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The Wiley logo consists of the word "wiley" in a bold, lowercase, sans-serif font. The letter "i" has a distinctive dot that is a small circle.

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December 14, 2020

**VIA E-MAIL (CELA@FEC.GOV)**  
**CONFIDENTIAL**

Mr. Jeff S. Jordan  
Attn: Christal Dennis, Paralegal  
Office of Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**Re: MUR 7833 (Montcalm LLC)**

Dear Mr. Jordan:

On October 29, 2020, the Federal Election Commission (“FEC” or “Commission”) notified our client, Montcalm LLC (“Montcalm”), of a complaint filed by the Campaign Legal Center. The complaint alleges that Montcalm violated the Federal Election Campaign Act of 1971, as amended (“FECA”), when Montcalm made a contribution to a federal super PAC – the Congressional Leadership Fund (“CLF”) – and did not disclose the identity of the individual funding Montcalm.

Montcalm is a single-member LLC whose sole member is Hendrik “Hank” Meijer. Pursuant to the Commission’s regulations, contributions from a single-member LLC are attributed directly to the underlying individual member. CLF publicly disclosed Mr. Meijer in an amended FEC filing one day after CLF originally reported the contribution, and more than ten days before the November 3 general election. To the extent there was a 24-hour gap in the public record, it was immediately remedied with ample time before the election. In circumstances like these, where the relevant information is already public, this Commission should apply existing FEC and judicial precedent and dismiss this matter at the threshold.

The complaint should be dismissed for other legal reasons. The complaint first alleges that Montcalm violated the FECA’s prohibition on making contributions in the name of another when Mr. Meijer was not initially disclosed. The FEC’s regulations dictate that a contribution from a single-member LLC like Montcalm is *per se* from the single individual member, not the LLC. Thus, there is no “other” person to serve as the intermediary contributor.

The complaint’s second allegation – an alternative attempt at requiring disclosure of Mr. Meijer – is that Montcalm is a political committee that must report its donors. But the Commission has already held that an individual underlying a single member LLC cannot be a political committee which is defined, in relevant part, as a “group of persons.” And given that FEC regulations disregard Montcalm and look to the activities of Mr. Meijer, Mr. Meijer’s “major purpose” must be electoral activities in order for Montcalm to be a political committee. That is not the case.

Mr. Jeff S. Jordan  
 December 14, 2020  
 Page 2

However, these legal arguments are largely academic. Mr. Meijer was disclosed as the single member of Montcalm only one day after this information would have otherwise become a matter of public record. Accordingly, the complaint should be dismissed.

### **FACTUAL BACKGROUND**

Montcalm is a limited liability company registered with the Michigan Secretary of State as an entity of perpetual existence. See Mich. Dep't of Licensing and Regulatory Affairs, *Montcalm LLC*.<sup>1</sup> Montcalm has not elected to be treated as a corporation, but is a disregarded entity under the Internal Revenue Code. The sole member of Montcalm is Mr. Meijer, a Michigan businessman, co-owner of the Meijer supermarket chain, and the current Chairman of the Board of the company. See, e.g., Sentinel Staff, *Watchdog Submits FEC Complaint Against Meijer, Paperwork Issue Blamed*, BedfordNow.com (Oct. 31, 2020);<sup>2</sup> *Hank & Doug Meijer*, Forbes.com (Nov. 30, 2020).<sup>3</sup> Mr. Meijer conducts business activities through numerous LLCs like Montcalm.

On October 8, 2020, Montcalm contributed \$150,000 to CLF using capital provided by Mr. Meijer. See CLF, *Pre-Election General Report* at 192 (filed Oct. 22, 2020).<sup>4</sup> CLF first reported this contribution on October 22, 2020. See *id.*<sup>5</sup> One day later, after Montcalm received press inquiries about the disclosures and conferred with Mr. Meijer's business associates as well as CLF, CLF filed an amended report attributing the contribution to Mr. Meijer as Montcalm's single member. See CLF, *Pre-Election General Report* at 193 (amended, filed Oct. 23, 2020).<sup>6</sup> Press accounts reported on the amendment and noted that a "Meijer family spokesperson said it was a paperwork issue." See, e.g., Sentinel Staff, *Watchdog Submits FEC Complaint Against Meijer, Paperwork Issue Blamed*.

Mr. Meijer, through Montcalm, made a second contribution to CLF on October 23, 2020. Mr. Meijer's business associates made clear to CLF that the contribution should be attributed to Mr. Meijer as the sole owner of Montcalm. CLF reported this contribution on page 367 of its Post-Election General Report.<sup>7</sup>

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<sup>1</sup> At [https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=802531454&SEARCH\\_TYPE=3&CanReturn=True](https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=802531454&SEARCH_TYPE=3&CanReturn=True).

