

Eric Roberson for Congress

4514 Cole Avenue, Suite 300

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2008 APR 21 P 12 25

Jeff Jordan, Esq., Supervisory Attorney
Complaints Examination & Legal Administration
Federal Elections Commission
999 E Street, NW
Washington, D C 20463

Re: MUR 5983

Dear Mr Jordan

Enclosed please find my Campaign's factual and legal response to frivolous allegations of Mr Steve Love dated March 13, 2008 and filed on or about March 13, 2008

This response is filed timely within 15 days of the Commission's letter, which was dated March 25, 2008, postmarked March 28, 2008, and received March 31, 2006

The response consists of Eric Roberson's 10 page verified letter that factually and legally details the reasons why MUR 5983 should be dismissed I adopt by reference for all purposes this Response and request that MUR 5983 be dismissed

Sincerely,

Brynn Sissom

Brynn Sissom, Treasurer

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Mr Love files five bulleted allegations and 11 numbered items marked "bill of particulars" Each is responded to individually

A. Introduction

As a note of background, in January of 2007, I decided to start an exploratory committee for the United States Senate This was done predominantly out of fear that the Democratic Party would not have a viable candidate I quickly raised about \$10,000 When crossing the \$5,000 threshold, I called the Federal Election Commission's (FEC's) toll free number and discussed testing the waters rules with the Compliance Office to insure I did not have to declare a candidacy until I was sure I was a candidate During this entire time I insured I did not hold myself out as a candidate

For several months, I spoke with Party Leaders, including County Chairs, State Democratic Executive Committee Members, and the State Party Chair, as well as rank and file Democrats I had detailed discussions with political consultants I also spoke with Emil Reichstadt, who also started an exploratory committee for the U S Senate

In the early Spring of 2007, while asking Mikal Watts for a donation to my Exploratory Committee I was informed he was exploring a run for the U S Senate too After a meeting with Mikal personally in Dallas, I decided he had a better chance than I did, and I thereafter sponsored an exploratory fundraising dinner for him In doing so, I

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contacted the FEC Compliance Office via the toll free number to insure that transferring money from one exploratory Committee to another was appropriate

After the June 2007 dinner I co-hosted for Mikal Watts, my Senate exploratory committee was mostly dormant except for minimal expenses related to maintaining the website hosting and other minor expenses. If I had allowed these items to lapse, I would have lost the work contained on the servers hosted by other companies. I was not actively testing the waters as such, but I was passively testing the waters by keeping an eye on the Senate race in case it became open again. As events would have it, Mr. Watts did drop out of the race for United States Senate. However, the Honorable Rick Noriega did file for the Senate race in early December 2007, and I decided that he was a viable candidate.

In the first week of December 2007, I first became aware that Will Pryor, the prior District 32 Democratic Candidate was not going to seek the Party's nomination. Prior to December 2007, I had had no interest in the 32nd District race. Specifically, I do not live in the 32nd District and had been under the mistaken impression that Mr. Pryor was seeking the nomination again.

In early December, I was told the only person seeking the nomination was Steve Love, a person whom I was told was totally unsuitable for the office and who would hurt the Party if he were to be the candidate. After looking at this race, I contacted the FEC to determine if I could transfer the Senate Exploratory Committee money from the now unnecessary U.S. Senate Exploratory Committee to a congressional race and was told that I could. After being asked by numerous members of the Party leadership to run for the 32nd District, I decided to run in late December 2007 and paid my fee to get on the ballot.

Steve Love did in fact run for the 32nd District and became one of my opponents in the primary race for the Democratic Nomination. I have now defeated him in the primary, placing first in the three-way general primary 45%-33%-22% and winning the primary runoff election against Mr. Love 72% to 28%.

During the primary, Mr. Love frequently relied on baseless and unsubstantiated attacks as one of his main means to attempt to gain traction against my candidacy. His usual mode of operation was to jump to a radical and unsubstantiated conclusion based solely on conjecture or misunderstanding of the rules and regulations. For example, although Democratic Party rules allow endorsements from State Democratic Executive Committee Members, Mr. Love threatened to have an SDEC member who endorsed me kicked off the SDEC for "violating party rules." Mr. Love was forced to apologize when the publically available rules were supplied to him.

