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September 30, 2019

**BY HAND DELIVERY AND EMAIL**Jeff S. Jordan  
Federal Election Commission  
Office of Complaints Examination and Legal Administration  
Attn: Christal Dennis, Paralegal  
1050 First Street, NE  
Washington, DC 204632019 OCT -2 PM 2: 10  
OFFICE OF  
GENERAL COUNSEL**Re: MUR 7630**

Dear Mr. Jordan:

We write as counsel to Dan McCready, McCready for Congress and Holly Giarraputo, Treasurer, in her official capacity, (the "Respondents"), in response to the complaint filed by Craig Robinson and The Patriots Foundation on August 2, 2019 (the "Complaint"). Because the Complaint fails to describe facts which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, or Federal Election Commission ("FEC" or "Commission") regulations, the Commission should dismiss the Complaint and close the file.

The Commission may find reason to believe that a violation of a statute or regulation under its jurisdiction has occurred or is likely to occur.<sup>1</sup> In contrast, a complaint must be dismissed unless it pleads "sufficient specific facts, which, if proven true, would constitute a violation of the [Act]."<sup>2</sup> Here, the Complaint erroneously alleges that Respondents have failed to disclose the purpose and recipient of certain campaign disbursements, and that Respondents have "failed to provide necessary documentation to demonstrate that campaign contributions are not being converted for personal use."<sup>3</sup> Yet the Complaint is devoid of any facts indicating that the purpose description or the identity of the payee is incorrect. Likewise, the Complaint offers no evidence that these disbursements – which were unambiguously in furtherance of Dan McCready's

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<sup>1</sup> 11 C.F.R. § 111.10(a).

<sup>2</sup> Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, Matter Under Review 4960 (Clinton for U.S. Exploratory Committee) (Dec. 21, 2000).

<sup>3</sup> Complaint at 4.

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candidacy – are prohibited “personal use” of campaign funds. Because the Complaint fails to allege any facts which, if proven true, would constitute a violation of the Act, the Commission must dismiss the Complaint and close the file.

### FACTUAL BACKGROUND

Dan McCready was the Democratic candidate for the 2019 special election in North Carolina’s 9th congressional district.<sup>4</sup> McCready for Congress (“the Campaign”) is his principal campaign committee.<sup>5</sup>

North Carolina’s 9th congressional district covers a sprawling area, from Charlotte in the west to Bladen County in the east. Driving across the district can take several hours and spans approximately 150 miles. In a district such as this one, field staffers must frequently use motor vehicles to perform their job responsibilities, including traveling to and staffing volunteer meetings, events, and canvass sites. The campaign does not provide each field staffer with a vehicle. Instead, field staffers use their own personal vehicles to carry out their job responsibilities. Throughout the 2019 special election period, the Campaign provided field staffers with prepaid cards that could be used exclusively at certain gas stations in order to cover transportation costs incurred by the field staffer. Field staffers received gas cards valued at \$200 each month to pay for these costs. Mr. McCready did not receive any gas cards.

Gas cards were purchased either online or from gas stations in the district using campaign funds, and were reported on the Campaign’s regular reports of receipts and expenditures as expenditures to the gas station that issued the card.<sup>6</sup> Cards purchased using Shell’s online prepaid card service were reported as expenditures to “RPG Gift Cards,” the name of the Shell gas station’s online prepaid card service provider.<sup>7</sup> On the Campaign’s FEC report, these expenditures were either given the specific purpose description “Gas cards,” or, because they were made to fund staff travel, were reported with the purpose description “Ground transportation.”<sup>8</sup>

### LEGAL ANALYSIS

*First*, the Complaint alleges that the Campaign failed to disclose the correct purpose of the disbursements in question. This charge has no legal merit. Commission regulations require that

<sup>4</sup> FEC Form 1, Statement of Candidacy, Dan McCready (amended July 16, 2019)  
<https://docquery.fec.gov/pdf/462/201907169151385462/201907169151385462.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> McCready for Congress, Pre-Special 2019, 196, 197, 199 (filed on June 18, 2019), July Quarterly 2019, 1034-38, 1042-44, 1049051 (filed on July 15, 2019).

<sup>7</sup> <https://www.buyshellgiftcards.com/order/PlasticGiftCard>.

<sup>8</sup> McCready for Congress, Pre-Special 2019, 196, 197, 199 (filed on June 18, 2019), July Quarterly 2019, 1034-38, 1042-44, 1049051 (filed on July 15, 2019).

