

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3
4 In the matter of)

5)
6 MUR 6385)
7 DAN SEALS FOR CONGRESS AND)
8 HARRY PASCAL, AS TREASURER)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

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FEDERAL ELECTION
COMMISSION

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11 **GENERAL COUNSEL'S REPORT**

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13 Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring
14 criteria to allocate its resources and decide which cases to pursue. These criteria include, but are
15 not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the
16 type of activity and the amount in violation, (2) the apparent impact the alleged violation may
17 have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent
18 trends in potential violations of the Act, and (5) development of the law with respect to certain
19 subject matters. It is the Commission's policy that pursuing low-rated matters, compared to
20 other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial
21 discretion to dismiss certain cases, or in certain cases where there are no facts to support the
22 allegations, to make no reason to believe findings. For the reasons set forth below, this Office
23 recommends that the Commission make no reason to believe findings in MUR 6385.

24 In this matter, the complainant, Carol Deitch, alleges that Dan Seals' principal campaign
25 committee, Dan Seals for Congress and Harry Pascal, in his official capacity as treasurer ("the
26 Committee"),¹ accepted at least nine contributions, totaling \$25,550, which were allegedly
27 designated for Mr. Seals' primary election, but were received after the February 2, 2010 primary,
28 in violation of 2 U.S.C. §§ 441a(a)(1) and (a)(2), and 11 C.F.R. §§ 110.1(b)(3) and 110.2(b)(3).

¹ Mr. Seals won the February 2, 2010 primary election, becoming the Democratic Party nominee to represent Illinois' 10th Congressional District in the U.S. House of Representatives. Mr. Seals lost in the general election on November 2, 2010.

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Specifically, the complainant asserts that the Committee accepted the following primary contributions, from one individual and eight multi-candidate political committees, after the February 2, 2010 primary election:

Table 1. Primary Contributions Accepted Post-Primary

Date	Contributor	Amount
2/14/10	Roberta Goldberg	\$50
3/07/10	Progressive Choices PAC	\$2,000
3/21/10	American Association for Justice PAC	\$5,000
3/25/10*	Communication Workers of America	\$1,500
3/29/10	AFSCME	\$5,000
3/29/10	IBEW PAC	\$5,000
3/30/10	SEIU	\$5,000
3/31/10	Taking The Hill PAC	\$1,000
3/31/10	We The People PAC	\$1,000
	TOTAL	\$25,550

* Amended 2010 April Quarterly Report shows contribution designated for general election.

The complainant further points out that the Committee's 12-Day Pre-Primary Report, covering the period from October 1, 2009 to January 13, 2010, and filed on January 21, 2010, discloses \$145,760.08 cash on hand and no debt. Additionally, the Committee's 2010 April Quarterly Report, covering January 14, 2010 through March 31, 2010, filed on April 15, 2010, and amended on June 29, 2010, discloses \$458,053.50 cash on hand and \$26,668.87 in debts and obligations. Therefore, according to the complainant, it does not appear that the contributions at issue were for the purpose of retiring primary election debt, as required by 11 C.F.R. §§ 110.1(b)(3) and 110.2(b)(3), which permit individuals and multi-candidate committees, respectively, to make contributions designated for a certain election after the election has occurred, but only to the extent that such contributions do not exceed the net debts outstanding stemming from the election.

In response, the Committee asserts that the contributions designated for the primary election that it accepted after the primary election were used solely for the purpose of retiring

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1 primary debt. The Committee explains that it had incurred approximately \$37,809.00 in
2 primary-related debt as of the February 2, 2010 election, and provided with its response a
3 schedule of expenses allegedly associated with the primary election race, totaling \$37,808.60.
4 Furthermore, according to the response, the Committee had \$48,079.00 cash on hand at the close
5 of the primary election, \$41,335.00 of which consisted of general election contributions.
6 Accordingly, the Committee explains that its "Net Primary Cash Balance" was only \$6,744.00
7 (\$48,079.00 in cash on hand minus \$41,335.00 in general election contributions), meaning that it
8 could permissibly accept approximately \$31,065.00 in connection with the primary election race
9 (or \$37,809.00 in expenses incurred in connection with the primary minus \$6,744.00 in primary
10 cash), for the purpose of retiring its primary debt. The Committee further explains that, as of the
11 date of the response, it had accepted \$30,952.00 in contributions designated for the primary
12 election since the February 2, 2010 election.

