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FIRST GENERAL COUNSEL'S REPORT

MUR: 6529

DATE COMPLAINT FILED: February 9, 2012

DATE OF NOTIFICATION: February 14, 2012

RESPONSE RECEIVED: April 4, 2012

DATE OF ACTIVATION: April 17, 2012

EXPIRATION OF SOL: Earliest: July 2016

Latest: December 2016

COMPLAINANT:

Steven A. Figueroa

RESPONDENTS:

Gloria Negrete McLeod

Gloria Negrete McLeod for Congress and Gilbert
McLeod in his official capacity as treasurer

Gloria Negrete McLeod for Senate 2010

Gloria Negrete McLeod for Supervisor 2014

Lang, Hansen, O'Malley & Miller

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 432(i)

2 U.S.C. § 434(b)

2 U.S.C. § 441a(a)(1)

2 U.S.C. § 441a(f)

2 U.S.C. § 441b

2 U.S.C. § 441d

2 U.S.C. § 441i(e)

11 C.F.R. § 100.72

11 C.F.R. § 100.131(a)

11 C.F.R. § 103.3(b)

11 C.F.R. § 104.7(b)

11 C.F.R. § 110.1

11 C.F.R. § 110.3

11 C.F.R. § 110.11

11 C.F.R. § 114.12

11 C.F.R. § 300.2(m)

11 C.F.R. § 300.61

11 C.F.R. § 300.62

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INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Gloria Negrete McLeod was a California state senator and 2012 candidate for the congressional seat in California's newly created 35th congressional district.¹ McLeod was also reportedly considering a run in the 2014 election for San Bernardino County Supervisor. McLeod has an authorized committee in connection with the elections for each of these offices.²

The Complaint alleges that McLeod and her three campaign committees violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations when the State and Supervisor Committees used non-federal funds to pay for polling and survey research that benefitted the Federal Committee. The Complaint also alleges that the Federal Committee violated the Act by: (1) accepting an excessive contribution from the lobbying firm of Lang, Hansen, O'Malley & Miller ("LHOM"); (2) failing to include a required disclaimer in a fundraising solicitation; (3) failing to use "best efforts" to collect required contributor information in its fundraising solicitation; and (4) soliciting non-federal funds from state and local PACs for the benefit of the Federal Committee. Finally, the Complaint alleges that McLeod and the State Committee disbursed non-federal funds to state and local candidates and committees after McLeod became a federal candidate.

¹ The new 35th congressional district was created by the California Citizens Redistricting Commission, based on the 2010 Census, and approved on August 15, 2011. The new district became effective June 2012, and is largely within McLeod's state senate district. Resp. at 5.

² Gloria Negrete McLeod for Senate 2010 is McLeod's California state senate reelection campaign committee (the "State Committee"); Gloria Negrete McLeod for Congress and Gilbert McLeod in his official capacity as treasurer is McLeod's principal campaign committee for the 2012 congressional race (the "Federal Committee"); and Gloria Negrete McLeod Supervisor 2014 is her county supervisor committee (the "Supervisor Committee"). McLeod won her congressional election.

1 McLeod and the Committees submitted a joint response to the Complaint (the
2 "Response").³ With regard to the polling, Respondents concede that one of the purposes of the
3 polling was "to help [McLeod] make the important decision about whether to seek the office of
4 County Supervisor or member of the House of Representatives." Resp. at 5. Therefore,
5 Respondents concede, costs of conducting the poll should have been allocated among the
6 Supervisor, State, and Federal Committees. Resp. at 5-6. Based on this concession, we
7 recommend the Commission find reason to believe that McLeod and the Federal, State, and
8 Supervisor Committees each violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) in
9 connection with the original payments for the polling; and that the Federal Committee violated
10 2 U.S.C. § 434(b) and 11 C.F.R. § 100.72(a) by failing to report the payments as an in-kind
11 contribution. We also recommend that the Commission enter into pre-probable cause
12 conciliation with McLeod and the Federal, State, and Supervisor Committees to settle these
13 violations.

