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October 5, 2016

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D. +1.202.434.1609  
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Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463**Re: MUR 7125**

Dear Mr. Jordan:

This letter is filed on behalf of the Democratic National Committee (the “DNC” or “Committee”); Andrew Tobias, in his official capacity as treasurer; Raul Alvililar, Garret Bonosky, Ali Khan, Luis Miranda, Marc Paustenbach and Tracie Pough, who were employees of the DNC at the times relevant to the Complaint filed in the above-referenced matter by Complainant Tim Canova; and April Mellody, who was an employee of the Democratic National Convention Committee at the relevant times. For the reasons set forth below, the Complaint alleges no violation of the Federal Election Campaign Act (the “Act”), is without merit, and should be dismissed.

**Factual Background**

At the times relevant to the complaint, the DNC’s chair was Representative Debbie Wasserman Schultz, who was also a candidate for re-election to Congress in Florida’s 23rd District. Mr. Canova was her opponent in the primary election, which she won on August 30, 2016. Mr. Canova filed the Complaint before the primary election. His claims are based on a series of documents published online by hackers linked to a foreign intelligence service, who claimed to have obtained them from the DNC’s electronic mail systems.<sup>1</sup> At this writing, the circumstances surrounding the publication of these emails remains the subject of review. The DNC accordingly has made no admission regarding the authenticity of these emails and does not concede their authenticity or accuracy in this Matter. As discussed at length below, even if the emails were authentic, the Commission still would have no reason to believe that Respondents violated the

<sup>1</sup> See Harriet Taylor, *DNC breach was likely Russia, not 400-pound hacker, law enforcement says*, CNBC (Sep. 27, 2016), <http://www.cnbc.com/2016/09/27/dnc-breach-was-likely-russia-not-400-pound-hacker-law-enforcement-says.html>.

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Jeff S. Jordan  
October 5, 2016  
Page 2

Act. Solely to assist the Commission in the timely disposition of the Complaint, this response assumes *arguendo* the authenticity of the exhibits provided with the complaint.

The Complaint hinges on four series of interactions depicted by the exhibits:

- *First*, the exhibits show a May 12, 2016 email exchange regarding Mr. Canova's Skype appearance at a "counter-event" in conjunction with the Alaska Democratic Party convention, at which Representative Wasserman Schultz was to speak in her capacity as DNC Chair. *See* Complaint Exhibits 6 – 7. They also show an email exchange about how to respond to employees of the Alaska Democratic Party, who had asked about the circumstances of Mr. Canova's access to DNC voter file data. *See* Complaint Exhibits 8 – 9.
- *Second*, the exhibits show a May 17, 2016 exchange 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 email also includes the claim, "Once again, our opponent has proven to be a poor steward the [sic] Democratic Party and the progressive values we share." *Id.*
- *Third*, the exhibits show a May 20, 2016 exchange in which employees of Representative Wasserman Schultz's authorized committee apprise DNC employees of a schedule of planned statements that the Wasserman Schultz for Congress campaign would issue between May 23 and 31 on topics such as Zika funding, the minimum wage, terrorism, and veterans' issues. *See* Complaint Exhibit 11.
- *Fourth*, the exhibits present a series of exchanges on May 21, 2016 and May 22, 2016, regarding the endorsement of Mr. Canova by U.S. Senator Bernie Sanders, then still a candidate for the Democratic presidential nomination, in the DNC Chair's primary election. The exchanges on May 21 culminate in the drafting of a statement in response to the statement saying, *inter alia*, "Even though Senator Sanders has endorsed my opponent I remain, as I have been from the beginning, neutral in the Presidential Democratic primary." Complaint Exhibits 3 – 4. Representative Wasserman Schultz elected to issue the statement from her principal campaign committee. On May 22, the exhibits show a DNC employee forwarding a statement to a journalist while explaining why the campaign, not the DNC, released that statement. *See* Complaint Exhibit 5. Also on May 22, the exhibits show an exchange regarding a Sanders presidential campaign

