



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Brian Svoboda, Esq.
Perkins Coie
607 14th Street, NW
Washington, DC 20005

JUN 07 2010

RE: MUR 6221
Kilpatrick for United States Congress and
Carl Stafford, in his official capacity as
treasurer

Dear Mr. Svoboda:

On October 22, 2009, the Federal Election Commission ("Commission") notified your clients, Kilpatrick for United States Congress and Carl Stafford, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 25, 2010, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe your clients violated 2 U.S.C. § 441a(f). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 § 100.5(e)(3). Transfund and Kilpatrick Response (“Transfund Response”) at 2 and Exhibits A,
2 B and C. As such, the PAC’s contributions to the Seals and Kilpatrick Committees did not
3 exceed the limits for multicandidate committees. In addition, Respondents deny that the
4 Kilpatrick Committee received an excessive contribution from Blackwell as a result of an
5 earmarked contribution, and asserts that there are no facts to suggest that Blackwell retained
6 control over his contributions or had actual knowledge that Transfund would contribute to the
7 Kilpatrick Committee. *Id.* at 2-3.

8 The available information indicates that the Seals Committee was not aware that
9 Transfund may not have qualified for multicandidate committee status. Upon receipt of
10 Transfund’s contribution, the committee’s treasurer verified the legitimacy of the PAC by
11 reviewing Transfund’s Form 1M on the FEC’s website. However, upon becoming aware of the
12 complaint, the Seals Committee refunded Transfund’s allegedly excessive contribution totaling
13 \$700, apparently out of an abundance of caution.

14 As discussed in further detail below, Transfund properly qualified as a multicandidate
15 committee. Thus, the PAC’s contributions to the Seals Committee and the Kilpatrick Committee
16 were not excessive. In addition, there is no information to support the allegation that Blackwell
17 made an earmarked contribution to the Kilpatrick Committee through Transfund, which would
18 have resulted in an excessive individual contribution by Blackwell to the Kilpatrick campaign.
19 Accordingly, the Commission finds no reason to believe that Transfund PAC and Rod B. Kassir,
20 in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) or that Kilpatrick for
21 United States Congress and Carl Stafford, in his official capacity as treasurer, violated 2 U.S.C.
22 § 441a(f).

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (“the Act”) provides that no person shall make contributions to any candidate and his or her authorized political committee with respect to any election for federal office which, in the aggregate, exceed \$2,300 for the 2008 election cycle, or to any other political committee in any calendar year which, in aggregate, exceed \$5,000. 2 U.S.C. § 441a(a)(1)(A) and (C); 11 C.F.R. § 110.1(b) and (d); *Price Index Increases for Expenditure and Contribution Limitations*, 72 Fed. Reg. 5294, 5295 (Feb. 5, 2007). Additionally, multicandidate committees are prohibited from making contributions in excess of \$5,000 to any candidate and his or her authorized committee with respect to any election for federal office. 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R. § 110.2(b). Candidates and their committees are prohibited from knowingly accepting any contributions in excess of the Act’s limitations. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

A. Transfund’s Multicandidate Committee Status

Transfund, the leadership PAC for Representative Carolyn Kilpatrick, has been registered with the Commission since December 16, 2006. *See* Statement of Organization. The Act defines a “leadership PAC” as a political committee that is directly or indirectly established, financed, maintained, or controlled by a candidate for Federal office or an individual holding Federal office, but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual. 2 U.S.C. § 434(i)(8)(B). Although associated with a particular candidate, a leadership PAC is not legally affiliated with the candidate’s principal campaign committee and is treated as a non-connected committee. *See* 11 C.F.R. § 100.5(g)(4); *Final Rules and Explanation and Justification on Leadership PACs*, 68 Fed. Reg. 67013 (Dec. 1, 2003).

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1 A leadership PAC can qualify as a multicandidate committee. A multicandidate
2 committee is a political committee that (1) has been registered with the Commission for at least
3 six months; (2) has received contributions from more than 50 persons; and (3) has made
4 contributions to at least five federal candidates. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3).

