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November 26, 2018

VIA ELECTRONIC AND FIRST-CLASS MAILMr. Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20463**Re: MUR 7502—Response of Friends of Mia Love (Robert F. Carlin, Treasurer)**

Dear Mr. Jordan:

A complaint was filed recently against Friends of Mia Love (“the Committee”), alleging that the Committee was ineligible to raise contributions for the 2018 primary election.¹ This accusation is incorrect, however, as Congresswoman Love was a “candidate” for purposes of federal campaign finance rules for that election and was therefore legally entitled to raise primary-election contributions.

As you know, an individual running for public office is legally entitled to raise contributions for any scheduled “election” in which she qualifies as a “candidate.”² And such an individual qualifies as a “candidate” for an “election” when she raises or spends over \$5,000 with respect to that election.³ A candidate’s legal ability to raise funds then subsequently continues until the election occurs, until the candidate formally withdraws from the election, or until the election is cancelled.⁴

Utah’s unique electoral system features two “election” periods—a convention and a primary—that run concurrently rather than sequentially.⁵ This particular aspect of Utah’s system leaves a candidate, in the words of the Commission, “no choice but to prepare for both the

¹ Alliance for a Better Utah Complaint at 1.

² 52 U.S.C. §§ 30101(1)-(2), 30116(a); 11 C.F.R. §§ 110.1(j), 110.2(i). *See also* Fed. Election Comm’n, *Congressional Candidates and Committees* at 20 (2014) (“The limits on contributions to candidate apply separately to each federal election in which the candidate participates.”), available at <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>.

³ 11 C.F.R. § 100.3(a). *See also* 52 U.S.C. § 30101(2).

⁴ *See* Fed. Election Comm’n Adv. Op. 2009-15 (“Contributions designated for an election that does not occur, or in which a person is not a candidate (for example, where a candidate has lost the primary and is hence not running in the general election), must be refunded, redesignated for another election...”); Fed. Election Comm’n Adv. Op. 2008-04 (discussing candidate formal withdrawal from an election); Fed. Election Comm’n Adv. Op. 1996-36 (discussing the application of contribution limits in the context of a cancelled election); Fed. Election Comm’n Letter to Cleta Mitchell (Aug. 1, 2017) (noting that a federal candidate was allowed to raise contributions before the state cancelled the primary election), available at https://transition.fec.gov/law/lra_documents/lra_1044_friends_of_mike_lee_response_letter_08-01-17.pdf.

⁵ Utah Code Ann. §§ 20A-9-407, 20A-9-408.

primary election and the party convention at the same time”⁶ because signature-gathering for the primary election as well as campaigning for both of these elections must happen simultaneously. Commission precedent is clear that a candidate “participating in multiple distinct elections” at the same time, as is the case in Utah, is “eligible for separate contribution limits” for each election.⁷

The complaint acknowledges that Congresswoman Love was a candidate for the convention, while also arguing that she was never a candidate for the primary election and therefore ineligible to raise primary-election contributions altogether.⁸ But Congresswoman Love was, in fact, a candidate for *both* the convention and the primary. Congresswoman Love formally declared her candidacy with the Utah Lieutenant Governor for the primary election⁹ and the Committee filed pre-election reports in connection with the 2018 primary election.¹⁰ The Committee’s spending before and during the first months of 2018 furthered Congresswoman Love’s candidacy for the convention and the primary. Some Committee expenses, such as \$36,300 in payments to a signature-gathering firm to help Congresswoman Love qualify for the primary-election ballot, were even focused exclusively on the 2018 primary election.¹¹ By virtue of spending more than \$5,000 on participating in the scheduled 2018 primary election in Utah, then, Congresswoman Love was manifestly a “candidate” for the primary under Commission rules and was legally entitled to raise primary-election contributions.

Perhaps in tacit recognition that Congresswoman Love was in fact a “candidate” under Commission rules for the 2018 primary election, the complaint shifts to an assertion that her campaign’s legal ability to raise funds for the primary election toggled on and off based on the presence or absence of a challenger for the Republican nomination.¹² The Commission has roundly rejected this faulty rationale. Commission rules state specifically that an “election in which a candidate is unopposed is a separate election for the purposes of the limitations on contributions” and that a “primary or general election which is not held because a candidate is unopposed or received a majority of votes in a previous election is a separate election for

⁶ Fed. Election Comm’n Letter to Cleta Mitchell (Aug. 1, 2017), https://transition.fec.gov/law/lra_documents/lra_1044_friends_of_mike_lee_response_letter_08-01-17.pdf.

⁷ Fed. Election Comm’n Adv. Op. 2016-03. *See also* Fed. Election Comm’n Matter Under Review 6438 Factual and Legal Analysis at 6-7, (Oct. 5, 2012) (stating “the plain language of the Act and Commission regulations . . . on their face place no limit on the number of ‘elections’ eligible for separate contribution limits” while finding no reason to believe that candidate violated Commission regulations by utilizing separate contribution limit for state-administered party primary and internet-based independent party primary).

⁸ Alliance for a Better Utah Complaint at 1-2.

