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January 13, 2017

By email to CELA@fec.gov

Jeff S. Jordan, Esquire
Assistant General Counsel
Attn: Donna M. Rawls, Paralegal
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review (MUR) 7163: Respondents' Response

Dear Mr. Jordan:

As you know, this office represents the three respondents in the above-referenced matter: Citizens for Joe Miller, Inc. (Thomas John Nelson, Treasurer); Restoring Liberty, LLC.; and Joe Miller. Executed designation of counsel forms were initially furnished to you with respect to Restoring Liberty, LLC. and Joe Miller.

You will recall that the letter of complaint submitted to your office by the complainant erroneously named Bernadette Koppy as Treasurer of Citizens for Joe Miller, Inc., but Ms. Koppy had been replaced as Treasurer of Citizens for Joe Miller, Inc., as reported to the FEC, in September 2016, well prior to the October 24, 2016 date of the complaint. You have since confirmed that Ms. Koppy was erroneously named a respondent in this matter, and you have advised us that Ms. Koppy has been dismissed as a respondent, and that Mr. Nelson, as the current Treasurer of Citizens for Joe Miller, Inc., has been substituted in her place. A designation of counsel form for Citizens for Joe Miller, Inc. signed by Thomas John Nelson, Treasurer, was submitted to you by us on December 21, 2016.

We appreciate the extension of time to January 13, 2017 for this response, which you agreed to, allowing the respondents time to consider the complaint and confer with us about the underlying facts.

As we previously advised, our clients wish this matter to remain confidential, in accordance with 2 U.S.C. sections 437g(a)(4)(B) and 437g(a)(12)(A).

ALLEGATIONS IN THE COMPLAINT

This MUR was commenced based on the filing of a letter of complaint dated October 24, 2016, by Tuckerman Babcock, Chairman of the Alaska Republican Party (“ARP”). The complaint alleges various violations of the Federal Election Campaign Act (“FECA”) and related Federal Election Commission (“FEC”) regulations by the respondents with respect to the conduct of the recent U.S. Senatorial campaign in Alaska. Although the complaint is confusing,¹ repeating the same allegations in different ways, it is believed that the allegations can be categorized as follows:

- A. Alleged corporate contributions/expenditures from Restoring Liberty, LLC to/in support of Citizens for Joe Miller, Inc.;
- B. Alleged improper use of social media (Twitter, Facebook and YouTube);
- C. Yard signs and radio advertisements without disclaimers;
- D. Alleged improper use of Restoring Liberty, LLC's email list;
- E. Alleged failure to use adequate disclaimers; and
- F. Alleged improper reporting by Citizens for Joe Miller, Inc. to the FEC.

This letter responds to all of these alleged violations. In the main, the allegations appear to be based on misapprehensions of fact and law, and they appear to be virtually devoid of accuracy and/or substance.

BACKGROUND

In 2010, after a hotly contested primary, challenger Joe Miller defeated incumbent United States Senator Lisa Murkowski seeking re-election, and thus was selected to be the nominee of the Alaska Republican Party for the U.S. Senate in 2010. Nevertheless, Lisa Murkowski broke faith with the Alaska Republican Party in that she refused to accept the party's decision and sought re-election to the U.S. Senate as a write-in candidate. Moreover, during the ensuing general election, despite their obligation to support the nominee of their Party, ARP Chairman Randy Ruedrich — predecessor to the complainant herein and viewed by many as the current *de facto* head of the ARP (as recently as this past summer, despite holding no official office in the ARP, Ruedrich reportedly was still signing ARP checks) — and many

¹ Although we have tried to respond as thoroughly as possible to the allegations of the complaint, should you be able to identify a specific credible allegation in this complaint which has not been addressed in this letter, we would be pleased to provide a supplemental response.

of his allies in the ARP leadership worked behind the scenes to attack and defeat the Republican Party nominee, Joe Miller. Eventually, after a contested recount, Lisa Murkowski was certified as the winner of the general election.

In 2016, Lisa Murkowski again sought re-election to the U.S. Senate. This time, the candidate of the Alaska Libertarian Party withdrew and the Libertarian Party invited Joe Miller to be its candidate to run against Lisa Murkowski. Joe Miller registered as a Libertarian and was nominated by the Libertarian Party only two months before the general election, on September 6, 2016. Although his campaign lasted only eight weeks, the 2016 Alaska Senate campaign was every bit as contentious as the 2010 campaign.

