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CLIENT/MATTER NUMBER  
999100-0130

July 15, 2011

**VIA HAND DELIVERY**

Mr. Jeff S. Jordan, Esq.  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Re: MUR 6449 - Response to Amended Complaint

Dear Mr. Jordan:

The Respondents in this matter, Jon Bruning, Bruning for Senate 2012 Exploratory Committee, Jon Bruning Exploratory Committee and Bruning for US Senate, Inc. (collectively, hereafter "Respondents") hereby submit this response to the amended complaint filed by Complainant, Nebraska Democratic Party, in the above-referenced MUR, to-wit:

1. Respondents deny that Jon Bruning or any of the referenced Respondent Committees have violated the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), or any other provision of law.
2. On February 22, 2011, Respondent Friends of Jon Bruning filed a comprehensive response to the original complaint filed by the Democratic Party in this MUR ("the Response"). Subsequently, all other Respondents have adopted and incorporated by reference the Response as their Response.
3. Respondents carefully and completely addressed each and every allegation in the amended complaint and have fully demonstrated that the allegations in the Complaint are unfounded and do not constitute any violation of law.
4. There are *no* new allegations in the Complainant's amended complaint filed on June 15, 2011, which have not already been addressed fully in the original response.
5. The amended Complaint purports to state 'facts' which are not actually factual correct. The correct facts are as follows:

• The funds transferred from Bruning 2008 were transferred into a 'testing the waters' account and no additional contributions were received from December 10, 2007 until November 5, 2010. See ¶13 of the Response.

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- There is no legal requirement that the 'testing the waters' bank account was or is required to file as a Political Organization with the Internal Revenue Service and, further, such allegations are beyond the jurisdiction of the Federal Election Commission.
- A 'testing the waters' account is not obligated to register and / or report its receipts and contributions until such time as the candidate determines that he/she is a federal candidate. See 11 C.F.R. §§100.72, 100.131 and 101.3.
- On January 29, 2008, the treasurer of the Bruning 2008 committee advised the Commission in writing of the procedures that were being followed with respect to the creation of the exploratory ('testing the waters') account and that all funds contributed to the 2008 primary election were being transferred into that account. See ¶10 of the Response.
- The January 29, 2008 letter also advised the Commission that donors to the 2008 General Election were being advised that they could request a refund of their contributions to the 2008 General Election or redesignate their contributions to a future election. See ¶8 of the Response.
- The amended complaint correctly states that "On November 5, 2010, Mr. Bruning announced that he was 'exploring' a run for the U.S. Senate in 2010 and also announced the formation of a new exploratory committee..." See Amended Complaint, p. 2, lines 11-13.
- Such actions do *not* trigger candidate status. See 11 C.F.R. §100.3. The amended complaint falsely asserts that "his public statements and actions showed that he had decided to be a candidate". There is no evidence submitted by the Complainant to controvert the sworn statement of Respondent Jon Bruning that he did not decide to become a candidate for the U.S. Senate until the time contemporaneous with his filing of a Statement of Candidacy for the 2012 election on Jan. 6, 2012. See ¶¶ 21-22. The other allegations of the amended Complaint on p. 2, lines 13 - 19 are false and unsubstantiated by any facts or evidence.
- The amended Complaint questions the transfer of funds from the testing the waters account to the 2012 Exploratory Committee and asserts (falsely) that Respondents made such transfer "...without identifying any of the donors whose funds comprised the transfer". However, as specifically stated in the Response, all funds transferred from the 'testing the waters' account were and had been duly reported to the FEC. See ¶¶19 and 20 of the Response. The initial transfer of \$448,349.52, consisted of funds remaining from donors to the 2008 primary election, plus accrued interest.

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- A subsequent transfer of \$162,383.24 consisted of contributions to the 2008 General Election from donors who redesignated their contributions to a future election. See ¶20 of the Response.
- All donors to the testing the waters account and, subsequently, to the 2012 Exploratory Committee, have been reported to the FEC, were lawful contributions from legal donors and within the permissible limits. See ¶¶19 and 20 of the Response.
- There were no expenditures from the 'testing the waters' account, other than refunds to donors who did not redesignate their 2008 General Election contributions to a future election. See Affidavit of Mark Pedersen.
- All donors to the 2008 primary election and 2008 general election were disclosed to the FEC and have been entered into the donor database of Bruning for U.S. Senate, Inc., for the 2011-12 election cycle. Contributions from these donors to the 2012 Primary and General Elections are monitored and tracked to ensure that any donor who made contributions during the 2008 cycle do not make contributions in the aggregate which exceed \$2500 for the 2012 primary and \$2500 for the 2012 general election. See Affidavit of Mark Pedersen.
- None of the Respondents have violated the Act or FEC regulations, and all contributions and disbursements have been fully disclosed in accordance with applicable FEC regulations. See the Response and Affidavit of Mark Pedersen.

In summary, there is nothing new in the amended Complaint that Respondents have not previously answered in the Response, other than Complainant's efforts to grab new headlines re-hashing old -- and still false -- information.

Accordingly, Respondents deny that any violations have occurred and respectfully move that the Commission dismiss the Complaint. Please contact me at (202) 295-4081 if you have questions regarding this Response to the Amended Complaint in the above-referenced matter.

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Sincerely,

A handwritten signature in black ink that reads 'Cleta Mitchell'.

Cleta Mitchell, Esq.

Counsel for Respondents

Enclosure

cc: The Honorable Jon Bruning  
Mark Pedersen, Assistant Treasurer for Respondents:  
Bruning for Senate 2012 Exploratory Committee  
Jon Bruning Exploratory Committee  
Bruning for US Senate, Inc.

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