FEDERAL ELECTION COMMISSION
Washington, D.C.

In the Matter of:	
Complaint of The Joe Miller for U.S. Senate Campaign	**No. MUR 6403**

RESPONSE OF ALASKANS STANDING TOGETHER TO THE COMPLAINT FILED BY THE JOE MILLER FOR U.S. SENATE CAMPAIGN

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Pursuant to 2 U.S.C. § 437g(a)(1) and section 111.6 of the regulations of the Federal Election Commission ("FEC"), 11 C.F.R. § 111.6, Alaskans Standing Together ("AST") respectfully submits this Response to the Complaint filed by The Joe Miller for U.S. Senate Campaign ("Campaign"), designated as Matter Under Review ("MUR") 6403. As further explained herein, the Campaign's charge that AST violated campaign finance laws (and certain other laws outside the jurisdiction of the FEC) has no factual or legal basis, and no action should be taken against AST on the basis of the Complaint.

I. INTRODUCTION

The Campaign's Complaint purports to claim that AST and various Alaska Native Corporations ("ANCs") that contributed to AST have "brazenly violated federal election law" and illegally "use[d] federal money to buy off an election to keep a senator who is on their payroll." Complaint at 3. It further alleges that AST and the ANCs have engaged in "election fraud and criminal diversion of federal money." Complaint at 6.

These inflammatory accusations are nothing short of frivolous. The Campaign wrongly assumes that these Alaska Native corporations are federal government contractors and therefore that these corporations are prohibited from contributing to a

fully legal non-connected independent expenditure-only political committee to make independent expenditures in connection with a U.S. Senate election. In this regard, the Campaign overlooks that the FEC decided more than ten years ago that parent corporations may engage in permitted political activity, without being bound by such restrictions on activities by federal contractors, provided that they are legally distinct entities from any federal contractor subsidiaries and that such activity is funded from revenues other than those generated by their federal contractor subsidiaries. AST properly solicited contributions from these Alaska Native corporations here consistent with such precedent.

Moreover, the January 2010 U.S. Supreme Court ruling in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), held that political spending by corporations to support or oppose individual candidates in elections is protected speech under the First Amendment. Certainly, under this decision and the right of peaceable assembly also guaranteed under the First Amendment, corporations can associate to make such expenditures. Nonetheless, the Campaign seeks to deny the Alaska Native corporations these constitutional rights, even where they have been exercised in a manner that involves full disclosure in accordance with the letter and spirit of the nation's campaign finance laws.

As illustrated by the Complaint's gratuitous charges under authorities that are well outside the Commission's authority (*i.e.*, the Federal Acquisition Regulations and the Byrd Amendment), as well as the Campaign's admitted lack of awareness of relevant FEC advisory opinions that directly address its claims, the Complaint amounts to nothing more than a desperate effort to draw attention away from a then-flagging campaign and to

discredit supporters of the Campaign's opponent in the election.[1] For the reasons discussed further herein, the Campaign's claims are entirely without merit and no action should be taken against AST on the basis of the Complaint.

II. ARGUMENT

A. AST is a Fully Legitimate, Legally Registered Non-Connected Independent Expenditure-Only Political Committee

AST is a non-connected independent expenditure-only PAC established and registered with the FEC in a manner fully consistent with Federal law and the FEC's advisory opinions in *Commonsense Ten* and *Club for Growth*. Anderson Aff. at ¶ 2; *see Citizens United*, 130 S. Ct. at 913 (holding that corporations may make unlimited independent expenditures using corporate treasury funds); *SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (*en banc*); *CommonSense Ten*, Advisory Opinion No. 2010-11 (July 22, 2010); *Club for Growth*, Advisory Opinion No. 2010-09 (July 22, 2010). It is not, as the Complaint asserts, a "front group supporting Lisa Murkowski" or, for that matter, any other candidate for federal office. Complaint at 2.[2] Although the Complaint carelessly charges that each respondent to the Complaint is a "federal contractor" and "has used money obtained as a federal contractor to attempt to influence a federal election," Complaint at 1, AST also, of course, is not a federal contractor. The

[1] Further illustrating the Complaint's total absence of merit and the lack of critical thought and attention that went into its preparation, the Complaint cites as statutory authority, 2 U.S.C. § 438(a)(10). Complaint at 1. This provision was repealed more than eight years ago by Public Law No. 107-252, Title VIII, section 801(b)(3), Oct. 29, 2002, 1116 Stat. 1726.

