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May 25, 2018

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2018 MAY 29 AM 11:29**BY HAND DELIVERY**Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
Complaints Examination & Legal Administration  
1050 First Street, N.E.  
Washington, DC 20463**Re: MUR 7358**

Dear Mr. Jordan:

We write as counsel to Representative Jacky Rosen, Rosen for Nevada and Steven Mele in his official capacity as Treasurer (collectively, “Respondents”), in response to the complaint filed by Greg Bailor (“Complainant”) on March 30, 2018 (the “Complaint”).

According to the Complaint “the public record demonstrates” that Respondents have “illegally accepted improper and excessive in-kind contributions” in the form of legal services from Perkins Coie LLP (“Perkins Coie”) and Wolf, Rifkin, Shapiro, Schulman, & Rabkin, LLP (“Wolf Rifkin”).<sup>1</sup> However, a review of the *entire* public record proves that claim false: Respondents have received no in-kind contributions for the legal services at issue, as all fees have been lawfully paid for and reported in accordance with the Federal Election Campaign Act of 1971, as amended (“FECA”). The Complainant either misunderstands recent changes to the FECA,<sup>2</sup> or has intentionally limited his review of the public record to support his incorrect conclusions. Either way, because Respondents have committed no violation of law, the Commission must find no reason to believe a violation has occurred and must immediately dismiss the Complaint.<sup>3</sup>

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<sup>1</sup> Compl. at 1.

<sup>2</sup> 52 U.S.C. § 30116(a)(9)(C); *see also* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130 (2014).

<sup>3</sup> *See* MUR 4960 (Hillary Rodham Clinton), Statement of Reasons (Dec. 21, 2000) (confirming that unwarranted legal conclusions from mere speculation will not be accepted as true, and do not provide an independent basis for investigation).

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## FACTUAL BACKGROUND

On December 16, 2014, President Obama signed into law the Consolidated and Further Continuing Appropriations Act of 2015.<sup>4</sup> Among other things, the law amended the FECA to allow national party committees to create a new account “to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.”<sup>5</sup> The law took effect immediately, (i) increasing the applicable contribution limits for the legal proceedings account to 300 percent of the annual contribution limit for national party committees; and (ii) exempting disbursements from the legal proceedings account from the coordinated party expenditure limits imposed by the FECA.<sup>6</sup> In terms of reporting disbursements from the legal proceedings account, the FEC instructed national party committees to “identify these disbursements by entering ‘Recount Account’ in the Purpose of Disbursement field along with the required purpose of the disbursement (e.g., ‘Recount Account – Legal Services’).”<sup>7</sup>

On November 8, 2016, Jacky Rosen was elected to the U.S. House of Representatives for Nevada’s 3rd District, defeating her opponent, Danny Tarkanian.<sup>8</sup> On November 16, 2016, Mr. Tarkanian filed a lawsuit against Jacky Rosen in the Clark County District Court, alleging that one of her campaign advertisements contained false and defamatory statements about him.<sup>9</sup> Perkins Coie represented Jacky Rosen and her principal campaign committee, Rosen for Nevada,<sup>10</sup> in the lawsuit, partnering with local counsel from Wolf Rifkin.<sup>11</sup>

<sup>4</sup> See Consolidated and Further Continuing Appropriations Act, 2015, 128 Stat. at 2772; 52 U.S.C. § 30116(a)(9)(C).

<sup>5</sup> 52 U.S.C. § 30116(a)(9)(C).

<sup>6</sup> *Id.* § 30116(a)(1)(B), (d)(5) (“The limitations contained in paragraphs (2), (3), and (4) of this subsection shall not apply to expenditures made from any of the accounts described in subsection (a)(9).”); see also 11 C.F.R. §§ 109.30, 109.32; 160 Cong. Rec. S6814-04 (daily ed. Dec. 13, 2014) (statement of Sen. Reid) (“[I]t is the intent of the amendments contained herein that expenditures made from the accounts described . . . do not count against the coordinated party expenditure limits.”)

