

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )  
4 )  
5 MUR 6953 ) DISMISSAL AND  
6 McSally for Congress ) CASE CLOSURE UNDER THE  
7 Paul Kilgore as treasurer ) ENFORCEMENT PRIORITY  
8 ) SYSTEM  
9

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a  
12 basis to allocate its resources and decide which matters to pursue. These criteria include, without  
13 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into  
14 account both the type of activity and the amount in violation; (2) the apparent impact the alleged  
15 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the  
16 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as  
17 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing  
18 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial  
19 discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored  
20 MUR 6953 as a low-rated matter and has determined that it should not be referred to the Alternative  
21 Dispute Resolution Office ("ADRO").<sup>1</sup>

22 The Complaint alleges that McSally for Congress and Paul Kilgore in his official capacity as  
23 treasurer (the "Committee")<sup>2</sup> violated the Act and Commission regulations by failing to disclose  
24 donor information in reports filed with the Commission.<sup>3</sup> Specifically, the Complaint alleges that the  
25 Committee failed to include employer and occupation information for over 70.5 percent of its donors

<sup>1</sup> The EPS rating information is as follows:  
Sep. 29, 2015.

Complaint filed: Aug. 4, 2015. Response filed:

<sup>2</sup> McSally for Congress is the authorized Committee for Martha McSally, U.S. Representative from Arizona's second Congressional district. McSally was re-elected in 2016.

<sup>3</sup> Compl. at 2 (Aug. 4, 2015).

1 in its 2015 April and July Quarterly reports; 189 of 269 donors who contributed to the Committee  
2 from January 1, 2015, to March 31, 2015, and 675 of 956 donors who contributed to the Committee  
3 from April 1, 2015, to June 30, 2015.<sup>4</sup> The Complaint also cites to information suggesting that the  
4 Committee failed to disclose the employer and occupation for 26 percent of its donors in the 2014  
5 election cycle.<sup>5</sup>

6 The Committee acknowledges that its 2015 April Quarterly and July Quarterly reports were  
7 missing employer and occupation information, but avers that it had procedures in place to comply  
8 with the Commission's "best efforts" requirements, including: (1) printed solicitations that included  
9 requests for contributor information and a statement of the Act's requirement to collect the  
10 information; (2) printed follow-up requests for missing information; and (3) amending disclosure  
11 reports to include missing contributor information.<sup>6</sup> Further, the Committee indicates that as a result  
12 of follow-up requests, it had obtained missing information for 330 individual contributors from the  
13 2016 election cycle and was in the process of amending its disclosure reports.<sup>7</sup> The Committee also

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<sup>4</sup> *Id.* The Complaint is based on a news article that summarizes reporting errors, most of which were the subject of Requests for Additional Information sent to the Committee by the Commission's Reports Analysis Division ("RAD"). Dylan Smith, *Errors in McSally Campaign Reports Add up to Millions*, TUSCON SENTINEL.COM, July 17, 2015 at [http://www.tucson sentinel.com/local/report/071715\\_mcsally/errors-mcsally-campaign-reports-add-up-millions/](http://www.tucson sentinel.com/local/report/071715_mcsally/errors-mcsally-campaign-reports-add-up-millions/).

<sup>5</sup> *Id.*

<sup>6</sup> Resp. at 1 (Sept. 29, 2015). *See also* Resp. Exhibits A and B (solicitations from the 2016 election cycle that request employer and occupation information and state that the Committee must exercise "best efforts" to obtain the information, and a sample follow-up letter and a list of letter recipients).

1 maintains that it similarly used best efforts to obtain information from its 2014 campaign contributors  
2 and notified each of their obligation to provide the information.<sup>8</sup>