Jeff S. Jordan  
 October 5, 2016  
 Page 3

email announcing Senator Sanders's endorsement of Mr. Canova and soliciting contributions to his campaign. *See* Complaint Exhibit 2.<sup>2</sup>

As Exhibit 5 indicates, and as reports filed by Representative Wasserman Schultz's principal campaign committee with the Commission confirm, her campaign engaged multiple staff and consultants to plan and implement her campaign activities in Florida. Indeed, the Complaint tacitly acknowledges that some of those whom Representative Wasserman Schultz purportedly utilized for her campaign were—in fact—paid by her campaign. *See* Complaint ¶¶ 6-7, 17. *See also, e.g.*, Debbie Wasserman Schultz for Congress July Quarterly Report, at 749-50 (showing disbursements to Ryan Banfill of \$4,286 on May 13 and June 15); *id.* at 816 (showing \$24,300 in disbursements to EMC Research, which employs consultant Dave Beattie, who is also named in the Complaint).

### Legal Analysis

#### 1. The Complaint Presents No In-Kind Contribution from the DNC to Representative Wasserman Schultz.

The Complaint presents no in-kind contribution from the DNC to Representative Wasserman Schultz's campaign. While Counts I and III of the Complaint claim that the DNC made unreported in-kind contributions, the exhibits present no such conduct. Rather, each of the four series of interactions clearly show the DNC pursuing its own interests, irrespective of the success or failure of Representative Wasserman Schultz's own campaign. The exhibits show that the DNC was trying to figure out how to respond to public criticism that Mr. Canova was directing at it in pursuit of his own campaign. They also show the DNC receiving information about its chair's planned public statements on national issues, so that it could respond in the media if they became a source of controversy for the Committee. The Complaint identifies no discrete expense incurred by the DNC and directly attributable to Representative Wasserman Schultz's campaign. To the contrary, the Complaint and the exhibits show that the campaign was incurring its own expenses in pursuit of its own activity, and that the DNC's employees understood that the campaign was separately staffed and supported.

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). Commission regulations

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<sup>2</sup> 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.

Jeff S. Jordan  
 October 5, 2016  
 Page 4

provide that “[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.”) From the Act’s inception, the Commission has been clear that the Act’s contribution limits “were not intended to cover every expenditure by a multicandidate committee.” Advisory Opinion 1975-87. As one of the principal sponsors of the Act’s 1974 amendments made clear:

there is general agreement among the conferees that the provisions placing limitations on contributions and expenditures should not require a ... national committee of a political party... to credit to a candidate’s limitations on expenditures and contributions or to otherwise attribute to any political candidates or his political committees a portion of their normal day-to-day expenses.

Any other interpretation would create an enormous amount of administrative busy work for all candidates and might cause wholesale violations of the law ...

These day-to-day expenses should be defined to include such items as research, speech writing, general party organization and travel, party publications, fund raising expenses, staff at various party headquarters in the field and national convention expenditures, 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.”).

The Complaint shows well why Congress wrote the Act this way more than forty years ago. Were the Commission to follow the Complaint’s logic instead, it would become impossible for a federal candidate to chair a national party committee, whether it be the national committee of a political party committee or one of the congressional campaign committees. A wide range of committee activities would potentially be allocated to the candidate’s limits, thus creating the “enormous amount of administrative busy work” and “wholesale violations of the law” that Congress sought specifically to avoid. Cong. Rec. H10332 (daily ed. Oct. 10, 1974).

In this case, the exhibits show that the DNC was not even providing Representative Wasserman Schultz’s campaign with the direct services that the Act and regulations permit. Rather, it was

Jeff S. Jordan  
 October 5, 2016  
 Page 5

simply trying to protect the Committee's interests, when Mr. Canova had made her service as chair an issue in her primary campaign. Thus:

- The exchanges regarding the Alaska event around May 12 occurred when Mr. Canova planned to appear by Skype in an event held to “counter” Representative Wasserman Schultz’s appearance at the Alaska Democratic Party convention in her capacity as DNC Chair. Complaint Exhibits 6 – 7. With no other Florida voters likely to attend the Alaska convention, it was clear that Mr. Canova’s appearance was likely to criticize her performance as Chair. Under these circumstances, it would have been entirely appropriate for DNC employees to monitor and respond to an event that seemed likely to involve discussion of the DNC. And, when after the event, Alaska Democrats asked whether the DNC had denied resources to Mr. Canova as he apparently claimed, it was entirely appropriate for DNC employees to respond to those allegations. *See* Complaint Exhibits 8 – 9.
- The May 17 exchanges likewise show DNC employees performing their ordinary duties of reviewing and responding to matters involving the DNC. It shows them sharing among themselves an email from Mr. Canova’s campaign that asked 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 email also calls the then-Chairwoman “a poor steward the [sic] Democratic Party and the progressive values we share.” *Id.*
- The May 20 exchange simply shows Debbie Wasserman Schultz for Congress forwarding information about scheduled press releases to DNC staffers for their awareness. *See* Complaint Exhibit 10. Far from showing that “DNC staff was involved in communications planning for U.S. House, FL-District 23,” Complaint at ¶ 25, the exhibit simply shows that campaign staff kept DNC staff informed about scheduled press releases. That it was campaign staff, and not DNC staff, who prepared the press releases in the first place belies the Complaint’s assertion of inappropriate support.
- The May 21 and 22 exchanges show DNC employees and consultants discussing a media report that Senator Bernie Sanders—then still a candidate for the Democratic presidential nomination—was planning to endorse Mr. Canova in his primary race against the DNC chair. Complaint Exhibit 1. Working with Mr. Banfill, who was employed both by Wasserman Schultz for Congress and the DNC, the employees and consultants drafted a response to Senator Sanders’s endorsement that defended the DNC’s conduct: “Even though Senator Sanders has endorsed my opponent I remain, as I have been from the beginning, neutral in the Presidential Democratic primary.” Complaint Exhibits 3–4. While the response was ultimately issued by the campaign, the exchange clearly shows

Jeff S. Jordan  
 October 5, 2016  
 Page 6

that the individuals involved were working to explain and defend the Committee's actions.<sup>3</sup>

The exhibits not only show the DNC's employees and consultants as working to serve DNC interests. It presents them as knowing and understanding that Representative Wasserman Schultz's re-election campaign was being staffed and supported by her own principal campaign committee—not by the DNC. For example, Exhibit 5 shows the DNC's spokesperson, Luis Miranda, as explaining to a reporter that the May 21 statement responding to Senator Sanders' endorsement of Mr. Canova was released to avoid the appearance of support for "her congressional re-election campaign: we're not running that from the DNC." Exhibit 5. As noted previously, the fact that the campaign separately engaged and paid employees and consultants supports the truth of this statement.

Thus, the exhibits consistently show the use of DNC resources and personnel in pursuit of the DNC's own interests, even though the law did not require the DNC to limit the use of its staff and day-to-day operating costs in this way. Like the public record, the exhibits show also that Representative Wasserman Schultz's campaign paid separately to promote its own interests. Finally, they show no expense incurred by the DNC for the campaign that was directly attributable to the campaign. The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. See 11 C.F.R. § 111.4(a), (d). Yet the Complaint presents no facts which, if true, would indicate a contribution from the DNC to Debbie Wasserman Schultz for Congress. Counts I and III of the Complaint are accordingly meritless.

**2. Complainant offers no evidence that would give the Commission reason to believe that any Respondent violated 52 U.S.C. § 30124.**

Count II of the Complaint utterly misreads the Act's prohibition on the fraudulent misrepresentation of campaign authority, to the detriment not only of the DNC, but its individual officers and employees. 52 U.S.C. § 30124 prohibits any federal candidate or candidate's agent from "fraudulently misrepresent[ing] himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to **such** other candidate or political party or employee or agent thereof" (emphasis added). Complainant claims that DNC employees violated this statute by "utilizing DNC staff as an arm of the Wasserman Schultz for Congress campaign to undermine the campaign of Tim Canova for Congress." Complaint ¶ 40.

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<sup>3</sup> Indeed, had the DNC issued the statement, it seems likely that this, too, would have been a violation in Complainant's view.