14 As to other allegations, we recommend either that the Commission find no reason to
15 believe that a violation occurred or dismiss the allegations.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 **A. Use of Non-Federal Funds for Federal Expenditures**

18 In July and August 2011, McLeod commissioned polling and survey research of an area
19 that included her state senate district, as well as her potential congressional and county
20 supervisor districts. Resp. at 5. The total cost of the polling and survey research was \$30,120,
21 which was divided evenly between the State and Supervisor Committees. See Compl. at Ex. 3
22 and 4. At the time of the polling, McLeod had not yet declared her candidacy for the 35th

³ LHOM submitted a separate response solely on the allegation that it made an excessive contribution to the Federal Committee ("LHOM Response").

1 congressional seat – she did so on September 6, 2011 – and had not yet established the Federal
2 Committee. Resp. at 4, fn. 3. The Complaint alleges that the facts “strongly suggest[]” that the
3 polling expenses were unrelated to McLeod’s state campaign activities and were used in
4 connection with her campaign for federal office, in violation of 11 C.F.R. § 110.3(d). Compl. at
5 4.

6 The Act prohibits federal candidates, candidates’ agents, and entities that they establish,
7 finance, maintain, or control from soliciting, receiving, directing, transferring, or spending funds
8 in connection with a federal election, unless those funds are subject to the limitations,
9 prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A). Further,
10 Commission regulations prohibit transfers of funds or assets from candidates’ campaign
11 committees or accounts for non-federal elections to their principal campaign committees or other
12 authorized committees for federal elections. 11 C.F.R. § 110.3(d); *see also* Explanation and
13 Justification, 57 Fed. Reg. 36,344 (Aug. 12, 1992).

14 Funds received, and disbursements made, solely for the purpose of testing the waters to
15 determine whether an individual should become a candidate – for example, payments for polling,
16 telephone calls, and travel – are not considered “contributions” and “expenditures” within the
17 meaning of the Act. 11 C.F.R. §§ 100.72(a), 100.131(a). Nonetheless, only funds that comply
18 with the Act’s contribution limits and source requirements may be used for testing the waters
19 activities. *Id.* An individual becomes a candidate for federal office when his or her campaign
20 either receives \$5,000 in contributions or makes over \$5,000 in expenditures. 2 U.S.C.
21 § 431(2)(A). Money raised and spent solely to “test the waters” does not count toward this
22 \$5,000 threshold until the individual makes the decision to run for federal office or conducts
23 activities that indicate he or she has decided to become a candidate. 11 C.F.R. §§ 100.72(a),

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100.131(a). At that point, funds already raised and spent to "test the waters" are considered contributions and expenditures and are subject to the reporting requirements of the Act. *Id.* Such contributions and expenditures must be reported with the first report filed by the candidate's principal campaign committee. *Id.*, see also 2 U.S.C. § 434(b).

In past matters, the Commission has determined that state and federal committees must share the costs of polls that include questions aimed at benefitting a federal candidacy. For example, in MUR 5480 (Liane Levetan for Congress), a poll conducted by a federal candidate's state committee violated 2 U.S.C. § 441i(e) and 11 C.F.R. 110.3(d) because it asked questions about the candidate that the federal committee admitted were aimed at benefitting the federal candidacy. Although the federal committee later reimbursed the state campaign for one-half of the poll's cost, the Commission found that the transfer nonetheless was unlawful because the federal committee did not pay for one-half of the poll at the time it was conducted and did not report an in-kind contribution from the state campaign.⁴

In this matter, Respondents state that "the purpose of the poll was two-fold: to assist [State] Senator McLeod in identifying issues of importance to her [State] Senate district constituents, and to help her make the important decision about whether to seek the office of County Supervisor or member of the House of Representatives." Resp. at 5. Respondents concede that "the portion of the polling devoted to testing the waters for the Congressional race should not have been paid by the [State] Senate and supervisorial committees, and instead should

⁴ The Commission has not pursued allegations where the respondents have demonstrated that the polling by a candidate for federal and state office was conducted only to benefit the state campaign. See MUR 5426 (Dale Schultz) (expenditures by state committee for state party to re-analyze polling data from an earlier state office race were not in-kind contributions to candidate's federal race); MUR 5761 (Patricia Madrid) (disbursements made in connection with a state committee's poll that appeared to compare candidate to other potential candidates for various statewide offices were not in-kind contributions to federal committee).