<sup>2</sup> At <https://www.bedfordnow.com/news/20201031/watchdog-submits-fec-complaint-against-meijer-paperwork-issue-blamed>.

<sup>3</sup> At <https://www.forbes.com/profile/hank-doug-meijer/?sh=54dd4901ebe6>. Mr. Meijer is also Vice-Chairman and a Trustee of the Gerald R. Ford Presidential Foundation and serves on the boards of Business Leaders of Michigan, The Henry Ford Foundation, The Kettering Foundation, The National Constitution Center, Grand Valley University Foundation, and the Food Marketing Institute. See *id.*; *Trustee Hank Meijer*, Gerald R. Ford Presidential Foundation (June 3, 2019), at <https://geraldfordfoundation.org/trustee-hank-meijer/>. And Mr. Meijer is also the author of a book on the late-Senator Arthur Vandenburg. Hank Meijer, Gerald R. Ford Presidential Foundation (May 14, 2010), at <https://geraldfordfoundation.org/centennial/oralhistory/hank-meijer/>.

<sup>4</sup> At <https://docquery.fec.gov/pdf/227/202010229336412227/202010229336412227.pdf>.

<sup>5</sup> To the best of Montcalm's knowledge, Mark Rizik, who we understand is also a Respondent in this matter, was not involved in the process of making this contribution.

<sup>6</sup> At <https://docquery.fec.gov/pdf/232/202010239336506232/202010239336506232.pdf>.

<sup>7</sup> At <https://docquery.fec.gov/pdf/924/202012039341231924/202012039341231924.pdf>.

Mr. Jeff S. Jordan  
 December 14, 2020  
 Page 3

## THE COMPLAINT AND LEGAL FRAMEWORK

The Complaint's first allegation is that the lack of disclosure of Mr. Meijer resulted in Montcalm making a contribution in the name of another person. The relevant FECA prohibition states at 52 U.S.C. § 30122:

### **Contributions in name of another prohibited**

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 and no person shall knowingly accept a contribution made by one person in the name of another person.

Because the contribution was made by an LLC, the complaint's first allegation also implicates the FEC's regulation "governing the treatment of Limited Liability Companies under the [FECA]." *Treatment of Limited Liability Companies under the Federal Election Campaign Act*, 64 Fed. Reg. 37,397 (July 12, 1999). Codified at 11 C.F.R. § 110.1(g), the regulation provides:

*Contributions by limited liability companies ("LLC")—(1) Definition.* A limited liability company is a business entity that is recognized as a limited liability company under the laws of the State in which it is established....

(4) 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.

The Complaint's second allegation asserts that Montcalm itself should have registered as a federal political committee that would have been required to disclose Mr. Meijer. But before an entity can become a political committee, it must satisfy both a statutory and a constitutional test. In relevant part, the FECA defines a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 52 U.S.C. § 30101(4) (emphasis added).

In addition to the statutory definition, the Supreme Court and lower federal courts – guided by constitutional concerns – have consistently "construed the words 'political committee' . . . narrowly [to] only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (emphasis added).

## ANALYSIS

### **I. The Commission Should Dismiss This Matter Because The Relevant Information Was Immediately Disclosed.**

For a 24-hour period, CLF's 669-page report – with its \$2.96 million in receipts – did not include the identity of Montcalm's single member, Mr. Meijer, in connection with one contribution. When the issue was brought to the attention of Montcalm and CLF, both moved

Mr. Jeff S. Jordan  
 December 14, 2020  
 Page 4

expeditiously to clarify the public record in advance of the election. When Montcalm made a second contribution to CLF, Montcalm took care to ensure that Mr. Meijer was timely disclosed as Montcalm's single member.

The Commission has repeatedly cited factors like these when dismissing other matters involving contributions by LLCs. See, e.g., Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, MUR 6485 (W Spann LLC) at 13 n.70 (Apr. 1, 2016)<sup>8</sup> (finding that a dismissal was supported by the fact that “within days of the contribution being called into question, [the underlying donor] asked the recipient Super PAC to disclose him as the donor”); Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen, MUR 7014 *et al.* (DE First Holdings), at 13 (July 2, 2018)<sup>9</sup> (finding that decision by contributor to ask super PAC to update its record supported a prosecutorial discretion dismissal); Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen, MURs 7031 & 7034 (Children of Israel), at 7-8 (Sept. 13, 2018)<sup>10</sup> (finding that another “factor in favor of an exercise of prosecutorial discretion is that the responses . . . have fleshed out the public record [to] identify the individuals behind the LLCs [and the recipient] has filed an amended report with the Commission[] attributing [the] contributions”).

