrounding conservation and economic policies by making grants to other 501(c)(4) organizations. It restricts its grants so that they cannot be used on electoral activities; its public statements indicate that it has a policy of avoiding electoral activity; it does not solicit funds with reference to elections; and it has never reported any electioneering communications or independent expenditures. Like the Wyss Foundation, Berger Action Fund does not meet the political committee test, as it has engaged in no electoral activity whatsoever. The Commission must find no reason to believe either entity failed to register or report as a political committee.

CONCLUSION

As demonstrated herein, the Complaint severely misconstrues the facts, jumps to unwarranted conclusions, and, in doing so, besmirches Respondents' reputations. Respondents carefully structure their activities to operate well within the bounds of the Act and have purely philanthropic and social welfare goals. They have no involvement in elections, much less unlawful involvement. Accordingly, the Commission should reject the Complaint's request for an investigation, find no reason to believe that a violation of the Act or Commission regulations has occurred, and immediately close this matter.

Very truly yours,



Marc E. Elias
Shanna M. Reulbach

Counsel to Respondents

⁴³ See 52 U.S.C. § 30101(8)(A)(i) (defining "contribution" as a gift provided "for the purpose of influencing any election for Federal office"); *id.* § 30101(9)(A)(i) (defining "expenditure" as a distribution or payment made "for the purpose of influencing any election for Federal office"). The Wyss Foundation specifically restricts its grants so they cannot be used to influence any election, and it does not accept money for the purpose of elections. Therefore, it has not accepted any contributions or made any expenditures.

⁴⁴ See *supra* note 43. The same explanation applies to Berger Action Fund.