Jeff S. Jordan  
 October 5, 2016  
 Page 7

Yet even had this conduct occurred, it would not present a violation of § 30124. That statute only applies when a candidate or her agent misrepresents herself *as acting for or on behalf of another, wronged candidate or party*. See 52 U.S.C. § 30124 (“on a matter which is damaging to *such* other candidate”) (emphasis added). The legislative history includes examples of the types of behavior that Congress prohibited here: “during the 1972 campaign there occurred at least two incidents in which an employee or agent of the Committee To Re-Elect the President distributed documents bearing the letterhead of Senator Muskie’s campaign which falsely accused Senators Humphrey and Jackson of the most bizarre type of personal conduct.” *Legislative History of Federal Election Campaign Act Amendments of 1974* at 521. In its Explanation and Justification for the regulation implementing § 30124, the Commission provided the example of “a candidate who distributes letters containing statements damaging to an opponent and who fraudulently attributes them to the opponent” and noted that the prohibition “includes actions or spoken or written communications that are intended to suppress votes for the candidate or party *who has been fraudulently misrepresented.*” Federal Election Comm’n, *Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of campaign Funds*, 67 Fed. Reg. 76962, 76968–69 (Dec. 13, 2002) (emphasis added).

The Complaint makes no allegation that any respondent ever purported to act on behalf of anyone besides the DNC, Representative Wasserman Schultz or her campaign—let alone Mr. Canova or his campaign. By misreading § 30124, the Complaint calumniates a group of individuals whom the exhibits show consistently as holding themselves out as representing their true employer. The Commission should forcefully and affirmatively reject the claim of any § 30124 violation.

**3. Complainant misreads 52 U.S.C. § 30116(d) and fails to state a claim that the Democratic National Committee violated the Act.**

Finally, Count IV of the Complaint erroneously claims that FECA prohibits the DNC from making contributions in connection with primary elections. It asserts that, because FECA gives parties authority to make *coordinated expenditures* in the general election, see 52 U.S.C. § 30116(d), and because it gives them no authority to do so in the primary election, it prohibits the DNC from making *contributions* in the primary election, regardless of amount. Like the other three counts of the Complaint, Count IV is simply wrong as a matter of law.

Section 30116(a)—not section 30116(d)—governs the DNC’s contributions to federal candidates. See 52 U.S.C. § 30116(a)(2). Section 30116(a) in no way prohibits national parties from making contributions in primary elections. Rather, it imposes a \$5,000-per-candidate limit on those contributions. See *id.* § 30116(a)(2)(A). The Commission has said flatly that a national party committee may give to a presidential primary candidate: “the House campaign committee and the national committee of the same political party have separate per election limits on contributions they give to any federal candidate, *including ... a candidate seeking the party’s*

Jeff S. Jordan  
October 5, 2016  
Page 8

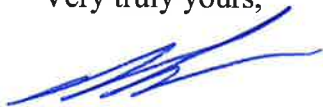
***nomination for President.***” Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,102 (1989) (emphasis added). While Count IV is ultimately irrelevant, because the DNC made no contribution in the Florida 23 primary, its claim that “national committees are not permitted to contribute to the primary campaigns of federal candidates” is contrary to law. Compl. ¶ 46.

The Complaint confuses section 30116(a)’s contribution limits with section 30116(d)’s separate provision for coordinated expenditures. Previously codified at 2 U.S.C. § 441a(d), section 30116(d) does not provide that “national committees are permitted to contribute to the general election campaigns of candidates for federal office.” Compl. ¶ 45. Rather, it permits the parties “to make limited general election campaign expenditures on behalf of their candidates, ***which are in addition to the amount they may contribute directly to those candidates.***” Party Committee Coordinated Expenditures; Costs of Media Travel With Publicly Financed Presidential Candidates, 64 Fed. Reg. 42,579, 42,580 (1999) (emphasis added). That Congress gave parties no express authority to make *coordinated expenditures* in primary elections has nothing to do with whether they may make *contributions* in those same elections—which, in any case, the Commission has expressly affirmed that they may do.

### CONCLUSION

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

Very truly yours,



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Emily A. Hogin