

**REMCHO, JOHANSEN & PURCELL, LLP**  
ATTORNEYS AT LAW

201 DOLORES AVENUE  
SAN LEANDRO, CA 94577  
PHONE: (510) 346-6200  
FAX: (510) 346-6201  
E-MAIL: harrison@rjp.com  
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Joseph Remcho (1944-2003)  
Robin B. Johansen  
Kathleen J. Purcell (Ret.)  
James C. Harrison  
Thomas A. Willis  
Karen Getman  
Margaret R. Prinzing  
Kari Krogseng

April 4, 2012

**VIA FEDERAL EXPRESS & E-MAIL**

Jeff Jordan  
Office of General Counsel  
Federal Election Commission  
999 "E" Street, NW  
Washington, DC 20463

Re: *MUR 6529*

Dear Mr. Jordan:

We represent California State Senator Gloria Negrete McLeod; committee treasurer Gilbert McLeod, Gloria Negrete McLeod for Congress, Gloria Negrete McLeod for Senate 2010, and Gloria McLeod for Supervisor 2014 (together "respondents") in connection with the complaint filed by Steven A. Figueroa.<sup>1</sup> Respondents received notification of the complaint on February 17, 2012, and your office granted respondents an extension to respond to the complaint by or on April 4, 2012. Respondents request that this matter remain confidential in accordance with 2 U.S.C. section 437g(a)(4)(B).

The complaint alleges that respondents have circumvented the Federal Election Campaign Act and the Bipartisan Campaign Reform Act of 2002 ("the Act") in five separate ways. These allegations are refuted below. At best, the complaint notes some de minimis deficiencies in respondents' disclaimers and minor errors in reporting and allocating expenditures. The complaint should be dismissed because it fails to establish any significant violation of federal campaign finance laws warranting the further use of FEC resources. See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985); *CREW v. FEC*, 475 F.3d 337, 340 (D.C. Cir. 2007).

<sup>1</sup> Respondents' updated statements of designation of counsel were submitted on March 6, 2012.

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1. Alleged Receipt of Contribution Over Limit

First, the complaint alleges that Gloria Negrete McLeod for Congress accepted a \$8,000 contribution from Lang, Hansen, O'Malley & Miller, a California partnership, which exceeded the \$2,500 per election limit. 11 C.F.R. § 110.1(b). It is true that the committee initially received and deposited a \$8,000 check from Lang, Hansen, O'Malley & Miller on December 23, 2011, and reported that check on FEC Form 3 filed on January 27, 2012. The committee mistakenly believed that the contribution could be attributed equally to the firm's four partners and that the contribution so attributed was within the contribution limit. Upon recognizing its error, however, the committee communicated with the firm, and all agreed that the committee would return \$6,000 to the firm on February 21, 2012, leaving a \$2,000 contribution from the firm. Copies of the reimbursement check sent from the committee to the firm, as well as the certified mail receipt, are attached in Exhibit A. The committee will file an amendment to reflect these facts.

The committee reimbursed the firm \$6,000 within 60 days of receipt of the contribution, and within 30 days of the committee's discovery that the contribution was impermissible. It therefore complied with the process set forth in section 103.3(b), which allows committees to refund excessive contributions. The amount remaining, \$2,000, is within the contribution limit. The committee's corrective actions complied with sections 110.1 and 103.3. The committee made an honest mistake regarding contributions from members of a partnership and it corrected its error as soon as it discovered it.

2. Alleged Non-Compliance with Federal Disclaimer Requirements

The complaint next alleges that Gloria Negrete McLeod for Congress failed to comply with the disclaimer requirements in section 110.11 with respect to a fundraiser invitation that was attached to an email sent to approximately 2,100 recipients. The complaint is flatly wrong in claiming that the invitation attached as Exhibit 2 to the complaint "does not clearly indicate who paid for the communication." To the contrary, the invitation states that it was "Paid for and Authorized by Gloria Negrete McLeod for Congress." It is true that the disclaimer was not set forth in a box, but given the nature of the one-sided invitation, and the simplicity of its content, the absence of the box is not a material omission. The invitation therefore substantially complied with the disclaimer requirement, and any technical violation of section 110.11 is insignificant.