[2] Under the Campaign's argument, apparently, Our Country Deserves Better PAC (Tea Party Express) and any other independent expenditure-only PAC that engaged in independent expenditures in support of Joe Miller or in opposition to Lisa Murkowski to support the election of Joe Miller must be "front groups" for Joe Miller.

suggestion that AST is anything other than a legitimately constituted non-connected independent expenditure-only PAC is simply absurd.

B. AST's Solicitation and Receipt of Contributions From the Various Contributing ANCs was Fully Consistent With 2 U.S.C. § 441c(a).

Contrary to the Campaign's allegations, AST's solicitation and receipt of contributions from the respondent contributing ANCs was fully consistent with 2 U.S.C. § 441c(a). The Complaint falsely asserts that "The $805,000 solicited by Jason Moore and AST was illegal since they were soliciting this money from known federal contractors." Complaint at 3. It further wrongly asserts that "the donations by these federal contractors was illegal." *Id.* As discussed herein, in the attached affidavit of William Anderson, Jr., and in the responses and affidavits submitted separately by the ANC respondents named in the Complaint, however, the parent entities that were solicited by AST and made their contributions to AST using funds other than those generated by their federal government contractor subsidiaries are not subject to the prohibition on contributions by government contractors under 2 U.S.C. § 441c(a). Accordingly, AST's solicitation and acceptance of contributions from these entities was fully compliant with this provision of the Federal Election Campaign Act ("FECA").

2 U.S.C. § 441c(a)(1) makes it unlawful "for any person . . . who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress" to "directly or

indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use." 2 U.S.C. § 441c(a)(1); 11 C.F.R. §§ 115.1(a), 115.2(a). This prohibition begins at the commencement of contract negotiations or when the request for proposals is sent out, whichever is earlier, and continues until the completion of performance under the contract or the termination of negotiations, whichever is later. 2 U.S.C. § 441c(a)(1); 11 C.F.R. §§ 115.1(b), 115.2(b). Section 441c(a)(2) makes it similarly unlawful for any person "knowingly to solicit any such contribution." 2 U.S.C. § 441c(a)(2); 11 C.F.R. § 115.2(c).

In Advisory Opinion 1998-11—which the Complaint completely overlooks—the FEC explained that "the prohibitions of 2 U.S.C. § 441c would not extend to an LLC holding company as long as it is, in fact, a separate and distinct legal entity from its Federal contractor subsidiaries." Fed. Election Comm'n Adv. Op. 1998-11, at 5; *see also* Fed. Election Comm'n Adv. Ops.1995-32, 1995-31, 1981-61, 1981-49. In that Advisory Opinion, the Commission concluded that the prohibitions of 2 U.S.C. § 441c did not apply to a parent limited liability company that had 99 percent ownership of two federal contractor subsidiaries and that generated revenue from separate business ventures unrelated to either of those subsidiaries, provided that "the source for these Federal contributions must be revenue other than that resulting from the operations of" the federal contractor subsidiaries. Fed. Election Comm'n Adv. Op. 1998-11, at 1, 5; *see* Fed. Election Comm'n Adv. Ops. 1995-31, n.2 ("The Commission assumes that these entities

can demonstrate that their revenue is sufficiently large to make these donations from non-bank income.") and 1995-32, n.4.

