



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 23 2013

BY FIRST CLASS MAIL AND FACSIMILE (510) 346-6201

James Harrison, Esq.
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San Leandro, CA 94577

RE: MUR 6529
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

Dear Mr. Harrison:

On February 14, 2012, the Federal Election Commission notified your clients, Representative Gloria Negrete McLeod, Gloria Negrete McLeod for Congress and Gilbert McLeod in his official capacity as treasurer (the "Federal Committee"), Gloria Negrete McLeod for Senate 2010 (the "State Committee"), and Gloria Negrete McLeod for Supervisor 2014 (the "Supervisor Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 9, 2012, the Commission found, on the basis of the information provided in the complaint and by your clients, that there is no reason to believe that Gloria Negrete McLeod for Congress and Gilbert McLeod in his official capacity as treasurer violated 2 U.S.C. § 441a(a)(1) and 11 C.F.R. §§ 110.1(b) and 104.7(b). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

The Commission considered the allegations in the complaint that McLeod and the Federal, State and Supervisor Committees violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by using non-federal funds to pay for polling and survey research for a federal election, and that the Federal Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 100.72(a) by failing to report the in-kind contributions from the State and Supervisor Committees. The Commission also considered allegations that the Federal Committee violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by failing to include the proper disclaimer on a fundraising solicitation, and that McLeod and the Federal Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting prohibited funds. Finally, the Commission considered allegations that McLeod and the State Committee violated 2 U.S.C. § 441i(e)(1)(B) and 11 C.F.R. § 300.62 by

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disbursing non-federal funds to state and local candidates and committees after she became a federal candidate. There were insufficient votes to make any findings on these allegations. Accordingly, on May 9, 2013, the Commission closed its file in this matter. A Statement of Reasons will follow.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Mark D. Shonkwiler
Assistant General Counsel

Enclosure

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gloria Negrete McLeod

MUR: 6529

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

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

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.

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1 information in its fundraising solicitation; and (4) soliciting non-federal funds from state and
2 local PACs for the benefit of the Federal Committee. Finally, the Complaint alleges that
3 McLeod and the State Committee disbursed non-federal funds to state and local candidates and
4 committees after McLeod became a federal candidate.

5 McLeod and the Committees submitted a joint response to the Complaint (the
6 "Response").³ The Commission found no reason to believe that Gloria Negrete McLeod for
7 Congress and Gilbert McLeod in his official capacity as treasurer violated 2 U.S.C. § 441a(a)(1)
8 and 11 C.F.R. § 110.1(b) by receiving an excessive contribution. The Commission further found
9 no reason to believe that Gloria Negrete McLeod for Congress and Gilbert McLeod in his
10 official capacity as treasurer violated 11 C.F.R. § 104.7(b) by failing to use "best efforts" to
11 collect contributor information in a fundraising solicitation, and closed the file. There were
12 insufficient votes to find reason to believe that respondents violated the other provisions of the
13 Act and Commission regulations that were alleged in the Complaint.

14 II. FACTUAL AND LEGAL ANALYSIS

15 A. Excessive Contribution

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

20 The Act provides that contributions by any person to a federal candidate may not exceed
21 the contribution limit, which in 2011-12 was \$2,500 per election cycle. 2 U.S.C. § 441a(a)(1);
22 11 C.F.R. § 110.1(b). The Act's regulations hold a committee's treasurer responsible for

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

1 examining all contributions received by the committee and making "best efforts" to ensure such
2 contributions comply with the Act. 11 C.F.R. § 103.3(b). If the treasurer determines that a
3 contribution exceeds the contribution limitations, the committee has 60 days to refund the
4 excessive contribution, or obtain a written redesignation or reattribution of the excessive portion.
5 11 C.F.R. § 103.3(b)(3). A contribution by a partnership must be attributed to the partnership
6 and to each applicable partner and must not exceed the limitations on contributions. 11 C.F.R.
7 § 110.1(e).

8 The Federal Committee acknowledges that it received an \$8,000 contribution from
9 LHOM. As required, however, the Federal Committee contacted LHOM regarding the
10 contribution and arranged to refund \$6,000 of the contribution, with the remaining \$2,000
11 attributed individually to each of LHOM's four partners equally, resulting in a per partner
12 contribution of \$500.⁴ Resp. at 2; LHOM Resp. at 2 (Mar. 15, 2012). On February 21, 2012,
13 exactly 60 days after receiving the initial contribution and therefore consistent with the Act, the
14 Federal Committee issued the refund check of \$6,000 to the partnership. *Id.* Therefore, the
15 Commission found no reason to believe that the Federal Committee violated 2 U.S.C.
16 § 441a(a)(1) and 11 C.F.R. § 110.1(b) by receiving an excessive contribution from LHOM.

17 **B. "Best Efforts" for Fundraising Solicitation**

18 On September 22, 2011, the Federal Committee hosted a fundraising event. Compl. at 2,
19 Ex. 2. The invitation, attached hereto as Attachment 1, was sent as a single-page e-mail
20 attachment to approximately 2,100 recipients. *Id.* The invitation includes date, time, and
21 location details about the fundraising event, as well as information about how to RSVP or get
22 additional information about the event. *Id.* The invitation also provides spaces for the recipient

⁴ 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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1 to indicate how much they would like to contribute and includes the statement, "Federal
2 campaign finance laws require that we obtain the following information" over blank spaces for
3 the recipient/donor to provide his name, occupation, employer, street address, phone, fax, and
4 email. *Id.* Under the lines for donor information are details about where to send contributions to
5 the Federal Committee and the statement, "ALL THE INFORMATION ABOVE IS REQUIRED
6 BY LAW" (upper case in original). *Id.* Centered at the bottom of the invitation is the following
7 disclaimer:

8 Paid for and Authorized by Gloria Negrete McLeod for Congress. Contributions
9 to Gloria Negrete McLeod for Congress will first be applied to the 2012 Primary
10 Election, then to the 2012 General Election in the 35th Congressional District.
11 Contributions are not tax-deductible for income tax purposes. An individual may
12 contribute up to a maximum of \$2,500 per individual per election. A
13 Federal/Multi-Candidate PAC may contribute a maximum of \$5,000 per election.
14 State and local PACs may contribute maximum \$1,000 (*sic*). Corporate
15 contributions and cash cannot be accepted.

16 *Id.*

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

20 The Act instructs that when the treasurer of a political committee shows that best efforts
21 have been used to obtain the information required by the Act, any report of the committee is
22 deemed in compliance with the Act. 2 U.S.C. § 432(i). The Commission regulations further
23 specify that, with regard to obtaining and reporting contributor information, the committee will
24 be deemed to have exercised best efforts only if all written solicitations contain a clear request
25 for the contributor's full name, mailing address, occupation and name of employer, and include
26 an accurate statement of federal law regarding the collection and reporting of individual
27 contributor identifications. 11 C.F.R. § 104.7(b).

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