Shortly after becoming a candidate, Joe Miller discovered and publicly alleged that the Alaska Republican Party was illegally coordinating political expenditures with Lisa Murkowski and her campaign committee, making expensive attacks on his campaign. These Party expenditures were being funded by Senator Lisa Murkowski, who made several transfers of supposed "surplus campaign funds" totaling in the hundreds of thousands of dollars — an enormous amount for an Alaska election — during the pendency of the campaign. These unusual transfers to the Alaska Republican Party, and resulting party expenditures by the Alaska Republican Party, significantly exceeded the \$96,100 limit for Coordinated Party Expenditures for this particular Alaska Senate election.²

In apparent response and retaliation to these public charges, the ARP filed its pending complaint against respondents on October 24, 2016.³

RESPONSE TO ALLEGATIONS IN THE LETTER OF COMPLAINT

A. Alleged corporate contributions/expenditures from Restoring Liberty, LLC to/in support of Citizens for Joe Miller, Inc.

1. The dominant theme of the complaint is the allegation that Restoring Liberty, LLC is a for-profit corporation which made illegal corporate contributions in various ways to the Citizens for Joe Miller, Inc. campaign committee. It is evident that this allegation is premised on an error of law. As the 2014 Campaign Guide for Congressional Candidates and Committees explains:

If a single member LLC has not chosen corporate tax treatment, it may make contributions; the contributions will be attributed to

² See http://www.fec.gov/info/charts_cpe_2016.shtml#Senate.

³ Citizens for Joe Miller, Inc. filed a complaint with the FEC against the ARP, alleging a number of FECA violations, on November 3, 2016.

the single member, not the LLC. 110.1(g)(4). [FEC, Campaign Guide for Congressional Candidates and Committees at 28 (June 2014).]

In turn, the FEC regulation cited in the Campaign Guide provides:

A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701-3 shall be attributed only to that single member. [11 CFR section 110(g)(4).]

Although the Campaign Guide and the cited regulation address only "contributions," this rule also applies equally to expenditures. *See* Advisory Opinion No. 2009-02 (April 17, 2009) ("The True Patriot Network, LLC.") ("The Commission has never before opined on whether expenditures by a single member LLC, like contributions, are attributable solely to the LLC's single member ... the Commission concludes that they are.").

Restoring Liberty, LLC is such a limited liability company, owned entirely and solely by Joe Miller, which has filed an election to be taxed under Subchapter S, and files tax returns consistent with that status. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 4.⁴ Accordingly, there is no bar to Restoring Liberty, LLC contributing some, or all, of its assets to Citizens for Joe Miller, Inc., or expending such assets in support of Joe Miller's candidacy. The complaint's allegations that any such items donated to Citizens for Joe Miller, Inc. or expended in support of Joe Miller's candidacy constitute illegal corporate contributions are baseless.

2. The complainant further alleged:

Following Joe Miller's statement of candidacy, Joe Miller and or Citizens for Joe Miller immediately began using the **Restoring Liberty** website almost solely as a **campaign website**, both failing to include any disclaimers and accepting patently unlawful corporate donations. [Complaint at. 2 (emphasis added).]

The website for the campaign committee, Citizens for Joe Miller, Inc., throughout the campaign was www.JoeForLiberty.com — **not** www.RestoringLiberty.us or www.JoeMiller.us. — as seems to be alleged in the complaint. As is normal, the campaign committee website www.JoeForLiberty.com contained background on the candidate, together with the public policy positions taken by the campaign, as well as a donation page. All

⁴ *See* <https://www.commerce.alaska.gov/cbp/Main/CorporationDetail.aspx?id=135283>. *See also* Exhibit A to the letter of complaint herein.

campaign-related materials (including signage) that were purchased, printed, and/or distributed by Citizens for Joe Miller, Inc. included that website address of the Miller campaign — **not** www.restoringliberty.us, and not www.joemiller.us, as seems to be alleged in the complaint.

The website domain www.JoeForLiberty.com was not only the solitary website used by Joe Miller's 2016 campaign, it was also the same website used exclusively by Citizens for Joe Miller, Inc. in the 2014 U.S. Senate cycle. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 5.

The website domains www.RestoringLiberty.us and www.JoeMiller.us were and are personally owned in their entirety by Joe Miller, not by any corporate entity.⁵ *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 6. Both URLs point to the same website. The content of these websites is owned by Restoring Liberty, LLC.

Since 2011, almost every day (except Sundays), a dozen or so political news excerpts and original news articles are published at the Restoring Liberty website. The geographic emphasis of the site has always been Alaska, so stories important to Alaska politics are routinely published on the site. Opinion pieces frequently advocate for or against candidates and political issues. The editor of Restoring Liberty is a family member but operates without direction from the candidate or any other campaign staff, posting items of interest, including reposted press releases from various candidates and committees including Citizens for Joe Miller — just as other news sites routinely do.⁶ Press releases are not subject to copyright and may be republished in their entirety by media. This practice did not change during the eight-week 2016 US Senate campaign in Alaska. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 7.

