

Kyle J. Gilster
Office Managing Partner

750 17th St. N.W., Suite 900
Washington, DC 20006-4675
Direct: 202.378.2303
Fax: 202.378.2319
kyle.gilster@huschblackwell.com

September 17, 2018

MUR 7454

Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

Dear Federal Election Commission:

On August 21, 2018, our client, Blue Magnolia Investments, LLC (Blue Magnolia), received the attached complaint (Attachment A). As the designated counsel of record for Blue Magnolia, we requested an extension to reply and the extension was granted until September 20, 2018 (Attachment B).

Our client feels that no further action is needed on this complaint due to the following action.

On September 6, 2018, a representative of Blue Magnolia sent the attached letter (Attachment C) to a representative of DefendArizona regarding the attribution of a particular contribution that was made by Blue Magnolia.

On May 7, 2018, Blue Magnolia made a \$100,000 contribution to DefendArizona, which is an Independent Expenditure Committee under the laws of the Federal Election Commission (FEC). DefendArizona in its initial disclosure to the FEC listed Blue Magnolia as the source of this contribution. This disclosure was done in error.

Since Blue Magnolia is a single member LLC under the laws of Delaware, the income from this entity flows directly to Mr. Larry Van Tuyl. As a result, we asked DefendArizona that this \$100,000 contribution be attributed to Mr. Larry Van Tuyl effective the date of the contribution which was May 7, 2018. This attribution is consistent with the following federal regulation governing campaign contributions. 11 CFR 110.1 (G)(4).

G. Contributions by limited liability companies ("LLC")—

1. Definition. A limited liability company is a business entity that is recognized as a limited liability company under the laws of the State in which it is established.

HUSCH BLACKWELL

2. A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).

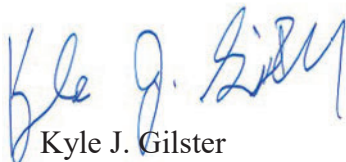
3. An LLC that elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701-3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114.

4. A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701-3 shall be attributed only to that single member.

Blue Magnolia fits the definition listed in 11 CFR 110.1 (G)(4). When Counsel advised Blue Magnolia of this definition above, they immediately sent Attachment C regarding attribution to their point of contact with DefendArizona on September 6, 2018. On September 11, 2018, DefendArizona, on an amended FEC disclosure, changed the attribution for the relevant contribution from Blue Magnolia to Mr. Larry Van Tuyl.

As a result of this disclosure, our client feels that no further action is needed on this complaint. We would be happy to answer any questions you may have.

Sincerely,



Kyle J. Gilster
Office Managing Partner

Attachments

Attachment A



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Blue Magnolia Investments, LLC
c/o Registered Agent
The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

AUG 08 2018

RE: MUR 7454

Dear Sir/Madam:

The Federal Election Commission received a complaint that indicates Blue Magnolia Investments, LLC may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 7454. Please refer to this number in all future correspondence.

The Act affords you the opportunity to demonstrate in writing that no action should be taken against Blue Magnolia Investments, LLC in this matter. If you wish to file a response, you may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements should be submitted under oath by persons with relevant knowledge. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. Please note that you have a legal obligation to preserve all documents, records, and materials relating to the subject matter of the complaint until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

Any correspondence sent to the Commission, such as a response, must be addressed to **one** of the following (note, if submitting via email this Office will provide an electronic receipt by email):

Mail

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20463

OR

Email

cela@fec.gov

If you have any questions, please contact Kathryn Ross at (202) 694-1539 or toll free at 1-800-424-9530. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jeff S. Jordan
Assistant General Counsel
Complaints Examination &
Legal Administration

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
1411 K Street NW, Suite 1400
Washington, DC 20005
(202) 736-2200

MARGARET CHRIST
1411 K Street NW, Suite 1400
Washington, DC 20005
(202) 736-2200

v. MUR No. 7454

BLUE MAGNOLIA INVESTMENTS, LLC
c/o Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

