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September 27, 2004

BY HAND DELIVERY

Mr. Lawrence H. Norton
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5501

Dear Mr. Norton:

On behalf of Senator John Kerry ("Respondent"), this letter is submitted in response to the complaint filed by Marcus G. McDonald ("the Complaint") and subsequently labeled MUR no. 5501. The Complaint should be immediately dismissed.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. *See* 11 C.F.R. §§ 111.4(a), (d) (2004). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. *See* Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

While the Complaint is far from pellucid, it seems to allege that the Howard Heinz Endowment and the Vira I. Heinz Endowment have made grants to the Tides Foundation, and that the Tides Foundation has in turn made grants to radical or terrorist organizations. Yet it identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." *Id.* Moreover, it does not allege any violations of the Federal Election Campaign Act of 1971, as amended, and chapter 95 or 96 of title 26. *See* 2 U.S.C. § 437g(a)(1) (2004). In fact, the Complaint does not identify any law that has been violated.

This Complaint also sets forth no facts to allege that Senator Kerry violated any law. Indeed, the Complaint does not allege any activity by Senator Kerry, lawful or otherwise. As the attachment to the Complaint acknowledges, Senator Kerry has no

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September 27, 2004
Page 2

role in the management of the Heinz endowments, and he has never made a contribution to the Tides Foundation.

Because the Complaint alleges no actual conduct by Senator Kerry and because it relies entirely on conclusory allegations, it should be dismissed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Marc Elias".

Marc E. Elias
Counsel to Senator John Kerry

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