1 have been paid by sources permissible under the testing-the-waters provision and later attributed
2 to the Congressional committee if and when it was created.” Resp. at 6.

3 In April 2012, Respondents reviewed the content and scope of the poll and determined
4 that the portion that was reasonably related to the congressional race was approximately 54.5%.

5 *Id.* Based on that determination, Respondents assert that the portion of the polling and survey
6 research costs that should have been attributed to the Federal Committee was \$16,429.09, and
7 accordingly, the Federal Committee remitted checks to the State and Supervisor Committees in
8 the amounts of \$8,214.55 and \$8,214.54, respectively. *Id.* Resp. at Ex. C.

9 Because the polling was admittedly related, at least in part, to McLeod’s potential federal
10 candidacy, it was required to be paid for with funds that comply with the Act’s contribution
11 limits and source requirements. And, once McLeod became a congressional candidate, the
12 payments by State and Supervisor Committees in connection with the polling became
13 impermissible in-kind contributions to the Federal Committee.⁵ 11 C.F.R. §§ 100.72(a),
14 100.131(a). Therefore, we recommend the Commission find reason to believe that McLeod, and
15 the Federal, State, and Supervisor Committees each violated 2 U.S.C. § 441i(e)(1)(A) and
16 11 C.F.R. § 110.3(d). We further recommend that the Commission find reason to believe that
17 the Federal Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 100.72(a) by failing to report
18 the in-kind contributions.

⁵ In their response, Respondents contend that the Complaint is “incorrect in alleging that the non-existent federal committee received in-kind contributions from the Senate and Supervisor committees,” and explain that “it was not the intention of either non-federal committee to make a prohibited contribution.” Resp. at 6. Respondents assert that they had the poll questions reviewed by counsel and were advised to allocate the costs of the polling between the State and Supervisor Committees; counsel purportedly did not raise the issue of whether the poll benefitted McLeod’s potential federal candidacy. *Id.* at 5. Respondents argue that the failure to allocate costs to the Federal Committee occurred because “there was a misunderstanding on the part of respondents about how the costs should be paid in reliance on the advice of counsel.” *Id.* A substantiated claim of reliance on counsel may mitigate a civil penalty, but does not absolve liability. See *FEC v. Friends of Janie Harmon*, 59 F. Supp. 2d 1046, 1058 (C.D. Cal. 1999).

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B. Excessive Contribution

The Federal Committee's 2011 Year End Report disclosed the receipt of an \$8,000 contribution from the partnership of Lang, Hansen, O'Malley & Miller on December 23, 2011. Based on the disclosure report, the Complaint alleges that LHOM made, and the Federal Committee received, an excessive contribution. Compl. at 1-2.

The Act provides that contributions by any person to a federal candidate may not exceed the contribution limit, which in 2011-12 was \$2,500 per election cycle. 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 110.1(b). The Act's regulations hold a committee's treasurer responsible for examining all contributions received by the committee and making "best efforts" to ensure such contributions comply with the Act. 11 C.F.R. § 103.3(b). If the treasurer determines that a contribution exceeds the contribution limitations, the committee has 60 days to refund the excessive contribution, or obtain a written redesignation or reattribution of the excessive portion. 11 C.F.R. § 103.3(b)(3). A contribution by a partnership must be attributed to the partnership and to each applicable partner and must not exceed the limitations on contributions. 11 C.F.R. § 110.1(e).

