HOLTZMANVOGELJOSEFIAK PLLC
Attorneys at Law

45 North Hill Drive
Suite 100
Warrenton, VA 20186
p/540-341-8808
f/540-341-8809

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Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: ***Response of Dan Sullivan, Eric Campbell, and Sullivan for US Senate in MUR 6888***

Dear Mr. Jordan,

This Response is submitted by the undersigned counsel on behalf of Dan Sullivan, Eric Campbell, and Sullivan for US Senate ("SFS"), in response to the Supplemental Complaint filed by the American Democracy Legal Fund ("ADLF"), and designated as Matter Under Review 6888. ADLF filed the Initial Complaint in this matter on or about October 15, 2014, and subsequently filed a Supplemental Complaint naming additional respondents on or about October 28, 2014. Dan Sullivan, Eric Campbell, and SFS were identified as Respondents in the Supplemental Complaint.

The Initial Complaint and Supplemental Complaint (together, "the Complaint") name a total of 82 respondents, including 33 entities, 25 candidate committee treasurers, and 24 former candidates. The Complaint fails to make the showing required to support a reason to believe finding as the sweeping allegations contained in the Complaint are entirely unsupported by facts and based wholly on conjecture and assumption. The Complaint fails for myriad reasons, including that it cannot establish i360, LLC is a "common vendor" under Commission regulations. Moreover, the Complaint fails to identify, and cannot as a matter of fact identify, even a single piece of "non-public, strategically material data" that could have been part of any exchange of information involving SFS. For these reasons, and all those described below in greater detail, the Complaint should be quickly dismissed.

Factual Background

The Complaint fails to identify, or even allude to, a single public communication referring to SFS or Mr. Sullivan's opponent that could provide any basis for the allegation of prohibited coordination. The Complaint also fails to identify any prohibited exchange of the type of information subject to the Commission's coordination regulation between SFS and any other entity supporting or opposing a candidate in the 2014 Alaska race for election to the U.S. Senate. Rather, the Complaint merely states that "[Americans for Prosperity] has made over $100,000 in expenditures opposing U.S. Senator Mark Begich.[] Senator Begich is the opponent of Respondent Dan Sullivan and [SFS], another i360 client." Supplemental Complaint at 8-9.

The attachment to the Supplemental Complaint shows SFS made three disbursements to i360, LLC totaling $1,550 for "Data management services." SFS selected i360, LLC to provide the Campaign with data management services, and entered into a contract with i360, LLC at fair market value for those services in April, 2014.[1] Specifically, the terms of the contract called for i360, LLC to provide "data management and analysis [and] servicing data requests from [SFS's] third party users." In exchange for providing these services, SFS paid i360, LLC an agreed upon fair market value fee as is shown in SFS's regular reports filed with the Commission during the relevant period.

Although the Complaint fails to allege any knowledge of the interactions between i360, LLC and SFS, we provide a general description below of how the parties performed pursuant to the terms of their contract. SFS was provided with access to i360, LLC's data warehouse records through web-based software. i360, LLC's data warehouse records include voter and consumer records that may include the names, addresses, and phone contacts as well as political and consumer modeled scores. SFS made *entirely internal* strategic determinations of which records to pull from i360, LLC's data warehouse records. SFS then pulled the records it sought from i360, LLC's data warehouse records by means of the web-based software. Where requested, i360, LLC staff provided *administrative support* to facilitate SFS's access to the records it sought. SFS then utilized the records it received to contact voters in furtherance of the campaign's efforts. During the course of the contract, SFS would return data or list enhancements to i360, LLC. The Complainant, however, is entirely incorrect in asserting that "real time" updating of data existed, as the agreement did not require such consistent provision of list enhancements, and such "real-time" updating is not logistically feasible or expected in the course of such an agreement for data services.

[1] The contract was entered into prior to "late August" 2014, which is the time when the Complaint alleges the creation of a "partnership" between i360, LLC and The Data Trust. Complaint at 4. Thus, the complaint may dismissed on this ground alone.

SFS made all strategic determinations regarding the records it sought from i360, LLC's data warehouse. SFS did not have access to, and did not use, any "non-public strategic campaign and party data." Supplemental Complaint at 5. In no way did i360, LLC perform provide any substantive or strategic guidance, beyond administrative guidance, regarding the records that SFS pulled from the data warehouse. i360, LLC in no way created, produced, or distributed the public communications of SFS. As a result, SFS did not make any "exchange of non-public, strategically material data through a common vendor," and further did not "pass[] on crucial, nonpublic voter information to i360's other . . . clients." *Id.* at 6-7.

