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July 23, 2018

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**BY MESSENGER AND ELECTRONIC MAIL**

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Federal Election Commission  
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OFFICE OF  
GENERAL COUNSEL  
2018 JUN 24 AM 11: 56

**Re: MUR 7389**

Dear Mr. Jordan:

We write on behalf of Congresswoman Kyrsten Sinema, Sinema for Arizona (the "Committee") and Cynthia Leigh Applebaum in her official capacity as treasurer (collectively, the "Respondents") in response to the complaint in MUR 7389 (the "Complaint"). The Complaint makes an entirely baseless allegation that the Committee is not following the best efforts requirements in reporting donor occupation and employer information on its regularly filed reports. In fact, the Committee meets and goes beyond the best efforts requirements imposed by the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.

The Act requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a precondition to opening an investigation into the violations alleged in a complaint.<sup>1</sup> The Complaint here contains nothing more than unwarranted legal conclusions and speculation—which the Commission has stated is insufficient to commence an investigation.<sup>2</sup> Accordingly, the Commission must find no reason to believe that Respondents violated the Act, close the file and take no further action.

**FACTUAL BACKGROUND**

Congresswoman Kyrsten Sinema is a candidate for Senate in Arizona; Sinema for Arizona is her principal campaign committee.<sup>3</sup> On May 21, 2018, the Commission received a Complaint

<sup>1</sup> 52 U.S.C. § 30109(a)(2).

<sup>2</sup> See Statement of Reasons of Commissioners Mason, Sandstrom, Smith & Thomas ("SOR") at 1, MUR 4960 (Hillary Rodham Clinton US Senate Exploratory Committee).

<sup>3</sup> Kyrsten Sinema, Amended Statement of Candidacy (Feb. 28, 2018); Sinema for Arizona, Amended Statement of Organization (Mar. 5, 2018).

alleging that Respondents failed to report to the Commission complete information about the employment status of certain contributors and that the Committee was not using "best efforts" to obtain, maintain, and report contributor information.<sup>4</sup> The allegations, however, are speculative and utterly unsupported by any evidence in the Complaint. Moreover, the Committee at all times has followed or gone beyond the Commission's "best efforts" requirements.

### LEGAL ANALYSIS

When filing disclosure reports with the Commission, political committees must itemize contributions from individuals who have contributed \$200 or more during the election cycle.<sup>5</sup> This requires the committee to report the contributor's full name, mailing address, occupation, and employer, the amount and date of the contribution, and the aggregate amount the individual has contributed during the election cycle.<sup>6</sup> Even if a committee does not report complete identifying information about a contributor, the Commission will consider the committee to be in compliance with the Act when the treasurer has used "best efforts" to obtain, maintain, and submit the required information.<sup>7</sup>

To use its "best efforts," a committee must adhere to a process laid out in the Commission's regulations. First, the committee must include in its written solicitations "a clear request for the contributor's full name, mailing address, occupation and name of employer, and . . . an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications."<sup>8</sup> Both the request and the statement must appear "in a clear and conspicuous manner" on response materials included with the solicitation.<sup>9</sup> Second, within 30 days of receiving a contribution with incomplete contributor information, the treasurer must make at least one effort to obtain the missing information.<sup>10</sup> The effort must consist of a written request to the contributor or an oral request that is documented in writing.<sup>11</sup> The request must clearly ask for the required information and again include the statement of federal law.<sup>12</sup> Written requests must be accompanied by a pre-addressed return post card or envelope.<sup>13</sup> The committee cannot include any additional content in the follow-up request other than a "thank you" for the contribution.<sup>14</sup>

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<sup>4</sup> Complaint ("Compl.") at 1.

<sup>5</sup> 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

<sup>6</sup> 11 C.F.R. §§ 100.12, 104.3(a)(4)(i).

<sup>7</sup> *Id.* § 104.7(a).

<sup>8</sup> *Id.* § 104.7(b)(1)(i).

<sup>9</sup> *Id.* § 104.7(b)(1)(ii).