Well, in this FEC complaint, Mr. Love is at it again. Unfortunately, it appears to me that Mr. Love used this Complaint as a political tool to try to gain traction by publically disseminating that he had filed an FEC complaint against me. Specifically, at or near the time he mailed the complaint to the FEC, he sent a Press Release to a variety of local media and also posted the Press Release on two major Democratic Websites.

www.DailyKos.com and www.Burntorangereport.com Like before, however, instead of doing any research, Mr Love simply made baseless accusations backed up solely with uneducated conjecture

Although these claims are legally and factually baseless, because of the seriousness of my desire to be in compliance with FEC regulations and federal election law, I will respond with much greater clarity and research than was put into researching the complaint

B. Response to Bill of Particulars and Alleged Violations

The following items are factual and legal responses to the eleven items marked "Bill of Particulars "

Numbered "Bill of Particulars"

1. Allegation: Accepting Donations under a "Senatorial Exploratory Committee," Mr Roberson collected \$9,300 from donors in Utah and New Jersey during the period of January 12 to March 2007, far exceeding funds needed to travel, phone and do polling in Texas as allowed to the test-the-waters before committing to be a candidate

Response:

A Factually The thrust of this allegation is that Mr Love wrongly believes one could adequately "test-the-waters" in Texas for under \$10,000

1) This is factually without basis or merit My plans for testing the waters for a Senate race called for a lot more than \$10,000 in expenditures Indeed, according to press reports Mikal Watts spent hundreds of thousands of dollars testing the waters and decided not to run

2) It is factually accurate that I collected approximately \$9,300 from donors in Utah and New Jersey during the period of January 12 to March 2007 under a senatorial exploratory committee There is nothing illegal or improper about collecting out-of-state money for an exploratory committee

B Legally this accusation is without merit as well – Specifically, when I crossed the \$5,000 mark, I called the FEC's toll free number and spoke with a compliance professional regarding the testing the water rules She confirmed my understanding of the rules that the test is two-fold (a) passing the \$5,000 threshold, and (b) making concrete actions or a decision consistent only with being a candidate Since I never held myself out to be a Senate candidate, never decided I was a Senate candidate, never made any actions that could be mistaken to be holding myself out as a Senate candidate, there is no violation of testing the water rules

2. Allegation: Expending money under the "Eric Roberson Senate Exploratory Committee" beginning January 26, 2007 in Violation of FEC Rules that disallow multiple exploratory committees and deceptively suggesting a race for the Senate

Response: This allegation is factually and legally without merit

A Factually, this allegation attempts to make a violation out of the fact that my campaigns' FEC Reports sometimes use an abbreviated title of Senate Exploratory Committee on some occasions on the Form 3 Disclosures initially filed in this race

- 1) The Form 3's speak for themselves, on some occasion the full formal Title "Eric Roberson Senate Exploratory Committee" was used, on other pages the shorter title "Senatorial Exploratory Committee" was used. The use of an abbreviated title on multiple pages of a fully detailed Form 3 does not create a second committee, there was never a second committee,**
- 2) There was a single committee that was exploring a race for the United States Senate**
- 3) During the timeframe of January 2007 to December 2007, Mr Love had no knowledge of who I was, had never met me, and had no idea that I was testing the waters with donors and other potential campaigns. Mr Love is simply making a baseless accusation that since some of the forms have a slightly different abbreviated title from other pages of the forms, that there were two committees**
- 4) To be clear, the single committee used a single segregated bank account and there was only one set of books**

B Legally, Mr Love is simply guessing that there is a rule somewhere against multiple committees. Whether there is or not is not relevant, since I only had one committee. Even so, I am aware of no such rule. Therefore, from a legal perspective this "bill of particulars" could not be a violation

Allegation 3. "Put up "Eric Roberson for Congress" website on or before February 8, 2007, in violation of "public advertising" while testing the waters "

Response: This allegation is factually and legally without merit

A Factually, this allegation is simply false

- 1) In early 2007, I purchased, among others the URL "www.ericroberson.org ". From February 2007 until spring of 2007, I developed various website looks, functions and schemes, experimenting with audio and video input**
- 2) During this time, the website was not publicized. Except for friends, family or potential consultants, nobody viewed the website**
- 3) At all such times, the Website was named the "Roberson Senate Exploratory Committee" Website and had a logo that said "Roberson Senate Exploratory Committee "**
- 4) At sometime on or about June of 2007, after it was clear to me that Mikal Watts was clearly capable of being a quality Senate candidate, the website was pulled down and an "under construction" page was the only item viewable on the Internet**

5) At no time until late December of 2007 did the website ever say anything about a congressional campaign. In late December, the website was republished for the first time identifying a congressional campaign.