3 Political committees must keep records of all contributions received by or on behalf of the  
4 committee, the name and address of any person who makes a contribution in excess of \$50, and the  
5 occupation and name of employer of any individual whose contributions aggregate more than \$200  
6 during an election cycle to an authorized committee.<sup>9</sup> When the treasurer of a political committee  
7 shows that best efforts have been used to obtain and disclose the information required by the Act, any  
8 report or any records of such committee shall be considered in compliance with the Act.<sup>10</sup> Best  
9 efforts includes, *inter alia*, making a clear request for the contributor's full name, mailing address,  
10 occupation and name of employer, and including an accurate statement of Federal law regarding the  
11 collection and reporting of individual contributor identifications on committee solicitations.<sup>11</sup>  
12 Further, for contributions aggregating more than \$200 per election cycle (in the case of an authorized  
13 committee) which lack required contributor information, the treasurer shall, within 30 days of receipt,  
14 make at least one effort, either by written or oral request, to obtain the missing information.<sup>12</sup> If  
15 contributor information is obtained after the contribution has been included in disclosure reports, the  
16 committee shall amend its reports or include the information with its next scheduled report.<sup>13</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> 52 U.S.C. § 30102(c); 104.3(a)(4)(i).

<sup>10</sup> 52 U.S.C. § 30102(i).

<sup>11</sup> 11 C.F.R. § 104.7(b)(1)(i) and (ii).

<sup>12</sup> 11 C.F.R. § 104.7(b)(2).

<sup>13</sup> 11 C.F.R. § 104.7(b)(4)(i). *See also* 11 C.F.R. § 104.7(b)(4)(ii) (committees are not required to file amendments for previous election cycles).

1 A review of the Committee's disclosure reports indicates that the Committee did not include  
2 employer and occupation information for all contributors. However, the Committee amended the  
3 2015 disclosure reports at issue to include at least some of the missing information. Further, the  
4 Committee, in response to RAD's Requests for Additional Information, submitted information  
5 regarding its best efforts procedures and the steps the Committee took to obtain missing contributor  
6 information. RAD has indicated that the Committee provided an adequate description of its best  
7 efforts procedures for the 2016 election cycle and amended its reports to provide additional employer  
8 and occupation information;

9  
10 Given the Committee's corrective actions and its best efforts procedures to obtain missing  
11 contributor information, and in furtherance of the Commission's priorities, relative to other matters  
12 pending on the Enforcement docket, we recommend that the Commission exercise its prosecutorial  
13 discretion to dismiss the allegation that McSally for Congress and Paul Kilgore in his official  
14 capacity as treasurer violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 104.7(b).<sup>14</sup>

15 **RECOMMENDATIONS**

- 16 1. Dismiss the allegation that McSally for Congress and Paul Kilgore in his official capacity  
17 as treasurer violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 104.7(b) pursuant to the  
18 Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985);  
19  
20 2. Approve the Factual and Legal Analysis;  
21  
22 3. Approve the appropriate letters; and

<sup>14</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 4. Close the file as to all Respondents.  
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Lisa J. Stevenson  
Acting General Counsel

Kathleen M. Guith  
Associate General Counsel

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11 9.28.17  
12 Date

BY: Stephen Gura  
Stephen Gura  
Deputy Associate General Counsel

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29 Attachment: Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: McSally for Congress MUR 6953  
Paul Kilgore as treasurer

**I. INTRODUCTION**

This matter was generated by a Complaint alleging that McSally for Congress and Paul Kilgore in his official capacity as treasurer (the "Committee")<sup>1</sup> violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by failing to disclose donor information in reports filed with the Commission.<sup>2</sup> The Commission dismissed the allegations that the Committee violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 104.7(b) pursuant to the Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985).

**II. FACTUAL AND LEGAL ANALYSIS**

The Complaint alleges that the Committee failed to include employer and occupation information for over 70.5 percent of its donors in its 2015 April and July Quarterly reports; 189 of 269 donors who contributed to the Committee from January 1, 2015, to March 31, 2015, and 675 of 956 donors who contributed to the Committee from April 1, 2015, to June 30, 2015.<sup>3</sup> The

<sup>1</sup> McSally for Congress is the authorized Committee for Martha McSally, U.S. Representative from Arizona's second Congressional district. McSally was re-elected in 2016.

<sup>2</sup> Compl. at 2 (Aug. 4, 2015).

<sup>3</sup> *Id.* The Complaint is based on a news article that summarizes reporting errors, most of which were the subject of Requests for Additional Information sent to the Committee by the Commission's Reports Analysis Division ("RAD"). Dylan Smith, *Errors in McSally Campaign Reports Add up to Millions*, TUSCON SENTINEL.COM, July 17, 2015 at [http://www.tucson sentinel.com/local/report/071715\\_mcsally/errors-mcsally-campaign-reports-add-up-millions/](http://www.tucson sentinel.com/local/report/071715_mcsally/errors-mcsally-campaign-reports-add-up-millions/).