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committees list the purpose for each expenditure which exceeds \$200 to a single person in a campaign cycle.<sup>9</sup> The “purpose” of an expenditure is “a brief statement or description of *why the disbursement was made*.”<sup>10</sup> Commission regulations provide a list of adequate purpose descriptions, including “travel” and “travel expenses,” and the Commission has provided further guidance regarding adequate and inadequate purpose descriptions, listing “transportation” as an adequate description.<sup>11</sup> The purpose descriptions used by the Campaign – “Ground transportation” and “Gas cards” – are plainly sufficient under the Commission’s guidelines and, in fact, provide *more* descriptive detail than the Commission requires, because they specify the method of transportation and/or the means of paying for it. The Complaint notes that the gas cards in question *could have* been used to purchase items at the gas station other than gas. But that is irrelevant under the Commission’s regulations, which require committees to describe “*why* the disbursement was made” – e.g. why the campaign decided to use its funds to make the purchase. Here, the Campaign made the disbursements to allow field staffers to purchase gas and, therefore, the use of “gas cards” (or “ground transportation”), is a proper description under Commission regulations. It is also why political committees registered with the FEC regularly use “gas cards” as the description for this particular type of purchase.<sup>12</sup>

*Second*, the Complaint alleges that the gas stations should not have been listed as the payees on the Campaign’s filings, even though the Campaign paid the gas stations for the purchases in question. Again, this claim has no legal merit and is contrary to the Commission’s regulations. Authorized committees must report the full name and address of each person to whom an expenditure is made in excess of \$200 within an election cycle.<sup>13</sup> The appropriate payee of a campaign expenditure is “the person providing the goods and services to the committee.”<sup>14</sup> Because the expenditure was made to the gas stations, and it was the gas stations that provided the prepaid cards to the campaign, the expenditures were appropriately reported as being made to the gas stations.

Commission regulations simply do not support the Complaint’s suggestion that the Campaign must disclose who utilized the gas cards that the Campaign purchased. Campaigns regularly purchase goods and services that are subsequently used by campaign staff; the campaigns disclose the identity of the person whom they *paid* for the goods and services but they do not disclose the identity of the person who subsequently *used* those same goods and services. When

<sup>9</sup> 11 CFR 104.3(b)(4).

<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> *Id.*; Purposes of Disbursement, FEC.gov, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/> (revised Aug. 21, 2018).

<sup>12</sup> *See*

[https://www.fec.gov/data/disbursements/?data\\_type=processed&two\\_year\\_transaction\\_period=2018&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2020&disbursement\\_description=gas+cards](https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&min_date=01%2F01%2F2017&max_date=12%2F31%2F2020&disbursement_description=gas+cards).

<sup>13</sup> 11 CFR 104.3(b)(4).

<sup>14</sup> *Id.* 102.9(b)(2)(i)(A).

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a committee directly reimburses a staffer for transportation expenses, the Commission's "secondary payee" rule requires the committee to disclose the actual vendor providing the goods and services (e.g. the gas station) in addition to the staffer who received the immediate payment from the campaign.<sup>15</sup> But when the campaign pays the vendor *directly* for the goods or services, the secondary payee rule is not implicated and there is no requirement to disclose the staffer who ultimately utilized the goods or services purchased by the campaign. Again, that is why other registered FEC committees that have made the same purchase correctly disclose the gas station – not the staffer – as the payee.<sup>16</sup>

Finally, the Complaint's personal use allegation is utterly baseless. Campaign funds can be used for any lawful purpose in connection with a federal election campaign, except that campaign funds cannot be converted to personal use of the candidate or any other person.<sup>17</sup> "Personal use" is any use of campaign funds "to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."<sup>18</sup> The gas cards in question were purchased to assist campaign field staff in paying for travel expenses incurred in the course of their campaign work. These are *not* expenses that would exist irrespective of candidacy; they are expenses that arise as a direct result of the campaign activities undertaken to further Mr. McCready's election. The complaint offers no evidence that the Campaign purchased the gas cards for anything other than campaign purposes, or that Campaign staff used the gas cards to pay expenses that would have existed irrespective of the Campaign.

### CONCLUSION

As described herein, the facts in the Complaint do not support a finding of any violation of the Act or Commission regulations. The Committee made valid campaign expenditures for prepaid gas cards, and properly reported those expenditures in accordance with federal law and Commission regulations and guidance. Accordingly, the Commission should find no reason to believe that a violation has occurred, and immediately dismiss this matter.

Very truly yours,



Jonathan S. Berkon  
 Elizabeth P. Poston

<sup>15</sup> Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40625, 40626 (Jul. 8, 2013).

<sup>16</sup> See

[https://www.fec.gov/data/disbursements/?data\\_type=processed&two\\_year\\_transaction\\_period=2018&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2020&disbursement\\_description=gas+cards](https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&min_date=01%2F01%2F2017&max_date=12%2F31%2F2020&disbursement_description=gas+cards).

<sup>17</sup> 52 U.S.C. § 30114(a); 11 CFR § 113.2.

<sup>18</sup> 11 CFR § 113.1(g).