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November 6, 2017

Thomas E. Hintermister
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA EMAIL: SHThomas@fec.gov

Re: McSally for Congress – Response to Draft Final Audit Report

Dear Mr. Hintermister:

On behalf of McSally for Congress (“Committee”), and Paul Kilgore, in his official capacity as Treasurer, we file this response to the Draft Final Audit Report (“DFAR”) received on October 18, 2017, in connection with the Federal Election Commission’s (“FEC” or “Commission”) audit of the Committee. We also request an audit hearing, pursuant to the Commission’s Procedural Rules for Audit Hearings, 74 Fed. Reg. 33140 (July 10, 2009), primarily to voice our disagreement with the Audit Division’s conclusions in Finding 1, specifically with regard to the amount of the alleged misstatement and the categorization and reporting of certain transactions. Because the amount of the misstatement is a question of fact, and not one of law, we request that the hearing be held in a closed executive session.

Before addressing the substance of the DFAR’s findings, we once again remind the Commission of the Committee’s extraordinary, and to our knowledge unprecedented, efforts to comprehensively evaluate all of its accounting and FEC reports beginning with the Committee’s inception in 2012. As we have previously noted, during the 2012 and 2014 election cycles, the Committee raised and spent over \$12.3 million, receiving more than 45,300 contributions from over 22,600 individual contributors, the majority of which came in the form of low dollar donations. For the time period covered by the Commission’s Audit (January 1, 2013 – December 31, 2014), the Committee received more than 33,000 contributions from over 19,000 donors. This amount and volume of activity was unparalleled for a non-incumbent. To illustrate her remarkable level of support, Congresswoman McSally was the third highest grossing fundraiser for all Republican Members of Congress in the 2016 cycle, despite just being a freshman and

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having never previously served in elected office. In short, although the level of support was tremendous, it also created unique challenges for Committee staff in handling the overwhelming volume of activity. This is precisely why the Committee acted swiftly to not only demand a comprehensive internal review of its finances, but to hire experienced FEC reporting professionals to perform the review.

Unlike the Commission's Audit, the Committee's internal review was not a sampling of the Committee's activity for the period of time being reviewed. Rather, the Committee started from the very beginning and completely rebuilt its database consisting of over \$12.3 million of activity over the 2012 and 2014 election cycles. In other words, the Committee started from scratch and examined every single transaction, contribution, and expenditure through a microscope to ensure everything was recorded and reported correctly for the entire history of the Committee. This was a colossal effort on the part of the Committee, and the Committee has spent a substantial amount of funds on professional reporting services, accountants, and lawyers over the last two years addressing the Commission's purported concerns.

Nonetheless, as a result of its internal review, every single report filed since the first report in 2012 through the 2014 Year-End Report was refiled on January 31, 2016. With respect to our position concerning Finding 1, it is critical to understand that the Committee's amended reports filed on January 31, 2016 were not based on its originally-filed reports (i.e. the audited reports). Instead, they are based on financial activities that actually occurred, as reflected in bank statements. As a result, all of the Committee's reports and bank statements reconcile to the penny, which has been the case for over a year and a half.

Finding 1

We incorporate by reference our response to the Audit Division's Interim Audit Report ("IAR") regarding Finding 1. Specifically, the Committee continues to take issue with the Audit Division's conclusions with respect to the amount of the alleged misstatement. As described in our response to the IAR, at the Exit Conference, Audit staff provided a list of 122 transactions they believed made up the alleged overstatement of \$94,528 in receipts. However, the Committee conducted its own review of this list, and of the 122 transactions, at least 33 transactions totaling \$27,115 do *not* appear on any of the amended reports. Likewise, Audit staff provided a list of transactions they believed made up the alleged overstatement of \$85,472 in disbursements. But the Committee reviewed this list, as well, and at least 23 of the transactions totaling approximately \$16,908 were *not* disclosed on the Committee's amended reports. Although many of these transactions appeared on the Committee's originally filed reports (i.e. the audited reports), they were not included in the amended reports filed on January 31, 2016 because they were either reported as duplicates on the audited reports or because the transaction did not actually occur in the first place. It is unclear why the Audit staff continues to insist on their version of the numbers when we have provided proof to the contrary. In short, the Committee believes its 2016 amended reports are an accurate reflection of what truly occurred at the time.

