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April 26, 2004

BY HAND DELIVERY

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5421

Dear Mr. Jordan:

On behalf of John Kerry for President, Inc. ("the Committee") and Robert Farmer, as treasurer (collectively, "Respondents"), we submit this letter in response to the complaint filed by Judicial Watch dated March 1, 2004.

Judicial Watch is a conservative organization with an established history of filing meritless actions against Democratic candidates and organizations. *See, e.g., David Segal, Pursuing Clinton Suits Him Just Fine*, Washington Post, May 30, 1998, at 1, available at <http://www.washingtonpost.com/wp-srv/politics/special/clinton/stories/klayman053098.htm>. This complaint is Judicial Watch's latest effort to burden a Democratic candidate and force him and his campaign to waste their time and resources in an election year.

Senator Kerry is the presumptive Democratic nominee for President of the United States. The Committee is his principal campaign committee. In December of 2003, Senator Kerry took out a mortgage on the personal residence shared by the Senator and his wife, Mrs. Heinz Kerry, as tenants by the entirety, located at 19 Louisburg Square, Boston, Massachusetts. As federal campaign finance law permits him to do, Senator Kerry used the proceeds of this loan, which was fifty percent of the appraised value of the property, to fund a personal loan he made to the Committee.

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As is explained below, there is simply no reason to believe that Respondents have violated the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 *et seq.* ("the Act"), or the Commission's regulations in this matter. The Commission should therefore dismiss the complaint promptly.

DISCUSSION

A. The Complaint Asserts No Actual Violation of Any Statute or Regulation.

Judicial Watch's complaint falls far short of the Commission's minimum standard for stating a valid complaint. Under the Commission's regulations, a complaint filed with the Commission must contain "a clear and concise recitation" of facts that "describe a violation of a statute or regulation" over which the Commission has jurisdiction. 11 C.F.R. § 111.4 (2003). In contrast, this complaint not only consists entirely of speculation, but also does not cite any particular statutory or regulatory provision that Senator Kerry or the Committee allegedly violated.

Senator Kerry and Mrs. Heinz Kerry are the beneficiaries, as tenants by the entirety, of the T & J Louisburg Square Nominee Trust, which owns Senator Kerry's personal residence at 19 Louisburg Square, in Boston, Massachusetts ("Kerry residence"). On December 19, 2003, Senator Kerry obtained a \$6,400,000 mortgage loan from Mellon Trust of New England, N.A. A mortgage in that same amount was placed on the Kerry residence as security for that loan, representing Senator Kerry's share of the \$12,800,000 appraised market value of the residence. This value was derived from an Appraisal Report prepared by Mr. Alexander R. Holliday, III, an independent licensed real estate appraiser with R.M. Bradley & Co., Inc. Mr. Holliday's Appraisal Report, a copy of which is attached hereto at Exhibit 1, established the fair market value of the Kerry residence as \$12,800,000. As indicated above, Senator Kerry used the proceeds of the mortgage loan primarily to make a personal loan to the Committee.

To the extent that one can glean an allegation of a substantive legal violation in the complaint, it could only be its suggestion that the market value of the Kerry residence was too low to support Senator Kerry's loan to the Committee in accordance with Commission regulations, and that the Committee therefore received an unlawful contribution from Mrs. Heinz Kerry. *See* Compl. at 1-2. The complaint, however, simply refers to the *assessed* value of the property, and does not even discuss its *appraised* value. It is the property's *appraised* value that represents its "usual and normal" market price--the standard to which the Commission looks to determine a property's value. *See, e.g.,* Advisory Op. 1984-60 at footnote 5 ("the Commission would

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view an appraisal by an expert using acceptable appraisal methods as prima facie evidence of the property's usual and normal market price").

Indeed, the complaint cites no statute or regulation that the Committee could have violated here. In fact, the only statutory or regulatory provisions cited in the entire complaint are the Commission's regulation governing gifts generally, and a subparagraph of that provision allowing a candidate to use jointly-owned assets as collateral for a loan. *See* 11 C.F.R. § 100.52. As the complaint states no violation of statute or regulation, it does not meet the requirements of a valid complaint under the Commission's rules and should be dismissed.

B. The Commission Should Dismiss this Complaint Because It Does Not Meet the "Reason to Believe" Threshold.

A finding of "reason to believe" that a violation has been committed is only appropriate when a complaint sets forth specific facts that, if proven true, would constitute a violation of the Act. *See* 11 C.F.R. §§ 111.4(a), (d). "Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true." Statement of Reasons, MUR 4960 (internal citations omitted). "[A] complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence[.]" *Id.*

This complaint fails to meet the "reason to believe" threshold, as the facts of the matter plainly refute the assertions in the complaint. Based upon its sole reference to the *assessed* value of the property as determined by the City of Boston's tax assessor, the complaint implies that the *appraisal* of the Kerry residence overstated the value of the property and that Mrs. Heinz Kerry therefore made an unlawful excessive contribution to the Committee. Contrary to the complaint's implication, however, the facts show that a valid and proper appraisal was obtained, that it was calculated in strict compliance with industry standards, and that it constitutes a valid valuation of the property under the Act.

