



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 21 2012

Benjamin L. Ginsburg, Esq.
Glenn Willard, Esq.
Ann M. Donaldson, Esq.
Patton Boggs LLP
2550 M Street NW
Washington, DC 20037

RE: MUR 6537

Dear Mr. Ginsberg, Mr. Willard and Ms. Donaldson:

On March 7, 2012, the Federal Election Commission ("Commission") notified your clients, Jeff Flake for U.S. Senate, Inc. and Hieu Tran in her official capacity as treasurer (the "Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On December 12, 2012, based upon the information contained in the complaint and information provided by the Committee, the Commission decided to dismiss the complaint and closed its file in this matter.

The Commission encourages the Committee to review the Factual & Legal Analysis, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. A copy is enclosed for the Committee's information and future reference. In particular, the Commission reminds the Committee, pursuant to 11 C.F.R. § 110.6(c)(2), to properly report information concerning conduits when receiving earmarked contributions. For further information on the Act, please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100.

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).

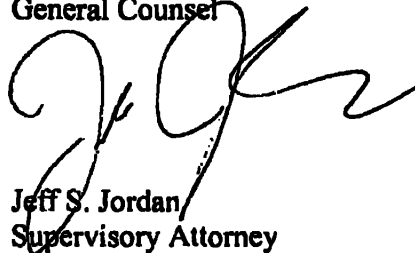
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If you have any questions, please contact Kim Collins, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman
General Counsel

A handwritten signature in black ink, appearing to read 'Jeff S. Jordan', is written over the printed name and title of the signatory.

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration

Enclosure
Factual & Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS: Jeff Flake for U.S. Senate, Inc.
Hieu Tran as treasurer**

MUR 6537

I. INTRODUCTION

This matter was generated by a Complaint filed by Richard J. McDaniel alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Federal Election Commission ("Commission") uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

A. Factual Background

The Complaint alleges that the Committee incorrectly reported earmarked contributions received through Club for Growth in the Committee's 2011 October Quarterly Report, filed on October 15, 2011 ("Original Report") and amended 2011 October Quarterly Report, filed on February 1, 2012 ("Amended Report"). Compl. at 1-2. In essence, the Complaint can be construed to allege that the Original Report, covering the period from July 1, 2011 through September 30, 2011, discloses conflicting information: "three separate earmarked contributions" from Club for Growth between July 15, 2011 and August 15, 2011 totaling approximately \$21,419; individual itemized earmarked contributions through Club for Growth during that time period that are lower ("only \$12,800"); and itemized individual earmarked contributions after that period.¹ *Id.* The Complaint can also be construed to allege that the Amended Report "raises additional questions" because: (1) the total of itemized earmarked contributions from Club for

¹ 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.

1 Growth (\$46,325) is higher than on the Original Report; (2) individual itemized earmarked
2 contributions during that time period are still lower than the approximately \$21,419 the
3 Complaint identifies as the “three contributions” from Club for Growth; and (3) the Committee
4 fails to disclose the correct dates on which the earmarked contributions were received. *Id.* The
5 Complaint attaches a two-page document containing two columns of dates and amounts, one
6 labeled “Original October Quarterly” and the other labeled “Amended October Quarterly.” The
7 document is unsourced, and appears to suggest a discrepancy between the Original and Amended
8 Reports. Compl, Attach. 1-2.

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

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1 **B. Legal Analysis**

2 Although the Committee's Original Report apparently disclosed individual earmarked
3 contributions from Club for Growth, it failed to properly report all requisite information in
4 connection with those conduit contributions. *See* 11 C.F.R. § 110.6(c)(2). Nonetheless, it
5 appears that the Committee took corrective action by amending the Original Report.

6 Based on the facts presented and in light of the remedial action taken by the Committee
7 before the Complaint was filed, the Commission exercised its prosecutorial discretion and
8 dismissed this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, the
9 Commission reminded Jeff Flake for U.S. Senate, Inc. and Hieu Tran in her official capacity as
10 treasurer to properly report information concerning conduits when receiving earmarked
11 contributions. Finally, the Commission approved the Factual & Legal Analysis, closed the file
12 and approved the appropriate letters.

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