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June 11, 2012

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VIA E-MAIL & COURIER

Jeff S. Jordan, Esquire
Supervisory Attorney
Office of the General Counsel
Federal Election Commission
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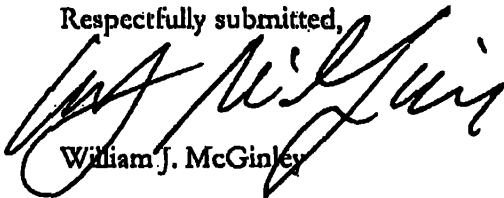
Re: MUR 6556
The Honorable Paul Broun
Paul Broun Committee and Paul Kilgore, as Treasurer

Dear Mr. Jordan:

Please find attached the response of our clients, The Honorable Paul Broun, and the Paul Broun Committee and Paul Kilgore, as Treasurer, to the notification from the Federal Election Commission that a complaint was filed against them in the above-captioned matter.

Please do not hesitate to contact us with any questions.

Respectfully submitted,



William J. McGinley

Attachments

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

The Honorable Paul Broun,
Paul Broun Committee
and Paul Kilgore, in his official capacity
as Treasurer.

MUR 6556

RESPONSE TO COMPLAINT IN MUR 6556

I. INTRODUCTION

This responds on behalf of our clients, The Honorable Paul Broun, Paul Broun Committee ("Campaign"), and Paul Kilgore, in his official capacity as Treasurer (collectively "Respondents"), to the notification from the Federal Election Commission ("Commission") that a complaint was filed against them in the above-captioned matter. Notwithstanding the Complaint's caviling: (1) the Respondents disclosed the full amount, source, principal repayment, and interest repayments for the loans at issue on the Campaign's FEC reports; (2) the home equity line of credit ("HELOC") used for a portion of those loans complied with the Act and Commission regulations; (3) the amount of principal the Campaign repaid Dr. Broun did not exceed the principal amount of his loans to the Campaign; and (4) the amount of interest the Campaign repaid Dr. Broun did not exceed – and indeed was *less* than – the amount of accrued interest on the HELOC that Dr. Broun paid to the lending institution. Thus, the only issue presented in this matter is the Campaign's oversight in inadvertently omitting Schedule C-1s for those loans derived from the HELOC, which the Campaign is the process of rectifying by submitting the proper amended reports and schedules.

For these and other reasons explained below, we submit that Respondents acted in good faith and substantially complied with applicable disclosure requirements, that the omission of the Schedule C-1s was inadvertent and relatively immaterial, and that the omission is being cured

through submission of amended reports. Therefore, we respectfully request that the Commission exercise its discretion and dismiss this matter entirely. Alternatively, if the Commission decides against outright dismissal, we respectfully request that it refer the matter to the Alternative Dispute Resolution Office ("ADR") for appropriate resolution rather than open an enforcement matter.

II. ANALYSIS

A. Dr. Broun loaned \$309,000 to the Campaign in calendar years 2007 and 2008, of which \$179,000 was derived from a HELOC secured by his personal residence.

During calendar years 2007 and 2008, Dr. Broun made \$309,000 in loans to the Campaign, of which \$209,000 was loaned on or before July 9, 2007. The loans made in the first half of 2007 all were made interest-free from Dr. Broun's personal funds and included: \$5,000 loaned in January 2007; \$80,000 loaned in March 2007; and \$10,000 loaned in May 2007. In May 2007, Dr. Broun obtained a HELOC on his personal residence, and on June 4, 2007 withdrew an initial amount of \$65,000 on that HELOC. This first HELOC withdrawal was intended at the time of the transaction as an in-kind loan to the campaign from Dr. Broun for the specific purpose of repaying \$65,000 of the \$80,000 loan of personal funds Dr. Broun had made to the Campaign in March 2007.¹ Dr. Broun made two additional loans to his Campaign using funds derived from the HELOC: \$34,000 in June 2007 and another \$80,000 in July 2007.