The Federal Committee acknowledges that it received an \$8,000 contribution from LHOM. As required, however, the Federal Committee contacted LHOM regarding the contribution and arranged to refund \$6,000 of the contribution, with the remaining \$2,000 attributed individually to each of LMOH's four partners equally, resulting in a per partner contribution of \$500.⁶ Resp. at 2; LHOM Resp. at 2 (Mar. 15, 2012). On February 21, 2012, as the Act requires, exactly 60 days after receiving the initial contribution, the Federal Committee issued the refund check of \$6,000 to the partnership. *Id.* Therefore, we recommend the

⁶ LHOM has no other partners and none of the four named individual partners have contributed any funds to the Federal Committee other than the contribution at issue.

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Commission find no reason to believe that LHOM or the Federal Committee violated 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 110.1(b) by making or receiving an excessive contribution.

C. Fundraising Solicitation Violations

On September 22, 2011, the Federal Committee hosted a fundraising event. Compl. at 2, Ex. 2. The invitation, attached hereto as Attachment 1, was sent as a single-page e-mail attachment to approximately 2,100 recipients. *Id.* The invitation includes date, time, and location details about the fundraising event, as well as information about how RSVP or get additional information about the event. *Id.* The invitation also provides spaces for the recipient to indicate how much they would like to contribute and includes the statement, "Federal campaign finance laws require that we obtain the following information" over blank spaces for the recipient/donor to provide his name, occupation, employer, street address, phone, fax, and email. *Id.* Under the lines for donor information are details about where to send contributions to the Federal Committee and the statement, "ALL THE INFORMATION ABOVE IS REQUIRED BY LAW" (upper case in original). *Id.* Centered at the bottom of the invitation is the following disclaimer:

Paid for and Authorized by Gloria Negrete McLeod for Congress. Contributions to Gloria Negrete McLeod for Congress will first be applied to the 2012 Primary Election, then to the 2012 General Election in the 35th Congressional District. Contributions are not tax-deductible for income tax purposes. An individual may contribute up to a maximum of \$2500 per individual per election. A Federal/Multi-Candidate PAC may contribute a maximum of \$5,000 per election. State and local PACs may contribute maximum \$1,000 (*sic*). Corporate contributions and cash cannot be accepted.

Id.

The Complaint alleges that the invitation violates the Act in three ways: (1) it has an incomplete disclaimer; (2) it does not comply with best efforts to collect contributor information; and (3) it solicits impermissible non-federal funds. We consider these issues in turn.

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1 1. Disclaimer

2 The Complaint alleges that the disclaimer does not comply with the requirements of
3 11 C.F.R. § 110.11(c)(2)(ii) because it "does not clearly indicate who paid for the
4 communication and the disclaimer is not contained in a text box set apart from other contents of
5 the communication." Compl. at 2.

6 The following types of communications require a disclaimer identifying the person
7 paying for the communication: (1) any public communication made by a political committee; (2)
8 electronic mail of more than 500 substantially similar communications when sent by a political
9 committee; (3) a political committee web site available to the general public; or (4) any public
10 communication made by any person that contains express advocacy, solicits a contribution, or
11 qualifies as an "electioneering communication" under 11 C.F.R. § 100.29. 2 U.S.C. § 441d and
12 11 C.F.R. § 110.11(a). The disclaimer must be "presented in a clear and conspicuous manner, to
13 give the reader, observer, or listener adequate notice of the identity of the person or political
14 committee that paid for, and where required, that authorized the communication." 11 C.F.R.
15 § 110.11(c). For printed communications, the disclaimer must comply with specifically
16 enumerated size, type, and font requirements set forth in the regulations and "must be contained
17 in a printed box set apart from the other contents of the communication." 11 C.F.R.
18 § 110.11(c)(2)(i) - (ii).

