



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Trevor Potter, Esq.
Caplin & Drysdale
One Thomas Circle, Suite 1100
Washington, DC 20005

AUG 7 2009

RE: MUR 6095
McCain-Palin Victory Fund 2008, *et al.*

Dear Mr. Potter:

On July 2, 2009, the Commission notified you that it dismissed this matter as to your clients, McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler, in his official capacity as treasurer, and cautioned McCain-Palin Compliance Fund, Inc. regarding the requirements of 11 C.F.R. § 9003.3(a)(1)(i)(A). The Commission also notified you that it found no reason to believe that your clients, McCain-Palin Victory Fund 2008 and Lisa Lisker, in her official capacity as treasurer, the Republican National Committee and Tim Johnson, in his official capacity as treasurer, the Michigan Republican Party and Carl Meyers, in his official capacity as treasurer, the Missouri State Republican Committee-Federal and Richard Peerson, in his official capacity as treasurer, the Ohio Republican Party State Central and Executive Committee and Sara Brown, in her official capacity as treasurer, and the Republican Federal Committee of Pennsylvania and Patricia Poprik in her official capacity as treasurer, violated 11 C.F.R. § 9003.3(a)(1)(i)(A). Furthermore, we informed you that we would send you a copy of the Factual and Legal Analysis, which more fully explains the Commission's decision, by separate letter. Please find enclosed the Factual and Legal Analysis in this matter.

Sincerely,

Delbert K. Rigsby

Delbert K. Rigsby
Attorney

Enclosure

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: McCain-Palin Victory Fund 2008

MUR: 6095

and Lisa Lisker, in her official capacity as treasurer
Republican National Committee

and Tim Johnson, in his official capacity as treasurer

Michigan Republican Party and Carl Meyers, in his official capacity as treasurer

Missouri Republican State Committee-Federal and Richard Peerson, in his
official capacity as treasurer

Ohio Republican Party State Central and Executive Committee and Sara Brown,
in her official capacity as treasurer

Republican Federal Committee of Pennsylvania and Patricia Poprik, in her
official capacity as treasurer

McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler, in his official
capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Stephen Franks. *See* 2 U.S.C. § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint as to McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler, in his official capacity as treasurer, and finds no reason to believe that McCain-Palin Victory Fund 2008 and Lisa Lisker, in her official capacity as treasurer, Republican National Committee and Tim Johnson, in his official capacity as treasurer, Michigan Republican Party and Carl Myers, in his official capacity as treasurer, Missouri Republican State Committee-Federal and Richard Peerson, in his official capacity as treasurer, Ohio Republican Party State Central and Executive Committee and Sara Brown, in her official capacity as treasurer, and Republican Federal Committee of Pennsylvania and Patricia Poprick, in her official capacity as treasurer, violated 11 C.F.R. § 9003.3(a)(1)(i)(A).

II. DISCUSSION

A. Factual Summary

The complaint alleges that then-Presidential candidate John McCain, who had agreed to accept public funding for the general election and therefore could not solicit or accept contributions for his general election campaign, violated the Federal election laws by soliciting \$5,000 in funds for his general election campaign from the complainant. Complainant's allegations are based on a fundraising letter and response form that he received in the mail and provided with the complaint. The letter is headed "John McCain" and signed by him. It solicits contributions of \$100, \$250, \$500, \$1,000 or \$5,000 for McCain-Palin Victory 2008, and states at the bottom of the first page that it was paid for by that entity. According to the complaint, the solicitation "buried" a paragraph stating that \$2,300 of any donation would be used for legal and accounting costs incurred in the campaign, but the "entire tenor of the letter conveyed the urgency of soliciting funds for the McCain-Palin Committee." The complaint also states that the information concerning how the funds would be distributed on the response form is displayed in such a way "that the recipient of the request from John McCain would not be aware of the disposition of the funds." Thus, the complaint concludes that the mailing "is misleading, deceptive and fraudulent in that it leads recipients to believe that by the mailing that they are contributing to" the McCain-Palin presidential campaign.

The McCain-Palin Victory Fund 2008 ("MPV 2008") is a joint fundraising committee established under 11 C.F.R. § 102.17. It is comprised of the Republican National Committee, Michigan Republican Party, the Missouri Republican State Committee-Federal, the Ohio Republican Party Central and Executive Committee, the Republican Federal Committee of Pennsylvania and the McCain-Palin Compliance Fund.

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MPV 2008 responded to the complaint on behalf of all the committees comprising the joint fundraising committee. It states that the McCain-Palin Compliance Fund is a legal and accounting fund established in conformity with 11 C.F.R. § 9003.3 and authorized by Senator John McCain. According to the response, the fundraising letter and response form included all of the sponsorship, joint fundraising and compliance fund disclaimers mandated by federal law. In addition, the response points out that MPV 2008, as a joint fundraising committee which includes an authorized committee of a candidate, is required to include the name "McCain Palin" in its name.