HIGHWAY 76, LLC
c/o Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

JOHN DOE, JANE DOE, and other
persons who created and operated
Blue Magnolia Investments, LLC
and/or Highway 76, LLC and
made contributions to
DefendArizona in the name of
Blue Magnolia Investments, LLC
and/or Highway 76, LLC

CELA

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FEDERAL ELECTION
COMMISSION

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Blue Magnolia Investments, LLC ("Blue Magnolia"), Highway 76, LLC ("Highway 76"), and any person(s) who created, operated, or made contributions to or in the name of Blue Magnolia and/or Highway 76 (John Doe, Jane

Doe, and other persons) have violated Section 30122 of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.*

2. Specifically, based on published reports, complainants have reason to believe that any person(s) who created, operated, and/or contributed to Blue Magnolia or Highway 76 may have violated 52 U.S.C. § 30122 by making contributions to DefendArizona (I.D.: C00668301) in the name of another person, namely Blue Magnolia and/or Highway 76, and that Blue Magnolia and Highway 76 violated 52 U.S.C. § 30122 by knowingly permitting their names to be used for the making of such contributions.
3. Further, based on published reports, complainants have reason to believe that Blue Magnolia and Highway 76 violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register as political committees and failing to file disclosure reports as political committees.
4. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation . . ." 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

5. DefendArizona is an independent expenditure-only political action committee (i.e., a "super PAC")¹ which, according to *The Arizona Republic*, was formed to support

¹ DefendArizona, Statement of Organization, FEC Form 1, at 1, 5 (filed Feb. 1, 2018), <http://docquery.fec.gov/pdf/805/201802019094235805/201802019094235805.pdf>. As of August 1, 2018, DefendArizona has raised \$1.325 million, has spent \$184,403 on operating expenditures, and has made no independent expenditures. DefendArizona, 2018 July Quarterly Report, FEC Form 3X, at 2-4 (filed July 15, 2018), <http://docquery.fec.gov/pdf/699/201807159115525699/201807159115525699.pdf>. As of June 30, 2018, it had reported \$1.14 million in cash on hand. *Id.* at 2.

- Martha McSally's U.S. Senate candidacy in Arizona.² *POLITICO* characterized DefendArizona as a new "[m]ystery Arizona super PAC" funded by a small handful of "big-ticket donors," including Randy Kendrick and Craig Barrett.³
6. On April 24, 2018, Blue Magnolia Investments incorporated in Delaware.⁴ In Delaware records, the LLC's registered agent is the "Corporation Trust Company" at 1209 Orange St., Wilmington, DE.⁵ Blue Magnolia does not appear to have a website; other than the Delaware incorporation records, there is no publicly available information about the entity.
 7. On May 23, 2018, Highway 76 incorporated in Delaware.⁶ Its registered agent is the same as Blue Magnolia's: Corporation Trust Company, 1209 Orange St., Wilmington, DE. Highway 76 also does not appear to have a website and there is no publicly available information about the entity.
 8. On May 30, 2018, Blue Magnolia gave \$100,000 to DefendArizona from 1209 Orange St., Wilmington, DE, according to DefendArizona's July quarterly report filed with the Commission.⁷

² Ronald J. Hansen, *Martha McSally campaign in line for \$5 million from GOP establishment*, AZ CENTRAL (June 29, 2018), <https://www.azcentral.com/story/news/politics/arizona/2018/06/29/martha-mcsally-campaign-line-5-million-gop-establishment/746659002/>.

³ Elena Schneider, *Morning Score*, *POLITICO* (Apr. 26, 2018), <https://www.politico.com/newsletters/morning-score/2018/04/26/dccc-adds-3-democratic-challengers-to-red-to-blue-list-183890>.

