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 AmericansforProsperity.org

September 12, 2018

VIA ELECTRONIC MAIL AND U.S. MAIL

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

Re: MUR 7482

2018 SEP 14 PM 2:12  
 OFFICE OF  
 GENERAL COUNSEL

Dear Ms. Ross:

Americans for Prosperity (“AFP”) submits the following response in the above-captioned case.

The Complaint, filed by Tennessee Citizen Action (“TCA” or “Complainant”), falsely alleges that AFP made in-kind contributions to Marsha For Senate in the form of coordinated communications in violation of the Federal Election Campaign Act (“FECA” or the “Act”),<sup>1</sup> but fails to provide any specific facts which, even if true, would substantiate its allegation. For the reasons further explained below, the Commission should find no reason to believe that AFP has violated the Act.

## I. Background

TCA brings this meritless complaint, as is consistent with its habit of filing meritless campaign finance complaints against ideological opponents.<sup>2</sup> Neither of TCA’s prior meritless complaints have been successful.<sup>3</sup>

<sup>1</sup> Compl. at 2.

<sup>2</sup> Dave Boucher, *Liberal advocacy group wants investigation of David Fox*, THE TENNESSEAN (Aug. 14, 2015, 3:21 PM), <https://www.tennessean.com/story/news/politics/2015/08/14/liberal-advocacy-group-wants-investigation-fox/31727315/>; Jason Gonzales, *Stand for Children cleared of illegal campaign coordination allegations*, THE TENNESSEAN (Dec. 7, 2016, 11:46 AM), <https://www.tennessean.com/story/news/education/2016/12/07/stand-for-children-campaign-finance/95013268/>.

<sup>3</sup> Jason Gonzales, *Stand for Children cleared of illegal campaign coordination allegations*, THE TENNESSEAN (Dec. 7, 2016, 11:46 AM), <https://www.tennessean.com/story/news/education/2016/12/07/stand-for-children-campaign-finance/95013268/>; Joey Garrison, *Democratic-aligned group targets Marsha Blackburn’s US Senate campaign in*

Marsha Blackburn is the U.S. Representative for Tennessee's Seventh Congressional District and has served in this role since 2002. She is also the 2018 Republican candidate for U.S. Senate in Tennessee.

Americans for Prosperity is a 501(c)(4) non-profit, non-partisan social welfare organization that recruits, educates, and mobilizes American citizens in support of the policies and goals of a free and open society at the local, state, and federal levels. With our 36 state chapters, 3.2 million activists, and thousands of dedicated volunteers, our grassroots organization advocates for state and federal issues that advance our policy agenda. We encourage policymakers to support good policy and hold them accountable for their voting records. In a few instances, we have also supported policy champions when they run for office if they have demonstrated they have the courage to stand for principled positions, even when it is difficult to do so.

On February 14, 2018, AFP publicly announced<sup>4</sup> it would support Congresswoman Blackburn in her campaign for U.S. Senate because of her legislative record of fighting against the injustices of Obamacare and a rigged tax code and standing up against Washington's regulatory barriers. On August 9, 2018, AFP filed its first independent expenditures report in support of Marsha Blackburn for Senate to the FEC,<sup>5</sup> and as of the date of this Response, AFP has filed three additional reports to the FEC, disclosing its independent expenditures for public communications supporting Marsha Blackburn or criticizing her Democratic opponent, Phil Bredesen.<sup>6</sup> AFP's activities in this race are limited to independent expenditures and it has not engaged in coordinated communications with Marsha for Senate or any other candidate, candidate's committee, or political party committee.

## II. Legal Analysis

Based on the lack of specific facts provided in the Complaint, in addition to the denial of allegations and specific rebuttal to allegations in this Response, the Commission should find no reason to believe AFP violated the Act. Opening an investigation to determine whether the Commission would have a basis for believing the Complaint's overly broad allegations runs counter to the statutory constraints imposed on the Commission.

