

HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC
Attorneys at Law

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

October 10, 2018

Jeff S. Jordan, Esq.
 Assistant General Counsel
 Complaints Examination & Legal Administration
 Office of General Counsel
 Federal Election Commission
 1050 First Street, NE
 Washington, DC 20002

2018 OCT 11 AM 10 28
 OFFICE OF
 GENERAL COUNSEL

Re: MUR 7482

Dear Mr. Jordan,

This response is submitted by the undersigned counsel on behalf of Senate Leadership Fund (SLF) in connection with the Complaint designated Matter Under Review 7482. For the reasons set forth below, the Complaint should be dismissed.

The Complaint alleges that SLF “made in-kind contributions to Marsha for Senate in the form of ‘coordinated communications.’” Complaint at ¶ 2. The Complainant points to comments attributed to Ward Baker. According to the Complaint, Mr. Baker’s consulting firm, Baker Group LLC is retained by Marsha for Senate. In comments for which no date is provided, Mr. Baker states that he is “a senior advisor to the Senate Leadership Fund.” Complaint at ¶ 7. Mr. Baker explains, “I’m obviously not involved with the Tennessee Senate race. I’m firewalled, that’s because I’m doing this race” *Id.*

As Mr. Baker noted, he is “firewalled” with respect to the Tennessee Senate election in connection with his work for SLF. SLF employees and contractors do not discuss non-public, strategic information or plans regarding the Tennessee Senate election with Mr. Baker, and Mr. Baker has no access to SLF materials that relate to the Tennessee Senate election. Mr. Baker’s consulting services contract with SLF requires him to provide periodic advice about U.S. Senate races as needed; and under that same contract, Mr. Baker is specifically obligated not to convey any non-public information pertaining to federal candidates to SLF, and vice versa.

Neither Marsha Blackburn, nor any representative or agent of her campaign committee, made a “presentation” to SLF, as alleged in Paragraph 18 of the Complaint. It should be noted

that Mr. Baker's comments do not specifically claim that the Blackburn campaign ever did a presentation for SLF. Rather, after noting that he was "not involved with the Tennessee Senate race" in connection with SLF because he was "firewalled," he then referred more generally to "the Super PAC world and outside groups" and said "[y]ou have to do presentations for them." Complaint at ¶ 7. SLF is unsure exactly as to what Mr. Baker was referring, but neither Representative Blackburn nor any representative or agent of her campaign made a "presentation" to SLF. *See* Affidavit of Steven J. Law at ¶ 3; Affidavit of Carl Forti at ¶ 3.

Steven J. Law serves as the President and Chief Executive Officer of SLF. Carl Forti serves as the Political Director. All decisions regarding SLF's engagement in U.S. Senate elections are made by Mr. Law and Mr. Forti, in consultation with the Board of Directors of Senate Leadership Fund, on the basis of their own independent analysis. In every instance, their decisions are informed by SLF's own internal, proprietary polling and assessment of the potential competitiveness of each race, based on myriad factors such as the unique political demographics of each state, candidate fundraising results as reported to the Federal Election Commission, and public news reports about the candidates' activities. Neither has ever been "begg[ed] ... for money" by Representative Blackburn or any representative or agent of Marsha for Senate. Similarly, no representative or agent of Marsha for Senate, including Representative Blackburn, has ever communicated any specific request to Mr. Law or Mr. Forti seeking the "involvement" of SLF in the 2018 U.S. Senate election in Tennessee. *See* Affidavit of Steven J. Law at ¶¶ 1-2, 4-5; Affidavit of Carl Forti at ¶¶ 1-2, 4-5.

The fact that SLF has engaged in spending in connection with the Tennessee Senate election is unsurprising and provides no evidence of coordination. According to the Complaint, SLF announced plans to spend in Tennessee in connection with the U.S. Senate election,¹ and Mr. Baker's statements thus prove that spending was coordinated. The conclusion drawn in Paragraph 19 of the Complaint is illogical and without any basis as far as it applies to SLF. It is no secret that the U.S. Senate race in Tennessee is an important one. For months, it has been viewed as potentially decisive to control of the U.S. Senate. For example, in early May 2018, the *Wall Street Journal* published an article titled "The Battle for the Senate Runs Through Tennessee."²

SLF has made independent expenditures in connection with the 2018 U.S. Senate election in Tennessee. Mr. Baker had no involvement whatsoever with the creation, production, or distribution of any of these independent expenditures. No one associated with Marsha for Senate

¹ The Complaint does not provide any citation to SLF's supposed "announced plans to spend heavily in Tennessee to elect Marsha Blackburn for United States Senate." To the best of our knowledge, the only such "announcement" has been in the form of news media reports of television advertisement bookings. *See, e.g.,* Reid Wilson, *Senate GOP PAC books millions in red state ad spending*, The Hill, July 2, 2018, <https://thehill.com/homenews/state-watch/395162-senate-gop-pac-books-millions-in-red-state-ad-spending>.

² Janet Hook, *The Battle for the Senate Runs Through Tennessee; For Republicans working to hold a slim Senate majority in midterm elections, the race for Bob Corker's seat is emerging as a potential bellwether*, Wall Street Journal, May 9, 2018, <https://www.wsj.com/articles/the-battle-for-the-senate-runs-through-tennessee-1525877942>.

has “coordinated” with SLF “in pursuit of a coordinated strategy to elect Marsha Blackburn to United States Senate.” Complaint at ¶ 8.