Many of the articles mentioning Lisa Murkowski were published well before Joe Miller had any idea that he would be asked to become the Libertarian Nominee in September 2016. *See, e.g.:*

- <http://joemiller.us/2011/08/fishy-media-bias-in-alaska-no-news-on-murkowskis-crooked-top-aide-during-election/>;
- <http://joemiller.us/2013/03/whats-wrong-with-alaskas-congressional-delegation/>;
- <http://joemiller.us/2014/02/collins-murkowski-likely-republicans-back-obama/>;

⁵ This ownership can be easily verified on line. *See, e.g.*, <http://www.netim.com/domain-name/whois-search.html>

⁶ An independent contractor has been almost exclusively responsible for the content of the site over the past several years. Mr. Miller did not take editorial control away from this contractor during the eight weeks that he was a candidate in the 2016 general election. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 7.

- <http://joemiller.us/2014/07/thad-cochrans-senate-enablers-hint-lisa-murkowski-one/>;
- <http://joemiller.us/2014/12/provision-ndaa-benefits-native-corp-contributed-murkowskis-write-campaign/>;
- <http://joemiller.us/2015/12/the-27-senate-rino-traitors-including-lisa-murkowski-who-voted-for-the-anti-american-obama-ryan-omnibus-bill/>;
- <http://joemiller.us/2016/04/lisa-murkowski-a-real-republican/>; and
- <http://joemiller.us/2016/08/media-sycophants-wont-tell-murkowskis-primary-victory/>.

During the eight-week campaign, there were a number of articles published about the campaign and the candidates as has been the practice of the website in prior Alaska election cycles. *See, e.g.:*

- <http://joemiller.us/2012/07/alaskas-rep-don-young-endorses-liberal-democrat-for-us-senate-video/>;
- <http://joemiller.us/2012/08/alaskas-primary-election-one-of-the-most-important-in-the-history-of-our-state/>;
- <http://joemiller.us/2012/10/alaskas-judges-public-servants-or-robed-masters/>;
- <http://joemiller.us/2013/02/alaska-republican-party-on-shakey-ground-in-disregarding-democratic-succession/>;
- <http://joemiller.us/2014/08/alaska-big-tent-may-decide-key-us-senate-election/>;
- <http://joemiller.us/2015/03/preliminary-alaska-fiscal-hall-of-shame/>;
- <http://joemiller.us/2016/08/alaskas-hunger-games-capitols-war-pfd/>; and
- <http://joemiller.us/2016/09/primary-elections-alaska-work/>.

There was absolutely no rebranding of the www.RestoringLiberty.us / www.joemiller.us website as a campaign website, contrary to the allegations in the complaint. The website appearance remained substantively as it had before the campaign. Moreover, and as discussed further below, the only structural modification to the website was the inclusion of an advertising link to the Senate campaign website — www.JoeForLiberty.com. This advertisement was reported as an in-kind contribution to Citizens for Joe Miller, Inc. in the campaign's FEC reports at the rate of \$500 per month. *See, e.g.*, FEC Form 3 (Amended Pre-Election Report), Citizens for Joe Miller, C005221730, p. 5 (12/8/16)⁷; FEC Form 3 (30-Day Post-General Report), Citizens for Joe Miller, C005221730, p. 37 (12/8/16).⁸

The complainant appears to allege that Restoring Liberty, LLC made illegal corporate contributions by posting articles criticizing Lisa Murkowski or supporting Joe Miller, but that allegation should be rejected. First, as already pointed out above (pages 3-4, *supra*), Restoring Liberty, LLC was solely owned by Joe Miller, so no corporate contribution issue even exists.

⁷ <http://docquery.fec.gov/pdf/771/201612140200793771/201612140200793771.pdf>.

⁸ <http://docquery.fec.gov/pdf/574/201612140200793574/201612140200793574.pdf>.

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Moreover, the FEC's regulations clearly provide that news stories, commentary, and editorials by the media are exempt from FECA regulation as contributions or expenditures. *See* 11 CFR §§ 100.73 and 100.132. It is submitted that Restoring Liberty, LLC at all pertinent times published bona fide and newsworthy stories, press releases, and articles that clearly qualify for the media exemption set forth in those regulations. The only issue regarding application of the media exemption would arise because Restoring Liberty LLC was owned by a candidate — Joe Miller — but the FEC regulations still provide for the exemption (i) if the news story that was published was a bona fide news account published in a publication of general circulation, which it is submitted Restoring Liberty, LLC is, and (ii) if the news story was part of a general pattern of campaign-related news accounts giving reasonably equal coverage to all opposing candidates in the circulation area — which, it is submitted, was accomplished through many and varied Restoring Liberty, LLC's news articles.

