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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 6850

Mike Lee

Friends of Mike Lee and Mike McCauley

in his official capacity as treasurer

J.P. Morgan Chase & Company

Ronald McMillan

CELA

FIFTH GENERAL COUNSEL'S REPORT

I. INTRODUCTION

The Complaint generally alleges two violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). First, it alleges that Friends of Mike Lee (the "Committee"), the principal campaign committee for Mike Lee's 2010 Senate campaign, was the beneficiary of a contribution reimbursement scheme perpetrated by John Swallow and Jeremy Johnson. That allegation has been addressed in the first four General Counsel's Reports and other briefings circulated in this matter, and the Commission has made various determinations related to that allegation.¹

This Report addresses the second allegation in the Complaint: that Lee and the Committee received in-kind contributions resulting from the short sale of his home, that is, a sale at a price less than the amount owed on the underlying mortgages. Specifically, the Complaint alleges that J.P. Morgan Chase & Company ("JPMC") made a prohibited national bank contribution to Lee when it approved the 2011 short sale of Lee's house and waived the balance

¹ The Commission found probable cause to believe that Jeremy Johnson knowingly and willfully violated 52 U.S.C. §§ 30122, 30116(a), Arvin Black violated 52 U.S.C. §§ 30122, 30116(a), and John Swallow knowingly and willfully violated 52 U.S.C. § 30122. Certification, MUR 6850 (Apr. 17, 2015); Certification, MUR 6850 (Oct. 28, 2015). The Commission dismissed the allegation that the Committee violated 52 U.S.C. § 30122 in connection with the alleged contribution reimbursement scheme. Certification, MUR 6850 (Jun. 18, 2015). The Commission authorized civil suits against Johnson and Swallow, Certification, MUR 6850 (Jun. 15, 2015); Certification, MUR 6850 (Dec. 4, 2015), and accepted a signed conciliation agreement from Black, Certification, MUR 6850 (Jul. 9, 2015).

1 that he still owed on the mortgages.² The Complaint also alleges that Ronald McMillan made
2 potentially excessive contributions to Lee when he purchased Lee's house and then rented
3 another house to Lee by arranging those transactions at prices other than fair market value.
4 Finally, the Complaint alleges that the Committee failed to disclose the contributions, and that
5 Lee converted the contributions to personal use. All respondents who submitted a response deny
6 the allegations, and McMillan filed a motion to sever the short-sale allegations from the
7 contribution reimbursement scheme allegations.³

8 As explained below, there is no evidence of a nexus between the transactions and Lee's
9 campaign. Further, it does not appear that McMillan provided Lee with anything of value that
10 would constitute a contribution. Therefore, we recommend that the Commission find no reason
11 to believe that JPMC and McMillan made contributions to Lee or to the Committee, and no
12 reason to believe that Lee or the Committee accepted any such contributions. Finally, we
13 recommend that the Commission open a new MUR, sever the allegations relating to the short
14 sale of Lee's home from the allegations relating to the contribution reimbursement scheme, place
15 the short sale allegations into the new MUR, and close that file.⁴

² Technically, Lee financed the purchase of his house through two simultaneously-executed deeds of trust. A deed of trust is virtually identical to a mortgage and we will refer to Lee's loans by the more common term, "mortgage." Restatement (Third) of Property (Mortgages) Intro. (1997).

³ Sen. Lee did not file a response in his personal capacity. McMillan's Response includes a document styled as an "Expedited Motion to Sever" requesting that the Commission sever the short sale allegations in the Complaint from the contribution reimbursement allegations so that the allegations involving McMillan may be resolved more quickly and the results published sooner.

⁴ The two sets of allegations are unrelated and therefore easily severable, and the file in this matter would otherwise not close until the Commission completes any related litigation. Because the Act does not provide for motions to sever, and because we independently believe that the Commission should sever the allegations in any event, the Commission does not need to take formal action on McMillan's motion.

