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OFFICE OF GENERAL
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CONFIDENTIAL

Via Email and U.S. mail

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RE: MUR 6249

Karen L. Pletz submits this response to the Federal Election Commission's ("FEC") letter and Factual and Legal Analysis, dated December 14, 2010. This response supplements (and incorporates) the submissions previously made by Ms. Pletz on March 8, March 29, and September 3, 2010.

The FEC should decline any further investigation of this matter. *First*, the Complaint filed by Kansas City University of Medicine and Biosciences ("KCUMB") fails to comply with the filing requirements set by statute and regulation. *Second*, there is an utter lack of evidence suggesting that Ms. Pletz knowingly and willfully made political contributions on behalf of KCUMB. *Third*, KCUMB's submissions to the FEC – which encourage the FEC to pursue an investigation against Ms. Pletz – contain misleading and incorrect information.

I. KCUMB's Complaint Fails To Comply With Filing Requirements

KCUMB originally filed its Complaint with the FEC on January 22, 2010, and then re-filed its Complaint on August 5th in a futile attempt to bring the Complaint into compliance with filing requirements. The FEC has taken the position that the re-filed Complaint meets the filing requirements. We respectfully disagree.

The Complaint fails entirely to "differentiate between statements based upon personal knowledge and statements based upon information and belief."¹ 11 C.F.R. §111.4(c). And it is now understandable why, because almost none of the information in KCUMB's Complaint is

¹ In addition to not meeting this filing requirement, the Complaint was not "made under penalty of perjury and subject to the provisions of section 1001 of Title 18." 2 U.S.C. §437g(a)(1).

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based upon knowledge. Instead, the Complaint is based on speculation. Recently, Ms. Pletz's counsel deposed Dr. Danny Weaver, who is President/CEO of KCUMB and the individual who signed the Complaint:

Q. Tell me, Dr. Weaver what information in this [January 22, 2010 letter to the FEC] is based on personal knowledge.

A. Certain things, such as the university and when it began, kind of general background on that; when the special committee was retained; the text messages that I provided that were sent to my telephone.

Q. You're referring to the text message that is discussed on page four of the January 22nd letter?

A. Yes, sir.

Q. Anything else in this letter based on your personal knowledge?

[Attorney Objection omitted]

A. Those would be the things that I have direct personal knowledge of. Other things such as – and also that she, on 2009, did deliver a Report of the President. I reviewed that attached report as Exhibit H. These things that – and these other exhibits, I reviewed those, but I did not have personal knowledge, I wasn't there when my dad provided an internal memorandum, things like that.

Exhibit 1 (1/22/2011 Weaver Deposition) at 248:4-15; 248:19-249:4. According to Weaver, of all the allegations and information contained in the Complaint, he only has personal knowledge of the university's general history, when the special committee was formed, receipt of an October 2009 text message, and a "report" given by Ms. Pletz in November 2009. The rest of the Complaint is pure speculation.

On the ultimate issue of whether the leadership stipend was ever used to make political contributions, Weaver unequivocally answered that he did not know:

Q. Dr. Weaver, your testimony is you were aware of the leadership stipend, yes?

A. I was aware of the leadership stipend.²

* * *

Q. Dr. Weaver, do you know whether the leadership stipend was ever used to make political contributions?

²Incidentally, contrary to KCUMB's allegations in the Complaint, Weaver testified that the entire Board approved the leadership stipend:

Q. For all years that you were on the board, did the board approve the compensation paid to President Pletz?

A. Yes.

Q. You testified earlier about the components of the compensation paid to President Pletz, right?

A. Yes, sir.

Q. And you identified the components to be a base salary, an incentive bonus, and a stipend, correct?

A. Correct.

Exh. 1 at 224:7-17 (emphasis added). Weaver subsequently sought to change his testimony after conferring with KCUMB lawyers during a break.

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- A. *I cannot say whether I know the leadership stipend money was used to make political contributions.* Let me see, I want to phrase this correctly.