First, an examination of the Appraisal Report, which consists of sixty-six pages plus attachments, indicates that it unquestionably meets the Commission's criteria for a valid valuation. An appraisal performed "by an expert using acceptable appraisal methods" is "prima facie evidence" of "the property's usual and normal market price." Advisory Op. 1984-60. The appraiser who compiled the Appraisal Report is a licensed and certified real estate appraiser with many years of experience. *See* Exhibit 2 (*Curriculum Vitae* of Alexander R. Holliday, III). He prepared the Report in conformity with the Uniform Standards of Professional Appraisal Practice and in accordance with traditional concepts of valuation – clearly "acceptable appraisal methods" sufficient to meet the Commission's standards. *See* Exhibit 1 at 4, 52.

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Second, the value cited in the Appraisal Report is plainly consistent with the values of comparable homes in the same area. The property is described in the Report as "a unique high-end townhouse where a limited number of properties are in a similar excellent quality condition." Exhibit 1 at 37. As is appropriate when valuing a "luxury, single-family townhouse," the Report utilized the "Sales Comparison Approach" to value the Kerry residence. Pursuant to this approach, the Report used comparable homes as benchmarks, comparing the Kerry residence with similar properties and using the adjusted sales prices of the most comparable properties to reach a per square foot value for the Kerry residence. *Id.* at 52-53.¹

Third, real estate brokers and other real estate professionals in the Boston area agree that the appraisal was within an expected range for the property. In compiling the Appraisal Report, the appraiser consulted top real estate brokers in Boston for their opinions of the likely sales price of the property. Notably, all three of the brokers consulted believed they could sell the property for at least \$13,000,000, a price *above* the eventual appraised value. *Id.* at 64. One broker maintained that the Kerry residence is "one of the best, if not the best, townhouse she had ever seen in all her experience in the Boston market." *Id.*

Press accounts have borne this out as well. Two brokers consulted by The Boston Globe were described as having commented that the appraisal was "not out of the range where the house would be priced if it were to be placed on the open market." Glen Johnson, 3 *Boston Brokers See a Fair Appraisal*, The Boston Globe, Feb. 26, 2004, at A20, available at 2004 WL 59773776. In an interview on national television, an individual who operates a real estate listing service in Boston told CNN's Paula Zahn that the valuation "sounds absolutely normal." *Paula Zahn Now* (CNN television broadcast, March 4, 2004).

¹ The Appraisal Report analyzed the per square foot sales prices of a number of single-family townhouses and large condominiums similar in size to the Kerry residence and located in the same general geographic area. The sales prices were then adjusted downward for qualities superior to the Kerry residence, upward for qualities inferior to the Kerry residence, and upward if necessary to reflect market conditions. *Id.* at 54. These analyses and adjustments yielded an average square foot price range appropriate for comparison with the Kerry residence. *Id.* at 64. Reading the per square foot price range of comparable properties together with the impressions of other real estate brokers and market conditions yielded a value of \$1,320 per square foot for the 9,720 square foot Kerry residence. The Appraisal Report thus valued the entire residence at \$12,830,400, rounded to \$12,800,000. *Id.* at 65.

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Moreover, the \$1,320 per square foot value assessed in the Appraisal Report falls well below the asking price of a comparable home The Boston Globe featured just two weeks before the complaint was filed. On February 15, 2004, The Boston Globe featured a home for sale in Boston's Back Bay whose asking price came to almost \$1,500 per square foot. Carol Beggy, *Paying a Premium Price*, The Boston Globe, Feb. 15, 2004, at H1, available at 2004 WL 59772004. As The Boston Globe reported, such a price would be "at the high end of what tony properties are getting in that area, but it would not set a record." *Id.*

The complaint's reliance on the City of Boston's assessed value of the residence for tax purposes is not relevant here, as a tax assessment is not the standard the Commission employs to value property. See Advisory Op. 1984-60. Further, in Boston, municipal property assessments are consistently significantly lower than the fair market values of the given properties. The listing service operator noted above commented that as a "rule of thumb," property sells for twice its assessed value. Paula Zahn Now (CNN television broadcast, March 4, 2004). Former Republican Governor of New Jersey Thomas Keane pointed out this difference in an editorial he wrote for Boston Herald.com two days after this complaint was filed. See Tom Keane, *Tax break hits close to all Boston homes*, Boston Herald.com, March 3, 2004, at 1, available at

[HTTP://NEWS.BOSTONHERALD.COM/OPINION/VIEW BG?ARTICLEID=364&FORMAT=TEXT](http://news.bostonherald.com/opinion/view/bg?articleid=364&format=TEXT). As Gov. Keane stated, "[Senator] Kerry isn't alone in owning a house that's worth considerably more than the city's assessment." *Id.*

CONCLUSION

As illustrated above, Judicial Watch's complaint is a groundless attack on Senator Kerry and the Committee. The Commission should dismiss the complaint in its entirety without delay.

Very truly yours,



Marc E. Elias

General Counsel, John Kerry for President, Inc.

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EXHIBITS 1-2 HAVE BEEN REMOVED

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