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June 26, 2019

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Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street NE
Washington, DC 20463
VIA EMAIL: CELA@fec.gov

Re: MUR 7566; Response to Complaint from McSally for Senate, Inc.

Dear Mr. Jordan:

We are writing this letter on behalf of Senator Martha McSally, McSally for Senate, Inc. and Paul Kilgore in his official capacity as Treasurer (the “Committee”) (collectively, the “Respondents”), in response to the Complaint filed in the above-referenced matter by a Democrat front-group called American Democracy Legal Fund (“ADLF” or “Complainant”), which Politico has labeled an “overtly partisan watchdog group.”¹ The Complaint was clearly filed for publicity and political gain, and is based solely on speculation and innuendo.

The Federal Election Commission (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 Federal Election Campaign Act (the “Act”). *See* 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

It should be noted that ADLF’s entire business model centers on filing frivolous FEC complaints against conservative and Republican candidates and organizations, hyperbolically asserting violations of the Act while providing no actual evidence. The current Complaint is even more egregious, however, as ADLF and its President, Brad Woodhouse, have signed, sworn, and notarized a Complaint, under penalty of perjury, that concedes no violation has occurred.

¹ Kenneth Vogel, *Media Matters’ David Brock Expands Empire*, POLITICO, Aug. 13, 2014, available at <http://www.politico.com/story/2014/08/david-brock-citizens-for-responsibility-and-ethics-in-washington-110003.html>.

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Instead, ADLF uses the Complaint as a forum to cite already-resolved matters covering activity that occurred over five years ago—all in an attempt score cheap political points. As explained in more detail below, the allegations made in the Complaint are both factually and legally flawed and do not support a reason to believe finding in this matter. The Complaint should be immediately dismissed.

Legal Analysis

The Complaint alleges that the Committee “accepted hundreds of thousands of dollars’ worth of contributions in excess of the Act’s contribution limits.” Compl. at 1. Specifically, the Complaint asserts that “the Committee accepted more than \$270,000 in excessive campaign contributions from over 60 donors.” Compl. at 2. As purported evidence to support this claim, the Complaint cites an Associated Press article from January 31, 2019, which was based entirely on a single Request for Additional Information (“RFAI”) filed by the Reports Analysis Division (“RAD”) on January 28, 2019.² That RFAI, which makes clear that the Committee has 60 days to reattribute, redesignate, or refund any excessive contributions,³ fails to provide any support that a violation of the Act has occurred. ADLF even concedes this fact when it states that “[t]he Commission has given the Committee until early March to refund the money and correct its campaign finance filings.” Compl. at 2-3.

In reality, the Committee thoroughly addressed each and every one of the contributions cited in the January 28th RFAI in its Form 99 Miscellaneous Report filed with the Commission on March 4, 2019.⁴ In this Form 99 submission, the Committee makes clear that the “excessive donations listed on this [January 28th] RFAI have all been addressed either on the recently filed 2018 Year End Report or on the upcoming 2019 April Quarterly Report.”⁵ The Committee’s Form 99 details the amounts and dates of refunds and reattributions, all of which were completed within sixty days of receipt, entirely negating the speculative allegations in the Complaint. In short, the Committee has, in full compliance with the Act, timely refunded or reattributed any contributions cited in the January 28th RFAI that were allegedly excessive.

² See McSally for Senate, Inc., Request for Additional Information (Jan. 28, 2019), Image No. 201901280300029763, available at <https://docquery.fec.gov/pdf/763/201901280300029763/201901280300029763.pdf>.

³ Under the Commission’s regulations, if a committee deposits a contribution that appears to exceed the limits, “the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate,” and “[i]f a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer’s receipt of the contribution, refund the contribution to the contributor.” 11 C.F.R. § 103.3(b)(3).

⁴ See McSally for Senate, Inc., Form 99 Miscellaneous Report (March 4, 2019), Image No. 201903049145600613 (a copy is attached as Exhibit A).

⁵ *Id.*

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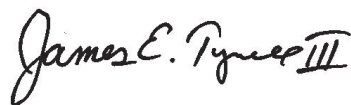
Of course, ADLF was well aware that the Committee had already properly refunded or reattributed a significant portion of the contributions cited in the RFAI because the Committee reflected those actions on its 2018 Year-End Report filed on January 31, 2019, two weeks before ADLF filed the Complaint. ADLF was therefore on notice that the Committee had clearly not violated the Act or the Commission's regulations, and yet it signed and swore to these false allegations anyway.⁶ By filing a sworn complaint containing information and allegations they knew to be materially false, ADLF and Mr. Woodhouse have subjected themselves to criminal liability under 18 U.S.C. § 1001.

Conclusion

In presenting politically-motivated and factually and legally unsubstantiated arguments, ADLF has failed to demonstrate that Senator McSally or the Committee have violated any provision of the Act or the Commission's regulations. Instead, ADLF has invoked an administrative process as a means to assault its political opponents. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 344-4522 with any questions.

Respectfully submitted,



James E. Tyrrell III
Counsel to McSally for Senate, Inc.

⁶ The Act makes clear that a "complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18." 52 U.S.C. § 30109(a)(1).

