

**SENSITIVE**

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FEDERAL ELECTION  
COMMISSION

2010 DEC -6 AM 10: 12

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of  
2010 DEC -6 A 9 58

MUR 6340

McDowell for Congress and Cynthia S.

Shutt, in her official capacity as treasurer

Supporters of Gary McDowell

Gary McDowell

CASE CLOSURE UNDER THE **CELA**  
ENFORCEMENT PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are

forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6340 as a low-rated matter.

In this matter, the complainant, Joshua Venable, alleges that Gary McDowell and his principal campaign committee, McDowell for Congress and Cynthia S. Shutt, in her official capacity as treasurer ("the Federal Committee"), violated 11 C.F.R. § 110.3(d) by accepting a transfer of \$1,000, reported as a contribution, from McDowell's state candidate committee, Supporters of Gary McDowell ("State Committee").<sup>1</sup> Cynthia Shutt is also treasurer of the State Committee. The Federal Committee's 2010 April Quarterly Report shows receipt of a \$1,000 contribution from the State Committee on June 7, 2010. A notation underneath the amount of the contribution amount reads, "Comprised of Permissible Funds."

In her response, Cynthia Shutt acknowledges that the State Committee contribution was "erroneously" deposited into the Federal Committee's account and admits it should not have

<sup>1</sup> The complainant also maintains that the Federal Committee failed to properly report the contribution as a transfer in order to "disguise" the illegal transfer, citing to 11 C.F.R. § 104.3(a)(4)(ii), which requires transfers to be reported on a separate line in FEC disclosure reports. He does not allege a violation of this provision, however, noting that the contribution of any funds from a State Committee is prohibited regardless of how it is reported.

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1 been, even though it consisted of “federally-eligible” dollars. She also states that the Federal  
2 Committee promptly refunded the contribution “[a]fter this error was discovered in an internal  
3 review” following the filing of its July Quarterly Report. The Federal Committee’s 2010  
4 October Quarterly Report shows that the contribution was refunded to the State Committee on  
5 August 9, 2010, three days after the complaint notification letters were mailed to the State and  
6 Federal Committees.<sup>2</sup>

7  
8 Transfers of funds or assets from a candidate’s non-federal campaign committee or  
9 account to his or her principal campaign committee for a federal election are prohibited.  
10 11 C.F.R. § 110.3(d). Although not specifically referenced in the complaint, 2 U.S.C.  
11 § 441i(e)(1)(A) also appears to apply to this situation. Specifically, under that provision, a  
12 federal candidate, a candidate’s agent, and entities established, financed, maintained or  
13 controlled by them are also prohibited from receiving, directing, transferring or spending funds  
14 in connection with a federal election, unless those funds are subject to the limitations,  
15 prohibitions and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A).

16 The treasurer of the State and Federal Committees has admitted that the State  
17 Committee made, and the Federal Committee accepted, a transfer of non-federal funds in the  
18 form of a \$1,000 State Committee contribution. Although the Federal Committee reported the  
19 State Committee contribution was “comprised of permissible funds,” it appears that the Federal  
20 Committee learned sometime after it received the contribution that transfers of any state  
21 campaign funds are prohibited. See 11 C.F.R. § 110.3(d) and 2 U.S.C. § 441i(e)(1)(A). The  
22 response does not state when the Federal Committee conducted the internal review that resulted

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<sup>2</sup> The State Committee’s disclosure reports match the dates of the Federal Committee reports, listing June 7, 2010 as the date the State Committee contribution was made and August 9, 2010 as the date it received a refund.

1 in discovering that the State contribution was prohibited, therefore, we cannot determine  
2 whether it refunded the contribution on its own or after it received a copy of the complaint.  
3 Nonetheless, the Federal Committee refunded the prohibited contribution within two months of  
4 its receipt.

5 In light of the Federal Committee's acknowledgment that it should not have accepted a  
6 \$1,000 contribution from the State committee coupled with its remedial action, and in  
7 furtherance of the Commission's priorities and resources relative to other matters pending on  
8 the Enforcement docket, the Office of General Counsel believes that the Commission should  
9 exercise its prosecutorial discretion and dismiss the matter. See *Heckler v. Chaney*, 470 U.S.  
10 831 (1985). Additionally, this Office intends on reminding Gary McDowell, McDowell for  
11 Congress, Supporters of Gary McDowell and Cynthia S. Shutts, in her official capacity as  
12 treasurer, that transfers of funds or assets from a candidate's non-federal campaign committee  
13 or account to his or her principal campaign committee for a federal election are prohibited  
14 under 11 C.F.R. § 110.3(d) and 2 U.S.C. § 441i(e)(1)(A).

15 **RECOMMENDATIONS**

16 The Office of General Counsel recommends that the Commission dismiss MUR 6340,  
17 close the file, and approve the appropriate letters. Additionally, this Office recommends  
18 reminding Gary McDowell, Supporters of Mike McDowell, McDowell for Congress and  
19 Cynthia S. Shutts, in her official capacity as treasurer, that transfers of funds or assets from a  
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1 candidate's non-federal campaign committee or account to his or her principal campaign  
2 committee for a federal election are prohibited under 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R.  
3 § 110.3(d).  
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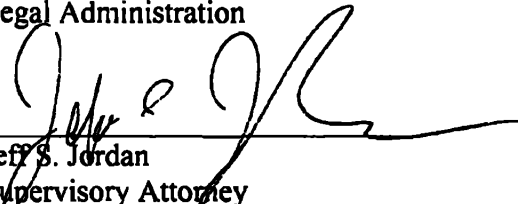
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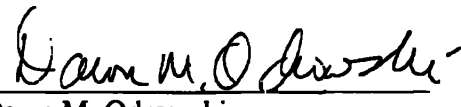
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