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FEDERAL ELECTION COMMISSION

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Aaron Hedlund)

Columbia, MO 65201)

Complainant)

v.)

Patriots for America)

1220 Poquoson Avenue)

Poquoson, VA 23362)

and)

Adam McLain)

24 Church Road)

Poquoson VA 23362)

Respondents)

CELA

MUR 7064

ANSWER OF ADAM MCLAIN, IN HIS INDIVIDUAL CAPACITY

This Firm represents Adam McLain, in his individual capacity ("McLain"), in connection with the above matter and we thank you for the opportunity to present this correspondence to demonstrate that no further action should be taken by the Federal Election Commission (the "Commission") against McLain. This responds to the letters from the Commission directed to McLain dated May 17, 2016. McLain specifically denies any allegations that he violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and answers and responds further as follows.

A. The Complaint Does Not Allege Facts Concerning Actions by Mr. McLean in His Individual Capacity

The Commission should take no further actions against Mr. McLean in his individual capacity because the complaint makes no allegations against him other than in his corporate capacity as Treasurer of Patriots for America ("P4A"). Although the Commission's letter to Mr. McLean relates that the Complaint accuses Mr. McLean of violating the Act in his individual capacity, the Complaint contains no specific allegations concerning any violations by Mr. McLean in his individual capacity. Rather, the Complaint alleges that he may violated the Act in his corporate capacity as Treasurer of P4A.

The Complaint first alleges or, more accurately, conjectures, that Mr. McLean executed and filed with the Commission on behalf of P4A inaccurate disclosure documents. Those allegations do not relate to actions by Mr. McLean in his individual capacity. At the bottom of the second page of the Complaint, the complainant states, on information and belief, that Franklin and Lee has an office address which is the same as Mr. McLean's mailing address and that Franklin and Lee made contributions to P4A. Based on those grounds, the Complaint states that "it appears to Complainant that Respondents may have violated [the Act] by 'knowingly accept[ing] a contribution made by one person in the name of another person by utilizing a shell corporation to conceal the true source of the contributions.'" Putting aside the baselessness of complainant's conclusion, these allegations do not relate to Mr. McLean in his individual capacity. The complainant does not allege that Mr. McLean "accepted" the contribution from Franklin and Lee individually. The party that allegedly "accepted" the contribution is P4A, not Mr. McLean as an individual. As such, the Complaint must be dismissed to the extent it is construed as making allegations against Mr. McLean in his individual capacity.

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B. The Complaint Fails to Set Forth Any Discernible Facts That Mr. McLain Violated the Act In His Individual Capacity.

While the Complaint names Mr. McLain as a respondent, it fails to set forth any facts to make out a violation of the act by McLain, in his individual capacity. It is well-settled that the burden lies with the complainant to articulate and allege with specificity in the Complaint facts sufficient to make out a violation of the Act before the Commission may find cause to proceed. 11 C.F.R. 401 requires a Complaint to "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction" in order to proceed. Neither the courts nor the Commission allows speculation, hypothesis, conjecture, guesswork, or incomplete allegations in a Complaint to justify further proceedings. E.g. Nader v. Fed. Election Comm'n, 823 F. Supp. 2d 53, 60 (D.D.C. 2011) (affirming dismissal of complaint in MUR 6021 where the complainant did not provide specific facts sufficient to demonstrate that each respondent "made expenditures in coordination with the Kerry-Edwards Campaign" even though the complaint contained 575 pages of circumstantial evidence and noting further that "it is not the FEC's burden to fill in the necessary blanks in Nader's complaint"). The Commission has stated further that "unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true," and "purely speculative charges" ... "do not form an adequate basis to find reason to believe that a violation of the FECA has occurred." Statement of Reasons, Federal Election Commission, MUR 4960 (Hillary Rodham Clinton for Senate Exploratory Committee, issued December 21, 2000). See, also, e.g. Factual and Legal Analysis, Federal Election Commission, MUR 6171/6172 (Cooney for Congress Committee) (dismissing complaint because "[w]ithout context or any other specific facts, this allegation is merely speculative and does not provide a sufficient threshold to support reason to believe findings").