B Legally, Mr. Love again is simply making up a rule that does not exist – Testing the waters campaigns are allowed to advertise that a person is testing the waters, just not as “candidates.” Because the website at all relevant times was labeled a “Senate Exploratory Committee” website, there was no violation.

Allegation 4. Joined a Candidate-Endorsing organization May 2, 2007 in violation of testing the water rules

Response: This allegation is factually and legally without merit

A Factually, this allegation is simply false. The referenced “Exhibit” is a page from my disclosure forms showing a \$300 expenditure to Texas Values in Action PAC. This was not for a membership, but was the cost of a dinner attended along with several hundred other persons. The purpose of attending the event was to meet important Democratic Party leaders and additionally gauge the waters for myself and the various names being floated about that were contemplating a Senate run. Thus, this event was a bona fide political expenditure.

B Legally Mr. Love again is once again simply making up a rule that does not exist.

Allegation 5. Donated \$2555.08 to another candidate's campaign in violation of testing the water rules

Response: This allegation is factually and legally without merit

A Factually, this allegation is without merit to the extent it implies I was a candidate at the time. I was not a candidate, I had a testing the waters committee. As my prior responses make clear, there was never a Senate candidacy, and the House candidacy did not come until December of 2007. To the extent his item references \$2,555 worth of donations to the Mikal Watts Senate Exploratory Committee, these items were fully and properly disclosed.

B Legally Mr. Love again is once again simply making up a rule that does not exist. Indeed, before making these donations I called the FEC's toll free number to insure that (1) they were allowed, and (2) what the maximum amount would be. Certainly, if such donations were not allowed, the answer would have been given to me as such.

Allegation 6. Bought beverages for another candidate in violation of testing the water rules

Response: This allegation is factually and legally without merit

A Factually, this allegation is without merit to the extent it implies I was a candidate at the time. I was not a candidate, I had a testing the waters committee. To the extent his item references in-kind donations to the Mikal Watts Senate Exploratory Committee, these items were fully and properly disclosed.

B Legally Mr. Love again is once again simply making up a rule that does not exist.

Indeed, before making these donations I called the FEC's toll free number to insure that (1) they were allowed, and (2) find out if the food and beverage had to be deducted from the maximum allowable donation. Certainly, if such donations were not allowed, the answer would have been given to me as such.

Allegation 7. Refund of \$2,555.00 donation to another candidate without there being evidence of the other candidate having made the prior donation, in violation of reporting all funds collected or expended after declaration of candidacy.

Response: This allegation is factually and legally without merit.

A Factually, this allegation is without merit as Mr. Love is simply confused about the referenced transaction.

- 1) First, this allegation is without merit to the extent it implies I was a candidate at the time. I was not a candidate, I had a testing the waters committee.
- 2) Prior to June 2007, I obtained donations to the Senate Exploratory Committee from persons other than Mikal Watts.
- 3) In June 2007, I donated \$2,055.08 to Mikal Watts Senate Exploratory Committee by Check and/or wire transfer, plus additional funds via in-kind donations of food and beverages for a fundraising party I co-hosted. These donations were fully and properly disclosed.
- 4) In the late Fall of 2007, after Mikal Watts decided not to run for the Senate, he offered to refund all donations made to him.
- 5) I accepted this offer as to the non-in-kind donations and marked this as a negative refund on my Form 3.
- 6) This was done because to mark it otherwise as a receipt would have falsely inflated my donations.
- 7) I did not refund a donation to Mikal Watts' campaign, Mikal Watts refunded a donation from my exploratory committee back to my exploratory committee.

B Legally there is no violation because I reported all donations and all refunds properly.

Allegation 8. Filed candidacy for Congressional office January 4, 2008, after twelve months of representing oneself as a Senate candidate in violation of the spirit and intent of testing the waters guidelines and with the effect of deceiving donors.

Response: This allegation is factually and legally without merit.

A Factually, this allegation is without merit.

