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September 18, 2018

MUR # 7502

Ms. AnnaLou Tirol
Acting Chief, Public Integrity Section
Department of Justice, Criminal Division
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Ms. Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463
lstevenson@fec.gov

Re: Illegal Campaign Contributions

Dear Ms. Tirol and Ms. Stevenson:

The law imposes clear limits on the amounts that federal candidates can raise from any individual to finance their campaigns, and there are separate limits for each election. These limits are simple and constitute the cornerstone of our campaign finance system. They exist to prevent corruption. A basic tenet of these contribution limits is that a candidate can raise contributions only for elections in which he or she is actually a candidate. Otherwise, it would be akin to raising contributions equal to twice the legal limit. Based on publicly available Federal Election Commission ("FEC") reports, it appears that this is exactly the activity engaged in by Ms. Mia Love, U.S. Congresswoman and current Republican candidate for the U.S. House of Representatives from Utah's Fourth Congressional District, to the tune of over \$1.1 million.

Under Utah's election system, it is possible to receive a general election nomination at a party's nominating convention, allowing the convention to function in place of a primary election. Accordingly, the FEC has recognized that candidates in Utah can raise under a separate contribution limit for a party convention. If no nominee is chosen at a party convention and it is necessary to hold a primary election, a campaign may also raise under a separate contribution limit for the primary. For contribution limits purposes, this means three "elections" can exist within one cycle. However, if a candidate is nominated at the convention and there is no primary, the law plainly states that he or she cannot raise under a separate contribution limit for the primary and that if he or she has already raised primary funds, those funds must be returned to the donors or redesignated within 60 days.

Because Ms. Love won the Republican nomination outright through the Party convention, this cycle has only two elections. Obviously, it would make no sense to be able to raise funds for an election in which you were not participating, and FEC precedent is clear on this point. But again, this is exactly what Mia Love has done this year. Although she was not a candidate in the primary election, she raised and spent primary election funds, in clear violation of the law. She continued to raise primary funds even after she

knew there would be no primary, and she has not returned nor redesignated the primary funds she raised earlier in the cycle.

Given this clear violation, Complainant files a complaint under 52 U.S.C. § 30109(a)(1) against Ms. Mia Love; Friends of Mia Love (FEC ID#: C00505776), Ms. Love's principal campaign committee; and Mr. Robert F. Carlin, in his official capacity as treasurer for Friends of Mia Love (collectively, "Respondents") based on information providing reason to believe that Respondents violated contribution limit restrictions of the Federal Election Campaign Act of 1971, as amended (the "Act"), 52 U.S.C. § 30101, *et seq.* and FEC regulations.

Moreover, since Ms. Love and the other Respondents were made aware of these violations by the Commission, they have refused to refund all primary election contributions, as mandated by federal law.¹ By refusing to refund these contributions, Ms. Love and the other Respondents are knowingly and willfully violating the Act, and accordingly, should be subject to criminal penalties.²

Respondents' actions are a betrayal of the public trust and of Utah voters. These actions should be investigated immediately to determine the extent of the violations, compel Respondents to refund the monies they were not allowed to accept, fine the Respondents the maximum amount permitted by law, and refer any knowing and willful violations to the Department of Justice for criminal prosecution, as deemed appropriate.

I. FACTS

Ms. Mia Love is a member of U.S. Congress and current Republican candidate for the U.S. House of Representatives from Utah's Fourth Congressional District.³ Ms. Love's principal campaign committee is Friends of Mia Love (the "Committee"). In Utah, a federal candidate seeking the Republican Party nomination for U.S. Congress was required to declare his or her candidacy by March 15, 2018.⁴ Ms. Love was the only candidate to declare her candidacy for the Republican Party nomination for the U.S. House of Representatives from Utah's Fourth Congressional District.⁵ On April 21, 2018, the Utah Republican Party held its convention and nominated Ms. Love for the U.S. House by acclamation, declaring, "Mia Love advances - No primary."⁶ On June 26, 2018, the Utah primary election for all federal offices was held,⁷ and because the Utah Republican Party had nominated Ms. Love as its sole candidate for the Fourth Congressional District and no other candidate qualified for ballot by the statutory deadline, Ms. Love was

¹ Rick Bowmer, *Love Refunding, Re-Designating Campaign Cash After Warning*, DAILY HERALD, (Sept. 10, 2018), https://www.heraldextra.com/news/local/govt-and-politics/love-refunding-re-designating-campaign-cash-after-warning/article_3d9ba527-565c-5c33-aaad-e05a94e21ef6.html.

