

2012 NOV 30 PM 2: 15

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	DISMISSAL AND
MUR 6537)	CASE CLOSURE UNDER THE
Jeff Flake for U.S. Senate, Inc. and)	ENFORCEMENT PRIORITY
Hieu Tran as treasurer)	SYSTEM
Club for Growth PAC)	
and Adam Rozansky as treasurer)	

CELA

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act or underlying Commission regulations has occurred, a no reason to believe finding. The Office of General Counsel has determined that MUR 6537 should not be referred to the Alternative Dispute Resolution Office.

For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss MUR 6537 as to Respondents Jeff Flake for U.S. Senate, Inc. and Hieu Tran in her official capacity as treasurer (the "Committee"). The Office of General Counsel also recommends that the Commission find no

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1 reason to believe that Club for Growth PAC and Adam Rozansky in his official capacity as
2 treasurer ("Club for Growth") violated the Act.¹

3 The Complaint alleges that the Committee incorrectly reported earmarked
4 contributions received through Club for Growth in the Committee's 2011 October Quarterly
5 Report, filed on October 15, 2011 ("Original Report") and amended 2011 October Quarterly
6 Report, filed on February 1, 2012 ("Amended Report"). Compl. at 1-2. In essence, the
7 Complaint can be construed to allege that the Original Report, covering the period from July
8 1, 2011 through September 30, 2011, discloses conflicting information: "three separate
9 earmarked contributions" from Club for Growth between July 15, 2011 and August 15, 2011
10 totaling approximately \$21,419; individual itemized earmarked contributions through Club
11 for Growth during that time period that are lower ("only \$12,800"); and itemized individual
12 earmarked contributions after that period.² *Id.* The Complaint can also be construed to allege
13 that the Amended Report "raises additional questions" because: (1) the total of itemized
14 earmarked contributions from Club for Growth (\$46,325) is higher than on the Original
15 Report; (2) individual itemized earmarked contributions during that time period are still lower
16 than the approximately \$21,419 the Complaint identifies as the "three contributions" from
17 Club for Growth; and (3) the Committee fails to disclose the correct dates on which the
18 earmarked contributions were received. *Id.* The Complaint attaches a two-page document
19 containing two columns of dates and amounts, one labeled "Original October Quarterly" and

¹ Complaint Filed: February 29, 2012.
Response from Club for Growth Filed: March 27, 2012. Response from Flake for Senate Filed: April 25, 2012.

² The Complaint alleges that "the total amount of earmarked contributions received from the Club for Growth during the reporting period appears to be \$45,625." A review of the record indicates that the correct total, as reflected on the Original Report, is \$46,125.

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1 the other labeled “Amended October Quarterly.” The document is unsourced, and appears to
2 suggest a discrepancy between the Original and Amended Reports. Compl, Attach. 1-2.

3 The Committee asserts that the Original Report accurately and completely disclosed
4 the individual earmarked contributions but admits that the Committee incorrectly reported
5 conduit contributions from Club for Growth on Schedule A, Line 11c (instead of Line 11a) of
6 the Original Report. Committee Resp. at 1. The Committee states that it received a Request
7 for Additional Information (“RFAI”) dated December 28, 2011, from the Reports Analysis
8 Division (“RAD”) and immediately worked with its RAD analyst to correct the reporting
9 errors in a timely manner. *Id.* at 2. The Committee asserts that the Amended Report correctly
10 reported Club for Growth as a conduit on Schedule A, Line 11a and itemized additional
11 contributions the Committee had since discovered met the \$200 aggregation threshold. *Id.* at
12 1. The Committee states that it will file a second amended 2011 October Quarterly Report “to
13 correct the date reporting issue cited in this complaint,” *i.e.*, to “change the individual
14 contribution receipt date from the date of the committee’s receipt of the funds to the date the
15 Club for Growth PAC indicated it received the individual contribution,” and to correct other
16 minor typographical and data entry errors. *Id.* at 3-4.³

17 Although the Committee’s Original Report apparently disclosed individual earmarked
18 contributions from Club for Growth, it failed to properly report all requisite information in

³ The Committee’s initial incorrect reporting of the date of receipt was raised in the RFAI. See RFAI at 1 (also noting proper memo entries for earmarked contributions); see also 11 C.F.R. § 110.6(c)(2). The Committee filed a second amended 2011 October Quarterly Report on April 28, 2012, to correct these errors.

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1 connection with those conduit contributions. *See* 11 C.F.R. § 110.6(c)(2). Nonetheless, it
2 appears that the Committee took corrective action by amending the Original Report.⁴

3 Club for Growth was notified as a respondent in this matter in light of the ambiguity
4 presented in the Complaint as to whether Club for Growth had properly reported the
5 earmarked contributions to the Committee. In its response, Club for Growth provided a
6 sample of the contributor information it provides to the Committee. Our review reveals no
7 anomalies. Moreover, the Committee acknowledged that it was responsible for the reporting
8 errors. Therefore, the Office of General Counsel recommends that the Commission find no
9 reason to believe that Club for Growth violated the Act.

