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2018 SEP -4 PM 1:00

September 4, 2018

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BY HAND DELIVERY

Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7304

Dear Mr. Jordan:

OFFICE OF
GENERAL COUNSEL
2018 SEP -4 PM 2:58

We write on behalf of Hillary Victory Fund and Elizabeth Jones in her official capacity as Treasurer; Hillary for America and Jose H. Villarreal in his official capacity as Treasurer; Secretary Hillary Rodham Clinton in her official capacity as a candidate for President of the United States; the DNC Services Corporation/Democratic National Committee and William Q. Derrough in his official capacity as Treasurer; the Nevada State Democratic Party and Jan Churchill in her official capacity as Treasurer; the Democratic Party of Virginia and Barbara Klear in her official capacity as Treasurer; and the Missouri Democratic State Committee and Lauren Arthur in her official capacity as Treasurer, (collectively, "Respondents"), in response to the Commission's July 31, 2018 letter informing Respondents that the Commission received a complaint containing a "new verification page correcting purported technical deficiencies" in the above-referenced matter.

Except for the changes made to the verification page, the July 31, 2018 Complaint appears to be identical to the original Complaint. Accordingly, Respondents adopt and enclose their previous response. The July 31, 2018 Complaint *still* repeatedly mischaracterizes and misconstrues Respondents' lawful joint fundraising activity, and fails to allege any conduct that would constitute a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), or Commission Regulations. The Commission should dismiss the Complaint for those reasons alone.¹

In addition, as noted in our previous response, the fact that the original Complaint lacked a sworn verification—in clear violation of the Act and Commission Regulations—provides an independent basis for the Commission to dismiss.² The Act provides that a complaint "shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made

¹ See Commissioners Mason, Sandstrom, Smith & Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2000).

² Resp. at 1 n.2 (Feb. 16, 2018).

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under penalty of perjury”³ *Per the Commission’s regulations, if a complaint does not meet these requirements, “the General Counsel shall so notify the complainant and any person(s) or entity(ies) identified therein as respondent(s), within [a] five (5) day period . . . , that no action shall be taken on the basis of that complaint.”*⁴ In the Explanation and Justification accompanying this regulation, the Commission explained, “[a] complaint is improper if it does not comply with this subsection, and shall not be acted upon by the Commission.”⁵

In keeping with this clear directive, the Commission’s Office of General Counsel (“OGC”) has developed standards for processing complaints. The OGC Enforcement Manual states:

Complaints are initially received and reviewed by Docket and the Special Assistant to the Associate General Counsel for Enforcement for compliance with the mandatory statutory requirements. If a complaint is improper on its face, Docket returns it with an explanation of the impropriety. . . . One of the more common reasons for return of a complaint is that it was not signed and sworn to by the complainant⁶

The Enforcement Manual states that a complaint cannot be docketed until OGC determines that it is “in proper form.”⁷ Only after docketing does the Commission send notification letters to the named respondents.⁸

The Commission provides another recitation of this process in its Guidebook for Complainants and Respondents on the FEC Enforcement Process. According to the Guidebook:

The Office of Complaints Examination and Legal Administration (“CELA”) within OGC is the entry point for processing a complaint. CELA reviews the complaint for compliance with the required criteria, as described above. If a complaint does not meet the criteria, CELA notifies the complainant of the deficiencies and that no action can be taken on the basis of the complaint. 11 CFR 111.5(b). If the complaint is deemed sufficient, CELA assigns the complaint a Matter Under Review (“MUR”) number, informs the complainant that the complaint has been received

³ 52 U.S.C. § 30109(a)(1).

⁴ 11 C.F.R. § 111.5(b) (emphasis added).

⁵ Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress, 45 Fed. Reg. 15,080, 15,088 (Mar. 7, 1980).

⁶ OFFICE OF GEN. COUNSEL, FED. ELECTION COMM’N, ENFORCEMENT MANUAL 21-22 (1997), available at https://transition.fec.gov/pdf/1997_Enforcement_Manual.pdf.

⁷ See *id.* at 22.

⁸ See *id.*

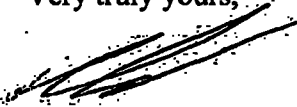
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and that the Commission will notify him or her once the entire matter has been resolved. *See* 11 CFR 111.5(a)-(b).⁹

The original complaint lacked a sworn verification. The Commission was thus barred by law from considering it. By processing the complaint as if it met the statutory requirements, the Commission clearly contradicted the Act, its own regulations, and guidance. Pursuant to the Commission's own rules, it should have returned the Complaint to the Complainant *within five days* and should not have taken any further action on the matter. While the July 31, 2018 Complaint appears to correct the deficiency on the verification page, it was filed *seven months* after the original complaint, well after Respondents undertook significant burden and expense to file a response, and only *after* Respondents alerted the Commission to the deficiency.

The Commission engaged in an irregular, unprecedented, and contradictory practice by failing to return the original complaint within five days of filing.¹⁰ For the reasons set forth herein and in Respondents' previous response, the Commission should immediately dismiss the matter.

Very truly yours,



Marc E. Elias
Jonathan S. Berkon
Brian G. Svoboda
Ezra W. Reese
Graham S. Wilson
Counsel to Respondents

⁹ FED. ELECTION COMM'N, *GUIDEBOOK FOR COMPLAINANTS AND RESPONDENTS ON THE FEC ENFORCEMENT PROCESS 7* (May 2012), available at https://transition.fec.gov/em/respondent_guide.pdf.

¹⁰ We have located numerous instances in which the Commission has returned complaints that were deficient because they lacked a sworn verification. *See, e.g.*, MUR 6909; MUR 6711; MUR 6681; MUR 6843; MUR 6704; MUR 4930; MUR 4690; MUR 4477; MUR 4138; MUR 3443; MUR 3188; MUR 3110; MUR 3098; MUR 2845; MUR 2798; MUR 2664; MUR 2653; MUR 2453; MUR 2314; MUR 2331; MUR 2308; MUR 2299; MUR 2265; MUR 2260; MUR 2248; MUR 2244; MUR 2194; MUR 2165; MUR 2075; MUR 1852; MUR 1776; MUR 1456; MUR 1466; MUR 1448; MUR 1435; MUR 1428. The Commission's acceptance of the original complaint in this matter was contrary to the rules and Commission practice.