INDEPENDENT

1 Complaint also cites to information suggesting that the Committee failed to disclose the  
2 employer and occupation for 26 percent of its donors in the 2014 election cycle.<sup>4</sup>

3 The Committee acknowledges that its 2015 April Quarterly and July Quarterly reports  
4 were missing employer and occupation information, but avers that it had procedures in place to  
5 comply with the Commission's "best efforts" requirements, including: (1) printed solicitations  
6 that included requests for contributor information and a statement of the Act's requirement to  
7 collect the information; (2) printed follow-up requests for missing information; and (3) amending  
8 disclosure reports to include missing contributor information.<sup>5</sup> Further, the Committee indicates  
9 that as a result of follow-up requests, it had obtained missing information for 330 individual  
10 contributors from the 2016 election cycle and was in the process of amending its disclosure  
11 reports.<sup>6</sup> The Committee also maintains that it similarly used best efforts to obtain information  
12 from its 2014 campaign contributors and notified each of their obligation to provide the  
13 information.<sup>7</sup>

14 Political committees must keep records of all contributions received by or on behalf of  
15 the committee, the name and address of any person who makes a contribution in excess of \$50,  
16 and the occupation and name of employer of any individual whose contributions aggregate more  
17 than \$200 during an election cycle to an authorized committee.<sup>8</sup> When the treasurer of a political

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<sup>4</sup> *Id.*

<sup>5</sup> Resp. at 1 (Sept. 29, 2015). *See also* Resp. Exhibits A and B (solicitations from the 2016 election cycle that request employer and occupation information and state that the Committee must exercise "best efforts" to obtain the information, and a sample follow-up letter and a list of letter recipients).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 52 U.S.C. § 30102(c); 104.3(a)(4)(i).

1 committee shows that best efforts have been used to obtain and disclose the information required  
2 by the Act, any report or any records of such committee shall be considered in compliance with  
3 the Act.<sup>9</sup> Best efforts includes, *inter alia*, making a clear request for the contributor's full name,  
4 mailing address, occupation and name of employer, and including an accurate statement of  
5 Federal law regarding the collection and reporting of individual contributor identifications on  
6 committee solicitations.<sup>10</sup> Further, for contributions aggregating more than \$200 per election  
7 cycle (in the case of an authorized committee) which lack required contributor information, the  
8 treasurer shall, within 30 days of receipt, make at least one effort, either by written or oral  
9 request, to obtain the missing information.<sup>11</sup> If contributor information is obtained after the  
10 contribution has been included in disclosure reports, the committee shall amend its reports or  
11 include the information with its next scheduled report.<sup>12</sup>

12 A review of the Committee's disclosure reports indicates that the Committee did not  
13 include employer and occupation information for all contributors. However, the Committee  
14 amended the 2015 disclosure reports at issue to include at least some of the missing information.  
15 Further, the Committee, in response to RAD's Requests for Additional Information, submitted  
16 information regarding its best efforts procedures and the steps the Committee took to obtain  
17 missing contributor information. RAD has indicated that the Committee provided an adequate  
18 description of its best efforts procedures for the 2016 election cycle and amended its reports to  
19 provide additional employer and occupation information.

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<sup>9</sup> 52 U.S.C. § 30102(i).

<sup>10</sup> 11 C.F.R. § 104.7(b)(1)(i) and (ii).

<sup>11</sup> 11 C.F.R. § 104.7(b)(2).

<sup>12</sup> 11 C.F.R. § 104.7(b)(4)(1). *See also* 11 C.F.R. § 104.7(b)(4)(ii) (committees are not required to file amendments for previous election cycles).



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Given the Committee's corrective actions and its best efforts procedures to obtain missing contributor information, and in furtherance of the Commission's priorities, relative to other matters pending on the Enforcement docket, the Commission exercised its prosecutorial discretion to dismiss the allegation that McSally for Congress and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 104.7(b).<sup>13</sup>

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<sup>13</sup> *Heckler v. Chaney.*