As mentioned above, and as confirmed by the Declaration of Joseph W. Miller attached hereto as Exhibit A, Restoring Liberty, LLC has been publishing such stories virtually daily since 2011, and the site's editor retained full editorial control over the content and selection of articles during the campaign. In other words, neither Mr. Miller nor his Citizens for Joe Miller staff took control away from the editor of Restoring Liberty. Importantly, many of the articles mentioning Senator Murkowski were published well before Joe Miller had any idea that he would be asked to become the Libertarian nominee in September 2016. It is submitted that even a cursory review of the Restoring Liberty articles cited above (pages 5-6, *supra*) would demonstrate that all of the Restoring Liberty, LLC articles should qualify for the media exemption. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 7.

B. Alleged Improper Use of Social Media (Twitter, Facebook, and YouTube).

The complaint alleges that, by including "direct links to Joe Miller's social media sites, especially Facebook and Twitter," Restoring Liberty, LLC has also made illegal campaign contributions. Complaint at 2. Again, the ARP's factual assertions are false, and its legal conclusion incorrect.

Beginning years prior to the eight-week 2016 U.S. Senate campaign, both the Facebook account ([facebook.com/joemilleralaska](https://www.facebook.com/joemilleralaska)) and Twitter account (twitter.com/joewmiller), have been linked to Restoring Liberty, both of which are personally owned by Joe Miller and preexist his U.S. Senate candidacies. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 8. Neither the Facebook account nor the Twitter account represents that it is owned by Restoring Liberty, LLC.⁹

⁹ Restoring Liberty, LLC maintains its own separate social media presence, with a Facebook account at "www.facebook.com/restoringlibertyus" and a Twitter account at "www.twitter.com/joemillerus." These accounts have also been in existence for years, well before the 2016 U.S. Senate campaign. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 8.

Moreover, there was no "transfer" of either personally owned social media account upon or after the declaration of Joe Miller's eight-week 2016 U.S. Senate campaign. Nor was there a "rebranding" of either account during the campaign itself, although each posted links to news stories and commentaries about the campaign.

The complaint makes ambiguous allegations about Joe Miller's personally-owned YouTube channel, but the complaint fails to provide any direct URL or other evidence specifically for such ads. Respondents acknowledge that Joe Miller posted some campaign videos to that YouTube channel, but there was no financial transaction or fundraising involved, nor is either one alleged.

At various other places, the complaint alleges that Citizens for Joe Miller failed to include the required disclaimers on "various Internet platforms" but provides no evidence of such "various Internet platforms" other than Exhibit J (discussed below). *See* Complaint at 3.

The complaint also broadly alleges, without evidence, that Joe Miller's Facebook account was used by the campaign "at times without disclaimers." Complaint at 3. However, the FEC has never expressly extended the disclaimer requirement to social media platforms by regulation, and indeed has been evenly divided on this issue. *See* MUR 6911 (Lois Frankel, *et al.*). As the General Counsel's Report in this MUR explained, the scope of the disclaimer requirement includes: "(1) all public communications by political committees; (2) all internet websites of political committees available to the general public; and (3) electronic mail of more than 500 substantially similar communications when sent by a political committee." MUR 6911, First General Counsel's Report (Sept. 4, 2015) at 3. The General Counsel recommended that the Commission conclude that Twitter profiles as well as tweets — even for those of a campaign committee — do not fall under the disclaimer rule.

The Statement of Reasons of Chairman Petersen and Commissioners Goodman and Hunter provide a compelling explanation of why the disclaimer requirement should not apply to social media platforms, explaining why such platforms are not public communications, committee websites, or electronic mail. The Statement concluded:

To find otherwise would hamper free communication through the thousands of new and developing social media platforms and would dampen use of the Internet for the free and robust exchange of ideas. Social media platforms as diverse as Facebook and Instagram to Snapchat and the *New York Times* comment boards would be swept into a cumbersome and often speech-prohibitive disclaimer scheme. [Statement of Reasons (Apr. 12, 2016) at 6 (emphasis added).

Because the FEC does not require disclaimers on social media of this sort, and for the legal and policy reasons expressed by the three Commissioners, the FEC should reject the

There is clearly an interest in developing more definitive FEC guidance on the subject, but there is no apparent precedent for finding a FECA violation in cases where disclaimers have not been used where it would be impractical or virtually impossible to post them.¹¹ Clearly, there continues to be substantial support for the position that disclaimers should not be required for Internet advertising where it would be impractical (and it is submitted, unnecessary). Lastly, the FEC to date has never determined that political ads on social media platforms are subject to the disclaimer requirements of 11 CFR 110.11.