B. Analysis

1. Joint Fundraiser Notification

Political committees that engage in joint fundraising under 11 C.F.R. § 102.17(c), must, among other things, provide a fundraising notice with every solicitation for contributions. The fundraising notice should include the names of all committees participating in the joint fundraising activity, the allocation formula to be used for distributing joint fundraising proceeds, a statement informing contributors that, notwithstanding the formula, they may designate their contributions for a particular participant and a statement that the formula may change if a contributor makes a contribution which would exceed the amount that the contributor may give to any participant. *See* 11 C.F.R. § 102.17(c)(2).

In the fundraising letter at issue, MPV 2008 stated that it paid for the communication, and identified the committees making up the joint fundraising committee at the bottom of the first page of the fundraising letter and at the bottom of the response form. MPV 2008 set forth the allocation formula in the response form, stating that "[u]nless a contribution would exceed federal limits or a contributor designates otherwise," the first \$28,500 will go to the Republican National Committee, the next portion will be divided evenly between the Michigan, Missouri, Ohio and Pennsylvania state

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parties' federal accounts up to a maximum of \$9,250 each and the final \$2,300 will go the Compliance Fund. Thus, it appears that MPV 2008's fundraising notice met the requirements of 11 C.F.R. § 102.17 (c)(2).

2. Solicitation Requirements Applicable to GELAC Funds

A major party candidate may receive public financing for his or her general election campaign by complying with certain requirements. To be eligible to receive payments for general election financing from the Presidential Election Campaign Fund, each Presidential and Vice Presidential candidate of a major political party shall, under penalty of perjury, certify to the Commission that no contributions have been or will be accepted by the candidate for his or her authorized committees except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 C.F.R. § 9003.3(a), or except to the extent to make up for any deficiency in payments received from the Fund. 11 C.F.R. § 9003.2. A major party candidate may accept contributions to a general election legal and accounting compliance fund ("GELAC") if such contributions are received and disbursed in accordance with 11 C.F.R. § 9003.3. 11 C.F.R. § 9003.3(a)(1)(i). "All solicitations for contributions to the GELAC shall clearly state that Federal law prohibits private contributions from being used for the candidate's election and that contributions will be used solely for legal and accounting services to ensure compliance with Federal law." 11 C.F.R. § 9003.3(a)(1)(i)(A).

The fundraising letter states that MPV 2008 includes the "McCain-Palin Compliance Fund, to which federal election laws permit you to contribute up to \$2,300 to help offset the McCain-Palin 2008 campaign's legal and accounting costs incurred during the campaign." The response form does not state that, with respect to the Compliance Fund, Federal law prohibits private contributions from being used for the candidate's election, but it does state that such contributions will be used "solely for legal

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1 and accounting services to ensure compliance with federal law and not for campaign activities.” There
2 appears to be sufficient information to enable recipients to determine that the mailing sought funds for
3 McCain-Palin Victory 2008, a joint fundraising committee in which the McCain-Palin Compliance
4 Fund was only one participant, and not to Senator McCain’s general election campaign for President,
5 and that the funds distributed to the compliance fund will be used only for GELAC expenses. The
6 letter references the general need to elect Republican candidates in races all across the country,
7 contains the specific notifications identifying all the joint fundraising participants, specifies the
8 allocation formula, and includes language describing how the McCain-Palin Compliance Fund will use
9 any proceeds it receives. Moreover, the mailing instructs recipients to write their checks to “McCain-
10 Palin Victory 2008” or to submit their donations online at McCainPalinVictory2008.com/win,” and
11 disclaimers identified all of the participants in McCain-Palin Victory 2008.

12 Therefore, the Commission decided to exercise its prosecutorial discretion and dismiss the
13 complaint as to McCain-Palin Compliance Fund, Inc., and Joseph Schmuckler, in his official capacity
14 as treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Because the McCain-Palin Compliance
15 Fund, Inc. is subject to the requirements for GELAC solicitations, and not MPV 2008 or its other
16 participants, there is no reason to believe that McCain-Palin Victory Fund 2008 and Lisa Lisker, in her
17 official capacity as treasurer, Republican National Committee and Tim Johnson in his official capacity
18 as treasurer, Michigan Republican Party and Carl Myers, in his official capacity as treasurer, Missouri
19 Republican State Committee-Federal and Richard Peerson, in his official capacity as treasurer, Ohio
20 Republican Party State Central and Executive Committee and Sara Brown, in her official capacity as
21 treasurer, and Republican Federal Committee of Pennsylvania and Patricia Poprick, in her official
22 capacity as treasurer, violated 11 C.F.R. § 9003.3(a)(1)(i)(A). The Commission has closed the file.

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