⁹ Mia B. Love, *Utah Lt. Gov. 2018 Qualified Political Party United States House of Representatives Declaration of Candidacy* (2018) (form indicating that the candidate was “seeking the nomination using... Both the convention process and the signature-gathering process”), available at <https://elections.utah.gov/Media/Default/2018%20Election/Declarations%20of%20Candidacy/US%20House%20Candidates/US%20House%204%20-%20Mia%20B.%20Love.pdf>.

¹⁰ Friends of Mia Love’s filings with the Commission are available at <https://www.fec.gov/data/committee/C00505776/?tab=filings>.

¹¹ Friends of Mia Love FEC Form 3, Line 17 (filed April 9, 2018) (disclosing \$36,300 in payments to “Gathering Inc.”), <http://docquery.fec.gov/cgi-bin/fecimg/?201804099104801129>.

¹² Alliance for a Better Utah Complaint at 6.

purposes of the limitations on contributions.”¹³ The Commission applied this clear articulation of the law to U.S. Senator Mike Lee during the 2016 election cycle, when it found that Senator Lee’s ability to raise contributions for a scheduled primary election was unaffected by the presence or absence of an opponent. In that circumstance, Senator Lee’s only challenger formally withdrew from the race nearly three weeks prior to the April 23, 2016 State Republican Convention.¹⁴ If the complaint were correct in its articulation of the law, the Commission would have held that Senator Lee was prohibited from raising primary-election contributions after his opponent’s withdrawal. Instead, the Commission found that Senator Lee’s legal ability to raise primary-election contributions ceased only when the state cancelled the election¹⁵ and concluded further that Senator Lee was able to raise and retain primary-election contributions “[e]ven though the candidate did not have any opponents in the primary election,” which is a direct contradiction of the complaint’s view.¹⁶

Realizing that this precedent squarely undercuts its claims, the complaint attempts to distinguish Senator Lee’s circumstances from the situation involving Congresswoman Love.¹⁷ But this tactic, too, does not hold. Unfortunately for the complaint and the complainant, the Commission’s Office of General Counsel has determined the following in connection with its review of the Committee’s response to a related Request for Additional Information earlier this year:

Upon our review of the Friends of Mia Love question, we concluded that *the substantive facts at issue were indistinguishable* from those presented in the Friends of Mike Lee Request. We, therefore, concluded that Friends of Mia Love could retain the primary election contributions it received prior to April 21, 2018, the date Ms. Love became the nominee at the party convention. RAD Analyst, Mike Dobi, correctly informed you of our analysis and conclusion and properly advised that Friends of Mia Love is not required to take any corrective action regarding the primary election contributions at issue.¹⁸

The Committee agrees. Congresswoman Love was a “candidate” for the 2018 primary election under Commission rules and her legal ability to raise primary-election contributions was, like

¹³ 11 C.F.R. §§ 110.1(j)(2), 110.2(i)(2), 110.1(j)(3), 110.2(i)(3). See also 11 C.F.R. § 100.2(a) (noting that an “election” is “the process by which individuals, whether opposed or unopposed, seek nomination for election”); Fed. Elec. Comm’n, *Taking Receipts* (2018) (“A candidate is entitled to a separate contribution limit even if: The candidate is unopposed in an election; A primary or general election is not held because the candidate is unopposed; or The general election is not held because the candidate received a majority of votes in the previous election.”), available at <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/>.

¹⁴ William Gaskill Letter to Utah Lieutenant Governor (April 5, 2016), available at <https://elections.utah.gov/Media/Default/2016%20Declarations%20of%20Candidacy/U.S.%20Senate/Senate%20William%20R.%20Gaskill%20Withdrawal.pdf>.

¹⁵ Fed. Election Comm’n Letter to Clela Mitchell (Aug. 1, 2017) (in concluding that primary-election contributions could be retained, noting that “Utah cancelled the primary election” and that the “subsequent cancellation of the primary election, https://transition.fec.gov/law/lra_documents/lra_1044_friends_of_mike_lee_response_letter_08-01-17.pdf”).

¹⁶ Fed. Election Comm’n Letter to Clela Mitchell (Aug. 1, 2017), https://transition.fec.gov/law/lra_documents/lra_1044_friends_of_mike_lee_response_letter_08-01-17.pdf.

¹⁷ Alliance for a Better Utah Complaint at 7 (stating that “Her facts are not the same”).

¹⁸ Email from Danita Alberico of the Office of General Counsel to Matthew Sanderson (Oct. 17, 2018) (emphasis added).

Senator Lee, unaffected by the presence or absence of an opponent. Congresswoman Love was permitted to retain contributions until the cancellation of the primary election, and Friends of Mia Love has already properly remedied all contributions received after that date.¹⁹ No primary-election contributions raised by the Committee remain at issue. The Commission should therefore find no reason to believe a violation occurred and should dismiss this Matter.

Respectfully Submitted,



Matthew T. Sanderson

Member

Caplin & Drysdale, Chartered

¹⁹ See RFAI Response from Timothy Kronquist and Michael Bayes (Sept. 7, 2018), <http://docquery.fec.gov/pdf/997/201809079121596997/201809079121596997.pdf>. Friends of Mia Love's filings with the Commission are available at <https://www.fec.gov/data/committee/C00505776/?tab=filings>.