The Congressional committee also substantially complied with the "best efforts" notification required by section 104.7(b). The invitation solicits a contributor's name, occupation, employer, address, and other contact information with the phrase "Federal campaign finance laws require that we obtain the following information." At the end of the solicitation, the invitation reiterates that "ALL THE ABOVE INFORMATION IS REQUIRED BY LAW." This language constitutes a "clear request" for the contributors' required information, and also constitutes "an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications." 11 C.F.R. § 104.7(b)(1)(i). Section 104.7 provides

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examples of the types of statements that are acceptable to convey this information, but they "are not the only allowable statements." *Id.* § 104.7(b)(1)(i)(B). The fact that the notice on the invitation is more simple and direct than the suggested examples does not mean that the notice did not substantially comply with section 104.7. Any technical deviation from the suggested example language in section 104.7(b) is insignificant and unworthy of further expenditure of Commission resources.

3. **Alleged Non-Compliance with Prohibition Against Disbursing Non-Federal Funds**

Third, the complaint alleges that Gloria Negrete McLeod for Senate 2010 made contributions to other state candidates and committees in violation of section 300.62, which prohibits federal candidates who are also state or local candidates from using their non-Federal campaign funds to make contributions to other state or local candidates or committees.

Respondents did not violate section 300.62 because all contributions made to state and local candidates and committees by the state senate committee after Senator McLeod became a federal candidate were from federally permissible sources within the federal limits. Section 300.62 allows federal candidates to disburse funds in connection with any non-Federal election "that do not exceed the Act's contribution limits or come from prohibited sources under the Act." A state candidate who is also a candidate for Congress may therefore use money in her state campaign account to contribute to other state candidates or a political party, provided that the state account includes sufficient contributions from federally permissible sources and within the federal limits. Advisory Opinion 2007-26 (Schock); Advisory Opinion 2006-38 (Casey). The Commission has determined that a candidate may use either the "first in, first transferred"/"first in, first out" ("FIFO") accounting method or the "last in, first transferred"/"last in, first out" ("LIFO") accounting method to identify federally permissible funds she has in her state account. Advisory Opinion 2007-26; Advisory Opinion 2006-38 (citing AO 2006-6 (Busby) & AO 2004-45 (Salazar)).

We have identified a number of contributions to the Gloria Negrete McLeod Senate 2010 committee that comprise federally permissible funds by reviewing the committee's filings with the California Secretary of State. In determining whether a contribution was federally permissible and within the federal limits, we included contributions from individuals, small contributor committees (political committees that receive contributions solely from individuals that do not exceed \$200),<sup>2</sup> and other federal and state political committees that received contributions solely from individuals. We reviewed each of the political committees'

<sup>2</sup> Under California campaign law, a political committee qualifies as a "small contributor committee" (SCC) when it meets all of the following criteria: (a) the committee has been in existence for at least six months; (b) the committee receives contributions from 100 or more persons; (c) no one person has contributed to the committee more than two hundred dollars (\$200) per calendar year; and (d) the committee makes contributions to five or more candidates every 36 months. Cal. Gov. Code § 85203; 2 Cal. Code Reg. § 18503.

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donor lists to ensure that they received no corporate or labor organization contributions. A donor that is a recipient committee (a federal non-connected committee, a California PAC, or a California small contributor committee (SCC)) was included as a permissible source only if the sources of its funds were individuals – *i.e.*, none of the committee's funds were received from corporations or labor organizations.

We then used LIFO and FIFO to confirm that the Gloria Negrete McLeod for Senate 2010 committee had sufficient federally permissible funds to cover the contributions it made to state and local candidates after Senator McLeod declared her candidacy for Congress on September 6, 2011. Senator McLeod made contributions to California state and local candidates and political committees totaling \$15,800.<sup>3</sup> See Exhibit B. Under the FIFO accounting method, the state senate committee had at least \$19,300 available in federally permissible funds to make those contributions. Under the LIFO accounting method, the committee had at least \$20,142 available.<sup>4</sup>

A list of federally permissible funds available under each accounting method is provided in Exhibit B.<sup>5</sup> Exhibit B demonstrates that there are sufficient federally permissible funds to cover the amount the committee has contributed to state and local candidates and committees under either accounting method. Accordingly, the committee had sufficient funds to comply with section 300.62 when it made the contributions to state and local candidates and committees.

