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MUR # 7482

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August 15, 2018

VIA FED EX:

OFFICE OF GENERAL COUNSEL
2018 AUG 16 PM 1:50

Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: ***Tennessee Citizen Action v. Marsha For Senate, et al.***
MUR No.

Dear Clerk:

Enclosed please find the enclosed for filing in the above referenced matter a complaint along with a thumb drive of an audio recording. I have attached the original complaint and four copies. We would like a stamp filed copy to be returned to our office using the enclosed self-address stamped envelope.

Please do not hesitate to contact me should you have any questions.

Very truly yours,

Nicole Vandewalker
Paralegal to Benjamin Gastel

ENCLOSURES

*ATTORNEYS MAY BE ADMITTED IN OTHER JURISDICTIONS.

FEDERAL ELECTION COMMISSION

TENNESSEE CITIZEN ACTION,

v.

MUR NO. 7482

MARSHA FOR SENATE,
PO BOX 3750
BRENTWOOD, TN 37024;

CLUB FOR GROWTH ACTION,
2001 L ST NW, STE 600
WASHINGTON, DC 20036;

AMERICANS FOR PROSPERITY,
1310 N. COURTHOUSE RD.
STE. 700
ARLINGTON, VA 22201;

and

SENATE LEADERSHIP FUND,
45 NORTH HILL DRIVE STE 100
WARRENTON, VA 20186

COMPLAINT

1. This Complaint is filed under 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that Marsha Blackburn's campaign, Marsha for Senate (FEC C00376939), and the political action campaigns ("PACs") Club for Growth Action ("Club for Growth") (FEC C00487470), Americans for Prosperity ("AFP") (FEC C90013285), and Senate Leadership Fund (FEC C00571703) have violated the Federal Election Campaign Act ("FECA"),

52 U.S.C. § 30101, *et. seq*. because Marsha for Senate has accepted, in-kind contributions in excess of federal contribution limits, failed to report those contributions, and used funds raised from impermissible sources.

2. Specifically, based on public remarks of Marsha for Senate's paid political consultants, Club for Growth, AFP, and Senate Leadership Fund have made in-kind contributions to Marsha for Senate in the form of "coordinated communications". These in-kind contributions are in violation of FECA's limit on contributions by non-multicandidate political committees to a candidate committee as set forth in 52 U.S.C. § 30116(a)(1) and FECA's reporting requirements that political committees report and disclose all contributions to candidates as set forth in 52 U.S.C. § 30104(b).

3. Federal law prohibits an individual from contributing more than $2,700 to Marsha Blackburn's campaign. A contributor violates those limits by contributing six- or seven-figure checks to Club for Growth, AFP, and Senate Leadership Fund, whose expenditures are coordinated with Marsha for Senate; as the U.S. Supreme Court has noted, "Coordinated expenditures of money . . . are tailor-made to undermine contribution limits," and "often will be as useful to the candidate as cash."

4. Despite federal law requiring independence between campaign committees and Super PACs, these coordination schemes have allowed a handful of wealthy Marsha for Senate supporters to undermine FECA's contribution limits to spend millions on potentially corrupting coordinated expenditures supporting Marsha for Senate.

5. Evidence of such coordination comes from statements by Ward Baker at a private event where he talked about coordinated efforts between Marsha for Senate and Club for

Growth, AFP, and Senate Leadership Fund. Ward Baker is a paid political consultant of Marsha for Senate, whose political consulting firm, Baker Group, LLC has been paid over $177,000.00 by Marsha for Senate according to FEC reports.

6. An audio file of Mr. Baker's comments can be found on the attached thumb drive.

7. Such comments showing coordination between Club for Growth and AFP include the following statements made during a question and answer portion of this meeting stating:

> Well, obviously we have a great relationship with Club For Growth. I don't really like, you know, to...I'm a consultant to Koch on the corporate side and to David Koch, and so I'll put that out there. But I'm not on the political side. But I don't like to say the Koch Brothers. I like to say AFP or things of that nature. Morgan worked (inaudible) through '16 recruiting force that she (inaudible) She's our Deputy Campaign Manager. And so, we have a great relationship with them, and they do a lot of stuff. When people put them down, it amazes me. They're only doing what the unions have been doing for years. I mean, you think the SEIU's not going to work against us? You think the SEIU's not going to be there? You don't think the AFL-CIO's not going out saying we got to stop them? I mean, I got an email just last night from someone saying that outside liberal groups were offering major money for people to be organizers against Marsha Blackburn. Because they didn't want her there because they knew the Conservative agenda she was going to push. So I did what anyone would. ***I picked up the phone and called all my conservative friends and told them***. And they do the same thing to us. At the end of the day, we try to figure out what we have to do to win this race on our own. If anyone else comes in, that's great. But will AFP be involved? Yes. Will Freedom Partners be involved? Senate Leadership Fund, I'm a senior advisor to the Senate Leadership Fund which is Mitch McConnell's Super PAC – I'm obviously not involved with the Tennessee Senate race. I'm a firewall that's because I'm doing this race that's why I don't do a lot of Senate races anymore because of that job. And I know that they've already laid down - Peter? - $2.8 Million for Congressman Blackburn. ***And we're going to have a lot of people involved. To be honest with you, it's just really...the Super PAC world and outside groups is part of your campaign now. And if you don't treat it that way, then you're going to lose***

> ***because that's just another arm. You have to do presentations for them. A lot of people are begging them for money, and you have to constantly be in front of them.*** If you're not, Susan B. Anthony List has been great for us, endorsed us, and they're doing a lot for us. ***So there's going to be a lot of people involved.***

8. The clear implications of the previous comments is that Marsha for Senate is coordinating or plans to coordinate with outside Super PACs in pursuit of a coordinated strategy to elect Marsha Blackburn to United States Senate.

