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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HON. THOMAS J. WHELAN)**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUNCAN D. HUNTER,

Defendant.

Case No. 18-CR-3677-W

**DEFENDANT’S RESPONSE IN
OPPOSITION TO GOVERNMENT’S
MOTION TO ADMIT EVIDENCE OF
USE OF CAMPAIGN FUNDS TO
PURSUE PERSONAL
RELATIONSHIPS**

DATE: July 1, 2019
TIME: 10:00 a.m.
COURTROOM: 3C
JUDGE: Hon. Thomas J. Whelan

Defendant DUNCAN D. HUNTER (“Mr. Hunter”), by and through his attorneys, Gregory A. Vega, Ricardo Arias, and Philip B. Adams, hereby submits this response in opposition to the Government’s motion to admit evidence of use of campaign funds to pursue personal relationships (“Motion”).

I. INTRODUCTION

The Government charges Mr. Hunter with conspiring with Margaret Hunter (“Mrs. Hunter”) to convert campaign funds for personal use. As such, the ultimate issue before the Court is whether Mr. Hunter used campaign funds for expenditures that would have existed “irrespective of” his campaign or duties as a Federal officeholder.

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1 The indictment identifies 18 individuals that it claims Mr. Hunter had a personal
2 relationship with and with whom Mr. Hunter allegedly spent campaign funds for non-
3 campaign related purposes. As such, the proper scope of the Government’s inquiry with
4 respect to each of these individuals and the alleged expenses incurred in connection with
5 them is the extent to which each relationship served a “political purpose¹” and whether
6 each expenditure would have existed irrespective of that political purpose. However,
7 rather than engaging in a straightforward analysis of whether certain expenditures
8 lacked a sufficiently political nexus to warrant the use of campaign funds, the
9 Government’s Motion seeks permission to focus the jury’s attention on Mr. Hunter’s
10 infidelity. As the Court is well aware, the allegations in the Motion are so controversial
11 and prejudicial that merely filing the Motion has tainted the jury pool against Mr.
12 Hunter based on the salacious allegations.

13 The Government claims, wrongly, that this evidence “is necessary for the jury to
14 consider in evaluating the case” and contends Mr. “Hunter’s intimate relationships
15 demonstrate his knowledge and intent to embezzle campaign funds.” This is simply
16 untrue. Evidence that some of Mr. Hunter’s relationships were “intimate” is neither
17 relevant to whether any expenditure of campaign funds would have existed “irrespective
18 of” Mr. Hunter’s campaign, nor necessary (or appropriate) for the jury to consider when
19 evaluating the case. The Government filed its Motion to publicly embarrass Mr. Hunter
20 with evidence that reflects poorly on his character, and the minimal (if any) probative
21 value of this evidence is substantially outweighed by the substantial risk of unfair
22 prejudice. Accordingly, the Court should deny the Motion and prevent the Government
23 from distracting the jury with this salacious and prejudicial information.

24
25
26 ¹ The complex realities of modern politics makes it increasingly difficult to determine
27 whether an expenditure warrants the use of campaign funds under the “Irrespective
28 Test” set out in 52 U.S.C. § 30114(b), which is precisely why Congress tasked the FEC
(and not the Justice Department) with identifying questionable uses of campaign funds
and resolving those issues on a case-by-case basis. *See* 11 C.F.R. § 113.1(g)(1)(ii).

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II. RESPONSE IN OPPOSITION

A. The Government’s Intimacy Evidence is Neither Relevant to The Charges Nor Admissible at Trial.

Evidence of Mr. Hunter’s “intimate affairs” is not directly relevant to the ultimate issue in this case, whether Mr. Hunter knowingly converted campaign funds to his personal use. 52 U.S.C. 30114(a)(6) permits the use of campaign funds “for any [] lawful purpose unless prohibited by subsection (b)” 52 U.S.C. § 30114. Subsection (b) provides the “Irrespective Test,” to determine whether the use of Campaign funds constitutes a conversion to personal use:

[A] contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including--

- (A) a home mortgage, rent, or utility payment;
- (B) a clothing purchase;
- (C) a noncampaign-related automobile expense;
- (D) a country club membership;
- (E) a vacation or other noncampaign-related trip;
- (F) a household food item;
- (G) a tuition payment;
- (H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and
- (I) dues, fees, and other payments to a health club or recreational facility.

52 U.S.C. § 30114. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. Evidence which cannot meet this standard is inadmissible. Fed. R. Evid. 402.

Evidence that Mr. Hunter’s relationships with individuals 14-18 were intimate relationships has no tendency to make any fact of consequence as to the determination of whether a particular expenditure would have existed irrespective of Mr. Hunter’s campaign than it would be if the relationships were strictly platonic.

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1 Unlike intimacy, the fact that an individual's relationship with Mr. Hunter
2 includes a professional aspect that directly, or indirectly, relates to his campaign or
3 duties as a holder of Federal office, is directly relevant to whether Mr. Hunter could
4 properly use campaign funds for an expense in connection with that individual. In its
5 quest to highlight the intimate nature of these relationships, the Government fails to
6 meaningfully consider the fact that, just as with Mr. Hunter's platonic relationships, his
7 friendships often blur the line between personal and professional, which is a widespread
8 occurrence in modern politics. However unpopular the notion of a married man mixing
9 business with pleasure, the Government cannot simply dismiss the reality that Mr.
10 Hunter's relationships with Individual's 14-18 often served an overtly political purpose
11 that would not have existed irrespective of his occupation. Indeed, the Government's
12 stated concern that Mr. "Hunter may suggest he was justified in spending campaign
13 funds on *all* of his 'meetings' with these individuals" because they "worked as lobbyists
14 or congressional staffers" implicitly concedes that Mr. Hunter was justified in spending
15 campaign funds on at least some of his meetings with these individuals.

16 Rather than address this gray area or quibble over the fundamentally vague
17 application of the irrespective test under such circumstances, the Government's Motion
18 focuses exclusively on Mr. Hunter's intimate relationships for the purpose of
19 publicizing Mr. Hunter's infidelity. For example, while strategically emphasizing the
20 costs incurred in connection with Mr. Hunter's "romantic liaisons" and "intimate
21 affairs" the Government conveniently minimizes the fact that nearly every expense it
22 references in its Motion was incurred in connection with a legitimate political activity.

23 Moreover, even if the Court determines that such evidence has some slight
24 relevance to the issues in this case, it should still deny the Motion on the grounds that it
25 constitutes impermissible character evidence, the probative value of which is
26 substantially outweighed by the prejudicial impact under Rule 403. *See United States v.*
27 *Bailey* 696 F.3d 794, 799 (9th Cir. 2012).