The final loan in this time period consisted of \$100,000 that Dr. Broun loaned interest-free to the Campaign in April 2008 from personal funds.² Of the total \$309,000 he loaned to the Campaign in years 2007 and 2008, only \$179,000 was derived from the HELOC, using his personal

¹ The Campaign is preparing, and will submit promptly to the Commission, all necessary amendments to the Campaign's reports disclosing this transaction and the Schedule C-1s for the 2007 HELOC (and for a 2010 HELOC into which the original balance for the 2007 HELOC was rolled over). The amended report covering May and June 2007 will show the \$65,000 in-kind loan from Dr. Broun derived from the HELOC, which was used to make an initial \$65,000 repayment on the \$80,000 loan made from Dr. Broun's personal funds during March 2007.

² Dr. Broun did not charge the Campaign any interest on the candidate loans he made to the Campaign using his personal funds.

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residence to secure the loan, as permitted by the Act and Commission regulations.³ The other \$130,000 of the candidate loans came from Dr. Broun's personal funds and not from the HELOC or any other bank loan.

Beginning in August 2007 and ending in February 2011, the Campaign repaid Dr. Broun the principal on both the candidate loans made from personal funds and the loans derived from the HELOCs. In addition, from February 2010 through April 2011, the Campaign repaid \$30,201.46 in interest to Dr. Broun to cover a portion of the HELOC accrued interest payments. In fact, Dr. Broun paid the lending bank a total of \$36,260.49 in accrued interest on the HELOCs, which is \$6,059.03 more than Dr. Broun received from the campaign for those HELOC interest payments. See Exhibit A (Bank Loan Transaction History for Each HELOC and Yearly Interest Statements from the Bank). Thus, the amount of interest the Campaign repaid Dr. Broun did not exceed – and indeed was significantly *less* than – the amount of accrued interest on the HELOC that Dr. Broun paid to the lending institution.

B. Dr. Broun's HELOC complied with the Act and Commission regulations: it was obtained from a bona fide lending institution, and its commercially reasonable terms complied with applicable laws.

A HELOC that is used by a candidate in connection with his campaign for federal office must be made in accordance with applicable law, under commercially reasonable terms, and in the lending institution's normal course of business. 11 C.F.R. § 100.83(a)(1)-(2). Each endorser shall be deemed to have contributed that portion of the total amount of the loan derived from an advance on the candidate's HELOC. *Id.* § 100.83(b). The candidate's principal campaign committee may repay a candidate loan derived from a HELOC directly to the candidate or to the original lender. *Id.*

³ Dr. Broun did not personally charge the campaign any interest on the candidate loans he made to the campaign derived from the HELOCs. Rather, the Campaign paid only the interest charged by the bank on the candidate loans derived from the HELOC, as detailed in this response and its attachments.

§ 100.83(d). The amount of the repayment shall not exceed the amount of the principal used in connection with the campaign and the interest that has accrued on that portion of the principal. *Id.*

Dr. Broun obtained his HELOCs from Athens First Bank, a bona fide lending institution that extends this type of credit in its ordinary course of business, and the loan terms were commercially reasonable and complied with all applicable laws. *See* Exhibit B (Loan Agreements). Dr. Broun was the sole endorser on the HELOCs. *Id.* The Campaign repaid Dr. Broun directly for both the principal and a portion of the interest charged to Dr. Broun in connection with the candidate loans derived from the HELOC, as permitted under 11 C.F.R. § 100.83(d), and those repayments did not exceed the amount of principal and accrued interest of the loans used in connection with the campaign. *See* Exhibit A (Bank Loan Transaction History for Each HELOC and Yearly Interest Statements from the Bank). In fact, the Campaign's total interest payments to Dr. Broun were \$6,059.03 *less* than Dr. Broun paid the lending institution in accrued interest on those HELOCs. *See* Exhibit A (Bank Loan Transaction History for Each HELOC and Yearly Interest Statements from the Bank). Accordingly, Dr. Broun's HELOC complies with all requirements of the Act and Commission regulations in its source, structure, terms, and repayment.

C. The Campaign reported in good faith and substantially complied with the disclosure requirements applicable to candidate loans derived from HELOCs.