⁴ *Entity Details: Blue Magnolia Investments, LLC*, STATE OF DELAWARE (purchased July 27, 2018). See also *Blue Magnolia Investments, LLC*, OPENCORPORATES, https://opencorporates.com/companies/us_de/6857924 (last visited July 27, 2018).

⁵ *Id.*

⁶ *Entity Details: Highway 76, LLC*, STATE OF DELAWARE (purchased July 27, 2018). See also *Highway 76 LLC*, OPENCORPORATES, https://opencorporates.com/companies/us_de/6898641 (last visited July 27, 2018).

⁷ DefendArizona, 2018 July Quarterly Report, FEC Form 3X, at 6 (filed July 15, 2018), <http://docquery.fec.gov/cgi-bin/fecimg/?201807159115525704>.

9. On June 30, 2018, Highway 76, LLC gave \$100,000 to DefendArizona from 1209 Orange St., Wilmington, DE, according to DefendArizona's July quarterly report.⁸

PROHIBITION ON CONTRIBUTIONS IN THE NAME OF ANOTHER

10. FECA provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person." 52 U.S.C. § 30122.
11. The Commission regulation implementing the statutory prohibition on "contributions in the name of another" provides the following examples of "contributions in the name of another":

- a. "Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made," 11 C.F.R. § 110.4(b)(2)(i).
- b. "Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source." 11 C.F.R. § 110.4(b)(2)(ii).

12. The requirement that a contribution be made in the name of its true source promotes Congress's objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive,⁹ and ensures that the

⁸ *Id.* at 7, <http://docquery.fec.gov/cgi-bin/fecinq/?201807159115525705>.

⁹ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the complete and accurate disclosure of the contributors who finance federal elections— is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

public and complainant Christ have the information necessary to evaluate candidates for office and cast an informed vote.

13. On April 1, 2016, then-Chairman Peterson and Commissioners Hunter and Goodman “provide[d] clear public guidance on the appropriate standard that we will apply in future matters” pertaining to allegations that an LLC was used to facilitate a contribution in the name of another. Statement of Reasons of Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Lee E. Goodman, MURs 6485, 6487, 6488, 6711, 6930 (April 1, 2016) at 2.¹⁰ The Commissioners advised that “the proper focus in these matters is whether the funds used to make a contribution were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act’s reporting requirements, making the individual, not the corporation or corporate LLC, the true source of the funds.” *Id.*; see also *id.* at 12. Relevant factors these Commissioners indicated they would consider included whether:

“there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”

Id. at 12.¹¹

14. The available facts suggest that neither Blue Magnolia nor Highway 76 had sufficient income from assets, investment earnings, business revenues, or bona fide capital investments to each make a \$100,000 contribution to DefendArizona. The temporal

¹⁰ Available at <https://www.fec.gov/files/legal/murs/6487/16044391129.pdf>.

¹¹ Mitigating factors include whether a contributor was acting pursuant to legal advice, and whether reports are corrected to reflect a true donor’s identity in advance of an election. *Id.* n.70.

proximity between each entity's formation and its contribution, viewed in the context of each entity's overall activities, strongly suggests that each received funds for the specific purpose of making these contributions. Blue Magnolia was formed on April 24, 2018, then made a \$100,000 contribution on May 30, 2018. Highway 76 was formed on May 23, 2018, then made a \$100,000 contribution on June 30, 2018. Neither Blue Magnolia nor Highway 76 has a website, a physical office address, or any other public presence; the only information available is that each entity was incorporated in Delaware and made a \$100,000 contribution to DefendArizona approximately five weeks after being created. Available records provide no indication that Blue Magnolia or Highway 76 had accrued sufficient assets, investment earnings, business revenues, or bona fide capital investments to make these contributions without an infusion of funds provided to them for that purpose.

