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August 11, 2009

OFFICE OF GENERAL
COUNSEL

VIA U.S. POSTAL SERVICE

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Chris K. Gober

Re: MUR 6200

Dear Mr. Jordan:

Battle Born Political Action Committee ("the Committee"), through counsel, hereby responds to the complaint filed by Citizens for Responsibility and Ethics in Washington and Melanie Sloan (collectively "CREW"). This matter arises from the \$12,000 monetary gifts that Michael and Sharon Ensign each provided to Doug Hampton, Cindy Hampton, Brandon Hampton, and Blake Hampton on April 7, 2008 ("the gifts"). Contrary to the hearsay and other innuendo forming the bases of CREW's complaint, the gifts were not related to Cindy Hampton's employment by the Committee, nor were they related to any expense or debt that the Committee would have otherwise incurred. Thus, the Committee respectfully urges the Federal Election Commission ("the Commission") to reject CREW's allegations and dismiss this matter in its entirety.

I. PROCEDURAL BACKGROUND

The Committee received the complaint designated as MUR 6200 on July 6, 2009, and was subsequently granted an extension to file a response on or before August 11, 2009. The Committee received a supplement to the original complaint on July 24, 2009.

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II. FACTUAL BACKGROUND

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On April 7, 2008, Michael and Sharon Ensign each made gifts to Doug Hampton, Cindy Hampton, Brandon Hampton, and Blake Hampton in the form of a check totaling \$96,000. EXHIBIT A. The gifts, made out of concern for the well-being of long-time family friends, were purposefully limited to \$12,000 each to comply with the applicable tax laws governing gifts. SEE EXHIBITS B AND C.¹ CREW has challenged Michael and Sharon Ensign's intent in making these gifts, however, by summarily alleging they were motivated by Cindy Hampton's previous employment by the Committee. CREW's allegation is without merit and unsupported by any credible evidence. Nonetheless, should the Commission question the stated intent of Michael and Sharon Ensign's gifts, then the following facts may be relevant to the Commission's analysis:

- Michael and Sharon Ensign are the parents of Senator John Ensign.
- Cindy Hampton had been a close personal friend of Senator Ensign and his wife for more than 20 years, and the Ensign and Hampton families had a close personal friendship during that time. Senator Ensign and his wife are the godparents for the Hampton children.
- In 2004, Doug and Cindy Hampton moved to Las Vegas, Nevada. Shortly thereafter, Cindy Hampton began working as the Assistant Treasurer for Ensign for Senate and Battle Born Political Action Committee. She became the Treasurer for Ensign for Senate on January 31, 2007, and the Treasurer for Battle Born Political Action Committee on February 12, 2008.
- In November 2006, Doug Hampton began working for Senator Ensign's official office.
- In addition to working together, the Ensign and Hampton families spent much of their personal time together. This personal time included weekly Sunday meals and vacationing together.

¹ Sworn originals of Exhibits B, C, and O will be transmitted under separate cover.

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- Due to the personal relationship between their families, as well as the Hamptons' financial difficulties, the Ensigs had provided the Hamptons with more than \$130,000 in financial assistance prior to the affair between Senator Ensign and Cindy Hampton. Specifically:
 1. On or about November 28, 2004, Senator and Darlene Ensign gave Doug Hampton a \$15,000 unsecured loan that was eventually repaid without interest. EXHIBIT D. The loan was provided to the Hamptons so they could refinance their home.
 2. On or about April 20, 2006, Senator and Darlene Ensign paid \$600 for education expenses for the Hampton children. EXHIBIT E.
 3. On or about July 11, 2006, Senator and Darlene Ensign gave Doug Hampton a \$25,000 unsecured loan that was never repaid. EXHIBIT F. The loan was provided to the Hamptons so they could refinance their home.
 4. On or about September 5, 2006, Senator and Darlene Ensign paid \$15,170 for private school tuition for the Hampton children. EXHIBITS G AND E.
 5. Michael and Sharon Ensign paid for the entire Hampton family to vacation in Hawaii from December 26, 2006, to January 2, 2007, which included their flights on a private Gulfstream 4SP jet, a rental home with its own private 9-hole golf course, food, and recreational activities. EXHIBITS H, I, J, AND K. The total cost of the vacation that could be allocated to the Hamptons was at least \$30,000.
 6. On or about January 29, 2007, Senator and Darlene Ensign paid \$4,500 for counseling for one of the Hampton children. EXHIBIT L.
 7. On or about July 17, 2007, Senator and Darlene Ensign paid \$23,970 for private school tuition for the Hampton children. EXHIBITS M AND N.
 8. Although the exact date is unknown, but prior to the affair, Senator and Darlene Ensign gave Doug and/or Cindy Hampton a \$20,000 unsecured loan that was eventually forgiven verbally by the Ensigs.
 9. On or about February 4, 2008, Senator and Darlene Ensign paid \$550 for books and private school activities for the Hampton children. EXHIBIT E.
- After Senator Ensign told his parents about the affair, Michael and Sharon Ensign decided to make gifts to the Hampton family, who had been family friends for more than 20 years.
- Michael and Sharon Ensign wanted to bestow gifts totaling approximately \$100,000; however, the total amount was reduced to \$96,000 so the gifts could be