<sup>7</sup> Press Release, Fed. Election Comm’n, FEC Issues Interim Reporting Guidance for National Party Committee Accounts (Feb. 13, 2015), <https://www.fec.gov/updates/fec-issues-interim-reporting-guidance-for-national-party-committee-accounts/> [hereinafter FEC Interim Reporting Guidance].

<sup>8</sup> Bridget Bowman, *Democrat Jacky Rosen Wins in Nevada’s 3rd District*, Roll Call (Nov. 9, 2016), <https://www.rollcall.com/news/politics/party-winner-succeeds-heck-nevadas-3rd-district>; see also About, Congresswoman Jacky Rosen, <https://rosen.house.gov/about> (last visited May 21, 2018).

<sup>9</sup> Complaint at 2, *Tarkanian v. Rosen*, No. A-16-746797-C (Nov. 16, 2017), *appeal docketed*, No. 73274 (Nev. June 19, 2017).

<sup>10</sup> FEC Statement of Organization, Rosen for Nevada (filed Jan. 26, 2016).

<sup>11</sup> Anti-SLAPP Special Motion to Dismiss Under N.R.S. 41.660 at 1, *Tarkanian v. Rosen*, No. A-16-746797-C (Jan. 25, 2017), *appeal docketed*, No. 73274 (Nev. June 19, 2017).

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Perkins Coie filed a motion to dismiss the lawsuit in January 2017, but the Clark County District Court denied the motion and allowed the lawsuit to proceed.<sup>12</sup> In June 2017, Perkins Coie appealed the matter to the Nevada Supreme Court.<sup>13</sup> The case is still ongoing, and both Perkins Coie and Wolf Rifkin continue to represent Jacky Rosen and Rosen for Nevada in the lawsuit.<sup>14</sup>

Because the lawsuit stems from Representative Rosen's campaign for the U.S. House of Representatives, the Democratic Congressional Campaign Committee (the "DCCC") initially paid for legal fees associated with the lawsuit, using funds from its legal proceedings account.<sup>15</sup> Specifically, since Mr. Tarkanian filed the lawsuit against Jacky Rosen on November 16, 2016, FEC reports indicate that the DCCC has paid Perkins Coie \$570,833 for "Recount Legal Svcs."<sup>16</sup> As is common practice for a national law firm when working with local counsel, Perkins Coie paid Wolf Rifkin directly, then billed the DCCC for the total cost of all services rendered from both law firms.

Since Representative Rosen announced her candidacy for the U.S. Senate,<sup>17</sup> FEC reports indicate that the Democratic Senatorial Campaign Committee ("DSCC") also began paying for legal costs associated with Mr. Tarkanian's lawsuit.<sup>18</sup> For example, on January 18, 2018, the DSCC paid Wolf Rifkin \$25,438.78 for "Legal Services Recount."<sup>19</sup> Since January 2018, the DSCC has also paid Perkins Coie \$32,467.25 for "Legal Services Recount."<sup>20</sup>

## LEGAL ANALYSIS

The Complaint's sole allegation is that Respondents accepted excessive in-kind contributions in the form of legal services from Perkins Coie and Wolf Rifkin, which allegedly provided Respondents with an "unlimited contribution limit" and a "boundless and immeasurable

<sup>12</sup> *Id.*; see also Order for Defendant's Motion to Dismiss Under N.R.S. 41.660, *Tarkanian v. Rosen*, No. A-16746797-C (June 12, 2017), *appeal docketed*, No. 73274 (Nev. June 19, 2017).

<sup>13</sup> Case Appeal Statement, *Tarkanian v. Rosen*, No. A-16-746797-C (June 13, 2017), *appeal docketed*, No. 73274 (Nev. June 19, 2017).

<sup>14</sup> *Id.*

<sup>15</sup> See Exhibit A, Disbursements from Legal Proceedings Accounts; see also About Us, DCCC, <https://dccc.org/about/> (last visited May 21, 2018) (describing the DCCC as "the only political committee in the country whose principal mission is to support Democratic House candidates every step of the way to victory").

