

JUN 17 2008

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Kathleen Cannon)	MUR 5849
)	
)	

GENERAL COUNSEL'S REPORT #4

I. ACTIONS RECOMMENDED

Find probable cause to believe that Kathleen Cannon knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by approving the reimbursement of contributions from corporate funds,

II. BACKGROUND

This matter originated with a *sua sponte* submission filed by the Bank of America Corporation ("the Bank"). The Bank admitted reimbursing political contributions totaling \$10,030 made by thirteen officers and employees in its Student Banking and Wholesale Lending Divisions between 1999 and 2004 in violation of 2 U.S.C. §§ 441b(a) and 441f. The *sua sponte* submission presented evidence that the Senior Vice President for Student Banking, Kathleen Cannon, was responsible for authorizing the reimbursement of political contributions in that division. Specifically, Cannon solicited and collected political contributions from subordinate managers in the Student Banking Division, instructed those managers to request reimbursement for their contributions from the Bank, and then, despite knowing the activity was improper, authorized the reimbursement of those contributions.

The Commission found reason to believe that Kathleen Cannon knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by approving the reimbursement of \$7,100 in contributions made by seven managers under her direct supervision ("direct reports"). Our

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1 investigation confirmed that Cannon knowingly and willfully authorized the reimbursement of
2 these employee contributions with Bank funds and also uncovered an additional \$600 reimbursed
3 contribution attributable to her, making the total amount in violation \$7,700.¹

4 Cannon did not respond substantively to the Commission's reason to believe findings,
5 failed to comply with the Commission's deposition subpoena and declined to answer a series of
6 written questions regarding her role in the reimbursements at issue. Instead of pursuing a
7 subpoena enforcement action, we served Cannon with the General Counsel's Brief. _____

8 _____
9 The General Counsel's Brief ("Brief"), which is incorporated herein by reference, sets
10 forth the factual and legal basis upon which this Office is prepared to recommend that the
11 Commission find probable cause to believe that Kathleen Cannon knowingly and willfully
12 violated 2 U.S.C. §§ 441b(a) and 441f. In her Reply Brief ("Reply"), Cannon does not directly
13 contradict any of the facts presented in the Brief or deny that she violated the Federal Election
14 Campaign Act of 1971, as amended ("the Act"). Instead, Cannon asserts that the matter should
15 be dismissed because of what she terms are certain "procedural and substantive gaps" in the
16 investigation. Reply at 1. Specifically, Cannon claims that the evidence in the Brief is limited in
17 scope and slanted in favor of the Bank because the document and the exhibits do not reference
18 the Bank officers who supervised her activities during her tenure with the Student Banking
19 Division. Without elaboration, Cannon implies that these Bank officials had a role in the
20 activities at issue in this matter. *Id.* at 2. Cannon also asserts that some of the evidence

¹ This \$600 reimbursed contribution was made by a manager in the Student Banking Division who was not under Cannon's immediate supervision.

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1 presented in the Brief is insufficiently detailed to "support a knowing and willful violation." *Id.*
2 Finally, Cannon reiterates an argument made in prior submissions that the Commission's
3 investigation is procedurally defective due to its failure to give her notice of the matter via a
4 sworn complaint pursuant to 2 U.S.C. § 437g(a)(1). _____

5 _____
6 _____
7 For the reasons set forth in the Brief and discussed below, we recommend that the
8 Commission find probable cause to believe that Kathleen Cannon knowingly and willfully
9 violated 2 U.S.C. §§ 441b(a) and 441f, _____

10 _____
11 **III. DISCUSSION**

12 **A. THERE IS PROBABLE CAUSE TO BELIEVE THAT CANNON**
13 **VIOLATED 2 U.S.C. §§ 441b(a) AND 441f**

14
15 1. Cannon Does Not Deny Authorizing the Reimbursement of Contributions
16 Totaling \$7,700

17
18 Under the Act, corporations and national banks are prohibited from making contributions
19 or expenditures from their general treasury funds in connection with any election of any
20 candidate for federal office and corporate officers are prohibited from consenting to such
21 contributions. 2 U.S.C. § 441b(a). The Act also provides that no person shall make a
22 contribution in the name of another person, or knowingly help or assist any person in making a

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1 contribution in the name of another. 2 U.S.C. § 441f, 11 C.F.R. § 110.4(b)(iii).