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broken down into simple \$12,000 increments to comply with applicable gift tax laws.

- Senator Ensign did not request that either Michael and/or Sharon Ensign make the gifts to the Hamptons, nor was there any discussion with Michael and/or Sharon Ensign that these gifts would function, either in form or substance, as a severance payment to Cindy or Doug Hampton.
- In April 2008, Michael Ensign instructed his Chief Financial Officer ("the CFO") to make the gifts, totaling \$96,000, to Doug, Cindy, Brandon, and Blake Hampton from the Ensign 1993 Trust. Michael and Sharon Ensign are the sole trustees of the Ensign 1993 Trust.
- According to the CFO, Michael Ensign did not provide further explanation for the gifts, other than they were gifts.
- The CFO maintained a record of the gifts in a file detailing all gifts made from the Ensign 1993 Trust. The gifts were also recorded in a ledger detailing all gifts made from the Ensign 1993 Trust. According to the CFO, there was "nothing out of the ordinary" about Michael Ensign's request, and it is typical for Michael Ensign to request payments in \$12,000 increments when he is making a gift. The CFO was not aware of the affair between Senator Ensign and Cindy Hampton until June 2009.
- The CFO prepared and signed the check, which was dated April 7, 2008.

III. LEGAL ANALYSIS

Simply stated, this matter boils down to a private, personal issue between the Ensigs and Hamptons that does not implicate the Federal Election Campaign Act of 1971, as amended ("the Act"). This conclusion is corroborated by the demonstrated pattern of generosity and financial assistance provided by the Ensign family to the Hamptons, as well as sworn affidavits confirming Michael and Sharon Ensign's underlying intent in making the gifts. SEE EXHIBITS B, C, AND O. In contrast, CREW alleges the gifts constituted "a severance payment for the loss of her positions as treasurer of both Ensign for Senate and the Battle Born Political Action Committee" based upon the following "evidence": (1) the circumstantial fact that the gifts were made in April 2008 and Cindy Hampton left her position as Treasurer in May 2008;

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(2) a newspaper quote from an anonymous source; and (3) a misleading "correction" by the Washington Post.

Contrary to CREW's allegations, the proximal timing of the gifts and Cindy Hampton's departure as treasurer for the Committee is purely circumstantial. Indeed, CREW's suggestion that the gifts were severance to Cindy Hampton is belied by the fact that the amount of the gifts would equal almost *two full years of Cindy Hampton's salary*—an excessively disproportionate amount that is not indicative of a severance package. Furthermore, the gifts to the Hamptons are entirely consistent with the Ensigns' past pattern of generosity—all of which occurred while Cindy Hampton served as Treasurer to the Committee. Michael and Sharon Ensign's gifts were no more related to the Committee's operations than were the Hamptons' Hawaii vacation, the children's private school tuition, or the unrecovered loans to refinance the Hamptons' house.

CREW also relies upon a second piece of "evidence" to support their allegations—an anonymous statement printed in the New York Times on June 23, 2009. The statement reads: "A person close to Mr. Ensign's family, who spoke only on condition of anonymity, said the senator had confessed the affair to his wife many months ago and, upon reconciling with her and attending counseling, dismissed Ms. Hampton from his political team with a severance that he paid from his own pocket." The statement is clearly inaccurate, as the payment came from Michael and Sharon Ensign, not Senator Ensign. Furthermore, this demonstrably inaccurate hearsay is directly contradicted by the only credible evidence before the Commission—the sworn affidavits of Michael Ensign, Sharon Ensign, and Senator Ensign. While the

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Commission is not governed by the Federal Rules of Civil Procedure, it should not ignore the underlying rationale for the hearsay rules.

Finally, in a supplement to the original complaint, CREW attempts to bolster their allegations with a Washington Post correction stating: "Also, his office says that the alleged \$25,000-plus severance payment to the Hamptons that some critics had questioned is part of the generous \$96,000 gift Ensign's parents decided to give the Hamptons." As explained below, the correction misquotes one of Senator Ensign's representatives.



