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December 19, 2019

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
attn: Christal Dennis, Paralegal  
1050 First Street NE  
Washington, DC 20463

**Re: MUR 7665**

Dear Ms. Dennis,

This response is submitted by the undersigned counsel on behalf of McSally for Senate, Inc. and Paul Kilgore, in his capacity as Treasurer, in connection with MUR 7665.

The Complaint alleges that the Respondents “have apparently violated the Act’s reporting requirements by failing to disclose the employer and occupation of at least 627 contributors on the Committee’s most recent quarterly campaign finance report.” Complaint at 1. The Complainant speculates that this alleged reporting deficiency was “[p]erhaps ... part of an effort to conceal [the campaign’s] sources of support.” This claim is ridiculous, and the Complainant presents no evidence to support it.

According to the Complainant, the Respondent has an “unusually high rate of noncompliance,” but the Complainant does not disclose what that rate is or what it should be. Either the Complainant did not determine the Respondent’s “rate,” as the total number of contributors is never mentioned in the Complaint, or, more likely, the Complainant omitted the percentage because it is quite low. The report referenced in the Complaint included 9,119 itemized contributions. 627 is 6.88% of 9,119. The chart included with the Complaint includes individuals who contributed more than once. Even if the number of contributors referenced by the Complainant is less than the total number of itemized contributions included on the chart, the 6.88% figure is instructive and makes absolutely clear that the “rate” at issue here is not “unusually high.” *See, e.g.*, MUR 6438 (Art Robinson for Congress) (dismissing matter involving “rates” ranging from 6.5% - 48%); MUR 6031 (Hagan Senate Committee) (dismissing matter involving “rates” of 36% and 19%).

The Complainant asserts that its demonstrably false claim of an “unusually high rate of noncompliance” is evidence of a failure to adhere to the “best efforts” requirements. This is pure speculation on the part of the Complainant. Missing employer and occupation information on a

committee's report does not reveal *anything* about that committee's "best efforts" compliance. To the contrary, the filed reports upon which the Complainant relies specifically state, in every instance, that the missing occupation and employer information was "requested per best efforts."

The D.C. Circuit determined that "[t]he statute does *not* require political committees to report the information for 'each' donor. It only requires committees to use their *best efforts* to gather the information and then report to the Commission whatever information donors choose to provide." *RNC v. FEC*, 76 F.3d 400, 406 (D.C. Cir. 1996) (emphasis in original); *see also id.* at 407 ("The law only requires political committees to *ask* donors for the information; no federal law requires *donors* to report their name, address, occupation, and employer as a condition of supporting the political party of their choice.") (emphasis in original).

Committees' "best efforts" obligations regarding occupation and employer information are set forth at 11 C.F.R. § 104.7(b). Committees are required to *request* occupation and employer information on the face of written solicitations and response materials. 11 C.F.R. § 104.7(b)(1)(i), (ii). If the information is not provided by the contributor along with the contribution, the committee's treasurer is required to make "at least one effort after the receipt of the contribution to obtain the missing information" within 30 days via what is known as a "stand alone" request. 11 C.F.R. § 104.7(b)(2). If the contributor does not provide the requested information, the committee must still report all contributor information in its possession, which includes fundraising records and reports filings within the same two-year election cycle. 11 C.F.R. § 104.7(b)(3). If additional contributor information is received, it must be included on a subsequent or amended report. 11 C.F.R. § 104.7(b)(4).

In this matter:

- The Complaint does *not* allege that any of the Respondents' written solicitations or response materials lacked the required "clear request" for contributor information. The Complaint does not even mention written solicitations or response materials.
- The Complaint does *not* allege that the Respondent failed to send a "stand alone" request to any contributor who did not include employer and occupation information. The Complaint does not mention follow-up requests.
- The Complaint does *not* allege that the Respondent failed to use existing records to fill in missing employer and occupation information. The Complaint does not mention this subject.
- The Complaint does *not* allege that the Respondent failed to supplement or amend past reports with newly received contributor information. The Complaint does not mention this subject.

In other words, the Complaint does not even mention the matters that would need to be addressed to even consider whether a violation had occurred.

