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Lawrence M. Noble, Esquire
General Counsel
Office of the General Counsel
Federal Election Commission
6th Floor
999 E Street, N.W.
Washington, DC 20463

Re: MURs 4924 and 4926 Hillary Rodham Clinton; Hillary Rodham Clinton for U.S. Senate Exploratory Committee; William J. Cunningham, III, as treasurer, and Terence McAuliffe

Dear Mr. Noble:

On behalf of Mrs. Hillary Rodham Clinton, the Hillary Rodham Clinton for U.S. Senate Exploratory Committee, William J. Cunningham, III, as treasurer, (the "Committee"), and Mr. Terence McAuliffe, this letter is in response to substantially similar complaints filed by the Conservative Campaign Fund (MUR 4924) and Mr. Jeffrey Scott Smith (MUR 4926) (the "Complainants") in the above-captioned Matters Under Review ("MUR").

The Committee and Mr. McAuliffe deny, for the reasons presented below, that any violation of the Federal Election Campaign Act of 1971, as amended, (the "Act") or of the Commission's regulations has occurred and request that the Commission promptly dismiss these complaints and close this matter, as it pertains to Mrs. Clinton, the Committee and Mr. McAuliffe.

The threshold issue in this matter is whether the Act prohibits a bank from lending money, in the ordinary course of business, to a husband and wife, one of whom may become a federal candidate, so that they may use the entire proceeds from the bank loan to purchase a house to be used as their primary residence. Unquestionably, the Act does not even apply to this matter, let alone prohibit it.

As outlined below, the complaints against Mr. McAuliffe are now moot and should be promptly dismissed because he will not be providing a personal guaranty to secure the bank loan

obtained by the Clintons to purchase their house. However, even if Mr. McAuliffe did provide such a guaranty, the bank loan will not be made in connection with or for the purpose of influencing a Federal election and, therefore, Mr. McAuliffe's guaranty would not be considered a prohibited contribution or expenditure under the Act.

1. The bank loan for the house will not include a guaranty by Mr. McAuliffe or any other person.

In early September 1999, the Clintons announced that they planned to purchase a house in Chappaqua, New York. At that time, the Clintons planned to finance the purchase of their house with a loan from Bankers Trust Company that included a mortgage on the property and a guaranty by Mr. McAuliffe. Mr. McAuliffe is a long-time friend of the Clintons and he volunteered to assist them with the financing for the house that they intend to live in after the President's term in office is completed. In preparation for the closing date in November 1999, however, the Clintons have secured alternative financing from a different bank that does not include a guaranty by Mr. McAuliffe, or any other person. Accordingly, the issues in this matter relating to the guaranty of a bank loan to purchase a permanent residence are moot and the complaints should be promptly dismissed as they pertain to Mr. McAuliffe.

2. A bank loan to a federal candidate, made in the ordinary course of business, for the purchase of a home is not a contribution or an expenditure made by the bank to influence a federal election, therefore, even if such a loan was secured by a personal guaranty it would be permissible under the Act

   a. The bank loan will not be made in connection with or for the purpose of influencing a Federal election.

A bank loan, made in the ordinary course of business, to a husband and wife, one of whom may become a Federal candidate, for the purpose of purchasing a home is not a contribution or expenditure as defined under the Act. The term "contribution" is defined as any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. §431(8)(A)(i); 11 C.F.R. §100.7(a)(1). The term "expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. §431(9)(A)(i); 11 C.F.R. §100.8(a)(1). The Act further provides that "any candidate who receives a contribution, or any loan for use in connection with the campaign of such candidate ... shall be considered ... as having received the contribution or loan ... as an agent of the authorized committee or committees of such candidate." 2 U.S.C. §431(e)(2); 11 C.F.R. §101.2.

Accordingly, for a bank loan to fall within the purview of the Act as a "contribution" or "expenditure" made to or on behalf of a candidate it must have been made in connection with or for the purpose of influencing a Federal election. In Advisory Opinions the Commission articulated several factors that funds given or loaned to a candidate personally were contributions under the Act. These factors include:

(1). The receipt of funds by the candidate for living expenses would free-up other funds of the candidate for campaign purposes;

(2). The candidate would have more time to spend on the campaign instead of pursuing his or her usual employment; and

(3). The funds would not have been donated but for the candidacy. FEC Advisory Opinions 1976-70, 1976-84, 1978-40 and 1982-64.

In the present matter, none of these factors exist. First, the bank loan will not free-up other funds, in fact, the Clintons will be required to use a substantial amount of their personal savings to make the down payment on the house in order to obtain the loan. Second, the bank loan will have no bearing on the amount of time Mrs. Clinton spends engaging in any exploratory committee activity. Finally, the decision of the bank to lend money to the Clintons for the purpose of purchasing a house is a business decision made irrespective of Mrs. Clinton's potential candidacy.