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<sup>4</sup> FEC complaint, THE TENNESSEAN (Aug. 16, 2018, 4:12 PM), <https://www.tennessean.com/story/news/politics/tn-elections/2018/08/16/tn-senate-race-marsha-blackburn-fec-complaint/1007118002/>.

<sup>5</sup> Press Release, Americans for Prosperity, Marsha Blackburn will be Champion for Freedom and Prosperity in U.S. Senate (Feb. 14, 2018), <https://americansforprosperity.org/marsha-blackburn-will-champion-freedom-prosperity-u-s-senate/>.

<sup>6</sup> FEC Form 5 Report, Americans for Prosperity (Aug. 9, 2018), <http://docquery.fec.gov/pdf/564/201808099119385564/201808099119385564.pdf>.

<sup>6</sup> FEC Form 5 Report, Americans for Prosperity (Aug. 22, 2018), <http://docquery.fec.gov/pdf/952/201808229121509952/201808229121509952.pdf>; FEC Form 5 Report, Americans for Prosperity (Aug. 31, 2018), <http://docquery.fec.gov/pdf/164/201808319121548164/201808319121548164.pdf>; FEC Form 5 Report, Americans for Prosperity (Sept. 9, 2018), <http://docquery.fec.gov/pdf/323/201809069121595323/201809069121595323.pdf>.

## A. The Reason to Believe Standard

The Commission's regulations provide, in relevant part, that any complaint alleging legal violations should include a clear and concise recitation of the facts which describe a violation of statute or regulation and be accompanied by any documentation supporting the facts alleged.<sup>7</sup> The Commission may find reason to believe ("RTB") "only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge *must* identify a source of information that reasonably gives rise in the truth of the allegations presented."<sup>8</sup>

Unwarranted legal conclusions from asserted facts, or mere speculations will not be accepted as true. Factual allegations refuted with sufficiently compelling evidence provided by respondent may be dismissed, and the Commission has often relied on the sworn statements of respondents in finding no RTB or exercising its prosecutorial discretion.<sup>9</sup> Therefore, "[p]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe that a violation of the FECA has occurred."<sup>10</sup>

The Complainant fails to assert any specific facts that demonstrate coordination between AFP and the Blackburn campaign. Instead, it bases its allegations on an audio recording and a transcript of a secretly recorded statement from Ward Baker at a private event, where the Complainant was not in attendance.<sup>11</sup> Contrary to the Complainant's claim that Mr. Baker's comments "clear[ly] implicat[e] that Marsha for Senate is coordinating or plan[ning] to coordinate with outside [groups] in pursuit of a coordinated strategy to elect Marsha Blackburn to United States Senate,"<sup>12</sup> Mr. Baker's comments do not suggest as such. Instead, Mr. Baker, speaking solely for himself in response to a question, makes general statements about how he views the role of SuperPACs in campaigns in recent cycles. Mr. Baker continues on to clarify, "At the end of the day, we try to figure out what we have to do to win this race *on our own*."<sup>13</sup>

Furthermore, AFP cannot and does not control the statements of individuals it does not employ. Mr. Baker does not work for AFP, nor is there any relationship, employment or otherwise, between Mr. Baker and AFP. Mr. Baker and Marsha for Senate have never given a presentation to AFP, and AFP has never asked Mr. Baker or Marsha for Senate for a presentation. Similarly, Mr. Baker and Marsha for Senate have never asked AFP for money or to otherwise engage in this race. AFP's decision to support Marsha Blackburn in this race was made independently based on Congresswoman Blackburn's legislative history.<sup>14</sup>

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<sup>7</sup> 11 C.F.R. § 111.4(d).

<sup>8</sup> Statement of Reasons of Vice Chairman Hunter and Commissioners McGahn and Petersen in MUR 6296 (Buck) (citing MUR 4960 (Hillary Clinton)).

