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June 5, 2008

Via Federal Express

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

RE: Response to Citizen Complaint
Jim Risch for U.S. Senate Committee
MUR 6012

Dear Mr. Jordan:

This correspondence is the Jim Risch for U.S. Senate Committee's response to the citizen complaint dated May 7, 2008, and assigned Matter Under Review (MUR) 6012.

At the outset, I would like to advise you that this campaign committee takes compliance issues very seriously. I was selected as the treasurer of this campaign, not only due to my relationship with the candidate, but also due to my extensive legal career and experience with interpreting and applying federal rules and statutes. I have practiced law for over 34 years, and throughout my career I have dealt with and am well versed in the interpretation and application of federal law. I have served on boards and committees on behalf of the Idaho State Bar Association. Throughout this campaign, this committee has developed and maintained detailed procedures to make every effort to comply with all regulatory rules and statutes including but is not limited to, the Federal Election Campaign Act of 1972, as amended ("the Act"), Title 11 of the Code of Federal Regulations ("C.F.R."), Titles 2 and 26 of the United States Code ("U.S.C.") and all Advisory Opinions issued by the FEC ("AOS"), all singularly referred hereinafter as "Rules and Regulations." This campaign employs and utilizes the professional services of attorneys, accountants and others formally trained in compliance matters. We regularly review published Advisory Opinions and subscribe to several electronic notices of various FEC activity. On a weekly basis we receive and review information and updates from the

Paid for by Jim Risch for U.S. Senate Committee

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U.S. SENATE
COMMITTEE
OFFICE OF GENERAL
COUNSEL

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FEC via electronic mail. We spend a significant financial resource on state of the art compliance software, and have trained several of our staff members in the use of this program. Additionally, every staff member is advised on the various legal requirements applicable to their positions. We have, on several occasions, made both oral and written communication with the Federal Election Commission to ascertain the proper course of action when said course is not clear from in the applicable rule or law. In addition to all this, we maintain voluminous detailed and accurate records of all transactions, including every contribution, as well as every expenditure. These records are open to you and your staff at any time.

Given the above, your letter notifying us of a complaint was obviously a significant event in this office. Each aspect of the complaint was immediately reviewed, analyzed and evaluated, at length. Per your request, please accept the following as this committee's written demonstration of why we believe this complaint is without merit.

First and foremost, I think it is important to note that the citizen complaint does not cite a single title, chapter, or section, of any rule or statute. Many of the alleged violations appear to be generalizations and assumptions, thus, making a specific detailed and reasoned response difficult. Further difficulties arise from the complainant's obvious and apparent lack of knowledge of the federal election Rules and Regulations, and his failure to take any effort whatsoever to investigate his concerns. For example, the complainant takes issue with the committee receiving contributions from "out-of-state special interest groups" which is clearly based on the complainant's personal prejudices since the federal election Rules and Regulations do not prohibit accepting contributions from outside the state where the election is being held. Another of the complainant's concerns states summarily that the campaign paid an expenditure to Complete Campaigns, Inc., a company which he erroneously asserts does not exist. Minimal research would have shown the complainant that this company does in fact exist and has a principal place of business at 610 Gateway Center Way, Suite K, San Diego, California.

SPECIFIC COMPLAINTS ADDRESSED

Page One, Issue 1: Please note that all of the allegations refer to the committee's report filed April 15, 2008 (hereinafter "The Report"). The complaint fails to reference transactions by their transaction identification number, but, where possible, I will provide this information for ease of reference. The first issue raised in the complaint is Item A, on page 174 of 183 of The Report. In this issue, the complaint appears to be referring to Transaction ID No. B-E-2855. The complainant questions the stated purpose of "Fund raising Settlement Fees." The complainant wants to know what legal issues required a settlement fee. The stated purpose does not indicate settlement of a "legal issue," rather this disbursement was made by the campaign for "settlement fees," a term commonly used to denote the percentage retained by a bank as fees for processing a credit card contribution. This term is used on the invoice from the vendor and is reported accurately. This

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reporting term is not a prohibited term under the "purpose of disbursement" required under 11 C.F.R. 104.3(b)(3). It further complies with the *Statement of Policy* interpreting 104.3(b)(3) as set forth in the Federal Register, Vol. 72, No. 5, Page 887 (January 9, 2007) authored by Robert D. Lenhard, Vice Chairman, Federal Election Commission. Vice Chairman Lenhard states, "The 'purpose of disbursement' entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear." The reporting term "settlement fees" used to describe the purpose of disbursement to a bank clearly references the fees associated with credit card transactions.