4. **Alleged Non-Compliance with Prohibition Against Soliciting Non-Federal Funds**

The complaint alleges that the Congressional committee may have violated section 300.61, which prohibits federal candidates from soliciting funds from PACs sponsored

<sup>3</sup> The Complaint alleges that the committee made state contributions exceeding \$18,000, but appears to count contributions made before Senator McLeod declared her federal candidacy. We have thus disregarded that amount and considered only the state and local contributions made after Senator McLeod declared her intention to become a federal candidate. Please note that Senator McLeod declared her candidacy for the Congressional seat on September 6, 2011, but she did not receive sufficient contributions under 11 C.F.R. section 100.3(a) to become a federal candidate until September 22, 2011.

<sup>4</sup> The Senate committee transferred \$652,360.41 in campaign funds to the Supervisor committee on November 9, 2010 and November 10, 2010, and attributed these funds to specific donors in its campaign report. This attribution was not required under state law and has no bearing on the accounting methods applicable to determining federally permissible funds, so we have disregarded the attribution to specific donors.

<sup>5</sup> Exhibit B does not contain a comprehensive list of all permissible contributions to the Senate committee, as we stopped identifying permissible sources of funds once ample contributions were identified.

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by corporations and labor organizations unless the PAC is registered with the FEC. This allegation is based solely on language contained in the fundraising event invitation, discussed above and attached as Exhibit 2 to the complaint. That language is: "State and local PACs may contribute maximum \$1,000. Corporate contributions and cash cannot be accepted."

Respondents are not aware of any FEC regulation that requires them to explain to potential donors the law regarding donors' compliance with federal registration and reporting rules. Respondents were and are aware that state and local committees may only make contributions to federal candidate committees from federally permissible funds. To this end, the committee's FEC filings demonstrate that Gloria Negrete McLeod for Congress has neither solicited nor accepted contributions from donors whose contributions appear to be impermissible under federal law. Therefore, respondents have committed no violation of section 300.61.

5. **Alleged Impermissible Transfer of Funds from Non-Federal Campaign Committee**

Lastly, the complaint alleges that Gloria Negrete McLeod for Senate 2010 and Gloria Negrete McLeod for Supervisor 2014 made impermissible in-kind contributions to Gloria Negrete McLeod for Congress in violation of section 110.3(d) when they split the costs of polling and survey research conducted in summer 2011, which totaled \$30,120.

The purpose of the poll was two-fold: to assist Senator McLeod in identifying issues of importance to her Senate district constituents, and to help her make the important decision about whether to seek the office of County Supervisor or member of the House of Representatives. The Senate district is quite large, and encompasses much of the supervisor district as well as the Congressional district. The Senate district is located in southern California, and contains a small part of Chino, as well as the cities of Colton, Fontana, Montclair, Ontario, Pomona, Rialto, San Bernardino, and unincorporated Bloomington. The Supervisor district contains the cities of Chino, Chino Hills, Montclair and Ontario, and a portion of Upland. At the time the poll was drafted and conducted in late July and early August 2011, the state redistricting commission had not yet finalized the boundaries of the Congressional district, so its contours were not known, and were subject to change. As it turns out, the 35th Congressional District is largely within the Senate district, and encompasses the cities of Chino, Ontario, and Pomona, and parts of Fontana, Rialto and unincorporated Bloomington. Thus, the polling directed towards the Senate district constituents largely overlapped with the polling regarding the potential opportunities of running in the Supervisor district or a new, not-yet-drawn Congressional race.

Respondents had the poll questions reviewed by counsel prior to conducting it. Counsel advised the committee to allocate the costs of the polling between the Senate and Supervisor committees, and did not flag the question of whether the poll also benefited the then-nonexistent Congressional committee. Respondents therefore relied on the advice of counsel in proceeding with the polling and the attribution of the costs of the polling to the Senate and Supervisor committees.

