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November 12, 2008

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Ms. Thomasenia P. Duncan
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Via: Fax (202) 219-3923 and U.S. Mail

Re: MUR 6075 (State Representative Bill Zedler)

Dear Ms. Duncan:

I represent Texas State Representative Bill Zedler in the above-captioned MUR and I am responding to the Complaint filed against him on September 24, 2008. This response, which incorporates the enclosed affidavit, demonstrates that no violation of the Federal Election Campaign Act of 1971 ("FECA"), as amended and implemented by Commission regulations, occurred. Therefore, this matter should be dismissed.

BACKGROUND

On or about August 15, 2008, State Representative Bill Zedler and his staff contacted several elected officials, including Texas Attorney General Greg Abbott, State Senator Kim Brimer, State Senator Jane Nelson, Congresswoman Kay Granger, and Congressman Joe Barton. As is customary in Texas campaigns, Representative Zedler or his campaign asked each of the elected officials to serve as "Honorary Hosts" for a fundraiser scheduled on September 9, 2008, in support of his state re-election campaign. Additionally, Representative Zedler contacted Tom Craddick, Speaker of the Texas House of Representatives, and, as is customary, requested that he be a "Special Guest" at this September 9, 2008 fundraiser.

Each of the elected officials contacted by Representative Zedler accepted their invitations to serve in their designated capacity. However, at no time in any conversation with any of the elected officials, or their respective staffs, did Representative Zedler request that they solicit political contributions on his behalf. Further, none of the elected officials in any way requested that Representative Zedler solicit political contributions in their name or otherwise authorize him or his staff to do so.

On August 19, 2008, the campaign of Texas State Representative Bill Zedler published a fundraising invitation with a request that attendees donate \$5,000, \$2,500, or \$1,000. The invitation showed all of the elected officials with whom Representative Zedler and his staff had spoken as "Honorary Hosts" of the event. The invitation also showed Tom Craddick as a "Special Guest." However, none of the elected officials listed on the invitation, or their respective staffs, reviewed or were otherwise informed of or involved in the preparation of the August 19 invitation before it was published.

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Sometime after the invitation was issued, Representative Zedler received a media inquiry from the *Texas Weekly* about Congresswoman Granger and Congressman Barton serving as Honorary Hosts.

Following the media inquiry, Representative Zedler separately contacted the staffs of Congresswoman Granger and Congressman Barton and told them that he had received questions about them being shown as Honorary Hosts and that he had decided to remove them from his invitation. Additionally, Representative Zedler explained, that to avoid any confusion, he would be re-issuing an invitation that would reflect the removal and would clarify that the new invitation superseded all previous invitations. Again, neither Congresswoman Granger, Congressman Barton, their respective staffs, nor any of the remaining elected officials listed on the initial invitation reviewed or were otherwise involved in the preparation of the new invitations.

On August 28, Representative Zedler republished invitations to his September 9, 2008 fundraiser without the names of the elected officials listed on the original invitation, except Tom Craddick was retained as a "Special Guest." Moreover, the following additional language was placed on the new invitation:

This corrected invitation supersedes all other invitations in order to ensure complete compliance with state and federal law.... Personal and PAC checks are welcome. Corporate donations are prohibited by state law.

Representative Zedler's fundraiser was held on September 9, 2008 and none of the elected officials who were on the original invitation attended, with the exception of Tom Craddick. Specifically, neither Congresswoman Granger nor Congressman Barton attended. Moreover, funds raised in connection with the event did not exceed \$1,250 per person or \$2,500 per PAC.

On September 29, 2008, Representative Zedler received notice from the Commission that this Complaint had been filed against him. The Complaint's theory appears to be that Representative Zedler became an agent of Congresswoman Granger and Congressman Barton in connection with his fundraising for the September 9 event: "The August 19 invitation shows that Bill Zedler was an agent of Barton and Granger, at least for purposes of the September 9 event." As their agent, Representative Zedler was subject to the same fundraising restrictions that would have applied to Congresswoman Granger and Congressman Barton under the FECA in connection with the event. On this theory, Representative Zedler could only solicit funds in connection with his fundraising event that complied with the FECA's amount and source limitations and prohibitions. The Complaint concludes that the solicitation of contributions contained in the event invitations of \$5,000 and \$2,500 exceeded the \$2,300 limit on personal contributions that are permissible under the FECA.

LEGAL ANALYSIS

The regulations implementing the FECA explain that "[a]gents acting on behalf of a Federal candidate or individual holding Federal office" may "solicit ... funds in connection with any non-Federal election, only in amounts and from sources that are consistent with State law, and that do

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not exceed the [FECA]'s contribution limits or come from prohibited sources under the FECA." Representative Zedler was not an agent acting on behalf of Congresswoman Granger and Congressman Barton; therefore, he was not constrained by the FECA in his fundraising solicitations. Assuming arguendo that he was, the solicitations were directed toward permissible FECA contributors and within FECA limits and the contributions received as a result of the solicitations complied with the same.

1. No Agency Relationship Existed between Representative Zedler and Congresswoman Granger or Congressman Barton.

Elemental to Complainant's theory that Representative Zedler violated the FECA is that he was acting as an agent of Congresswoman Granger or Congressman Barton or both. *Black's Law Dictionary, 8th Edition*, defines an agent as "one who is authorized to act for or in place of another; a representative." Moreover, the *Restatement of Agency (Second)* defines agency as "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."

Representative Zedler's affidavit demonstrates that Congresswoman Granger and Congressman Barton did not authorize or otherwise consent to Representative Zedler or his campaign raising campaign contributions on their behalf. On the contrary, Representative Zedler was engaged in raising funds on his own behalf for his own state re-election effort and gave no notice or review authority to Congresswoman Granger or Congressman Barton, or their respective staffs, with regard to the use of their names on his invitation.

The Complaint fails to allege that Representative Zedler sought, or that Congresswoman Granger or Congressman Barton granted, any authority to solicit political contributions in another person's name or on behalf of another person. The lack of authority to Representative Zedler means that no agency relationship was created between him and Congresswoman Granger or Congressman Barton.

2. The Fundraising Invitations Solicited Funds Permissible Under the FECA.

Assuming, arguendo, that Representative Zedler was an agent of Congresswoman Granger or Congressman Barton, which he was not, he still would not have violated the FECA because all the funds solicited and collected at the fundraiser were from sources and in amounts consistent with state law and within the limits of the FECA. Specifically, Representative Zedler solicited personal and PAC funds of \$5,000, \$2,500, and \$1,000. The FECA permits personal contributions up to \$2,300 and PAC contributions up to \$5,000. Additionally, Representative Zedler did not solicit or accept any corporate donations as prohibited by Texas Election Code §253.094. Further, as Representative Zedler's affidavit states, the largest individual contribution received at his fundraiser from an individual was \$1,250 and the largest PAC contribution received was \$2,500.

Accordingly, the Complaint's concern that the solicitation of \$5,000 and \$2,500 could be misunderstood as a solicitation by an agent of Congresswoman Granger and Congressman Barton of

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personal contributions in excess of FECA's \$2,300 limit is clearly misguided. First, the re-issued event invitation removed the names of Congresswoman Granger and Congressman Barton to clarify that the solicitation of contributions was not from an agent of theirs. Second, no impermissible funds were raised in connection with the event.

CONCLUSION

There was no agency relationship between Representative Zedler and Congresswoman Granger and Congressman Barton to solicit funds on their behalf. No such solicitations were made, let alone in a manner impermissible under the FECA. Accordingly, this matter should be dismissed.

Respectfully,



James E. Trainor, III

Enclosure

cc: The Honorable Bill Zedler

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