

September 29, 2017

Chairman Johnny Isakson
Senate Select Committee on Ethics
220 Hart Senate Office Building
Washington, DC 20510

Re: Request for Investigation

Dear Chairman:

This letter constitutes a complaint against Senator Dean Heller pursuant to Rule 2 of the Rules of Procedure of the Senate Select Committee on Ethics (“Committee”), which authorizes any person to file a sworn complaint with the Committee “alleging that any Senator . . . has violated a law [or] the Senate Code of Office Conduct . . . in the performance of his or her duty as a Member . . . or has engaged in improper conduct which may reflect upon the Senate.” Here, Senator Heller has done both. By touting his position on the Senate Committee on Finance and implying that a contribution to his campaign committee will directly support new tax legislation, Senator Heller has clearly violated 31 U.S.C. § 1301(a) and the Committee’s longstanding interpretation that 31 U.S.C. § 1301(a) makes it “inappropriate to use any official resources to conduct campaign or political activities.”¹ Senator Heller has further violated federal law by soliciting and accepting campaign contributions for or because of specific official actions in direct violation of 18 U.S.C. § 201(c)(1)(B). Accordingly, we respectfully request that the Committee investigate these claims and take appropriate remedial action against Senator Heller for improper conduct that is “contrary to accepted morals [and] derogates from the public trust expected of a Senator.”²

Factual Background

Dean Heller currently serves as a U.S. Senator for the state of Nevada.³ As a member of the Senate Committee on Finance,⁴ Senator Heller has been involved in recent efforts to amend the U.S. tax code.⁵ Earlier this month, his principal campaign committee, Heller for Senate,⁶ began soliciting political contributions in support of new tax legislation.

On September 7, 2017, Senator Heller issued a fundraising e-mail for Heller for Senate, highlighting his position as a “member of the Senate Finance Committee (the tax writing committee in the Senate)” and making three separate requests for contributions to Heller for

¹ S. Select Comm. on Ethics, 108th Cong., 1st Sess., Senate Ethics Manual, at 153.

² See Senate Ethics Manual, Improper Conduct Reflecting Upon the Senate, Appendix E, at 434.

³ Meet Dean Heller, U.S. Senate, available at <https://www.heller.senate.gov/public/index.cfm/biography>.

⁴ See Committee Assignments of the 115th Congress, U.S. Senate, available at https://www.senate.gov/general/committee_assignments/assignments.htm.

⁵ See, e.g., Press Release, Hatch Statement at Finance Hearing on Comprehensive Tax Reform: Prospects and Challenges. Senate Committee on Finance (Jul. 18, 2017), available at <https://www.finance.senate.gov/Chairmans-news/hatch-statement-at-finance-hearing-on-comprehensive-tax-reform-prospects-and-challenges>; Jurisdiction, Senate Committee on Finance, available at <https://www.finance.senate.gov/about/jurisdiction>.

⁶ FEC Statement of Organization, Heller for Senate (filed Apr. 27, 2017).

Senate “to support our tax plan.”⁷ The e-mail goes on to tell recipients that “[b]y chipping in \$15 today, you’re supporting our fight for tax relief” and concludes with one final request to “[c]hip-in \$15 to support our plan for tax reform and relief.”⁸ According to the disclaimer at the bottom of the e-mail, the communication was paid for by Heller for Senate and was signed by Dean Heller himself.⁹

By clicking on the text of any of the three solicitations above, recipients were taken directly to a Heller for Senate contribution page, where they could contribute between \$5 and \$5,400 to Heller for Senate.¹⁰ According to the link to the contribution page, these contributions were being solicited by Heller for Senate for a “tax relief fund.”¹¹

Legal Analysis

A. Use of Official Resources

Senator Heller has boldly violated federal law and the Senate Code of Official Conduct by misusing official resources for campaign purposes. The Senate Ethics Manual is very clear on this point: “Official resources may only be used for official purposes. . . . It is thus inappropriate to use any official resources to conduct campaign or political activities.”¹² The Senate Ethics Manual explains that “[t]his principle derives in large part from 31 U.S.C. § 1301(a)” which provides that “official funds are to be used only for the purposes for which [they are] appropriated.”¹³ Senate appropriations are intended for “official representational and legislative duties,” not political campaign activity.¹⁴

This prohibition applies to the use of “Senate space, equipment, staff time, and resources” none of which should be used to assist or support a campaign committee.¹⁵ And because “Senate employees are compensated from funds of the Treasury for regular performance of official duties [and] not paid to do campaign work” it logically follows that Senate employees may not engage in campaign activity in their official capacities, and may not use any official resources, including Senate Committee titles or their involvement with specific legislation, for political activity.¹⁶

By using his position on the Senate Committee on Finance to garner financial support for his political campaign, and by implying that a contribution to Heller for Senate is a direct contribution to support a piece of official legislation, Senator Heller has clearly violated the longstanding rule against using official resources for campaign purposes. In linking his position

⁷ Attachment A.