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The complaint is incorrect in alleging that the non-existent federal committee received in-kind contributions from the Senate and Supervisor committees. A federal candidate committee may not accept a contribution from a non-federal committee controlled by the candidate, and it was not the intention of either non-federal committee to make a prohibited contribution. Rather, there was a misunderstanding on the part of respondents about how the costs should be paid in reliance on the advice of counsel.

Respondents now realize that the portion of the polling devoted to testing the waters for the Congressional race should not have been paid by the Senate and the supervisorial committees, and instead should have been paid by sources permissible under the testing-the-waters provision and later attributed to the Congressional committee if and when it was created. Accordingly, respondents have reviewed the content and scope of the poll and identified the portion (six-elevenths) that is reasonably related to the Congressional district. The Congressional committee has reimbursed the Senate committee and the Supervisor committee \$8,214.55 and \$8,214.54, respectively, for the portion of the polling that was directed towards the potential Congressional race, and these payments will be reflected in its next FEC filing. Copies of the reimbursement checks are attached at Exhibit C. Respondents believe this remedial action rectifies the mistake, and do not believe that further expenditure of FEC resources on the matter is necessary.

In sum, respondents' conduct has been substantially consistent with the requirements of the Federal Election Campaign Act and the FEC's regulations. Any violations of the Act were relatively minor and insignificant, and have been corrected. Respondent Gloria Negrete McLeod is a first-time federal candidate, and she, her treasurer and other staff are still learning the complex federal campaign finance laws governing her candidacy. They made their best efforts to do so in the first months of her candidacy, and will redouble their efforts to comply with federal law going forward. The complaint should therefore be dismissed without further action.

If you would like additional information, please do not hesitate to contact us:

Sincerely,



REMCHO, JOHANSEN & PURCELL, LLP  
James C. Harrison  
Kari Krogseng

KK:NL  
Attachments  
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**EXHIBIT B**

## ANALYSIS OF GLORIA NEGRETE MCLEOD FOR SENATE 2010 CONTRIBUTIONS

### RESPONSE TO FEC COMPLAINT, MUR 6529

**A. Monetary Contributions Made by State Senate Committee to State or Local Candidates/Committees after September 6, 2011 (the date Senator McLeod announced her candidacy for federal office)<sup>1</sup>**

Candidate or Committee	Type of State or Local Race or Committee	Amount of Contribution	Date of Contribution
Leland Yee For Mayor 2011	City Mayor	\$500.00	09/12/2011
Lopez For Assembly 2012	State Assembly	\$1,000.00	09/26/2011
Women's Democratic Club	California PAC - General Purpose Candidate Committee	\$100.00	10/09/2011
Pavley For Senate 2012	State Senate	\$3,900.00	10/27/2011
Andrew Lachman For Assembly 2012	State Assembly	\$1,500.00	10/29/2011
Jackson For Senate 2012	State Senate	\$3,900.00	10/29/2011
Loni Hancock For Senate 2012	State Senate	\$3,900.00	10/31/2011
Furutani For City Council General 2012	City Council	\$500.00	12/03/2011
Joe Simitian For Supervisor 2012	County Supervisor	\$500.00	12/06/2011
	<b>Total Contributions Made</b>	<b>\$15,800</b>	

<sup>1</sup> Please note that Senator McLeod declared her candidacy for the Congressional seat on September 6, 2011, but she did not receive sufficient contributions under 11 C.F.R. section 100.3(a) to become a federal candidate until September 22, 2011.



**B. Federally Permissible Contributions Received By State Senate Committee Using "First In, First Transferred"/"First In, First Out" (FIFO) Accounting Method**