<sup>16</sup> See Exhibit A, Disbursements from Legal Proceedings Accounts. Because federal law does not require national party committees to subitemize disbursements from its legal proceedings account or otherwise identify a benefitted candidate, the exact cost associated with the Tarkanian lawsuit is not specified on DCCC or DSCC FEC reports.

<sup>17</sup> See FEC Statement of Candidacy (filed Jul. 1, 2017), <http://docquery.fec.gov/pdf/301/201707050200164301/201707050200164301.pdf>.

<sup>18</sup> See February Monthly Report at 1636, DSCC (filed Feb. 20, 2018); FEC Statement of Candidacy, Rosen for Nevada (filed July 1, 2017), <http://docquery.fec.gov/pdf/301/201707050200164301/201707050200164301.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> See Exhibit A, Disbursements from Legal Proceedings Accounts.

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advantage” in the 2016 election.<sup>21</sup> However, these accusations and conclusions are simply false—refuted not only by the public record but by a federal law that has been on the books since 2014. What the Complaint characterizes as an illegal, excessive in-kind contribution is actually a series of lawful transactions that were properly paid for and disclosed in accordance with federal law and indistinguishable from those regularly made by other national party committees.<sup>22</sup>

#### *A. Legal Services Lawfully Paid Through National Party Legal Proceedings Accounts*

The Consolidated and Further Continuing Appropriations Act of 2015 is quite clear in its application: it allows for a “separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) [to be] used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.”<sup>23</sup> Not only did the new law increase contribution limits for a legal proceedings account, it explicitly excluded from the coordinated party expenditure limit any disbursement from the legal proceedings account.<sup>24</sup>

The Explanation of Congressional Intent accompanying the new law makes clear that Congress intended for national party committees to “use such funds for costs, fees, and disbursements associated with other legal proceedings.”<sup>25</sup> Absent any specific limitations in the law, Congressional Record, legislative history, Commission regulations, or Commission guidance, a plain read of the statute and Explanation of Congressional Intent affirms that a legal proceedings account may be used to pay for any and all litigation expenses incurred by a national party committee. Moreover, the fact that the new law explicitly exempts from the coordinated party expenditure limit any expenditure from the legal proceedings account confirms that a national party committee can make expenditures to defray such legal costs in full coordination with candidates and without being subject to limits applicable to such candidates.

Here, the Commission recognizes both the DCCC and the DSCC as a national party committee.<sup>26</sup> In full compliance with the FECA and Commission regulations, both the DCCC and the DSCC

<sup>21</sup> Compl. at 3.

<sup>22</sup> Megan R. Wilson, *Lobbyists Reluctant to Fund Legal Defense of Trump Officials*, The Hill (Sept. 20, 2017), <http://thehill.com/business-a-lobbying/business-a-lobbying/351445-lobbyists-reluctant-to-fund-legal-defense-of-trump>; see also Jeremy Diamond, *RNC Covering More than \$230,000 in Trump Legal Fees*, CNN (Sept. 19, 2017), <https://www.cnn.com/2017/09/19/politics/donald-trump-legal-fees-rnc/index.html>.

<sup>23</sup> See Consolidated and Further Continuing Appropriations Act, 2015, 128 Stat. at 2773; 52 U.S.C. § 30116(a)(9)(C).

<sup>24</sup> 52 U.S.C. § 30116(d)(3); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 83 Fed. Reg. 6,022 (Feb. 12, 2018) (“Based upon this formula, the expenditure limitation for 2018 general elections for House candidates in these states, districts, and territories is \$49,700.”).

<sup>25</sup> 160 Cong. Rec. S6814-04 (daily ed. Dec. 13, 2014) (statement of Sen. Reid).

<sup>26</sup> 11 C.F.R. §§ 110.1(c)(2), 110.2(c)(2), 110.3(b)(2).

