



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 25, 1999

Trevor Potter, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 4758  
C. Boyden Gray  
Jeanne Fletcher

Dear Mr. Potter:

On June 17, 1998, the Federal Election Commission notified your clients, C. Boyden Gray and Jeanne Fletcher, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on March 5, 1999, found that there is no reason to believe your clients violated 2 U.S.C. § 441f, a provision of the Act, with regard to Mr. Gray's contributions misattributed to Ms. Fletcher and that there is no reason to believe Mr. Gray violated 2 U.S.C. § 441a(A)(1)(C) with regard to his contribution to the New Republican Majority Fund.

However, on the same date the Commission further found that there is reason to believe Mr. Gray violated 2 U.S.C. §§ 441a(a)(1)(A), (a)(1)(B) and (a)(3). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

Although your client has taken substantial steps to bring himself into compliance with the Act, our review of the contributions at issue indicates that there remain certain uncorrected violations by Mr. Gray. Concerning the twenty-five thousand dollar annual limit, in reconstructing his contribution history for the year 1994, and taking corrective action in an effort to bring himself into compliance with the annual contribution limit, your client appears to have failed to identify an additional \$500 contribution. This contribution was made on 2/19/93 to the Portman for Congress Committee. Consequently, your client's aggregate contributions for 1994 stand at \$25,398 -- \$398 in excess of the allowable limit. Similarly, our review of Mr. Gray's 1998 contributions discloses that he has exceeded the yearly limit by \$600. (See attached schedule).

Further, two of Mr. Gray's excessive candidate committee contributions appear to remain uncorrected. Both contributions were originally misattributed to Ms. Fletcher. The first concerns your client's 2/23/94 primary contribution to Jim Miller for U.S. Senate in the amount of \$500. When aggregated to his \$1,000 primary contribution to the same committee of 4/25/93, Mr. Gray appears to remain in excess of the limit by \$500. Although your client's records indicate that he sought a refund of the contribution on 3/30/98, this Office has been unable to confirm the requested refund. The second concerns your client's 3/8/98 primary contribution to the Hatch Election Committee in the amount of \$1,000. Again, when combined with an earlier \$1,000 contribution on 5/28/97 to the same committee for the same election, your client remains in violation of the \$1,000 limit. Although your client did seek a reattribution of the contribution, he does not appear to have sought, or received, either a refund or redesignation.

To expeditiously resolve this matter, this Office requests that your client take the necessary steps to correct the above remaining excessive contributions, and provide this Office with confirmation of the correction, or demonstrate that no action is necessary, within thirty days.

The Commission reminds your client that all federal contributions count towards that twenty-five thousand dollar yearly aggregate limit at 2 U.S.C. § 441a(a)(3). Contributions to candidates or their committees count towards the aggregate for the year in which the election is being held for the office sought by the candidate, even when made on a non-election year. Your client should implement the necessary record keeping procedures to guarantee proper tracking of all aggregate contributions.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Jose M. Rodriguez, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures

Factual and Legal Analysis  
1998 Contribution Schedule

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: C. Boyden Gray  
Jeanne Fletcher

MUR: 4758

**I. GENERATION OF MATTER**

This matter was generated based on a complaint filed by Robert E. Welsh on June 12, 1998. Based on a news account appearing in the May 28, 1998 edition of the Wall Street Journal, Complainant alleges that C. Boyden Gray, former counsel to former President George Bush, knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the name of his personal assistant, Jeanne Fletcher, and that Ms. Fletcher violated the same provision by allowing her name to be used to make the contributions at issue. Complainant further alleges that Mr. Gray knowingly and willfully violated 2 U.S.C. § 441a(a)(3) by exceeding the annual twenty-five thousand dollar limit on federal contributions and 2 U.S.C. § 441a(a)(1)(C) by making an excessive contribution to the New Republican Majority Fund, a leadership PAC closely associated with Senator Trent Lott.<sup>1</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

