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August 5, 2016

Jeff S. Jordan
Office of the General Counsel
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, DC 20436

Re: MUR 7079

Dear Mr. Jordan:

This response is submitted on behalf of Respondents the Honorable Loretta Sanchez, the Committee to Re-Elect Loretta Sanchez ("Committee"), and Katharine Borst, in her official capacity as Treasurer. The Complaint alleges that Representative Ami Bera, his campaign committee and certain members of his family possibly violated the Federal Election Campaign Act ("FECA") by directing a "network" of candidates and their family members to contribute to Ami Bera for Congress with the understanding that in return the Bera family would contribute to "participating" candidate committees. *See* Complaint at 1.

The Complaint makes vague assertions that Representative Sanchez and the Committee to Re-Elect Loretta Sanchez were part of this purportedly improper arrangement. Complainants allege that such a pattern of contributions amounted to "reimbursements" by individual Bera family members. In fact, "reimbursement" is a term of art used in the FECA and Federal Election Commission ("FEC") regulations and advisory opinions to denote a specific transaction in which a contributor either gives cash to a "straw party" donor who makes a contribution in his or her name, or a contributor makes a contribution in a false name. *United States v. O'Donnell*, 608 F.3d 546, 548 (9th Cir. 2010). The Complaint in an attempt to find a legal basis for its allegations cites 11 C.F.R. § 110.4(b)(2)(i) and FEC Advisory Op. 1996-05 (March 14, 1996). However, the regulation and opinion both deal with situations in which contributors gave to campaigns in a false name or contributors provided cash to reimburse straw donors who made contributions in their own name. Accordingly, the Complainants offer no specific facts to support allegations that § 110.4(b)(2)(i) was violated by any party named in this matter.

In fact, § 110.4(b) sets forth specific circumstances which the FEC has determined will be considered a contribution in the name of another. These include knowingly permitting one's name to be used to effect a contribution; knowingly accepting a contribution made by one person in the name of another; assisting any person in making a contribution in the name of another; and

giving money or something of value to a contributor without disclosing the true source to the recipient. 11 C.F.R. § 110.4(b). Similarly, the FEC Advisory Opinion 1996-05 cited in the Complaint dealt with a situation, vastly different from that alleged in the Complaint, in which a corporation reimbursed in cash employees who made contributions in their own names to a federal candidate. *See* FEC Advisory Op. 1996-05 (March 14, 1996). Complainants' attempts to extend this regulation to cover the activity described in this Complaint would require the Commission to extend the reach of this regulation well beyond the language of the statute and previous interpretations. Accordingly, the Complaint offers no basis for finding a reason to believe any violation occurred under §110.4(b)(2).

Apart from the lack of statutory or regulatory basis to support Complainants' convoluted theory of a violation, solicitation of campaign contributions is constitutionally protected First Amendment activity. The solicitation of campaign contributions by its very nature involves constitutionally protected speech and also involves the ability to work in concert with others in supporting candidates, a clearly protected right of association. In *Buckley v. Valeo*, the Supreme Court recognized that:

> "[t]he First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 1170, 2 L.Ed.2d 1488 (1958), stemmed from the Court's recognition that "(e)ffective advocacy ... is undeniably enhanced by group association." *Buckley v. Valeo*, 424 U.S. 1, 15 (1976).

Moreover, the Supreme Court in *Buckley* viewed contribution limits as precisely tailored to the only aspect of political association that presented a certifiable danger of corruption. The Court stated that the Act's "contribution limitation focuses precisely on the problem of large campaign contributions the narrow aspect of political association where the actuality and potential for corruption have been identified ...." *Id.* at 28.

Complainants' use of inflammatory language alleging the existence of a purported "donor swap shell game" is really aimed at creating an additional restriction beyond that imposed by FECA limitations. This additional restriction would impose an unconstitutional burden on candidates, donors and citizens by limiting their ability to discuss candidates and financial support for them within statutorily prescribed limits, limits which federal courts have repeatedly determined to be sufficient to protect the integrity of the electoral process. Indeed, the Supreme Court appears to have envisioned that such interactions among candidates and donors would occur without presenting corruption issues, so long as the contributions occurred within the law's "base limits:"

> "Of course a candidate would be pleased with a donor who contributed not only to the candidate himself, but also to other candidates from the same party, to party committees, and to PACs supporting the party. But there is a clear, administrable line between money beyond the base limits funneled in an identifiable way to a candidate—for which the candidate feels obligated—and money within the base limits given widely...." *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1461 (2014).

There is an attempt to characterize contributions given by and to candidates named in the Complaint as a "*quid pro quo*" system. In so doing, the Complaint attempts to apply the concept of *quid pro quo* corruption, prohibited by 18 U.S.C. § 201, to campaign contributions that are totally legal. The basic prohibitions in 18 U.S.C. § 201 involve offering something of value to a public official to influence an official act. However, there is no evidence presented that these contributions that are the subject of the Complaint were excessive, or that any illegal solicitation occurred or that they involved any *quid pro quo* arrangements. Indeed the Supreme Court has concluded that contribution limitations basically operate to prevent this from happening:

> "It is worth keeping in mind that the *base limits* themselves are a prophylactic measure. As we have explained, "restrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements."" *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1458 (2014) (quoting *Citizens United*, 558 U.S. 310, 357 (2010)).

Congress has clearly delineated by statute those situations in which solicitations can be illegal and has specifically prohibited the conduct. Hence, it is illegal to solicit contributions in a federal building, 18 U.S.C. § 607, or for certain federal employees to solicit contributions from other federal employees, 18 U.S.C. § 602. Apart from these and similar restrictions, Congress has never broadly prohibited candidates and donors from encouraging each other to make legal contributions in compliance with applicable limits.

With regard to Representative Sanchez and the Committee, the Complaint cites to various contributions made by her Committee or to her Committee, all of which are legal. Moreover, it is reasonable for candidates to support other candidates who are from the same state, from the same party and who share the same views on many issues. Clearly, making and receiving legal contributions in this context is not a sufficient basis for finding reason to believe Representative Sanchez or the Committee violated the Act.

The Complaint fails to meet the standards specified in FEC regulations in that it does not recite "... facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). On behalf of Respondents, we respectfully request that the Commission dismiss this Complaint. If you have any questions, please contact our office by email or phone.

Sincerely,

Lyn Utrecht

Greg Holger