5 A committee shall certify to the Commission that it has satisfied the criteria for becoming a
6 multicandidate committee by filing an FEC Form 1M (Notification of Multicandidate Status)
7 with the Commission within 10 days of the date that the committee meets these criteria.
8 11 C.F.R. § 102.2(a)(3).

9 Once qualified as such, a multicandidate committee may give a candidate up to \$5,000
10 per election and can receive up to \$5,000 per calendar year from a contributor. 11 C.F.R.
11 §§ 110.1(d) and 110.2(b). A multicandidate committee that makes a contribution is required to
12 notify the recipient in writing of its status as a multicandidate committee. 11 C.F.R.
13 § 110.2(a)(2).

14 The complaint alleges that Transfund claimed multicandidate committee status in July
15 2008 without having fully qualified, thus making some of the PAC's contributions excessive.
16 Specifically, the complaint questions whether the PAC received more than 50 contributions by
17 July 1, 2008, as stated on Transfund's Form 1M. Complaint at 1. The complaint states that a
18 review of the committee's disclosure reports indicates that the PAC did not receive contributions
19 from 51 persons during the 2008 election cycle, but rather only received contributions from 47
20 donors by June 30, 2008. *Id.* In addition, the complaint alleges that two persons disclosed on
21 the PAC's reports contributed six times and were counted as six persons toward the 51
22 contributor requirement. *Id.*

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1 Based on a review of relevant materials, it appears that Transfund met the requirements
2 for multicandidate committee status. 2 U.S.C. § 441a(a)(4). Because it filed its first Statement
3 of Organization with the Commission on December 19, 2006, Transfund had been registered
4 with the Commission for more than six months at the time it sought multicandidate committee
5 status. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3). Further, according to its FEC disclosure
6 reports, by the Fall of 2007 it had already made contributions to more than 5 federal candidates.
7 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3); *see* Transfund's 2007 Mid-Year and Year End
8 Reports and FEC Form 1M dated July 14, 2008.

9 Based on the available information, it appears that Transfund had 51 contributors at the
10 time period at issue. Contrary to the complaint's allegations, contributors do not appear to have
11 been counted more than once toward the multicandidate committee status contributor
12 requirement. Transfund's disclosure reports showed that it had received 49 itemized
13 contributions by August 1, 2008. *See* 2006 Year End Report, 2007 Mid-Year Report, 2007 Year
14 End Report, 2008 April Quarterly Report, 2008 July Quarterly Report, and 2008 October
15 Quarterly Report. However, Transfund clarified in its response to the complaint that it received
16 two contributions on January 26, 2007, and May 23, 2008, in the amounts of \$100 and \$5,
17 respectively, which were not required to be itemized in its disclosure reports but would count
18 toward its contributor requirement for multicandidate committee status.¹ 2 U.S.C. § 434(b)(3);
19 Transfund Response at 2. This clarification is consistent with information on the PAC's
20 Detailed Summary Pages of its disclosure reports. Its 2007 Mid-Year Report, filed with the
21 Commission on July 31, 2007, disclosed \$100 in unitemized receipts on page 3 of the Detailed

¹ As part of its response, Transfund produced a list of all 51 contributions, setting forth the contributors' names, dates and amounts. Transfund Response at Exhibit A.

1 Summary Pages. Additionally, Transfund's 2008 July Quarterly Report, filed with the
2 Commission on July 14, 2008, reflects \$5 in unitemized receipts on page 3 of the Detailed
3 Summary Pages.

