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2004 SEP 20 P 4:25

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September 20, 2004

**VIA HAND DELIVERY**

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

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2004 SEP 20 P 3:42

**RE: MUR 5501 – The Tides Foundation and The Democratic  
Justice Fund**

Dear Mr. Norton:

This letter responds to the complaint filed by Marcus G. McDonald against The Tides Foundation and the Democratic Justice Fund in Matter Under Review 5501. Mr. McDonald fails to identify any violation of the Federal Election Campaign Act (the “Act”). See 2 U.S.C. § 437g(a)(1) and 11 C.F.R. §111.4.<sup>1</sup> Moreover, the limited references that Mr. McDonald makes in his letter to the Tides Foundation are inaccurate and entirely misrepresent the Foundation and its work. To the extent he appears to refer to the Tides Foundation as a “Democratic operative” in his letter, the Tides Foundation categorically and emphatically denies this characterization. As discussed in more detail below, the Tides Foundation is a nonpartisan organization and does not operate on behalf of or in connection with the Democratic Party, any other party or candidate. Therefore, we request that the Commission dismiss this complaint with no further action.

The Tides Foundation is a public charity exempt from taxation under Internal Revenue Code Section 501(c)(3). Founded in 1976, Tides Foundation has made over \$400 million in grants to tens of thousands of nonprofit organizations to support education, scientific and charitable work largely to promote a society based on fairness, equal justice and economic opportunity. Tides Foundation maintains a public record of its grants which is accessible through a variety of sources. For example, a listing of recent grantees from 2003 can be viewed at [www.tidesfoundation.org/documents/TF\\_GrantsMade\\_2003.pdf](http://www.tidesfoundation.org/documents/TF_GrantsMade_2003.pdf).

<sup>1</sup> Both the Act and the regulations require that a complaint “contain a clear and concise recitation of the facts which describe a violation of the statute or regulations over which the Commission has jurisdiction.” 11 C.F.R. § 111.4(d)(3). Mr. McDonald’s complaint fails to meet this requirement.

The Tides Foundation received \$230,000 in grants from the Heinz Endowments between 1994 through 1998, many years prior to the time Ms. Heinz Kerry's husband began his campaign for the Presidency. These funds supported nonpartisan environmental projects and pollution prevention initiatives. Tides Foundation has received no other funds from the Heinz Endowments.<sup>2</sup>

The complaint also refers to the Democratic Justice Fund. Contrary to Mr. McDonald's wholly inaccurate description of its purposes, the Democratic Justice Fund was an outgrowth of the Tides Foundation's 9/11 Fund. The 9/11 Fund was established in the wake of September 11 for three purposes: to provide immediate relief to underserved communities, to address the sharp increase in anti-immigrant sentiment in the country and to protect civil liberties. The 9/11 Fund was later renamed the Democratic Justice Fund. It is not a separate legal entity and, therefore, responds to this complaint through the Tides Foundation. Like all other Tides Foundation initiatives and projects, this Fund was used exclusively to support nonpartisan charitable activities. No monies from this Fund have ever been used for or directed to partisan or violent groups or activities. To the extent that Mr. McDonald intends to suggest that the Tides Foundation supports groups that condone or have any ties whatsoever with terrorism, Respondent categorically denies such an allegation. The Fund ceased its activities in December, 2003.

Based on the facts presented above and the failure of Mr. McDonald to identify any factual or legal basis for a complaint against the Tides Foundation, we respectfully request that this matter be dismissed without further action.

Very truly yours,



B. Holly Schadler  
Counsel to The Tides Foundation

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<sup>2</sup> The Tides Center, which is not a Respondent in this matter, is a public charity and a separate legal entity from the Tides Foundation. Since 1994, the Center has received funds from the Heinz Endowments to support specific environmental, economic opportunity, youth and other charitable and educational programs. The websites of both the Tides Center and the Heinz Endowments provide a comprehensive listing of these grants and the nonpartisan projects they supported. The Tides Center's projects are conducted in a strictly nonpartisan manner and, like the Tides Foundation, do not directly or indirectly engage in any political activity on behalf of or in opposition to any candidate or political party.