Finally, the Complainant contends that “an investigation of respondents will reveal the full extent of these coordinated expenditures, thereby resulting in discovery of illegal in-kind contributions.” Complaint at ¶ 20. The burden is on *the Complainant* to provide sufficient evidence to provide reason to believe a violation of the Act occurred; it is not enough to draw unsubstantiated legal conclusions from vague statements. *See* MUR 4960 (Clinton), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas (“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if prove true, would constitute a violation of the FECA. ... Unwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true. ... [P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.”); MUR 6056 (Protect Colorado Jobs), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 n.12. (“The RTB standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges.”).

For the reasons set forth above, the Complaint should be dismissed. Thank you for your consideration.

Sincerely,



Thomas J. Josefiak
Michael Bayes

Counsel for Senate Leadership Fund

AFFIDAVIT OF STEVEN J. LAW

PERSONALLY came and appeared before me, the undersigned Notary, the within named STEVEN J. LAW, makes this Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Steven J. Law. I am the President and Chief Executive Officer of Senate Leadership Fund. I am familiar with the activities of Senate Leadership Fund, including the public communications distributed by Senate Leadership Fund.
2. Carl Forti is the political director of Senate Leadership Fund. In consultation with our board of directors, Mr. Forti and I make all strategic decisions regarding the elections in which Senate Leadership Fund will engage, the subject matter of all of Senate Leadership Fund's communications, and the timing and placement of all of Senate Leadership Fund's advertisements. With respect to every election, our decisions are informed by Senate Leadership Fund's own internal, proprietary polling and assessment of the potential competitiveness of each race, based on myriad factors such as the unique political demographics of each state, candidate fundraising results as reported to the Federal Election Commission, and public news reports about candidates' activities.
3. Neither Representative Marsha Blackburn, nor any representative or agent of her U.S. Senate campaign committee, made a "presentation" to Senate Leadership Fund during the 2018 federal election cycle.
4. I have never been "begged for money" by any representative or agent of Representative Marsha Blackburn's U.S. Senate campaign, including Representative Blackburn.
5. No representative or agent of Marsha Blackburn's U.S. Senate campaign, including Representative Blackburn, has ever communicated any specific request to me seeking the "involvement" of Senate Leadership Fund in the 2018 U.S. Senate election in Tennessee.

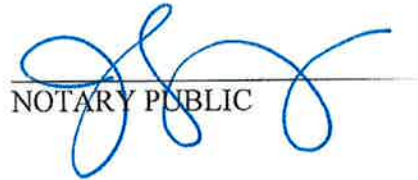
- 6. I have never discussed non-public, strategic information (including campaign plans, projects, activities, or needs) regarding the 2018 U.S. Senate election in Tennessee with Ward Baker.

DATED this the 10th day of October, 2018



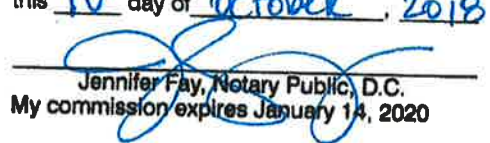
Signature of Affiant, Steven J. Law

SWORN to subscribed before me, this 10 day of October, 2018



NOTARY PUBLIC

My Commission Expires:
1/14/2020

District of Columbia: SS
Subscribed and Sworn to before me
this 10 day of October, 2018

Jennifer Fay, Notary Public, D.C.
My commission expires January 14, 2020

AFFIDAVIT OF CARL FORTI

PERSONALLY came and appeared before me, the undersigned Notary, the within named CARL FORTI, makes this Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Carl Forti. I am an independent contractor who serves as the Political Director of Senate Leadership Fund. I am familiar with the activities of Senate Leadership Fund, including the public communications distributed by Senate Leadership Fund.
2. Steven J. Law is the President and Chief Executive Officer of Senate Leadership Fund. In consultation with the organization's board of directors, Mr. Law and I make all strategic decisions regarding the elections in which Senate Leadership Fund will engage, the subject matter of all of Senate Leadership Fund's communications, and the timing and placement of all Senate Leadership Fund's advertisements. With respect to every election, our decisions are informed by Senate Leadership Fund's own internal, proprietary polling and assessment of the potential competitiveness of each race, based on myriad factors such as the unique political demographics of each state, candidate fundraising results as reported to the Federal Election Commission, and public news reports about candidates' activities.
3. Neither Representative Marsha Blackburn, nor any representative or agent of her U.S. Senate campaign committee, made a "presentation" to Senate Leadership Fund during the 2018 federal election cycle.
4. I have never been "begged for money" by any representative or agent of Representative Marsha Blackburn's U.S. Senate campaign, including Representative Blackburn.
5. No representative or agent of Marsha Blackburn's U.S. Senate campaign, including Representative Blackburn, has ever communicated any specific request to me seeking the "involvement" of Senate Leadership Fund in the 2018 U.S. Senate election in Tennessee.

- 6. I have never discussed non-public, strategic information (including campaign plans, projects, activities, or needs) regarding the 2018 U.S. Senate election in Tennessee with Ward Baker.


DATED this the 10 day of October, 2018


 Signature of Affiant, Carl Forti

SWORN to subscribed before me, this 10 day of October, 2018


 NOTARY PUBLIC

My Commission Expires:
1/14/2020

District of Columbia: SS
 Subscribed and Sworn to before me
 this 10 day of October, 2018

 Jennifer Fay, Notary Public, D.C.
 My commission expires January 14, 2020