

**LAW OFFICES OF SHARON LE DUY**

sharon@sharonleduy.com

Phone: 510-547-5120

1221 Bridgeway, Sausalito, CA 94965

October 1, 2008

2008 OCT -2 A 9 14

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 8085

Ladies and Gentlemen:

I am writing in response to the complaint filed with the Federal Election Commission ("FEC") by Charisse Wilson against my client, Whiskey Media, LLC. The complaint was received by my client on September 19, 2008.

Whiskey Media is the owner and operator of the website Political Base, located at [www.politicalbase.com](http://www.politicalbase.com). Political Base's purpose is to provide news, information and commentary about political candidates and political issues. In addition to offering original content created by its own staff and community members, Political Base makes a wide variety of public information available to its users, including information from campaign contribution reports filed with the Federal Election Commission ("FEC").

In her complaint dated August 22, 2008, Charisse Wilson alleges that Political Base is making commercial use of the information contained in reports that she filed with the FEC by displaying the information on the Political Base website. As demonstrated below, Political Base is not making commercial use of the information, but rather is serving one of the primary purposes of public reporting under the Federal Election Campaign Act ("FECA"): "an unmistakable preference for first amendment values of publicity and exposure" and "a 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Federal Election Commission v. Political Contributions Data*, 943 F.2d 190 (2d Cir. 1991).

***Media Usage of Reports is Permissible***

The regulations issued under FECA permit the media to make broad use of the information contained in campaign contribution reports. While 2 U.S.C. §438(a)(4) limits commercial use of contribution reports filed by individuals, the regulations issued under that statute expressly contemplate usage by the press:

The use of information, which is copied or otherwise obtained from reports filed under 11 CFR part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor

29044231789

information listed on such reports for the purpose of soliciting contributions or for other commercial purposes. 11 CFR 104.15(c)

Political Base's use of information from campaign reports falls squarely within this regulation. Political Base's purpose is not to communicate contributor information for the purpose of soliciting contributions or for other commercial purposes. On the contrary, the purpose of the disclosure is to educate the public and facilitate public dialogue. As stated in the "About Us" section of the website, one of Political Base's goals is "[t]o make it easier to see connections between candidates, fundraising, issues and media." The FEC reports are key to enabling that analysis.

Political Base's choice of the Internet as its medium does not diminish its entitlement to the same protections afforded newspapers, magazine and books. The FEC has already recognized that news, information and commentary are no less subject to protection just because they are transmitted over the Internet rather than through other forms of media. See e.g. Federal Election Commission, Final Rules and Transmittal to Congress, *Internet Communications*, 71 Fed. Reg. 18588 (2006).

#### ***Political Base Not Responsible for Unrelated Third Party Solicitations***

Ms. Wilson alleges that by making the reporting information available on its website, Political Base has made Ms. Wilson a prospect for solicitations for "cars, credit cards, magazine subscriptions and vacation trips." However, would-be solicitors need not obtain this information from Political Base because the reports, including contributors' addresses, are readily available to the public from the FEC, including in digital format. Political Base has not used this data to make any solicitations and has done nothing to authorize, encourage or condone any third party solicitations. If a third party has in fact used data from the FEC reports to make an unauthorized and unlawful solicitation (which Ms. Wilson does not allege has occurred), then the appropriate subject of a complaint would be the person who made the unlawful solicitation. Finally, in an age where electronic data is readily available on the Internet and through marketing databases, it is not realistic to suggest that Political Base's display of Ms. Wilson's publicly-available FEC report information materially changes marketers' access to Ms. Wilson. I note that as of the date of this letter, the same address for Ms. Wilson that is available through the FEC reporting information on Political Base is also freely available through [www.whispages.com](http://www.whispages.com).

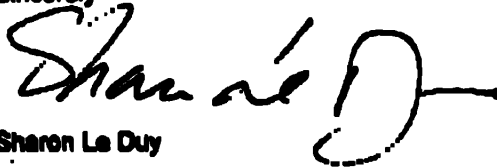
#### ***For-Profit Nature of Media Doesn't Nullify Protections***

Ms. Wilson also alleges that Political Base's usage is commercial because Political Base may someday sell advertising on its website (note: Political Base does not currently charge users any fee or present any advertising on its site, though it may present advertising in the future). Many, if not most, newspapers and magazines also sell advertising. Their for-profit nature does not diminish their ability to enjoy protections offered by law to the press. *Bursfyn, Inc. v. Wilson*, 343 U.S. 485 (1952). The court in *Federal Election Commission v. Political Contributions Data* recognized that the fact that a newspaper or other purveyor of information operates on a for-profit basis does not, in and of itself, make their usage of FEC report data commercial. *Federal Election Commission v. Political Contributions Data*, 943 F.2d 190 (2d Cir. 1991).

In light of the FEC's express authorization of the use of campaign contribution reports by the media and the important role that the media plays in facilitating public discussion about campaign financing, Whiskey Media respectfully requests that you dismiss Ms. Wilson's complaint.

If you have any questions, please don't hesitate to call me at 510-547-5120.

Sincerely



Sharon Le Duy

cc: Mike Tatum  
Sausalito, CA 94965

29044231791



FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2008 OCT -2 A 9 14

STATEMENT OF DESIGNATION OF COUNSEL  
Please use one form for each Respondent/Client  
FAX (202) 218-9822

MUR # 6065

NAME OF COUNSEL: Sharon Le Doy

FIRM: Law Offices of Sharon Le Doy

ADDRESS: 1221 Bridgeway

Sausalito, CA 94965

TELEPHONE- OFFICE (510) 547-5120

FAX (415) 738-5423

The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

9/30/08  
Date

Mike Tatum  
Respondent/Client Signature

Partner  
Title

RESPONDENT/CLIENT Mike Tatum  
(Please Print)

MAILING  
ADDRESS:

Sausalito, CA 94965

TELEPHONE-HOME \_\_\_\_\_

BUSINESS (415) 287-0863

Information is being sought as part of an investigation being conducted by the Federal Election  
Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(1)(A) apply. This section  
prohibits making public any investigation conducted by the Federal Election Commission without  
the express written consent of the person under investigation