

REPORTS ANALYSIS DIVISION REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: September 10, 2013

ANALYST: Vicki Davis

- I. COMMITTEE: Friends of Christine O'Donnell
C00449595
Matthew J. Moran, Treasurer (10/6/2010 - present)
Sandra A. Taylor, Treasurer (8/14/2010 - 10/5/2010)
Christine O'Donnell, Treasurer (6/8/2009 - 8/13/2010)¹
Susan M. Dixon, Treasurer (4/13/2009 - 6/7/2009)
P.O. Box 3987
Wilmington, DE 19807
- II. RELEVANT STATUTES: 11 CFR § 104.3(a) and (b)
2 U.S.C. § 434(b)(2) and (4)

III. BACKGROUND:

Failure to Provide Supporting Schedules (Failure to Disclose All Financial Activity)

Friends of Christine O'Donnell ("the Committee") amended its 2009 April Quarterly, 2010 April Quarterly, 2010 July Quarterly, 2010 October Quarterly, 2010 12 Day Pre-General, and 2010 30 Day Post-General Reports to disclose additional receipts of \$87,584.09 and additional disbursements of \$330,965.93, which were not reported in the original reports (Attachment 2).

2009 April Quarterly Report

On April 15, 2009, the Committee filed the original 2009 April Quarterly Report covering the period from January 1, 2009 through March 31, 2009. The report disclosed

¹ While the Committee did not file a Statement of Organization naming Christine O'Donnell treasurer, the cover letter attached to the August 14, 2010 Statement of Organization stated that Sandra A. Taylor replaced Christine O'Donnell as treasurer (Image 10020621525).

10020621525

\$6,250.00 in receipts on Line 11(a)(i) (Itemized Contributions from Individuals), \$965.00 in receipts on Line 11(a)(ii) (Unitemized Contributions from Individuals), and \$0.00 in receipts on Line 14 (Offsets to Operating Expenditures) of the Detailed Summary Page (Image 29020200003).

On December 21, 2010, the Committee filed a Miscellaneous Text Submission ("Form 99") referencing several Requests for Additional Information (RFAs) sent on the 2009 April Quarterly, 2009 Year End, 2010 April Quarterly, 2010 July Quarterly and 2010 12 Day Pre-Primary Reports for matters unrelated to this referral. The Form 99 stated, in part:

"The Committee did not have the funds prior to the 2010 primary in September, 2010 to retain professional compliance vendors and counsel. Since the general election on November 2, 2010, the Committee's compliance team has undertaken the task of going back to the beginning of the election cycle to reconcile all entries in the bank account to the FEC reports and is in the process of preparing amendment(s) to the previously filed reports as necessary.

The Committee hopes to have all amendments prepared and filed along with the 2010 Year End report due on January 31, 2011.

Until all entries are reviewed and reconciled, it will not be possible to file accurate amendments. Accordingly, the Committee advises the Commission that as it becomes aware of the need to file amendments, those will be prepared and filed together – hopefully by January 31, 2010" (Image 10021153446).

On April 15, 2011, the Committee filed an Amended 2009 April Quarterly Report disclosing \$6,050.00 in receipts on Line 11(a)(i), \$1,525.00 in receipts on Line 11(a)(ii), and \$790.00 in receipts on Line 14 of the Detailed Summary Page, a total increase in receipts of \$1,150.00 from the original report (Image 11020192204, Attachment 3). This amendment was filed together with the Amended 2010 April Quarterly, 2010 July Quarterly, 2010 October Quarterly, 2010 12 Day Pre-General, and 2010 30 Day Post-General Reports. The cover letter attached to the amended reports stated, in part:

"The Committee retained FEC compliance experts who have worked closely with the Committee and have painstakingly reviewed all contributions, disbursements, invoices, receipts and documentation of expenditures and has [sic] reconciled the FEC reports to the Committee's bank account during the election cycle" (Image 11020201385).