<sup>10</sup> *Id.* § 104.7(b)(2).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

When the treasurer files the committee's reports, he or she must include all available information about the contributor in the committee's possession, which includes information from previously filed reports and other fundraising records.<sup>15</sup> If the treasurer receives additional information after filing the report, the treasurer must either file an amended report on or before the next regularly scheduled reporting date, or file with the next regularly scheduled report "an amended memo Schedule A listing all contributors for which contributor identifications have been received during the reporting period."<sup>16</sup> If the committee completes these steps, it has exercised its "best efforts" and will be in compliance with the Act, even if it did not succeed in obtaining complete information from every contributor.<sup>17</sup>

While the Complaint alleges that Respondents have failed to use "best efforts" to obtain, retain, and report contributor information, it is unable to point to any evidence to support this allegation.<sup>18</sup> The Complaint has offered no solicitations made by Respondents that lack the proper notices and no information showing that Respondents have failed to make appropriate follow-up attempts to obtain contributor information. The Complaint's allegations are wholly based on the fact that the Committee has reported receiving contributions from donors who do not have jobs.<sup>19</sup> This fact alone does not have any connection to Respondent's adherence to the "best efforts" policy and any implication that there is a connection is misplaced. The Complaint ignores the most basic fact that some contributors simply are not working at the time they make a contribution.<sup>20</sup>

Moreover, Respondents go above and beyond the Commission's regulations to comply with the "best efforts" requirements. Respondents proof all solicitation materials to ensure the materials clearly request the contributor's identifying information and state that "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in an election cycle." Within 30 days of receiving a contribution without complete donor information, Respondents contact the donor over email or by phone to request the missing information. If that does not work, Respondents also mail a letter and pre-addressed envelope to obtain the information. The letter includes no content other than the request. Accordingly, Respondents make three requests for contributor information—one more than required by the Commission's regulations.

In preparing reports for the Commission, Respondents reference their fundraising records and previously filed reports to obtain contributor information that is still missing. Respondents again

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<sup>15</sup> *Id.* § 104.7(b)(3).

<sup>16</sup> *Id.* § 104.7(b)(4).

<sup>17</sup> *Id.* § 104.7(a).

<sup>18</sup> See SOR at 1-2, MUR 4960 (stating that the Commission will find reason to believe a violation occurred "only if a complaint sets forth sufficient specific facts," and that "mere speculation" is not enough).

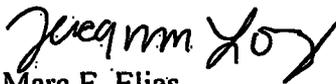
<sup>19</sup> Compl. at 2-3.

<sup>20</sup> See SOR at 2, MUR 4960 (stating that the Commission will not credit "[u]nwarranted legal conclusions from asserted facts").

take extra measures at this stage, searching other entities' Commission filings for contributors' identifying information and looking for information about the contributors on Internet sites like Google and LinkedIn. Respondents include all of the information that can be found in their reports and follow the Commission's guidelines for disclosing additional information that becomes available after the filing deadline. Finally, the allegation that Respondents file "fraudulent reports" is completely baseless and unsupported by any evidence. Respondents take great care, in accordance with the procedures described above, to report accurate and complete information. Accordingly, Respondents are in compliance with the Act's reporting requirements, as their internal policies meet and exceed the "best efforts" standard.

Because the allegations in this Complaint fail to provide a factual basis on which the Commission could find reason to believe that a violation of the Act or Commission regulations has occurred (much less a knowing and willful violation),<sup>21</sup> and the Respondents have affirmatively established that they use "best efforts" in obtaining, maintaining, and reporting contributor information, we respectfully request that the Commission find no reason to believe a violation of the Act or Commission regulations has occurred in MUR 7391 and close the file.<sup>22</sup>

Very truly yours,



Marc E. Elias  
Danielle E. Friedman  
Jacquelyn K. Lopez  
Shanna M. Reulbach

Counsel to Respondents

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<sup>21</sup> See *id.* at 1-2.

<sup>22</sup> While the Complaint claims that the Respondents have "engaged in a prolonged pattern of violations of federal election laws," the Complaint discusses no violations beyond the alleged failure to adhere to the Commission's "best efforts" standard and the related filing of "fraudulent reports." See Compl. at 1. The Complaint cannot be reasonably construed as containing more than these two allegations.