II. FACTUAL BACKGROUND

In 2007, Lee purchased a house in Alpine, Utah, in the midst of what the media later described as the height of a housing boom.⁵ JPMC provided Lee, then an attorney in private practice, with two mortgages that had a combined value of \$1,440,000.⁶ It is unclear how much Lee paid for the house or how large a down payment he made.⁷

In 2010, Lee was elected Senator from Utah, and, during that election cycle, Ronald McMillan and his wife, Bonnie McMillan, made contributions to the Committee.⁸ Upon his election, Lee reportedly faced several financial challenges in addition to his lower Senate salary.⁹ The real estate market reportedly “tanked,” his former law firm filed for bankruptcy while owing him a “large sum,” and the short sale of a neighboring property lowered the already-depressed

⁵ Attached to the Complaint are two *Salt Lake Tribune* news articles that describe the circumstances of the short sale. Compl., Exs. C at 1, D at 1. The news articles indicate that Lee purchased the house in 2008. However, according to publicly-filed documents, it appears that Lee purchased the house in August 2007. See Warranty Deed (Aug. 17, 2007).

⁶ JPMC provided Lee with a deed of trust to secure a debt of \$1,100,000 and a closed-end deed of trust to secure a debt of \$340,000. See Deed of Trust at 2 (Aug. 21, 2007); Closed-End Deed of Trust at 1 (Aug. 21, 2007). The next year, Lee refinanced the deed of trust in order to decrease the interest rate from 7.125% to 6.625% without changing the value of that mortgage. See Fixed/Adjustable Rate Rider at 1, Deed of Trust (Jan. 11, 2008). Lee reported the 2007 closed-end deed of trust and the 2008 refinanced deed of trust on his United States Senate Financial Disclosure Report. Michael S. Lee, 2011 United States Senate Financial Disclosure Report for Annual and Termination Report at 6 (May 11, 2012) (describing both deeds of trust as home mortgages); see Compl., Ex. D at 1.

⁷ The news articles attached to the Complaint indicate that Lee purchased the house for \$1,100,000, but this apparently confuses the value of one of his mortgages with the sale price. See Compl., Exs. C at 1, D at 1. The publicly-available information from the Utah County website does not indicate the value of the sale.

⁸ Ronald and Bonnie McMillan each contributed \$2,400 to the Committee on February 26, 2010. Friends of Mike Lee, Amended 2010 Apr. Quarterly Rpt. at 18 (June 24, 2010). Around the same time, fiscal years 2010 through 2011, McMillan’s company, VitalSmarts LLC, reportedly received about \$2 million in federal contracts. Compl., Ex. C at 1. In 2012, a year after the short sale, the value of the company’s federal contracts apparently dropped to about \$215,000. *Id.* Lee reportedly stated that he knows “almost nothing about [McMillan’s] business,” but apparently Lee mentioned McMillan and materials produced by VitalSmarts in a 2011 Senate floor debate, and VitalSmarts promoted Lee’s mention on social media. *Id.*

⁹ Lee reportedly stated that he purchased the house while earning a salary of several hundred thousand dollars a year, but expected that he might have to sell if elected to the Senate since the lower salary would make it difficult to pay the mortgage. Compl., Ex. D at 1.

1 home values in his neighborhood.¹⁰ As a result, Lee apparently could not afford the mortgage
 2 payments for his house but could not sell the property at a suitable price either. JPMC approved
 3 a June 2011 short sale of Lee's house to McMillan and waived the deficiency balance, that is, the
 4 remaining amount that Lee owed on the mortgage after the sale.¹¹ In return, Lee forfeited a
 5 "significant" down payment.¹² McMillan funded his purchase with two mortgages that had a
 6 combined value of \$720,100.¹³ A news article claims that JPMC waived a deficiency balance of
 7 approximately \$400,000, but this apparently represents the difference in value between only one
 8 of Lee's mortgages and both of McMillan's mortgages, rather than the difference in value
 9 between both of Lee's mortgages and the price that McMillan paid for the house.¹⁴ The actual
 10 deficiency balance is unknown, but it is likely to have been greater than \$400,000.¹⁵ Shortly
 11 after the sale, McMillan rented another house to Lee in the same area.¹⁶

¹⁰ Compl., Exs. C at 2, D at 1.

¹¹ Compl., Ex. D at 1. The Complaint alleges that the short sale took place in May 2012, but the available information indicates that it occurred in June 2011. *Compare* Compl. at 2 *with* Warranty Deed (Jun. 14, 2011) (signed by Michael S. Lee); Warranty Deed (Jun. 14, 2011) (signed by Sharon B. Lee).

¹² Compl., Ex. D at 1.

