FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Wright McLeod for Congress and Cameron Nixon in his official capacity as treasurer; *et al.*	)	MUR 6576

STATEMENT OF REASONS
VICE CHAIRMAN DONALD F. McGAHN

The complaint in this matter alleged, among other things, that Wright McLeod for Congress (the "McLeod Committee") used proprietary donor information obtained from Commission disclosure reports filed by Rick W. Allen for Congress to solicit funds in violation of 2 U.S.C. § 438(a)(4) and 11 CFR § 104.14(a).[1] While I ultimately agreed with the Office of General Counsel's ("OGC") recommendation to find no reason to believe ("RTB") that the McLeod Committee violated this provision of the Federal Election Campaign Act, as amended (the "Act"), and Commission regulations,[2] I write to address how OGC handled this allegation, and how this conduct demonstrates the need for the Commission to adopt an Enforcement Manual.

I. BACKGROUND

The Commission received the complaint in this matter on May 16, 2012. It included numerous allegations including that the McLeod Committee violated the Act by soliciting contributions from information contained in reports filed with the Commission.[3] The initial response from the McLeod Committee was sent to the Commission on June 29, 2012. In it, they explained that the McLeod Committee outsourced its direct mail and fundraising solicitations to

[1] *See* MUR 6576 (Wright McLeod for Congress), Complaint.

[2] *See* MUR 6576 (Wright McLeod for Congress), Certification dated September 10, 2013.

[3] *See* MUR 6576 (Wright McLeod for Congress), Complaint.

a third-party vendor.[4] Evidently this rebuttal piqued OGC's curiosity because they sent the McLeod Committee a letter on December 4, 2012 asking them to provide the name of the vendor.[5] The McLeod Committee responded to OGC's inquiry on December 14, 2012 with an affidavit from its campaign manager, naming the vendor involved in its direct mail solicitation operations as RGC Consulting LLC ("RGC").[6] Still unsatisfied, OGC then sent RGC a letter, claiming it had received a complaint indicating RGC may have violated the Act.[7] RGC submitted a response on March 18, 2012 rebutting those allegations.[8]

II. ANALYSIS

A. The Complaint is Insufficient on Its Face

Before turning to OGC's handling of this matter, I note that the complaint failed to provide enough information to support a RTB finding that the committee improperly used FEC disclosure reports. The complaint bases its allegation solely on solicitations received by Molly Hargather and Wyche Thomas Green from the McLeod Committee.[9] The allegations are circumstantial at best: one individual had only made one political contribution, and the other, although a prolific contributor, took issue with how his name was punctuated (the punctuation of used in the solicitations from the McLeod Committee was allegedly identical to that used on reports filed by Rick W. Allen for Congress).[10]

Under longstanding Commission precedent, these facts as set forth in the complaint fail to provide sufficient support for a finding of RTB. The Commission has time and time again said that such speculation is insufficient to establish reason to believe.[11] It is not enough that an

[4] *See* MUR 6576 (Wright McLeod for Congress), Response from McLeod Committee.

[5] *See* MUR 6576 (Wright McLeod for Congress), Letter from Daniel Petalas, Associate General Counsel for Enforcement, FEC, to Stefan Passantino, Counsel to the McLeod Committee (December 4, 2012) (attached).

[6] *See* MUR 6576 (Wright McLeod for Congress), Letter from Stefan Passantino, Counsel to the McLeod Committee, to Kimberly Hart, Attorney, FEC (December 14, 2012) (attached).

[7] *See* MUR 6576 (Wright McLeod for Congress), Letter from Jeff S. Jordan, Supervisory Attorney, Complaints Examination & Legal Administration, FEC, to Rebecca Grant Cummiskey, RGC Consulting LLC (January 7, 2013) (attached).

[8] *See* MUR 6576 (Wright McLeod for Congress), Response from RGC Consulting LLC (attached).

[9] MUR 6576 (Wright McLeod for Congress), Complaint at 1.

[10] *Id. But see* MUR 6576 (Wright McLeod for Congress), First General Counsel's Report at 5 (describing that in fact Mr. Green's name is not used identically in the McLeod Committee solicitation as it was used in the reports filed with the Commission by Rick W. Allen for Congress).

