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April 16, 2021

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Trace Keeys, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: MUR 7886

Dear Mr. Keeys,

This response is submitted by the undersigned counsel on behalf of Senate Leadership Fund (“SLF”) in connection with MUR 7886. SLF is registered with the Federal Election Commission (“Commission”) as an independent expenditure-only committee. The Complaint alleges that Astellas Pharma US, Inc. is a “federal contractor” under the Federal Election Campaign Act of 1971, as amended (“the Act”), and made an impermissible contribution to SLF on November 30, 2020.¹ The Complaint does not name SLF as a respondent or allege any violation of the Act by SLF, nor does it present any evidence suggesting that SLF violated any provision of the Act or Commission regulations. Nonetheless, the Office of General Counsel notified SLF that it received a complaint “which indicates” that SLF “may have violated” the Act.

While the application of the federal contractor prohibition to contributions made to independent expenditure-only committees is likely unconstitutional, the Commission has taken the position that the prohibition remains enforceable. Accordingly, it is the policy of SLF to comply with the Commission’s current view of the prohibition, and SLF does not knowingly solicit or accept contributions from federal government contractors. As noted in the Complaint, SLF’s online donation page requires affirmation that the contributor is *not* a federal government contractor. Complaint at ¶ 4. In addition, the written information that SLF provides to its prospective supporters and the contribution form that contributors fill out and return to SLF collectively include three separate notices that contributions from federal government contractors are prohibited. *See* Attachment A (notices highlighted).

¹ The Complaint, at paragraph 8, alleges that SLF accepted impermissible contributions from five other donors during the 2020 cycle. Those contributions are the subjects of MURs 7843, 7846, 7885, 7888, and 7890.

SLF did not knowingly solicit a contribution from any federal contractor and was unaware at the time it received the contribution at issue that the donor may have been a federal contractor. After receiving this Complaint and conferring with representatives of Astellas Pharma US, Inc., SLF voluntarily refunded the contribution on or about April 15, 2021.

The Act's Federal Contractor Prohibition

The federal contractor prohibition, at 52 U.S.C. § 30119(a), makes it unlawful for a federal contractor “directly or indirectly to make any contribution of money or other things of value ... to any political party, committee, or candidate for public office” 52 U.S.C. § 30119(a)(1). In addition, the provision makes it “unlawful for any person ... *knowingly to solicit any such contribution* from any such person for any such purpose during any such period.” 52 U.S.C. § 30119(a)(2) (emphasis added); *see also* 11 C.F.R. § 115.2(c) (“It shall be unlawful for any person *knowingly to solicit any such contribution* from a Federal contractor.”) (emphasis added).

Unlike the Act’s other source prohibitions, however, the federal contractor prohibition does not prohibit the *receipt* or *acceptance* of a federal contractor contribution by a political committee. For example, with respect to corporate and labor organization contributions, it is impermissible “for any candidate, political committee, or other person *knowingly to accept or receive* any contribution prohibited by this section.” 52 U.S.C. § 30118(a); *see also* 11 C.F.R. § 114.2(d). Similarly, it is “unlawful for ... a person to *solicit, accept, or receive* a contribution or donation” from a foreign national. 52 U.S.C. § 30121(a)(2); *see also* 11 C.F.R. § 110.20(g). By contrast, the federal contractor provision does not prohibit *accepting or receiving* contributions from federal contractors; the prohibition applies only to the knowing solicitation of a contribution from a federal contractor.

As noted above, the Complaint does not allege, and the facts do not demonstrate, that SLF knowingly solicited any contribution from any federal contractor.

Past Consideration of Federal Contractor Complaints

In similar matters, the Commission has taken no action against independent expenditure-only committees that allegedly received a contribution from a federal contractor. *See* MUR 7099 (Suffolk Construction Company), MUR 7451 (Ring Power Corporation), and MUR 7568 (Alpha Marine Services Holdings, LLC). Consistent with these matters, the Commission should find no reason to believe that SLF violated the Act and close the file.

In MUR 7099, the Complaint alleged that Suffolk Construction Company, Inc. was a federal contractor that had made two contributions to Priorities USA Action, an independent expenditure-only committee. The Commission determined “that Suffolk was a federal contractor at the time of its contributions,” found reason to believe that Suffolk violated the Act, and authorized pre-probable cause conciliation with Suffolk. At the reason to believe stage, the General Counsel recommended, and the Commission agreed, to “take no action at this time as to the Committee.” MUR 7099, First General Counsel’s Report at 2. The Office of General Counsel engaged in pre-probable cause conciliation with Suffolk, reached a settlement

agreement, and then recommended the Commission accept the agreement and close the file. Simultaneously, the General Counsel informed the Commission: "Because the available record does not indicate that the Committee knowingly solicited the federal contractor contributions at issue, we now recommend that the Commission find no reason to believe that Priorities USA Action and Greg Speed in his official capacity as treasurer violated 52 U.S.C. § 30119(a)(2), and close the file." MUR 7099, General Counsel's Pre-Probable Conciliation and Case Closing Memorandum at 2.

