

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the matter of: )  
Doug LaMalfa Committee, and )  
David Bauer as treasurer; )  
Lisa Buescher, individually )

MUR 6575  
Response To Complaint

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In accordance with 2 U.S.C. §437g(a)(1), this response is filed on behalf of Doug LaMalfa Committee, and David Bauer, as treasurer (Committee) and Lisa Buescher, individually (Respondents) in the above referenced matter. For the reasons set out below, Respondents request that the Commission make a "no reason to believe" finding and close the file.

**Factual Summary**

By a letter dated April 30, 2012 and received by the Federal Election Commission (FEC or Commission) on May 11, 2012, Wade Freedle filed a complaint against the Respondents (Complaint) alleging violations of the Federal Election Campaign Act of 1971, as amended (FECA or Act). The Complaint makes a general accusation that the Doug LaMalfa Committee, the principle campaign committee for Doug LaMalfa, was utilizing LaMalfa's paid California State Senate staff to conduct campaign related activities. But for one event, the Complaint fails to state any specific facts upon which an alleged violation of the FECA could be substantiated.

The single event, for which the Complaint alleges a sufficient factual basis, involves an appearance by Lisa Buescher, the District Office Director for Senator LaMalfa's Senate office, at a Nevada County Republican Women Federated club meeting. The event took place on March 20, 2012 and was held at the Alta Sierra Country Club, Grass Valley, California (Meeting). The Complaint states that the purpose of the Meeting was to, "...hear candidates for various offices present their qualifications for office." (See Lisa Buescher Declaration (Decl.) ¶ 2). The Meeting occurred at twelve noon, in a luncheon format and adjourned at or about 1:30 pm, March 20, 2012 (Decl. ¶ 10).

During all times related to the Complaint, Doug LaMalfa was a sitting member of the California State Senate and a candidate for the Republican Party nomination for the 1<sup>st</sup> Congressional District, in California. LaMalfa won the Republican primary election. He was a candidate for election to the 1st C.D. on the November 6, 2012 ballot, and won that election. Doug LaMalfa did resign his State Senate office on August 31, 2012 in order to dedicate all his efforts to the

November general election. Lisa Buescher during all times related to the Complaint was the District Office Director of the LaMalfa State Senate Office (Director) (Decl. ¶ 1).

On the date of the Meeting, Doug LaMalfa was not available to attend the Meeting and in his place, he requested that Lisa Buescher appear on his behalf to speak in support of his election. Buescher volunteered her time and took vacation leave from her official Director duties and attended the Meeting (Decl. ¶7).

The Meeting commenced at approximately 12:00 noon and adjourned at approximately 1:30 pm (Decl. ¶10). Buescher took and declared four (4) hours of vacation time to attend the Meeting. The official records of the California State Senate reflect that Buescher took a total of six (6) hours of vacation time during the month of March. Buescher has provided testimony that four (4) of those hours were taken to attend the Meeting (Decl. ¶9). Buescher has also testified that State Senate staff are entitled to take one (1) hour of personal time for lunch each day (Decl. ¶12).

In response to the Complaint, the Committee's treasurer, David Bauer, sent a short letter, dated May 21, 2012 to the Commission, summarily denying the allegations and indicating all staff use personal vacation time to attend political events. The Office of General Counsel, in an August 10, 2012 letter to Mr. Bauer invited him to supplement the response (see documents at Exhibit B).

The LaMalfa State Senate staff, including Buescher, was aware of the need to take personal vacation time in the event they conducted any LaMalfa campaign activity during normal State Senate working hours (Decl. ¶¶8 & 13). Buescher also testifies that she timely reported to the LaMalfa Senate office chief of staff her vacation time for the month of March (Decl. ¶9).

### **Analysis and Arguments**

1. Except for the facts pertaining to the Meeting, the Complaint fails to set forth any facts upon which the statutory requirements for a complaint are met.

The Complaint fails to state sufficient facts to support an allegation of any violation of the FECA, but for the facts alleged related to the Meeting. The Complaint states LaMalfa, "...is running for the First Congressional District in 2012. He is utilizing his State Senate paid staff to campaign for the First Congressional District seat, openly and notoriously, throughout the entire District."