[11] *See, e.g.*, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1-2 ("The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. . . .

individual receives a solicitation from an entity it has not requested information from in the past, which uses punctuation of the individual's name that has only appeared in reports filed with the Commission. If this was sufficient, then almost all recipients of unsolicited solicitations could claim a violation of the Act. This is especially true considering that in modern political campaigns there are a multitude of ways to obtain the names of potential contributors from a range of organizational and commercial entities that legally gather and sell personal name and contact information obtained through activities wholly unrelated to politics, and are perfectly legal.

More convincing evidence of a violation of the Act's prohibition on using information in disclosure reports for solicitations occurs when a committee has "salted" its reports with pseudonyms and those fictitious individuals receive solicitations. Without that, or more concrete evidence based on personal knowledge that an entity is improperly using Commission reports, the complaint failed to provide sufficient evidence to find reason to believe a violation of the Act has occurred.[12] Thus, in this matter, the complaint was insufficient on its face with regards to this allegation.

B. OGC's Extra-Statutory Pre-RTB Investigation

The second issue with OGC's handling of this matter is that, rather than end its analysis with the complaint's lack of evidence, OGC used the Respondent's answer to this allegation as an opportunity to engage in an extra-statutory investigation prior to a finding of RTB. The McLeod Committee addressed the complaint's allegation by: (1) denying that they had used FEC reports to solicit funds, (2) explaining that they outsourced its direct mail and fundraising solicitations to a third-party vendor, and (3) stating that they had no information from the vendor that it has done so.[13] Therefore, they could not have violated this provision of the Act since they themselves did not send the vendor a list of potential contributors, and there was no evidence that the vendor uses an FEC report to solicit funds.

OGC then took it upon themselves to send the committee a letter offering an opportunity to "clarify [their] response."[14] In actuality, the letter can be read as a factual inquiry, similar to

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Unwarranted legal conclusions from asserted facts, *see* SOR in MUR 4869 (American Postal Workers Union), or mere speculation, *see* SOR of Chairman Wold and Commissioners Mason and Thomas in MUR 4850 (Fossella), will not be accepted as true." (some citations omitted)); MUR 5467 (Michael Moore), First General Counsel's Report at 5 ("Purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe that a violation of the FECA has occurred." (*quoting* MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 3))). *See also FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981) ("[M]ere 'official curiosity' will not suffice as the basis for FEC investigations . . .").

[12] When asked, OGC did not dispute this, and seemed to indicate that some in OGC agreed that the complaint itself was lacking, but that the ultimate OGC decision maker decided that the matter warranted further review.

[13] MUR 6576 (Wright McLeod for Congress), Response from McLeod Committee at 4-7.

[14] MUR 6576 (Wright McLeod for Congress), Letter from Daniel Petalas, Associate General Counsel for Enforcement, FEC, to Stefan Passantino, Counsel to the McLeod Committee (December 4, 2012).

an interrogatory in discovery, asking the committee to provide the name their vendor, and was so read by the respondent. This type of pre-RTB investigation is contrary to the Act and creates serious due process concerns. The Act is clear that an investigation is to begin only after the Commission votes to find reason to believe:

> If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, *by an affirmative vote of four of its members*, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act . . . the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall *make an investigation* of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.[15]

As recently explained by the Perkins Coie political law group in comments filed with the Commission, this is by design: "Congress wrote FECA to place limits on what the Commission may do at the pre-reason to believe, or 'pre-RTB' phase."[16]

Most troubling is that this seems to be an evolving practice.[17] Sometimes, OGC has sent letters to respondents prior to a finding of RTB asking them to clarify certain points made in the response.[18] But in others, such as this case, the inquiry has gone beyond asking for clarification on a legal point or a conclusory statement made in a response and asks a specific factual question.[19] Here, as explained more fully below, OGC sent a second letter, accusing the vendor

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[15] 2 U.S.C. § 437g(a)(2) (emphasis added). *See also* 11 C.F.R. § 111.10(a).

