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August 31, 2004

Lawrence Norton, General Counsel  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

5482  
Re: ~~MUR 5483~~, Robert G. Whittel for Congress, Jason Melton,  
as Treasurer and individually, and Robert Whittel

Dear Mr. Norton:

This is the response of our clients, Robert G. Whittel for Congress (the "Committee"), Jason Melton, as Treasurer and individually, and Robert Whittel (collectively the "respondents") to the complaint filed in the above-referenced MUR. For the reasons stated below, the Commission should immediately dismiss this baseless and specious complaint and close the file in this matter.

The complainant in this matter is a primary opponent of respondent Whittel and is attempting to use the Commission's enforcement process to smear respondents and gain political advantage. In short, complainant charged that the respondents incurred unreported expenditures in connection with the primary campaign for the office of U.S. Representative from the Fifth District of Florida in a complaint filed July 15, 2004 with the Commission, when – that very same day, July 15, 2004 – the respondents filed a timely and complete quarterly report detailing the very expenditures complained of. For that reason alone, this complaint should be dismissed, and the matter closed.

**Complainant's allegations of unreported expenditures are specious.**

Complainant allegations – to the extent that it can be discerned from his filing – would seem to be that there are three categories of expenditures that were paid by respondents and not reported: (1) expenses associated with Jason Melton's role as campaign manager, (2) rental car(s), and (3) printing of literature.<sup>1</sup> By implication,

<sup>1</sup> Although the complaint is notarized, most, if not all, of the allegations are actually unsupported hearsay statements and should be taken by the Commission at face value. For example, the allegation with respect to printing costs is attributed to unnamed "knowledgeable individuals". The respondents cannot be

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complainant appears to allege that these expenses were paid in March, and therefore, should have been reported on a report covering that period.<sup>2</sup>

**No registration or reporting is required until the \$5000 threshold is met.**

An individual becomes a candidate for federal office, when campaign activity exceeds \$5000 in either contributions or expenditures. 2 U.S.C. §431(2). At that point, the candidate has triggered registration and reporting, as required under the Federal Election Campaign Act of 1971, as amended. See *Campaign Guide for Congressional Candidates and Committees*, [www.fec.gov/pages/campguide2004/chapt2.htm](http://www.fec.gov/pages/campguide2004/chapt2.htm) (May 2004). A statement of candidacy is due within fifteen (15) days of becoming a candidate, 2 U.S.C. §432(e)(1), and a statement of organization is due to be filed by each authorized campaign committee within ten (10) days of being designated by the candidate. 2 U.S.C. §433(a).

**The respondents timely and completely registered and reported.**

Candidate Whittel filed a statement of candidacy, as called for by the Act, when the triggering threshold was reached. Prior to that time, the \$5000 expenditure threshold had not been triggered. Thus, candidate Robert G. Whittel duly filed a statement of candidacy on April 1, 2004, designating the Committee as his principal campaign committee. The Committee filed its statement of organization on April 1, 2004, as well. The Committee duly filed a quarterly report covering the period April 1 through June 30, 2004, on July 15, 2004.

The report filed by the Committee discloses all of the Committee's expenditures. In particular, the report includes (1) payments to Jason Melton, (2) rental car payments to Budget Car Rental, and (3) printing payments to Gunn Printing, all of the payments that were questioned by complainant. With respect to Mr. Melton, contrary to complainant's assertion that he was "on leave" but not a volunteer, he was, in fact, on leave *and* volunteering his time during March. He went on the payroll in April. With respect to the rental cars – assuming arguendo that there were rental cars used – the Committee received and paid the bill in a timely manner, and the payment was made and duly reported during the second quarter. Finally, with respect to the printing, the Committee also received and paid that bill in a timely manner, and it was reported on the second quarter report.

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expected to respond to such charges, and the Commission should discount them. With respect to the rental cars and salary, complainant does not provide even an iota of support other than his conclusory statements. On this basis, respondents urge the Commission to find that the complaint fails to meet the minimum standards required to support possible violations, regardless of the fact that it is under oath

<sup>2</sup> Complainant's second allegation would appear to be against the Commission rather than respondents, whereby he claims that "your agency . . . is in technical violation of Florida election laws, as well as the spirit of Federal election laws." Complaint at 2. This allegation does not describe any possible violation by the respondents and fails to meet the Commission's requirements for a valid complaint. Respondents deny any wrongdoing in connection therewith.

Neither the rental car nor the printing bills, in the aggregate, triggered the registration and reporting thresholds prior to the time of actual filing. And, when these bills were aggregated in March with other expenses due to be paid, resulting in the registration and reporting thresholds being triggered, those filings were all timely made on April 1 and July 15<sup>th</sup>, respectively.

Thus, not only is complainant blatantly wrong in charging that there are unreported expenditures – since complainant did not wait for the July 15<sup>th</sup> filing in order to rush these charges into the Commission – but there is also no basis to alleges that the \$5000 threshold was reached at an earlier point in time. The Committee was timely formed, and all filings were timely and completely made.

**The Commission should find no reason to believe and dismiss this complaint.**

Accordingly, for the reasons stated above, it is clear that complainant's allegations are without merit, and, in fact, if complainant had waited one more day – rather than rushing to file this specious complaint to smear the respondents – to review the public record, it would have become unquestionably clear from the Committee's quarterly report that these charges are baseless. The Commission should find no reason to believe that any possible violation of the Act occurred and close this matter as soon as possible.

Respectfully submitted,

  
Lyn Utrecht  
Eric Kleinfeld

Counsel for Respondents