A review of all available evidence, including substantial documentation provided by Respondents Gray and Fletcher in response to the complaint in this matter and additional evidence gathered by this Office from the Commission's internal databases,

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<sup>1</sup> Rather than citing to the Federal Election Campaign Act, Complainant cites only to the relevant Commission Regulations in making the above allegations (viz. Sections 110.4(b), 110.5(b) and 110.1(d)).

demonstrates that there is no reason to believe a violation of 2 U.S.C. § 441f has been committed by either Mr. Gray or Ms. Fletcher with respect to the contributions at issue. Similarly, there appears to be no evidence of a violation by Mr. Gray with regard to his contribution to the New Republican Majority Fund. However, this same evidence does demonstrate violations of the twenty-five thousand dollar annual limitation and violations of the individual limitations on contributions to party committees and candidate committees by Mr. Gray.

**A. Alleged Conduit Contributions**

Complainant's allegations that Mr. Gray violated Section 441f by making contributions in the name of his personal assistant, Jeanne Fletcher, and that Ms. Fletcher violated Section 441f by allowing her name to be used to make the contributions, are exclusively premised on the above cited Wall Street Journal news article which reported that some of Mr. Gray's contributions had been attributed by the recipient committees to Ms. Fletcher. The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits any person from making a contribution in the name of another person, knowingly permitting one's name to be used to effect such a contribution, or knowingly accepting a contribution made by one person in the name of another person.

2 U.S.C. § 441f, *see also* 11 C.F.R. § 110.4(b).

In their joint response to the complaint and accompanying affidavits, Mr. Gray and Ms. Fletcher explain that a number of Mr. Gray's contributions were incorrectly misattributed by the recipient committees to Ms. Fletcher, arguing that at no time did Mr. Gray intend to represent that any contribution was from anyone other than himself. Respondents explain that the misattributions resulted from the method used to make

Mr. Gray's political contributions. Mr. Gray's political and charitable contributions were usually made from an account maintained by Mr. Gray and for which Ms. Fletcher had signature authority.<sup>2</sup> *See* Response at 8, and Affidavit of Jeanne Fletcher dated July 30, 1998 ("Fletcher Aff."), at ¶¶ 4 and 7 (Exb. C to Response). Samples of the contribution checks show that the checks for all three accounts contained Mr. Gray's name imprinted on the upper-left corner of the check, with Ms. Fletcher's name imprinted just below, followed by the notation "Special Account." *See* Response at Exb. 17. Respondents explain that, because many of the checks were signed by Ms. Fletcher, a number of recipient committees mistakenly assumed that Ms. Fletcher was the contributor. This occurred despite Mr. Gray's name being imprinted at the top of the checks and the notation, in all of the misattribution cases, directly on the check that the contribution was from C. Boyden Gray.<sup>3</sup> *See id.* Respondents also note that upon notice of the misattributions in 1998, Mr. Gray took prompt corrective action, seeking either immediate re-attributions or refunds of the contributions at issue.<sup>4</sup> *See* Affidavit of C. Boyden Gray dated July 30, 1998 ("Gray Aff.") at ¶ 2 (Exb. B to Response), and Fletcher Aff. at ¶ 16.

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<sup>2</sup> During the period at issue, this account was consecutively held at three separate banks, American Security Bank, Nationsbank and The Riggs National Bank. *See* Affidavit of Jeanne Fletcher dated July 30, 1998 ("Fletcher Aff."), at ¶ 4 (Exb. C to Response).

<sup>3</sup> Although Respondents provided check copies for all the misattributed contributions at issue, only the front portion of these checks were provided.

<sup>4</sup> As is explained in the next section, Respondents' were informed of apparent contribution irregularities on two separate occasions, once in 1994 and again in 1998 in connection with the writing of the news article prompting the complaint in this matter. The available documentation suggests, however, that in 1994 Respondents were informed only that Mr. Gray may have exceeded the twenty-five thousand dollar annual limit, and not of the contributions misattributed to his assistant.