Exhibit A

MISCELLANEOUS TEXT (FEC Form 99)

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NAME OF COMMITTEE (In Full)
MCSALLY FOR SENATE INC

FEC IDENTIFICATION NUMBER

C00666040

Mailing Address PO BOX 19128

City	State	ZIP Code
TUCSON	AZ	85710

March 4, 2019

Federal Election Commission
1050 First Street NE
Washington, DC 20463

ID Number: C00666040

Reference: 30 Day Post-General Report (10/18/18 ? 11/26/18)

To Whom it May Concern:

Our committee has received for Request for Additional Information regarding the above referenced report. Please see below for our response.

When our committee receives a contribution that exceeds a donor?s contribution limit, we attempt to reattribute the excess funds to the donor?s spouse, where applicable. If the donor does not respond to the reattribution request within the 60-day window allowed by the FEC, the excess funds are refunded. The excessive donations listed on this RFAI have all been addressed either on the recently filed 2018 Year End Report or on the upcoming 2019 April Quarterly Report as follows:

Excess Donations Refunded:

Adler, Elizabeth - \$7300 on 1/7/19
Ainley, Pat - \$2375 on 2/4/19
Barkley, Robert - \$2700 on 12/13/18
Barthelemy, Joel - \$2000 on 2/4/19
Beckwith, George - \$1700 on 1/7/19
Burns, Richard - \$300 on 2/4/19
Chazen, Stephen - \$2700 on 2/4/19
Childs, John - \$2700 on 2/4/19
Combs, Frances - \$5400 on 2/4/19
Davidson, Gary - \$2300 on 1/7/19
Day, Marlyn - \$2700 on 12/13/18
DeSilva, Pathmanath - \$1612.50 on 1/7/19
Diaz, Charles - \$1700 on 12/3/18
Dolan, Kari - \$80 on 11/20/18
Dolan, William - \$2300 on 2/4/19
Fisher, Michael - \$700 on 1/7/19
Fleetham, Jeffrey - \$50 on 1/7/19
Francis, Jay - \$2700 on 1/7/19
French, Daniel - \$300 on 1/7/19
Hansen, Randy - \$2700 on 2/4/19
Hawk, Leo - \$1500 on 1/7/19
Hillstrom, Bradley - \$500 on 1/7/19
Hirsch, Thomas - \$700 on 12/3/18
Hoehn, Robert - \$1000 on 12/13/18
Hogan, Patrick - \$2700 on 1/7/19
Horn, Matthew - \$5400 on 1/7/19
Hutt, Robert - \$1000 on 12/3/18
Johnson, Joanne - \$1000 on 11/30/18

MISCELLANEOUS TEXT (FEC Form 99)

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NAME OF COMMITTEE (In Full)
MCSALLY FOR SENATE INC

FEC IDENTIFICATION NUMBER

C00666040

Mailing Address PO BOX 19128

City	State	ZIP Code
TUCSON	AZ	85710

Kalil, George - \$300 on 1/7/19
Kasper, Van - \$500 on 1/7/19
Kroiz, Harvey - \$2700 on 1/7/19
Laffoon, Howard - \$500 on 12/13/18
Lahood, Nabeeh - \$5000 on 1/7/19
Martori, Stephen - \$1700 on 2/4/19
Mathews, Gilbert - \$1250 on 1/7/19
Melli, Ali - \$2700 on 1/7/19
Mellott, Herman - \$1300 on 1/7/19
Milde, Leslie - \$2000 on 1/7/19
Moran, Frank - \$2900 on 2/4/19
O?Leary, George - \$2700 on 1/7/19
Olyan, Jeffrey - \$2700 on 12/3/18
Randall, Dicki - \$2300 on 2/4/19
Sackman, Alan - \$2700 on 1/7/19
Simonton, Scott - \$2700 on 1/7/19
Topper, Lewis - \$2300 on 2/4/19
Turner, John - \$2700 on 1/7/19
Ulm, William - \$2700 on 1/7/19

Reattributed Excess to Spouse:

Blann, Thomas - \$300 to Oleta Blann on 12/10/18
Doty, William - \$50 to Patricia Doty on 12/31/18
Hansen, Michael - \$300 to Nancy Hansen on 12/23/18
Harlfinger, Charles - \$1300 to Anita Harlfinger on 12/18/18
Hobson, Carol - \$2700 to Soleil Dolce on 12/18/18
Kress, Donald - \$950 to Carol Kress on 11/27/18
Legasey, Ted - \$300 to Patricia Legasey on 12/3/18
Lewis, George - \$2700 to Jeanne Lewis on 12/17/18
Mills, Sonja - \$2700 to Owen Mills on 11/27/18
Rothe, Edward - \$2700 to Pamela Rothe on 12/17/18

Not Excessive:

Babinec, Albert ? These are 2 different donors. Albert Babinec Jr. gave \$2700 on 1/23/18, and Albert Babinec Sr. gave \$2700 on 11/6/18. These donors have the same address.
Hallman, Hugh ? The 10/23/18 transfer memo was designated incorrectly. Our committee is currently undergoing a software data conversion and will amend this report to correct this contribution as soon as we are able.

Thank you for the opportunity to respond. Please let us know if you have any additional questions.

Sincerely,

McSally for Senate