⁸ *Id.*

⁹ *Id.*

¹⁰ Attachment B. *See also* Heller for Senate Contribution Page, available at <https://secure.anedot.com/deanheller/email-taxrelief-fund> (last accessed Sept. 14, 2017).

¹¹ *See* Attachment B; Heller for Senate Contribution Page, available at <https://secure.anedot.com/deanheller/email-taxrelief-fund> (last accessed Sept. 14, 2017).

¹² Senate Ethics Manual, at 153.

¹³ *Id.*

¹⁴ Senate Ethics Manual, at 140 (noting that Congress has long recognized the distinction between official representational and legislative duties and political activities).

¹⁵ Senate Ethics Manual, at 150.

¹⁶ *Id.* at 139.

on the Senate Committee on Finance and specific legislative proposals to a fundraising solicitation, Senator Heller is relying on official resources to achieve his campaign fundraising goals. Doing so violates not only the letter, but also the spirit of the Senate Ethics Rules and 31 U.S.C. § 1301(a).

B. Soliciting and Accepting Contributions For or Because of Official Action

Federal law makes it a crime for a federal official, including a U.S. Senator, to directly or indirectly seek, receive, accept, or agree to receive or accept anything of value for or because of any official act performed or to be performed by the public official.¹⁷ According to the Senate Ethics Manual, a violation occurs if “the thing of value...[is] offered or requested either ‘in return for being influenced in’ or ‘for or because of’ an official act.”¹⁸ An “official act” includes any “decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official’s official capacity.”¹⁹ And the phrase “anything of value” is understood to include any private benefit to the public official, including campaign contributions to a public official’s campaign committee.²⁰

Here, Senator Heller’s fundraising e-mail clearly qualifies as a solicitation of something of value for or because of an official act. The email begins by highlighting the Senator’s role in “leading the fight to make sure Congress passes job-creating legislation that will relieve the tax burden” for Americans.²¹ From there, Senator Heller makes three distinct requests for campaign contributions in direct relation to official tax legislation. By asking recipients of the e-mail to “pitch in” or “chip in” to “support our tax plan,” Senator Heller is clearly soliciting campaign contributions in return for forthcoming tax legislation or because of, or as a thank you for, specific official actions he has already taken on tax reform and tax legislation.²² Consequently, this is a clear request for campaign contributions in exchange for and because of Senator Heller’s official acts as a U.S. Senator, in direct violation of the federal law prohibiting bribery and illegal gratuities.

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¹⁷ See 18 U.S.C. § 201(c)(1)(B).

¹⁸ Senate Ethics Manual, at 58 (internal citations omitted).

¹⁹ 18 U.S.C. § 201(a)(3).

²⁰ *U.S. v. Arthur*, 544 F.2d 730, 734 (4th Cir. 1976) (certain gifts, favors, and contributions given to public officials may constitute bribery); *S. v. Blagojevich*, No. 11-3853, 2015 U.S. App. LEXIS 12563, at * 7-8 (7th Cir. July 21, 2015) (explaining that a private benefit includes money). See also H.R. Office of Cong. Ethics, Report No. 13-3308 at 1.

²¹ See Attachment A.

²² *Id.*

Based on these violations, we respectfully request that the Committee immediately investigate Senator Heller's actions and take appropriate remedial action pursuant to its authority under the Committee's Rules of Procedure.

Sincerely,

William H. Miller

STATE OF Nevada)

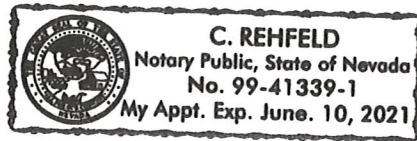
County of Clark)

SUBSCRIBED AND SWORN to before me this 29 day of September, 2017.

C. Rehfeld

Notary Public

My Commission Expires:



June 10, 2021