15. Therefore, based on published reports, there is reason to believe that Blue Magnolia and Highway 76 violated 52 U.S.C. § 30122 by "[g]iving money . . . , all or part of which was provided to" each entity by another person (*i.e.*, the true contributor(s)) without disclosing the true source of money at the time of making the contribution to DefendArizona. *See* 11 C.F.R. § 110.4 (b)(2)(i).
16. Based on published reports, there is reason to believe that the person(s) who created, operated and/or contributed to Blue Magnolia and/or Highway 76 (John Doe, Jane Doe, and other persons) may have violated 52 U.S.C. § 30122 by "[m]aking a contribution of money . . . and attributing as the source of the money . . . another person [namely, Blue Magnolia and/or Highway 76] when in fact [the person(s) who

created, operated and/or contributed to Blue Magnolia and/or Highway 76 was] the source,” *see* 11 C.F.R. § 110.4(b)(2)(ii).

17. Based on published reports, there is reason to believe that Blue Magnolia and Highway 76 have violated 52 U.S.C. § 30122 by “knowingly permit[ting its] name to be used to effect such a contribution.” 52 U.S.C. § 30122.

**POLITICAL COMMITTEE STATUS, REGISTRATION,
AND REPORTING REQUIREMENTS**

18. FECA defines the term “political committee” to mean “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5(a). “Contribution,” in turn, is defined as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i). Similarly, “expenditure” is defined as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i).
19. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term “political committee” to “only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *Id.* at 79. Again, in *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986), the Court invoked the “major purpose” test and noted, in the context of analyzing the activities of a 501(c)(4) group, that if a group’s independent spending activities “become so extensive that the *organization’s major purpose may be regarded as*

campaign activity, the corporation would be classified as a political committee.” *Id.* at 262 (emphasis added). In that instance, the Court continued, the corporation would become subject to the “obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns.” *Id.*

20. The Commission has explained:

[D]etermining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization’s specific conduct—whether it received \$1,000 in contributions or made \$1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).

Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007).

21. Based on the above, there is a two-prong test for “political committee” status under federal law: (1) whether an entity or other group of persons has a “major purpose” of influencing the “nomination or election of a candidate,” as stated by *Buckley*, and, if so, (2) whether the entity or other group of persons receives “contributions” or makes “expenditures” of \$1,000 or more in a calendar year.
22. Any entity that meets the definition of a “political committee” must file a “statement of organization” with the Commission, 52 U.S.C. § 30103, must comply with the organizational and recordkeeping requirements of 52 U.S.C. § 30102, and must file periodic disclosure reports of its receipts and disbursements, 52 U.S.C. § 30104.¹²
23. The political committee disclosure reports required by FECA must disclose to the Commission and the public, including complainants, comprehensive information

¹² 52 U.S.C. § 30121, the ban on foreign nationals directly or indirectly making contributions or expenditures in connection with Federal, State, or local elections, prohibits a foreign national from directly or indirectly making a contribution to an independent expenditure-only political committee.

regarding such committee's financial activities, including the identity of any donor who has contributed \$200 or more to the committee within the calendar year. *See* 52 U.S.C. § 30104(b). The Supreme Court has repeatedly recognized the importance of campaign finance disclosure to informing the electorate. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“[T]ransparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

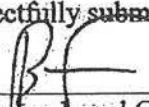
24. Based on published reports, there is reason to believe that Blue Magnolia and Highway 76 have met the two-prong test for political committee status by (1) being an entity or group of persons with the “major purpose” of influencing the “nomination or election of a candidate” and (2) receiving “contributions” of \$1,000 or more in a calendar year.
25. There is no public record of Blue Magnolia and Highway 76 conducting any significant activities other than making contributions since their formation. Consequently, there is reason to believe that Blue Magnolia and Highway 76 have violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register Blue Magnolia and Highway 76 as political committees and failing to file disclosure reports as political committees.