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made payments to Perkins Coie and Wolf Rifkin to defray legal costs associated with the lawsuit filed by Mr. Tarkanian against Jacky Rosen and her campaign committee.<sup>27</sup>

Those payments were properly reported by both the DCCC and the DSCC, following specific guidance from the FEC to itemize such disbursements as made for the purpose of the “Recount Account.”<sup>28</sup> In each instance, the DCCC identified the payments as made for the purpose of “Recount Legal Svcs,” paying Perkins Coie a total of \$570,833 since the date the lawsuit was filed.<sup>29</sup> Those payments covered not only legal services provided by Perkins Coie and Wolf Rifkin in connection with the Tarkanian suit, but also other legal expenses incurred by the DCCC in connection with election recounts, contests and other legal proceedings. Additionally, since Representative Rosen became a candidate for the U.S. Senate and the DSCC began paying for legal fees in connection with the Tarkanian lawsuit, the DSCC has properly identified these payments as made for the purpose of “Legal Services Recount” and paid Perkins Coie \$32,467.25.<sup>30</sup> The DSCC separately paid Wolf Rifkin \$25,438.78 for “Legal Services Recount.”<sup>31</sup>

#### *B. Legal Proceedings Accounts Regularly Used for Election-Related Litigation Costs*

Under the misguided legal theory advanced by Complainant here, any Federal candidate who benefits from an expenditure from a national party committee’s legal proceedings account will have received an “immeasurable advantage” in the form of an “unlimited contribution limit” for entirely lawful activities.<sup>32</sup> Not only does that interpretation have no basis in federal campaign finance law, it directly conflicts with common practice and how other national party committees use their legal proceedings accounts.

For example, the Republican National Committee (“RNC”) has reportedly spent more than \$230,000 from its legal proceedings account to pay President Donald Trump’s legal fees in connection with Special Counsel Robert Mueller’s investigation into Russian meddling in the 2016 election.<sup>33</sup> In fact, the “RNC has also begun to foot the legal payments of Trump’s son, Donald Trump Jr.” in connection with the same investigation.<sup>34</sup> According to an RNC official, the “President and his son’s legal bills were covered through the RNC’s legal defense fund—not its political coffers—which the RNC official said was established in 2014 to cover legal fees associated with election-related litigation.”<sup>35</sup> Consequently, the RNC is clearly using its legal

<sup>27</sup> See Exhibit A, Disbursements from Legal Proceedings Accounts.

<sup>28</sup> FEC Interim Reporting Guidance, *supra* note 7.

<sup>29</sup> *Id.*

<sup>30</sup> See Exhibit A, Disbursements from Legal Proceedings Accounts.

<sup>31</sup> See February Monthly Report at 1636, DSCC (filed Feb. 20, 2018).

<sup>32</sup> Compl. at 3.

<sup>33</sup> Wilson, *supra* note 22; see also Diamond, *supra* note 22.

<sup>34</sup> Diamond, *supra* note 22.

<sup>35</sup> *Id.*

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proceedings account to pay for litigation costs in connection with the 2016 election, even to pay the legal fees of individuals who did not run for office.

### CONCLUSION

As described herein, the Complaint has failed to identify a single excessive in-kind contribution accepted by Respondents in connection with the legal services at issue. Instead, the Complaint describes a series of lawful transactions that are not only disclosed to the public and fully compliant with federal law, but indistinguishable from how other national party committees use their legal proceedings accounts to defray legal costs.

Both Perkins Coie and Wolf Rifkin were fully and substantially paid by the DCCC and DSCC for all legal services rendered, meaning none of the services at issue even qualify as an in-kind contribution under federal law.<sup>36</sup> Because expenditures by the DCCC and the DSCC are all exempt from the coordinated party expenditure limit, the payment for legal services by the DCCC and DSCC similarly result in no excessive in-kind contribution to Respondents. Accordingly, the Complaint in this instance should be immediately dismissed, as there is simply no violation of law presented by the Complainant in this matter.

Very truly yours,



Marc E. Elias  
Kate Sawyer Keane  
Courtney T. Weisman  
Counsel to Respondents

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<sup>36</sup> 11 C.F.R. § 100.52(d).