Federal courts have agreed with the FEC's decision to dismiss prior matters involving LLCs, particularly where the recipient super PAC “has since amended its public reports to make clear that [the underlying individual], not [the] LLC, was the true donor.” *Campaign Legal Ctr. v. FEC*, 245 F. Supp. 3d 119, 125 (D.D.C. 2017). In one such case, involving a \$1 million contribution to a super PAC, the court upheld the Commission's dismissal – even though the LLC was formed “solely for the purpose of making th[e] contribution” – because the underlying contributor publicly disclosed his identity. *Id.* In another case involving \$875,000 in super PAC contributions, the court agreed with the Commission's dismissal based on the fact that the individual controlling the LLC “readily acknowledged his ownership of [the LLC]” and publicly “explained that he [had] directed his LLC to make the contributions.” *Id.* at 126. In both of these cases, the court not only agreed that dismissal was appropriate, but also held that complainants lacked standing to challenge the dismissals. See *id.*

Because the relevant information the complaint seeks here – i.e., the identity of Mr. Meijer – is already a matter of public record, the Commission should dismiss this case just like these earlier matters. Pursuing this case further would not provide the public with any new information about the relevant contribution, and judicial precedent confirms that the dismissal will be affirmed by a reviewing court.

## II. The Complaint's Legal Claims Are Baseless.

### A. Montcalm Did Not Make a Contribution in the Name of Another.

Making a contribution in the name of another requires two persons – one to make the contribution and another who is the “true contributor” on whose behalf the contribution is made.

<sup>8</sup> At <https://eqs.fec.gov/eqsdocsMUR/16044391107.pdf>.

<sup>9</sup> At [https://www.fec.gov/files/legal/murs/7019/7019\\_2.pdf](https://www.fec.gov/files/legal/murs/7019/7019_2.pdf).

<sup>10</sup> At [https://eqs.fec.gov/eqsdocsMUR/6969\\_2.pdf](https://eqs.fec.gov/eqsdocsMUR/6969_2.pdf).

Mr. Jeff S. Jordan  
 December 14, 2020  
 Page 5

11 C.F.R. § 110.4(b)(2)(i).<sup>11</sup> That is not possible here. The FEC’s regulations explicitly provide that when an LLC is a disregarded entity with a single natural person member and does not elect to be taxed as a corporation, a contribution by it “shall be attributed only to that single member.” 11 C.F.R. § 110.1(g)(4) (emphasis added).<sup>12</sup> In other words, there is only one person, Mr. Meijer, involved in making the contribution to CLF, not the two people required by the statutory prohibition cited in the complaint.

### **B. Montcalm Is Not a Political Committee.**

The FECA defines a “political committee” as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4) (emphasis added). In addition, the Constitution dictates that only organizations that have the major purpose of electing or defeating candidates may be regulated as political committees. *See supra* at 3.

The only “person” who made the contribution to CLF was Mr. Meijer, not Montcalm. As just explained, the FEC’s regulations – and the Treasury regulations on which they rely – treat Montcalm as Mr. Meijer’s alter ego. *See* 11 C.F.R. § 110.1(g)(4).<sup>13</sup> Because Mr. Meijer is not a “group of persons,” the allegation that Montcalm is a political committee fails. *See* Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen, MURs 7031 & 7034, at 8 n.47 (“an individual, is not a group of persons under the [FECA]” for purposes of ascertaining political committee status).

The allegation also fails because Mr. Meijer’s major purpose is not electing or defeating candidates. Mr. Meijer is the co-owner of a Midwestern grocery store chain with billions of dollars in annual sales. *See Hank & Doug Meijer*, *Forbes.com*. Mr. Meijer spends most of his time and money engaged in non-electoral pursuits and business activities, such as managing his company, that have nothing to do with federal elections. Accordingly, neither Mr. Meijer, nor Montcalm as his alter-ego, can be a political committee.

### **CONCLUSION**

To the extent Mr. Meijer should have been disclosed as the single member of Montcalm, that information became part of the public record within one day of when it would have otherwise been reported. In any event, the FEC’s regulatory treatment of Mr. Meijer and Montcalm as one-in-the-same precludes a finding that Montcalm made a contribution in the name of another or that Montcalm was a political committee. For these reasons, the

<sup>11</sup> *See also* Oxford Dictionary of English (3d ed. 2015) (defining “another” as an “additional” or “different person or thing from one already mentioned or known about”).

<sup>12</sup> *See also* FEC Advisory Op. 2004-42 (Pharmavite) (applying Treasury regulations that describe a disregarded entity as “an entity with a single owner that may be disregarded as an entity separate from its owner” and noting that “if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship.”)

<sup>13</sup> *Id.*

Mr. Jeff S. Jordan  
December 14, 2020  
Page 6

Commission should find no reason to believe that a violation occurred and dismiss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Caleb P. Burns". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Caleb P. Burns  
Andrew G. Woodson  
Robert L. Walker