[16] Comment from Perkins Coie, LLP Political Law Group, on Request for Comment on Enforcement Process (April 19, 2013), available at http://www.fec.gov/law/policy/enforcement/2013/perkinscoie.pdf. *See also* MUR 6540 (Rick Santorum for President), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter.

[17] The Commission's 2003 interim policy regarding what is released to the public at the conclusion of an enforcement matter does not include OGC's pre-RTB investigatory letters and inquiries. The reason for this is simple: OGC was not sending such letters at that time. This shows that OGC's organic progress did not begin to take shape until after 2003.

[18] Certainly, the Commission can authorize OGC to send a letter to a respondent asking for mere clarification of a response to ensure due process, *i.e.*, asking whether a respondent intentionally failed to respond to an allegation contained in the response. The current issue is different, as OGC has taken matters in their own hands and has chosen to go it alone.

[19] *See e.g.* MUR 6127 (Obama for America), Letter from Anne Marie Terzaken, Associate General Counsel for Enforcement, FEC, to Katharine Royne, Counsel to VIDA Fitness (March 27, 2009) (questioning how a charge for rental space was calculated); MUR 6044 (Musgrove for Senate), Letter from Anne Marie Terzaken, Associate General Counsel for Enforcement, FEC, to Marc Elias, Counsel to the Democratic Senatorial Campaign Committee and Musgrove for Senate (February 12, 2009) (questioning the approval process for a television advertisement).

of violating the Act, and erroneously claiming that a complaint had been filed against the vendor.[20]

Even if such an inquiry is somehow consistent with the Act,[21] there is no consistent process used by OGC. Instead, it is nothing more than a standardless *ad hoc* sweep where OGC can send these types of inquiries whenever it wishes without a Commission-adopted policy. There is nothing mandatory about the practice, nor is there a specified explanation of when it is appropriate to send pre-RTB inquiries to respondents. Often times, inquiries can occur months and months after a respondent has filed their initial response. Such an extended time period frustrates the due process afforded by the Act, which expressly talks about a complaint and a response and their timing, and provides no authority for post-response inquiries prior to a reason to believe determination. Such inquiries not only bog down the enforcement process by causing protracted delay of the submission of OGC's first report to the Commission, they create the appearance that OGC is using that time to data mine for incriminating information against certain respondents, either because of their partisan or ideological persuasion, or to further a novel legal theory.[22]

[20] This causes a practical problem for respondents, as it becomes a guessing game as to how to respond to the initial complaint. If they provide too much information, that could inadvertently launch OGC's pre-RTB discovery. But if they wish to avoid that and file a tighter response that simply responds directly to the complaint, then they risk the charge that they did not sufficiently rebut other accusations, whether real or imagined. The Commission needs to do better that such Goldilocks too hot -- too cold games of gotcha. Chief Justice Roberts, in his opinion in *FEC v. Wisconsin Right to Life, Inc.*, has already chastised the FEC for playing "heads I win, tails you lose" games. 551 U.S. 449, 471 (2007).

[21] The Act does not confer upon OGC the power to recommend whether there is RTB in a matter. That is a Commission-created convenience created through regulation. *See* 11 C.F.R. § 111.17; *see also* 11 C.F.R. § 111.18. Thus, there is no inherent right of OGC to do anything at the RTB stage other than that the Commission asks them to do. Given that whatever power OGC possesses was created *via* Commission regulation, it is the Commission (and not OGC) that has the power to construe that regulatory authority. Other agencies, such as the Securities and Exchange Commission, have explicit regulations empowering staff to investigate. *See, e.g.*, 15 U.S.C. § 78d-1 ("In addition to its existing authority, the Securities and Exchange Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. . . ."). The FEC lacks such regulations, and for good reason: the Act specifically prohibits the Commission from delegating certain powers. *See* 2 U.S.C. § 437c(c) ("A member of the Commission may not delegate to any person his or her vote or any decisionmaking authority or duty vested in the Commission by the provisions of this Act except that the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of section 437d(a) of this title or with chapter 95 or chapter 96 of Title 26."). This is why, for example, the Reports Analysis and Audit Divisions are not free to simply create their own standards and thresholds – those are approved by the Commission. And even then, such staff is merely empowered to act according to those standards, and bring the results of such efforts to the Commission for a decision. This stands in stark contrast to how OGC believes it can operate.

