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June 3, 2022

VIA EMAIL

Roy Q. Luckett
 Federal Election Commission
 Office of Complaints Examination
 & Legal Administration
 Attn: Kathryn Ross, Paralegal
 1050 First Street, NE
 Washington, DC 20463
cela@fec.gov

Re: MUR 7989

Dear Mr. Luckett:

We write on behalf of Benjamin Pursley in response to the Complaint filed in the above-described matter. The Complaint alleges that Mr. Pursley failed to timely file his Statement of Candidacy (Form 2). Mr. Pursley was a first-time candidate who attempted twice to file Form 2 using the FEC's online filing system but, unbeknownst to him, the second filing was unsuccessful. Once this fact was brought to his attention, he promptly filed another copy of Form 2. Moreover, Mr. Pursley's committee timely filed its Statement of Organization (Form 1) and all required campaign reports, resulting in full public disclosure of his campaign activities. Accordingly, the Commission should not find reason to believe that Mr. Pursley violated the Federal Election Campaign Act of 1971, as amended (the "Act") and should close the file.

In March of this year, Mr. Pursley decided to become a candidate for U.S. Senate in Idaho. On March 31, Mr. Pursley opened a bank account and loaned his campaign \$25,000.¹ On the same day, he attempted to file Form 1 and Form 2 using the FEC's online filing system. He was able to file Form 1 successfully, but the Form 2 filing was not successful.

After this initial attempt, Mr. Pursley's campaign retained a compliance professional to handle his committee's filings and act as the committee's treasurer. On April 9, the treasurer created a second version of Form 2 and submitted it to the FEC, again using the FEC's online filing system. There was no error message associated with this filing. The next day, on April 10, Mr. Pursley met with his treasurer and was given a copy of the Form 2 that the treasurer had filed with the FEC, a copy of which is attached as Attachment A. Based on the documentation provided to

¹ Mr. Pursley did not make any contributions or expenditures in connection with his election before this day.

Long Beach
 555 E. Ocean Blvd, Ste. 420
 Long Beach, CA 90802

Sacramento
 555 Capitol Mall, Ste. 400
 Sacramento, CA 95814

Oakland
 1901 Harrison St., Ste. 1550
 Oakland, CA 94612

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him at this meeting, Mr. Pursley believed that the form had been successfully filed with the Commission. On April 15, the committee filed its April quarterly disclosure report.

On April 26, Mr. Pursley received notice that the present complaint had been filed against him. His treasurer called the Commission's electronic filing office to determine the status of the filing that was made on April 9, and Commission staff indicated that it had no record of the Form 2 being filed. His treasurer submitted the form again that same day and it was successfully filed. Mr. Pursley did not win the May 17 primary, and now seeks to terminate his committee.

Based on these facts, and the Commission's handling of similar matters, the Commission should dismiss this matter.

First, Mr. Pursley attempted to file Form 2 timely, but was prevented from doing so by an error with the Commission's online filing system. Once Mr. Pursley learned that the filing did not go through, he promptly corrected the matter within 24 hours. These circumstances would excuse the late filing of a campaign disclosure report, *see 11 C.F.R. § 111.35*, and should also excuse Mr. Pursley's late filing here.

Second, there was no public harm. While the Form 2 originally prepared by Mr. Pursley's treasurer did not make it on the public record timely, virtually all of the information on Form 2 was provided to the Commission on the Form 1 that Mr. Pursley timely filed. The only piece of information not identified on Form 1 was the candidate's party affiliation, which was a matter of public record in any event. Moreover, Mr. Pursley's committee filed all required disclosure reports timely. Levying a civil penalty in this case would not advance the public's interest in campaign disclosure, because this interest was already satisfied.

Third, when faced with similar circumstances, the Commission has declined to pursue enforcement. For example, in MUR 7721, candidate Jim Oberweis made a \$10,000 contribution to his authorized committee in February 2019, but did not file Form 2 until seven months later. The Commission dismissed the matter under *Heckler v. Chaney*. Similarly, in MUR 7400, candidate Jim Francis attempted to file a Statement of Candidacy on February 22, 2018, but was informed in May, three months later, that it was not on the Commission's website, so he filed an amended Statement of Candidacy. It was also alleged that Francis made several additional reporting errors. Nonetheless, the Commission dismissed this matter, too, as a matter of prosecutorial discretion. Here, Mr. Pursley filed his second Form 2 only 11 days – not months – after the original deadline, and there are no other allegations of reporting errors. *A fortiori*, the Commission should dismiss this matter, too.

Based on these facts, the Commission should dismiss this matter and close the file. However, should the Commission decline to do so, we respectfully request that this matter be transferred

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to the Commission's ADR program. In either event, Mr. Pursley respectfully requests that the Commission resolve this matter expeditiously, so that he may terminate his committee.

Sincerely,

A handwritten signature in black ink, appearing to read "AW".

Andrew Harris Werbrock

AHW:NL
Attachment
(00465936-2)

ATTACHMENT A

FEC FORM 2

STATEMENT OF CANDIDACY

1. (a) Name of Candidate (in full) Pursley, Ben, . . .		2. Candidate's FEC Identification Number	
(b) Address (number and street) 4015 N Whitehead St		<input type="checkbox"/> Check if address changed	
(c) City, State, and ZIP Code Boise		ID	83703
4. Party Affiliation DEMOCRATIC PARTY	5. Office Sought Senate	3. Is This Statement <input checked="" type="checkbox"/> New (N) <input type="checkbox"/> OR <input type="checkbox"/> Amended (A)	
		6. State & District of Candidate ID 00	

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

7. I hereby designate the following named political committee as my Principal Campaign Committee for the 2022 election(s).
(year of election)

NOTE: This designation should be filed with the appropriate office listed in the instructions.

(a) Name of Committee (in full)

PURSLEY FOR SENATE

(b) Address (number and street)
225 N 9TH STREET

(c) City, State, and ZIP Code

BOISE

ID 83702

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

(Including Joint Fundraising Representatives)

8. I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

NOTE: This designation should be filed with the principal campaign committee.

(a) Name of Committee (in full)

(b) Address (number and street)

(c) City, State, and ZIP Code

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Signature of Candidate

Date

04/09/2022

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to penalties of 2 U.S.C. §437g.

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