



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

**DEC 31 2009**

Lynn Gilbert  
Treasurer, Cannon for Congress  
190 West 800 North  
Suite 100  
Provo, Utah 84601

**RE: MUR 6235**  
Cannon for Congress and  
Lynn Gilbert, in her official capacity as  
Treasurer

**Dear Ms. Gilbert:**

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting Cannon for Congress ("Committee") and you, in your official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On December 1, 2009, the Commission found that there is reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Act, and 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3), and 110.2(b)(3). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, 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 investigation to be made public.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law. Enclosed is a conciliation agreement for your consideration.

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If you are interested in engaging in pre-probable cause conciliation, please contact Joshua Smith, the attorney assigned to this matter, at (202) 694-1630 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 2 U.S.C. § 437g(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**Respondents: Cannon for Congress and  
Lynn Gilbert, in her official capacity as Treasurer**

**MUR: 6235**

**I. INTRODUCTION**

This matter involves \$113,996.50 in general election contributions accepted by Cannon for Congress and Lynn Gilbert, in her official capacity as treasurer ("the Committee"), the principal campaign committee of Chris Cannon, during the 2008 primary election. Chris Cannon served six terms in the House of Representatives, representing the 3<sup>rd</sup> Congressional District of Utah. On June 24, 2008, Cannon lost a Republican primary race to challenger Jason Chaffetz. The contributions identified in this referral consist of \$113,996.50 that were designated for the 2008 general election, but that were not redesignated, reattributed, or refunded within 60 days of the date of the primary loss. Of this amount, \$75,300 in general election contributions became excessive after Cannon lost the primary election. Another \$38,696.50 was eligible for redesignation or reattribution. The Committee failed to refund, redesignate, or reattribute these funds within 60 days after the primary election.

As described below, the Commission finds reason to believe that Cannon for Congress and Lynn Gilbert, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting \$75,300 in contributions designated for the general election from individuals and multicandidate committees that had already contributed the maximum amount allowable for the 2008 primary election, which became excessive as of the date the candidate lost the primary, and 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i) by failing to refund, redesignate, or reattribute an additional \$38,696.50 in

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1 contributions designated for the general election from contributors who did not contribute  
2 the maximum allowable for the 2008 primary election.

3 **II. FACTUAL SUMMARY**

4 Beginning in mid-2007 through mid-2008, the Committee reported general  
5 election contributions from 20 individuals totaling \$20,996.50, 34 political action  
6 committees totaling \$92,000, and one "communication cost group" (i.e., a trade  
7 association reporting communication costs on FEC Form 7) totaling \$1,000. As noted  
8 above, Cannon lost the primary election on June 24, 2008. On October 16, 2008, the  
9 Commission sent the Committee a Request for Additional Information ("RFAI")  
10 referencing the Committee's 2008 July Quarterly Report. The RFAI questioned the  
11 Committee's receipt of certain general election contributions that were reported on  
12 several of the Committee's 2007 and 2008 FEC Reports and requested that the  
13 Committee take corrective action. On November 14, 2008, the Committee filed an  
14 amended 2008 July Quarterly Report, but the Amended Report failed to address the  
15 contributions received for the general election. The Committee has taken no further  
16 action with respect to these contributions.

17 On January 28, 2009, the Committee was notified that this matter would be  
18 referred for further action by the Commission.

19 **III. LEGAL ANALYSIS**

20 The Committee accepted \$113,996.50 in contributions from individuals and  
21 multicandidate political action committees ("PACs") that were designated for the 2008  
22 general election. Under the Federal Election Campaign Act of 1971, as amended ("the  
23 Act"), an individual may not make a contribution to a candidate in excess of the limits at

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1 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1), set at \$2,300 per election during  
2 the 2008 election cycle, and multicandidate political action committees may not make  
3 contributions in excess of \$5,000 per election. *See* 2 U.S.C. § 441a(a)(2)(A). Candidates  
4 and political committees are prohibited from knowingly accepting contributions in excess  
5 of the limitations in section 441a. *See* 2 U.S.C. § 441a(f). A primary election, general  
6 election, runoff election, and special election are all considered an "election" under the  
7 Act, *see* 2 U.S.C. § 431(1)(A); 11 C.F.R. § 100.2, and contribution limits are applied  
8 separately with respect to each election. *See* 11 C.F.R. § 110.1(j).