19 Contrary to the Complaint's allegations, the disclaimer at the bottom of the Federal
20 Committee's invitation is clearly readable, and states that the communication was "Paid for and
21 Authorized by Gloria Negrete McLeod for Congress." Compl. at Ex. 2. Thus, the disclaimer is
22 clear and conspicuous, and provides the invitation recipient with adequate notice that the Federal
23 Committee paid for and authorized the solicitation. The disclaimer also meets the size, type, and

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1 font requirements of 11 C.F.R. § 110.11(c)(2)(i). The disclaimer, however, is not set aside in a
2 separate text box required for printed communications by 11 C.F.R. § 110.11(c)(2)(ii).⁷

3 Notwithstanding the absence of the required box, because the other substantive
4 requirements of Section 110.11 were met, we recommend the Commission exercise prosecutorial
5 discretion and dismiss the allegation that the Federal Committee violated 2 U.S.C. § 441d and
6 11 C.F.R. § 110.11. *See Heckler v. Chaney*, 470 U.S. 821 (1985); *see also* MURs 6270 (Rand
7 Paul) (dismissing § 110.11 violation where disclaimer not in text box); MUR 6260 (Radkowski)
8 (same); MUR 6153 (New Mexico-Democratic Legislative Campaign Committee.) (same).

9 **2. Best Efforts**

10 The Complaint alleges, without elaboration or support, that the Federal Committee's
11 fundraising invitation "failed to comply with the 'best efforts' notification required by FEC
12 Regulation 104.7(b)." Compl. at 2.

13 The Act instructs that when the treasurer of a political committee shows that best efforts
14 have been used to obtain the information required by the Act, any report of the committee is
15 deemed in compliance with the Act. 2 U.S.C. § 432(i). The Commission regulations further
16 specify that, with regard to obtaining and reporting contributor information, the committee will
17 be deemed to have exercised best efforts only if all written solicitations contain a clear request
18 for the contributor's full name, mailing address, occupation and name of employer, and include

⁷ While the solicitation was sent by electronic mail, it is a separate printable attachment that would need to be printed out by the recipient in order to complete the form with the requested donor information, and thus appears to qualify as a "printed communication" for the purpose of disclaimer requirements. Because the solicitation was sent as a .pdf attachment to the electronically mailed invitation, rather than as a hyper-link to a page on the Federal Committee's website, the solicitation does not fall within the Commission's prior determination that internet webpages do not constitute "printed communications" for the purpose of disclaimer requirements. *See Statement of Reasons*, MUR 5526 (Graf for Congress, *et al.*) (Comm'rs. Weintraub, Walther, Lonhard, Marion, Toner, and von Spakovsky) ("SOR"); MUR 6406 (Lee Terry for Congress, *et al.*) (citing the SOR, the Commission unanimously found that "Internet pages" do not constitute "printed communications").

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1 an accurate statement of federal law regarding the collection and reporting of individual
2 contributor identifications. 11 C.F.R. § 104.7(b).

3 Here, the fundraising invitation clearly requests the required contributor information. *See*
4 Attachment 1. Text near the bottom of the invitation states that "Federal campaign finance laws
5 require that we obtain the following information" and then requests the contributor's name,
6 occupation, employer, address, and other contact information. Further, following the
7 information request, the solicitation states that "ALL THE INFORMATION ABOVE IS
8 REQUIRED BY LAW." *Id.* (upper case in original). Thus, we recommend the Commission
9 find no reason to believe that the Federal Committee violated 11 C.F.R. § 104.7(b).

10 3. Solicitation of Non-Federal Funds

11 The Complainant also alleges that because the invitation includes in its disclaimer the
12 statement that "State and local PACs may contribute maximum \$1,000" the disclaimer violates
13 11 C.F.R. § 300.61. This Commission regulation prohibits federal candidates from soliciting
14 funds from prohibited sources in connection with a federal election.⁸ Compl. at 3. Complainant
15 notes that some state and local PACs are not federal political committees and could therefore
16 contribute funds to the Federal Committee from prohibited sources.⁹ Compl. at 3.

