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December 6, 2004

Lawrence Norton, Esq.
Tracey L. Ligon, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 5390
Clarke Dryden Camper, Respondent

Dear Mr. Norton and Ms. Ligon:

We are responding on behalf of Clarke Camper to the Commission's notification, dated September 30, 2004, that it found reason to believe ("RTB") that he may have violated the Act.[1] The RTB findings involve Mr. Camper's alleged consent to impermissible corporate contributions, or to their facilitation. We believe that these findings, which are unsupported by the facts or the law, do not warrant further review. We address each in turn below.

I. Legal Framework for Camper's Individual Volunteer Activities

A. Introduction

Clarke Camper, like others with political backgrounds and experience in the City, has engaged in ongoing individual fundraising for candidates and political organizations affiliated with his party. He is one of hundreds of individuals who volunteer their support in this fashion while working for law firms, corporations, trade

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[1] This reply is submitted pursuant to an extension of time for responding, confirmed by letter dated October 21, 2004 from Tracey L. Ligon , an additional extension to December 6, 2004, was established

associations and other private business entities. Freddie Mac was generally aware of these individual activities, as it was generally aware of the individual activities of other officers; but at no time was Mr. Camper instructed to engage in these activities or otherwise advised that it was a condition of his employment or in any way useful to his professional advancement.

The law unambiguously authorizes individual volunteer activity by corporate employees and shareholders. A specific Commission rule sanctions this individual volunteer activity, distinguishing it from concerted corporate activity conducted impermissibly "in connection with a federal election." 11 C.F.R. § 114.9. This impermissible corporate activity includes uses of corporate assets constituting the violation of "facilitation." 11 C.F.R. § 114.2(f)(2).

In this case, there are two questions that bear on the individual liability of Mr. Camper. The first question is whether any use of corporate facilities fell outside the protection of individual volunteer activity, constituting illegal corporate spending or facilitation. The second is whether, if any such illegal corporate spending or facilitation occurred, Mr. Camper personally "consented" to it. Only in the event that these two questions are resolved in the affirmative could Mr. Camper be subject to individual liability under the statute.

B. Contract with Progressive Strategies (Scott Freda)

The Commission's Factual and Legal Analysis ("FLA") raises a question about payments made by Freddie Mac to Progressive Strategies ("PS"). The FLA is concerned specifically that Progressive Strategies' primary contact with the company, Scott Freda, may also have assisted Mr. Camper with fundraising on behalf of candidates that was impermissibly underwritten through the general consulting contract. The Commission is aware of Mr. Camper's account of the facts—that his activities were individual in nature, rendered as a volunteer, and that he believed in good faith that Mr. Freda contributed time also on a voluntary basis outside the scope of the PS agreement. Yet the FLA finds "no information" to support the treatment of these activities as individual and voluntary in nature.

The analysis of this issue must begin with the nature of Mr. Camper's activities. Nothing in the law prohibited Mr. Camper, a life-long Democrat, from engaging in individual voluntary activity while also advising the company, in his official capacity, on political matters. It is standard practice in Washington that those active in partisan politics maintain and nurture their established political relationships. They do so when their regular employment does not entail any political fundraising activities; or, like Mr. Camper, their professional responsibilities may include advice on government relations and other political matters even as they also pursue their long- standing personal political commitments. There are countless instances of this. Mr. Camper's is merely one. It is routine in nature.

The law also does not prohibit Mr. Freda's individual participation in those volunteer activities. Mr. Freda, like Mr. Camper, is a Democrat, formerly a senior fundraiser with the Democratic National Committee. Mr. Camper worked with Mr. Freda on corporate projects; he was therefore a natural person to whom Mr. Camper would turn for advice and assistance on individual projects. Mr. Freda could decide as he wished whether to accept or reject the request. Mr. Freda's assistance was de minimis and occasional.

But that assistance was also lawful. If Mr. Camper could, as the regulations clearly allow, assist the corporation with lawful corporate projects while also pursuing individual volunteer activity, then Mr. Freda could do the same. The Commission does not properly make its case by constructing assumptions about the nature of Mr. Camper's activities and then declaring that there is "no information" to contradict them. There is in fact no information to place in doubt Mr. Camper's good faith belief that Mr. Freda could assist him voluntarily, on an occasional and de minimis basis, with his individual volunteer activity.