<sup>9</sup> *Id.*; see also Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas, MUR 4850 (Fossella).

<sup>10</sup> Statement of Reasons of Vice Chairman Hunter and Commissioners McGahn and Petersen in MUR 6296 (Buck) (citing MUR 5467 (Michael Moore), FGCR at 5 (citing MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons at 3)).

<sup>11</sup> Compl. at 2-4.

<sup>12</sup> Compl. at 4.

<sup>13</sup> Compl. at 3 (emphasis added).

<sup>14</sup> See Decl. of Emily Seidel, Chief Executive Officer of AFP, and Decl. of Tori Venable, Tennessee State Director of AFP.

## B. There is No Basis to Find Reason that Any Communication was Coordinated

The Act prohibits any person from making, and any candidate or committee from accepting or receiving, excessive or prohibited contributions.<sup>15</sup> A “contribution” includes anything of value given for the purpose of influencing a federal election.<sup>16</sup> Any expenditure made by a person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, authorized political committee, or a national or state party committee” is considered an in-kind contribution.<sup>17</sup> These expenditures are deemed “coordinated”<sup>18</sup> and qualify as contributions to the candidate and must be reported as expenditures made by the candidate’s authorized committee or political party committee.<sup>19</sup>

A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent thereof if it meets a three-part test: (1) payment by a third-party; (2) satisfaction of one of four “content” standards; and (3) satisfaction of one of six “conduct” standards.”<sup>20</sup> All three prongs must be satisfied for a communication to be coordinated; if one part is not satisfied the analysis ends.”<sup>21</sup>

There is no question that AFP has made and paid for communications that are in support of Marsha Blackburn for U.S. Senate; the payment and content prongs are met. However, the conduct standard is not.

### i. The Conduct Standard is Not Satisfied

Under Commission regulations, the conduct prong may be satisfied by: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign materials.<sup>22</sup>

The Complaint fails to allege any facts that fall under any of the standards listed under the conduct prong. The complaint does not point to any particular communication on which Marsha for Senate and AFP allegedly coordinated, nor does it include verifiable facts that point to communications between the campaign and AFP. The Complainant hedges his broad allegation with speculative language.<sup>23</sup> The Complaint does not establish how, even if true, Marsha for Senate

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<sup>15</sup> 52 U.S.C. § 30116(a), (f); *see, e.g.*, 52 U.S.C. § 30118(a) (prohibiting making or knowingly receiving corporate or union contributions).

<sup>16</sup> 52 U.S.C. § 30101(g)(A)(i).

<sup>17</sup> *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

<sup>18</sup> 11 C.F.R. § 109.20(a).

<sup>19</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a).

<sup>20</sup> 11 C.F.R. § 109.21.

<sup>21</sup> 11 C.F.R. § 109.21(a); *see also* Statement of Reasons of Vice Chairman Hunter and Commissioners McGahn and Petersen in MUR 6296 (Buck).

<sup>22</sup> 11 C.F.R. § 109.21(d).

<sup>23</sup> “*To the extent* that Marsha for Senate campaign is ‘doing presentations’ with . . . AFP . . . and ‘begging them for money’ to ensure [they] are ‘involved’ in the Marsha for Senate campaign, expenditures by . . . AFP . . . would be considered ‘coordinated communications[.]’” Compl. at 6-7 (emphasis added).

campaign “doing presentations”<sup>24</sup> for AFP would satisfy the conduct prong or link such to any specific public communication. Notwithstanding, these activities did not occur between Marsha for Senate and AFP, as established above.

AFP publicly announced its support for Marsha Blackburn’s senatorial bid. There were no secret discussions between Marsha for Senate and AFP. AFP’s public communications to support Marsha Blackburn for U.S. Senate in Tennessee were created independently, and those independent expenditures were reported to this Commission. The Complainant fails to provide a connection between AFP’s paid communications and any alleged coordination.