4 Finally, it appears that Transfund properly filed its Form 1M with the Commission after,
5 not before, meeting the contributor requirement for multicandidate committee status. Although
6 Transfund's disclosure reports indicate that it received a contribution from its fifty-first
7 contributor on August 1, 2008--instead of July 1, 2008--Transfund explains that it had
8 incorrectly reported the date of receipt of contributions from contributors 50 and 51. Transfund
9 Response at 2. According to Transfund, those contributions should have been reported as having
10 been received on July 1, 2008. The PAC provided copies of the relevant checks in support of its
11 claim. See Transfund Response at Exhibit B. The checks from Matthew Moroun and Nora
12 Moroun were dated June 30, 2008, but handwritten notations next to the copies of each check
13 indicate that they were received on July 1. *Id.* In its response, the PAC acknowledges that the
14 August 1, 2008, date show on its disclosure report was a reporting error and states that it would
15 amend the relevant report to correct this error. *Id.* at 2. As of the writing of this analysis, the
16 PAC has not yet amended its 2008 October Quarterly Report to reflect the correct date of the
17 contributions from Matthew and Nora Moroun.²

18 Based on the information discussed above, Transfund appears to have qualified as a
19 multicandidate committee by being registered with the Commission for over six months, having

² A review of Transfund's disclosure reports also revealed the receipt of two contributions from "NGP Software," the PAC's compliance software provider. However, based on identical disbursements the PAC made to NGP Software on the same dates, the report of receipts from NGP Software appears to have been an error.

1 contributed to at least five federal candidates, and having received contributions from over 50
2 persons. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3).

3 Although it appears that Transfund properly qualified for multicandidate status,
4 Transfund's disclosure reports created doubts about the date on which Transfund achieved this
5 status, whether it timely filed its Form 1M declaring its qualification, and whether it properly
6 notified its contribution recipients of its multicandidate status. Nevertheless, even taken
7 together, these irregularities do not warrant proceeding further because the apparent deficiencies
8 involve small amounts or short time periods, and the major allegation in this matter of whether
9 Transfund achieved multicandidate status lacks support.

10 Specifically, Transfund's failure to accurately disclose the date of receipt of its 51st
11 contribution in its reports to the Commission resulted in questions over whether the PAC had
12 met the requirements for multicandidate committee status by July 14, 2008, the date that it filed
13 its Form 1M. Because Transfund's disclosure reports did not reflect 51 itemized contributions
14 by July 1, 2008, the Reports Analysis Division sent the PAC Requests for Additional
15 Information ("RFAs") dated August 8, 2008, and October 31, 2008, inquiring whether
16 Transfund met the requirements for certification as a multicandidate committee and whether it
17 had made excessive contributions. Transfund never responded, either orally or in writing, to the
18 RFAs.

19 Further, because Transfund appears to have qualified as a multicandidate committee on
20 July 1, 2008, it was required to file Form 1M with the Commission within ten days. Transfund
21 filed its Form 1M with the Commission on July 14, 2008, thirteen days after qualification for
22 multicandidate status. After qualifying as a multicandidate committee, Transfund was also
23 required to notify contribution recipients in writing of its status as a multicandidate committee.

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1 11 C.F.R. § 110.2(a)(2). Other than a statement that Transfund did not provide such notification
2 along with its contributions to the Seals Committee, the Commission has no information whether
3 Transfund notified contribution recipients of its status as a multicandidate committee.
4 Nonetheless, none of the minor deficiencies noted warrants proceeding further.

5 **B. Alleged Excessive Contributions by Transfund**

6 Based on its allegation that Transfund did not properly qualify as a multicandidate
7 committee, the complaint concludes that the PAC's contributions to the Seals Committee and the
8 Kilpatrick Committee were limited to the amounts set for persons other than multicandidate
9 committees (e.g., \$2,300 in 2008). 2 U.S.C. § 441a(a)(1)(A). The contributions at issue are as
10 follows:

DATE	COMMITTEE	AMOUNT	ELECTION
7/16/2008	Kilpatrick for United States Congress	\$5,000	Primary
7/16/2008	Kilpatrick for United States Congress	\$5,000	General
9/30/2008	Dan Seals for Congress	\$2,000	General
10/31/2008	Dan Seals for Congress	\$1,000	General