2 **Apart from generally questioning its level of detail, Cannon does not deny or otherwise**
3 **contradict the evidence presented in the Brief that from 1999 through 2004 she approved \$7,700**
4 **in corporate reimbursements for eight Bank employees and knowingly assisted in making**
5 **contributions in the name of another in violation of 2 U.S.C. §§ 441b(a) and 441f. Brief at 2 – 6;**
6 **see also Chart of Reimbursed Contributions Authorized by Kathleen Cannon attached to the**
7 **Brief at Exhibit 1. In her Reply, Cannon does not dispute that McKeon for Congress committee**
8 **staff told her in 1999 that she could not use a corporate check to pay for a table at a fundraising**
9 **dinner and that this event prompted her to begin soliciting federal contributions from Bank**
10 **employees and authorizing their reimbursement with Bank funds. Reply at 2; Brief at 2. Cannon**
11 **also does not deny soliciting federal contributions from direct reports and other Bank employees**
12 **via the company's e-mail system starting in November of 2003 or contradict statements she made**
13 **in these e-mails instructing those individuals to seek reimbursement of their federal contributions**
14 **with Bank funds. Brief at 4 – 6. More importantly, Cannon does not challenge, or otherwise**
15 **explain statements she made to her direct reports demonstrating that she knew reimbursing**
16 **federal contributions with Bank funds was improper. Id. at 5 and 6. For instance, Cannon does**
17 **not deny that while her June 11, 2004 e-mail solicitation stated that “[t]he tickets can not be**
18 **expensed as it is a contribution,” she later told one of her direct reports that the contribution**
19 **could be expensed. Id. at 5. Further, Cannon does not repudiate the evidence presented in the**
20 **Brief that she specifically admitted to one of her direct reports that she knew reimbursing**
21 **contributions with Bank funds was in violation of the Bank's ethics rules. Id. at 6.**

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1 2. **Cannon's Attempt to Shift Responsibility for the Violations at Issue is**
2 **Unsupported by the Evidence**

3
4 Without providing any factual support, Cannon implies that unnamed supervisors had an
5 unidentified role in the activities at issue in this matter. Reply at 2 and 3. Cannon's response
6 states, in pertinent part, that the "eight different Bank of America officers" who supervised her
7 during her tenure with the Bank "are noticeably absent from the documentation provided by
8 Bank of America and submitted as exhibits to the Brief" and asserts that the "Bank officers who
9 supervised her activities remain in the shadows." *Id.* at 2. Cannon's insinuation that her
10 supervisors and/or other Bank officials knew of, or participated in, the reimbursement of
11 contributions made by employees in the Los Angeles-based Student Banking Division is not
12 supported by the evidence.

13 Cannon was put in charge of the Student Banking Division in 1993 and managed its 160
14 employees with a great deal of autonomy, in large part because she was never supervised by any
15 one person for any significant length of time and none of her superiors was located in the
16 division's Los-Angeles office.³ *Sua Sponte* submission at 7 and 8. Cannon told Bank
17 investigators that her supervision was minimal and that she had little contact with the rest of the
18 Bank. Further, Cannon reportedly told Bank investigators that she did not discuss the issue of
19 reimbursements or their propriety with her superiors. The three individuals who supervised
20 Cannon during the relevant time period told investigators that they were unaware of her activities

³ The Student Banking Division was headquartered in Los Angeles and had sales and marketing staff located throughout the country. Five of Cannon's direct reports worked in the Los Angeles office while the other three were based in Kansas City, Dallas and Charlotte respectively.

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1 and never gave her permission to authorize the reimbursement of employee contributions.⁴
2 Additionally, Cannon admitted to Bank investigators that she never discussed the issue with the
3 Bank's government affairs division with which she had regular dealings in connection with
4 student lending related legislation or its legal divisions. *Sua Sponte* Submission at 26.

5 Therefore, there is no evidence to support Cannon's argument that her supervisors at the
6 Bank were aware of, or had a role in, the reimbursement with Bank funds of federal contributions
7 made by employees in the Student Banking Division.