An examination of the contributions originally attributed to Ms. Fletcher shows no discernible pattern of an intent to circumvent the contribution limits. Unlike other instances where contributions made in the name of company employees or personal assistants have demonstrated circumvention because the true contributor source had already contributed the maximum amount to the recipient campaigns, or situations where the conduit contributions began only after the true contributor had reached the twenty-five thousand dollar annual limit, no such pattern is present concerning the contributions here at issue.

Under these circumstances, and based on the available evidence, it does not appear that Mr. Gray sought to disguise the sources of his contributions by using Ms. Fletcher as a conduit, especially considering that many of the contribution checks bore the clear designation "C. Boyden Gray Contribution," or similar language. *See* Response at Exb. 17. Instead, as explained in the response, many of Mr. Gray's contributions were simply incorrectly attributed to his personal assistant by the recipient committees.<sup>5</sup>

Accordingly, there is no reason to believe that either C. Boyden Gray or Jeannie Fletcher violated 2 U.S.C. § 441f.

#### **B. Alleged Section 441a(a)(3) Violations**

Complainant next alleges that Mr. Gray exceeded the twenty-five thousand dollar annual limit on contributions for the years 1994, 1995 and 1996. These allegations too

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<sup>5</sup> Recipient committees are required to attribute any contribution made by check to the last person signing the check, unless there is "evidence to the contrary" on the check. 11 C.F.R. § 104.8(c). Because the contribution checks bore a memo entry disclosing that the contributions were from Mr. Gray, the contributions should have properly been attributed to him.

are premised on the Wall Street Journal news article which reported that Mr. Gray "gave more than \$50,000 for 1994, about \$26,000 for 1995, and \$31,000 for 1996." *See* Attachment to Complaint at 2.

Section 441a(a)(3) of the Act limits the total federal contributions by an individual in any calendar year to \$25,000. For purposes of this provision, any contribution to a candidate or candidate committee made in a non-election year counts towards the contributor's aggregate contributions for the year in which the candidate is next up for election. *See* 11 C.F.R. § 110.5(c)(2).

Respondent Gray acknowledges exceeding the twenty-five thousand dollar annual limit for each of these years, but explains that the excessive contributions were inadvertent, resulting from a fundamental misunderstanding of the application of 2 U.S.C. § 441a(a)(3). Essentially, Respondents Gray and Fletcher explain that it was Ms. Fletcher's responsibility to keep track of Mr. Gray's political contributions and to ensure that they were in compliance with all applicable provisions of the Act. *See* Response at 4. At the time that Mr. Gray began making political contributions, 1993-1994, Ms. Fletcher, although aware of the twenty-five thousand dollar annual limit, did not realize that PAC and Party contributions counted towards the limit. *See* Response at 4, Gray Aff. at ¶ 3 and Fletcher Aff. at ¶ 10. Consequently, she did not include these contributions in her accounting of Mr. Gray's aggregate contributions. Upon notice in 1994 that these contributions did in fact count towards the annual limit, and that certain contributions believed to have been non-federal were in fact federal, Ms. Fletcher re-calculated Mr. Gray's aggregate contributions and discovered that he had exceeded

the annual limit. *See id.* at 5, Gray Aff. at ¶ 4 and Fletcher Aff. at ¶ 11. Consequently, Mr. Gray took immediate corrective action, seeking refunds and redesignations (to non-federal accounts) of many of his contributions, leading Mr. Gray to believe he had brought himself into compliance with Section 441a(a)(3). *See id.*