The complaint alleges at the outset that Respondents:

However, the complaint fails to support these charges. Exhibit I purports to show a yard sign, but the photograph does not depict the sign well enough to respond. The complaint fails to include any URL, transcript, or other evidence of any such radio ad.

The complaint alleges that Restoring Liberty, LLC:

By use of the word “appear,” the complainants implicitly admit that they have no evidence of any violation. In fact, the email list used by the Citizens for Joe Miller, Inc. was compiled from pre-existing lists used by Citizens for Joe Miller, Inc. in the 2014 Campaign as

¹¹ See <http://www.fec.gov/pages/fecrecord/2016/november/anprnreopeninternetdisclaimers.shtml>. (FEC seeking comment on possible revision of 11 CFR 110.11 and comments submitted by December 19, 2016).

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campaign immediately after that email was sent on September 12, 2016, and corrective steps were implemented, as demonstrated by the fact that the very next email sent to that same email list on September 15, 2016, contained the correct disclaimer. *See Exhibit B hereto.* Therefore, all of the persons receiving that first email without a disclaimer thereafter received approximately 125 more emails from the campaign — in the same basic email format — with the required disclaimer (unless they un-subscribed during the campaign). The complainant addressed the one email that did not post the disclaimer in correct form, referencing no others.

However, it should be noted that the one initial email that admittedly did not contain the correct disclaimer was clearly associated with Citizens for Joe Miller, Inc. Complaint Exhibit H, page 4 of 4, states expressly and clearly at its end:

Copyright © 2016 Citizens for Joe Miller....

Our mailing address is:

Citizens for Joe Miller

250 Cushman St., Suite 2A

Fairbanks, AK 99701

Thus, although this one email may have been in technical noncompliance, there was clear notice to the public as to the source of the email that comports with the basic purpose of the disclaimer requirement.

With respect to complainant's allegation regarding signs with incorrect disclaimers, the complaint fails to reflect in Exhibit I any improper disclaimers by Respondents. Exhibit I is a campaign sign from Joe Miller's 2010 campaign — one that apparently had been saved by a supporter — which was not paid for or authorized by Citizens for Joe Miller, Inc. with respect to the 2010 campaign. Hundreds, perhaps thousands, of signs from the 2010 U.S. Senate race remain in circulation throughout Alaska and are owned by their possessors, not by Citizens for Joe Miller, Inc. The signs that reflect the old logo presumably were erected and/or distributed by volunteers, not by authorization of Citizens for Joe Miller, Inc. in 2016. *See Declaration of Joe Miller, Exhibit A hereto, ¶ 10.*

With respect to the on-line campaign advertisement solicitation at Complaint Exhibit J, this site was maintained by an independent contractor, who reports that the disclaimer was always present in proper form. *See Declaration of Joe Miller, Exhibit A hereto, ¶ 11.* Either the complainant ignored the disclaimer or intentionally misrepresented the alleged omission of the disclaimer. A copy of the screenshot demonstrating the presence of the disclaimer is attached as Exhibit C.

Complaint Exhibit K is a repeat of the complainant's earlier charge that the Restoring Liberty website posted articles that were critical of Murkowski or that promoted Joe Miller. The lack of merit in this allegation is addressed above. *See pages 5-6, supra.*

Complaint Exhibit L is the screen shot of a website that includes no URL. Citizens for Joe Miller, Inc. did not sponsor or coordinate with this website. Notably, the picture includes signs from 2010. Upon information and belief, this site was likely erected by members of the Libertarian Party who were authorized under state law to assist in poll watching. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 12.

F. Alleged Improper Reporting to FEC.

The complaint makes two seeming mutually exclusive assertions, that Citizens for Joe Miller, Inc. simultaneously:

- over-reported donations in order "to show a source of support that does not exist" or to "inflate perceptions of support" (*see* Complaint at 4), and simultaneously
- under-reported in-kind donations. *See* Complaint at 4-5.

The complaint's various allegations of miscellaneous reporting or other violations (Complaint pp. 4-5) are addressed in order as follows:

1. The in-kind contribution of \$4,500 from the Alaska Republican Party — which the complainant says is incorrect — reflected the campaign's receipt of thousands of brochures printed during Joe Miller's 2010 campaign as the Republican candidate for U.S. Senate. Although produced in 2010, for some reason the brochures were not mailed by the Alaska Republican Party in 2010. In 2016, they were delivered to the offices of Citizens for Joe Miller, Inc. and viewed as an in-kind contribution. After a new proper disclaimer was printed on the brochures, along with a message that made it clear they were from 2010, not 2016, Citizens for Joe Miller mailed many of the brochures to voters. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 13. Since the brochures had substantial value, failure to report receipt of these brochures donated to the campaign could have been viewed as an FEC violation. A reasonable value was estimated for the brochures and properly reported.