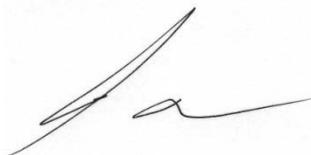
In its written solicitations and response devices, the Respondent includes appropriate "best efforts" notices and provides space for contributors to write in their occupation and employer name information. When the Committee receives a contribution and the contributor has not provided employer and occupation information, the Committee sends a "stand alone" letter to the contributor within 30 days asking for that information. A pre-addressed return

envelope is included. Attached as Exhibit A is the Committee's template request letter. When possible, the Committee uses existing records to provide employer and occupation information. If no information is available at the time a report must be filed, the Committee indicates on the report that the information has been requested per best efforts requirements. If employer and occupation information is subsequently provided or otherwise obtained, the Committee includes that information on amended reports and/or subsequent reports filed with the Commission. (The Committee provided this same information to the Reports Analysis Division on March 4, 2019, in response to a Request For Additional Information. *See* Exhibit B. To the best of our knowledge, the Reports Analysis Division was satisfied by this response.)

We urge the Commission to stop entertaining this type of complaint and specifically recognize that employer/occupation reporting figures and "rates" do *not* serve as reliable evidence of "best efforts" or the lack thereof. Complaining to the Commission that there is no employer or occupation information reported for "at least 627 contributors" on a report does *not* identify any violation of the Act. The absence of information that contributors are not required to provide, and that committees are not required to report, should not be accepted as evidence of a "best efforts" violation. The Complainant speculates that the Respondent has committed "best efforts" violations, but the Complaint contains *no evidence whatsoever* pertaining to the Committee's written solicitation and response materials, its subsequent request letters, its use of existing records, or its follow-up reporting procedures. Instead, the Complainant claims that employer and occupation information is missing for 627 contributors and asks the Commission to "promptly investigate this matter to determine if Respondents are, in fact, using best efforts to collect and report the required information." The Complainant seeks to reverse the burden of proof. The Commission may only investigate if there is *actual evidence* that best efforts obligations were not met. The only evidence of a committee's failure to satisfy best efforts requirements that the Commission should accept is evidence directly pertaining to a committee's failure to properly request employer and occupation information in accordance with 11 C.F.R. § 104.7. Here, no such evidence is provided.

The Commission should find no reason to believe a violation occurred and dismiss this matter. The basic requirements of the reason to believe standard are not satisfied where the facts presented, even if taken as true, would not constitute a violation of the Act. *See* MUR 4960 (Clinton), Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas. "Fail[ing] to report the employer and occupation information for at least 627 contributors," even if true, is not a violation of Act. The Act was only violated if, with respect to these 627 contributors, the Respondents failed to meet their Section 104.7 obligations. Here, the Complainant provides no evidence of any such failure, and no evidence whatsoever pertaining to the Respondent's best efforts.

Sincerely,



Jason Torchinsky  
Michael Bayes

**Exhibit A**

December 19, 2019

«FNAME» «LNAME»  
«STREET» «ADDR1»  
«CITY», «STATE» «ZIP»

Dear «FNAME»,

Thank you very much for your most recent contribution to McSally for Senate, Inc.. It is supporters like you that make our continued work possible.

Federal election law requires that we request the employer and occupation of all contributors whose total contributions exceed \$200 in an election cycle. Please complete the information below and return to the address below.

McSally for Senate, Inc.  
c/o Professional Data Services  
824 S Milledge Ave Ste 101  
Athens, GA 30605

Alternately, you may also send the completed form back via fax at (404) 393-7868 to by email at [marthamcsally@pdscompliance.com](mailto:marthamcsally@pdscompliance.com).

Employer: \_\_\_\_\_

Occupation: \_\_\_\_\_

Thank you again for your staunch support.

Sincerely,  
Paul Kilgore, Treasurer  
McSally for Senate, Inc.

**Exhibit B**

**MISCELLANEOUS TEXT (FEC Form 99)**

NAME OF COMMITTEE (In Full)  
**MCSALLY FOR SENATE INC**

FEC IDENTIFICATION NUMBER  
C00666040

Mailing Address PO BOX 19128

City	State	ZIP Code
TUCSON	AZ	85710

March 4, 2019

Federal Election Commission  
1050 First Street NE  
Washington, DC 20463

ID Number: C00666040

Reference October Quarterly Report (08/09/2018 ? 09/30/2018)

To Whom It May Concern:

We are in receipt of the letter from the Commission regarding the above referenced report. Please see below for our complete response.

Our committee does have in place a system that meets the best efforts standard established by the Commission. All of our original solicitations have the request for employer and occupation information on them. We inform the potential donor that we are required by federal law to request this information. For the donors that do not provide that information, we automatically send them a written request for it within 30 days. This follow up does not request any additional monies, includes a pre-addressed return envelope and again informs the person of the federal requirement for requesting this information. Finally, we add the new information to our database and include it in amended reports filed with the commission and subsequent reports going forward.

Thank you for the opportunity to respond. Please contact us if you need any additional information.

Sincerely,  
Paul Kilgore, Treasurer  
McSally for Senate