A complaint is required by the FEC Regulations to, "... clearly identify as a respondent each person or entity who is alleged to have committed a violation." (11 CFR 111.4(d)(1)). The

Complaint fails to name any LaMalfa State Senate staff or any person, other than Buescher, who is alleged to have violated the FECA.

The Regulations also require a complaint to, "...contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction;..." 11 CFR 111.4(d)(3). The only sets of facts alleged in the Complaint are those which pertain to the Meeting. The Complaint fails to set forth any facts regarding any potential violation of the FECA but for those related to the Meeting. As such the Commission must confine its findings to only those matters pertaining to the Meeting and not make a finding of reason to believe related to any other activity by the Committee as it relates to this MUR.

2. It is well documented that Lisa Buescher took vacation time to volunteer her time and services to attend the Meeting on behalf of Doug LaMalfa and as such her actions fall clearly within the Regulation's volunteer services exemption.

The single issue pertaining to this matter is whether Lisa Buescher's attendance at the Meeting on behalf of Doug LaMalfa constituted a prohibited contribution under the Act. The term contribution is defined to include, "(i) 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; or (ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose."

2 U.S.C. §431(8)(A); see also, 11 CFR §§100.52 and 100.54.

The Act exempts from the definition of contribution, "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;" 2 U.S.C. §431(8)(B)(i); see also, 11 CFR §100.74. More directly on point for this MUR, exempt from that portion of the definition of "contribution" which pertains to payment of compensation for personal services, is an exemption which states, "No contribution results where the time used by an employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time." 11 CFR §100.54(c).

The Commission has long recognized various situations in which, "[T]he Act exempts from the definition of 'contribution' 'the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee'". Advisory Opinion 2007-08, citing also to Advisory Opinions 1980-2; 1982-04. Buescher volunteer her time to speak on behalf of LaMalfa at the Meeting. Therefore, Buescher attendance at the meeting, to speak as a volunteer on behalf of Doug LaMalfa, is exempt from the definition of a "contribution" pursuant to § 431(8)(B)(i).

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Correspondingly, the appearance at the Meeting by Buescher is exempt from the definition of contribution pursuant to § 100.54(c) provided the time during which she was volunteering her time was not compensated by the State Senate of California in her capacity as Director.

The Declaration of Buescher submitted with this response evidences that Buescher was not compensated for the time during which she made her voluntary appearance at the Meeting. The testimony tendered by Lisa Buescher unequivocally states that Buescher took and declared four (4) hours of vacation time to attend the Meeting. The Meeting also took place during the noon hour and therefore, Buescher was also entitled to make use of the standard one (1) hour for lunch time to volunteer for political activities on behalf of the Committee. Therefore, Buescher had an allotted five (5) hours of time to attend the Meeting which took approximately one and one-half (1 ½) hours; far more vacation/personal time than was required to attend the Meeting and be in compliance with the Act.

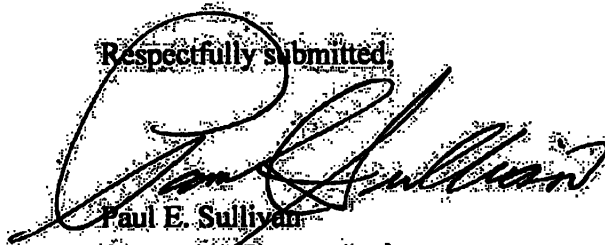
The official records of the California State Senate reflect that Buescher took a total of six (6) hours of vacation time during the month of March. Buescher has provided testimony that four (4) of those hours were taken to attend the Meeting (Decl. ¶9). The quantity of vacation time taken by Buescher far exceeded the one and one-half (1 ½) hours of time taken to hold the Meeting (Decl. ¶10). As a side note, the California State Senate records do not break-out the specific days on which an employee takes vacation time. Rather, those records are reported on a monthly aggregated basis.

The vacation time taken by Buescher comes within the §100.54(c) exemption to the definition of contribution and as such no contribution resulted from Buescher's attendance at the Meeting.

#### **Conclusion**

Based upon the factual evidence tendered and the applicable FECA exemption to the definition of contribution, set out above, Respondents request the Commission make a finding of no reason to believe and close the file in this matter.

Respectfully submitted,



Paul E. Sullivan  
Counsel to Respondents

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