8 **B. THERE IS PROBABLE CAUSE TO BELIEVE CANNON'S VIOLATIONS**
9 **WERE KNOWING AND WILLFUL**

10
11 In her Reply, Cannon addresses only one of the factual issues that we assert demonstrates
12 that her violations were knowing and willful. While Cannon does not deny that she was
13 informed by staff of Representative Howard P. "Buck" McKeon that she could not use a
14 corporate check to pay for a table at a 1999 fundraising dinner, she contends that the Brief fails to
15 cite enough details to demonstrate that this advice provided her with a thorough grounding in
16 "the specifics of 2 U.S.C. §§ 441b(a) and 441f." Reply at 2. Contrary to Cannon's assertion, the
17 relevant legal standard does not require a showing that a defendant "had specific knowledge of
18 the regulations" or "conclusively demonstrate" a defendant's state of mind, if there were "facts
19 and circumstances from which the jury reasonably could infer that [the defendant] knew her
20 conduct was unauthorized and illegal." *United States v. Hopkins*, 916 F.2d 213 (5th Cir. 1990)

⁴ The investigation indicates that none of Cannon's direct reports informed her supervisors or other Bank officers that their contributions were being reimbursed with Bank funds. Direct report Reinstadtler stated in his interview with Bank investigators that, although he was aware that reimbursing contributions was improper, he did not report Cannon's activities to her supervisor because he feared retaliation. The Bank terminated Reinstadtler and three other direct reports because they served in a leadership capacity and, although they knew or suspected that reimbursing contributions with Bank funds was improper, failed to report the activity up the line. *Sua Sponte* Submission at 37.

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1 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838
2 (1989)). The factual evidence in this matter, which Cannon does not contest, demonstrates that
3 she was fully cognizant that her actions were prohibited and illegal during the entire five year
4 period she directed the reimbursement scheme at issue.

5 First, Cannon only began soliciting and authorizing the reimbursement of employee
6 contributions after being explicitly told by the McKeon committee that it could not accept a
7 corporate check.⁵ That Cannon fully understood the significance of this information is
8 underscored by the fact that she continued to circumvent the prohibition against using corporate
9 funds by soliciting contributions from direct reports and other employees in the Student Banking
10 Division and authorizing their reimbursement until the Bank instituted its investigation in July of
11 2005.⁶

12 Second, Cannon acknowledged that reimbursing contributions was improper in an e-mail
13 solicitation and in a conversation with one of her direct reports. In the June 11, 2004 e-mail
14 solicitation for the July 9th McKeon fundraiser, which was issued to both her direct reports and
15 others in the Student Banking Division, Cannon stated that “[t]he tickets can *not* be expensed as

⁵ Cannon stated in her interview with Bank investigators that lobbying at the federal level on issues related to student lending was an important part of her job. The majority of Cannon’s fundraising efforts amongst the Bank’s employees were on behalf of Representative McKeon, who at the time was the Chairman of the House Committee on Education and the Workforce, which is the authorizing committee for federal student lending legislation. Brief at Exhibits 1 and 2.

⁶ At that time, the Bank instituted an internal audit in response to reports that Cannon had improperly accepted personal gifts from a vendor specializing in student loans. During the course of this audit, the Bank’s internal auditors discovered information indicating that Cannon may have approved the reimbursement of political contributions. See First General Counsel’s Report at 2 n. 2.

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1 it is a contribution." (Emphasis added.) Brief at Exhibit 13. The evidence indicates that Cannon
2 followed up this e-mail solicitation by personally instructing one of her direct reports and another
3 Student Banking manager to make contributions to the McKeon committee and submit
4 reimbursement requests. Brief at 5. When one of her direct reports confronted Cannon about the
5 sentence in the June 11th e-mail stating that the tickets to the fundraiser could not be expensed
6 because they were contributions, Cannon brushed off her concern and told her explicitly that she
7 could expense the contribution. *Id.*

8 Cannon more directly acknowledged that the reimbursement of political contributions
9 was prohibited when she responded to a direct report's concerns that the Bank's new on-line
10 ethics training barred the reimbursement of political contributions by admitting that she knew the
11 practice was in violation of the Bank's ethics rules.⁷ Brief at 6.

12 Finally, the evidence indicates that Cannon recognized reimbursing contributions was
13 improper, in part, because her e-mails only explicitly stated that contributions could be
14 reimbursed when the recipient list was restricted to Student Banking employees under her
15 immediate and direct control. Specifically, e-mails issued exclusively to her direct reports on
16 November 3, 2003 (e-mail Reply), February 20, 2004 and July 8, 2005 stated that contributions
17 could be reimbursed, while e-mail solicitations issued to a wider audience in the Student Banking
18 Division, dated November 3, 2003 and June 11, 2004, either did not mention the issue of

⁷ Contrary to Cannon's inference that the Bank did not promote compliance prior to 2005, prior versions of the Bank's Code of Ethics also included language outlining the ban on corporate contributions. *Sua Sponte* Submission at Exhibits 5 – 9. At least since 1994, the Bank's Code of Ethics contained a section stating that federal and state laws prohibited corporations from making contributions directly or indirectly to political committees and candidates. *Id.* According to the Bank, Cannon regularly completed Code of Ethics training and was thus on notice that corporate contributions were not only impermissible under Bank policy, but also illegal. *Sua Sponte* Submission at 22.