13 A contribution designated in writing for a particular election, but made after that election,
14 shall be made only to the extent that the contribution does not exceed net debts outstanding from
15 such election. 11 C.F.R. §§ 110.1(b)(3) and 110.2(b)(3). Specifically, an authorized committee
16 may accept contributions made after the date of an election if those contributions: (1) are
17 designated in writing by the contributor for that election; (2) do not exceed the adjusted amount
18 of net debts outstanding on the date the contribution is received; and (3) do not exceed the
19 contribution limitations in effect on the date of such election. *Id.* The Commission defines "net
20 debts outstanding" as the total amount of unpaid debts and obligations incurred with respect to
21 an election, less the total cash on hand available to pay those debts and obligations. 11 C.F.R.
22 § 110.1(b)(3)(ii). For the purpose of calculating net debts outstanding for the primary, cash on
23 hand need not include pre-primary contributions that are specifically designated for the general

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1 election. *See Contribution and Expenditure Limitations and Prohibitions Explanation and*
2 *Justification*, 52 Fed. Reg. 762 (January 7, 1987).

3 The Committee's response asserts that its net debts outstanding for the primary election,
4 as of the date of the election, totaled \$31,065, and there is no information to suggest otherwise.²
5 We note that a contribution from the Communications Workers of America was incorrectly
6 reported as being designated for the primary election (see Amended 2010 April Quarterly
7 Report). Therefore, the primary election contributions at issue in this case, and received after the
8 primary election, amount to \$24,050, for a total of \$30,952 in primary contributions as of
9 October 13, 2010, or \$113.00 less than the Committee's net primary election debt (\$31,065),
10 reported as of February 2, 2010. Thus, it appears that the contributions designated for the
11 primary election and accepted after the primary election did not exceed the amount of net debts
12 outstanding.³ Accordingly, we recommend the Commission find no reason to believe that Dan
13 Seals for Congress and Harry Pascal, in his official capacity as treasurer, violated 2 U.S.C.
14 §§ 441a(a)(1) and (2) and 11 C.F.R. §§ 110.1(b)(3) and 110.2(b)(3).
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² A review of the Committee's 2010 April Quarterly Report reveals that all of the primary expenses listed on the schedule attached to the response, in support of its \$37,809.00 primary debt calculation, were in fact disclosed on the report as disbursements made for the primary, and made within two weeks of the primary election.

³ There are no allegations that the contributions at issue were not designated in writing by the contributor for the primary election, or that they exceeded the contribution limits in effect on the date of the election. Furthermore, there is no outside information to indicate that these contributions did not meet those requirements. A review of the Committee's disclosure reports reveals that the contributions at issue were designated for the primary election, aside from one exception explained above, and none exceeded contribution limits.

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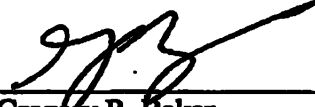
RECOMMENDATIONS

1. Find no reason to believe that Dan Seals for Congress and Harry Pascal, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(1) and (2), and 11 C.F.R. §§ 110.1(b)(3) and 110.2(b)(3).
2. Close the file and send the appropriate letters.

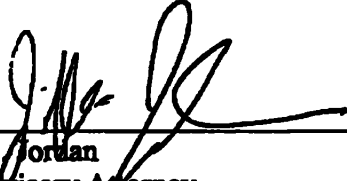
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