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Furthermore, although the Committee acknowledges that the Commission's Campaign Guide provides some direction on when negative entries are appropriate in Schedules A and B, the Commission has simply not provided clear guidance regarding how a committee must report a so-called "chargeback." We therefore believe it is reasonable for a committee to choose to report a transaction in a different way if it appears to a committee that it is a more accurate reflection of what occurred at the time. After all, the Commission's Campaign Guide, although helpful at times, does not have the force of law.

Finding 2

The DFAR states that this matter is resolved. However, we take issue with the DFAR's inference that the Committee only demonstrated "best efforts" "during audit fieldwork" and disagree with the DFAR's conclusion that "since MFC's corrective action occurred after audit notification, the matter is included in this audit report." It is a complete mischaracterization to suggest that the Committee's demonstration of "best efforts" only occurred after the Commission's audit was initiated. The fact that the Committee's originally-filed reports did not contain the occupation and employer for some donors does not mean that the Committee did not demonstrate "best efforts" to obtain that information in the first place. It simply means that the Committee was unable to obtain this information despite demonstrating "best efforts."

As we previously stated in our response to the IAR, the Committee's solicitation materials have always included a clear request for the name, address, occupation and employer of individuals whose contributions aggregated \$200 during the election cycle, and in instances where a contributor did not provide that information, the Committee would make at least one effort to obtain that information. Therefore, the DFAR's statement that "since MFC's corrective action occurred after audit notification, the matter is included in this audit report," cannot be true because "corrective action" in this context can only mean demonstrating "best efforts," which occurred from the beginning. "Corrective action" in this context does not mean that the Committee was ultimately able to obtain this information after multiple attempts.

In light of the fact that the Committee has demonstrated "best efforts" from its inception, we believe that Finding 2 should be removed altogether from the Final Audit Report.

Finding 3

Finding 3 in the DFAR correctly notes that the Committee provided copies of negotiated refund checks totaling \$6,500, which resolved four of the five remaining excessive contributions. In light of the signed redesignation letter from Larry Adamson that we provided to Sheraline Thomas on October 31, 2017, we request that Finding 3 be revised to state that all excessive contributions have now been resolved.

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Finding 4

The Committee's response to the IAR pointed out the discrepancy between the number and amount of untimely filed 48-hour contribution reports presented to the Committee at the Exit Conference and the number and amount contained in the IAR. However, the DFAR does not address our concerns or provide any explanation for this discrepancy other than a general statement that "preliminary findings at the exit conference...may be subject to change or modification based on additional documentation; internal review; legal advice, etc."¹ We respectfully request an explanation behind this discrepancy.

Even if the Audit staff is correct in its determination of the number and amount of untimely filed 48-hour contribution reports, the total amount in question is not material in contrast to the vast overall amount of financial activity the Committee had during the applicable period.

Finding 5

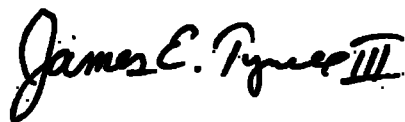
The Committee has no additional comments with respect to Finding 5 in the DFAR.

Conclusion

As we have already made clear, the Committee takes its reporting obligations very seriously, and it has taken extraordinary measures, both in time and money, to address these issues over the last two years. At the same time, we want the public record to reflect what actually happened during the applicable time period. For that reason, we believe it is imperative that the Commission hear our foregoing concerns in an audit hearing.

We appreciate the Audit Division's time and attention to this matter. Please feel free to contact me directly with any questions.

Respectfully submitted,



James E. Tyrrell III
Counsel to McSally for Congress

¹ Draft Final Audit Report, at 5 n. 8.