- 1) I never represented myself as a Senate candidate, I represented myself as testing the waters for a run for Senate.
- 2) My donors were never deceived in that I was actually testing the waters for a Senate run when I received money for the Senate Exploratory Committee.
- 3) Further, although there was no legal obligation to do so, I offered a refund to the

major donors prior to making a decision to run for congress

- B** Legally this allegation is without merit Prior to transferring the Senate Exploratory Funds for congressional use, I contacted the FEC toll free number and spoke with the compliance office I was told there was no requirement to refund the money just to turn around and ask for it back for the congressional run

Allegation 9. Failing to file as a candidate immediately after February 8, 2007 when funding threshold and activities went far beyond polling, telephoning and traveling to test-the-waters

Response: This allegation is factually and legally without merit

- A** Factually The Thrust of this allegation is that Mr Love wrongly believes one could adequately "test-the-waters" in Texas for under \$10,000 and/or that one is legally required to declare as a candidate as soon as the 5,000 threshold is crossed

- 1) This is factually without basis or merit My plans for testing the waters for a Senate race called for a lot more than \$10,000 in expenditures Indeed, according to press reports Mikal Watts spent hundreds of thousands of dollars testing the waters and decided not to run
- 2) It is factually accurate that I collected approximately \$9,300 from donors in Utah and New Jersey during the period of January 12 to March 2007 under a "Senatorial Exploratory Committee" There is nothing illegal or improper about that

- B** Legally this accusation is without merit as well – Specifically, when I crossed the \$5,000 mark, I called the FEC's toll free number and spoke with a compliance professional regarding the testing the water rules She confirmed my understanding of the rules that the test is two-fold (a) passing the 5,000 threshold, and (b) making concrete actions or a decision consistent only with being a candidate Since I made no such actions, never decided to be a candidate for the Senate, and never declared myself to be a candidate Senate, I never was a candidate for the Senate and never had a duty to declare myself a candidate for the Senate

Allegation 10. Use of an employer's office as a campaign headquarters constitutes an in-kind donation by Mr Mulligan or the Mulligan Law Firm, where Mr Mulligan is an employee There is no report of such in-kind donation in violation of the reporting rules

Response: This allegation is factually and legally without merit

- A** Factually There was no in-kind donation from the Mulligan Law Firm or Patrick Mulligan Mr Mulligan paid a complete primary donation of \$2,300 and was not capable of making an in-kind donation

- 1 Instead, the use of facilities was done under an agreement with Mr Mulligan that I could use office facilities as allowed by federal law
- 2 The firm I work for wants to foster both a well-rounded personal life and community activity while minimizing the impact that these activities have on the work environment In other words, doing personal tasks at work is seen as a

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better option than making you leave the office to conduct personal activities, such as call your Pastor to coordinate a mission activity or answer a question from a child on a team I coach. Therefore, all attorneys and support staff at my office are allowed to accept personal mail or facsimiles at the office, accept personal phone calls at the office, and use the printer for minimal personal copies for church, charity and other similar events. I have done so for years for my Church mission projects and dozens of teams I have coached. Similarly, almost every employee has personal purchases delivered to the office, from fishing and hunting gear, to Christmas presents.

- 3 After reviewing the FEC regulations, I initially assumed that as long as I kept the use of the office telephone to less than an hour a week and did not otherwise engage in any non-incidental use of office facilities, that there would be no need to reimburse Mr. Mulligan or the Mulligan Law Firm, except for items such as copies and use of the mail meter, which were reimbursable even under the incidental use rules.
 - 4 Specifically, my campaign "headquarters" occupied no office space, used my cell phone as the contact number, had no dedicated telephone land lines, and was essentially nothing more than an address where mail could be sent or volunteers could come to pick up materials, which were stored either in my trunk in the garage or the corner of my personal office or a small section of my office closet. Staff meetings are conducted across the street at one of a few local eateries, etc.
 - 5 After discussing the issue with the FEC Compliance Office however, it seems there is a slight ambiguity over whether the corporate/union incidental use exceptions can ever be applied to an office owned by a sole proprietorship.
 - 6 The fair market value of an executive suite "cyber-office" package in this building's executive suite located on the sixth floor is approximately \$130.00 a month. This includes up to 20 hours a month in dedicated office usage, use of receptionist for visitors and phone calls, receipt of facsimiles, closet space and provision of a mail box all at the inclusive price. Additionally, "at cost" copying and mailing services such as FEDEX or US Postal metering and the use of conference rooms are included at extra expense.
 - 7 Assuming without admitting, that the "incidental use" exception does not apply to a sole proprietorship (a conclusion which is legally and factually disputed), the total value of services rendered to my campaign at the first FEC disclosure was less than \$500 and the bill was not otherwise yet paid or "statutorily overdue" such as to require disclosure.
 - 8 Subsequently, I have fully disclosed the relationship with my office and valued the disclosures based on \$130.00 a month for the primary campaign plus copying costs and mail meter costs, rounded up to \$500.00.
- B Legally this accusation is without merit as well -- Mr. Love assumes that all contractual arrangements must be immediately disclosed. But in prior discussions with the FEC Compliance Office, we have been instructed that unpaid bills of less