11
12 Because it properly qualified as a multicandidate committee, Transfund was permitted to make
13 contributions to candidates of up to \$5,000 per election. 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R.
14 § 110.2(b). Therefore, its contributions to the Kilpatrick Committee of \$5,000 for the primary
15 election and \$5,000 for the general election, as well as its contributions to the Seals Committee
16 totaling \$3,000 for the general election, did not exceed the contribution limits of the Act. As
17 such, the Seals Committee was not required to refund Transfund's contribution. *Supra* at 2.
18 Therefore, the Commission finds no reason to believe that Transfund PAC and Rod B. Kassir, in
19 his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) or that Kilpatrick for United

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1 States Congress and Carl Stafford, in his official capacity as treasurer, violated 2 U.S.C.

2 § 441a(f).

3 **C. Alleged Earmarked and Excessive Contribution by Blackwell**

4 The complaint also alleges that an individual named Arthur Blackwell made an excessive
5 contribution Kilpatrick's campaign. The complainant cites the Commission's regulations on
6 earmarked contributions (11 C.F.R. § 110.6) and contributions by individuals to committees
7 supporting the same candidate (11 C.F.R. § 110.1(h)), cites three contributions made by
8 Blackwell (a \$5,000 contribution to Transfund PAC, the leadership PAC of Representative
9 Carolyn Kilpatrick, and \$500 and \$1,000 contributions to the Kilpatrick Committee), and asserts
10 that Blackwell exceeded the individual contribution limit by \$1,500.

11 An earmarked contribution counts against the contributor's contribution limit for the
12 recipient candidate. 11 C.F.R. § 110.6(a). Thus, if Blackwell's contribution was earmarked, it
13 would be subject to Blackwell's individual's contribution limit of \$2,300 per election to a
14 candidate committee during the 2008 election cycle, and it would not count against his limit for
15 contributing to Transfund. 2 U.S.C. § 441a(a)(1)(A) and 441a(a)(8). However, if Blackwell's
16 contribution was not earmarked, then he was permitted to contribute \$5,000 per calendar year to
17 Transfund, an unauthorized committee, as long as he did not possess actual knowledge that his
18 contribution would be used for Kilpatrick's campaign and he did not retain control of the funds.
19 See 2 U.S.C. § 441a(a)(1)(C); 11 C.F.R. § 110.1(h)(1)-(3). As discussed below, there is no
20 available information to support the complainant's allegations that Blackwell's contribution to
21 Transfund was either earmarked, or excessive.

22 A contribution is earmarked when there is "a designation, instruction, or encumbrance,
23 whether direct or indirect, express or implied, oral or written, which results in all or any part of a

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1 contribution or expenditure being made to, or expended on behalf of, a clearly identified
2 candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b). In the past, the
3 Commission has determined that contributions were earmarked where there was clear
4 documentary evidence demonstrating a designation or instruction by the donor. *See* MURs
5 4831/ 5274 (Nixon) (finding contributions were earmarked where checks contained express
6 designations on memo lines); *see also*, MUR 5732 (Matt Brown for U.S. Senate), MUR 5520
7 (Republican Party of Louisiana/Tauzin), MUR 5445 (Davis), and MUR 4643 (Democratic Party
8 of New Mexico) (rejecting earmarking allegations where there was no evidence of a clear
9 designation, instruction, or encumbrance by the donor). The Commission has rejected
10 earmarking claims even where the timing of the contributions at issue appeared to be a
11 significant factor, but the contributions lacked a clear designation or instruction. *See* MUR 5445
12 (Davis) and MUR 4643 (Democratic Party of New Mexico).

13 Additionally, the Commission's regulations permit an individual to contribute to a
14 candidate or his or her authorized committee with respect to a particular election and also
15 contribute to a political committee, which has supported, or anticipates supporting, the same
16 candidate in the same election without aggregation, as long as (1) the political committee is not
17 the candidate's principal campaign committee, or other authorized committee or single candidate
18 committee; (2) the contributor does not give with the knowledge that a substantial portion will be
19 contributed to, or expended on behalf of, that candidate for the same election; and (3) the
20 contributor does not retain control over the funds. *See* 11 C.F.R. § 110.1(h)(1)-(3). *See also*
21 *Explanation and Justification of 11 C.F.R. § 110.1(h)*, 52 Fed. Reg. 44,130 (January 9, 1987).