* * *

- A. *Involved with my conversations with the attorneys and the attorney-client privilege, there are certain things that I became aware of. If you're asking did I know that specific dollars that came from the leadership stipend to any political contributions, I am not aware of that.*

Id. at 252:14-16; 252:22-253:6; 253:10-16 (emphasis added). Thus, Weaver first testified that he was unable to say Ms. Pletz used the leadership stipend to make political contributions. Weaver then went further, and testified that even with the information gained from special committee counsel, he was "not aware" that leadership stipend monies were used for political contributions.

This testimony is critical to the FEC's decision whether to expend valuable commission resources pursuing an investigation against Ms. Pletz. After a multi-million dollar, scorched-earth investigation of Ms. Pletz led by a special committee of multiple lawyers, Weaver admitted that KCUMB could not say that Ms. Pletz ever used stipend money to make political contributions. There is nothing to suggest that the FEC could possibly come to a contrary conclusion.

II. Karen Pletz Did Not Knowingly and Willfully Make Political Contributions on Behalf of KCUMB

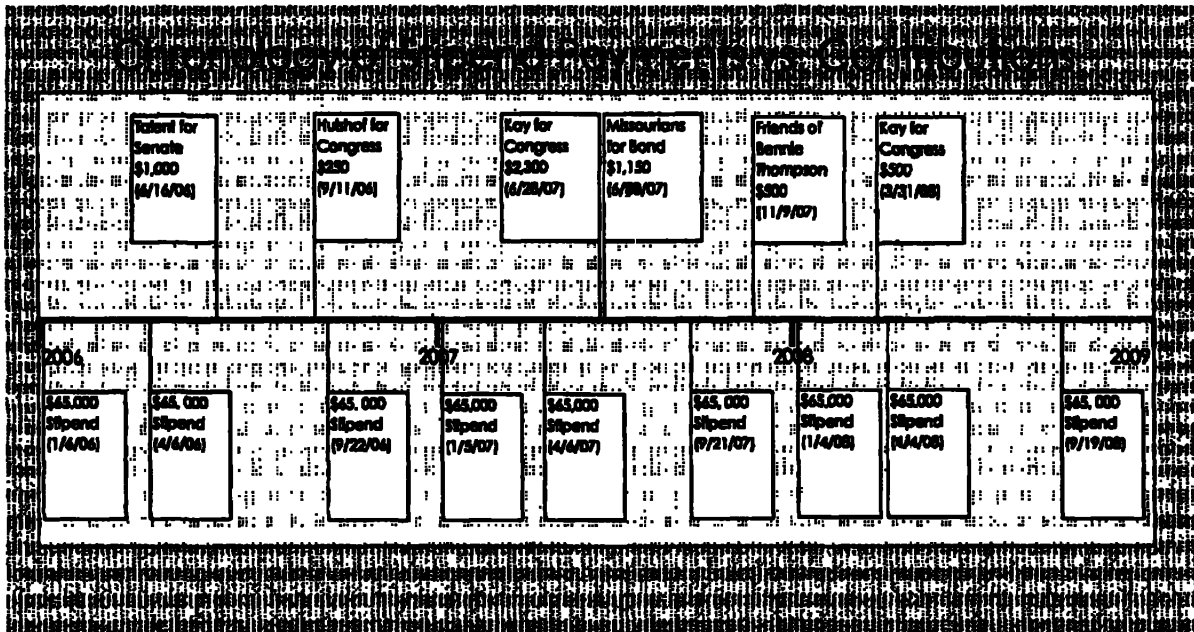
There is an utter lack of evidence suggesting that Ms. Pletz "knowingly and willfully" used stipend money to make political contributions on behalf of KCUMB. The FEC argues that certain information "raises the question" of a knowing and willful violation. FEC Analysis at 10. But the "question" is not a serious one, for the objective record shows that (1) KCUMB did not intend Ms. Pletz to use the leadership stipend for political purposes and (2) that Ms. Pletz *did not* use the stipend for political purposes.