17 The Act provides that a candidate shall not "solicit, receive or spend funds" in connection
18 with an election for federal office unless the funds are subject to the limitations, prohibitions, and
19 reporting requirements of the Act. 2 U.S.C. § 441i(e); *see also* 2 U.S.C. §§ 441a(f), 441a(a)(1)
20 (prohibiting contributions in excess of \$2,500 per election from an individual or partnership),

⁸ The relevant portion of the disclaimer reads in full: "A Federal/Multi-Candidate PAC may contribute a maximum of \$5,000 per election. State and local PACs may contribute maximum \$1,000. Corporate contributions and cash cannot be accepted." Attachment 1.

⁹ *See, e.g.,* <http://www.fppc.ca.gov/bulletin/007-Dec-2012StateContributionLimitsChart.pdf> (chart listing California contribution limits, including from "business entities," and in amounts in excess of the Act's limitations).

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2 U.S.C. §§ 441b, 441e (prohibiting funds from corporations, unions, and foreign nationals);
11 C.F.R. § 300.61.

Respondents deny any intent to solicit from state and local PACs contributions that do not comply with the Act's prohibitions, contribution limits and reporting requirements. The Response explains, "Respondents were and are aware that state and local committees may only make contributions to federal candidate committees from federally permissible funds." Resp. at 5. The Response further asserts, "Respondents are not aware of any FEC regulation that requires them to explain to potential donors the law regarding donors' compliance with federal registration and reporting rules." *Id.* Respondents' intent, however, is not dispositive.

The invitation clearly solicits funds, *see* 11 C.F.R. § 300.2(m) (defining "to solicit"). This includes the unqualified solicitation of funds from "state and local PACs" -- entities that might themselves be prohibited sources.¹⁰ If any of the state and local PACs were incorporated, the inclusion of the disclaimer statement specifying that the Federal Committee was soliciting only federally permissible funds (*e.g.*, the invitation's sentence that "[c]orporate contributions . . . cannot be accepted") would not cure the prohibited solicitation. *See, e.g.*, MUR 6268 (Alan Grayson) (noting that a disclaimer cannot cure an otherwise prohibited solicitation of "\$500 per . . . corporate entity" and finding reason to believe a committee violated section 441i(e)).

Notwithstanding the fact that the Federal Committee solicited non-federal funds from non-federal committees, a review of the Federal Committee's disclosure reports indicates that the Federal Committee in fact received no contributions from state and local PACs as a result of the

¹⁰ Commission regulations exempt from the corporate restrictions of the Act and Commission regulations those organizations that are incorporated for liability purposes only and are "political committees" under the Act and Commission regulations. *See* 11 C.F.R. § 114.12. In the invitation here, the solicitation of funds from "state and local PACs" was expressly distinguished from the solicitation of funds from federal political committees. *See* Attachment 1. Some of these entities may be incorporated. We do not, however, know to which entities this solicitation was sent.

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1 solicitation. In fact, the Federal Committee has not reported receiving any money from any non-
2 federal PACs for the 2012 election cycle. Under these circumstances, we recommend the
3 Commission exercise its prosecutorial discretion and dismiss allegations that McLeod and the
4 Federal Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 300.61 because
5 investigation of this matter does not warrant further use of Commission resources. *See Heckler*
6 *v. Chaney*, 470 U.S. 821 (1985). We further recommend the Commission caution McLeod and
7 the Federal Committee with respect to their solicitations in the future.

8 **D. Disbursement of Non-Federal Funds to State and Local Candidates**

9 After McLeod became a federal candidate, the State Committee made nine contributions
10 totaling \$15,800 to California state and local candidates and political committees ranging in
11 amounts from \$100 to \$3,900.¹¹ Resp. at 4, Ex. B. The Complaint alleges that these
12 contributions were made in violation of 11 C.F.R. § 300.62. Compl. at 2-3. According to the
13 Response, the State Committee made the contributions with funds that complied with the Act's
14 contributions limits and source prohibitions. Resp. at 4, Ex. B.

