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Via Hand Delivery

Jeff S. Jordan
Supervisory Attorney, CELA
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Jordan:

This is in response to the complaint filed in the above-referenced matter by Citizens for Responsibility and Ethics in Washington ("CREW") and the Campaign Legal Center ("CLC") alleging that our clients, Donald and Susan Simms, exceeded the biennial aggregate contribution limit of \$46,200 to federal candidates during the 2011-2012 election cycle.

As will be discussed further below, Donald and Susan Simms inadvertently exceeded the biennial aggregate limit for contributions to federal candidates, the biennial limit for contributions to federal political action committees (PACs) and party committees, and the overall federal biennial limit. A lack of awareness of the existence of aggregate contribution limits, as well as general inexperience in the world of political giving, led to the excessive contributions. Working at the request of Mr. and Mrs. Simms, our firm has undertaken prompt, diligent efforts to secure refunds from the recipient committees. Thus far, we have received \$165,100 in refunds.

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2011-2012 Contributions

Our research indicates that during the 2012 cycle, Donald Simms contributed \$104,300 to federal candidates, inadvertently exceeding the biennial aggregate contribution limit of \$46,200 by \$58,100; whereas, Susan Simms contributed \$94,300 to federal candidates, inadvertently exceeding the biennial aggregate contribution limit of \$46,200 by \$48,100.¹ See **Exhibit 1** (Donald) and **Exhibit 2** (Susan) for lists of the federal candidate contributions for the 2011-2012 cycle. Although not addressed in the body of the complaint, a review of the contributions also revealed that during the 2012 cycle, Donald Simms contributed \$127,400 to federal PACs and party committees, exceeding the \$70,800 biennial aggregate contribution limit by \$56,600; and Susan Simms contributed \$123,300 to federal PACs and party committees, exceeding the \$70,800 biennial aggregate contribution limit by \$52,500.² See **Exhibit 1** (Donald) and **Exhibit 2** (Susan) for lists of the PAC and party contributions for the 2011-2012 cycle. Because of these excessive contributions, Mr. and Mrs. Simms also exceeded the \$117,000 overall biennial limit by \$114,700 and \$100,600, respectively.³

Refund Efforts

Our firm evaluated public information from the Commission's website and information provided by Mr. and Mrs. Simms to clarify which candidate committees, PACs, and party committees in fact received contributions from them during the relevant period. We sought refunds from those committees that last received funds (i.e., committees that received funds after the Simmses had reached their aggregate contribution limits). See **Exhibits 1 and 2**.

Our firm initiated refund efforts on June 21, 2013 by first sending hard-copy letters to the recipient committees. On the same day the hard-copy letters were sent, we also e-mailed the recipient committees a copy of the letters. See **Exhibit 3** for samples of the letters and emails.

Our refund request efforts have been highly successful – as of July 11, 2013, Mr. and Mrs. Simms have received refunds of \$165,100 of the \$215,300 in excessive contributions. Unfortunately, a number of committees have either terminated or are without funds. See **Exhibit 1** and **Exhibit 2**. Three committees have not responded to our repeated refund requests – Jeff Flake for US Senate, Johnson for Congress, and Friends of Doc Hastings. Contributions to those three committees total \$10,600. We will continue to contact these committees via email, telephone, and hard copy letter until we receive a response. It looks as though all three remaining committees have the funds available to refund.

¹ 2 U.S.C. § 441a(a)(3)(A); 11 C.F.R. § 110.5(b)(1)(i). For the contribution limits during the 2011-2012 election cycle, see Press Release, Federal Election Commission, "FEC Announces 2011-2012 Campaign Cycle Contribution Limits" (February 3, 2011), available at <http://www.fec.gov/press/20110203newlimits.shtml> ("FEC Press Release").

² 2 U.S.C. § 441a(a)(3)(B); 11 C.F.R. § 110.5(b)(1)(ii). See FEC Press Release cited at n. 1.

³ 2 U.S.C. § 441a(a)(3); 11 C.F.R. § 110.5(b). See FEC Press Release cited at n. 1.