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1 reimbursements at all or stated definitively that the contributions could not be expensed. Brief at
2 Exhibits 8, 11, 13 and 17. This behavior demonstrates that Cannon knew that reimbursing
3 contributions with Bank funds was illegal and felt more comfortable communicating about this
4 prohibited activity with her small group of direct reports. All these circumstances establish a
5 clear basis for the Commission to find that Cannon's violation of the Act was knowing and
6 willful.

7 **C. CANNON RECEIVED PROPER NOTICE OF THE ALLEGATIONS**
8 **AGAINST HER**

9 Cannon's Reply argues that the Commission should not find probable cause to believe
10 that she violated the Act because the Commission "failed to comply with its own statutory
11 obligations under 2 U.S.C. § 437g" by providing her with a sworn complaint. Reply at 1. As in
12 her previous filings in this matter, *see supra* pp. 2 and 3, Cannon contends that because she was
13 not provided with a copy of a sworn complaint, she has not been properly notified of the
14 "underlying allegations against her." *Id.* The Commission should once again reject Cannon's
15 assertion for the simple reason that she did receive proper notice of the allegations at issue
16 pursuant to 2 U.S.C. § 437g.

17 In this matter, the Commission was well within its discretionary powers to initiate the
18 present enforcement action based on the information contained in the Bank's *sua sponte*
19 submission. *See Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte*
20 *Submissions)*, 72 Fed. Reg. 16695 (April 5, 2007). Pursuant to the Act, the Commission may
21 generate enforcement actions on the basis of formal complaints filed pursuant to 2 U.S.C.
22 § 437g(a)(1) or on the "basis of information ascertained in the normal course of carrying out its
23 supervisory responsibilities." 2 U.S.C. § 437g(a)(2). Enforcement actions generated on the basis

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1 of information ascertained in the normal course of carrying out its supervisory responsibilities
2 include those based on *sua sponte* submissions from individuals and organizations disclosing
3 their own possible violations of campaign finance law. See FEC Directive 6 (April 21, 1978).
4 Once the Commission initiates such an action, it shall notify the respondent of the alleged
5 violation. Such notification shall set forth the factual basis of such alleged violation. 2 U.S.C.
6 § 437g(a)(2).

7 The Commission properly notified Cannon of its finding and of the factual basis for the
8 apparent violations pursuant to 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis
9 ("F&LA") sent to Cannon contained all of the information that formed the basis for the
10 Commission's initiation of an investigation. The F&LA fully described the factual
11 circumstances at issue in this matter, including, *inter alia*, Cannon's actions, the identities of the
12 alleged conduits, the amounts of the contributions at issue, and the dates upon which those
13 contributions were allegedly solicited, made, and reimbursed. As a result, the F&LA fully
14 satisfied the notification requirements of the Act and contained information that was more than
15 sufficient for her to adequately respond to the Commission's findings, attend her deposition and
16 otherwise fully defend herself in this matter. Therefore, Cannon was provided full and fair notice
17 of the allegations pertaining to her pursuant to 2 U.S.C. § 437g.

18 **D. CONCLUSION**

19 For the reasons outlined above, this Office recommends that the Commission find that
20 there is probable cause to believe that Cannon knowingly and willfully violated 2 U.S.C.
21 §§ 441b(a) and 441f by approving the reimbursement of \$7,700 in contributions from corporate
22 funds.
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General Counsel's Report #4

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10 **V. RECOMMENDATIONS**

11 1. Find probable cause to believe that Kathleen Cannon knowingly and willfully
12 violated 2 U.S.C. §§ 441b(a) and 441f.

13 2. _____

3. Approve the appropriate letters.

6/17/2008
Date

Thomasenia P. Duncan
Thomasenia P. Duncan
General Counsel

Kathleen Guith
Kathleen Guith
Acting Deputy Associate General Counsel
for Enforcement

Thomas J. Andergen
Thomas J. Andergen
Acting Assistant General Counsel

Marianne Abely
Marianne Abely
Attorney

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