



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 8, 2015

Elliot S. Berke, Esq.  
McGuire Woods LLP  
2001 K St, NW, Suite 400  
Washington, DC 20006-1040

Re: ADR 773 (A13-02)  
Kevin McCarthy for Congress and Jill Thomson, Treasurer

Dear Mr. Berke:

The Audit Division of the Federal Election Commission ("FEC" or "Commission") determined that matters arising from its recent review of the 2012 election cycle records warranted further examination for possible violation of the Federal Election Campaign Act of 1971, as amended.

After considering the circumstances of this matter, the Commission determined to exercise its prosecutorial discretion and take no further action against the Respondents Kevin McCarthy for Congress and Jill Thomson, Treasurer. In its memorandum to the Commission, dated November 5, 2015, this office recommended:

**Summary and Analysis of Case:** On June 9, 2015, the Commission approved the Proposed Final Audit Report on Kevin McCarthy for Congress and Jill Thomson, Treasurer, (Respondents or the Committee) which included a finding referable to the ADR Office. In Finding 1, the Commission concluded that the Committee received excessive contributions totaling \$77,094. The excessive contributions were the result of not resolving the excessive portion of contributions by timely forwarding a presumptive letter to its contributors informing them how their contribution had been redesignated and/or reattributed, or refunding the excessive portion. The Committee has resolved the excessive contributions, but absent records to substantiate the presumptive letters were sent timely to its contributors, the corrective action taken by the Committee was untimely.

The Committee contends, in responses to the exit conference, the Interim Audit Report and the Draft Final Audit Report, that presumptive redesignation letters were sent timely. The Committee maintains that because such efforts were undertaken by a prior treasurer, the Committee could not prove the timeliness of the letters with a degree of acceptable certainty, so they sent new letters. In addition, the Committee believes that applicable donation and solicitation forms contained disclaimers that would serve to sufficiently notify donors of potential redesignation or reattribution. The Committee contends that under the prior

administration such forms were not retained, but volunteers recollect that disclaimers were included on solicitation forms and requests for donations. On these bases, the Committee disagrees with the conclusion that remedies were untimely.

Through the audit process, the Committee worked to remedy the excessive contributions in question, despite contentions that presumptive redesignation and reattribution had already occurred in a timely manner. In response to the exit conference, representatives provided evidence that they submitted more presumptive letters to contributors than required and resolved the excessive contributions with sufficient proof. All of the apparent excessive contributions could be resolved through presumptive reattribution/redesignation, so the Committee did not retain any funds beyond what it believes was timely remedied by letters and/or disclaimers that would have been provided by the former treasurer. In addition, through the audit process the Committee worked extensively with audit staff and counsel to gain a clear understanding of the requirements of the law and appropriate Committee procedures surrounding presumptive redesignation and reattribution, which will aid the Committee in future compliance. On these bases, the ADR Office recommends dismissal of this matter in accordance with *Heckler v. Chaney*, 470 U.S. 821 (1985).

Accordingly, the Commission closed its file in this matter on December 1, 2015.

The FEC is obligated by federal regulations to make a finding to terminate its proceedings public, as well as the basis therefore. 11 C.F.R. § 111.20(b). In addition, the Commission will also place on the record copies of the referral and reports prepared for the Commission by this office to assist in its consideration of this matter. In accordance with federal statute, copies of documents relative to this matter will be forwarded to the FEC's Public Information Office.

If you have any questions regarding this matter, please contact this office.

Sincerely,



Krista J. Roche, Assistant Director  
Alternative Dispute Resolution Office