² 52 U.S.C. § 30109(d)(1)(A)(i).

³ See MIA LOVE FOR U.S. CONGRESS, <https://love4utah.com/>.

⁴ See Utah Code §§ 20A-9-407(3)(a), 20A-9-408(3)(a); see also 2018 Candidate Manual, UTAH LIEUT. GOV., 38 (2018), <https://elections.utah.gov/Media/Default/2018%20Election/2018%20Candidate%20Manual.pdf>.

⁵ See 2018 Candidate Filings, UTAH LIEUT. GOV., <https://elections.utah.gov/2018-candidate-filings#Federal>.

⁶ See Events, UTAH REPUBLICAN PARTY, <http://utah.gop/events/>; POST CONVENTION NEWSLETTER, UTAH REPUBLICAN PARTY, 5 (2018), <http://utah.gop/wp-content/uploads/2018/05/Post-Convention-Newsletter.pdf>. Notably, Ms. Love is the only Republican candidate to have filed for the Utah 4th District of the U.S. House. See 2018 Candidate Filings, UTAH LIEUT. GOV., <https://elections.utah.gov/2018-candidate-filings#Federal>.

⁷ Utah Code § 20A-9-409(1); see Election Calendar, UTAH LIEUT. GOV., <https://vote.utah.gov/vote/menu/calendar.html>.

the sole Republican Party nominee and her name did not appear on the primary election ballot.⁸ No primary election was held for Utah's Fourth Congressional District by the Republican Party; there was only the convention.

Despite the lack of a primary election, according to the Committee's FEC reports, Respondents took contributions for the convention, the general election, and the primary election. The Committee has taken over \$1,100,000 designated for the primary.⁹ Moreover, Respondents raised in excess of \$530,000 of those primary-designated funds *after* the candidate declaration deadline, when they knew that Ms. Love was the only declared candidate for the Republican Party nomination for the U.S. House of Representatives from Utah's 4th Congressional District.¹⁰ She raised primary funds when she knew there would be no primary. Furthermore, the Respondents raised in excess of \$370,000 of those funds *after* the Utah Republican Party convention where Ms. Love was nominated, again when Respondents knew there would be no primary.¹¹

In fact, on August 6, 2018, the Commission made a formal Request for Additional Information ("RFAI") to the Committee, asking why the Committee had accepted contributions for the 2018 primary even though "the candidate [did] not participate in the 2018 Primary election."¹² The Commission confirmed that "Any subsequent report(s) filed with the Commission must disclose the refund or redesignation of *any 2018 Primary election contribution*."¹³ In response, Respondents even admitted that they accepted contributions in violation of federal campaign finance law, though they refuse to refund all 2018 primary election contributions as mandated by federal law, given that it is not legally permissible to redesignate contributions after more than 60 days.¹⁴

II. LEGAL ARGUMENT

The Act regulates the influence of money through politics to prevent corruption in federal elections. Under federal law, a federal candidate or officeholder, or agent thereof, may not solicit, receive, direct, transfer, spend, or disburse funds in connection with a federal election for federal office which are not

⁸ See *2018 Candidate Filings*, UTAH LIEUT. GOV., <https://elections.utah.gov/2018-candidate-filings#Federal>.

⁹ See Friends of Mia Love, April Quarterly 2017 FEC Report (April 14, 2017); Friends of Mia Love, July Quarterly 2017 FEC Report (July 14, 2017); Friends of Mia Love, October Quarterly 2017 FEC Report (Oct. 15, 2017); Friends of Mia Love, Year-End 2017 FEC Report (Jan. 30, 2018); Friends of Mia Love, Pre-Convention 2018 FEC Report (Apr. 9, 2018); Friends of Mia Love, Pre-Primary 2018 FEC Report (June 14, 2018); Friends of Mia Love, July Quarterly 2018 FEC Report (July 12, 2018), <https://www.fec.gov/data/committee/C00505776/?tab=filings>.