C. Corporate Facilitation

The FLA also finds preliminarily that Mr. Camper consented to impermissible corporate facilitation in the course of soliciting contributions for specific candidates from other senior Freddie Mac executives. The facilitation is suggested to have occurred in two ways.

First, the FLA focuses on various forms of secretarial support provided for these exchanges by Ella Lee, the personal secretary to the Company's CEO. Ms. Lee is said to have "relayed messages" and also to have transmitted the contributions to Messers. Delk and Camper, or directly to the candidates. FLA at 5. It is not correct that simple secretarial support, in the taking or relaying of messages, or even in the placing of contributions in envelopes, constitutes corporate facilitation.

The Commission rules distinguish between internal communications, on the one hand, and "fundraising activities," on the other. *Compare* 11 C.F.R. § 114.3 *with* 11 C.F.R. § 114.2(f)(2)(i). In the first case, the regulations do not prohibit staff from supporting those communications; this support would be no more prohibited to a personal secretary than to an in-house courier who runs an envelope from one executive to another. *See, e.g.*, FEC Advisory Opinion 1996-21 (sending letters included within class of protected internal communications). In fact, the regulations governing internal communications even authorize staff to assist in "administering" events featuring candidate fundraising appeals, on corporate premises, to the restricted class. It cannot be the case that when the candidate is present on-site, appealing directly for contributions, the staff may be asked to support such an event, but that the personal secretary to a CEO may not transmit messages involving permissible partisan communications.

The facilitation regulations prohibit a different course of conduct: that of corporate employees who are directed or ordered to "plan, organize or carry out the fundraising project." 11 C.F.R. § 114.2(f)(2)(i)(A). There is no suggestion here of a fundraising project event, on premises or elsewhere. Ms. Lee was not asked to "plan, organize or carry out" one. She was acting as personal secretary only, discharging her usual responsibilities, as the Commission's own FLA confirms.[2]

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[2] The legal conclusion here does not change if Mr. Camper is viewed as engaging in individual activity when soliciting senior executives. In that case, Mr. Camper is not acting as a corporate officer and cannot "consent" to any improper use of facilities.

Second, if couriers were ordered and paid to deliver contributions, or if the checks were otherwise delivered with the use of corporate resources in violation of the facilitation rules, there is no basis for the claim that Mr. Camper "consented" to any such illegal uses. Mr. Camper did not, in fact, consent to any illegal corporate facilitation. The uses in question were not ones over which he exercised authority as an officer of the corporation. *See* discussion, *supra*. It is also not apparent that, as a matter of law, there can be any such violation in the form of consenting to a "facilitation," rather than to an illegal corporate expenditure. The relevant rule prohibits only "consent" to any "contribution or expenditure" by the corporation. 11 C.F.R. § 114.2(c).

II. The Nature of Officer "Consent"

If the Commission concludes that this case involves instances of illegal corporate spending or facilitation, it may not hold Mr. Camper liable without an additional finding that he personally "consented" to these violations. It is not enough that he may have been familiar with some of the material facts on which the Commission bases its conclusion. "Consent" is a specific element of a specific offense under the statute: it is different in nature from other standards of liability, adopted in other contexts, under the Act.

As is apparent from a review of Commission regulations and decisions, consent cannot be found on the basis of factual knowledge alone, such as knowledge that corporate facilities were used. "Consent" occurs when a corporate officer, acting in that capacity, exercises his or her authority to approve improper uses of corporate resources. *See, e.g.*, MUR 1094 (First General Counsel's Report; July, 1981) ("respondent *as a corporate officer* authorized corporate funds to be expended" in violation of the law) (emphasis added). The controlling factor is that of officers acting for the corporation, either in "initiating, developing or executing" an illegal reimbursement plan, or accepting funds provided in illegal reimbursement of campaign contributions. Pre-MUR 4184 (later, MUR 2575) (First General Counsel's Report; January, 1988). *See also* MUR 2104 (August, 1986) (officer made contribution, then accepted reimbursement from corporation); MUR 5173 (May,

2002) (illegal loans to political committees authorized in writing by company "president and sole officer").