Any and all contributions made by the respondent parent ANCs to AST were made by the parent corporations, not through their subsidiaries, and were fully attributed to such parent corporations in AST's reports to the FEC. Anderson Aff. at ¶¶ 7-17. Although each of these ANCs is the parent of subsidiary corporations that hold contracts with the federal government, it was AST's understanding at the time that it solicited the contributions from the respondent parent ANCs that these parent corporations themselves were not persons who have entered into contracts with the United States or any department or agency thereof, and that they have separate legal identities from any federal contractor subsidiaries. Anderson Aff. at ¶¶ 5, 6, 19.[3] AST similarly understood that each of these parent corporations had revenue from sources other than its federal contractor subsidiaries that exceeded the amount of its contribution(s) to AST and from which such contributions could be made. Anderson Aff. at ¶¶ 4-6, 19.[4]

Therefore, in soliciting contributions from the ANC respondents, AST did not knowingly solicit any contribution from an entity prohibited from making such contributions under 2 U.S.C. § 441c. Accordingly, consistent with Advisory Opinion

[3] In this regard, the Complaint sets forth no facts suggesting that any of the federal contractor subsidiaries of the ANC contributors are merely agents, instrumentalities, or alter egos of their parents.

[4] And, after learning of the charges in the Complaint, AST promptly contacted representatives of each of the respondent contributing ANCs, who confirmed these understandings. Anderson Aff. at ¶ 19.

1998-11, the Commission should conclude that the prohibitions of 2 U.S.C. § 441c do not apply to AST's solicitation and acceptance of contributions from the ANC respondents.[5]

C. Any Suggested Violations of the Federal Acquisition Regulation and Byrd Amendment Are Beyond the Jurisdiction of the Commission and Wholly Without Merit.

Further illustrating that the Campaign's Complaint is nothing more than a poorly-researched and executed political stunt intended to help address a then-flagging campaign are the Complaint's misplaced references to the Federal Acquisition Regulation ("FAR") and the Byrd Amendment, 31 U.S.C. 1352. Irrespective of the fact that there is no merit whatsoever to either of these claims, neither of these authorities, of course, provides any basis for a complaint before the FEC. As such, to the extent the Complaint purports to allege violations of these authorities, it must be dismissed outright.

D. Jason Moore is Not the "Operator" of AST

The Campaign erroneously alleges that Jason Moore, who the Complaint also names as a respondent, is the "operator" of AST. Complaint at 2. AST is unclear what it means to be the "operator" of a PAC, as it is not a term used by either the FECA or FEC regulations, or in any PAC guidance issued by the FEC. In fact, however, Mr. Moore is neither an officer or employee of AST. Instead, Mr. Moore is an employee of M&I Communications, Inc., a company that received disbursements from AST in connection with independent expenditures that AST made in connection with the election.

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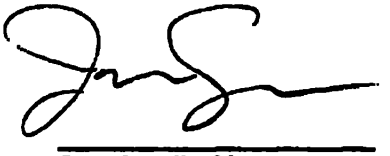
[5] AST also maintains that the respondent ANCs have a constitutional right under *Citizens United* and other applicable law to have engaged in such activity and to do so in concert with other corporations. However, this argument is not necessary to demonstrate that AST has not violated 2 U.S.C. § 441c, and, therefore, AST does not further address this argument in this Response.

III. CONCLUSION

The Campaign's Complaint fails to demonstrate that AST violated federal election law. AST is a fully legitimate, legally established and registered non-connected independent expenditure-only committee. At the time it solicited contributions from the respondent parent ANCs, it understood that those corporations did not hold federal government contracts, and therefore fall outside the scope of 2 U.S.C. § 441c(a)'s prohibitions, and that those corporations had sufficient other sources of funds from which to make such contributions. After it received the Complaint, AST made reasonable inquiries of each of the respondent parent ANCs to confirm that understanding. Accordingly, in soliciting contributions from the respondent parent ANCs, AST did not knowingly solicit any contribution from any entity prohibited from contributing to AST under 2 U.S.C. § 441c(a) or any other provision of the FECA. For these reasons, AST's solicitation and acceptance of contributions from these entities was fully compliant with the FECA and no action should be taken against AST on the basis of the Complaint.

Respectfully submitted,



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