¹⁰ See *id.*

¹¹ See *id.*

¹² See Friends of Mia Love, FEC Request for Additional Information (Aug. 6, 2018), <http://docquery.fec.gov/pdf/739/201808060300016739/201808060300016739.pdf>.

¹³ *Id.* (emphasis added).

¹⁴ See Friends of Mia Love, Response to FEC Request for Additional Information (Sept. 6, 2018), <http://docquery.fec.gov/pdf/997/201809079121596997/201809079121596997.pdf> ("Committee RFAI Response"); see also Dennis Romboy, *Rep. Mia Love to Return, Redesignate \$380K in Campaign Funds Raised for Primary Election*, KSL (Sept. 10, 2018), <https://www.ksl.com/article/46388667/rep-mia-loves-campaign-admits-to-improperly-raising-primary-election-funds>; Andrew Kaczynski & Nathan McDermott, *Rep. Mia Love's Campaign Admits to Improperly Raising Primary Election Funds*, CNN (Sept. 10, 2018), <https://www.cnn.com/2018/09/10/politics/mia-love-campaign-funds/index.html>; Griffin Connolly, *Rep. Mia Love's Campaign Gamed Primary Fundraising Laws, FEC Finds*, ROLL CALL (Sept. 10, 2018), <https://www.rollcall.com/news/politics/rep-mia-loves-campaign-gamed-primary-fundraising-laws-fec-finds>.

subject to the source restrictions and contribution limits under the Act.¹⁵ For the 2017-2018 election cycle, a federal candidate can accept up to \$2,700 per election per individual.¹⁶

The Act and Commission regulations define an “election” to include “a general, special, primary, or runoff election” and “a convention or caucus of a political party which has authority to nominate a candidate.”¹⁷ It is possible for there to be a separate contribution limit for three elections—the convention, the primary and the general,¹⁸ but this is not always the case. FEC regulations are clear on what happens if no primary election is required. 11 C.F.R. § 110.1(j)(4) provides that a “primary election which is not held because a candidate was nominated by a caucus or convention with authority to nominate is not a separate election for the purposes of the limitations on contributions . . .”¹⁹ A candidate nominated at a convention only gets two contribution limits in the cycle (one for the convention and one for the general), not three. When enacting this regulation, the Commission expressly stated, “there is no separate contribution limit with respect to a primary election” when the candidate has been nominated by a caucus or convention with the authority to nominate a candidate.²⁰

Under Utah law, to get on a primary ballot, a U.S. congressional candidate can participate in the political party convention to obtain the party’s nomination, qualify for the ballot through the signature-gathering process, or both.²¹ Pursuant to the Utah Republican Party Constitution, a “candidate for an office that receives 60% or more of the votes cast at any point in the balloting process at the state nominating conventions shall proceed to the general election,”²² assuming that no candidates qualified through the signature gathering process. No later than the Monday after the convention, the nominating convention secretary shall certify the names of the party’s nominees.²³ Utah’s conventions have the authority to nominate candidates. A candidate can also qualify for the primary ballot by collecting 7,000 signatures of registered voters who are residents of the congressional district and permitted to vote in the primary election.²⁴ If a candidate collects enough qualifying signatures, the candidate shall qualify as a nominee of the relevant political party for that elective office.²⁵ Signatures must be submitted no later than 14 days before the candidate’s nominating convention.²⁶

However, if only one candidate qualifies for the regular primary election ballot of the candidate’s political party for a particular elective office, that candidate shall be “unopposed” and the Lieutenant Governor

¹⁵ 52 U.S.C. § 30125(e)(1)(A).

¹⁶ 11 C.F.R. § 110.1(b); *Contribution Limits*, FED. ELEC. COMM’N, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits-candidates/>.

¹⁷ 11 C.F.R. § 100.2; 52 U.S.C. § 30101(1).

¹⁸ FEC Adv. Op. 1992-25, 1-2 (July 10, 1992), <https://www.fec.gov/files/legal/aos/1992-25/1992-25.pdf>.