As a result of the 1994 miscalculations, Mr. Gray established a system for tracking his political contributions. Under this system, Ms. Fletcher was responsible for familiarizing herself with the Act's applicable provisions and for ensuring that his contributions were in compliance. *See id.* at 5, Gray Aff. at ¶ 5 and Fletcher Aff. at ¶ 9. Richard Scott, Mr. Gray's accountant, was to review this information on a regular basis. *See id.* However, although Ms. Fletcher familiarized herself with the Act's provisions, she failed to fully comprehend the application of the yearly contribution limit. Ms. Fletcher did not realize that contributions made to a candidate committee counted against the yearly total for the year that the candidate was up for election, and not necessarily for the year of the contribution, if made in a non-election year. *Id.* at 6, Gray Aff. at ¶ 6 and Fletcher Aff. at ¶ 9, *see also* 2 U.S.C. § 441a(a)(3), 11 C.F.R. § 110.5(c)(2). Consequently, Ms. Fletcher failed to calculate non-election year candidate contributions into the aggregate for Mr. Gray's election year contributions.

Although now aware that party committee contributions count towards the annual contribution limit, Respondents also explain that several contributions either intended as non-federal or believed to be non-federal were deposited into federal accounts. Respondents note that the May, 1995 \$10,000 NRSC contribution was intended as a non-federal contribution, but that in this instance Mr. Gray used a separate bank account for the contribution rather than having the funds transferred to the account maintained by



Ms. Fletcher for disbursement to the recipient committee. *See* Response at 7, Fletcher Aff. at ¶ 14. Despite explicit instructions to the bank that the contribution was to be non-federal, the bank directly issuing the check failed to designate it as such. *See id.* Moreover, many attendance fees believed to have been non-federal payments were deposited by the recipients into federal accounts unbeknownst to Respondents. *See id.* at 6 and Fletcher Aff. at ¶ 15.

Prior to publishing the article which prompted the complaint in this matter, the Wall Street Journal contacted Mr. Gray concerning his excessive contributions (as well as the contributions misattributed to Ms. Fletcher discussed in the preceding section), thereby bringing to light Respondents' calculation errors. *See id.* at 5 and Fletcher Aff. at ¶ 6. In response, Mr. Gray again instructed his staff to review his contribution records. This review confirmed that Mr. Gray had exceeded the annual limits. *See id.* The review disclosed that various contributions intended as non-federal had been deposited into federal accounts, and that various candidate contributions had been incorrectly counted towards the annual limit for the year when made and not for the year of the election as required by the Act. As a result, Mr. Gray again sought refunds and redesignations of various contributions (as well as re-attributions of contributions improperly attributed to Ms. Fletcher). Respondents conclude that these corrective actions taken in 1994 and 1998 have brought Mr. Gray into compliance with the Act.

However, a review of the Commission's databases discloses that, despite Mr. Gray's efforts, his aggregate contributions for the years 1994 and 1998 remain in excess of the twenty-five thousand dollar limit. According to Respondents' calculations, Mr. Gray's aggregate federal contributions for 1994 stand at \$24,898. Respondents'

identify a total \$66,498 in contributions made by Mr. Gray for 1994, reduced through refunds and re-designations by \$41,600. However, this Office's examination of the Commission's data bases and committee reports suggests that Respondents, in reconstructing Mr. Gray's contribution history, failed to identify one additional \$500 candidate contribution. Accordingly, Mr. Gray's total contributions stand at \$25,398, still \$398 in excess of the annual limit.

Similarly, there also appears to be a slight excess with respect to Mr. Gray's aggregate 1998 contributions. Because Mr. Gray's 1998 contributions were not at issue in the complaint in this matter, Respondents have not addressed them. However, this Office's internal review of the Commission databases discloses that Mr. Gray appears to have exceeded the annual limit by \$600.

Respondents' faulty record keeping also resulted in other violations by Mr. Gray. For the three election cycles at issue, Mr. Gray contributed a combined \$1,750 in excess of the \$1,000 per election contribution limit. These excessive contributions were made to three of the ninety candidate committees Mr. Gray contributed to during the years at issue. *See* 2 U.S.C. § 441a(a)(1)(A). Similarly, in 1995 Mr. Gray exceeded the twenty thousand dollar contribution limit to party committees by \$410. It appears that this violation resulted from the committee designating as contributions attendance fees believed by Mr. Gray to not count towards the contribution limits.