[22] *See* MUR 6540 (Rick Santorum for President), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioner Caroline C. Hunter; MUR 6081 (American Issues Project, Inc.), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen.

The lack of consistency within OGC makes it an *ad hoc* process, undertaken without Commission approval.[23] This raises important questions:

- When are these "clarification" letters sent?
- Who makes that determination?
- How many rounds of questioning are permissible?

Despite my best efforts to obtain answers to these questions, the answers to these questions remain unknown. What is clear is that there is no Commission-sanctioned process, nor is there consistency from matter to matter.

C. OGC's Standardless Addition of Respondent

The final issue with OGC's handling of this matter is OGC's letter to RGC, sent about six months after the initial complaint was filed. Once it received the McLeod Committee's response naming the vendor, OGC expanded the scope of this matter by implicating that vendor, even though they were not named in the complaint. The letter to RGC states: "The Federal Election Commission received a complaint that indicates RGC Consulting LLC may have violated the Federal Election Campaign Act of 1971, as amended ('the Act')."[24] Nowhere in the complaint is RGC mentioned, nor are there any allusions in it to an entity like RGC. The only reason OGC knew of RGC was the McLeod Committee's letter responding the OGC's extra-statutory inquiry that it received. The letter to RGC further states: "The complaint was not sent to you earlier due to an administrative oversight."[25] This makes no sense – it could not have been due to administrative oversight, since RGC was never named in the complaint, and OGC did not even know of their involvement until the McLeod Committee provided that information in response to a pre-RTB inquiry. It is very troubling that such bogus statements are being sent on Commission letterhead to those engaging in the political process, suggesting a legal violation without so much as a scintilla of evidence to support it.[26]

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[23] It is also troubling that in many instances these letters are not put on the public record once a matter has closed. For example, neither pre-RTB letter in this matter appears on the public record.

[24] MUR 6576 (Wright McLeod for Congress), Letter from Jeff S. Jordan, Supervisory Attorney, Complaints Examination & Legal Administration, FEC, to Rebecca Grant Cummiskey, RGC Consulting LLC (January 7, 2013).

[25] *Id.*

[26] The letter also contained other, less egregious, errors. For example, the letters salutation simply says, "Dear Mr.:[sic]" without any name included and the letter addressed to Rebecca Grant Cummiskey. Also, the letter states: "Under the Act you have the opportunity to demonstrate in writing that no action should be taken against and you [sic], as treasurer, in this matter." MUR 6576 (Wright McLeod for Congress), Letter from Jeff S. Jordan, Supervisory Attorney, Complaints Examination & Legal Administration, FEC, to Rebecca Grant Cummiskey, RGC Consulting LLC (January 7, 2013). While these are likely typographic errors, it still demonstrates that this was outside of the ordinary course for CELA and was not being done according to a set procedure.

Also troubling is the fact that this too seems to be an evolving, *ad hoc* process. There have been instances in the past, no less problematic, where OGC has taken information obtained during the course of a pre-RTB investigation and used it to name respondents not included in the original complaint.[27] In those instances, the letter to the new respondent typically came from an attorney in OGC's Enforcement Division, and would claim that information that the respondent violated the Act was ascertained "in the normal course of carrying out its supervisory responsibilities."[28] Those letters did not include a copy of the underlying original complaint, making it more difficult for these new respondents to be able to address the allegations against them. Here, the letter was sent from the Complaints Examination and Legal Administration Division ("CELA") of OGC, not the Enforcement Division, and did include the complaint.[29] Certainly, CELA did not take matters into their own hands and send the letter on their own initiative. There is no way that CELA would have known about the existence of the vendor, their name, or contact information, unless the Enforcement Division provided that information to CELA with the full expectation that CELA would send the letter. This raises yet another troubling question: given that at least half the Commission is not in favor of OGC's continued aggressive use of pre-RTB discovery, has the OGC Enforcement Division attempted to off-load their efforts to CELA so as to create the appearance of some sort of regular order?

