



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 5, 2012

MEMORANDUM

TO: Lynn Fraser
Director of Alternative Dispute Resolution

THROUGH: Alec Palmer
Staff Director

FROM: Patricia Carmona
Chief Compliance Officer

Patricia Carmona

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Philomena Brooks
Lead Auditor

PHILOMENA BROOKS

SUBJECT: John Kennedy for U.S. Senate, Inc. (A09-05) – Referral Matter

On February 27, 2012, the Commission approved the Final Audit Report of the Commission (FARC) on the John Kennedy for U.S. Senate, Inc. The report was released to the public on March 5, 2012. In accordance with the Materiality Thresholds for Authorized Committees, the FARC includes a matter that meets the criteria for referral to Alternative Dispute Resolution:

Receipt of Contributions that Exceed Limits

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Philomena Brooks or Marty Favin at 694-1200.

Attachment: Receipt of Contributions that Exceed Limits

cc: Reports Analysis Division

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Receipt of Contributions that Exceed Limits

Summary

A review of contributions from individuals indicated that JKFS received excessive contributions totaling \$224,722. This amount includes contributions for which JKFS made an untimely contribution refund, contributions for which JKFS sent an untimely redesignation and/or reattribution letter to the contributor and contributions for which JKFS made a payment to the U.S. Treasury.

In response to the Interim Audit Report, JKFS provided copies of presumptive redesignation and/or reattribution letters, photocopies of negotiated refund checks and a check to the U.S. Treasury. The Audit staff reviewed these materials and concluded that through these actions, JKFS had materially resolved all excessive contributions, albeit in an untimely manner.

The Commission approved a finding that JKFS received excessive contributions.

Legal Standard

A. Authorized Committee Limits. For the 2008 election, an authorized committee could receive no more than a total of \$2,300 per election from any one person. 2 U.S.C. §441a(a)(1)(A), and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must:

- return the check to the donor; or
- deposit the contribution and maintain sufficient funds to potentially make a refund until the legality of the contribution is established; or
- seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation), and, if the committee does not receive a proper reattribution or redesignation within 60 days of receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §103.3(b)(3), (4) and (5).

C. Joint Contributions. Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on the check or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a

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joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

1. both contributors must sign the reattribution;
2. the committee must receive the reattribution within 60 days of receiving the original contribution; and
3. the contributor instead may request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days of receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless the contributor(s) instruct otherwise. The committee must inform each contributor how the contribution was attributed and that the contributor instead may request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

E. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excessive portion of the contribution for use in another election. The committee must inform the contributor that:

1. the contributor must sign the redesignation;
2. the committee must receive the redesignation within 60 days of receiving the original contribution; and
3. the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5)(ii)(A).

Within 60 days of receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

1. is made before that candidate's primary election;
2. is not designated in writing for a particular election;
3. would be excessive if treated as a primary election contribution; and
4. as redesignated, does not cause the contributor to exceed any other contribution limit.

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. 11 CFR 110.1(b)(5)(ii)(B).

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Facts and Analysis

A. Facts

A review of contributions from individuals indicated that JKFS received excessive contributions totaling \$224,722 that were resolved in an untimely manner or could still be resolved via presumptive reattribution or redesignation letters.² Prior to receiving the Interim Audit Report, JKFS provided evidence that it sent untimely reattribution/redesignation letters to contributors (concerning \$62,700) and made untimely refunds to contributors (concerning \$30,900). The remaining contributions, totaling \$131,122 (\$224,722 - \$62,700 - \$30,900), had not been addressed by JKFS prior to receiving the Interim Audit Report.

Among the excessive contributions that JKFS resolved in an untimely manner were 12 contribution checks totaling \$36,800, written on a bank account of a limited liability company (LLC). One of three individuals associated with the LLC signed each check. JKFS attributed these contributions to the eight individuals whose names were imprinted on the 12 checks. The contribution checks were computer-generated and sequentially numbered (except for one missing check number). Five of the 12 checks, totaling \$9,200, were dated December 20, 2007, and were signed by one individual. Three checks, totaling \$13,800, were dated March 13, 2008 and were signed by a second individual. The remaining four checks, totaling \$13,800, were also dated March 13, 2008 and were signed by a third individual. JKFS attributed \$4,600 to each of the eight individuals, \$2,300 each to the primary³ and general elections. The Audit staff attributed these contributions to the three check-signers, resulting in excessive contributions to the primary election. For these 12 checks, JKFS provided photocopies of untimely presumptive redesignation letters, relating to the \$18,400 in excessive contributions from the eight individuals.