The Commission applied the same approach in MURs 7451 and 7568. In both matters, the Commission ultimately entered into a Conciliation Agreement with the contributor, but found no reason to believe the recipient independent expenditure-only committee violated the Act by knowingly soliciting federal contractor contributions. *See* MUR 7451, Vote Certification of June 12, 2019; MUR 7568, Pre-Probable Cause Conciliation Memo. The same result is warranted in the present matter.

The Complaint does not allege a violation by SLF, and there is no evidence to suggest that SLF knowingly solicited a contribution from a federal contractor. As noted above, SLF has refunded the contribution at issue. For the reasons set forth herein, and consistent with MURs 7099, 7451, and 7568, the Commission should find no reason to believe that SLF violated the Act and close the file in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Josefiak', with a stylized, cursive script.

Thomas J. Josefiak

Michael Bayes

Counsel to Senate Leadership Fund

Attachment

Attachment A



SENATE
LEADERSHIP
FUND

Memorandum

TO: Prospective Supporter
FROM: Senate Leadership Fund
SUBJECT: Contribution Information

Thank you for your interest in supporting the Senate Leadership Fund. This memorandum provides important information to prospective contributors concerning Senate Leadership Fund. It is not intended as an opinion letter regarding your particular circumstances, and you should consult your attorney or accountant on how this information applies specifically to your contemplated donation.

As an independent Super PAC, the Senate Leadership Fund is organized as a Section 527, federal independent expenditure political committee and as such is able to engage in independent political advocacy.

Senate Leadership Fund has one goal: to protect and expand the Republican Senate Majority.

Our communications may directly advocate for or against the election of federal candidates, discuss their policy positions, or may consist of voter mobilization activities.

There are no limits on the amounts that may be contributed to Senate Leadership Fund by an individual, corporation, union, or trade association; however, Senate Leadership Fund is prohibited from accepting contributions from foreign nationals, other than from an individual with permanent residence status ("green card" holder). **Contributions from federal government contractors are also prohibited.** Contributions to Senate Leadership Fund are not deductible as charitable contributions for federal income tax purposes.

Donations and disbursements of more than \$200 are itemized and disclosed to the Federal Election Commission ("FEC") on periodic reports which are made available to the general public on the FEC's web site. When Senate Leadership Fund engages in express advocacy, it must also disclose those specific disbursements to the Federal Election Commission.

Should you have any questions concerning Senate Leadership Fund or its efforts, please do not hesitate to contact me at [REDACTED] or [REDACTED] [@americancrossroads.org](mailto:[REDACTED]@americancrossroads.org).

Thank you again for your interest and consideration in Senate Leadership Fund. I look forward to following up shortly.

Paid for by Senate Leadership Fund and not authorized by any candidate or candidate's committee.

www.senateleadershipfund.org



Senate Leadership Fund Response Form

Senate Leadership Fund is organized as a Section 527, federal independent expenditure political committee with the purpose of advocating for or against the election of federal candidates, discussing their policy positions, and engaging in voter mobilization activities.

There are no limits on the amount of funds that may be contributed to Senate Leadership Fund by an individual, corporation, union, or trade association; however, Senate Leadership Fund is prohibited from accepting contributions from foreign nationals other than from individuals with permanent residence status ("green card" holders) and from federal government contractors. Contributions and disbursements of more than \$200 are itemized and disclosed to the Federal Election Commission ("FEC") on periodic reports which are made available to the general public on the FEC's web site. When Senate Leadership Fund engages in express advocacy, it must also disclose those specific disbursements to the Federal Election Commission.

Contributor Type: ☐ Individual ☐ Corporate ☐ Association

I/We will be making a contribution by: ☐ Check ☐ Wire ☐ Credit Card

Contribution Date: _____

I/We will be making a contribution to the Senate Leadership Fund in the amount of: \$ _____

Federal law requires Senate Leadership Fund to use best efforts to obtain and report the name, mailing address, occupation and name of employer of individuals who contribute in excess of \$200 in a calendar year.

Contributor Name _____ **Contact Name** _____

Address _____

City _____ **State** _____ **Zip** _____

Employer _____ **Occupation** _____

Home Phone _____ **Work Phone** _____

Mobile Phone _____ **E-mail** _____

Please fax or email completed form with credit card information to (fax: [REDACTED]) / [REDACTED]@americancrossroads.org; or mail to: Senate Leadership Fund, c/o [REDACTED], 1130 Connecticut Avenue NW, Suite 1201, Washington, DC 20036

Wiring Instructions:

| | |
|---------------------|------------------------|
| Bank | [REDACTED], VA |
| Account # | [REDACTED] |
| Routing # | [REDACTED] |
| Account Name | Senate Leadership Fund |

Credit Card Information: Please charge my contribution of \$ _____ to my credit card.

Circle one: Visa MasterCard AMEX Discover Security Code _____ Exp Date _____

Name on Card _____ Account Number _____

Contributions to Senate Leadership Fund, Inc. are not deductible as charitable contributions for federal income tax purposes. Contributions from foreign nationals and federal government contractors are prohibited.

Signature: _____

Paid for by Senate Leadership Fund and not authorized by any candidate or candidate's committee.

www.senateleadershipfund.org

Senate Leadership Fund | 1130 Connecticut Avenue NW, Suite 1201 | Washington, DC 20036