¹³ The news articles attached to the Complaint indicate that McMillan purchased the house for around \$720,000, but this amount appears to be the approximate value of his two mortgages, not the value of the sale, which is presently undisclosed on the Utah County website. *Compare* Compl., Exs. C at 1, D at 1 *with* Revolving Credit Deed of Trust at 7 (Jun. 17, 2011) (\$303,100); Deed of Trust at 1 (Jun. 17, 2011) (\$417,000).

¹⁴ Compl. Ex. D at 1.

¹⁵ If McMillan did not make a down payment (an unlikely scenario), the sales price would have been \$720,100 and the deficiency balance would have been around \$719,900. If McMillan made a down payment of 20% (a more plausible scenario), the sales price would have been around \$900,125 and deficiency balance would have been approximately \$539,875. These estimations do not take into account the amount Lee might have paid JPMC towards the mortgage principal.

¹⁶ Compl., Ex. C at 1.

1 The Complaint alleges that JPMC made an unreported campaign contribution to Lee by
2 waiving the deficiency balance.¹⁷ According to the Complaint, other JPMC mortgage borrowers,
3 in contrast to the favorable disposition Lee received, “faced foreclosure and ongoing personal
4 liability.”¹⁸ The Complaint further alleges that McMillan made an unreported campaign
5 contribution to the Committee because McMillan and Lee “may have” agreed to a short sale and
6 rental prices other than at fair market value.¹⁹ As evidence for this claim, the Complaint asserts
7 that the short sale and rental — each involving Lee and McMillan — appear “prearranged” and
8 therefore must not have been negotiated at arm’s length.²⁰ Finally, the Complaint alleges that
9 Lee converted the contributions from JPMC and McMillan to personal use.²¹

10 The Committee’s Response denies the allegations and states that the short sale and rental
11 have “absolutely nothing to do with the Committee.”²² The Committee asserts that it did not
12 receive contributions or make disbursements involving Lee’s residences.²³

13 JPMC’s Response denies the allegations and explains that in March 2011 — several
14 months before the short sale — it instituted a general policy of forgiving short sale deficiency
15 balances.²⁴ A senior vice president in Chase Foreclosure Alternatives communicated the policy

¹⁷ Compl. at 3.

¹⁸ *Id.*

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ *Id.*

²² Committee Resp. at 1.

²³ *Id.*

²⁴ JPMC Resp. at 1.

via e-mail to Liquidation Management personnel.²⁵ The policy provides that JPMC shall waive the deficiency balance on mortgage loans that are: (1) active; (2) JPMC-owned; and (3) approved by JPMC for a short sale or a deed in lieu of foreclosure transaction.²⁶ Attached to the Response is an affidavit from Jeff Butler, vice president and liquidation manager in Mortgage Banking, who confirms having received the e-mail and states that he directed his team of liquidation negotiators to begin waving deficiency balances for mortgages that satisfied the stated criteria.²⁷ JPMC argues that because the waiver of Lee's deficiency balance would have been consistent with this policy, it follows that JPMC did not waive Lee's debt to influence an election.²⁸ JPMC does not confirm or deny any details of its transactions with Lee.²⁹

McMillan's Response denies the allegations and argues that the Complaint is speculative.³⁰ McMillan attached a sworn declaration to his response.³¹ He states that the transactions "had nothing to do with [Lee's] position as a United States Senator," and "nothing to do with any of his campaigns."³² McMillan asserts that he liked the property and believed that purchasing it would be a smart financial decision.³³ Moreover, he explains that his agent

²⁵ *Id.* at 2.

²⁶ *Id.* at 1-2. There is no information describing how JPMC approved mortgage loans for a short sale or deed in lieu of foreclosure transaction.

²⁷ *Id.*, Attach. There is no indication that Butler's team was responsible for handling Lee's short sale.

²⁸ *Id.* at 2.

²⁹ *Id.* at 2-3. JPMC explains that, under the Financial Right to Privacy Act (12 U.S.C. § 3401 *et. seq.*), it "cannot release information contained in the financial records of any customer to a government authority unless pursuant to the customer's authorization, administrative or judicial subpoena, summons, search warrant, or formal written request for the particular information or financial records." *Id.* at 3.

³⁰ McMillan Resp. at 6

³¹ *Id.*, Ex. 1 ("McMillan Declaration").

³² McMillan Decl. ¶ 11.

