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October 5, 2016

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BY HAND

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 7125

Dear Mr. Jordan:

In response to the Complaint filed by Tim Canova, we write on behalf of Debbie Wasserman Schultz for Congress and Lawrence Wasserman, in his official capacity as treasurer (“DWS for Congress” or “the Committee”); Representative Debbie Wasserman Schultz; and Steven Paikowsky, Dave Beattie, and Ryan Banfill, who served as consultants to the Committee during the times relevant to the Complaint (all collectively, “Respondents”). For the reasons set forth below, the Complaint alleges no violation of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 *et seq.* (the “Act”) and should be dismissed.

I. FACTUAL BACKGROUND

The Committee is the principal campaign committee of Representative Debbie Wasserman Schultz, who was a candidate for re-election to Congress in Florida’s 23rd District while serving also as Chair of the Democratic National Committee (“DNC”). Mr. Canova was her opponent in the primary election and filed the Complaint in the weeks preceding the primary. The Complaint’s core allegation is that Representative Wasserman Schultz made “illegal use of DNC resources and staff in furtherance of her primary election campaign.” Complaint ¶ 12. From this, the Complaint contends that the Committee and Representative Wasserman Schultz received contributions and failed to disclose them, and that Respondents violated the Act’s prohibitions on fraudulent misrepresentation of campaign authority.

All of these claims hinge on four alleged email exchanges:¹

¹ The exhibits to the Complaint are derived from documents published online by hackers who claimed to have obtained them from the DNC’s electronic mail systems. *See* Complaint ¶¶ 18 & n. 2. As discussed at length at this response, even if authentic, the exhibits would present no violation of the Act. Without admission and solely to

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- The first exchange, on May 12, 2016, involved Mr. Canova’s Skype appearance at a “counter-event” in conjunction with the Alaska Democratic Party convention. Representative Wasserman Schultz was speaking at the convention in her capacity as DNC Chair. *See* Complaint Exhibits 6 – 7. DNC employees also discussed how to respond to Alaska Democratic Party employees who asked about the circumstances of Mr. Canova’s access to DNC voter file data. *See* Complaint Exhibits 8 – 9.
- The second exchange, on May 17, 2016, was among DNC employees regarding an email sent by Mr. Canova’s campaign, asking recipients to “[s]ign our petition now asking Debbie Wasserman Schultz to return every penny the Democratic National Committee has taken from Republicans and anti-Obamacare lobbyists.” Complaint Exhibit 10.
- The third exchange, on May 20, 2016, involved DWS for Congress personnel apprising DNC employees of a schedule of planned statements that the Committee would issue between May 23 and 31 on topics like Zika funding, the minimum wage, terrorism, and veterans’ issues. *See* Complaint Exhibit 11.
- The fourth series of exchanges occurred on May 21, 2016 and May 22, 2016. They involved the endorsement of Mr. Canova by U.S. Senator Bernie Sanders, who was then still a candidate for the Democratic presidential nomination. The May 21 emails culminated in the drafting of a statement in response to the endorsement, which was released by the Committee. Complaint Exhibits 3 – 4. On May 22, a DNC employee is shown forwarding the statement to a journalist while explaining why the campaign, and not the DNC, released it. *See* Complaint Exhibit 5. Also on May 22, DNC employees are shown discussing a Sanders presidential campaign email that announced the endorsement and solicited contributions to Canova’s campaign. *See* Complaint Exhibit 2.²

However, as the Complaint acknowledges, the Committee engaged multiple personnel to plan and implement its activities, including some of those whom the Complaint claims was utilized for the campaign. *See* Complaint ¶¶ 6-7, 17. *See also, e.g.*, DWS for Congress July Quarterly Report, at 816 (showing \$24,300 in disbursements to EMC Research, which employs Dave Beattie); *id.* at 766–67 (showing disbursements of \$5,000 on April 1, \$5,000 on May 5, and \$5,000 on June 3 to BTS Strategies, which employs Steven Paikowsky); *id.* at 749–50 (showing

assist the Commission in the Complaint’s timely disposition, this response assumes *arguendo* the authenticity of the exhibits.

² The Complaint also includes a July 26, 2016 Huffington Post article, citing “two sources” who reported that, “in one recent incident,” Representative Wasserman Schultz “was asked to place a call to Vice President Joe Biden to get him to help out the DNC . . . [but] she ended up discussing a fundraiser that the VP would do for her congressional campaign.” Complaint Exhibit 12. The Complaint does not identify the sources, nor does it identify any DNC expense or resource associated with the reported solicitation.



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disbursements of \$4,286 on May 13 and June 15 to Ryan Banfill). Thus, the Complaint and the public record make clear that the Committee had its own personnel and spent substantially in support of its own operations. Exhibit 5 of the Complaint affirms this. It presents a DNC spokesperson as saying of Representative Wasserman Schultz's campaign, "we're not running that from the DNC." Complaint Exhibit 5.