Contributor	Type of Contributor	Amount of Contribution	Date of Contribution
CA Academy of Physician Assistants (CAPA) PAC	California PAC - individual contributors only	\$1,000.00	02/28/07
California Medical Association	California PAC - Small Contributor Committee	\$1,000.00	02/28/07
California State Council Of Laborers PAC	California PAC - Small Contributor Committee	\$2,300.00	03/06/07
California Nurses Association PAC	California PAC - Small Contributor Committee	\$1,000.00	03/09/07
California Professional Firefighters PAC	California PAC - Small Contributor Committee	\$1,000.00	03/11/07
Association For Los Angeles Deputy Sheriffs PAC	California PAC - individual contributors only	\$500.00	03/11/07
Professional Engineers In California Government PAC	California PAC - Small Contributor Committee	\$1,000.00	03/14/07
Peace Officers Research Association Of CA PAC	California PAC - Small Contributor Committee	\$1,000.00	03/15/07
Michael Malik	Individual	\$1,000.00	04/09/07
California Medical Association	California PAC - Small Contributor Committee	\$1,000.00	04/20/07
California Association Of Psychiatric Technicians Inc.	California PAC - Small Contributor Committee	\$1,000.00	05/18/07
Professional Engineers in California Government PAC	California PAC - Small Contributor Committee	\$1,000.00	05/21/07

CA-NV Conference of Operating Engineers PAC	California PAC - Small Contributor Committee	\$2,000.00	05/22/07
California Professional Firefighters PAC	California PAC - Small Contributor Committee	\$1,000.00	05/23/07
Association For Los Angeles Deputy Sheriffs PAC	California PAC - Small Contributor Committee	\$500.00	05/24/07
QuestPAC Quest Diagnostics Employees PAC	Federal PAC	\$1,000.00	05/24/07
General Motors Corp PAC GM PAC	Federal PAC	\$1,000.00	06/04/07
Verizon Communications Inc. Good Government Club-CA	California PAC - individual contributors only	\$1,000.00	06/05/07
	<b>Total Contributions Received</b>	<b>\$19,300</b>	

**C. Federally Permissible Contributions Received By State Senate Committee Using "Last in, First Transferred"/"Last In, First Out" (LIFO) Accounting Method**

Contributor	Type of Contributor	Amount of Contribution	Date of Contribution
Pitney-Bowes Inc. PAC	Federal PAC	\$500.00	11/01/10
Wells Fargo & Co California Employees Good Government Fund	California PAC - individual contributors only	\$1,000.00	10/29/10
Drive Committee	Federal PAC	\$1,000.00	10/28/10
Political Action For Classified Employees Of CA School Employees PAC	California PAC - individual contributors only	\$1,000.00	10/20/10
Coca-Cola Enterprises Inc. Employee Nonpartisan Comm For California	Federal PAC	\$792.00	10/08/10
Plumbers & Steamfitters Local 467 PAC	California PAC - individual contributors only	\$2,400.00	09/27/2010
San Bernardino Public Employees Association	California PAC - individual contributors only	\$2,400.00	09/26/2010
San Bernardino County Safety Employees' Benefit Association PAC	California PAC - individual contributors only	\$300.00	09/15/2010
National Association Of Chain Drug Stores Inc PAC - NACDS PAC	Federal PAC	\$1,000.00	09/13/2010
Rosanne Bader	Individual	\$100.00	09/09/2010
Vera Arregin	Individual	\$100.00	09/09/2010
Luis Juarez	Individual	\$100.00	09/09/2010
Lelia Robertson	Individual	\$100.00	09/09/2010
Charles Bader	Individual	\$100.00	09/09/2010
Plumbers & Steamfitters Local 398 PAC	California PAC - Small Contributor Committee	\$250.00	09/09/2010

California Association Of Highway Patrolmen	California PAC – individual contributors only	\$1,000.00	08/30/2010
The Procter & Gamble Co Good Government Committee	Federal PAC	\$1,000.00	08/30/2010
Capt San Francisco Bar Pilots PAC	California PAC – individual contributors only	\$1,000.00	08/16/2010
CA Society Of Enrolled Agents PAC	California PAC – individual contributors only	\$1,000.00	08/16/2010
California Professional Firefighters PAC	California PAC – individual contributors only	\$1,000.00	08/12/2010
Professional Engineers In CA Government PAC	California PAC – individual contributors only	\$1,000.00	08/06/2010
California Association Of Nurse Anesthetist PAC	California PAC – individual contributors only	\$1,000.00	08/06/2010
Eli Lilly & Co PAC (Federal)	Federal PAC	\$900.00	06/07/2010
Eli Lilly & Co PAC (Federal)	Federal PAC	\$1,100.00	06/07/2010
	<b>Total Contributions Received</b>	<b>\$20,142</b>	