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### Exhibit A: Disbursements from Legal Proceedings Accounts

Date of Disbursement	Committee	Recipient	Amount	Purpose of Disbursement	FEC Report
11/29/2016	DCCC	Perkins Coie LLP	\$6,000	Recount Legal Svcs	<a href="#">Link</a>
1/10/2017	DCCC	Perkins Coie LLP	\$25,147.50	Recount Legal Svcs	<a href="#">Link</a>
2/8/2017	DCCC	Perkins Coie LLP	\$9,770.82	Recount Legal Svcs	<a href="#">Link</a>
2/8/2017	DCCC	Perkins Coie LLP	\$66,345.46	Recount Legal Svcs	<a href="#">Link</a>
2/8/2017	DCCC	Perkins Coie LLP	\$9,677.50	Recount Legal Svcs	<a href="#">Link</a>
3/23/2017	DCCC	Perkins Coie LLP	\$3,297.50	Recount Legal Svcs	<a href="#">Link</a>
5/18/2017	DCCC	Perkins Coie LLP	\$4,947.62	Recount Legal Svcs	<a href="#">Link</a>
5/18/2017	DCCC	Perkins Coie LLP	\$44,995.93	Recount Legal Svcs	<a href="#">Link</a>
5/18/2017	DCCC	Perkins Coie LLP	\$73,200.02	Recount Legal Svcs	<a href="#">Link</a>
6/22/2017	DCCC	Perkins Coie LLP	\$140,149.60	Recount Legal Svcs	<a href="#">Link</a>
6/29/2017	DCCC	Perkins Coie LLP	\$15,526.72	Recount Legal Svcs	<a href="#">Link</a>
7/12/2017	DCCC	Perkins Coie LLP	\$864.21	Recount Legal Svcs	<a href="#">Link</a>
8/31/2017	DCCC	Perkins Coie LLP	\$2,215.41	Recount Legal Svcs	<a href="#">Link</a>
8/31/2017	DCCC	Perkins Coie LLP	\$4,652.88	Recount Legal Svcs	<a href="#">Link</a>
8/31/2017	DCCC	Perkins Coie LLP	\$17,280.00	Recount Legal Svcs	<a href="#">Link</a>
10/5/2017	DCCC	Perkins Coie LLP	\$104,515.38	Recount Legal Svcs	<a href="#">Link</a>
10/5/2017	DCCC	Perkins Coie LLP	\$675.00	Recount Legal Svcs	<a href="#">Link</a>
10/26/2017	DCCC	Perkins Coie LLP	\$8,840.00	Recount Legal Svcs	<a href="#">Link</a>
10/26/2017	DCCC	Perkins Coie LLP	\$2,516.00	Recount Legal Svcs	<a href="#">Link</a>
10/26/2017	DCCC	Perkins Coie LLP	\$1,421.25	Recount Legal Svcs	<a href="#">Link</a>
12/7/2017	DCCC	Perkins Coie LLP	\$5,775.18	Recount Legal Svcs	<a href="#">Link</a>
12/7/2017	DCCC	Perkins Coie LLP	\$1,320.00	Recount Legal Svcs	<a href="#">Link</a>
1/18/2018	DCCC	Perkins Coie LLP	\$9,053.59	Recount Legal Svcs	<a href="#">Link</a>
1/25/2018	DCCC	Perkins Coie LLP	\$1,755.00	Recount Legal Svcs	<a href="#">Link</a>
1/25/2018	DCCC	Perkins Coie LLP	\$10,889.99	Recount Legal Svcs	<a href="#">Link</a>
1/25/2018	DSCC	Perkins Coie LLP	\$16,780.16	Legal Services Recount	<a href="#">Link</a>
2/9/2018	DSCC	Perkins Coie LLP	\$15,687.09	Legal Services Recount	<a href="#">Link</a>

**Total from DCCC: \$570,833.00**

**Total from DSCC: \$32,467.25**