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VIA U.S. MAIL AND E-MAIL

Jeff S. Jordan
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: FEC MUR 6990
Our File No.: BER6528.001

Dear Mr. Jordan:

We are writing as counsel to Babulal Bera ("Bera") in response to the complaint filed by Douglas D. Head on November 25, 2015 ("the "Complaint").

Introduction

The Complaint was filed against Thomas P. Murphy, Jr. and Leslie Murphy, the parents of Congressman Patrick Murphy, alleging violations of 52 U.S. C. Section 30122 and 11 C.F.R. Section 110.4. Mr. Bera is not named as a respondent, but the Complaint contains vague allegations that Mr. Bera and Leslie Murphy somehow engaged in a "donor swapping scheme" by making contributions to the campaigns of each of their respective sons. Other than the mere fact that Mr. Bera and Mrs. Murphy each made contributions to the other's son, however, the complaint is purely speculative and does not provide any legal basis for asserting a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") or Commission regulations. Consequently, there is no reason to believe that Mr. Bera may have violated any provision of the Act, and the Commission should close its file on this matter with respect to Mr. Bera.

Analysis

Mr. Bera is the father of Amerish Bera, the current elected House Member representing California's 7th Congressional District. Ami Bera was elected to the House of Representatives in 2012, having lost a prior campaign for the same seat in 2010.

On or about February 19, 2013, Mr. Bera made maximum contributions of \$2,600 per election to his son's 2014 re-election campaign, just as he had in the prior election cycles.¹ Since his son

¹ The contribution limits in the prior cycles were \$2,400 per election in 2009, and \$2,500 per election in 2011.

began running for federal office, Mr. Bera has made contributions to a number of other Democratic congressional candidates seeking House seats in California and around the country. Most of these contributions have been made to Democratic incumbents in targeted districts, or to Democratic candidates running for highly contested open seats. In each instance, Mr. Bera has made a maximum contribution, and in most instances, he has "double maxed" to both the candidates' primary and general election campaigns.

Mr. Bera learned that Patrick Murphy's seat would be a Democratic priority in the 2014 election cycle. In order to provide early support for Congressman Murphy, Mr. Bera made a maximum contribution of \$5,200 (primary and general) to Mr. Murphy's re-election campaign on or about March 19, 2013. He made a number of other maximum contributions to priority Democratic candidates during the first part of 2013.

Other than receiving a contribution form, Mr. Bera did not discuss his contribution to Congressman Murphy with representatives of the Murphy campaign or members of Congressman Murphy's family prior to making his contribution. Similarly, Mr. Bera never discussed Leslie Murphy's March 5, 2013 contribution to his son's campaign with Mrs. Murphy or any other members of Congressman Murphy's family, or any representatives of the Murphy campaign. In fact, until receiving notice of this complaint, Mr. Bera was unaware that Leslie Murphy had made a contribution to his son's campaign.

In short, Mr. Bera did not make a contribution to Patrick Murphy's campaign with the hope or expectation that any of Congressman Murphy's family members would make a contribution to his son's campaign. And he certainly did not make the contribution to "reimburse" Leslie Murphy, as the complaint alleges, for any contribution that she made to Congressman Bera's campaign. The complainant has drawn a connection between two completely independent events without providing any additional facts or support. Absent some additional evidence, the complaint as to Mr. Bera is purely speculative and without basis.

Even if, for the sake of argument, Mr. Bera and Mrs. Murphy had discussed making contributions to each other's son, the complaint still would not allege a violation by Mr. Bera. In the absence of any evidence -- or even an allegation -- that either party reimbursed the other, there simply is no basis for finding that any possible violation of the Act occurred.

The complainant cites to Section 30122 of the Federal Election Campaign Act to allege violations of the contribution limits set forth in the Act. That Section states, in part, "No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution..." (See 52 U.S.C. § 30122; see also 11 C.F.R. § 110.4(b)(1)(i) and (ii).) Mr. Bera contributed to Friends of Patrick Murphy under his own name, using his own personal funds. That contribution was disclosed properly by Friends of Patrick Murphy, including Mr. Bera's name and other relevant donor information as required by the Act. Thus, Mr. Bera did not make a contribution in the name of another person, nor did he knowingly permit his name to be used to effect such a contribution by any other person.

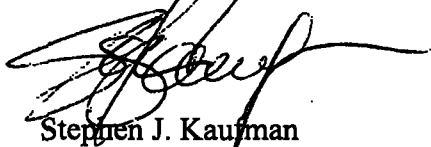
Further, the complainant cites *U.S. v. O'Donnell* in stating that a contribution in the name of another occurs "whether accomplished through the advancement or reimbursement of funds." (See 608 F.3d 546, 551 (9th Cir. 2010), cert. denied, 131 S. Ct. 1837, 179 L. Ed. 2d 794 (2011).) This argument is misplaced under the facts of this case. Mr. Bera was not advanced funds from any individual for purposes of making the contribution to Friends of Patrick Murphy, nor did he receive any reimbursement of funds after making his contribution. Again, Mr. Bera simply contributed to Friends of Patrick Murphy in his own name using his own personal funds. Thus, Mr. Bera did not violate Section 30122 or the contribution limits set forth in the Act.

In fact, the Commission has been presented with similar facts as alleged in the complaint, and found no basis for any violations of the Act. (See Matter Under Review 4783, stating in part, that contributions from donors of the Babin Committee to the Gills and Thurmond campaigns, in exchange for contributions from donors of the Gills and Thurmond campaigns to the Babin Committee, were not contributions made in the name of another, because donors were not reimbursed, and the contributions were not "conduit" or "earmarked" contributions under the Act and Commission regulations; see also Advisory Opinion 1996-33 (Colantuono).) Applying that same analysis here, there simply is no basis for asserting that Mr. Bera violated the Act.

Conclusion

For the reasons described herein, the complaint does not contain any facts or legal basis for asserting a possible violation of the Act by Mr. Bera. Therefore, we respectfully request that the Commission dismiss this matter with respect to Mr. Bera, and take no further action against him.

Very truly yours,



Stephen J. Kaufman

cc: Donna Rawls (via U.S. Mail and E-mail)

SJK:dn