Page Two, Issue 2: The complainant's next issue calls into question the amount listed on the subtotal line on page 174 of 183 of The Report. This is further evidence of the complainant's ignorance of the Rules and Regulations, as this subtotal does not and should not include any *memo items* listed on the page. On this particular page, Item C is clearly denoted as a memo entry, thus making the stated subtotal correct and accurate.

The next issue raised by the complainant relates to the use of credit card transactions by the committee. The complainant claims the committee failed to disclose three points, none of which are required to be disclosed or reported pursuant to the Rules and Regulations. Nonetheless, I will address them in the interest of transparency and to evidence the full cooperation of this committee:

- **Credit Card Point One:** The complaint alleges the bank issuing the card is not listed on the committee's *Statement of Organization*. Pursuant to the Rules and Regulations the committee is required to list "all banks, safe deposit boxes or other depositories used by the committee." 11 C.F.R. 102.2(a)(vi) (emphasis added). Further, the *Instructions for FEC Form 1 Statement of Organization* published by the FEC states, "The committee must provide the name and mailing address of any bank, repository, or depository where the committee holds funds." Instructions, page 4 (emphasis added). Nowhere is there a requirement to list credit card companies on Form 1.
- **Credit Card Point Two:** The complaint alleges, "The name or names on the card are not listed, again an apparent violation of FEC rules and regulations." The complaint is completely devoid of reference to any rule or statute violated. The committee is aware of no such disclosure requirement, nor does Form 3 allow for such a disclosure. Nevertheless, I can advise the FEC that the card in question is issued to the Jim Risch for U.S. Senate Committee.
- **Credit Card Point Three:** The complaint alleges, "The candidate has not disclosed the type of card." Again, the complaint is devoid of any citation,

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and the committee is not aware of any such requirement. Nonetheless, indicated above the card is issued in the name of the committee and is not a personal or business card of the candidate.

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Page Two, Issue 1: The complaint alleges "He [the candidate] presumes to be the general election candidate when in fact as of the date of the loan he was not." The complainant takes issue with the fact that a loan of the candidate's personal funds was made to the candidate's general election account. This was not the fact; however, receiving monies allocated for a general election prior to a primary election is specifically allowed and considered in several parts of the Rules and Regulations, including, but not limited to, 110.1(b), 110.1(b)(2), 110.1(b)(3), 110.1(j), 110.2(b)(2), and 110.2(b)(3). Since the very month of our announcement, the committee has received numerous contributions designated for use in the general election. The committee accepted and deposited these contributions with the full knowledge and understanding of, and in compliance with, 11 C.F.R. 102.9(e)(1) and (3) which require accounting practices to distinguish these contributions and which may require the refunding of these amounts should the committee not have a candidate in the general election. At all times since its inception, this committee has maintained separate bank accounts for the primary and general election. Never at any time has the personal money of the candidate been co-mingled with these accounts. Nevertheless, the loan referred to in the complaint was made to the primary account of the committee and the designation on this page is a typographical error that has been corrected and will be reflected in the amended report to be filed later this month. At no time prior to the primary election did the campaign expend any funds designated or deposited into the general election account.

Page Two, Issue 2: The allegations pertaining to page 152 of 183, Transaction ID No. B-E-421, complains that it is illegal to pay the committee's treasurer for services rendered. This allegation again illustrates the complainant's ignorance of the law and presumes many things, most of which are in error. The first incorrect assumption is that through a partnership I share some part of my income with James E. Risch. I do not. Even so, the complainant assumes that there is some sort of rule or regulation requiring that I am only allowed to work on the campaign after business hours. That assumption is ludicrous. The complainant assumes many other rules or regulations that simply do not exist. All monies paid to me are for professional legal compliance and reporting services directly provided by either myself or other attorneys (James E. Risch is not one of them) that work for me. No part of the monies are directly or indirectly paid to James E. Risch.

Page Two, Issue 3: The allegation which references page 182 of 183, Transaction Item No. B-E-5407K, again refers to the campaign's use of its credit card. As addressed previously in this response, there is nothing illegal or even inappropriate about the campaign's use of this credit card. Further, the purposes of expenditures are not concealed, but quite the opposite, are "memoed" out in great detail.