The distinction in the law between knowledge of facts and authority to act on them in approving illegal corporate activity is thrown into sharp focus by the Commission's decision in MUR 3056 (1991). There the Commission found that various Bank officers, who approved corporate reimbursement of political contributions, had "consented" to the illegal scheme. Two other Bank officers who were aware of the facts surrounding the reimbursement were found not to have rendered the requisite "consent," since "neither...had the authority to actually approve the reimbursement requests." General Counsel's Report at 6. Because they possessed factual knowledge—but not official authority to act on it—"they could not consent to contributions by the Bank." *Id.* at 7.

That "consent" is more than the knowledge of material facts is borne out by consideration of the other standards of liability in Commission regulations. Each such standard is shaped by the specific contexts in which liability may arise. In cases involving the making or receipt of contributions in violation of the limits of Part 110, the law provides for liability for "knowing" of donation or acceptance of the funds. "Knowing" here entails simply knowledge that the contribution was made or received: the administration of the contribution and related expenditure limits requires that these facts alone will suffice to establish liability. 11 C.F.R. § 110.9. By contrast, the regulations establish a more exacting "knowing" standard where the violation is that of solicitation, acceptance or receipt of a contribution from a foreign national. 11 C.F.R. § 110.20. This standard imposes liability for actual knowledge; or for awareness of facts that would lead a "reasonable person" to believe to a level of "substantial probability" that the source of the funds was a foreign national; or for awareness of facts leading a "reasonable person" to conduct a factual investigation. 11 C.F.R. § 110.20(a)(4). Other provisions address in still different ways the potential liability for "knowing" violations. *See, e.g.*, 11 C.F.R. § 300.65(e) (liability for officeholder or candidate solicitation of tax-exempts that may have the principal purpose of conducting election-related activities).

The requirement of consent to support individual officer liability appears in Part 114, and the context—activities by corporations, and by corporate officers, shareholders or employees—determines its meaning and scope. Mr. Camper attempted to conduct "individual volunteer activity" under section 114.9. Such activity is permissible by the very terms of the regulation if it is conducted "subject to the rules and practices of the corporation." 11 C.F.R. § 114.9(a)(1). There is no evidence in the case that Mr. Camper as an officer wrote, influenced or controlled the applicable "rules and practices" of the corporation, or that he failed to follow those of which he was aware. He related to them, and observed them, as an individual employee, and not as an officer responsible for their promulgation or enforcement.

Moreover, the corporation was aware that Mr. Camper, among others, conducted activities as an individual volunteer who determined which candidates to support, the schedule on which he would offer support, and the amount of support he would offer. Precisely because he was acting in these respects as an individual, volunteering his efforts to these candidates, he could not have been acting "in his capacity" as an officer of the corporation.

These conclusions are consistent with the general corporate law governing personal liability for consenting officers. In cases like *Vuitch v. Furr*, 482 A.2d 811 (D.C. 1984), the courts pegged the existence of consent to a high level of management and control over the policies that gave rise to tort liability. In *Vuitch*, the officer, also the wife of a physician, was not subject to liability because she was an officer of the clinic, or because she was aware of the material facts, but because of the level of her management authority. *See also Lawlor v. District of Columbia*, 758 A.2d 964 (D.C. 2000) (the question in liability determinations is whether the individual, as an officer, had a "share" in the corporation's wrongful acts).

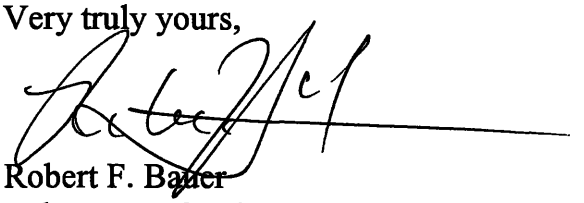
The question under review by the Commission is whether, in these specific circumstances, individual volunteer activity gave rise to corporate liability. However it is resolved, the answer cannot be that the individual engaged in the activity becomes at once both the volunteer, acting independently of the corporation, and also the agent of the corporation who fails to police the boundaries between individual and corporate activity. This result would so seriously put at risk individual volunteer

activity that it would wholly undermine the specific grant of authority for individual volunteer activity under section 114.9. Any individual volunteer, who for any number of reasons may err in the use of corporate facilities, would run the risk of instant transformation into a "consenting officer." Yet the corporate facilitation rules apply only to "officers...acting as agents" for the corporation, 11 C.F.R. § 114.2(f)(2)(i), not to officers who conduct their activities as individual volunteers.

III. Conclusion

For the reasons stated, we ask on behalf of Mr. Camper that the finding be dismissed.

Very truly yours,



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