Analysis

The Complaint's allegation of prohibited coordination occurring through a common vendor fails at the outset because i360, LLC does not meet the definition of a "common vendor" under Commission regulations. i360, LLC, to the best of SFS's knowledge, does not "create, produce, or distribute" public communications on behalf of its clients. 11 C.F.R. § 109.21(d)(4)(i). Regardless, the mere existence of a "common vendor" does not violate any provision of the Act or Commission regulations, nor does it create a presumption of coordination. *See* Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003) (explaining that the Commission "disagrees with those commenters who contended the proposed standard created any 'prohibition' on the use of common vendors, and likewise disagrees with the commenters who suggested it established a presumption of coordination."); *see also* MUR 6050, First General Counsel's Report at 9 ("the use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the 'conduct' prong of the coordination test").

The Complaint further fails to allege any facts that might satisfy the content prong of the Commission's coordination regulation. *See* 11 C.F.R. §§ 109.21(a)(1) and (c). The Complaint merely concludes that i360, LLC provided services to multiple campaigns and committees, and as a result, must have engaged in prohibited coordination with SFS. The Complaint does not, and as a factual matter cannot, identify any information communicated through i360, LLC, or any specific information that could potentially be included in the type of information described in the Commission's coordination regulation. The Commission's Final Rule on Coordinated and Independent Expenditures explains that the coordination regulation is applicable only to certain types of information, rather than the universe of raw data that may exist in any vendor's data warehouse.

> This regulation focuses on the sharing of information about plans, projects, activities, or needs of a candidate or political party through a common vendor to the spender who pays for a communication that could then be considered to be made 'totally independently' from the candidate or political party committee.

Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. at 436. SFS made all strategic determinations regarding the records it sought from i360, LLC's data warehouse. The information contained within i360, LLC's data warehouse records, including that data selected and retrieved by SFS for its use, is not the type of information contemplated by 11 C.F.R. § 109.21(d)(4)(iii). The Commission's rules fulfill their purpose by allowing those subject to them to operate within the guidelines provided in the law without being subject to baseless allegations; such as those made in the Complaint regarding the relationship between SFS and i360, LLC.

The Complaint fails to allege any specific allegation regarding any "information about plans, projects, activities, or needs of [SFS]" that could possibly have been impermissibly communicated through i360. This is because SFS made internal strategic determinations about the records it desired from i360, LLC's data warehouse, and i360, LLC provided only administrative support in providing SFS with the data it desired pursuant to the terms of their contract. The Complaint's failure to even allege information that could form the basis of prohibited coordination is fatal, and it should be dismissed. As the Commission's previous explanation of the "reason to believe" standard states:

> The Commission will make a determination of 'no reason to believe' a violation has occurred when the available information does not provide a basis for proceeding with the matter. The Commission finds 'no reason to believe' when the complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred, or even if the allegations were true, would not constitute a violation of the law. For example, a 'no reason to believe' finding would be appropriate when:
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> - A violation has been alleged, but the respondent's response or other evidence convincingly demonstrates that no violation has occurred;
> - A complaint alleges a violation but is either not credible or is so vague that an investigation would be effectively impossible; or
> - A complaint fails to describe a violation of the Act.

Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (March 16, 2007).

The Commission further explained that: "Unwarranted legal conclusions from asserted facts ..., or mere speculation ... will not be accepted as true. In addition, while credibility will not be weighed in favor of the complainant or the respondent, a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint ... [P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred." Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and

Thomas in MUR 4960 (Hillary Clinton) at 2-3. "[M]ere 'official curiosity' will not suffice as the basis for FEC investigations." *FEC* v. *Machinists Non-Partisan League*, 655 F.2d 380, 388 (D.C. Cir. 1981).

The relationship between SFS and i360, LLC was entirely permissible and consistent with all applicable Commission regulations. The Complainant provides no evidence of, and does not purport to have any knowledge regarding, any prohibited interactions between SFS and i360, LLC. Accordingly, the Complaint cannot by any measure support a reason to believe finding and should be dismissed.

Conclusion

The Complaint is based entirely on speculation, fails to indicate any conduct or payment that might for the basis of prohibited coordination, and should be dismissed as soon as reasonably possible.

Sincerely,

Sean Cairncross
Chris Winkelman
Counsel to Sullivan for US Senate