



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MAY 22 2013

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

RE: MUR 6689  
John McCain 2008 Inc.  
Joseph Schmuckler, Treasurer  
McCain Victory 2008

Dear Mr. Potter:

On November 13, 2012, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 7, 2013, the Commission found, on the basis of the information in the complaint, and information provided by the respondents, that there is no reason to believe your clients violated 2 U.S.C. § 441a(f). Accordingly, the Commission closed its file in this matter.

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). A Factual and Legal Analysis further explaining the basis for the Commission's decision is enclosed.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Anthony Herman  
General Counsel

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

Enclosure  
Factual & Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: John McCain 2008, Inc.  
Joseph Schmuckler as treasurer

MUR 6689

**I. INTRODUCTION**

This matter was generated by a Complaint filed by Grace Sheedy 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.

**II. FACTUAL AND LEGAL ANALYSIS**

The Complaint alleges that, during 2007 and 2008 (the "time period"), Jim C. Walton ("Walton") violated the biennial limit on contributions to federal candidates at 2 U.S.C. § 441a(a)(3). Compl. at 1-2.<sup>1</sup> Specifically, according to the Complaint, Walton contributed \$46,100 to federal candidates. *Id.* at 2. The Complaint provides a chart listing contributions from Walton to federal candidates, seemingly drawn on Commission records. Compl., Ex. A. On that chart are two contributions from Walton to John McCain 2008, Inc., Senator John McCain's 2008 presidential primary committee, and Joseph Schmuckler in his official capacity as treasurer ("McCain 2008"), totaling \$4,600 and two contributions from Walton to McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler in his official capacity as treasurer

<sup>1</sup> During the time period, individuals could contribute \$42,700 to federal candidates and their authorized committees and \$65,500 to party committees and other political committees. Price Index Increases for Expenditure and Contribution Limitations, 72 Fed. Reg. 5294, 5295 (Feb. 5, 2007) ("Contribution Limit Increases").

1 ("GELAC"), totaling \$4,300.<sup>2</sup> *Id.* As a consequence, according to the Complaint, Walton  
2 exceeded the biennial limit of \$42,700 on contributions to federal candidates by \$3,400. *Id.*

3 According to information obtained by the Commission, Walton reportedly made a  
4 contribution of \$2,300 to McCain 2008 in May 2008 and a \$4,300 contribution to McCain  
5 Victory 2008, a joint fundraising committee, and Lisa Lisker in her official capacity as treasurer  
6 ("McCain Victory") in August 2008. It appears that Walton instructed McCain Victory to  
7 allocate \$2,000 of his contribution to the Republican National Committee and \$2,300 to GELAC.  
8 Instead, in what may have been a processing error, on August 29, 2008, McCain Victory  
9 allocated his contribution as follows: \$2,300 to McCain 2008 (the wrong amount to an incorrect  
10 recipient) and \$2,000 to GELAC (the wrong amount to the correct recipient). *Id.* at 1-2.

11 The transfer to McCain 2008, when aggregated with Walton's May 2008 \$2,300  
12 contribution to McCain 2008, would have resulted in an excessive contribution to McCain 2008.  
13 It appears, however, that McCain Victory subsequently reallocated the \$4,300 contribution  
14 correctly.

15 McCain 2008 confirms that it first received a contribution of \$2,300 from Walton in May  
16 2008 and that it received \$2,300 from Walton via McCain Victory on August 29, 2008. McCain  
17 2008 Resp. at 1-2. McCain 2008 states, however, that it returned the second \$2,300 contribution  
18 to McCain Victory on September 13, 2008, as disclosed on its 2008 October Quarterly Report  
19 and that McCain Victory subsequently reallocated Walton's contribution. *Id.* Therefore,

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<sup>2</sup> A major party candidate for president who receives public funding for the general election is permitted to accept contributions designated for a general election legal and accounting compliance fund, or GELAC, which is a special account used to pay legal and accounting expenses incurred in complying with Federal law. See 11 C.F.R. § 9003.3(a)(1).

- 1 McCain 2008 asserts that it did not accept an excessive contribution from Walton. *Id.*
- 2 The record indicates that McCain 2008 did not accept an excessive contribution, in
- 3 violation of 2 U.S.C. § 441a(f), because it transferred the \$2,300 Walton contribution that had
- 4 been misallocated by McCain Victory back to that entity, which then complied with the donor's
- 5 intent. Therefore, there is no reason to believe that John McCain 2008, Inc. and Joseph
- 6 Schmuckler in his official capacity as treasurer, violated 2 U.S.C. § 441a(f).

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Joseph Schmuckler as treasurer**

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1 ("GELAC"), totaling \$4,300.<sup>2</sup> *Id.* As a consequence, according to the Complaint, Walton  
2 exceeded the biennial limit of \$42,700 on contributions to federal candidates by \$3,400. *Id.*

3 Separately, with respect to the \$4,300 in contributions to GELAC, the Complaint  
4 observes that GELAC contributions are subject to the Act's contribution limits, *see* 11 C.F.R.  
5 § 9003.3(a)(1)(i)(B), which were \$2,300 per individual per election during the 2008 election  
6 cycle. Compl. at 2. Therefore, the Complaint maintains that Walton appears to have contributed  
7 almost twice the allowable amount to GELAC. *Id.* at 1-2; *see also* Compl., Exh. A.

8 According to information obtained by the Commission, Walton reportedly made a  
9 contribution of \$2,300 to McCain 2008 in May 2008 and a \$4,300 contribution to McCain  
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16 record reflects, however, that both of the misallocated contributions were returned to McCain  
17 Victory, which then complied with the donor's intent.<sup>3</sup>

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<sup>2</sup> A major party candidate for president who receives public funding for the general election is permitted to accept contributions designated for a general election legal and accounting compliance fund, or GELAC, which is a special account used to pay legal and accounting expenses incurred in complying with Federal law. *See* 11 C.F.R. § 9003.3(a)(1).

<sup>3</sup> After reviewing GELAC's financial disclosure reports, the Commission was unable to pinpoint whether GELAC transferred the original \$2,000 contribution back to McCain Victory. Given, however, that Walton contributed a total of \$4,300, not \$6,300, to McCain Victory during the time period, it appears likely that McCain Victory and GELAC unwound the initial erroneous transfer.

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1           Therefore, the Commission exercises its prosecutorial discretion and dismisses this  
2   matter as to McCain-Palin Compliance Fund, Inc. and Joseph Schmuckler in his official capacity  
3   as treasurer, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).  
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