15 The Act and Commission regulations allow a federal candidate, a candidate's agent, and
16 entities established, financed, maintained, or controlled by them to direct, transfer, spend, or
17 disburse funds in connection with a non-Federal election "only in amounts and from sources that
18 are consistent with State law, and that do not exceed the Act's contribution limits or come from
19 prohibited sources under the Act." 11 C.F.R. § 300.62; 2 U.S.C. § 441i(e)(1)(B). These
20 provisions apply to a state campaign committee that was established, financed, maintained, or
21 controlled by an individual who is now a federal candidate. *See Advisory Opinion 2007-26*
22 (Schock). Such a state committee may use a reasonable accounting method to determine which

¹¹ Respondents contend that the \$18,000 in contributions alleged in the complaint is incorrect because it includes contributions made by the State Committee before McLeod declared her federal candidacy on September 6, 2011. Resp. at 4.

1 of its funds are federally permissible when making contributions to other state committees,
2 provided such donations are consistent with state law. *Id.*

3 Respondents provide charts that they contend demonstrate that using either the "First
4 In/First Out" (FIFO) accounting method or the "Last In/First Out" (LIFO) accounting method,
5 the State Committee had more than \$15,800 in federally permissible funds in its account when it
6 made the contributions to state and local candidates and committees. *Id.* at Ex. B. Respondents'
7 charts also include lists of the contributors from whom these funds were derived; some of these
8 contributors are listed as individuals, while others are listed as federal political committees,
9 "small contributor" state PACs, or state PACs that themselves received contributions from only
10 individuals.¹² *Id.*

11 Although it appears that the State Committee's contributions were within the contribution
12 limits set forth in §441a(a)(1), the State Committee does not appear to have sufficient funds from
13 sources that are not prohibited under the Act with which to make those contributions. Some of
14 the funds the State Committee characterizes as from federally permissible sources appear to be
15 from prohibited sources. A comparison of the entities listed in the LIFO/FIFO charts provided in
16 the Response against corporation records maintained by the California Secretary of State
17 indicates that at least some of the "small contributor" state PACs from which the State
18 Committee received contributions are incorporated for liability purposes.¹³ Resp. at Ex. B.

19 Although the Commission's regulations provide an exception to the Act's general
20 prohibition on corporate contributions for registered federal committees that are incorporated for

¹² Respondents explain that a "small contributor" state PAC may only accept contributions from individuals who may contribute no more than \$200 per calendar year, and that such committee makes contributions to at least five candidates every six months. Resp. at 3, n. 2 (*citing* Cal. Gov. Code § 85203; 2 Cal. Code Reg. § 18503).

¹³ See <http://kepler.sos.ca.gov/>. We do not know the corporate status of each of the entities listed by Respondents.

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1 liability purposes, *see* 11 C.F.R. § 114.12, that exception does not extend to incorporated state
2 political entities. Therefore, for the purposes of 2 U.S.C. § 441i, the contributions the State
3 Committee received from at least some of these state PACs may be regarded as having come
4 from prohibited sources.

5 Nonetheless, we recommend the Commission exercise its prosecutorial discretion and
6 dismiss allegations that McLeod and the State Committee violated 2 U.S.C. § 441i(e)(1)(B) and
7 11 C.F.R. § 300.62 in connection with contributions made by the State Committee to state
8 candidates and committees; because of the small amount in violation, investigation of this matter
9 does not warrant further use of Commission resources. *See Heckler v. Chaney*, 470 U.S. 821
10 (1985). We further recommend the Commission caution McLeod and the State Committee with
11 respect to their disbursements of non-federal funds.