³³ *Id.* ¶ 4.

conducted negotiations for the short sale and that JPMC approved the terms of sale as part of a “lengthy process.”³⁴ He does not provide information regarding the sales price. Although McMillan acknowledges that he has known Lee and his family since moving into the neighborhood, he and Lee are members of the same church, and he apparently was aware that Lee owned the house, McMillan states that he does not recall discussing the sale with Lee while the transaction was pending.³⁵ McMillan represents that his first conversation with Lee about the purchase occurred at their church after the short sale was completed.³⁶ McMillan explains that he offered to rent his old house to Lee — who expressed a desire to remain in the same neighborhood for school and church reasons — while McMillan waited for market conditions to improve.³⁷ McMillan states that his agent identified market rental rates and that McMillan negotiated a rate with Lee based on those figures.³⁸ Although McMillan does not provide the specific rental rate that Lee pays for the house, he explains that the rate covers the mortgage payments and anticipated expenses.³⁹

III. ANALYSIS

The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”⁴⁰ The Commission’s regulations provide that a third party’s payment of a

³⁴ *Id.* ¶ 5.

³⁵ *Id.* ¶¶ 2-3; 5.

³⁶ *Id.* ¶ 7.

³⁷ *Id.* ¶¶ 8-9.

³⁸ *Id.* ¶ 10.

³⁹ *Id.*

⁴⁰ 52 U.S.C. § 30101(8).

1 candidate's personal expense shall be a contribution "unless the payment would have been made
 2 irrespective of the candidacy."⁴¹ The Commission has explained in prior matters that because
 3 candidates continue to engage in personal transactions during their candidacy that are beyond the
 4 campaign finance matters regulated by the Act, a finding of reason to believe that a candidate's
 5 personal transaction resulted in a contribution to his or her campaign requires specific
 6 information demonstrating a nexus between the transactions and the campaign.⁴² Further, the
 7 Commission has advised that "[t]he basis for this determination is the context of the transaction's
 8 surrounding factual circumstances."⁴³

9 A candidate who receives a contribution "for use in connection with" his or her campaign
 10 is considered "as having received the contribution . . . as an agent of the authorized committee or
 11 committees of such candidate."⁴⁴ A candidate's authorized committee must disclose the
 12 identification of each person whose contribution or contributions have an aggregate amount or
 13 value in excess of \$200 within an election cycle.⁴⁵ No person shall convert a contribution or
 14 donation to personal use.⁴⁶ The Act also provides that no person shall make an excessive

⁴¹ 11 C.F.R. § 113.1(g)(6); *see* Explanation and Justification, Third Party Payments of Personal Use Expenses, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995) ("If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy.").

⁴² *See, e.g.*, MUR 6035 (Northern Trust Co.) (home mortgage); MUR 5141 (Moran for Congress) (loan from a friend to help pay for legal expenses related to a domestic relations matter); MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee) (cost of a candidate's move to a new house); MUR 4944 (PNC Mortgage Corp.) (home mortgage). The Commission has expressed some reluctance to consider personal matters to be campaign-related issues. *See* Statement of Reasons at 2, n.2, Commr's McDonald, Mason, Sandstrom, Smith, & Thomas, MUR 4944 ("SOR") (recognizing "there are a number of issues arising from a candidate's personal situation . . . that may become campaign issues, but the Commission will not necessarily therefore deem expenses arising from such controversies to be campaign expenses").

⁴³ *See* SOR at 3, Commr's Mason, Sandstrom, McDonald, Smith, Thomas, & Wold, MUR 5141.

⁴⁴ 52 U.S.C. § 30102(e)(2).

⁴⁵ *Id.* § 30104(b).

⁴⁶ *Id.* § 30114(b).

contribution to any candidate and his or her authorized political committee, and candidates and their committees shall not knowingly accept such contributions.⁴⁷ In addition, the Act prohibits national banks and corporations organized by authority of any law of Congress from making contributions to candidates, and prohibits candidates and their committees from knowingly accepting or receiving such contributions.⁴⁸

A. JPMC's Waiver of the Deficiency Balance on Lee's Home Mortgage was Not a Contribution.

The Complaint argues that the amount JPMC forgave on Lee's mortgage should be treated as a contribution and is subject to the Act's prohibitions and limitations.⁴⁹ However, the available information suggests that the short sale was a consequence of Lee's personal financial situation with no apparent connection to the Committee or Lee's campaign for Senate.⁵⁰ The Committee denied that the short sale involved the campaign in any way, and it occurred shortly after the 2010 election and over five years before the 2016 election.⁵¹

⁴⁷ *Id.* § 30116(a), (f).