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Following Paul Coggins' statement on behalf of Senator Ensign on July 9, 2009, attached hereto as Exhibit P, the Washington Post incorrectly insinuated that Senator Ensign made a \$25,000 severance payment to Cindy Hampton *in addition to* the gifts by Michael and Sharon Ensign.² See EXHIBIT Q. After the article was published with false information, Senator Ensign's communications director, Tory Mazzola, contacted the reporter to explain that there had only been one payment to the Hamptons, totaling \$96,000, and any reports of a separate \$25,000 payment were inaccurate. The Washington Post then printed the cited correction, which mischaracterized Mr. Mazzola's communication. The correction proves nothing other than the fact that the news media makes mistakes, even when they are trying to correct their mistakes.

² "In fact, Sen. John Ensign's sexual affair with former campaign staffer Cynthia Hampton, the wife of his former chief of staff -- and news last week that the Nevada Republican's parents magnanimously gave the Hamptons \$96,000 'out of concern' for the couple and their kids -- now looks a far better bet to get us through the traditional summer news doldrums... There's still the matter of an alleged severance payment to Cynthia Hampton by Ensign of at least \$25,000. That payment was not reported, as required by law, to the Federal Election Commission." Al Kamen, *The Senate's Got Talent, and Then Some*, Washington Post, July 13, 2009.

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IV. CONCLUSION

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The complaint, in and of itself, does not provide a legally or factually sufficient basis for the Commission to make a "Reason to Believe Finding" that the Committee violated the Act. Furthermore, the evidence shows that the \$12,000 monetary gifts that Michael and Sharon Ensign each provided to Doug Hampton, Cindy Hampton, Brandon Hampton, and Blake Hampton were not related to Cindy Hampton's previous employment by the Committee, nor were they related to any expense or debt that the Committee would have otherwise incurred. For this reason, the Committee respectfully urges the Commission to reject CREW's allegations and dismiss this matter in its entirety.

Thank you for your consideration of this request, and please do not hesitate to contact me at (214) 747-5070 if you have any questions.

Sincerely,



Chris K. Gober
Counsel to Battle Born PAC



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EXHIBIT J

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 50-minute Seashell Massage
 50-minute High Performance Facial
 25-minute Shampoo and Blow Dry or
 Men's haircut at Grand Design Salon

'Aina (Earth) (4 1/2 hours)
 60-minute Terme Wailea Hydrotherapy
 25-minute Awapuhi (Ginger) Salt Scrub
 & Hot Wrap
 50-minute Hawaiian Lomi Lomi Massage
 50-minute Volcanic Ash Purifying Facial
 25-minute Shampoo and Blow Dry
 Ladies' or men's Haircut at the Grand
 Design Salon
 One meal voucher at Café Kula or Bistro
 Molokini

Makani (Winds) (4 Hours)
 60-minute Terme Wailea Hydrotherapy
 50-minute Glycolic Oxygen Facial
 50-minute Thai Cooling White Clay
 25-minute Oxygen Hair treatment with
 Scalp massage
 25-minute Shampoo and Blow Dry for
 ladies or haircut for men at the Grand
 Design Salon

Wala (Heat) (4 Hours)
 60-minute Terme Wailea Hydrotherapy
 25-minute Hawaiian Salt & Aiea Clay
 Scrub or Aiea Honey Steam Wrap
 50-minute Pohaku (lava stone) Massage
 25-minute Simultaneous Scalp Massage
 & Foot Massage
 60-minute Royal Pohaku Facial

Leleahi (Harmony) (4 Hours)
 60-minute Terme Wailea Hydrotherapy
 1-hour certified private session of Yoga,
 Meditation or Boxing
 1-hour certified Spa Grande Fitness
 Training session
 60-minute Terme Wailea Hydrotherapy
 50-minute Shiatsu or Thai Massage

Spa Grande Treasures (3 Hours)
 Terme Wailea Hydrotherapy
 50-minute Spa Grande Signature
 Massage
 50-minute Deep Cleansing Organic
 Facial
 90-minute Grand Paraffin Manicure and
 Pedicure
 25-minute Shampoo and Blow Dry for
 ladies or men's haircut at the Grand
 Design Salon

Makani (Winds) (4 Hours)

Wala (Heat) (4 Hours)

Arrival Date

11/29/2006

12/2/2006

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EXHIBIT Q

The Washington Post

The Senate's Got Talent, and Then Some

By Al Kamen
Monday, July 13, 2009

And now, additional proof that there is more to life than being a senator and responding like Pavlov's dog to the buzzer summoning lawmakers for floor votes.