While it might be an improvement that the complaint is included in the letter sent to the added respondent, as it provides a more meaningful opportunity to be heard,[30] that does not solve the problem. First, although I have probably been the most outspoken proponent of enhancing the due process afforded to those who have been accused of wrongdoing, this presupposes that one has actually been accused of wrongdoing in the first instance. Here, no one accused RGC of wrongdoing, nor was there any evidence of improper conduct. Second, all this is done without Commission approval or a set procedure. While attorneys in CELA have stated they do have a written procedure on the naming of respondents in complaint-generated matters in general, that document is not public and it seems to not adequately address when, if ever, it is appropriate to add respondents to a matter later in the enforcement process.[31]

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[27] *See e.g.* MUR 5964 (Aaron Schock for Congress), Letter from Thomasenia P. Duncan, General Counsel, FEC, to Paul O. Wilken, Wilson Grand Communications (May 27, 2008); MUR 6152 (Chaldean Chamber of Commerce PAC), Letter from Thomasenia P. Duncan, General Counsel, FEC, to Martin Manna (June 5, 2009).

[28] *Id.*

[29] MUR 6576 (Wright McLeod for Congress), Letter from Jeff S. Jordan, Supervisory Attorney, Complaints Examination & Legal Administration, FEC, to Rebecca Grain Cummiskey, RGC Consulting LLC (January 7, 2013). I question whether sending the complaint to someone not referenced therein, nor otherwise accused of wrongdoing, violates the Act's confidentiality provision. *See* 2 U.S.C. § 437g(a)(12). To the extent it does not, that can only be due to the McLeod campaign and its vendor RGC being one in the same, perhaps because the third party vendor was operating as an agent of the campaign. But if that is true, then the pre-RTB letter ought to have gone to counsel for the campaign. It did not, which demonstrates that OGC viewed RGC as separate and apart from the campaign. It would seem, then, that sending the complaint to an entity that is separate and apart from the respondent contravenes the confidentiality protections afforded respondents under the Act.

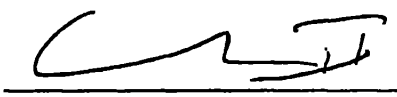
[30] Assuming, of course, this is done consistent with the Act's confidentiality protections.

[31] This is even more troubling in light of a recent court opinion cautioning the FEC for not following the Act's clear instructions regarding the naming of respondents in enforcement proceedings. *Nader v. FEC*, 823 F. Supp.2d 53, 67 (D.D.C. 2011) ("The FEC has not identified any statutory or other authority for the proposition that, despite the

Of course, there already exists a venue where the Commission could properly address these and other important issues facing the Commission: during an open meeting with a discussion of the long-pending enforcement manual. It is a disservice to the public that the Chair continues to prevent a discussion on this important topic, and this and other matters illustrate that problem her obstruction has caused.

III. CONCLUSION

For the aforementioned reasons, although I could support OGC's recommendation to find no reason to believe in this matter, I do not approve of the process undertaken in this matter.



DONALD F. McGAHN II
Vice Chairman

9/16/13
Date

Act's clear language, it has discretion to notify whomever it wants as "respondents" to the administrative complaint. The statute clearly strips the agency of that discretion."). To date, neither OGC nor the Commission has addressed this issue, despite my repeated urging.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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VIA ELECTRONIC MAIL AND U.S. MAIL
Stephen Passantino, Esq.
McKenna, Long & Aldridge
1900 K Street N.W.
Washington, D.C. 20006-1108

December 4, 2012

Dear Mr. Passantino:

RE: MUR 6576
McLeod for Congress

On May 22, 2012, the Federal Election Commission (the "Commission") notified your client, McLeod for Congress and Cameron Nixon in his official capacity as treasurer ("Committee"), of a complaint alleging that it may have violated 2 U.S.C. § 438(a)(4) by using contributor information obtained from Commission disclosure reports for fundraising purposes. A copy of the complaint was forwarded to the Committee at that time. On June 29, 2012, you responded to the complaint on behalf of your client. We are presently reviewing this matter.