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16 **IV. RECOMMENDATIONS**
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- 1 (1) Find reason to believe that Gloria Negrete McLeod, Gloria Negrete McLeod
2 for Senate 2010, Gloria Negrete McLeod for Supervisor 2014, and Gloria
3 Negrete McLeod for Congress and Gilbert McLeod in his official capacity as
4 treasurer violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. §§ 110.3(d) by using
5 non-federal funds to pay for polling and survey research for a federal election;
- 6 (2) Find reason to believe that Gloria Negrete McLeod for Congress and Gilbert
7 McLeod in his official capacity as treasurer violated 2 U.S.C. § 434(b) and
8 11 C.F.R. § 100.72(a) by failing to report an in-kind contribution;
- 9 (3) Find no reason to believe that Lang, Hansen, O'Malley & Miller violated
10 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 110.1(b) by making an excessive
11 contribution;
- 12 (4) Find no reason to believe that Gloria Negrete McLeod for Congress and
13 Gilbert McLeod in his official capacity as treasurer violated 2 U.S.C.
14 § 441a(a)(1) and 11 C.F.R. § 110.1(b) by receiving an excessive contribution;
- 15 (5) Dismiss allegations that Gloria Negrete McLeod for Congress and Gilbert
16 McLeod in his official capacity as treasurer violated 2 U.S.C. § 441d and
17 11 C.F.R. § 110.11 by failing to include the proper disclaimer on a fundraising
18 solicitation;
- 19 (6) Find no reason to believe that Gloria Negrete McLeod for Congress and
20 Gilbert McLeod in his official capacity as treasurer violated 11 C.F.R.
21 § 104.7(b) failing to use "best efforts" to collect contributor information in a
22 fundraising solicitation;
- 23 (7) Dismiss allegations that Gloria Negrete McLeod or Gloria Negrete McLeod
24 for Congress and Gilbert McLeod in his official capacity as treasurer violated
25 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 300.61 and caution these
26 respondents with respect to their solicitations in order to avoid the solicitation
27 of prohibited funds;
- 28 (8) Dismiss allegations that Gloria Negrete McLeod, Gloria Negrete McLeod for
29 Congress and Gilbert McLeod in his official capacity as treasurer, or Gloria
30 Negrete McLeod for Senate 2010 violated 2 U.S.C. § 441i(e)(1)(B) and 11
31 C.F.R. § 300.62 by disbursing non-federal funds to state and local candidates
32 and caution these respondents with respect to their disbursements of non-
33 federal funds;
- 34 (9) Approve the attached Factual and Legal Analyses;
- 35 (10) Authorize conciliation prior to a finding of probable cause to believe;
- 36 (11)

(12) Approve the appropriate letters.

Anthony Herman
General Counsel

1-14-13
Date

BY: K. H. Guith
Kathleen Guith
Deputy Associate General Counsel
for Enforcement

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Camilla Jackson Jones
Camilla Jackson Jones
Attorney

Attachments:

1. Federal Committee Invitation and Solicitation

Please Join

Senator Gloria Negrete McLeod

for her

Birthday Mixer

Thursday, September 22nd
6:00 p.m. - 8:30 p.m.

Sixth Street Center
Sky Room, 4th Floor
1131 West Sixth Street
Ontario, CA 91762

\$99 per person \$500 Supporter \$1500 Co-Sponsor \$2500 Sponsor

To RSVP or for more information call Manuel J. Carrillo at
or email

- () Yes! I will attend. Enclosed is _____
() I cannot attend, but please accept a contribution of \$100 _____ \$500 _____
\$1,000 _____ Other \$ _____

Federal campaign finance laws require that we obtain the following information:

Name	Occupation	Employer
Address		City/State/Zip
Phone	Fax	Email

Please make checks payable to:
Gloria Negrete McLeod for Congress
Mail to: _____, Chino, CA 91710

ALL THE ABOVE INFORMATION IS REQUIRED BY LAW

Paid for and Authorized by Gloria Negrete McLeod for Congress. Contributions to Gloria Negrete McLeod for Congress will first be applied to the 2012 Primary Election, then to the 2012 General Election in the 35th Congressional District. Contributions are not tax-deductible for income tax purposes. An individual may contribute a maximum of \$2500 per individual per election. A Federal/Multi-Candidate PAC may contribute a maximum of \$5,000 per election. State and local PACs may contribute maximum \$1,000. Corporate contributions and cash cannot be accepted.

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