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Thus far, we have received refunds from the following committees:

Date of Contribution	Committee	Amount
<i>Donald Simms</i>		
2/21/2012	Whitfield for Congress	\$2,500
3/19/2012	Tim Murphy for Congress	\$2,500
3/20/2012	Upton for All of Us	\$2,500
5/7/2012	Romney for President	\$5,000
5/11/2012	Citizens for Josh Mandel	\$2,500
5/24/2012	Gibbs for Congress	\$2,500
6/30/2012	Rothfus for Congress	\$2,500
7/17/2012	Jim Renacci for Congress	\$2,500
7/23/2012	Heller for Senate	\$2,500
10/16/2012	Committee to Elect Charlie Summers	\$2,500
10/17/2012	Ted Cruz for Senate	\$2,500
7/19/2012	National Republican Congressional Committee	\$20,800
7/31/2012	The Freedom Project	\$5,000
8/17/2012	National Republican Senatorial Committee	\$30,800
<i>Susan Simms</i>		
2/21/2012	Whitfield for Congress	\$2,500
3/19/2012	Tim Murphy for Congress	\$2,500
3/20/2012	Upton for All of Us	\$2,500
5/7/2012	Romney for President	\$5,000
5/11/2012	Citizens for Josh Mandel	\$2,500
5/24/2012	Gibbs for Congress	\$2,500
7/17/2012	Jim Renacci for Congress	\$500
7/23/2012	Heller for Senate	\$500
9/19/2012	Deb Fischer for US Senate	\$2,500
10/16/2012	Committee to Elect Charlie Summers	\$2,500
10/17/2012	Ted Cruz for Senate	\$2,500
7/19/2012	National Republican Congressional Committee	\$16,700
7/31/2012	The Freedom Project	\$5,000
8/17/2012	National Republican Senatorial Committee	\$30,800
Total as of 7/11/2013		\$165,100

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Also see the "Status of Refund Request" columns from **Exhibit 1** and **Exhibit 2** for a summary of the refund efforts.

The Mitigating Circumstances

We urge the Commission to work with us to resolve this matter in a way that is fair to Donald and Susan Simms—relative novices in the area of political giving who were completely unaware of the aggregate two-year contribution limits of the federal law. As the attached declarations (**Exhibit 4**) demonstrate, Mr. and Mrs. Simms:

- Were relatively inexperienced in the world of political contributions (They first became significant contributors in the 2009-2010 cycle, long after any public discussion or press about the 2002 McCain/Feingold aggregate limits ceased);
- Were not aware of the existence of the federal aggregate contribution limits and do not recall receiving any aggregate contribution limit information from committees soliciting funds, but rather recall merely receiving information about the immediate limit on giving to such committees;
- Did not seek legal advice when dealing with political contribution matters, and had no basis for realizing they should seek any expert advice in this area; and
- Immediately directed that every reasonable effort should be made to seek refunds and resolve matters with the Commission to the extent possible.

The Commission can discern from its database of contributors and contributions that significant aggregate donations from Donald and Susan Simms did not appear until the 2009-2010 election cycle. In fact, prior to 2009, Donald Simms had contributed less than \$16,000 to federal candidates, and Susan Simms had not donated at all to federal candidates. Mr. and Mrs. Simms became active as a donor primarily because of the 2008 election results, when it appeared to them that the business sector was going to be increasingly under siege. They were thus receptive to contribution solicitations from candidates, PACs, and party committees that would help elect leaders focused on promoting traditional business interests and policies. The Simmses had been financially successful over the years, and had come to believe that responding favorably to the many requests for contributions coming their way would help strengthen American business over time.

As the Commission probably is aware, the standard practice of federal committees soliciting contributions is to only make reference to the contribution limit for giving to the particular committee in question. The standard practice, in other words, is to not make any reference whatsoever to the 2-year aggregate contribution limits that were created under the 2002 McCain/Feingold amendments of the Federal Election Campaign Act. This is hardly surprising since the limits are difficult to explain (an overall limit, two sub-limits, and one sub-sub-limit),

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and recipient committees have no practical way of effectively monitoring compliance in a way that could be helpful to donors but not unduly cumbersome.⁴

Donald and Susan Simms did not have any awareness of the 2-year aggregate contribution limit until the complaint in this matter was brought to their attention. Note that Pennsylvania state law does not have aggregate contribution limits for individual contributions to nonfederal candidates (or any type of individual contribution limits for that matter), so this was not a concept the Simmses were likely to know about by virtue of any state-level contribution activity. Moreover, the Simmses recall seeing nothing in any solicitation materials from federal committees that referenced the 2-year aggregate limits. The Simmses logically had assumed during the period they had been actively making contributions that the soliciting committees (with better access to campaign finance experts) would bring the relevant contribution limits to their attention.

There is no plausible reason for the Simmses to have had awareness of the 2-year aggregate contribution limits. There are very few apparent violations of these limits brought to the attention of the Commission, and there is virtually no public reporting of FEC enforcement in this area.⁵ The FEC itself doesn't appear to have an internal system for proactively generating enforcement cases involving the 2-year aggregate limits and then publicizing such enforcement efforts.⁶ And while the FEC does a fairly good job of referencing the 2-year aggregate limits in a few places on its website, individual donors realistically cannot be expected to search out these snippets of information in the normal course of their daily lives.