II. LEGAL ANALYSIS

A. The Complaint's Allegation of In-Kind Contributions Is Meritless

The allegation that the Committee received and failed to report in-kind contributions from the DNC is without merit. A "contribution" includes in-kind contributions and "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." 52 U.S.C. § 30101(8)(A). However, "[e]xpenditures for rent, personnel, overhead, general administrative, fund-raising, and other day-to-day costs of political committees need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate." 11 C.F.R. § 106.1(c)(1). *See also* H.R. Doc. No. 95-44, at 49 (1977) ("The administrative expenses and other non-candidate related expenses of a multicandidate committee do not have to be allocated among candidates, as long as they are not made on behalf of a specific candidate.") The Act's contribution limits "were not intended to cover every expenditure by a multicandidate committee." Advisory Opinion 1975-87. Rather, day-to-day expenses including research, writing and staff are not treated as contributions, "provided that such expenses do not contribute directly to any candidate's campaign effort. Cong. Rec. H10332-33 (daily ed. Oct. 10, 1974) (statement of Rep. Frenzel). *See also* 120 Cong. Rec. H7807-08 (daily ed. Aug. 7, 1974) (statement of Rep. Hays) ("I do not think it was the intention of the committee, to include whatever services we give to any candidate as far as the \$5,000 [limit] is concerned.").

As a threshold matter, the Complaint and its exhibits do not show the DNC acting to support the Committee. The Complaint's exhibits shows the DNC and Representative Wasserman Schultz as its Chair responding or preparing to respond to external events affecting the DNC's own interests. The May 12 exchange involved an appearance by Mr. Canova in relation to an event in Alaska that the Congresswoman was attending in her capacity as Chair. The May 17 exchange involved Mr. Canova's demand that the DNC refund certain contributions. The May 20 exchange showed the Committee apprising the DNC of its own communications plans, so that the DNC would not be caught off guard. And the May 21-22 exchange involved a Democratic presidential candidate endorsing the primary opponent of the DNC Chair—a matter in which the party's own interest was obvious and unavoidable.

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The exhibits and the public record show that the Committee had a robust staff and consulting team of its own. At least two of those mentioned in the Complaint as among the DNC personnel who had purportedly been put to “illegal use” (Complaint ¶ 16)—Ryan Banfill and Dave Beattie—were, in fact, paid by the Committee. *See* Complaint ¶ 6; *see also* DWS for Congress July Quarterly Report, at 749-50 (showing disbursements to Banfill), 816 (showing disbursements to Beattie’s employer). Consistent with the other exhibits and the record as a whole, Exhibit 5 shows the DNC’s spokesperson, Luis Miranda, as saying “we’re not running [the campaign] from the DNC.” Complaint Exhibit 5.

Yet even if DNC employees and resources were utilized for the Committee—which the record does not show—that would not have represented *prima facie* a contribution. To the contrary, Commission rules expressly allow the DNC to treat its day-to-day operating costs as not subject to candidate limits, unless incurred on behalf of a specific candidate and directly attributable to that candidate. *See* 11 C.F.R. § 106.1(c)(1). The Complaint and its exhibits does not show a single expense that was incurred directly on behalf of the Committee or Representative Wasserman-Schultz’s candidacy. The Complaint’s charge of unreported contributions is thus groundless and should be dismissed.

B. The Complaint Misreads and Presents No Violation of § 30124’s Ban on Fraudulent Misrepresentation

52 U.S.C. § 30124 prohibits federal candidates, their employees and agents from fraudulently misrepresenting themselves or entities they control as speaking, writing or otherwise acting for or on behalf of another candidate, another party or its agents to that candidate or party’s detriment. The bulk of the statute in its current form was written after Watergate to deal with “dirty tricks”—for example, the Nixon campaign’s distribution of documents on Muskie campaign letterhead that “accused Senators Humphrey and Jackson of the most bizarre type of personal conduct.” Cong. Rec. S5845 (daily ed. Apr. 11, 1974) (statement of Sen. Bayh). For a violation to occur, a respondent must fraudulently represent himself or herself as acting for another or on behalf of another on a matter damaging to that same other person. *See* 52 U.S.C. § 30124(a)(1).

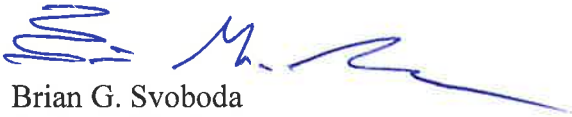
The Complaint does not allege that any Respondent ever purported to act on behalf of anyone besides the DNC, Representative Wasserman Schultz, or her campaign. Nor does it allege anything that any Respondent said or did that was damaging to Mr. Canova or his campaign. Finally, it presents no facts that show anyone as participating in or conspiring to participate in any scheme to violate the statute. *See* 52 U.S.C. § 30124(a)(2). The Complaint fails to establish the basic elements of the statute, and indeed misreads the statute. Its baseless claim of fraudulent misrepresentation, itself prejudicial to the individual Respondents, should be immediately and roundly dismissed.

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CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the Complaint and take no further action.

Very truly yours,

A handwritten signature in blue ink, appearing to be "S. M. R.", is written over the typed names of the signatories.

Brian G. Svoboda
Emily A. Hogin
Counsel to Respondents