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ST. FRANCIS CIRCLE PROFESSIONAL CENTER

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July 10, 2006

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Attn: Jeff S. Jordan

Re: McCloskey for Congress
MUR 5759

Dear Mr. Jordan:

This firm represents McCloskey for Congress ("the Committee"), its treasurer Stacy Owens and Congressional candidate Paul N. "Pete" McCloskey. We are responding to your letter, dated June 13, 2006, pursuant to a designation of counsel authorization that was submitted to you by the treasurer of McCloskey for Congress.

Complaint and Responses

A complaint was filed by Marilyn Bradley, a resident of San Ramon, CA against the Committee on June 7, 2006. The FEC opened a Matter Under Review (MUR 5759) and provided a copy of the complaint, along with its attachments, by First Class Mail to the Committee with a copy to Mr. McCloskey. Your letter, dated June 13, 2006, provided for a voluntary response within 15 of receipt of your letter. Your letter was actually physically received by the Committee on June 26, 2006. An initial response letter from this firm was provided by facsimile to your office on June 29, 2006. We are providing this response within 15 days of the date of receipt of your letter.

The complaint alleged that the disclaimer "Paid for by McCloskey for Congress" was not included on two flyers and one door hangar, in violation of 2 U.S.C. 441(d). The complaint incorrectly assumes that the Committee is responsible for all three forms of communication just described. The complaint further erroneously states that a disclaimer is required on "all public communications" without taking into account the actual language of the provisions of the Federal Election Campaign Act.

Response Regarding Two Flyers

With respect to the two flyers, the Committee did not in fact knowingly produce, prepare, pay for, distribute, coordinate with others to produce, authorize, or distribute either of the two flyers. It is likely that a campaign supporter of Mr. McCloskey personally and unilaterally

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undertook to prepare, distribute, and pay for such flyers using materials available in the public domain and/or created on a computer. Based on our initial inquiry, it appears that the Committee did not produce or pay for and is not responsible for the two flyers. Therefore, no further action should be taken against the Committee based on the allegations in the complaint regarding the two flyers. See attached Declaration under oath of Paul N. "Pete" McCloskey.

Response Regarding Door Hangars

With respect to the door hangars, these were produced approximately in the last two weeks of the Republican primary election in California. There were 10,000 door hangars printed by PIP Printing and Document Services at a cost of \$2,227.38. The Committee paid the invoice for the door hangars in full. Although the campaign workers responsible for getting the door hangars were advised by the campaign coordinator that a disclaimer should be included on the door hangars, a disclaimer was not included in the rush to get the door hangars printed and distributed. Some of the door hangars had been distributed, when it was discovered that they did not include a disclaimer. The decision was made by the campaign coordinator not to print or distribute any more door hangars thereafter. It is believed that only approximately 1000 or less door hangars were actually physically placed door to door to the public. This represents only approximately 10% or less of the total door hangars that were printed. See attached Declaration under oath of Paul N. "Pete" McCloskey.

The value of the door hangars that were actually distributed to the public is only approximately \$223 or less. This is a very de minimis amount. Based on the value alone, we would respectfully request that no further action against the Committee be taken by the Federal Election Commission. This request is further supported by the additional argument set forth below.

The policy of the Committee was to place a disclaimer on all campaign materials. It is not entirely clear under the FEC law and regulations if the disclaimer was actually required on the door hangars at all. The FEC's laws and regulations do not require a disclaimer on all campaign materials. There are exceptions provided under law. Exceptions to the Commission's disclaimer requirement are listed at 11 CFR 110.11(f). These exceptions include 11 CFR 110.11(f)(i), which covers small items, such as bumper stickers, upon which a disclaimer cannot be conveniently printed and is not therefore required. The door hangars in question are substantially smaller than bumper stickers. The regulation is clear that a disclaimer is not required on a bumper sticker. If a disclaimer is not required on a bumper sticker, it definitely should not be required on a smaller door hangar. Anyone reading the regulation easily and reasonably should come to the conclusion that a disclaimer is not legally required on a door hangar that is smaller than a typical bumper sticker. This exception regarding no disclaimer on small items is further publicized and highlighted on page 8 of the Federal Election Commission's brochure entitled "Special Notices on Political Ads and Solicitations." That brochure is widely distributed to the public, is relied upon by the public, and was provided by the FEC to me, legal counsel for the Committee, prior to the date of the primary election.

