

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6193) CASE CLOSURE UNDER THE
6 MCCAIN-PALIN VICTORY 2008) ENFORCEMENT PRIORITY SYSTEM
7 AND LISA R. LISKER,)
8 AS TREASURER)
9

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, matters that are low-rated _____

12 _____ are
13 forwarded to the Commission with a recommendation for dismissal. The Commission has
14 determined that pursuing low-rated matters compared to other higher rated matters on the
15 Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.
16 The Office of General Counsel scored MUR 6193 as a low-rated matter.

17 The complainant in this matter, Jerry L. Waters, claims he made a contribution of \$100 in
18 support of the McCain-Palin campaign in 2008. Enclosed with the complaint is what appears to
19 be a partial carbon copy of the contribution check, endorsed to "Sarah Palin" (the date is not
20 legible) and a letter from McCain-Palin Victory 2008 and Lisa R. Lisker, in her official capacity
21 as treasurer ("the Committee")¹ dated December 31, 2008, in which the Committee thanked
22 Mr. Waters for his contribution. The Committee's letter also provided that because the check
23 was received after the beginning of the general election period it was required to refund
24 Mr. Waters' contribution, unless he signed a form redesignating the check to the Committee.
25 Mr. Waters asserts that he returned the form unsigned and subsequently contacted the Committee

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¹ The Committee is a joint fundraising committee which is comprised of the Republican National Committee, the Michigan, Ohio and Pennsylvania Republican parties, and the McCain-Palin Compliance Fund.

1 several times, seeking to have his contribution refunded. Nonetheless, according to Mr. Waters,
2 the Committee failed to do so, in violation of 11 C.F.R. § 103.3(b)(3).

3 In response, the Committee maintained that 11 C.F.R. § 103.3(b)(3), which requires that
4 excessive or otherwise impermissible contributions be refunded, does not apply to Mr. Waters'
5 \$100 contribution which, according to the Committee, was neither excessive nor impermissible.

6 In addition, the Committee noted that its letter dated December 31, 2008, referenced above,
7 which offered Mr. Waters the opportunity to have his contribution refunded, was mistakenly
8 generated. Nonetheless, the Committee indicated that it has a policy that it will voluntarily
9 refund contributions upon request. The Committee stated that it made a good-faith effort to
10 comply with Mr. Waters' requests but, due to miscommunications with its vendor, the refund
11 was delayed. The Committee observed that on May 27, 2009, it issued a refund of \$100 to
12 Mr. Waters. The Committee's response includes a copy of the refund check and Federal Express
13 tracking information indicating that it was delivered to Mr. Waters' residence on May 28, 2009.

14 Given that the potential amount in violation is *de minimus*, coupled with the fact that the
15 Committee has apparently refunded the contribution at issue, and in furtherance of the
16 Commission's priorities and resources, relative to other matters pending on the Enforcement
17 docket, the Office of General Counsel believes that the Commission should exercise its
18 prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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RECOMMENDATIONS


The Office of General Counsel recommends that the Commission dismiss

MUR 6193, close the file, and approve the appropriate letters.

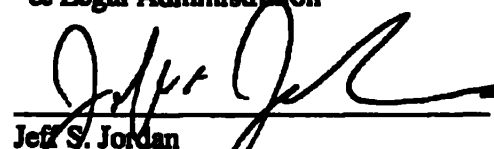
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