2. Joe Miller leased use of his personally owned Hummer (H1) vehicle to the campaign, contributing the value of the lease. The complainant alleges — without authority — that the valuation was inflated. However, that allegation lacks substance. A reasonable estimate of the value of a short-term lease of a Hummer I vehicle in Alaska (\$3,000 per month) was made and reported as an in-kind donation. The vehicle has Joe Miller logos on all four sides, and was taken out of storage on the date that his 2016 campaign started and then put back in storage at the end of his 2016 campaign. As is confirmed by the attached advertisements for the rental of a near-identical Hummer (H1) (*see* Exhibit D), the value reflected for the use of this vehicle in the campaign is reasonable. *See* Declaration of Joe Miller, Exhibit A hereto, ¶ 14.

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3. The allegation that illegal corporate donations were made by Restoring Liberty, LLC, including its website, email lists, and "other like items," is refuted, *supra*. As already discussed above, in-kind contributions from Restoring Liberty, LLC of \$500 per month have been reported with respect to the advertisement containing a link to the Citizens for Joe Miller, Inc. campaign website. *See* page 6, *supra*. And the use of Joe Miller's personal email list is being reflected as an additional in-kind donation on amended FEC reports. *See* footnote 13, *supra*.

4. As discussed above (pages 7-9, *supra*), none of the social media sites complained of by ARP /Babcock in the complaint would support an allegation of an illegal corporate contribution from Restoring Liberty, LLC. Joe Miller personally owned the social media sites and permissibly used them. Even if there were Facebook entries or tweets from Restoring Liberty, LLC, these would not be considered illegal corporate contributions in light of the fact that Joe Miller owns the LLC. *See* page 4, *supra*.

5. The Anchorage headquarters for Citizens for Joe Miller were not provided to the campaign at "no cost," as alleged in the complaint. A portion of the rent was paid by the Committee, and the balance was reflected as an in-kind contribution from the owner, Mary Williams. Both items were duly reported. *See* FEC Form 3 (October 15 Quarterly Report), Citizens for Joe Miller, C005221730, pp. 5, 69 (10/15/16); FEC Form 3 (Amended 12-Day Pre-Election Report), Citizens for Joe Miller, C005221730, pp. 6, 37 (12/8/16).

6. Similarly, the complainant's final allegations regarding "new campaign materials" (Complaint at 5) lack substance. As explained above, Joe Miller's last senate campaign (in 2014) used the exact same logo and website (www.JoeForLiberty.com) as the 2016 campaign. In 2010, a different committee (Joe Miller for U.S. Senate) used www.JoeMiller.us as its website. That website — personally owned and used by Joe Miller for years prior to the 2010 Senate campaign — was not "converted to use by Restoring Liberty, LLC." The domain is, and always has been, owned by Joe Miller personally. To the best of respondents' understanding and belief, no campaign material was produced in 2014 or 2016 reflecting or directing potential voters to www.JoeMiller.us. Remnant signage from the defunct Joe Miller for U.S. Senate 2010 campaign was erected by volunteers of their own volition. This was signage possessed, owned and posted by unrelated individuals, not by Citizens for Joe Miller, Inc.

The respondents, Citizens for Joe Miller, Inc. and its Treasurer, Restoring Liberty LLC, and Joe Miller respectfully request the dismissal of the complaint with respect to them. We look forward to hearing from you.

William J. Brown

WJO:mm
Attachments

BEFORE THE FEDERAL ELECTION COMMISSION

IN RE:

**CITIZENS FOR JOE MILLER, INC.,
RESTORING LIBERTY, LLC; JOE MILLER**

MUR 7163

DECLARATION OF JOSEPH W. MILLER

1. My name is Joseph W. Miller, and I am commonly known as Joe Miller. I was a recent candidate for the United States Senate from the State of Alaska, being the Alaska Libertarian Party candidate for that office for approximately two months, from September 6 to November 8, 2016. The certified winner of that election was the incumbent, Republican Lisa Murkowski.

2. My campaign committee was Citizens for Joe Miller, Inc. That committee, its current treasurer, Thomas John Nelson, and I are respondents — along with Restoring Liberty, LLC, a limited liability Subchapter S company of which I am the sole owner — in the above-captioned Matter Under Review ("MUR").

3. MUR 7163 was opened to review the allegations in a letter of complaint dated October 24, 2016, and submitted by Tuckerman Babcock, Chairman of the Alaska Republican Party, to the Federal Election Commission ("FEC"). This Declaration is submitted in support of the joint response ("counsel's letter of response") of the respondents to the allegations set forth in Mr. Babcock's complaint.

