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Camilla Jackson Jones
Attorney
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

**Re: MUR 7343**

Dear Ms. Jackson Jones:

We write on behalf of Highway 31 and Edward Still in his official capacity as treasurer (the "Committee"), in response to the Federal Election Commission's (the "Commission") letter dated August 2, 2019 pertaining to MUR 7343. Below, the Committee provides responses to the Commission's questions and presents additional discussion regarding this matter.

**DISCUSSION**

The Commission found that there is reason to believe the Committee violated 52 U.S.C. § 30104(b)(4) by failing to properly report disbursements made to pay its debts and obligations. Specifically, the Commission found reason to believe that the Committee failed to report contributions from certain vendors, which were in fact extensions of credit. The Commission determined that the record supports a conclusion that the vendors' extensions of credit were not made in the ordinary course of business and therefore should have been reported as contributions on the Committee's Pre-General Report.

The Commission should find that no violation occurred and dismiss this matter. Importantly, the Commission did not find reason to believe that the Committee received prohibited contributions; merely that the debt owed to the named vendors should have been reported on a different schedule of the Committee's Pre-General Report. The Committee did in fact disclose all of the transactions at issue in this matter, and it disclosed them according to the knowledge the Committee had at the time. The Committee engaged the vendors to create independent expenditures in connection with the Alabama special election and fully intended to pay the vendors the fair market value for their services. The vendors sent the Committee invoices for the services performed, indicating that the parties all treated the amounts owed as debt. Accordingly, the Committee reported the sums owed to the vendors as outstanding debt on Schedule D of the Pre-General Report,[1] as required by the Federal Election Campaign Act of 1971, as amended

[1] Highway 31 Pre-Election Report (Nov. 30, 2017), http://docquery.fec.gov/pdf/779/201711309087675779/201711309087675779.pdf.

(the "Act"), and its accompanying regulations ("Commission Regulations").[2] As the Commission recognized, the Committee paid off the debts within a "short" time of incurring the obligations and reported when it extinguished these debts on the Year-End Report.[3]

The Commission found reason to believe that the vendors' extensions of credit to the Committee were contributions because they were not made in the ordinary course of the vendors' business.[4] However, the record contains insufficient evidence to support the Commission's conclusion. As the Committee explained in its May 2, 2018 letter, certain of the vendors have been reported on other political committees' debt schedules; although not under circumstances identical to the one at hand in this matter, this should lend support to the Committee's reasonable understanding that when it engaged and received services from the vendors, the Committee had incurred debt and had not received contributions. Additionally, while the Commission suggests that the vendors have never extended credit to a "similarly situated committee,"[5] this does not necessarily mean that the extension of credit was outside of the vendors' ordinary business practices. It is not a requirement that a vendor has extended similar credit to another political committee reporting to the Commission to find that credit was extended in the ordinary course of the vendor's business.[6] Moreover, the Commission should recognize that the vendors extended credit in connection with services provided in a special election and on a very tight timeline. The extensions of credit were not necessarily outside of the ordinary course of business *in the context of a high profile special election*. Where a vendor might not extend credit to a new committee at the beginning of a two-year election cycle, it should be unsurprising that the vendor would extend credit to different types of committees in order to take advantage of the business opportunities that a special election presents. The evidence on the record simply does not support the conclusion that the vendors' extensions of credit were obviously outside of their ordinary business practices in the context of providing services in a special election.

Even if the vendors did not in fact extend credit to the Committee outside of the ordinary course of business, the Committee had no way to know that such practice was atypical. The Committee, after all, had a very short existence and was not in the practice of engaging with media and production vendors. It would be unfair to place the burden of demonstrating the vendors' ordinary business practices on the Committee, which is not in a privy to such information.

The Committee acted to the best of its ability to accurately disclose every transaction with each vendor. In the event the Commission determines that the extensions of credit were technically

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[2] The Act and Commission Regulations require political committees to disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).
[3] MUR 7343, Factual and Legal Analysis at 11 (Aug. 2, 2019).
[4] *Id.* at 10.
[5] *Id.* at 9.
[6] *See* 11 C.F.R. § 100.55.

contributions, the Committee respectfully requests the Commission to recognize that the Committee exercised its best efforts to comply with the law and dismiss this matter. "When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by [the] Act for the political committee, any report or any records of such committee shall be considered in compliance with [the] Act."[7] *The standard is not strict scrutiny.* "The test of whether a committee has complied with the statutory requirements is whether its treasurer has exercised his or her best efforts to obtain, maintain, and submit the information required by the Act. If the treasurer has exercised his or her best efforts, the committee is in compliance."[8]

In this matter, the Committee has demonstrated that it used its best efforts to accurately report the transactions at issue. The Committee reported each independent expenditure, each outstanding debt, and each debt repayment. As discussed above, the Committee reported the debts owed to the vendors on Schedule D based on the information available to the Committee at the time and the manner in which the vendors treated the debt (*i.e.*, as typical outstanding debt). The Committee timely submitted these reports to the Commission. The Committee had no way of knowing that the Commission could consider the extensions of credit to be contributions when it originally disclosed these transactions. Since the Committee used its best efforts to timely and accurately submit the information required by the Act, the Commission is obligated to determine that the Committee's reports are in compliance with the Act.

## CONCLUSION

As discussed herein, the record contains insufficient evidence to support the Commission's finding that there is reason to believe the Committee violated 52 U.S.C. § 30104(b)(3)(A) by failing to report the vendors' extensions of credit as contributions. Moreover, the Commission should recognize that the Committee used its best efforts to fully disclose the transactions with the vendors and accordingly find that the Committee's reports were in compliance with the Act. The Commission should dismiss this matter without delay.

Very truly yours,

Ezra W. Reese

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[7] 52 U.S.C. 30102(i); *see also* 11 C.F.R. 104.7.

[8] *Lovely v. F.E.C.*, 307 F. Supp. 2d 294, 299 (D. Mass. 2004) (quoting the legislative history from when Congress amended the best efforts statute in 1979).