9 The Commission's regulations permit a committee to accept contributions for the  
10 general election prior to the primary election, but the committee must employ an  
11 acceptable accounting method to distinguish between primary and general election  
12 contributions. *See* 11 C.F.R. § 102.9(e)(1). An authorized committee's records must  
13 demonstrate that prior to the primary election, the committee's recorded cash on hand  
14 was at all times equal to or in excess of the sum of general election contributions received  
15 less the sum of general election disbursements made. *See* 11 C.F.R. § 102.9(e)(2). If,  
16 however, the candidate loses the primary election and does not otherwise run in the  
17 general election, the committee must, within 60 days: (1) refund the contributions  
18 designated for the general election; (2) redesignate such contributions in accordance with  
19 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in  
20 accordance with 11 C.F.R. § 110.1(k)(3). *See* 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i),  
21 110.2(b)(3)(i).

22 Because a committee does not have actual notice of the need to obtain  
23 redesignations until the results of the primary are known, if a candidate loses the primary

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1 election but has accepted a contribution designated for the general election before the  
2 primary, the committee has 60 days from the date of the primary election to refund,  
3 redesignate, or reattribute such contribution. 11 C.F.R. § 102.9(e)(3); *see* AO 1992-15  
4 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for  
5 losing primary candidates, like Mr. Russo, who receive contributions before the primary  
6 election that are designated for the general election, redesignation within 60 days of the  
7 primary election date would be permissible."). *See also* AO 2007-03 (Obama for  
8 America) at 3 ("If a candidate fails to qualify for the general election, any contributions  
9 designated for the general election that have been received from contributors who have  
10 already reached their contribution limit for the primary election would exceed FECA's  
11 contribution limits."). Redesignation of general election contributions may only occur to  
12 the extent that the amount redesignated does not exceed the contributor's contribution  
13 limit for the primary and the amounts redesignated do not exceed the net debts  
14 outstanding from the primary. *See* 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i),  
15 110.2(b)(5)(iii) and (b)(3)(i); *see also* AO 1992-15 at 2. A committee's net debts  
16 outstanding are calculated, in relevant part, based on the total amount of debts and  
17 obligations incurred for an election, less the total cash on hand available to pay the debts  
18 and obligations, and any amounts owed to the committee. 11 C.F.R. § 110.1(b)(3)(ii). If  
19 a committee deposits contributions that exceed its net debts outstanding, it must, within  
20 60 days of accepting the excessive contributions, refund, redesignate, or reattribute the  
21 excessive contributions. 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i), *see also* 11 C.F.R.  
22 §§ 110.1(b)(5) and 110.1(k)(3). Likewise, reattribution of a general election contribution

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1 may only occur to the extent that such attribution does not exceed the contributor's  
2 contribution limits. See 11 C.F.R. § 110.1(k)(3)(ii)(B)(1).

3 In this case, the Committee accepted contributions totaling \$113,996.50 that were  
4 designated for the 2008 general election, but that were not redesignated, reattributed or  
5 refunded within 60 days after the candidate's primary loss. See 11 C.F.R. § 102.9(e)(3).

6 Of this amount, it appears that the Committee accepted \$75,309 in contributions from  
7 individuals and multicandidate political action committees ("PACs") that had already  
8 contributed the maximum amount allowable for the primary election, and therefore these  
9 contributions designated for the general election became excessive when the candidate  
10 lost the primary. See 11 C.F.R. § 102.9(e). The Committee could not redesignate these  
11 general election contributions to the 2008 primary election because the contributors had  
12 already contributed the maximum amount allowable for the primary election. Moreover,  
13 reattribution of the Committee's general election contributions would not remedy the  
14 Committee's acceptance of a contribution designated for an election in which Cannon  
15 was not participating. See 11 C.F.R. § 110.1(k)(3). The remaining amount, \$38,696.50,  
16 came from individuals and PACs that did not contribute the maximum amount allowable  
17 for the primary election, but which was not redesignated, reattributed, or refunded as  
18 required under 11 C.F.R. § 102.9(e). Also, according to disclosure reports, the  
19 Committee spent nearly all of its money on the primary election and, thus, did not have  
20 sufficient funds to make the necessary refunds.<sup>1</sup>

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<sup>1</sup> The Committee reported \$3,455.68 in cash on hand in its 2008 October Quarterly Report and \$2,572.27 cash on hand in its 2008 Year End Report.

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1           Based upon the foregoing, the Commission finds reason to believe that Cannon  
2   for Congress and Lynn Gilbert, in her official capacity as treasurer, violated 2 U.S.C.  
3   § 441a(f) by knowingly accepting \$75,300 in contributions designated for the general  
4   election from individuals and multicandidate committees that had already contributed the  
5   maximum amount allowable for the 2008 primary election, which became excessive as of  
6   the date the candidate lost the primary, and 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), and  
7   110.2(b)(3)(i) by failing to refund, redesignate, or reattribute an additional \$38,696.50 in  
8   contributions designated for the general election from contributors who did not contribute  
9   the maximum allowable for the 2008 primary election.

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