Prior to making any recommendations to the Commission, we offer you the opportunity to clarify your response in relation to certain information you provided. On pages five and six of your response, you state that the Committee "outsources the vast majority of its direct mail and fundraising solicitation activities to a third-party vendor and does not circulate such materials on its own." You further state that the Committee "plays no role in the development of its vendor's mailing lists or in the vendor's preparation or circulation of materials," and "has no knowledge of the vendor's conduct regarding either activity." You also state that the Committee "has uncovered no evidence to suggest that the third-party vendor at issue obtained Mr. Green and Mrs. Hargather's names and/or contact information through inappropriate means or through conduct that may have violated 11 C.F.R. § 104.15(a) and 2 U.S.C. § 438(a)(4)." You indicate, however, that "[t]he campaign committee continues to look into the matter."

We note that the Response does not identify the vendor that the Committee retained to conduct the activities at issue in this matter, nor does it explain how its vendor obtained names and contact information for recipients of the mailings it sent on behalf of the Committee. We write to provide your client an opportunity to clarify those points or to submit any new information it may have uncovered since filing the Response, if it wishes to do so.

Any response on your part is entirely voluntary. Should you choose to respond, you may submit any materials — whether documents or affidavits from persons with knowledge — that you believe may be relevant or useful to the Commission's analysis of this matter. The Commission will take into account any additional information you may provide in determining whether to find reason to believe that the Committee violated the Federal Election Campaign Act. *See* 2 U.S.C. § 437g(a)(1).

In the event you wish to further clarify your response as described here, please do so by December 12, 2012. We will then make our recommendations to the Commission based on the information available to us. This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B), (12)(A). If you have any questions, please feel free to contact Attorney Kimberly Hart at (202) 694-1618.

Sincerely,

Daniel Petalas
Associate General Counsel
for Enforcement

Albany
Atlanta
Brussels
Denver
Los Angeles

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December 14, 2012

Ms. Kimberly Hart
Federal Election Commission
Enforcement Division
999 E Street, NW
Washington, DC 20463

Re: MUR No. 6576 - Original Copy of Affidavit Submitted by Mr. Mike Allen on Behalf of Wright McLeod for Congress, Inc.

Dear Ms. Hart:

As per your request, please find enclosed the signed affidavit submitted by Mr. Mike Allen, Campaign Manager for Wright McLeod for Congress, Inc., in association with Matter Under Review No. 6576. The attached document is Mr. Allen's original signed and notarized affidavit, a PDF copy of which was provided to you via e-mail earlier this week.

Thank you again for your continued assistance with this matter. Should you have any questions regarding Mr. Allen's affidavit or any other related issues, please do not hesitate to contact me.

Very truly yours,

Stefan C. Passantino

SCP
Enclosure

FEDERAL ELECTION COMMISSION

Wright McLeod for Congress, Inc.; and Cameron Nixon, in his capacity as Treasurer of Wright McLeod for Congress, Inc.	)	MUR No. 6576

AFFIDAVIT OF MIKE ALLEN ON BEHALF OF WRIGHT MCLEOD FOR CONGRESS, INC.

STATE OF GEORGIA
RICHMOND COUNTY

Appeared before me, the undersigned officer duly authorized to administer oaths, MR. MIKE ALLEN, who, after being sworn, stated under oath as follows on behalf of Wright McLeod for Congress, Inc.:

1. My name is Mike Allen. I am over the age of 21 years, am fully competent, and suffer under no disabilities that would prevent me from making this Affidavit. I was the official Campaign Manager for Wright McLeod for Congress, Inc. ("WMFC"), the principal federal campaign committee of former Republican congressional candidate D. Wright McLeod, who was seeking to represent Georgia's Twelfth Congressional District in the U.S. House of Representatives.

2. In my capacity as Campaign Manager for WMFC, I neither encountered nor discovered any data or information that would cause me to believe that the campaign committee, the candidate, the campaign treasurer, or any other campaign employee, utilized donor name and address information that was misappropriated from the FEC financial disclosures of other committees for either a commercial purpose or the purpose of soliciting campaign contributions.

