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November 12, 2021

**VIA E-MAIL (CELA@FEC.GOV)**

Mr. Roy Q. Luckett  
Acting Associate General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**Re: MUR 7939 (Carolina Senate Fund)**

Dear Mr. Luckett:

We represent Carolina Senate Fund (“CSF”) in the above-captioned matter. We have reviewed the complaint filed on October 28, 2021 (the “Complaint”) alleging that CSF violated the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission (the “Commission”) regulations by failing to file a 48-hour notice for an independent expenditure.

On October 18, 2021, CSF disseminated an independent expenditure totaling \$25,994.40.<sup>1</sup> As a result of miscommunication regarding the dissemination date, CSF inadvertently did not file its notice for this independent expenditure within 48 hours of dissemination. CSF realized this error upon receiving a copy of the Complaint on October 29, 2021, and promptly filed the 48-hour notice within hours thereafter.<sup>2</sup>

The Commission should dismiss this matter as an exercise of its prosecutorial discretion pursuant to *Heckler v. Chaney* for several reasons.<sup>3</sup> *First*, although CSF inadvertently filed the 48-hour notice a few days late, it did so more than four months before North Carolina’s 2022 primary election, which will not take place until March 8, 2022.<sup>4</sup> *Second*, the amount of the independent expenditure at issue was a relatively modest amount—\$25,944.40. *Third*, through the *Reports Analysis Division (“RAD”) Review and Referral Procedures*, the Commission has

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<sup>1</sup> The Complaint states that CSF “made” an independent expenditure on October 16, 2021. However, the correct dissemination date is October 18, 2021.

<sup>2</sup> Carolina Senate Fund, 48-Hour Report of Independent Expenditures (filed Oct. 29, 2021), <https://docquery.fec.gov/pdf/771/202110299468411771/202110299468411771.pdf>.

<sup>3</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>4</sup> N.C. State Board of Elections, 2022 Statewide Primary, <https://www.ncsbe.gov/news/events/election-day-2022-statewide-primary>.

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already approved a process for handling reporting errors such as this.<sup>5</sup> If a reporting error meets a confidential threshold, RAD will send a Request for Additional Information ("RFAI") to the committee. Under some circumstances, RAD will refer certain reporting errors meeting higher confidential thresholds to the Office of Alternative Dispute Resolution ("ADR") or the Office of General Counsel ("OGC") for enforcement. The *RAD Review and Referral Procedures* and the confidential thresholds therein reflect the Commission's considered judgment on what types of reporting errors warrant use of Commission resources for enforcement. If CSF's late 48-hour notice meets any of these confidential thresholds, RAD will presumably take the appropriate steps to refer CSF to ADR or OGC for further action.

For all the foregoing reasons, the Commission should promptly dismiss the Complaint as an exercise of the agency's prosecutorial discretion.

Sincerely,

/s/ Michael E. Toner

Michael E. Toner  
Brandis L. Zehr

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<sup>5</sup> Fed. Election Comm'n, *Reports Analysis Division Review and Referral Procedures for the 2021-2022 Election Cycle*, [https://www.fec.gov/resources/cms-content/documents/2021-2022\\_RAD\\_review\\_and\\_referral\\_procedures.pdf](https://www.fec.gov/resources/cms-content/documents/2021-2022_RAD_review_and_referral_procedures.pdf).



FEDERAL ELECTION COMMISSION  
1050 First Street, NE  
Washington, DC 20463

# STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

**E-MAIL: [cela@fec.gov](mailto:cela@fec.gov)**

**AR/MUR/RR/P-MUR#** 7939

Name of Counsel: Michael E. Toner; Brandis L. Zehr

Firm: Wiley Rein LLP

Address: 1776 K Street NW

Washington, DC 20006

Office#: 202.719.7210 (Zehr) Fax#: -

Mobile#: -

E-mail: mtoner@wiley.law; bzehr@wiley.law

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11/11/2021

Date

*Lisa R. Lisker*

(Signature - Respondent/Agent/Treasurer)

Treasurer

Title

Lisa Lisker

(Name – Please Print)

**RESPONDENT:** Carolina Senate Fund

**(Please print Committee Name/ Company Name/Individual Named in Notification Letter)**

Mailing Address: 228 S, Washington Street, Suite 115  
(Please Print)

Alexandria, VA 22314

Home#: -

Mobile#: -

Office#: -703-281-7540

Fax#: -

E-mail: llisker@hdapec.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.



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11/11/2021

Date

*Lisa R. Lisker*

(Signature - Respondent/Agent/Treasurer)

Treasurer

Title

Lisa Lisker

(Name – Please Print)

Lisa Lisker in her Official Capacity as Treasurer of

**RESPONDENT:** Carolina Senate Fund

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

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