Take the recent fundraiser in Northwest Washington for Sen. *Arlen Specter* (D-Pa.), a cancer survivor and ardent supporter of medical research. The fundraiser featured, in addition to the well-heeled, prominent medical-community guests such as former National Institutes of Health chief *Elias Zerhouni* and former National Cancer Institute director *Andrew von Eschenbach*.

Specter told the gathering he knew when he voted for the stimulus bill -- with the \$10 billion infusion for medical research -- that he was jumping off a political cliff, that he would be tarred as a big spender and would face a strong Republican primary challenge. (Of course, it looks like he's now facing a very tough Democratic challenge.)

But Specter, and many there who supported the funding boost, long ago concluded that such investments in research would pay big dividends down the road. That would be research particularly for diabetes, heart disease and other maladies that drive up Medicare and Medicaid costs as the population ages.

Specter's onetime GOP colleague, former senator *Ted Stevens*, showed up a bit late. Seems he was tending to a mosquito-catcher that wasn't working very well. So he started taking it apart. He explained, ignoring his wife's concerns that he might harm himself or others. He worked on it and put it back together and -- what do you know? -- he got it working again. Next: cleaning out the Internet's tubes.

So life after the Senate is full of adventures.

The Ensign Files (Cont.)

Speaking of life after your political career tanks, l'Affaire Ensign had been briefly overshadowed by Gov. *Mark Sanford* (R-S.C.) and his taxpayer-funded search for a love ranch on the pampas so he could be with his Argentine girlfriend. But last week it zoomed back to the forefront.

In fact, Sen. John Ensign's sexual affair with former campaign staffer *Cynthia Hampton*, the wife of his former chief of staff -- and news last week that the Nevada Republican's parents magnanimously gave the Hamptons \$96,000 "out of concern" for the couple and their kids -- now looks a far better bet to get us through the traditional summer news doldrums.

However, even though Ensign himself claimed "extortion" to describe *Doug Hampton's* requests for money, it is unclear whether anyone in the prosecutorial world is actually taking a hard look at the goings-on.

Everyone's conduct in the matter may raise questions, we were told, but it is far from clear whether there is sufficient basis to initiate a criminal investigation. (There's still the matter of an alleged severance payment to Cynthia Hampton by Ensign of at least \$25,000. That payment was not reported, as required

by law, to the Federal Election Commission.)

It's also unclear if there is going to be any action by the fearsome Senate ethics committee. A potentially key witness, Sen. *Tom Coburn* (R-Okla.), is a close friend of Ensign's and urged him to end the affair. But Coburn said last week he would "never" testify before the committee or in court. He noted that he counseled Ensign "as a physician" -- Coburn is an obstetrician and gynecologist -- and as an "ordained deacon," and therefore could not be compelled to testify because of doctor-patient privilege and religious privilege.

That seems pretty conclusive to us -- after all, if a guy can't trust his OB-GYN, who can he trust? But some lawyers think neither assertion, though quite creative, would stand up in court. (There's little chance at this point that the committee will haul Coburn in to testify, with or without some goofy claim of privilege.)

Even so, Coburn's got other options, perhaps better ones, we were advised. He could hustle on out and get a law degree real quick, then claim retroactive attorney-client privilege -- a recognized and formidable barrier to compelled testimony. To be absolutely bulletproof, however, he may want to marry Ensign -- they'd have to travel to Iowa -- and then rely on the ironclad spousal privilege.

SBA's Jackson Watch

Small Business Administration staffers were hard at work Tuesday afternoon when they noticed their Internet connections had slowed dramatically. Hard to figure out what was happening, but they may have suspected it could have had something to do with the fact that so many of them were using their computers to watch streaming video of *Michael Jackson's* funeral.

Then SBA officials sent out a notice that everyone's streaming video capacity was being disabled for the afternoon because so many people were watching the funeral. There was "no crash" of the entire system, an SBA spokesman assured us. "All essential functions continued." By Wednesday, it was small business as usual.

Moving On

As expected, the White House last week announced the nomination of former 15-term congressman *James A. Leach* (R-Iowa) to be chairman of the National Endowment for the Humanities. And, as we reported a couple months ago, *Phil Murphy*, former investment banker and national finance chairman of the Democratic National Committee, is the nominee to be ambassador to Germany. But it's not about the money, as they say. Murphy, while at Goldman Sachs, headed the Frankfurt office from 1993 to 1997.

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