⁴⁸ *Id.* § 30118(a).

⁴⁹ 11 C.F.R. § 116.4, which governs the forgiveness of debt by a committee vendor for goods or services provided to a committee, does not apply to JPMC's waiver of Lee's mortgage balance because that regulation assumes the dispositive factual issue here, that is, that the forgiven debt was something of value provided for the purpose of influencing an election (because it was provided to a political committee). Although the regulation refers to candidates as well as committees, in context, its purpose appears to be to encompass debts incurred by candidates as agents of committees for goods provided or services rendered for the campaign. Our review of over thirty cases in which the Commission applied that regulation did not reveal any that extended the regulation to the forgiveness of a candidate's personal debt. Therefore, we make no recommendation concerning the forgiveness of debt under 11 C.F.R. § 116.4.

⁵⁰ See Factual & Legal Analysis at 5-6 n.2, MUR 6035 (citing SOR at 5, Commr's McDonald, Mason, Sandstrom, Smith, & Thomas, MUR 4944 ("Treating such loans for a candidate's home purchase or other personal living expenses as not 'in connection with the campaign' and as made 'irrespective of the candidacy' is well founded in our view.")).

⁵¹ See SOR at 3-4, MUR 5141 (interpreting an approximately 17-month difference between the date of a loan and the next election as a factor supporting a finding of no reason to believe).

Furthermore, the available information suggests that JPMC waived Lee's deficiency balance irrespective of his candidacy. The Commission has considered several factors when addressing the status of third party payments: (1) whether the payment freed up the candidate's funds for campaign purposes; (2) whether the payment granted the candidate more time to spend on the campaign instead of pursuing usual employment; and (3) whether the payment would not have been made but for the individual's candidacy.⁵² Here, we have no information tending to suggest that the waiver freed up Lee's funds for campaign purposes.⁵³ Moreover, the waiver did not enable Lee to spend more time on his campaign as his employment situation remained unaffected by the short sale.

The remaining question is whether JPMC would have waived the deficiency balance but for Lee's candidacy. As mentioned above, the short sale was not close in time to an upcoming election and there is no obvious connection between the short sale and Lee's candidacy. In addition, it does not appear that a short sale was especially unusual at the time.⁵⁴ Moreover, JPMC states that it had a general policy of waiving the deficiency balances on JPMC-owned

⁵² *Id.* at 4 (explaining the factors that the Commission has considered in prior matters involving third party payments for a candidate's personal expense and applying a three-part test to find that a personal loan to a candidate from a friend was made irrespective of his candidacy).

⁵³ Aside from \$125,000 in loans during his 2010 campaign that were re-paid the same year, Lee has not made any loans or contributions to the Committee since his election to the Senate. *See* Friends of Mike Lee, Amended 2010 Apr. Quarterly Rpt. at 29 (June 24, 2010) (loan for \$25,000); Friends of Mike Lee, Amended 2010 July Quarterly Rpt. at 104 (Aug. 19, 2011) (loan for \$100,000); Friends of Mike Lee, 2010 Pre-General Rpt. at 53 (Oct. 20, 2010) (\$125,000 in disbursements to Lee for repayment of loans). Admittedly, a loan is substantively different from the forgiveness of a debt; a loan usually contemplates near-immediate use of funds provided in bulk, whereas the forgiveness of a debt allows the former debtor to save money in each payment period that otherwise would have been used to pay off the debt. Theoretically, Lee could save money for about five years to spend it on his 2016 campaign. However, even assuming that Lee had such intentions, the loss of his down payment, the cost of renting a new house, and the potential ramifications to his credit would likely offset any potential savings from the forgiveness of his debt.

⁵⁴ There is information in the record suggesting that short sales were "increasingly becoming the preferred option for banks" during this time period, given that "scrutiny over foreclosure practices were a nightmare for the banks." Compl., Ex. D at 1. This opinion comes from Daren Blomquist, vice president of RealtyTrac, "which looks at housing trends." *Id.* In addition, another house in Lee's neighborhood reportedly sold through a short sale around the same time. *Id.*

1 mortgage loans that it approved for a short sale.⁵⁵ Still, JPMC does not explain its requirements
2 for approving short sales pursuant to that policy, nor does it state whether Lee's proposed short
3 sale to McMillan, which resulted in a sizable loss for the bank, was approved in the ordinary
4 course of business. Nonetheless, the available information supporting the allegation is limited to
5 the Complaint's bare assertion that Lee received the benefits of a short sale and release from
6 personal liability whereas other JPMC borrowers faced the hardships of a foreclosure and
7 ongoing personal liability.⁵⁶ There are no available facts tending to suggest that Lee received a
8 benefit that would not have otherwise been available to similarly-situated individuals or that
9 JPMC's waiver was not made in the ordinary course of business.⁵⁷ Without more, a reason to
10 believe finding would be based solely on speculation.

11 In sum, the available information does not indicate a nexus between the short sale and
12 Lee's campaign. Therefore, we recommend that the Commission find no reason to believe that
13 J.P. Morgan Chase & Company made a prohibited contribution in violation of 52 U.S.C.
14 § 30118(a), find no reason to believe that Mike Lee and Friends of Mike Lee and Mike
15 McCauley in his official capacity as treasurer knowingly received or accepted a prohibited
16 contribution in violation of 52 U.S.C. § 30118(a), find no reason to believe that Friends of Mike
17 Lee and Mike McCauley in his official capacity as treasurer failed to disclose a contribution in
18 violation of 52 U.S.C. § 30104(b), and find no reason to believe that Mike Lee converted

⁵⁵ JPMC Resp. at 1.

⁵⁶ Compl. at 3.

⁵⁷ This conclusion is consistent with analogous provisions of the Act and the Commission's regulations. There is an exemption from the definition of a contribution for bank loans made in accordance with applicable law and in the ordinary course of business. *See* 52 U.S.C. § 30101(8)(A)(vii); 11 C.F.R. § 100.82(a).

contributions from J.P. Morgan Chase & Company to personal use in violation of 52 U.S.C. § 30114(b).

B. McMillan's Purchase of Lee's House and Rental of Another House to Lee Were Not Contributions.

The Complaint alleges that McMillan's purchase of Lee's house and his rental of another house to Lee both resulted in potentially excessive contributions that the Committee failed to disclose. The allegations are premised on the Complaint's unsupported assertion that the transactions appeared prearranged and, consequently, that they "may have" been arranged at prices other than fair market value.⁵⁸ As a threshold matter, it does not appear that McMillan provided Lee with anything of value in connection with these transactions — a necessary element of a contribution.

First, as to the short sale, it does not appear that McMillan provided Lee with a benefit by creating a market that otherwise did not exist so that Lee could avoid the inconvenience and bad publicity associated with a foreclosure, or so that Lee could benefit from JPMC's policy of waiving the deficiency balances on short sales. There is information that other homeowners resolved their mortgages through short sales around this time, including one of Lee's neighbors.⁵⁹ McMillan's sworn statement asserts that he purchased the house because he "liked the property, and considered the opportunity to buy it at a good price through a short sale to be a smart financial move."⁶⁰ Furthermore, there is no available information to support an inference that McMillan purchased the house for more than its fair market value. At any rate, such

⁵⁸ Compl. at 2. The Commission has made clear that a "complainant's unwarranted legal conclusions from asserted facts, will not be accepted as true." SOR at 2, MUR 5141.

⁵⁹ Compl., Ex. D at 1 (describing the recent trend of banks approving short sales rather than foreclosures).

⁶⁰ McMillan Decl. ¶ 4.

1 information would not necessarily alter a contribution analysis since McMillan purchased the
2 house through a short sale and JPMC had a policy of waiving the deficiency balance. In other
3 words, an inflated sales price would have benefited JPMC, not Lee. Accordingly, the available
4 information does not indicate that Lee received anything of value from McMillan in connection
5 with the short sale.

6 Second, as to the rental, there is no available information to support an inference that
7 McMillan charged Lee rent that was below the fair market value. A news article attached to the
8 Complaint provides a website's estimate that Lee's rent should be around \$2,200 a month, but
9 the Complaint does not allege, and the available information does not indicate, what Lee actually
10 pays to McMillan.⁶¹ Moreover, McMillan's sworn statement asserts that "I had my real estate
11 agent pull comparable rates and we negotiated the monthly payment based on those figures," and
12 that the amount was "enough to cover the monthly mortgage payment and provide additional to
13 save for future repairs and renovations."⁶² We have no information to the contrary.
14 Accordingly, the available information does not indicate that Lee received anything of value
15 from McMillan in connection with the rental.

16 Even if McMillan did provide Lee with something of value in connection with the short
17 sale and rental — and, again, there is no indication that he did — those transactions appear to
18 have been personal, rather than campaign-related. The only apparent suggestion in the
19 Complaint of a connection with Lee's candidacy relates to the fact that McMillan and his wife
20 were contributors to Lee during the 2010 election cycle. However, as stated above, the
21 transactions involved Lee's personal residences, the Committee denied that the transactions

⁶¹ Compl., Ex. C at 1.

⁶² McMillan Decl. ¶ 10.

1 involved the campaign or campaign funds, Lee has not subsequently transferred any of his
2 personal funds to the Committee, and the transactions occurred after the 2010 election and over
3 five years before the 2016 election.

4 Furthermore, the available information suggests that McMillan made the transactions
5 irrespective of Lee's candidacy. First, they did not free up any funds for Lee to use in his
6 campaign. Second, they did not enable Lee to spend more time on his campaign. And, finally,
7 there is no indication that McMillan would not have engaged in those transactions but for Lee's
8 candidacy. McMillan's sworn statement asserts that they "had nothing to do with [Lee's]
9 position as a United States Senator, nothing to do with any of his campaigns, and I would have
10 entered into these transactions even if he were neither a candidate nor a sitting United States
11 Senator."⁶³ Moreover, McMillan states that he considered the purchase of Lee's house at a
12 lowered price to be a "smart financial move," and the rental of his old house to Lee to be prudent
13 since he did not think he could receive "top value" by selling in the prevailing market
14 conditions.⁶⁴ The available facts do not question those assessments.

15 In summary, there is no evidence that McMillan provided Lee with anything of value, or
16 of a nexus between the transactions at issue and Lee's campaign for Senate. Therefore, we
17 recommend that the Commission find no reason to believe that Ronald McMillan made an
18 excessive contribution in violation of 52 U.S.C. § 30116(a), find no reason to believe that Mike
19 Lee or Friends of Mike Lee and Mike McCauley in his official capacity as treasurer knowingly
20 accepted excessive contributions in violation of 52 U.S.C. § 30116(f), find no reason to believe
21 that Friends of Mike Lee and Mike McCauley in his official capacity as treasurer failed to

⁶³ *Id.* ¶ 11.

⁶⁴ *Id.* ¶¶ 4, 9.

disclose contributions to the Commission in violation of 52 U.S.C. § 30104(b), and find no reason to believe that Mike Lee converted contributions from Ronald McMillan to personal use in violation of 52 U.S.C. § 30114(b).

IV. RECOMMENDATIONS


1. Open a new MUR;
2. Sever the allegations addressed in this Report, based on Count II of the Complaint in MUR 6850, as to Mike Lee, Friends of Mike Lee and Mike McCauley in his official capacity as treasurer, J.P. Morgan Chase & Company, and Ronald McMillan, and place them into the new MUR;
3. Find no reason to believe that J.P. Morgan Chase & Company made a prohibited contribution in violation of 52 U.S.C. § 30118(a);
4. Find no reason to believe that Ronald McMillan made an excessive contribution in violation of 52 U.S.C. § 30116(a);
5. Find no reason to believe that Mike Lee or Friends of Mike Lee and Mike McCauley in his official capacity as treasurer knowingly accepted prohibited contributions in violation of 52 U.S.C. § 30118(a);
6. Find no reason to believe that Mike Lee or Friends of Mike Lee and Mike McCauley in his official capacity as treasurer knowingly accepted excessive contributions in violation of 52 U.S.C. § 30116(f);
7. Find no reason to believe that Mike Lee converted campaign contributions to personal use in violation of 52 U.S.C. § 30114(b);
8. Find no reason to believe that Friends of Mike Lee and Mike McCauley in his official capacity as treasurer failed to disclose contributions to the Commission in violation of 52 U.S.C. § 30104(b);
9. Approve the attached factual and legal analysis;
10. Close the new MUR file; and

11. Send the appropriate letters.


Date: 2/2/16



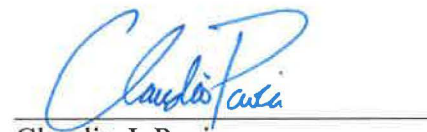
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