⁴ Perhaps the Commission could issue "best practice" guidance to all federal committees suggesting that solicitations include at least some reference to the 2-year aggregate limits so that donors would gain more awareness over time, but this would not change the fact that donors in the 2011-2012 election cycle were *not* getting notice from soliciting committees about the 2-year aggregate limits.

⁵ As the Commission knows, this firm assisted Ms. Lisa Falcone with a *sua sponte* submission regarding her inadvertent 2-year aggregate excessive contributions (ADR Case #572, resolved with Settlement Agreement signed September 4, 2011), but there does not appear to have been any press coverage of the resolution of that matter. While there was some coverage of the Commission's resolution of the Arnold Cenac matter (MUR 6234 Conciliation Agreement signed August 20, 2012), there does not seem to have been any focus on the 2-year aggregate limit aspect of the violations involved. See *Houma Towing Firm to Pay \$170,000 Fine for Illegal Contributions to Landrieu, Vitter*, Staten Island Advance website ("silive.com"), Aug. 22, 2012, http://blog.silive.com/alex_test/2012/08/houma_towing_firm_to_pay_17000.html (last visited July 2, 2013). Finally, the Commission's resolution of the Jack Antaramian matter (MUR 6463 Conciliation Agreement signed August 13, 2012) does not seem to have generated any press coverage about the 2-year aggregate limit.

⁶ Given the difficulty of knowing whether a particular donor in the database indeed is responsible for various reported contributions (due, e.g., to fathers, sons, and grandfathers with the same name possibly living at the same residence, and all the complications of properly reporting reattributions, redesignations, refunds, and joint fundraising transfers), this certainly is understandable.

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In hindsight, Donald and Susan Simms certainly wish they had consulted an attorney or accountant to review their political contributions for legal compliance. The reality is that this never occurred to them because, as noted above, they assumed the soliciting committees had included in the solicitation materials all relevant advice regarding contribution limits.

Donald and Susan Simms deeply regret any excessive contributions that they made during the 2011-2012 time frame. Since learning of this problem, the Simmses have worked with our firm to promptly cure the improper funding and resolve this with the Commission.

Requested Resolution

As the Commission is aware, a plausible constitutional challenge to the biennial aggregate contribution limits is currently pending at the United States Supreme Court in *McCutcheon, et al. v. FEC*.⁷ That case is to be argued in the upcoming October term of the Court. If the Court finds the biennial aggregate contribution limits to be unconstitutional, it would be unfair and unjust to have pursued any civil penalty against Donald and Susan Simms.

Given the pending Supreme Court decision, the various mitigating circumstances noted earlier, and the large amount of refunds received, Mr. and Mrs. Simms respectfully urge that the Commission impose no civil penalty against them. They would, however, be amenable to placing all the refunds received from recipient committees in an escrow account so that they could be disgorged to the U.S. Treasury if the Commission is ultimately victorious in the *McCutcheon* case. This would be a substantial sum, and it would help cover any U.S. Government expenses for handling this matter.

To achieve an agreed resolution of this matter along the lines just suggested, Mr. and Mrs. Simms urge that the Commission's Alternative Dispute Resolution (ADR) process be used.⁸ If ADR is not deemed appropriate, they respectfully request that Pre-Probable Cause Conciliation procedures be used.⁹

⁷ See Brief for Appellant Shaun McCutcheon, No. 12-536 (May 6, 2013), available on FEC website at http://www.fec.gov/law/litigation/mccutcheon_sc_mcc_brief.pdf.

⁸ See Federal Election Commission, *Guidebook for Complainants and Respondents on the FEC Enforcement Process*, May 2012, at 23-24, available at http://www.fec.gov/em/respondent_guide.pdf.

⁹ See 11 C.F.R. §111.18(d). See also Federal Election Commission, *Guidebook for Complainants and Respondents on the FEC Enforcement Process*, May 2012, at 16-18, available at http://www.fec.gov/em/respondent_guide.pdf.

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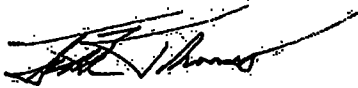
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Donald and Susan Simms are amenable to signing an agreement laying out the relevant facts and committing themselves to full compliance with the contribution limits in the future. Though such agreement will become public and they may suffer some reputational injury as a result, they are willing to take this course of action. We respectfully urge the Commission to follow this approach so this matter can be promptly resolved without protracted use of additional legal resources.

Sincerely,



Scott E. Thomas

Dickstein Shapiro LLP



Jennifer L. Carrier

Dickstein Shapiro LLP

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