

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

Jeff Flake for US Senate, Inc.  
and Hieu Tran, as Treasurer

MUR 6537

RECEIVED  
2012 APR 26 AM 11:53  
2012 APR 25 PM 3:20  
OFFICE OF GENERAL  
FEC MAIL CENTER

RESPONDENTS' RESPONSE TO THE COMPLAINT

Jeff Flake for US Senate, Inc., and Hieu Tran, as Treasurer ("the committee"), hereby respond to the complaint filed against them in the above-referenced matter. The complaint rests on differences between the committee's originally-filed and amended 2011 October Quarterly report. But amendments are changes to make a report more accurate, and are encouraged (and required) by the Commission. See, e.g., 11 C.F.R. §§ 100.19; 104.7(b)(4)(i)(B),(ii); 104.11; 104.18(f). Correcting mistakes made in the method of reporting conduit contributions does not constitute a violation of the Federal Election Campaign Act.

The reality is that even before the amendments, which put the campaign's activity in the correct form, the committee reported all the required information for the individual contributions earmarked for the campaign through a conduit — including the fact that individual contributions had been earmarked by a conduit and disclosing the total amount earmarked through the conduit. The Complaint, which the Commission should promptly dismiss as frivolous and politically motivated, boils down to merely pointing out that the committee amended its October Quarterly, and in doing so, made a mistake reporting the dates of earmarked contributions and a couple obviously typographical errors. The remainder of the complaint stems from the complainant's failure to understand the itemization regulations.

Statement of Facts

The committee has received over \$600,000 in earmarked contributions from individuals through the Club for Growth PAC during this election cycle. The Club for Growth PAC exerted no direction or control of these contributions, and merely acted as a conduit to transmit these contributions as permitted by 11 C.F.R. § 110.6(d).

The committee's October Quarterly report disclosed individual contributors with a memo entry on each itemized individual earmarked contribution which read, "Earmarked through Club for Growth PAC." The total amounts and dates of various groups of contributions transmitted from the Club for Growth PAC were reported on Schedule A, Line 11c (PAC contributions) as memo items.

Upon receiving the FEC's Request For Additional Information ("RFAI") dated December 28, 2011, the committee amended its October Quarterly to instead report the Club for Growth PAC as a conduit on Schedule A, Line 11a, tied to the appropriate itemized individual entries. The amended report also itemized a couple of additional individual contributions that the committee had since discovered met the aggregate threshold of \$200 per election cycle and corrected other entry errors in the original report. Significantly, these amendments were sufficient for the Commission, which has not asked for any additional information since the amendment was submitted.

## Discussion

I. The original report did not deprive the public of relevant information about the individual donors, nor did it attempt to hide the fact that the individual contributions were earmarked from Club for Growth PAC and, upon notification of the error, the committee properly and in a timely manner amended its October Quarterly.

The original report accurately and completely disclosed the individual donor contributions transmitted by the conduit.<sup>1</sup> The report also indicated that certain contributions were "earmarked through Club for Growth PAC" on the relevant individual entries. In addition, the total amounts and dates of various Club for Growth PAC transmissions were reported on Line 11c of the report. Though this information was not initially provided on the correct lines of the report, it was disclosed nonetheless. Since the Club for Growth PAC did not exercise any direction or control, none of the earmarked contributions affected the contribution limits of the Club for Growth PAC. *See* 11 C.F.R. § 110.6(d).

Further, the fact that the Club for Growth PAC supported Jeff Flake's candidacy for Senate was widely reported. The Club publicly endorsed Congressman Flake on February 14, 2011, the day Congressman Flake announced his Senate bid, and many news items covering Congressman Flake's announcement also mention the Club's support of his campaign. *See, e.g.*, Dan Nowicki, "Jeff Flake announces he'll run for Jon Kyl's Senate Seat," Ariz. Republic (Feb. 15, 2011) ("Club for Growth PAC will do everything it can in the Republican primary and general election to help him win this race," said club president Chris Chocola . . .). The Club for Growth PAC raised over \$100,000 for the committee at a widely reported fundraiser the following day. *See* Catalina Camina, "Club for Growth raises \$100K for Jeff Flake's Senate Bid," USA Today (Feb. 16, 2011). In March 2011, The Club issued a press release entitled "Club for Growth PAC Raises Jeff Flake \$250,000 Since Endorsement Last Month." And when Congressman Flake's primary opponent entered the race in August 2011, Arizona news reports reiterated the Club for Growth PAC's support of the Jeff Flake for US Senate campaign. *See, e.g.*, Dan Nowicki, "Mesa investor Wil Cardon joins race for Kyl's Senate seat," Ariz. Republic (Aug. 5, 2011).

The committee's initial reporting mistake did not deprive the public of information about the individual contributors or the Club for Growth's role as a conduit.