Also, the Audit staff asked JKFS to provide information as to the permissibility of these contributions. JKFS provided letters from the eight individuals associated with the LLC, which affirmed that the contributions were from their personal funds and not from the funds of the LLC or any other entity. The letters from the three individuals who signed the checks also affirmed that the LLC was not an incorporated entity and did not file its tax return as a corporation.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff informed JKFS representatives of this matter at the exit conference held at the close of audit fieldwork and in subsequent discussions. The Audit staff provided schedules of the contributions in question. The representatives stated that they would

² The \$224,722 is comprised of \$175,422, the projected dollar value of errors in the population, and \$49,300 from focused reviews of contributions not included in the sample population. The sample projection was made using a Monetary Unit Sample program with a 95 percent confidence level. The sample estimate of \$175,422 could be as low as \$119,124 or as high as \$231,723. The \$49,300 from two focused reviews resulted from a review of high-dollar contributions (\$30,900) and a review of contributions from individuals associated with a limited liability company (\$18,400).

³ Date of the primary election was October 4, 2008.

take the necessary actions. In addition, JKFS representatives pointed out that the solicitation devices (reply cards) used during the campaign had specific instructions on the contribution limits for the primary and general elections and the contributor filled them out. They added that these response devices included lines for spousal information. The Audit staff reviewed the solicitation devices and noted that, although they provided space for contributor information from more than one contributor, there is no evidence that more than one contributor completed the form(s).

The Interim Audit Report recommended that JKFS provide evidence demonstrating that the contributions totaling \$224,722 were not excessive or that they were resolved in a timely manner. Examples of such evidence given included: copies of timely negotiated refund checks; timely signed/dated reattribution/redesignation letters; and/or presumptive reattribution/redesignation letters. The Interim Audit Report noted that the Audit staff would calculate a revised projected error amount if any such evidence was presented that demonstrated any of the sample exceptions were not excessive contributions.

Absent evidence that the contributions were not excessive or were resolved in a timely manner, the Interim Audit Report further recommended that JKFS review its contributions to determine which were excessive and how each could be resolved. The Interim Audit Report noted that JKFS could have resolved any excessive contributions by sending presumptive redesignation and/or reattribution letters to inform the contributors how the JKFS designated and/or reattributed the contribution along with an offer for a refund. For a reattribution, JKFS was to notify both the contributor and the individual to whom a contribution was reattributed. Absent a request for a refund by the contributors, these letters would obviate the need for contribution refunds or a payment to the U.S. Treasury. For notifications sent to contributors, the Audit staff requested that JKFS provide a copy of each notification and evidence that it was sent. The Audit staff noted that the appropriate reduction to the \$131,122 in excessive contributions not yet addressed as of the close of fieldwork would be made after a review of any additional letters submitted by JKFS in response to the Interim Audit Report. For all refund checks not negotiated by the contributors or for any contributor JKFS was unable to locate, the Interim Audit Report further recommended that JKFS make a payment to the U.S. Treasury.

In addition, the Interim Audit Report recommended that if funds were not available to make the necessary refunds, JKFS should disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds became available to make the refunds.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, JKFS provided copies of presumptive redesignation and/or reattribution letters sent after it had received the Interim Audit Report. The Audit staff reviewed these letters along with the corresponding contributor checks/credit card documentation and concluded that \$121,100 in excessive contributions were eligible for such action. As a result, the Audit Staff considered \$121,100 as resolved but not in a timely manner. JKFS also provided photocopies of negotiated refund checks sent to three individuals, totaling \$6,900, which JKFS sent to the contributors subsequent to audit fieldwork but before transmittal of the Interim Audit Report. Finally, JKFS submitted a check to the U.S. Treasury in the amount of \$22,600 for

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stale-dated refund checks, which included \$4,500 in excessive errors from the Audit staff's sample review of contributions from individuals.

In summary, the Audit staff's review of contributions from individuals indicated that JKFS received excessive contributions totaling \$224,722 that were resolved, but not in a timely manner. The Interim Audit Report recommended that JKFS address \$131,122 in excessive contributions not yet addressed as of the close of fieldwork. JKFS's response provided evidence that resolved, albeit in an untimely manner, \$132,500 (\$121,100 + \$6,900 + \$4,500) in excessive contributions.⁴

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that JKFS provided evidence that resolved, albeit in an untimely manner, the excessive contributions.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, JKFS stated that the committee appreciates that the audit report acknowledges it fully complied with the Audit staff's recommendation.

Commission Conclusion

On February 10, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that JKFS received excessive contributions.

The Commission approved the Audit staff's recommendation.

⁴ The \$132,500 resolved by JKFS's response exceeded the \$131,122 the Audit staff recommended that JKFS address in the Interim Audit Report recommendation. This occurred because the \$131,122 was partially based on a projected dollar value of excessive errors in the population and JKFS located a slightly larger dollar value of excessive contributions eligible for presumptive redesignation and/or reattribution treatment.