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Page Two, Issue Four: Next, the complaint questions the personal loan from the candidate to the committee. This allegation is perhaps the most unfounded and ridiculous claim in the complaint. The complainant simply states, in a conclusory manner, "I question if and how James E. Risch accumulated a quarter of a million dollars loaned to his campaign." The complainant is making a summary and incorrect statement, despite the fact that the candidate's personal financial statement is on record with the Secretary of the Senate and available for public review. Said statement demonstrates a personal net worth far in excess of the amount of this loan. The committee can vouch that these loans appear to be well within the candidate's personal financial ability. The complainant also summarily states that this campaign is "primarily [funded] from out-of-state special interest groups and PACs." As stated previously there is no rule or regulation prohibiting fundraising out-of-state. I feel compelled to point out the factual error upon which the complainant relies. The report, which is obviously in possession of the complainant, clearly indicates on the initial summary pages that a majority of the committee's contributions are from individuals and not "special interest groups and PACs."

Page Two, Issue 5: The complaint alleges, again without citation to a single fact, that monies allocated to the committee's general election account were spent on primary expenses. This did not happen, and to this date the committee has not written a single check out of the general election account.

Page Two, Issue Six: The last paragraph of page two begins, "This would seem to also be a violation of the rules listed in Chart 3-B." The committee is at a complete loss as to what "this" is referring to, but apparently is, again, what appears to be merely a guess by the complainant; there are allegations that the committee could not produce the receipts required to be retained. While the committee is not aware of "Chart 3-B" the complainant is referring to, the committee can unequivocally state that it has used its best efforts to retain copies of all documentation as required by 11 C.F.R. 102.9(B) and can produce any receipt necessary.

Page Three, Issue One: The complaint alleges "a clear cut violation of FEC rules and regulations which do not allow a candidate to pay himself out of campaign funds." This issue again shows the complainant's ignorance of the law, as 11 C.F.R. 113.1(g)(1)(i)(I) clearly allows payment to a candidate by the committee. Notwithstanding such allowances, I wish to make it crystal clear that Jim Risch is not being paid any amount of money whatsoever by the committee; he has only been reimbursed for travel expenses. The payments to Risch, Goss, Insinger, Gustavel are to a separate entity, and as indicated in the Report, is for rent, office supplies, incidental postage, office equipment, phone expenses, and Internet expenses, etc.

Page Three, Issue 2: The complaint alleges that Item B on page 169 of 183, Transaction ID No. B-S-48 is payment to Complete Campaigns, a company that allegedly does not exist. As stated previously, any brief investigation would reveal that this company does exist and operates out of San

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Diego, California. On the same page, the complaint then points out that there is no purpose of disbursement listed for Item C, Transaction ID No. B-S-49 (payment made to American Airlines). While the committee makes every effort to include descriptions denoting the purpose of every expenditure (in including on memo entries), this date entry was overlooked. However, as stated previously, the legislative intent of the disclosure rule is to make the purpose of the expenditure clear. The committee believes that this airfare expenditure is obvious on its face when one considers the payee. Nonetheless, this minor omission has been corrected, and will be reflected in the amended report to be filed later this month

Page Three, Issue 3: The allegations referenced in the complaint on page 186 [sic] of 183 seem to refer to Transaction ID No. B-E-2861, and the stated criticisms relate to the use of a credit card by the campaign. The use of this card is completely acceptable, as was addressed previously in this response under Page One, Issue 2. The purpose of the expenditure references the memo items, each of which further report and explain the purpose of the expenditure.

CONCLUSION

Throughout the complaint, there are general allegations of inappropriate co-mingling, "loose accounting," and insufficient disclosure. In almost every case, these allegations are without reference to a single fact and appear to be unsubstantiated and uninvestigated speculation of the complainant. This committee employs professional services. It expends, and has expended, a great deal of time, money and labor to design and implement a system that effectuates our best efforts to maintain strict and complete compliance with every applicable rule, regulation and statute. Never has there been co-mingling of a single dollar or one inappropriate payment. The committee respectfully urges that this complaint is without any merit whatsoever, and should be dismissed.

Very truly yours,

JIM RISCH FOR U.S. SENATE COMMITTEE

By 
R. JOHN DINSINGER, Treasurer

RJI/sc