HELOCs used in connection with a campaign must be reported by the candidate's principal campaign committee in accordance with Section 104. 11 C.F.R. § 100.83(e). If the candidate obtains a HELOC, "only the candidate needs to be listed as the source of the loan on Schedule C." FEC Form 3 instructions at 15. In addition, the campaign must disclose the receipt of the candidate loan on Schedule A and the loan repayments on Schedule B. *See* 11 C.F.R. § 104.3(a)(3) (describing categories of receipts required to be disclosed, including loans made, guaranteed, or endorsed by the candidate from an advance on a HELOC described in § 100.83.); *id.* § 104.3(b)(2) (describing

categories of disbursements required to be disclosed, including the repayment of loans made, guaranteed or endorsed by the candidate to his or her authorized committee, including loans derived from advances on a HELOC described in § 100.83.); *id.* § 104.3(b)(4) (describing the itemization of disbursements made by authorized committees, including each person who receives a loan repayment, including a repayment of a loan of money from a HELOC described in § 100.83, during the reporting period together with the date and amount of such loan repayments.).

The campaign also must file a Schedule C-1 for the reporting period in which a candidate loan derived from a HELOC is made to the campaign. *See id.* § 104.3(d)(4) (providing that when a candidate obtains a loan of money derived from a HELOC used in connection with the campaign, the candidate's principal campaign committee shall disclose in the report covering the period when the loan was obtained, the following information on C-1: (i) the date, amount, and interest rate of the loan or line of credit; (ii) the name and address of the lending institution; and (iii) the types and value of collateral or other sources of repayment that secure the loan or line of credit, if any.).

In addition, the campaign must report its repayment to either the candidate or the lending institution. *Id.* § 104.9(f). If the campaign, however, makes repayments to the candidate, the campaign is not required to report the payments from the candidate to the lending institution. *See* 67 Fed. Reg. 38356 (June 4, 2002) ("Section 104.3(b)(4)(iv) is deleted, removing the requirement that the principal campaign committee report each person who receives a repayment from the candidate."); 67 Fed. Reg. 38357 ("Repayment by the candidate's committee to the lending institution or the candidate is reported as an itemized entry on schedule B. Unlike the proposed rules, the committee is not required by the final rules to report repayments by the candidate to the lending institution.") (emphasis added); FEC Form 3 Instructions at 15 ("When repayments are made to the candidate for candidate loans, the committee is not required to report the repayments made by the candidate to the lending institution.").

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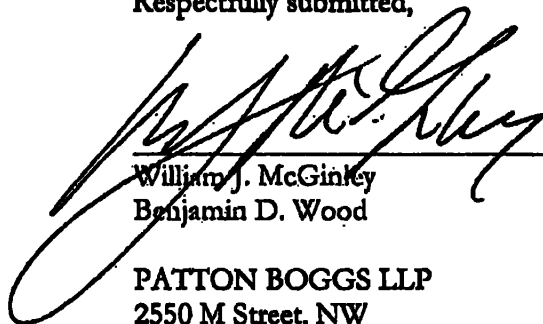
The Campaign reported each loan received from Dr. Broun on Schedule A and Schedule C for the applicable reporting period. Each repayment of loan principal was reported properly on Schedule B and Schedule C, and each loan repayment disclosed on Schedule B contained the description "Repay Loan Made/Guar by Cand," clearly informing the voting public that the repayments applied to candidate loans from personal funds or those derived from a HELOC guaranteed or endorsed by the candidate. Accordingly, the Campaign disclosed the receipt of the candidate loans and all of the loan repayments, including the interest payments for the candidate loans derived from the HELOC, in good faith and in a timely manner.

Although the Campaign acted in good faith in making all of those substantial disclosures as required, Respondents do not dispute that the Campaign did not file the required Schedule C-1s for each of the candidate loans derived from the HELOC. As discussed in footnote 1, *supra*, the Campaign is preparing all necessary amendments to correct this inadvertent mistake, and will promptly submit all amended reports and Schedule C-1s to the Commission. The submission of those amended reports will cure the reporting error at issue in this matter.

III. CONCLUSION

In light of the Respondents' transparent and good faith reporting, substantial compliance with applicable disclosure requirements, and self-corrective remedial measures, we respectfully request that the Commission exercise its discretion and dismiss this matter. Alternatively, if the Commission does not dismiss, we ask that it refer this matter to ADR for resolution.

Respectfully submitted,



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June 11, 2012