4. As pointed out on page 4 of counsel's letter of response, Restoring Liberty, LLC is my wholly-owned LLC. Restoring Liberty, LLC filed a Subchapter S election and is not a Subchapter C corporation. As such, it has been my understanding that any benefits derived by

my campaign from Restoring Liberty, LLC were not considered corporate contributions under the Federal Election Campaign Act ("FECA") and the FEC's rules and regulations.

5. As pointed out on pages 4 and 5 of counsel's letter of response, the website for my campaign committee, Citizens for Joe Miller, Inc., throughout the 2016 campaign was www.JoeForLiberty.com. It was not, as the letter of complaint seems to state or imply, www.RestoringLiberty.us or www.JoeMiller.us. My campaign committee's website contained background on me, together with the public policy positions taken by the campaign, as well as a donation page. To the best of my knowledge, all campaign-related materials (including signage) that were purchased by, printed by, and/or distributed under the authority of Citizens for Joe Miller, Inc. during the campaign in 2016 included that website address of the Miller campaign — www.JoeForLiberty.com. Citizen's for Joe Miller, Inc.'s campaign materials and solicitations did not, to the best of my knowledge, list any other website. And Citizen's for Joe Miller, Inc.'s campaign's website domain — www.JoeForLiberty.com — was not only exclusively used as the website for my 2016 senate campaign, it was also the same website used exclusively by Citizens for Joe Miller, Inc. in the 2014 U.S. Senate cycle, when I was a candidate for the Republican Party nomination for Senator from Alaska.

6. The website domains www.RestoringLiberty.us and www.JoeMiller.us were and are personally owned in their entirety by me, and not by any corporate entity. The domain www.RestoringLiberty.us forwards readers to www.JoeMiller.us.

7. I have read the allegations in the letter of complaint arguing that some articles on the website of Restoring Liberty, LLC (the "Restoring Liberty website") were anti-Lisa Murkowski and/or pro-Joe Miller during the 2016 Senate campaign. Even if that is so — and I

am not certain as to exactly what articles were published during the campaign as I have neither read nor reviewed every article of the hundreds that were posted during that time period — it was not my decision that they each be published, even though I am the owner of Restoring Liberty, LLC. Since 2011, almost every day (except Sundays), a dozen or so political and news articles are published at the Restoring Liberty website. With an "Alaska News" tab, the geographic emphasis of the site has always been Alaska, so stories important to Alaska politics are routinely published there. Opinion pieces frequently advocate for or against candidates and/or political issues. During the campaign, the editor of the Restoring Liberty website, of her own discretion and consistent with past practice, published items of interest, including reposted campaign press releases — just as I believe other news sites routinely do. My understanding is that press releases are not subject to copyright and may be republished in their entirety by media, which the Restoring Liberty website surely did to some degree both during and before the campaign. The website's editor, although a member of my family, functioned as an independent contractor who edits the site and has been almost exclusively responsible for the content of the site over the past several years. I did not take any editorial control away from this editor during the eight weeks that I was a candidate in the 2016 general election.

8. At page 2 of the letter of complaint, it is alleged that, by including "direct links to Joe Miller's social media sites, especially Facebook and Twitter," Restoring Liberty, LLC has also made illegal campaign contributions. I am not certain how that conclusion would follow, but the premise seems to be wrong in any event. My Facebook account (facebook.com/joemilleralaska) and my Twitter account (twitter.com/joewmiller) — which are linked to the Restoring Liberty website — are personally owned by me, and they both preexist

my U.S. Senate candidacies. Moreover, there was no transfer of either of these personally-owned social media accounts upon or after the declaration of my 2016 U.S. Senate campaign. Nor do I believe there was "rebranding" of either of these accounts during the campaign itself, although each website posted photos, links to news stories and commentaries about the campaign. Moreover, Restoring Liberty, LLC has its own separate social media accounts, with a Facebook account at "www.facebook.com/restoringlibertyus" and a Twitter account at "www.twitter.com/joemillerus." These accounts have been in existence for years, well before my 2016 U.S. Senate campaign.

9. At page 3 of the letter of complaint, it is alleged that there may have been an illegal contribution of an email list to my campaign. In fact, the email list used by the Citizens for Joe Miller, Inc. was compiled from pre-existing lists used by Citizens for Joe Miller, Inc. in the 2014 Campaign as well as emails personally owned by me. Moreover, the email list used by Restoring Liberty, LLC has at all times has been maintained as a separate list with its own separate email sending account — never used by Citizens for Joe Miller, Inc. — segregated from the email list owned or used by Citizens for Joe Miller, Inc. with its own separate email sending account.