On the issue of KCUMB's intent, the contemporaneous Board and Committee minutes are dispositive. As discussed at length in Ms. Pletz's September 3rd submission, the minutes approving the leadership stipend make no mention of political contributions or activity. Pletz 9/3/2010 Submission at 3-4. Rather, the minutes state consistently that Ms. Pletz was awarded the stipend in recognition of her involvement and leadership in the civic community. *Id.* The reality is that the stipend had nothing to do with political activity.

On the issue of Ms. Pletz's use of the stipend monies, the numbers tell the story. As discussed in the September 3rd submission, Ms. Pletz is alleged to have received \$1,316,000 in leadership stipend payments while making only \$15,700 in federal political contributions. 9/3/2010 Submission at 2-3. This means that political contributions represent 1% of stipend payments received. *Id.* at 3. And if only the years within the statute of limitations are considered (2006 to the present), the correlation is even weaker: between 2006 to the present, Ms. Pletz is alleged to have received \$780,000 in stipend payments and to have made political

contributions totaling \$6,200. This equals a correlation of .07%, which is not exactly strong evidence of illegal political activity.

The chronology of stipend payments compared to political contributions tells the same story:



If Ms. Pletz used stipend monies to make political contributions, one certainly would expect political contributions to have been made close in time to the stipend payment date. But they weren't. The above timeline shows a minimum of six weeks (and often longer) between a stipend payment and a political contribution.

The above objective, compelling evidence should be juxtaposed with the three documents that make up KCUMD's allegations: (1) September 1999 Memorandum; (2) October 2009 text message³; and (3) November 2009 Report of the President. Each of these documents was previously discussed in Ms. Pletz's March 8th submission, and that discussion will not be repeated here. But Weaver's testimony regarding the 1999 Memorandum is worth noting.

³ Contrary to the FEC's statement in footnote 3 of its Analysis, Ms. Pletz does not "admit" that she sent the October 2009 text message to obtain money "for the purpose of influencing state legislation." In fact, Ms. Pletz expressly denies the allegation. In any event, the October text message is irrelevant in this matter because (1) Ms. Pletz did not make a federal contribution after the October text message and (2) the text message, at most, refers to state legislation, not federal legislation. *See See McConnell v. FEC*, 540 U.S. 93, 122 (2003) (FECA does not extend to contributions "made solely for the purpose of influencing state or local elections"); *Emily's List v. FEC*, 581 F.3d 1, 20 (D.C. Cir. 2009) ("FEC's authority extends only to regulating donations and expenditures made 'for the purpose of influencing any election for Federal office.'")

Weaver was asked directly whether he knew that the September 1999 Memorandum was received by, or even sent to, then-Board Chairman Jack Weaver.

- Q. To the best of your knowledge, this internal memorandum that is referenced at the top of page 2 of the January 22nd letter, was provided to your father; is that correct?
- A. Yes.
- Q. How do you know that?
- A. No, I just said to the best of my knowledge. I don't know that specifically.
- Q. Do you know that generally?
- A. It's an assumption.
- Q. What's that assumption based on?
- A. That the letter was drafted and sent to my dad from Karen Pletz.
- Q. How do you know it was sent to your father?
- A. I don't. That's just from what I read here.
- Q. You're just looking at the memorandum itself, right?
- A. That said it was to him, correct.

Exh. 1 at 250:7-19 (emphasis added). The bottom line is, even if the 1999 Memorandum is wrongly spun as "evidence" of an alleged illegal plan by KCUMB to funnel money to Ms. Pletz, *nothing in the record remotely suggests that the 1999 Memorandum was received by, or even sent to, Board Chairman Jack Weaver, any Board trustee, or any other person at KCUMB.*⁴

* * *

The FEC's Analysis goes beyond "raising the question" of whether a knowing and willful violation occurred. The FEC makes several conclusory allegations that have no support in the record and, in some cases, directly contradict the record. Here are a few examples:

• "[B]etween 1999 and 2009, the University provided [Ms. Pletz] with a yearly stipend *specifically* to be used for political contributions." FEC Analysis at 9 (emphasis added) This is an incredibly broad, conclusory allegation that has no support. It is inexplicable how the FEC could take the three documents – 1999 Memorandum, 2009 text message, November 2009 Report – and make this allegation, especially in view of the ~~historical~~ record of the stipend payments and political contributions. Not even KCUMB makes this allegation in its Complaint. To the contrary, KCUMB argues that it was not aware that the stipend payments were made during all years.