For these reasons, the Complaint does not set forth any cognizable allegation of impermissible coordination, and there has never, in fact, been any such impermissible coordination by AFP with Marsha for Senate.

### **III. Conclusion**

For the reasons set forth above, the Commission should find no reason to believe that AFP has violated the Act or the Commission’s regulations and should dismiss the Complaint, as to respondent Americans for Prosperity.

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<sup>24</sup> Compl. at 6.

**BEFORE THE FEDERAL ELECTION COMMISSION**

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In re:

Tennessee Citizen Action

v.

Marsha for Senate,  
Club for Growth Action,  
Americans for Prosperity, and  
Senate Leadership Fund

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MUR 7482

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**DECLARATION OF EMILY SEIDEL**

1. I serve as the Chief Executive Officer of Americans for Prosperity (“AFP”), a Respondent in the above-referenced Matter Under Review. I have held this position since October 2017. I make this Declaration in support of the Response filed by AFP.
2. I, along with several of my colleagues, decide if, when, and which electoral races AFP should engage in politically. Political activity is not AFP’s primary purpose.
3. AFP’s decision to support Marsha Blackburn for U.S. Senate was reached independently.
4. I have never discussed any aspect of AFP’s communications with any officer, employee, or agent of the Marsha for Senate campaign.
5. I have never discussed any aspect of AFP’s communications with Ward Baker or any of his known employees or agents.
6. Neither Ward Baker nor Marsha for Senate have asked AFP for a contribution or to otherwise engage in Marsha Blackburn’s campaign.
7. Neither Ward Baker nor Marsha for Senate have given a presentation to AFP.

8. Ward Baker does not have any relationship, employment or otherwise, with AFP.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information, and belief. Dated this 12 day of September 2018.



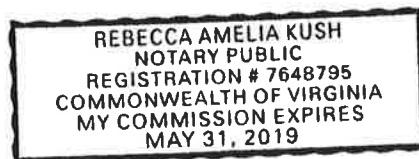
Emily Seidel

Sworn to and subscribed before me

this 12 day of September 2018.

  
\_\_\_\_\_  
Notary Public

My Commission Expires May 31, 2019



**BEFORE THE FEDERAL ELECTION COMMISSION**

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In re:

Tennessee Citizen Action

v.

Marsha for Senate,  
Club for Growth Action,  
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Senate Leadership Fund

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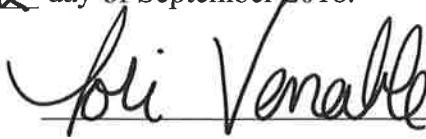
MUR 7482

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**DECLARATION OF TORI VENABLE**

1. I serve as the Tennessee State Director of Americans for Prosperity (“AFP”), a Respondent in the above-referenced Matter Under Review. I have served in this capacity since January 2018. I make this Declaration in support of the Response filed by AFP.
2. I have never discussed any aspect of AFP’s communications with any officer, employee, or agent of the Marsha for Senate campaign.
3. I have never discussed any aspect of AFP’s communications with Ward Baker or any of his known employees or agents.
4. To the best of my knowledge, no officer, employee, agent, or consultant of Marsha for Senate has ever discussed or communicated any aspect of Marsha Blackburn’s senatorial campaign with me.
5. All AFP communications were created independently.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information, and belief. Dated this 12 day of September 2018.



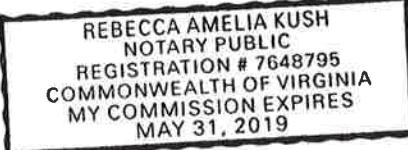
Tori Venable

Sworn to and subscribed before me

this 12 day of September 2018.

  
\_\_\_\_\_  
Notary Public

My Commission Expires May 31, 2019



REBECCA AMELIA KUSH  
NOTARY PUBLIC  
REGISTRATION # 7648795  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES  
MAY 31, 2019