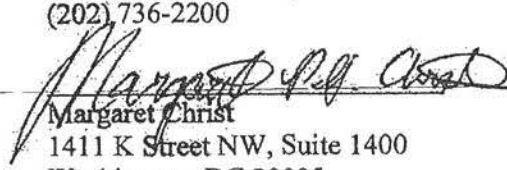
PRAYER FOR RELIEF

26. Wherefore, the Commission should find reason to believe that Blue Magnolia Investments, LLC, Highway 76, LLC, and any person(s) who created, operated and made contributions to or in the name of those entities (John Doe, Jane Doe, and other persons) have violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).

27. Further, the Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,


 Campaign Legal Center, by
 Brendan M. Fischer
 1411 K Street, NW, Suite 1400
 Washington, DC 20005
 (202) 736-2200


 Margaret Christ
 1411 K Street NW, Suite 1400
 Washington, DC 20005
 (202) 736-2200

Brendan M. Fischer
 Campaign Legal Center
 1411 K Street, NW, Suite 1400
 Washington, DC 20002
 Counsel to the Campaign Legal Center,
 Margaret Christ

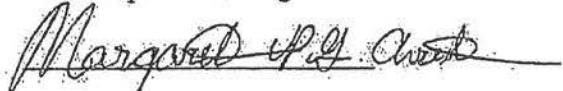
August 1, 2018

VERIFICATION

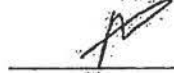
The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

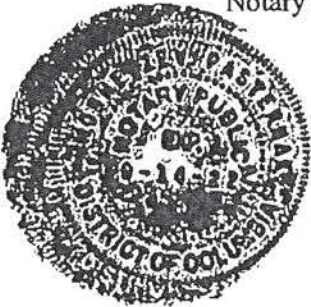
For Complainant Margaret Christ


Margaret Christ


Sworn to and subscribed before me this 1 day of August 2018.



Notary Public




For Complainant Campaign Legal Center

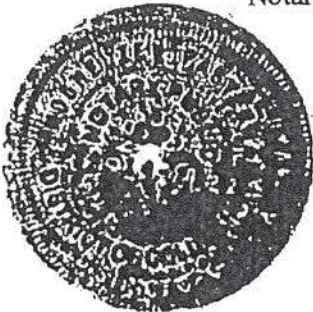


Brendan M. Fischer

Sworn to and subscribed before me this 1 day of August 2018.



Notary Public



Attachment B



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 23, 2018

VIA EMAIL

Kyle J. Gilster
Husch Blackwell LLP
750 17th Street, NW, Suite 900
Washington, DC 20006-4675

RE: MUR 7454
Blue Magnolia Investments, LLC

Dear Mr. Gilster:

This is in response to your request for an extension to respond to the complaint filed in the above mentioned matter we received via e-mail on August 23, 2018. After considering the circumstances in this matter, the Office of General Counsel has granted the requested extension. Accordingly, your client's response is due on or before the close of business September 20, 2018. If you have any questions, you may contact me by phone 202-694-1539 or at cela@fec.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn Ross".

Kathryn Ross, Paralegal
Complaints Examination and
Legal Administration

Attachment C

September 6, 2018

Ms. Corinne Lovas
Lovas. Co.
Defend Arizona
6635 W. Happy Valley Rd., Ste. A104, #19B
Glendale, AZ. 85310

Re: Attribution letter

Dear Corrinne:

On May 7, 2018, Blue Magnolia Investments LLC made a \$100,000 contribution to Defend Arizona, which is an Independent Expenditure Committee.

Since Blue Magnolia is a single member LLC, the income from this entity flows directly to Mr. Larry Van Tuyl. As a result, we would like this \$100,000 contribution to be attributed to Mr. Larry Van Tuyl effective the date of the contribution May 7, 2018. This attribution is consistent with the following federal regulation governing campaign contributions. 11 CFR 110.1 (G)(4).

Could Defend Arizona make the needed change on its Federal Election Commission disclosures to reflect this? Please do not hesitate to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Van Tuyl", is written over the word "Sincerely,".