• "The University's *sua sponte* submission suggests that without representation as to the need to make political contributions to further the University's interests, Ms. Pletz would not have received the leadership stipend." FEC Analysis at 9. KCUMB's Complaint does not make this suggestion *anywhere*. Rather, as the FEC acknowledges in footnote 5 of its Analysis, KCUMB alleges that Ms. Pletz hood-winked the University into paying her the stipend, going so far as to falsify Board and Committee minutes to

⁴ As KCUMB concedes in its May 11, 2010 submission, there is no evidence that the September 1999 Memorandum ever made its way to the university's accounting or finance department.

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prevent KCUMB's Board from learning of the stipend. The FEC's interpretation of KCUMB's position is not only incorrect, but it is also illogical: KCUMB cannot have knowingly paid Ms. Pletz a stipend based on her alleged representation that it would be used for political purposes, if KCUMB also unknowingly paid Ms. Pletz a stipend as a result of her alleged trickery. This does not make sense.

● "[T]he University provided Ms. Pletz with funds in response to her representation that she would use them to make contributions in the University's interest, and Ms. Pletz then proceeded to make contributions." FEC Analysis at 10. This conclusory statement is belied by the record, including the evidence discussed above regarding the lack of correlation between stipend payments received and political contributions made. Assuming the FEC's purported basis for this statement is the 1999 Memorandum and the \$42,000 payment made that same year, the statute of limitation bars the FEC from pursuing any violation allegedly committed in 1999.

● "Indeed, the University's internal investigation concluded that the stipend was used to make contributions." FEC Analysis at 10. KCUMB's Complaint does not state that the special committee investigation made this determination. To the contrary, as noted above, President/CEO Weaver, who led the special committee during the investigation, testified that he did not "*know the leadership stipend money was used to make political contributions.*"

III. KCUMB's Submissions Contain Misleading And Incorrect Information

In the civil litigation between the parties, KCUMB produced its FEC submission dated May 11, 2010. It appears that information from this May 11 submission was included in the FEC's Analysis.⁵ The FEC should be aware that certain, if not most, information contained in the May 11 submission is not accurate. By way of example, KCUMB's counsel represented in the submission that Exhibit B is "Ms. Pletz's handwritten notes from the September 27, 1999 Compensation and Benefits Committee meeting." This representation is flat-out wrong, as even a cursory investigation would have revealed. Several deposition witnesses, including KCUMB employees, have been questioned about the minutes, and not one has testified that the minutes reflect Ms. Pletz's handwriting.

IV. Conclusion

Ms. Pletz respectfully suggests that no probable cause can be found that a violation of FECA occurred. There is an utter lack of evidence of any knowing and willful violation, and the speculative allegations made in KCUMB's Complaint (which the FEC largely adopted in its Analysis) are contradicted by the testimony and other evidence already gathered in the civil litigation. The matter between KCUMB and Ms. Pletz is, pure and simple, a very contentious, breach of contract, employment case that has nothing to do with any fanciful scheme to skirt the laws regarding political contributions. The FEC must view the Complaint for what it is: an improper and brazen attempt by KCUMB to enlist a federal agency in its campaign to destroy

⁵ The FEC's Analysis also references a telephone conversation with KCUMB's counsel. Ms. Pletz is unaware of the allegations made by KCUMB in this telephone conversation.

its former President and CEO and to gain leverage in the civil case between the parties. This is not a matter that merits the FEC's time or resources.

Respectfully submitted,

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