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The Complaint is completely devoid of any allegations against McLean individually. As noted above, the *only* fact alleged in the Complaint conceivably related to Mr. McLean in his individual capacity is that the mailing address listed on P4A disclosures for Mr. McLean is the same as that listed for Franklin and Lee. Under any circumstance, this cannot constitute "a clear and concise recitation of the facts which describe a violation of a statute or regulation."

C. The Complaint Must Be Dismissed as to Mr. McLean Individually Because It Does Not Provide Sufficient Notice of the Allegations Against Him.

Requiring Mr. McLean to respond to this Complaint would violate his due process rights because the Complaint does not fairly apprise him of what he is accused of doing and what laws he is being accused of violating. In complaint generated matters such as this, the Act and the Commission's regulations require the Commission to provide notice of the claims and allegations to respondents identified in a Complaint by forwarding a copy of the Complaint to them. It is the Complaint itself which identifies those who have allegedly violated the act and specifies the factual bases of the alleged violations, and it is the forwarding of the Complaint by the Commission which provides detailed notice of the grounds for the violations alleged. The procedure is designed to provide clear notice of the allegations in order to afford respondents a fair opportunity to respond before the Commission determines whether there is cause to proceed further. 52 U.S.C §30109(a)(1); 11 C.F.R. §§ 111.5 & 111.6.¹ "The notice procedures set out in Section [30109(a)(1)] are for the benefit of those [alleged to have] violated the Act." Nader v. Fed. Election Comm'n, 823 F. Supp. 2d 53, 68 (D.D.C. 2011). Such notice is a precondition to

¹ In non-complaint generated matters, the Commission's procedures require the Commission to send notice to the respondent "setting forth the basis of the referral and potential violations of the Act and/or Commission regulations that arise based on the referral." Fed. Reg. Vol 74, No. 148, p. 38617.

the Commission proceeding and a matter must be dismissed in the absence of strict compliance with the notice requirements.

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The MUR must be dismissed against Mr. McLean because the Complaint does not allege a violation of the Act or the Commission's regulations by Mr. McLean individually. He is being asked unfairly to defend himself against unknown and un-asserted claims—left to guess at what he is being accused of doing. Neither the Act nor the Commission's regulations, however, authorizes the Commission to institute an investigation against a respondent who has not first been provided with "a clear and concise recitation of the facts which describe a violation of a statute or regulation" and a fair opportunity to address those allegations. 11 C.F.R. §§ 111.4 – 111.6. This has not occurred.

The failure to provide Mr. McLean notice of the specific violations of the Act alleged and/or the factual grounds to support such violations violates his due process rights under the United States Constitution. It is fundamental that due process requires, at minimum, notice of the charges leveled against a subject and a fair opportunity to respond. In re Gault, 387 U.S. 1, 33, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); Amsden v. Moran, 904 F.2d 748, 753 (1st Cir. 1990) (cert. den., 498 U.S. 1041, 111 S. Ct. 713 (1991)) ("The essentials of procedural due process comprise notice of the charges and a reasonable chance to meet them."); U.S. v. Baker, 807 F.2d 1315, 1323 (6th Cir. 1986) ("One of the most fundamental requirements of due process is that an individual must receive adequate notice of the charges or claims being asserted against him."). "Notice, to comply with due process requirements, ... must set forth the alleged misconduct with particularity." In re Gault, 387 U.S. at 33. "[D]ue process notice contemplates specifications of acts or patterns of conduct, not general, conclusory charges unsupported by specific factual allegations." Spinelli v. City of New York, 579 F.3d 160, 171-72 (2d Cir. 2009). Indeed, the

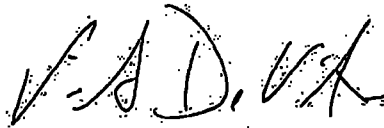
Commission's regulations are designed to ensure that respondents are given adequate notice of the allegations against them, by requiring complainants to provide "a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4.

Where the Complaint here does not set forth *any* facts describing a violation of the Act by Mr. McLean individually or even identify the statutory or regulatory provisions he allegedly violated, the most basic due process requirements have not been fulfilled. As such, the Complaint must be dismissed as to Mr. McLean individually.

WHEREFORE, Mr. McLain respectfully requests that the Commission Dismiss the Complaint against him, and that no further action be taken.

Respectfully Submitted:

Adam McLain, Individually
By his counsel:



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