22 In order for a contribution to an unauthorized committee to be aggregated with an
23 individual's contribution limits for a particular candidate, the Commission has required that the

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1 contributor have "actual knowledge" of the committee's plans to use his or her contribution to
2 contribute to or expend funds on behalf of the candidate to meet the requirements of section
3 110.1(h)(2). *See* MURs 5732 (Matt Brown for U.S. Senate), 5678 (Liffrig for Senate), 5445
4 (Davis), and 5019 (Keystone Federal PAC) (although contributors were likely aware that the
5 PAC would contemporaneously contribute to the candidates' committees there was no evidence
6 that the contributors actually knew that a portion of their contributions would be given to
7 specific candidates). *See also* MUR 5881 (Citizens Club for Growth) (rejecting claim that
8 contributors had actual knowledge based on text of solicitations).

9 There is no information to demonstrate that Blackwell's contribution of January 26,
10 2007, to Transfund was earmarked for the Kilpatrick Committee or that Blackwell actually knew
11 his contribution would be used for a candidate. There is no allegation or available information
12 indicating that Blackwell may have designated his contribution to be used exclusively for the
13 benefit of the Kilpatrick Committee. 11 C.F.R. § 110.6(b). Similarly, there is no information
14 indicating that Blackwell had actual knowledge that his contribution to Transfund would be used
15 for the benefit of the Kilpatrick campaign or that Blackwell retained control over his contribution
16 to Transfund in any way. 11 C.F.R. § 110.1(h)(2)-(3).

17 Based on his past contributions, Blackwell appears to be a long-time supporter of
18 Kilpatrick with contributions going as far back as 1997, but there is no history of any excessive
19 contributions. FEC records show that during the 2008 election cycle, Blackwell contributed a
20 total of \$1,500 to the Kilpatrick Committee (\$500 on November 2, 2007, and \$1,000 on June 30,
21 2008). Although Blackwell might reasonably infer that some portion of his contribution to
22 Kilpatrick's leadership PAC might be used to support Kilpatrick, such an inference alone does
23 not suggest that Blackwell had "actual knowledge" that Transfund would use his contribution to

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1 support Kilpatrick. *See, e.g.*, MUR 5968 (John Shadegg's Friends) and MUR 5732 (Matt Brown
2 for U.S. Senate) (stating that although donors solicited by a candidate to contribute to state
3 parties might reasonably infer that their contributions would be used to benefit that candidate,
4 such information was insufficient for finding reason to believe that 11 C.F.R. § 110.1(h) had
5 been violated).

6 Finally, there are no additional factors that point to the possibility that Blackwell
7 intended his contribution to be used for the Kilpatrick Committee. Since its organization in
8 2006, Transfund has contributed to thirty federal candidates other than Kilpatrick. In fact,
9 Transfund did not make a contribution to the Kilpatrick Committee until July 16, 2008, over one
10 year after the date of Blackwell's January 26, 2007 contribution. These factors do not indicate
11 Blackwell retained any control of his contribution to Transfund, or that Blackwell had any
12 knowledge of whether it would be used for the benefit of Kilpatrick.

13 In sum, based on the available information, it does not appear that Arthur Blackwell
14 made an earmarked contribution as defined in 11 C.F.R. § 110.6(b) or made his contribution to
15 Transfund with the requisite knowledge or control, as set forth in section 110.1(h)(2)-(3), to
16 trigger a violation of 2 U.S.C. § 441a(a). Accordingly, the Commission finds no reason to
17 believe that that Kilpatrick for United States Congress and Carl Stafford, in his official capacity
18 as treasurer, knowingly received an excessive contribution in violation of 2 U.S.C. § 441a(f).

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