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October 23, 1998

VIA HAND DELIVERY

F. Andrew Turley, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4800

Dear Mr. Turley:

This letter sets forth the response of Michigan Automotive Compressor, Inc. ("MACI") and Stanley D. Tooley to the complaint filed on August 25, 1998 (the "Complaint") in the foregoing matter.¹ For the reasons set forth below, we respectfully request that the Federal Election Commission (the "Commission") either dismiss the Complaint or find no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), has occurred. In particular, as against MACI and Mr. Tooley, the Complaint fails to allege that they committed any violation of the Act within the period of the applicable statute of limitations.²

The Complaint contains a series of allegations concerning The Nick Smith for Congress Committee (the "Smith Committee"). With regard to MACI and Mr. Tooley, however, the Complaint focuses on events and contributions that occurred during Representative Smith's 1992

¹ We previously requested and were granted extensions of time in which to respond.

² We note that either MACI or its affiliate received copies of the Complaint addressed to Atsuhiro Hayakawa, Takashi Katoh, Tsuneko Katoh, Mineo Kawai and Shigenori Nakayama. Neither MACI nor Jones Day is appearing on behalf of these five individuals. We note for the Commission's information, however, that four of those individuals, Messrs. Hayakawa, Nakayama, Katoh, and Kawai, worked for MACI or its affiliate during the relevant time period, but have since returned to Japan. We believe that the fifth individual, Tsuneko Katoh, is Mr. Katoh's wife and has also returned to Japan. The Commission does not, of course, have jurisdiction over Japanese nationals living in Japan. See *CFTC v. Nahas*, 738 F.2d 487, 489 (D.C. Cir. 1984) (holding that district court had no authority "to enforce an investigative subpoena served on a foreign citizen in a foreign nation"). More importantly, as explained below, all of their alleged contributions were in the 1992 election cycle, more than five years ago, and therefore fall outside the applicable statute of limitations.

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congressional campaign. Complaint at 9. The Complaint highlights 14 "apparent Japanese contributions" totaling \$3,200 by 13 individuals, five of which were allegedly made by individuals connected to MACI or its affiliate, and contains vague allegations about a fundraiser held in the month before the 1992 election. Yet all of the alleged contributions were made more than five years ago. The Complaint itself recites that 11 of the 14 "apparent Japanese contributions" were made "in the month before the 1992 general election," that two others were made in July 1992, and the last was made by Mr. Katoh on August 4, 1993. *Id.* Similarly, the complainant acknowledges that the contributions made around the time of the one fundraiser identified were made "roughly six years ago." *Id.* Finally, the last of Mr. Tooley's contributions alleged to be excessive was made in September, 1993 -- more than five years ago.³

Therefore, even if the claims against MACI, Tooley and the five related individuals were assumed to be true for the limited purpose of analyzing the Complaint, they still would be barred by the five-year statute of limitations on civil fines or penalties applicable to the Act.⁴ Undertaking an investigation under such circumstances would waste the Commission's limited resources on a complaint filed just before an election in order to gain publicity. Moreover, such an action would impose an unjustified burden on the respondents to undertake an investigation of alleged violations arising from facts more than five years old that could not be the basis for any civil fines or penalties, in any event.

The complainant appears to have simply supplied a list of all contributions by employees of Japanese-affiliated companies to the Smith Committee.⁵ With respect to these contributions,

³ We also believe that the apparent excess may also reflect reporting errors by the Smith Committee. We understand that the Smith Committee is reviewing suspected reporting errors, and note that even on the face of the reports, Mr. Tooley's contributions, if reported differently, would have been within the limits for both the 1992 primary and general elections.

⁴ See 28 U.S.C. § 2463. See also FEC v. Williams, 104 F.3d 237 (9th Cir. 1996), cert. denied, 118 S.Ct. 600 (1997); FEC v. The Christian Coalition, 965 F. Supp. 66, 70 (D.D.C. 1997) (holding that "the law of this Circuit is clear . . . the FEC's cause of action accrued when the events at issue occurred, and 28 U.S.C. § 2462 operates according to its terms to bar the enforcement of any civil fine, penalty or forfeiture for events that occurred more than five years before the Complaint was filed"; relying upon 3M Co. v. Browner, 17 F.3d 1453, 1455-57, 1461 (D.C. Cir. 1994)).

⁵ The only other contributions cited in the Complaint by employees of MACI are several contributions made by former employee William Lambkin and his wife Beverly Lambkin that allegedly exceeded individual contribution limits. See Complaint at 4-5, ¶¶ 32-33. We understand that the Lambkins will be responding to the Complaint separately, and that the Smith Committee appears to have acknowledged that reporting errors were made relating to the

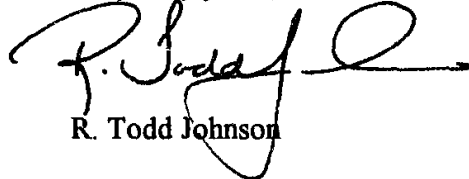
(continued...)

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the complainant admits that he has no "corroborative details on which to base specific complaints" but simply "feels" that they "are worthy of further investigation by the FEC." Id. at 9. Those feelings do not constitute, however, a "clear and concise recitation" of facts describing a violation,⁶ let alone facts supporting a reason to believe the Act was violated.

In sum, the Complaint against MACI and Mr. Tooley fails to allege that they committed any violation of the Act within the period of the applicable statute of limitations. Accordingly, we urge the Commission either to dismiss the Complaint against them or to find no reason to believe that violations of the Act have occurred.

Very truly yours,



R. Todd Johnson

⁵ (...continued)
Lambkins' contributions.

⁶ 11 C.F.R. § 111.4(d)(3).