¹⁹ 11 C.F.R. § 110.1(j)(4) (emphasis added).

²⁰ 52 Fed. Reg. 765 (Jan. 9, 1987).

²¹ Utah Code §§ 20A-9-407, 20A-9-408, 20A-9-409.

²² Utah Republican Party Const., Art. XII, Sec. 2(I), https://drive.google.com/file/d/1CqLTpBbJowjOxpe1ZOWTXClniCgs_McD/view.

²³ *Id.* Sec. 2(J).

²⁴ Utah Code § 20A-9-408(8)(b).

²⁵ *Id.* § 20A-9-408(9)(d).

²⁶ *Id.* § 20A-9-408(9)(a).

shall “instruct the county clerks to exclude unopposed candidates from the primary election ballot.”²⁷ If a candidate receives a party’s nomination at the convention and no candidate successfully takes advantage of the signature gathering option, there is no primary election in Utah for contribution limits purposes.

In FEC Advisory Opinion 2004-20, the Commission confirmed this exact scenario.²⁸ There, a Connecticut congressional candidate was nominated by the Democratic Party convention, which had the authority to nominate a candidate.²⁹ Because the Democratic Party had nominated the candidate, and no other member of the Democratic Party filed a petition for candidacy by the statutory deadline, the candidate was the Democratic Party’s nominee and her name did not appear on the primary election ballot.³⁰ The Commission concluded that the candidate was not allowed to accept contributions designated for the primary election after the date of the convention.³¹ Since the committee had no outstanding debts, all contributions made after the date of the convention were required to be designated as contributions to the general election.³² There was no separate limit for the primary election. Similarly, other FEC Opinions also make it plain that as soon as it was clear that there was not going to be primary (because a candidate was successfully nominated at the convention) any funds that were previously raised for the primary election needed to be refunded.³³ In certain circumstances, it is possible to redesignate contributions for one election, if they were originally designated for an election in which a candidate did not participate. However, redesignation is only possible if it is done within 60 days. Under federal regulations, “[a] contribution shall be considered to be redesignated for another election if . . . within sixty days from the date of the treasurer’s receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.”³⁴ Once the 60-day deadline is past, a committee has no legal basis to redesignate contributions for another election. Rather, a committee must refund all excessive contributions.³⁵ Respondents have not followed these clear legal requirements and despite being aware of these laws, continue to willfully refuse to follow them now.

Respondents violated federal law by accepting contributions for a primary election that was not held. Since Ms. Love was nominated as the Republican Party’s candidate for the 4th Congressional District by acclamation and no other candidate qualified for candidacy by the statutory deadline, Ms. Love was the sole Republican Party nominee.³⁶ As an unopposed candidate nominated by a convention with the

²⁷ *Id.* § 20A-9-409(3)-(4).

²⁸ FEC Adv. Op. 2004-20, 1-2 (July 20, 2004), <http://saos.fec.gov/saos/searchao?AONUMBER=2004-20>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 2.

³² *Id.* at 4.

³³ See FEC Adv. Op. 1982-49 (Oct. 8, 1982), <https://www.fec.gov/files/legal/aos/1982-49/1982-49.pdf>; FEC Adv. Op. 1983-39 (Dec. 5, 1983), <https://www.fec.gov/files/legal/aos/1983-39/1983-39.pdf>; FEC Adv. Op. 1996-36 (Sept. 20, 1996), <https://www.fec.gov/files/legal/aos/1996-36/1996-36.pdf>.

³⁴ 11 C.F.R. § 110.1(b)(5).

³⁵ See *id.* § 110.1.

