



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR - 8 2011

Brian G. Svoboda, Esq.
Perkins Coie LLP
607 14th Street, NW, Suite 800
Washington, DC 20005

RE: MUR 6343
Michael McMahon
Michael McMahon for Congress and
George Caputo, in his official capacity
as treasurer

Dear Mr. Svoboda:

On August 11, 2010, the Federal Election Commission notified your clients, Michael McMahon and Michael McMahon for Congress and George Caputo, 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 April 5, 2011, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Michael McMahon or Michael McMahon for Congress and George Caputo, in his official capacity as treasurer, violated 2 U.S.C. § 438(a)(4). 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) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which explain the Commission's finding, are enclosed for your information.

If you have any questions, please contact April J. Sands, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark Allen
Assistant General Counsel

Enclosures

Factual and Legal Analyses

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6343**

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5 **RESPONDENT:** Michael McMahon
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7 **I. GENERATION OF MATTER**

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 Brendan Lantry. See 2 U.S.C. § 437g(a)(1).

10 **II. FACTUAL AND LEGAL ANALYSIS**

11
12 Based on an article posted on *politico.com*, complainant alleges that Michael McMahon
13 violated the "sale or use" provision of the Federal Election Campaign Act of 1971, as amended
14 (the "Act"). Specifically, the complaint alleges that McMahon compiled a list of contributors to
15 Michael Grimm, McMahon's general election opponent, from Grimm's committee's 2010 July
16 Quarterly disclosure report, and used it to solicit contributions from those individuals.¹
17 See "Fired Aide in 'Jewish Money' Flap Speaks," *www.politico.com*, August 3, 2010,
18 Attachment 1 to the Complaint at 2 ("*politico.com* article"). The Response submitted by Mike
19 McMahon for Congress and George Caputo, in his official capacity as treasurer,
20 (the "Committee"), does not deny compilation of the list, but states that the list was not actually
21 used to solicit contributions, and thus no violation occurred.²

22 In relevant part, 2 U.S.C. § 438(a)(4) provides that the Commission shall make available
23 to the public reports and statements filed with the Commission, except that any information

¹ McMahon, a one-term Democratic congressman running for re-election in New York's 13th Congressional District, lost the 2010 election to Michael Grimm.

² The Response was submitted on behalf of the Committee. McMahon did not separately respond.

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1 copied from such materials may not be sold or used by any person for the purpose of soliciting
2 contributions or for commercial purposes, other than using the name and address of any political
3 committee to solicit contributions from such committee. *See* 11 C.F.R. § 104.15(a).

4 The *politico.com* article upon which complainant relies reports (without quoting her) that
5 Jennifer Nelson, a former Committee spokesperson, stated that the Committee had compiled a
6 list, the purpose of which “was an analysis of potentially poachable donors from McMahon’s
7 rivals after the second quarter fundraising filings came out.” *See* Complaint, Attachment 1.
8 Reportedly quoting Nelson, the *politico.com* article states that Nelson said the list “was to
9 identify specific voters that the congressman could reach out to via email or phone call or letter
10 to discuss issues of importance to them and having [sic] them contribute money to his
11 campaign.” *Id.* Based on the *politico.com* article, complainant alleges that McMahon “violated
12 federal law and privacy rights of individuals by pulling the names of donors to Michael Grimm
13 from Grimm’s second quarter reports and soliciting those individuals for contributions.”
14 Complaint at 2.

15 While incorrectly stating that the complaint alleges no “actual use of the data to solicit
16 contributions,” the Committee’s Response correctly states that “[t]he Complaint relies entirely on
17 the *Politico* article, which neither presents nor alleges any actual use by the Committee of Mr.
18 Grimm’s FEC report data.”³ Response at 2. The Response asserts that “[n]o such use has
19 occurred.” *Id.* The Response further maintains that “the Act does not prohibit campaigns from
20 reviewing or analyzing their opponents’ FEC reports for non-fundraising, non-commercial
21 purposes,” but only the actual sale or use of the data for fundraising and commercial purposes.

³ The Response makes this statement, but ends it with “except for Ms. Nelson’s own unauthorized disclosure to the press, which resulted in her termination.” However, the *politico.com* article does not attribute any statements to Nelson concerning the Committee’s actual use of the list.

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1 *Id.* at 2, 3. According to the Response, “Ms. Nelson’s statements that the list was compiled to
2 solicit contributions for the campaign are inaccurate and in no way reflect the actual use of the
3 list by the Committee.” *Id.* at 3.

4 The Act and the Commission’s regulations prohibit the actual sale or use of FEC data for
5 the purpose of soliciting contributions or for any commercial purpose. 2 U.S.C. § 438(a)(4);
6 11 C.F.R. § 104.15(a). There are no facts in the complaint or in publicly available sources
7 showing that McMahon used any information obtained from FEC data to solicit contributions.
8 Moreover, a comparison of the Committee’s itemized contributions received after July 15, 2010
9 with the itemized contributions disclosed by the Grimm committee in its 2010 July Quarterly
10 Report, found no common contributors.⁴ Because there is no available factual support for the
11 complaint’s allegation that McMahon used FEC data to solicit contributions, the Commission
12 finds no reason to believe that Michael McMahon violated 2 U.S.C. § 438(a)(4).

⁴ A comparison of contributors to Michael Allegetti, Grimm’s Republican primary opponent, as disclosed in his committee’s 2010 July Quarterly Report to those disclosed by the McMahon Committee after July 15, 2010, also found no common contributors.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6343**

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6 in his official capacity as treasurer
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13 Based on an article posted on *politico.com*, complainant alleges that Mike McMahon for
14 Congress and George Caputo, in his official capacity as treasurer, (the "Committee"), violated
15 the "sale or use" provision of the Federal Election Campaign Act of 1971, as amended (the
16 "Act"). Specifically, the complaint alleges that the Committee compiled a list of contributors to
17 Michael Grimm, Michael McMahon's general election opponent, from Grimm's committee's
18 2010 July Quarterly disclosure report, and used it to solicit contributions from those individuals.¹
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24 to the public reports and statements filed with the Commission, except that any information

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3 committee to solicit contributions from such committee. See 11 C.F.R. § 104.15(a).

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9 identify specific voters that the congressman could reach out to via email or phone call or letter
10 to discuss issues of importance to them and having [sic] them contribute money to his
11 campaign.” *Id.* Based on the *politico.com* article, complainant alleges that Respondents
12 “violated federal law and privacy rights of individuals by pulling the names of donors to Michael
13 Grimm from Grimm’s second quarter reports and soliciting those individuals for contributions.”
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5 the purpose of soliciting contributions or for any commercial purpose. 2 U.S.C. § 438(a)(4);
6 11 C.F.R. § 104.15(a). There are no facts in the complaint or in publicly available sources
7 showing that the Committee used any information obtained from FEC data to solicit
8 contributions, and the Response denies it was so used. Moreover, a comparison of the
9 Committee's itemized contributions received after July 15, 2010 with the itemized contributions
10 disclosed by the Grimm committee in its 2010 July Quarterly Report, found no common
11 contributors.³ Because there is no available factual support for the complaint's allegation that
12 the Committee used FEC data to solicit contributions, the Commission finds no reason to believe
13 that Michael McMahon for Congress and George Caputo, in his official capacity as treasurer,
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³ A comparison of contributors to Michael Allegetti, Grimm's Republican primary opponent, as disclosed in his committee's 2010 July Quarterly Report to those disclosed by the McMahon Committee after July 15, 2010, also found no common contributors.