10 The Office of General Counsel also recommends that, in light of the remedial action
11 taken by the Committee before the Complaint was filed, and in furtherance of the
12 Commission's priorities, relative to other matters pending on the Enforcement docket, the
13 Commission should exercise its prosecutorial discretion and dismiss this matter as to the
14 Committee pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985). Finally, the Office of
15 General Counsel recommends that the Commission remind the Committee of its obligation to
16 properly report information concerning conduits when receiving earmarked contributions;
17 approve the attached Factum & Legal Analyses and the appropriate letters; and close the file.

18 **RECOMMENDATIONS**

- 19 1. Find no reason to believe that Club for Growth PAC and Adam Rozansky in his
20 official capacity as treasurer violated the Federal Election Campaign Act of 1971,
21 as amended;
22


⁴ RAD advises that the Committee has rectified discrepancies between the amounts of the individual contributions and the related conduit memo entries, which were questioned in the RFAI.


2. Dismiss the allegation that Jeff Flake for U.S. Senate, Inc. and Hieu Tran in her official capacity as treasurer violated 11 C.F.R. § 110.6(c)(2), pursuant to the Commission's prosecutorial discretion;
3. Approve the attached Factual & Legal Analyses and the appropriate letters; and
4. Close the file.

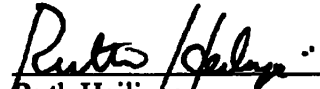
Anthony Herman
General Counsel

11/30/12
Date

BY:


Gregory B. Baker
Deputy General Counsel


Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration


Ruth Heilizer
Attorney
Complaints Examination
& Legal Administration

Attachments:

1. RFAI to Jeff Flake for U.S. Senate, Inc. dated Dec. 28, 2011



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

December 28, 2011

HIEU TRAN, TREASURER
JEFF FLAKE FOR US SENATE INC
PO BOX 12512
TEMPE, AZ 85284-0042

Response Due Date

02/01/2012

IDENTIFICATION NUMBER: C00347260

REFERENCE: OCTOBER QUARTERLY REPORT (07/01/2011 - 09/30/2011)

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **An adequate response must be received at the Senate Public Records Office by the response date noted above. Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 2 item(s):

1. Schedule A of your report discloses earmarked contributions through a conduit. Please be reminded that when a committee receives an earmarked contribution(s) through an allowable conduit, each individual contribution must be itemized when the individual's total contributions to your committee aggregate over \$200 per election cycle. This itemization must include the full name, address, occupation, and employer of the individual contributor along with the date the contribution(s) was received by the conduit. Any un-itemized contributions received through the conduit must be included in your totals on Line 11(a)(ii) of the Detailed Summary Page.

In addition, information regarding the conduit or intermediary for each contribution must be itemized on Schedule A as a memo entry. The conduit's full name and address (and occupation and employer if the conduit is an individual) must also be provided, along with the date the contribution(s) was received by your committee and the total amount of earmarked contributions received from the conduit.

Please amend your report to disclose the proper format for earmarked contributions received from a conduit or intermediary. You can refer to the FEC Campaign Guide for Congressional Candidates and Committees for further guidance on how to report earmarked contributions through a conduit (11 CFR § 110.6(c)(2))

ATTACHMENT 1

Page 1 of 3

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JEFF FLAKE FOR US SENATE INC

Page 2 of 3

2. Schedule A of your report discloses transfers from "The Good Government Fund"; however, the memo entries supporting the transfers do not clearly indicate which transfer they are supporting.

Please be reminded that when a committee receives a transfer from a joint fundraising representative, the committee must report its share of net proceeds received from the joint fundraising representative as a transfer-in on Line 12, Schedule A. A memo Schedule A must be provided on Line 12 to itemize the committee's share of the gross contributions received through the joint fundraiser. The memo schedule should itemize each individual who has contributed an aggregate in excess of \$200 during the election cycle and all political committees, regardless of amount of the contribution. (11 CFR § 102.17(c)(8)(i)(B)) When itemizing gross contributions, the committee must report the date of receipt as the day the joint fundraising representative received the contribution. (11 CFR § 102.17(c)(3)(iii))

Please amend your report to clearly indicate on Line 12 which supporting memo entries correspond to each transfer from the joint fundraising representative. For further guidance, please refer to "Appendix C: Joint Fundraising" of the FEC Campaign Guide for Congressional Candidates and Committees.

Please note, you will not receive an additional notice from the Commission on this matter. Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. **Requests for extensions of time in which to respond will not be considered.**

A written response or an amendment to your original report(s) correcting the above problems should be filed with the Senate Public Records Office. Please contact the Senate Public Records Office at (202) 224-0322 for instructions on how and where to file an amendment. If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1174.

ATTACHMENT 1

Page 2 of 3

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JEFF FLAKE FOR US SENATE INC

Page 3 of 3

Sincerely,



Caroline DeBerry
Campaign Finance Analyst
Reports Analysis Division

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