then \$500 and that are not "statutorily overdue" should not be disclosed. Since the relationship with the use of office space was not a contractual obligation of more than \$500 and was not statutorily overdue, the lack of disclosure on the Campaign's initial pre-primary report was not a violation.

Allegation 11. An exploratory period extending from January 12, 2007 to January 4, 2008 would seem to have morphed into a candidacy if the prohibition of "activities over a protracted period of time" apply.

Response: This allegation is factually and legally without merit.

A Factually

- 1) Factually on-going activities of the testing the waters campaign essentially ceased on or about June of 2007, save and except monitoring the two main candidacies for the Senate, making sure one of these candidacies would move forward, and keeping the website "under construction page" for contingencies.
- 2) It was not until early December 2007, when the filing period began that State Rep Rick Noriega actually filed for office. Until that time, maintaining an exploratory fund was appropriate.
- 3) In late December 2007, I transitioned the Senate Exploratory Funds to Congressional purposes and filed for the ballot.

B Legally this accusation is without merit as well – Specifically, prior to letting the testing the waters committee be essentially dormant, I contacted the FEC via the compliance office and insured that this dormancy while seeing how the race would develop was acceptable, further, prior to transferring the use of the testing the waters funds to the congressional campaign, I also contacted the FEC via the toll free number and again was told this was acceptable.

After the above detailed review, it is clear that as to each of Mr. Love's five bulleted "alleged offenses," each is without merit and there is no violation of FEC regulations.

- My records were accurately maintained and properly reported,
- I neither deceived donors, nor maintained multiple exploratory committees (and there is no rule, no regulation and no law against testing the waters for one office, and then after being asked to run for a different office, switching funds from an exploratory committee),
- I properly reported all activities with my employer at the timeframe when they were first required to be reported,
- I properly declared my candidacy under the actual legal standard, when I decided to run for office and prior to conducting any candidacy efforts, and,
- I violated no testing the waters guidelines.

CONCLUSION

Mr Love's Complaint is facially without merit both legally and factually. Legally, the FEC is the best interpreter of FEC rules, not Mr Love. Factually, Mr Love has merely reviewed my campaign's disclosures and jumped to illogical conclusions based solely on his own misunderstandings. Worse, the point of the Complaint was purely political. The use of an FEC Complaint that consists of made-up rules and baseless conjecture must be rejected. I am confident the FEC will find no violation of any law, rule or regulation and respectfully request this Complaint be dismissed.

The disclosures made by my campaign to the FEC have been transparent and beyond the minimum required (for example, listing donors who have paid less than the amount where disclosure becomes required). Even so, as a first time seeker for a federal office, some areas of the rules are confusing or subject to multiple interpretations. To the extent any such issue was identified, I and my campaign have attempted to call the Compliance Office to determine and follow the FEC's current interpretation. To the extent that any clerical or other technical error may remain in my filings, I and my campaign will certainly work with the FEC to make any type of amendment or conciliation to insure our filings are 100% accurate and proper.

In any event, it is clear that the complaint must be rejected and dismissed for failure to state any violations.

Sincerely,


Eric Roberson

VERIFICATION

State of Texas]

County of Dallas]

Before me the undersigned authority, appeared Eric Roberson, who being personally known by me, was sworn under oath, and verified that the above factual assertions were true and correct based on his own personal knowledge.


Signature of Notary

Seal of Notary

