FEDERAL ELECTION COMMISSION
Washington, DC 20463

10044272005

Mr. Charlie Stuart
Mr. Jeffrey S. Berger, Treasurer
Charlie Stuart for Congress
P.O. Box 560908
Orlando, FL 32856-14810

DEC 22 2009

RE: MUR 6241
Charlie Stuart for Congress and Jeffrey S. Berger, in his official capacity as treasurer

Dear Messrs. Stuart and Berger:

On August 11, 2009, the Federal Election Commission (the "Commission") notified Charlie Stuart for Congress ("the Committee") and Mr. Berger, in his official capacity as treasurer, that in the normal course of carrying out its supervisory responsibilities it had ascertained information suggesting that the Committee had violated the Federal Election Campaign Act of 1971, as amended (the "Act"). Specifically, the notification stated that as a result of a Commission audit of the Committee conducted under 2 U.S.C. § 438(b), two audit findings had been referred to the Office of the General Counsel for possible enforcement action. The Commission also provided the Committee and Mr. Berger with a copy of the referral.

After reviewing the referral and a response submitted by Mr. Stuart, the Commission on December 15, 2009, found reason to believe that the Committee and Jeffrey S. Berger, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(f), provisions of the Act. 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.

On behalf of the Commission,

Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondents: Charlie Stuart for Congress and Jeffrey S. Berger, in his official capacity as treasurer. **MUR**

I. INTRODUCTION

This matter was generated by a Commission audit, pursuant to 2 U.S.C. § 438(b), of Charlie Stuart for Congress ("the Committee"). The Audit Division conducted an audit of the Committee covering the period of May 10, 2005 through December 31, 2006 and referred two findings to the Office of General Counsel for enforcement action. Finding 1 involves the acceptance of prohibited contributions from corporations, including possible prohibited contributions from limited liability companies (LLCs). Finding 2 involves the acceptance of excessive contributions.

II. FACTUAL & LEGAL ANALYSIS

A. Receipt of Prohibited Contributions (Finding 1)

The Federal Election Campaign Act of 1971, as amended, prohibits political committees from knowingly accepting contributions from corporations. *See* 2 U.S.C. § 441b(a). According to the audit referral, the Committee received 65 apparent prohibited contributions totaling $35,950. Of these, 17 contributions totaling $15,650 were received from LLCs and 48 contributions totaling $20,300 from entities that the Audit Division has confirmed were incorporated when the contributions were made.

Contributions from an LLC that elects to be treated as a corporation by the Internal Revenue Service ("IRS") or from an LLC with publicly traded shares are treated as prohibited corporate contributions. *See* 11 C.F.R. § 110.1(g)(3). In contrast, contributions from an LLC that elects to be treated as a partnership by the IRS or an LLC that does not elect to be treated as

either a partnership or corporation are permissible and are treated as contributions from a partnership under 11 C.F.R. 110.1(e). *See* 11 C.F.R. §110.1(g)(2). Similarly, contributions from an LLC with a single natural member that does not elected to be treated as a corporation are permissible and are attributed to the single member. *See* 11 C.F.R. § 110.1(g)(4). An LLC must affirm to a recipient committee when it makes a contribution that it is eligible to do so and must provide information as to how the contribution must be attributed. *See* 11 C.F.R. § 110.1(g)(5). Committee treasurers are responsible for examining all contributions for evidence of illegality. *See* 11 C.F.R. § 103.3(b).

The Audit Division explained the LLC regulations to SFC at the May 23, 2008 audit exit conference and provided it with a schedule of the apparent prohibited contributions and the underlying documentation. The Interim Audit Report (IAR), sent to SFC on March 20, 2009, also set out the LLC regulations. The IAR recommended that the Committee demonstrate that all of the apparent prohibited contributions were not from prohibited sources. With respect to the LLC contributions, the IAR specified that SFC could demonstrate that these were permissible by providing documentation from each entity that it had elected not to be treated as a corporation under IRS rules. Absent evidence that the contributions were permissible, the IAR recommended that SFC refund the prohibited contributions or report the refunds as a debt if funds were unavailable to do so.

