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November 24, 2020

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

Re: MUR 7814

Dear Ms. Ross,

This response is submitted by the undersigned counsel on behalf of Salazar for Congress and Paul Kilgore, in his capacity as Treasurer, and Maria Salazar in connection with MUR 7814.

The Complainant alleges that Respondents “violated 52 U.S.C. §§ 30101, 30104, and 30116 by failing to identify persons and individuals who have contributed to it since its creation.” Complaint ¶ 3. The Complainant alleges that “scores of [Salazar for Congress’s] reported contributions do not provide the required identification information” and that “every report filed by [Salazar for Congress] fails to disclose the employer and occupation of all of its contributors.” *Id.* ¶¶ 8, 9. The Complainant contends that Respondent’s report “for the third quarter of 2019 contains legally insufficient information for at least one hundred thirty-three (133) contributions from no fewer than ninety-one (91) different individuals.” *Id.* ¶ 16.

Complainant includes a separate and apparently unrelated allegation regarding excessive contributions. *See* Complaint ¶ 17. The Complaint cites the Reports Analysis Division’s Request for Additional Information (RAFI) issued on September 14, 2020. This RAFI identified two possibly excessive contributions. The Respondent issued a refund to each of the contributors identified in the RAFI. These refunds were reported in the Respondent’s October 15 quarterly report.

Salazar for Congress Fully Complies with the Commission’s Best Efforts Standard

The Complainant misunderstands the applicable law and appears not to be aware of the “best efforts” standard. When a contributor does not provide occupation and employer information, the Respondent adheres to the Commission’s “best efforts” requirements and indicates on its report “INFORMATION REQUESTED.” As the D.C. Circuit explained, “[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).

Political committees’ “best efforts” obligations regarding occupation and employer information are set forth at 11 C.F.R. § 104.7(b). Political committees are required to *request* occupation and employer information on the face of written solicitations and response materials. *Id.* § 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. *Id.* § 104.7(b)(2). If the contributor does not provide the requested information, the committee must still report all contributor information in its possession, including information in contributor records, fundraising records, and reports filed within the same two-year election cycle. *Id.* § 104.7(b)(3). If additional contributor information is received, it must be included on a subsequent or amended report. *Id.* § 104.7(b)(4). Salazar for Congress and its treasurer comply with these requirements and there is no information or allegation in the Complaint that suggests otherwise.

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 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. The Respondent’s template request letter is attached as Exhibit A. 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 the Commission's 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 November 22, 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.)

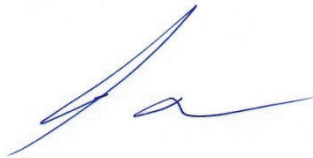
The Complaint presents no evidence that the Respondent violated its "best efforts" obligations. The absence of information that contributors are not required to provide, and that committees are not required to report, is not evidence of a "best efforts" violation. Simple tallies of the number of contribution entries on a report that do not include employer and occupation information, *see* Complaint ¶ 16, 16 n.4, similarly do not provide evidence of a "best efforts" violation. The *only* evidence of a political 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.

In a virtually identical recent matter, the Commission unanimously dismissed a complaint premised on the same theory of missing occupation and employer information. *See* MUR 7665 (McSally for Senate). The same result is warranted here.

Conclusion

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. "[F]ail[ing] to disclose the employer and occupation information of ... contributors," even if true, is not a violation of Act. The Act was only violated if, with respect to these 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

Attachments

Exhibit A



November 23, 2020

«First_Name» «Last_Name»
«Address_Line_1» «Address_Line_2»
«City», «State» «Zip_5»

Dear «First_Name»,

Thank you very much for your most recent contribution to Salazar for Congress. 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.

Salazar for Congress
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 mariasalazar@pdscompliance.com.

Employer: _____

Occupation: _____

Thank you again for your staunch support.

Sincerely,
Paul Kilgore, Treasurer
Salazar for Congress

Exhibit B

MISCELLANEOUS TEXT (FEC Form 99)

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NAME OF COMMITTEE (In Full)
SALAZAR FOR CONGRESSFEC IDENTIFICATION NUMBER
C00714261

Mailing Address PO BOX 431332

City	State	ZIP Code
MIAMI	FL	33243

November 22, 2019

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
ID Number: C00714261

Reference October Quarterly Report (07/01/2019 ? 09/30/2019)

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
Salazar for Congress