9. "If the Commission, upon receiving a complaint…has reason to believe that a person has committed, or is about to commit, a violation of [FECA]…[t]he Commission ***shall*** make an investigation of such alleged violation…." 52 U.S.C. § 30109(a)(2); *see also* 11 CFR § 111.4(a).

10. Federal law limits the amount of a contribution that a senate candidate or her authorized campaign committee may accept to $2,700 from an individual donor. 52 U.S.C § 30116(a)(1). FECA also prohibits a corporation or labor union from making a contribution to a federal candidate. 52 U.S.C. § 30118(a).

11. Generally, contributions from a person to political committees other than candidate and party committees may not exceed, in the aggregate, $5,000 per calendar year, 52 U.S.C. § 30116(a)(1)(C), and candidates cannot accept contributions from a non-multicandidate political committee in excess of $2,700, § 30116(a)(1).

12. However, in Advisory Opinion 2010-11, the Commission interpreted and applied court decisions in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc) and *Citizens United v. FEC*, 558 U.S. 310 (2010), and opined that a committee that "intends to make only independent expenditures" and that "will not make any monetary or in-kind contributions

(including coordinated communications) to any other political committee or organization" is permitted to solicit and accept unlimited contributions from individuals, corporations, labor organizations, and other political committees. AO 2010-11 at 2-3. Conversely, a committee that accepts contributions in excess of the limits from individuals and other political committees, or any contributions from corporations or labor organizations, is prohibited from contributing to candidates.

13. "Contribution" is defined as (1) "any 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(8)(A)(i), and (2) "the payment … 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)(ii).

14. FECA makes clear that any expenditure made in coordination with a candidate is a "contribution" to such candidate. FECA states: "[E]xpenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents shall be considered to be a contribution to such candidate." 52 U.S.C. § 30116(a)(7)(B)(i). This statutory coordination provision is implemented by the nearly-identical regulation defining "coordination" to mean "in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 C.F.R. § 109.20(a).

15. Under the regulations, a communication is coordinated with a candidate and/or that candidate's authorized committee, and is thus a contribution to that candidate's committee, when the communication (1) is paid for, in whole or in part, by a person other than the candidate

or committee; (2) satisfies at least one of the "content standards" in the regulation; and (3) satisfies at least one of the "conduct standards" in the regulation. *Id.* at § 109.21(a).

16. The second prong, the "content standard," is met if the communication "expressly advocates . . . the election or defeat of a clearly identified candidate for Federal office." *Id.* at § 109.21(c)(3).

17. The activities that satisfy the third prong, the "conduct standard," are described at 11 CFR § 109.21(d). Pursuant to congressional directive, those include provisions pertaining to a political committee that is at the "request or suggestion" because the communication is (1) created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee or (2) created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion. 11 CFR § 109.21(d)(1)(i)-(ii). Alternatively, the conduct standard may also be satisfied by the "material involvement" standard if the candidate, authorized committee, or political party committee is materially involved in decisions regarding (i) The content of the communication; (ii) The intended audience for the communication; (iiii) The means or mode of the communication; (iv) The specific media outlet used for the communication; (v) The timing or frequency of the communication; or (vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

18. To the extent that the Marsha for Senate campaign is "doing presentations" with Club for Growth, AFP, or the Senate Leadership Fund and "begging them for money" to ensure these groups are "involved" in the Marsha for Senate campaign, expenditures by Club for

Growth, AFP, and Senate Leadership Fund would be considered "coordinated communications" under the relevant regulations.

19. Club for Growth, AFP, and Senate Leadership Fund have announced plans to spend heavily in Tennessee to elect Marsha Blackburn for Untied States Senate. Based on Ward Baker's own statements any such communications would have to be treated as "coordinated communications" with the Marsha for Senate campaign and therefore run afoul of FECA.

20. The "great relationship" between Club for Growth, AFP, and Senate Leadership Fund described by Ward Baker provides reason to believe that Club for Growth, AFP, and Senate Leadership Fund have made in-kind contributions to Marsha for Senate in the form of coordinated expenditures. There is reason to believe that an investigation of respondents will reveal the full extent of these coordinated expenditures, thereby resulting in discovery of illegal in-kind contributions.

21. Wherefore, the Commission should find reason to believe that Marsha for Senate, Club for Growth, AFP, and Senate Leadership Fund have violated 52 U.S.C. § 30101, *et seq.* and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should seek appropriate remedies and sanctions for any and all violations, including requiring respondents to file true and accurate reports reflecting all contributions, refund or disgorgement of excessive and prohibited contributions, appropriate civil penalties, and such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Dated: August 15, 2018

Respectfully submitted,

J. Gerard Stranch, IV, BPR #23045
Benjamin A. Gastel, BPR #28699
Seamus T. Kelly, BPR #32202
BRANSTETTER, STRANCH
& JENNINGS, PLLC
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Nashville, Tennessee 37203
Phone: (615) 254-8801
Fax: (615) 255-5419

Attorneys for Complainant

VERIFICATION

The complainant listed below hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

Andy Spears, Executive Director, Tennessee Citizen Action

Sworn to and subscribed before me

this the 15 day of August, 2018.

Notary Public

NICOLE VANDEWALKER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 7-5-2020

My Commission Expires:_____