The records maintained and produced by SFC during the audit were incomplete. In addition, SFC failed to respond to the IAR despite being twice granted extensions of time in which to do so, and did not respond to emails sent by the auditors after the final IAR due date of May 18, 2009. As a result, SFC did not document that the $15,650 in contributions from LLCs were permissible or refund any of the apparent prohibited contributions during the audit.

The candidate, however, personally responded to the notice of referral on behalf of SFC. Because his response was styled as a belated response to the audit and posed a question to the audit division about the proper mechanism to accomplish refunds, OGC contacted him to clarify the procedural posture and timing of the matter, *i.e.*, that the matter was no longer in the audit process and had been referred to the Office of General Counsel. The candidate advised us that he would contact the entities at issue and obtain written documentation from any LLC that had not elected to be treated as a corporation.

Based on the information in the referral, there is reason to believe that SFC violated 2 U.S.C. § 441b by knowingly receiving 65 apparent prohibited contributions totaling $35,950.

B. Receipt of Excessive Contributions (Finding 2)

Political committees are prohibited from knowingly accepting a contribution from an individual with respect to any Federal election that exceeds, in the aggregate, the limitation set forth at 2 U.S.C. § 441a(a)(1)(A). *See* 2 U.S.C. § 441a(f). In the 2006 election cycle, the individual per-election contribution limit was $2,100.

Committee treasurers are responsible for examining each contribution received to determine whether it exceeds the applicable contribution limitation on its face or when aggregated with other contributions from the same individual. *See* 11 C.F.R. § 103.3(b). In addition, a committee may accept contributions designated in writing for a particular election, but made after that election, only if it has net debts outstanding. *See* 11 C.F.R. §§ 110.1(b)(3). If a contribution is excessive or cannot be accepted with respect to a certain election because the Committee does not have net debts outstanding, a committee treasurer may seek a written redesignation to another election or a written reattribution to a joint contributor, *see* 11 C.F.R.

§§ 103.3(b)(3), 110.1(b), and 110.1(k), or may presumptively redesignate or reattribute certain excessive contributions by sending a written notice to the contributor of the amount of the contribution redesignated or stating how the contribution was reattributed. *See* 11 C.F.R. §§ 110.1(b)(5)(ii)(B) and (C) and 110.1(k)(3)(ii)(B). Under Commission regulations, the redesignation or reattribution must take place within 60 days of the date the treasurer receives the contribution, and the committee must advise the contributors that they have a right to a refund. *See* 11 C.F.R. §§ 110.1(b)(5) and 110.1(k). If a committee cannot redesignate or reattribute an excessive contribution, or a contribution designated in writing for a particular election that was made after that election and that exceeds the committee's net debts outstanding, the treasurer must refund the contribution to the contributor within 60 days of receipt. *See* 11 C.F.R. §§ 103.3(b)(3); 110.1(b)(3)(i).

According to the audit referral, SFC accepted $13,000 in excessive contributions from eight individuals. The Audit Division concluded, based on a determination that SFC had no net outstanding primary or general election debt, that only two excessive contributions, totaling $2,300, were curable through presumptive redesignation or reattribution, and recommended in the IAR that SFC cure these excessive contributions during the audit. Following the audit referral, however, the Audit Division revisited the net debts outstanding issue and determined that SFC had sufficient net debts such that it could have cured all of the excessive contributions.

As a result of the revised net debts outstanding determination, one of the contributions referred is not, in fact, excessive. Committee records show that the first of two $2,100 contributions from Paul Deutsch, made and received after the September primary election, contained the handwritten notation "primary election" in the check memo line. Given that the check was designated in writing for the primary election and the amount of the contribution did

not exceed the primary net debts outstanding, SFC properly accepted it. *See* 11 C.F.R. § 110.1(b)(3)(i).

In addition, the Audit Division also determined that the amount of the excessive contribution attributable to one contributor, Albert Kodsi, was $900 rather than the $1,000 included in the referral.

SFC thus appears to have accepted excessive contributions totaling $10,800, all of which were curable through presumptive redesignation or reattribution. Based on the information in the referral, there is reason to believe that SFC violated 2 U.S.C. § 441a(f).