10. I have looked at Exhibit 1 to the letter of complaint, which appears to be a campaign sign from my 2010 campaign — one that I assume was saved by a supporter, and one which I confirm, to the best of my knowledge, information, and belief, was not paid for or authorized by Citizens for Joe Miller, Inc. with respect to the 2016 campaign. I believe that hundreds, if not thousands, of signs from my prior U.S. Senate races remain in circulation throughout Alaska and are owned by their possessors, and not by Citizens for Joe Miller, Inc.

The signs that reflect the old logo presumably were erected and/or distributed by volunteers, not by authorization of Citizens for Joe Miller, Inc. in 2016.

11. I have looked at Exhibit J to the letter of complaint, which appears to be a screen shot of an on-line campaign advertisement/solicitation without a disclaimer. This site was maintained by an independent contractor, who was responsible for putting the disclaimer up and who maintains that the disclaimer was always present in proper form. Upon learning of ARP/Babcock's complaint in this matter about the missing disclaimer, I personally verified that the disclaimer was there. Apparently, the complainant missed the disclaimer by failing to scroll all the way to the bottom of the page.

12. I have looked at Exhibit L to the letter of complaint, which appears to be the screen shot of a website that includes no URL. To the best of my knowledge, information, and belief, Citizens for Joe Miller, Inc. did not put this website up or coordinate it. It is noted that the picture includes signs from 2010. Upon information and belief, this site was likely erected by members of the Libertarian Party who were authorized under state law to assist in poll watching.

13. The letter of complaint alleges that a reported in-kind donation of \$4,500 from the Alaska Republican Party is incorrect. However, that reported contribution reflected my campaign's receipt of brochures printed by the Alaska Republican Party during my 2010 campaign as the Republican candidate for U.S. Senate. Although printed in 2010, the brochures were not mailed in 2010. In 2016, they were donated and delivered to Citizens for Joe Miller, Inc. After a new proper disclaimer was printed on the brochures, along with a message that made it clear that the content of the Alaska Republican Party brochures was from

2010, not 2016, Citizens for Joe Miller mailed many of the brochures to voters. The brochures were reported as an in-kind contribution at their estimated value.

14. As to the letter of complaint's allegation regarding an in-kind contribution for use of a vehicle, I can confirm that I loaned the use of my Hummer (H1) vehicle to the campaign, contributing the value of the lease. A reasonable estimate of the value of a short-term lease of a Hummer (H1) vehicle in Alaska (\$3,000 per month) was made and reported as an in-kind donation. The vehicle has Joe Miller logos on all four sides, and was taken out of storage on the date that my 2016 campaign started and then put back in storage at the end of my 2016 campaign. Based on the advertisements for the rental of a similar Hummer (H1) (see Exhibit D to the letter of response to the complaint herein), I believed that the value reflected for the use of this vehicle in the campaign was reasonable.

I declare, under penalty of perjury, that the foregoing statements are true to the best of my knowledge, information, and belief.

Executed: January 13, 2017



Joseph W. Miller

overwhelmed and humbled

Subject: overwhelmed and humbled
From: Joe Miller <Joe@JoeForLiberty.com>
Date: 9/15/2016 8:14 PM
To: William <wjo@mindspring.com>



William,

"Overwhelmed"

"Grateful"

"Excited"

"Encouraged"

William, I can't really think of any other way right now to describe how I feel about the massive outpouring of support I've received since launching my campaign for U.S. Senate.

Republican Party officials in Alaska are resigning from their positions so they can support my insurgent campaign against establishment lackey Lisa Murkowski.

And in an unprecedented move, the Alaska Republican Assembly just issued a statement of support for my campaign, referring to Lisa Murkowski as someone who has "laid siege on the Constitution."

But William, what overwhelms me the most are the hundreds of grassroots patriots like you who have pledged their support by chipping in \$25, \$15, \$10 -- even \$5 -- to help me defeat Lisa Murkowski in November.

It's encouraging to know there are so many others out there who care as much as you and I do about the future of our country.

overwhelmed and humbled

Right now, you and I have a historic opportunity to win this election and send a loud message to the Establishment:

"The days of Big Government are OVER!"

William, there's never been a better time than now to send that type of message.

So please pledge your support by making a generous contribution of \$25, \$50, \$100 or more toward our grassroots campaign to replace Lisa Murkowski today.

Thank you, William, for your help and support.

It means the world to me.

For liberty,

Joe Miller
Alaska's Liberty Candidate
United States Senate

P.S. I need a grassroots army of Patriots to pledge their support to stand with me in the fight against establishment lackey Lisa Murkowski.

Are you in, William?



TAKE THE PLEDGE: I'M WITH JOE!



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Thank you for supporting Joe Miller and joining the fight for Liberty!

Our mailing address is:
Citizens for Joe Miller
250 Cushman St, Suite 2A
Fairbanks, AK 99701

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