Upon learning of them, the committee properly addressed the reporting errors by filing an amendment in advance of the next reporting deadline and well before any election, all according to FEC regulations. Neither the original report nor the amendment was election sensitive: the primary occurs in late August 2012. After receiving the RFAI dated December 28, 2011, the committee immediately worked with a Reports Analysis Division analyst to correct the reporting errors in a timely manner. It also reformed its record-keeping and reporting processes to ensure proper

---

<sup>1</sup> Under 11 C.F.R. § 110.6(c)(2)(ii), "The report by the recipient candidate or authorized committee shall contain the following information: (A) The identification of the conduit or intermediary. . . (B) The total amount of earmarked contributions received . . . and the date of receipt; and (C) The information required under 11 C.F.R. 104.3(a) (3) and (4) for each earmarked contribution which in the aggregate exceeds \$200 in any calendar year."

reporting in the future. The Commission has not asked for any additional information about the October Quarterly since the amendment was filed.

**II. A review of the complaint indicates that the complainant does not understand FEC regulations about itemized contributions and amendments.**

FEC regulations only require the itemized reporting of individual earmarked contributions that, in the aggregate, exceed \$200 per election cycle. *See* 11 C.F.R. § 110.6(c)(2). As such, and contrary to what the complaint implies, it is neither unusual nor indicative of any sort of violation for the aggregate amount of itemized receipts for any individual transmission of earmarked contributions to be less than the total transmission.

Moreover, the complaint's assertion that its attached list of itemized entries in the amended and original October Quarterly constitute "discrepancies" does not stand up to scrutiny. A simple comparison of this list to the original and amended reports resolves all but two of the so-called discrepancies.<sup>2</sup> The comparison is included as Attachment A.

**III. Nonetheless, the committee conducted an internal review of its records related to the earmarked contributions and is filing amendments to correct the date reporting issue cited in this complaint as well as other minor reporting errors it discovered.**

After a thorough internal review of its records conducted upon receiving this complaint, the committee is preparing amendments to its 2011 quarterly reports to ensure each individual and conduit entry conforms fully to the reporting requirements set out by 11 C.F.R. § 110.6(c)(2). These amendments will be filed within the week in accordance with the amendment process for Senate candidates. The internal review, voluntarily undertaken, goes beyond the scope of this complaint and the resulting amendments demonstrate the committee's commitment to a culture of compliance.

During the course of the internal review and subsequent preparation of amendments, the committee will make the following adjustments to the reports: 1) change the individual contribution receipt date from the date of the committee's receipt of the funds to the date the Club for Growth PAC indicated it received the individual contribution in the transmission reports; 2) correct some errors made in reporting individual earmarked contributions with the correct transmission groups from the Club for Growth PAC; 3) correct some typographical errors made in the course of data entry for the report; and 4) add corresponding Club for Growth PAC memoranda for a limited number of individual contributions that had not previously been reported as earmarks.

---

<sup>2</sup> The two instances where the original and amended reports differ are as follows:

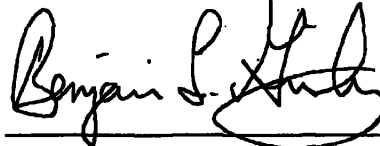
1) John Gregg's September 8, 2011 contribution was originally reported as \$1000 because of an entry error and did not include the memo entry designating it as an earmarked contribution from Club for Growth PAC. This error was resolved on the amended report indicating the \$100 contribution was earmarked from the Club for Growth PAC.

2) Larry McGregor's July 14, 2011 contribution of \$100 was not reported on the original report because it was initially thought to be under the aggregate threshold; upon further review, the committee discovered that Mr. McGregor had previously donated, and the amended report corrected this omission and reported the contribution and the correct aggregate total.

Collectively, the amendments will correct newly discovered minor entry errors found in the course of the committee's internal review of its records in connection with this matter. Other than the date adjustments, which were made to correct the committee's misunderstanding of the proper date to use in reporting the date of receipt for the earmarked contributions, the remainder of the amendments correct minor typographical and data entry errors. While amendments will be made relating to the itemized entries and the corresponding Club for Growth PAC transmission memo items, importantly, none of the amendments will report new contributions. Likewise, the amendments will not change any of the bottom-line information such as the fact and amount of individual itemized contributions, the total earmarked each quarter through the Club for Growth PAC, or the total contributions and cash on hand in each quarter.

For these reasons, we respectfully request that the Commission dismiss the complaint, take no further action and close the file.

Respectfully submitted,



Benjamin L. Ginsberg  
Glenn Willard  
Ann M. Donaldson

PATTON BOOGS LLP  
2550 M Street, NW  
Washington, DC 20037  
P: (202) 457-6000  
F: (202) 457-6315

April 25, 2012