³⁶ See *2018 Candidate Filings*, UTAH LIEUT. GOV., <https://elections.utah.gov/2018-candidate-filings#Federal>.

authority to nominate her,³⁷ Ms. Love's name did not appear on the primary election ballot and no primary election was held for her.³⁸

Prior to the convention and earlier in the cycle, Respondents did not know whether or not there might be a primary; they were raising funds in the event that a primary might occur. However, after the candidacy declaration deadline, on March 15, 2018, when it was clear that Ms. Love had no challenger for the Republican nomination, Respondents were obligated to refund or redesignate all of those primary contributions.³⁹ They were similarly obligated to refund or redesignate all primary contributions after the convention, when it was again evident that there would be no primary.⁴⁰ They did not do so in either case.⁴¹ There was no excuse for continuing to raise primary funds when it was plain to all that no primary would occur. The Committee accepted over a million dollars in primary contributions it was not allowed to accept and retain. Furthermore, over \$530,000 of those funds were raised after the candidate declaration deadline, and over \$370,000 of those funds were raised after the convention, when Respondents knew there was no basis for raising contributions under a primary election limit.⁴² Now, since the 60-day redesignation deadline has passed for all contributions designated for the primary election,⁴³ the Committee must refund all contributions designated for the primary election.⁴⁴ There is no legitimate legal basis that will allow the Committee to redesignate any funds to the general election.

In blatant defiance of federal law, Ms. Love openly refuses to refund the illegal primary contributions. Instead, she has cynically decided to hope for a pass on her clear legal obligations because the Commission once granted Senator Mike Lee some leniency after a review of his campaign finances.⁴⁵ In reality, the Commission's response to the Friends of Mike Lee Request for Legal Consideration only confirms our analysis of the current situation. First, it is important to note that the Mike Lee matter did not change the clear requirements of the Act. In that case, the Commission allowed Senator Mike Lee to

³⁷ FEC Adv. Op. 2004-20, 3 (July 20, 2004), <http://saos.fec.gov/saos/searchao?AONUMBER=2004-20>.

³⁸ Utah Code § 20A-9-409(3)-(4).

³⁹ See FEC Adv. Op. 1982-49 (Oct. 8, 1982), <https://www.fec.gov/files/legal/aos/1982-49/1982-49.pdf>; FEC Adv. Op. 1983-39 (Dec. 5, 1983), <https://www.fec.gov/files/legal/aos/1983-39/1983-39.pdf>; FEC Adv. Op. 1996-36 (Sept. 20, 1996), <https://www.fec.gov/files/legal/aos/1996-36/1996-36.pdf>.

⁴⁰ *Id.*

⁴¹ See Friends of Mia Love, April Quarterly 2017 FEC Report (April 14, 2017); Friends of Mia Love, July Quarterly 2017 FEC Report (July 14, 2017); Friends of Mia Love, October Quarterly 2017 FEC Report (Oct. 15, 2017); Friends of Mia Love, Year-End 2017 FEC Report (Jan. 30, 2018); Friends of Mia Love, Pre-Convention 2018 FEC Report (Apr. 9, 2018); Friends of Mia Love, Pre-Primary 2018 FEC Report (June 14, 2018); Friends of Mia Love, July Quarterly 2018 FEC Report (July 12, 2018), <https://www.fec.gov/data/committee/C00505776/?tab=filings>.

⁴² The Committee might argue that since contributions are automatically designated for the next election, the contributions designated for the primary election after the declaration deadline and after the convention were simply mistakenly designated. However, the Committee expressly states: "Unless you direct otherwise, your contribution(s) will be allocated first to the convention, then to the primary, then to the general election, subject to the per election and overall limits." See FRIENDS OF MIA LOVE, <https://secure.love4utah.com/donate>. This language clearly shows that the Committee intentionally designated the funds for the primary election even after they knew that no primary would be held. *Id.*

⁴³ 11 C.F.R. § 110.1(b)(5).

⁴⁴ The Utah primary election was held on June 26, 2018. 60 days from June 26, 2018, the last day the Committee should have received primary contributions, was **August 25, 2018**. Accordingly, the Committee is well-past the 60-day deadline to redesignate primary contributions.

⁴⁵ See Committee RFAI Response.

keep limited primary funds because Friends of Mike Lee “had no choice but to prepare for both the primary election and the party convention at the same time.”⁴⁶ Friends of Mike Lee raised primary funds and then in fact used those primary funds to get on the primary ballot through the signature gathering process.⁴⁷ Here, the Committee did not file a single signature to gain access to the primary ballot.