Accordingly, there is reason to believe that C. Boyden Gray violated 2 U.S.C. §§ 441a(a)(1)(A), (a)(1)(B) and (a)(3).

### C. Alleged Section 441a(A)(1)(C) Violation

Complainant alleges that Mr. Gray violated Section 441a(a)(1)(C) with regard to his contributions to the New Republican Majority Fund. Section 441a(a)(1)(C) limits the amount an individual can contribute to a multi-candidate political action committee ("PAC") to \$5,000 per year.

A review of the Commission's databases and the New Republican Majority Fund disclosure reports reveals only one contribution from Mr. Gray to this PAC. The contribution was reported by the PAC as received on March 10, 1997 and totaled \$5,000, within the contribution limits.<sup>6</sup>

Accordingly, there is no reason to believe that Mr. C. Boyden Gray violated 2 U.S.C. § 441a(a)(1)(C).

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<sup>6</sup> As with other contributions at issue, Mr. Gray's contribution was initially misattributed to Ms. Fletcher.

**1998 Federal Political Contributions  
Attributable to C. Boyden Gray**

RECIPIENT	DATE	AMOUNT
Bob Barr - Congress	7/6/97	\$ 500
Dan Coats for Indiana	11/13/95	\$ 500
Mac Collins for Congress	5/14/98	\$ 500
The Coverdell Good Government Committee	9/20/93	\$ 500
The Coverdell Good Government Committee	3/21/94	\$ 500
The Coverdell Good Government Committee	7/26/95	\$ 500
Cox Christopher Cox Congressional Committee	3/20/97	\$ 500
Christopher Cox Congressional Committee	5/13/98	\$ 350
Tom Davis for Congress	5/21/97	\$ 250
Tom Davis for Congress	7/15/97	\$ 500
Tom Davis for Congress	3/10/98	\$ 250
Tom Davis for Congress	3/10/98	\$ 250
Friends of Jennifer Dunn	3/9/97	\$ 500
Faircloth for Senate Committee 1998	3/30/98	\$ 250
Faircloth for Senate Committee 1998	5/5/98	\$ 250
Gallegly for Congress	9/3/97	\$ 500
Gallegly for Congress	2/23/98	\$ 500
Gallegly for Congress	5/8/98	\$ 500
Friends of Dylan Glenn	4/22/98	\$ 250
Hagel for Senate Committee	5/18/98	\$ 500
Hall for Congress Committee	3/16/97	\$ 500
Hatch Election Committee	5/28/97	\$ 1,000
Hatch Election Committee	3/8/98	\$ 1,000
J. D. Hayworth for Congress	7/30/98	\$ 500
Dick Kempthorne for Senate	3/20/97	\$ 1,000
Lazio for Congress	10/15/97	\$ 1,000
David McIntosh for Congress	2/14/97	\$ 1,000
Portman for Congress	6/30/98	\$ 500
Committee to Re-Elect Congressman Dana Rohrabacher	8/11/97	\$ 500
John Shadegg for Congress	4/14/97	\$ 500
Sherman for Congress	4/29/97	\$ 250
Citizens for Arlene Specter	4/7/97	\$ 500
Citizens for Arlene Specter	6/2/97	\$ 500
Voinovich for Senate Committee	3/3/97	\$ 1,000
Voinovich for Senate Committee	5/4/98	\$ 500
National Republican Congressional Committee	3/19/98	\$ 1,000
National Republican Senatorial Committee	3/19/98	\$ 1,000
Republican National Committee	3/27/98	\$ 5,000
	<b>TOTAL</b>	<b>\$25,600.00</b>