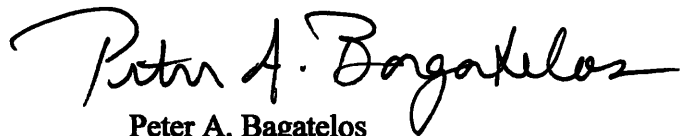
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Conclusion

Based on the information, explanations, and arguments contained herein, we respectfully request that the Federal Election Commission take no further action against the Committee based on the allegations contained in the complaint. As shown, the Committee was not responsible for the two flyers and had no responsibility regarding placement of a disclaimer. With regard to the door hangars, a reasonable conclusion is that no disclaimer was legally required at all and, even if one were arguably required, the Committee voluntarily refrained from distributing the bulk of the door hangars once it learned they did not contain a disclaimer and the production and distribution of the door hangars involved a very de minimis cost.

Thank you for your consideration.

Very truly yours,



Peter A. Bagatelos

cc: Paul N. "Pete" McCloskey
Stacy Owens

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BEFORE THE FEDERAL ELECTION COMMISSION

**Declaration of Paul N. "Pete" McCloskey
MUR 5759**

I, Paul N. "Pete" McCloskey, declare as follows:

1. I am an individual who was an unsuccessful candidate for Congress in the California Republican primary election held on June 6, 2006 for the 11th Congressional District.
2. My principal campaign committee, McCloskey for Congress, is registered with the Federal Election Commission. Stacy Owens is the treasurer of McCloskey for Congress (hereinafter "the Committee").
3. The Federal Election Commission, based on a third party complaint that was filed against the Committee, opened a Matter Under Review (MUR 5759) and transmitted a copy of the complaint to the treasurer of the Committee with a copy to me. I am providing a response to MUR 5759 with this declaration. I have inquired of the Committee staff regarding the allegations in the complaint. The facts stated in this declaration are known to me of my own personal knowledge or, if stated on information or belief, I believe them to be true. If called upon to testify to the matters in this declaration, I could and would competently do so.
4. The Committee undertook to print 10,000 door hangars, which are smaller than a bumper sticker, at a cost of \$2,227.38. A copy of invoice number 233039 from PIP Printing and Document Services, dated 5/18/06, is attached hereto. The Committee paid the full amount of the invoice for the door hangars.
5. Upon information and belief, the Committee volunteers responsible for having the door hangars printed were advised by the Committee campaign coordinator, Mark Herrick, to have the Committee disclaimer placed on the disclaimer. However, the disclaimer was inadvertently not included.
6. Upon information and belief, I understand that approximately 1000 or less of the door hangars were distributed by hand on two weekends just before the election to the public before it was realized that the Committee disclaimer was not included

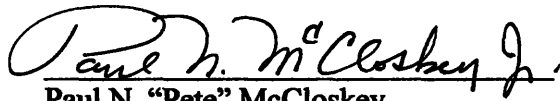
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on the door hangars. At that time, it was decided by the Committee coordinator that the remaining door hangars would not be distributed or used in the campaign any further.

7. Upon information and belief, the two flyers that were submitted with the complaint were not produced, paid for, or distributed by the Committee. The two flyers were likely produced by a volunteer supporter of the Committee who prepared, paid for, and distributed the flyers at such person's expense, using information, photos, and other material that was publicly available. However, the flyers were not done with the knowledge, consent, approval, cooperation, or at the request of the Committee. The Committee is unaware of how many of such flyers may have been distributed to members of the public.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 6th day of July, 2006.


Paul N. "Pete" McCloskey
Candidate for Congress - 11th District

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05/19/2006 13:56 6503234338

MARK HERRICK
PIP PRINTING

PAGE 02
PAGE 01



INVOICE

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NO. **233039**

DATE 5/18/06
CUSTOMER P.O. NO.

SOLD TO

McCloskey for Congress
PO Box 1810
Pleasanton CA 94566

Mary Prendergast (703-505-0366) Mark
Herrick (w941-8657 c 776-6987)

Julia cell 510 333 905

QUANTITY	DESCRIPTION	AMOUNT
10,000	Door Hangers (3334x3=10,000; 2/2), 8.5 x 11 Door Hangers (3-up), printed 3 up 2 colors front in PMS 2758 & PMS 1807 ink & colors back in PMS 2758 & PMS 1807 ink	1,932.13
4	Polyester plate	30.00
2	PMS 2758 & PMS 1807 Wash Up	70.00
3	Cut (200/HR)	25.80
FAX all invoices to 650-941-6987 for payment Taken by: Mike Account Type: COD		Subtotal 2,057.83
Ship Via: Call client when job complete Wanted: Fri 5/19		Tax 169.75
<i>will p/u @ noon fri</i>		Shipping
		Total 2,227.38

PIP can not guarantee the final printed product from any electronic file submitted to us using the transparency features in Photoshop, Illustrator or InDesign. We make every effort to give you your quantity ordered; however, standard industry practice of +/-10% does apply on any print run.



Received by: *Julia Levin*

Date: _____

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