Moreover, Senator Lee had a Republican opponent for his seat, Mr. William Gaskill,⁴⁸ and Mr. Gaskill withdrew his candidacy mere *days* before the 2016 Republican Convention.⁴⁹ Ms. Love never had a Republican opponent.⁵⁰ Her facts are not the same. Not surprisingly, the FEC’s Reports Analysis Division has already confirmed that the Committee may not rely on the allowance outlined in the Commission’s response to the Friends of Mike Lee Request for Legal Consideration.⁵¹

Critically, Friends of Mike Lee also stopped accepting primary contributions once it was clear that no primary election would be held.⁵² Here, the Committee accepted primary contributions until the day of the 2018 primary.⁵³ Ms. Love knew there would be no primary on March 15, but continued to raise primary funds anyway, clearly flouting the law. In recent days, now that her violations have become public, Ms. Love has doubled down, saying that she “will refund or re-designate up to \$380,000 in contributions” instead of refunding all contributions designated for the primary election, as mandated by federal law.⁵⁴ She willfully raised primary funds when she knew there wasn’t going to be a primary, even after she received the nomination at the convention, and now she is knowingly continuing to break the law by keeping those funds. “Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure . . . aggregating \$25,000 or more during a calendar year shall be fined . . . or imprisoned for not more than 5 years, or both.”⁵⁵ By refusing to refund all primary contributions as required by federal law, Respondents are knowingly and willfully violating federal law. Accordingly, Ms. Love and the other Respondents may be subject to a fine as well as criminal prosecution.

⁴⁶ See Friends of Mike Lee, FEC Acting General Counsel Response to Request for Legal Consideration (Aug. 1, 2017), https://transition.fec.gov/law/ra_documents/ra_1044_friends_of_mike_lee_response_letter_08-01-17.pdf.

⁴⁷ See Friends of Mike Lee, FEC Memorandum to Commission, 2 (May 22, 2017), https://transition.fec.gov/law/ra_documents/ra_1044_ogc_recommendation_memo_mike_lee.pdf.

⁴⁸ See *2016 Candidate Filings*, UTAH LIEUT. GOV., <https://elections.utah.gov/election-resources/2016-candidate-filings>.

⁴⁹ *Id.*

⁵⁰ See *2018 Candidate Filings*, UTAH LIEUT. GOV., <https://elections.utah.gov/2018-candidate-filings#Federal>.

⁵¹ Committee RFAI Response.

⁵² Friends of Mike Lee, Request for Legal Consideration (Apr. 24, 2017), https://transition.fec.gov/law/ra_documents/friends_of_mike_lee_request_for_legal_determination.pdf.

⁵³ See Friends of Mia Love, April Quarterly 2017 FEC Report (April 14, 2017); Friends of Mia Love, July Quarterly 2017 FEC Report (July 14, 2017); Friends of Mia Love, October Quarterly 2017 FEC Report (Oct. 15, 2017); Friends of Mia Love, Year-End 2017 FEC Report (Jan. 30, 2018); Friends of Mia Love, Pre-Convention 2018 FEC Report (Apr. 9, 2018); Friends of Mia Love, Pre-Primary 2018 FEC Report (June 14, 2018); Friends of Mia Love, July Quarterly 2018 FEC Report (July 12, 2018), <https://www.fec.gov/data/committee/C00505776/?tab=filings>.

⁵⁴ Rick Bowmer, *Love Refunding, Re-Designating Campaign Cash After Warning*, DAILY HERALD, (Sept. 10, 2018), https://www.heraldextra.com/news/local/govt-and-politics/love-refunding-re-designating-campaign-cash-after-warning/article_3d9ba527-565c-5c33-aaad-e05a94e21ef6.html.

⁵⁵ 52 U.S.C. § 30109(d)(1)(A)(i).

III. REQUESTED ACTION

As is plain from Respondents own FEC reports, Respondents have violated federal law by violating the provisions of the Act and accepting over a million dollars in prohibited funds. Complainant respectfully requests that the Federal Election Commission promptly investigate these violations, compel Respondents to refund the illegal contributions, fine the Respondents the maximum amount permitted by law, and refer relevant violations to the Department of Justice for criminal prosecution.

Sincerely,

Chase Thomas
Executive Director
Alliance for a Better Utah

SUBSCRIBED AND SWORN to before me this 18th day of September, 2018.

Notary Public

My Commission Expires:

