



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By Facsimile (202) 434-1690 and First Class Mail

FEB 26 2009

Brian G. Svoboda, Esq.
Ezra W. Reese, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, DC 20005-2011

RE: MUR 5840
Ellen Simon for Congress
and Gael Summer, in his
official capacity as
treasurer;
Ellen Simon

Dear Messrs. Svoboda and Reese:

Your clients were previously notified that the Federal Election Commission, on August 1, 2007, found reason to believe that: Ellen Simon for Congress and its treasurer ("the Committee") violated 2 U.S.C. § 434(b) by misreporting a \$50,000 loan from Ellen Simon and a \$225,000 bank loan guaranteed by Ms. Simon, as contributions from Ms. Simon, and by failing to exercise best efforts in obtaining contributor information; and, the Committee and Ms. Simon, each violated 2 U.S.C. § 441a-1(b) for the untimely filing of the 24-Hour Notice of Expenditure from Candidate's Personal Funds. Following the Supreme Court decision in *Davis v. FEC*, 128 S. Ct. 2759 (2008) that found Sections 319(a) and 319(b) of the Bipartisan Campaign Reform Act of 2002 — the so-called "Millionaires' Amendment" — unconstitutional, your clients were notified that the Commission, on September 11, 2008, determined to take no further action as to the Committee and Ms. Simon in connection with 2 U.S.C. § 441a-1(b), and closed the file as to Ms. Simon.

After considering the circumstances of this matter and your responses, the Commission, on February 6, 2009, determined to take no further action as to the Committee with respect to the 2 U.S.C. 434(b) reason to believe finding regarding the failure to submit contributor information and for misreporting loans. The Commission also closed the file in this matter.

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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). The Factual and Legal Analysis explaining the basis for the Commission's decisions on February 6, 2009, is enclosed.

If you have any questions, please contact me at (202) 694-1598.

Sincerely,



Dominique Dillenseger
Attorney

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Ellen Simon for Congress
and Gael Summer, in his official
capacity as treasurer
MUR: 5840
Ellen Simon

I. BACKGROUND

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2), and by a complaint filed with the Federal Election Commission by the Arizona Republican Party. *See* 2 U.S.C. § 437g(a)(1).

The Commission previously found reason to believe that Ellen Simon and Ellen Simon for Congress and its treasurer, violated 2 U.S.C. § 441a-1(b), a provision of the Millionaires' Amendment of the Act, by failing to timely file a 24-Hour Notice of Expenditure from the Candidate's personal funds. The Commission also found reason to believe that the Simon Committee violated 2 U.S.C. § 434(b) by misreporting a \$50,000 loan from the Ms. Simon and a \$225,000 bank loan guaranteed by Ms. Simon, as contributions from Ms. Simon, and by failing to provide complete contributor information in its 2006 Pre-Primary Report.

II. DISCUSSION

A. Millionaires' Amendment Provision

On June 26, 2008, the U.S. Supreme Court ruled that the Millionaires' Amendment and its related reporting requirements are unconstitutional. *Davis v. FEC*, 128 St. Ct. 2759 (2008). The statutory provisions pertaining to the Millionaires' Amendment were voided by *Davis*. Accordingly, the Commission determined to take no further action as to Ellen Simon and Ellen

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Simon for Congress, and Gael Summer, in his official capacity as treasurer, in connection with 2 U.S.C. § 441a-1(b).

B. Contributor Information and Best Efforts

The Act requires candidate committees to identify persons who make contributions that, when aggregated, exceed \$200 for the election cycle. 2 U.S.C. § 434(b)(3)(A). The Act and the regulations define "identification" to include providing the person's name, address, occupation and name of employer. 2 U.S.C. § 431(13)(a); 11 C.F.R. § 100.12. If the contribution is not accompanied by all of the contributor information required to be reported, the committee must undertake "best efforts" to obtain the missing information. 11 C.F.R. § 104.7. When a committee treasurer shows that best efforts have been made to obtain such information, the committee is considered to be in compliance with the Act. *Id.* Specifically, the committee treasurer must make at least one effort within 30 days of receipt of the contribution to obtain the missing information; the effort may be in writing or it may be an oral request, documented in writing; it may not include material on any other subject and may not solicit any contribution; and if in writing, it must clearly ask for the missing information and must be accompanied by a pre-addressed return post card or envelope for the response. 11 C.F.R. § 104.7(b)(2). Written requests for missing information must include an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications. 11 C.F.R. § 104.7(b)(1).

During the Commission's investigation of this matter, the Simon Committee provided documentation showing that it had exercised best efforts to obtain missing contributor information. The Committee submitted sample letters that it states were used throughout the campaign and were mailed on a monthly basis to all contributors who gave more than \$200 in an election cycle and failed to provide complete information. The letters show that the Committee

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exercised best efforts to obtain missing contributor information. Accordingly, the Commission determined to take no further action as to Ellen Simon for Congress and Gael Summer, in his official capacity as treasurer, with respect to the 2 U.S.C. § 434(b) reason to believe finding regarding failure to disclose contributor information, and closed the file in this matter.

C. Misreporting of Loans

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no further action as to Ellen Simon for Congress and Gael Summer, in his official capacity as treasurer, in connection with a violation of 2 U.S.C. § 434(b) for the misreporting of candidate loans. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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