FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Clayton L. Barker
Kansas Republican Party
P.O. Box 4157
Topeka, KS 66604

AUG 20 2015

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RE: MUR 6809
Kultala for Congress, *et al.*

Dear Mr. Barker:

The Federal Election Commission reviewed the allegations in your complaint received on April 23, 2014. On August 13, 2015, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to dismiss the allegations that Kultala for Congress and Carol Marinovich in her official capacity as treasurer, and Kultala for State Senate violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d), and close its file in this matter. Accordingly, the Commission closed its file in this matter on August 13, 2015.

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 Analysis, which more fully explains the Commission's finding, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,

General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Kultala for Congress MUR 6809
and Carol Marinovich
in her official capacity as treasurer
Kultala for State Senate

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Kultala for Congress and Carol Marinovich in her official capacity as treasurer (collectively the "Federal Committee")[1] and Kultala for State Senate (the "State Committee"). It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

Complainant alleges that on February 17, 2014, the Federal Committee accepted a $1,000 contribution from the State Committee. Compl. at 1.[2] According to the Complainant, the State Committee had received contributions from corporations and labor unions, as permitted by Kansas state law. *Id.* As a result, the Complainant asserts that Respondents violated 11 C.F.R. § 114.2(b)(1), which prohibits corporations and labor unions from making contributions in connection with a Federal election. *Id.*

[1] The Federal Committee was candidate Kelly Kultala's campaign committee during her unsuccessful 2014 race for Congress from Kansas's Third Congressional District.

[2] *See also* Compl. at 2 (Federal Committee's 2014 April Quarterly Report at 36, disclosing a $1,000 contribution from the State Committee on February 17, 2014).

1 The Response appends a letter addressed to the candidate, Kelly Kultala, from Tom
2 Keating ("Keating"), the Federal Committee's Custodian of Records. Resp. at 1-3. Keating
3 explains that, before the State Committee made the contribution to the Federal Committee, he
4 sought guidance from the Kansas Ethics Commission, which reportedly informed Keating that
5 "it was a federal matter." *Id.* at 2. According to Keating, he then contacted the Commission's
6 Information Division, which advised that contributions from "unregistered organizations" are
7 permissible if the organization can show, using a reasonable accounting method, that it has
8 sufficient federal funds to make the contributions. *Id.*[3] Keating maintains that the State
9 Committee had accepted well over $1,000 in federally permissible funds and, therefore, its
10 $1,000 contribution to the Federal Committee complied with federal law. *Id.* He asserts that
11 such contributions are "routine" in other states and, as an example, observes that in 2010, Yoder
12 for Congress[4] accepted a $2,400 contribution from "Yates 2010," a campaign committee for a
13 state legislator in Missouri that is not registered with the Commission. *Id.* at 2-3.[5] Keating
14 concludes his letter by pointing out that when he had learned that the contribution from the State
15 Committee would be prohibited under Kansas state law, the Federal Committee refunded the

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[3] Under 11 C.F.R. § 102.5(b), an organization that is not a political committee under the Act may finance political activity in connection with Federal and non-Federal elections (other than through transfers and joint fundraisers). The Committee must keep records of receipts and disbursements and demonstrate through a reasonable accounting method that the organization has received sufficient funds subject to the limitations and prohibitions of the Act to cover the contribution, expenditure, or payment. 11 C.F.R. § 102.5(b).

[4] Yoder for Congress is the campaign committee of Congressman Kevin Yoder, who defeated Kultala in the 2014 general election.

[5] *See also* Yoder for Congress Request for Additional Information from the Reports Analysis Division dated June 29, 2010, at 3, 6 (advising that, pursuant to 11 C.F.R.§ 102.5, an organization not registered with the Commission, which makes contributions to federal committees must either establish a separate account that contains only funds that comply with the Act's limitations and prohibitions, or demonstrate through a reasonable accounting method that the organization has received sufficient FEC-compliant funds to make the contribution, and identifying Yates 2010 as a committee not registered with the Commission).

State Committee for its $1,000 contribution via check dated April 20, 2014, three days before the Complaint was filed. *Id.* at 3-4.[6]

Under the circumstances, the Commission believes this matter warrants dismissal. The amount of the alleged impermissible contribution, $1,000, is *de minimis*. Moreover, the available information indicates that Respondents' Federal Committee promptly refunded the contribution to the State Committee before the Complaint in this matter was filed. Therefore, in furtherance of its priorities relative to other matters pending on the Enforcement docket, the Commission exercises its prosecutorial discretion and dismisses the allegations that Kultala for Congress and Carol Marinovich in her official capacity as treasurer, and Kultala for State Senate violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d) related to this matter.[7]

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[6] Keating included in the Federal Committee's Response a letter he wrote to the Kansas Ethics Commission enclosing the refund check and explaining that the refund was for a contribution prohibited under state law. *Id.* at 4-5. In this letter, Keating states that Kan. Stat. Ann. ("K.S.A.") 25-4153(f), a state law of which he was not previously aware, prohibits contributions from state committees to federal committees. Resp. at 4.

[7] *See Heckler v. Chaney*, 470 U.S. 821 (1985).