3. Based upon my experience and knowledge as Campaign Manager for WMFC, it is my understanding that the campaign committee outsourced the vast majority of its direct mail and fundraising solicitation activities to a third-party vendor, RGC Consulting, LLC, and did not circulate such materials on its own. Likewise, it is my understanding that WMFC contributed to the development of the substantive content associated with its campaign mailings and solicitations, but played no rule in the development of RGC Consulting LLC's mailing lists or its preparation or circulation of direct mail and fundraising materials.

4. Based upon my experience and knowledge as Campaign Manager for WMFC, it is my understanding that the campaign committee and its staff had no knowledge whatsoever of RGC Consulting, LLC's development of campaign-related mailing lists or its preparation or circulation of direct mail and fundraising materials.

5. I declare under penalty of perjury under the laws of the State of Georgia and certify under oath that the foregoing is true and correct.

Executed this 12 day of December, 2012.

FURTHER AFFIANT SAITH NAUGHT

MIKE ALLEN

Subscribed and sworn to before me
this 12 day of December, 2012.

Notary Public
My commission expires:

MELISSA G. TYLER NOTARY PUBLIC EXP. 03-20-2015 RICHMOND COUNTY, GA

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 7, 2013

Rebecca Grant Cummiskey
RGC Consulting, LLC
6375 Glenridge Drive NE Unit 201
Atlanta, GA 30328

Re: MUR 6576

Dear Mr.:

The Federal Election Commission received a complaint that indicates RGC Consulting LLC may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 6576. Please refer to this number in all future correspondence.

The Commission has information which indicates that your firm was involved in the McLeod Committee solicitations allegedly sent to the donors listed on Complainant's FEC disclosure reports. The complaint was not sent to you earlier due to an administrative oversight. Under the Act you have the opportunity to demonstrate in writing that no action should be taken against and you, as treasurer, in this matter. Please submit any factual or legal materials that you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Frankie D. Hampton at (202) 694-1650 or toll free at 1-800-424-9530. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration

Enclosures:
1. Complaint
2. Procedures
3. Designation of Counsel Statement

Holland & Knight

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Robert S. Highsmith Jr.
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March 18, 2013

Via Fax (202) 219-3923 and First Class Mail

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal
Administration
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Re: MUR 6576

Dear Mr. Jordan:

We represent Rebecca Grant Cummiskey and her company, RGC Consulting, LLC, in this matter. This letter responds to your letter to her dated January 7, 2013.

As an initial matter, your letter contains the following statement: "Under the Act you have the opportunity to demonstrate in writing that no action should be taken against and you, as treasurer, in this matter." Mrs. Cummiskey is not now, and has never been, treasurer of the "Wright McLeod for Congress campaign" in this matter.

She was, however, a campaign finance consultant to the campaign. At no time did she or her company violate 11 C.F.R. § 104.15 or 2 U.S.C. § 438(a)(4) as the complaint alleges.

The addresses on the fundraising solicitations to which the complaint refers are easily explained and were *not* obtained in violation of 11 C.F.R. § 104.15, which only prohibits the use of information "copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed under the [Federal Election Campaign] Act". Mrs. Cummiskey has worked on numerous campaigns over the past twelve years as a political fundraiser. During that time, she has built a large database containing approximately 30,000 contacts throughout the state of Georgia. The contact information in her database has come through a variety of sources, largely from direct donations to campaigns on which she has worked previously. In addition, when working with fundraising committees and event hosts, she and the committee pore though rolodexes, chamber of commerce directories, association

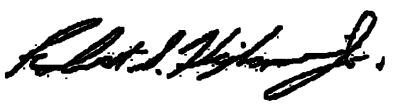
membership directories, and other appropriate resources to brainstorm on new contributor prospects.

For the Wright McLeod for Congress campaign, she provided call lists and mail lists for various events. These lists were derived exclusively from her database. At no time did she download, copy, or otherwise obtain contributor addresses from any FECA filing.

We trust this information will be helpful as you review this matter. Please let me know if we can provide any further information.

Sincerely yours,

HOLLAND & KNIGHT LLP



Robert S. Highsmith Jr.

RSH:cap