The Commission has determined that only bank loans whose proceeds are used for campaign committee related expenses are contributions to the committee and must be reported as such. In 1994, the Commission was asked to determine if the proceeds from a second mortgage on a house were reportable by a Federal candidate's campaign committee. In that matter, the candidate took out a $150,000 second mortgage on his home and used the proceeds to pay off a loan obtained by his campaign committee. The Commission determined that because the original loan taken by the committee was campaign related, that the second mortgage constituted a refinancing of the committee loan and that it must be considered a committee related expense and debt, and had to be reported as such. FEC Advisory Opinion 1994-35. In the present matter, the proceeds from the bank loan will be used to purchase a house that will serve as the Clinton's permanent residence. None of the proceeds of the loan will be used for any Committee related expenses. Therefore, consistent with the Commission's opinion in AO 1994-35, because the bank loan is unrelated to the Committee, it must not be considered a Committee related expense or debt and the Committee will not be required to report it as such.

The Clintons need to make living arrangements in preparation for the end of the President's term in office. These arrangements include the purchase of house and their personal financial situation makes it necessary for them to obtain a bank loan to finance such a purchase. In this case, the purpose of the bank loan will be for the Clintons to purchase the house that will serve as their permanent residence. The bank loan will not be made, nor will the proceeds be used, in connection with or for the purpose of influencing any election for Federal office. None of the factors identified by the Commission as being relevant to the inquiry of whether a personal loan to a candidate is a contribution are present in this matter. Therefore, the Act does not apply to this transaction.

b. The bank loan will be made in the ordinary course of business.

The bank loan for the purpose of purchasing a house will be made in the ordinary course of business. The FEC regulations set forth a standard for determining whether a loan to a

political committee was made in the ordinary course of business. Although the FEC regulations are not applicable in this matter because they do not apply to loans not made in connection with or for the purpose of influencing a Federal election, they are worth noting. Pursuant to 11 C.F.R. §100.7(b)(11) of the FEC regulations:

> A loan will be deemed made in the ordinary course of business if it: Bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule.

In this case, the bank loan has not yet been made so the terms are not final, but such terms will satisfy each criteria for a loan made in the ordinary course of business as set forth in the FEC regulations. The expected interest rate will be the usual and customary rate of the bank for this category of loan. A bank loan is made on a basis which assures repayment if it is secured by traditional collateral, with a perfected security interest; and other sources of repayment, including future income. Explanation and Justification §100.7(b), Fed. Elec. Camp. Fin. Guide (CCH) paragraph 730 and Advisory Opinion 1994-26. The collateral in this case is a mortgage on the house. Since the Clintons are making a substantial down payment, the value of the collateral exceeds the amount of the loan. In addition, the loan will be evidenced by a written instrument and subject to a due date or amortization schedule. Accordingly, the bank loan meets the standard of a loan made in the ordinary course of business as set forth in the FEC regulations.

c. A loan, made in the ordinary course of business, for a purpose other than in connection with or to influence a Federal election may include a personal guaranty.

A personal guaranty by Mr. McAulliffe of a loan made by a bank in the ordinary course of business to the Clintons for the purpose of purchasing a home, not in connection with or for the purpose of influencing a Federal election, would be a permissible and legal method of securing such a loan. The threshold issue in such an anaylsis, is whether the Act applies to the transaction in question. As described above, a bank loan to a husband and wife for the purpose of purchasing a house is not a contribution or expenditure as defined by the Act. Accordingly, the Clintons are not prohibited, under the Act, from obtaining such a loan.

Moreover, a bank loan secured by traditional collateral, with a perfected security interest, such as a personal guaranty that includes the deposit of the guaranteed amount in an account held at the bank, meets the standard set forth in FEC regulations for assuring repayment of the loan and, therefore, may properly be deemed a loan made in the ordinary course of business.

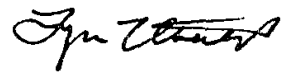
The Complainants are correct that the amount guaranteed by a secondary source of repayment, such as guarantors or cosigners, for a loan made to a political committee shall not exceed the contribution limits. 11 C.F.R. §100.7(b)(11)(i)(A)(2). In this case, however, Mr. McAuliffe was not guaranteeing a loan made to the Committee or in connection with or for the purpose of influencing a Federal election. No proceeds of the loan will be used in connection with the campaign. Therefore, Mr. McAuliffe would not be prohibited under the Act from

providing traditional collateral, in which the bank would have a perfected security interest in the amount of the guaranty, for a bank loan used by the Clintons to purchase a home.

Conclusion

The complaints are completely devoid of any factual basis for the Commission to find reason to believe that a violation of the Act or Commission regulations occurred. The complaints that pertain to Mr. McAuliffe should be promptly dismissed because he will not be providing a personal guaranty to secure the bank loan, therefore, this issue is moot. The complaints that pertain to Mrs. Clinton and the Committee should also be promptly dismissed because the Act does not apply to, and therefore cannot prohibit, a bank loan, made in the ordinary course of business, for the purpose of purchasing a house to be used as the permanent family residence.

Respectfully submitted,



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