2010 April Quarterly Report

On April 15, 2010, the Committee filed the original 2010 April Quarterly Report covering the period from January 1, 2010 through March 31, 2010. The report disclosed \$31,600.00 in receipts on Line 11(a)(i) (Itemized Contributions from Individuals), \$0.00

in receipts on Line 11(a)(ii) (Unitemized Contributions from Individuals), \$1,000.00 in receipts on Line 11(c) (Contributions from Other Political Committees), \$0.00 in receipts on Line 14 (Offsets to Operating Expenditures), and \$0.00 in receipts on Line 15 (Other Receipts) of the Detailed Summary Page (Image 10020310056). The Committee also reported \$24,056.67 in disbursements on Line 17 (Operating Expenditures) of the Detailed Summary Page (Image 10020310057).

On April 15, 2011, the Committee filed an Amended 2010 April Quarterly Report disclosing \$32,075.00 in receipts on Line 11(a)(i), \$5,395.00 in receipts on Line 11(a)(ii), \$1,250.00 in receipts on Line 11(c), \$75.64 in receipts on Line 14, and \$2.25 in receipts on Line 15 of the Detailed Summary Page, a total increase in receipts of \$6,197.89 from the original report (Image 11020192117, Attachment 3). The Committee also reported \$26,915.61 in disbursements on Line 17 of the Detailed Summary Page, a total increase in disbursements of \$2,858.94 from the original report (Image 11020192118, Attachment 4).

2010 July Quarterly Report

On July 15, 2010, the Committee filed the original 2010 July Quarterly Report covering the period from April 1, 2010 through June 30, 2010. The report disclosed \$50,750.00 in receipts on Line 11(a)(i) (Itemized Contributions from Individuals), \$58,505.66 in receipts on Line 11(a)(ii) (Unitemized Contributions from Individuals), \$249.95 in receipts on Line 14 (Offsets to Operating Expenditures), and \$0.00 in receipts on Line 15 (Other Receipts) of the Detailed Summary Page (Image 10020573534). The Committee also reported \$55,930.28 in disbursements on Line 17 of the Detailed Summary Page (Image 10020573535).

On April 15, 2011, the Committee filed an Amended 2010 July Quarterly Report disclosing \$53,050.00 in receipts on Line 11(a)(i), \$58,465.66 in receipts on Line 11(a)(ii), \$1,832.95 in receipts on Line 14, and \$5.18 in receipts on Line 15 of the Detailed Summary Page, a total increase in receipts of \$3,848.18 from the original report (Image 11020192230, Attachment 3). The Committee also reported \$67,683.46 in disbursements on Line 17 of the Detailed Summary Page, a total increase in disbursements of \$11,753.18 from the original report (Image 11020192231, Attachment 4).

2010 October Quarterly Report

On October 15, 2010, the Committee filed the original 2010 October Quarterly Report covering the period from August 26, 2010 through September 30, 2010. The report disclosed \$1,103,839.20 in receipts on Line 11(a)(i) (Itemized Contributions from Individuals), \$2,615,940.86 in receipts on Line 11(a)(ii) (Unitemized Contributions from Individuals), \$51,700.00 in receipts on Line 11(c) (Contributions from Other Political Committees), \$770.00 in receipts on Line 14 (Offsets to Operating Expenditures) and \$0.00 in receipts on Line 15 (Other Receipts) of the Detailed Summary Page (Image 10020710312). The Committee also reported \$1,159,122.76 in disbursements on Line 17 (Operating Expenditures) of the Detailed Summary Page (Image 10020710313).

On October 21, 2010, the Committee filed an Amended 2010 October Quarterly Report. The report disclosed \$1,103,839.20 in receipts on Line 11(a)(i), \$2,615,940.86 in receipts on Line 11(a)(ii), \$51,700.00 in receipts on Line 11(c), \$790.99 in receipts on Line 14 and \$0.00 in receipts on Line 15 of the Detailed Summary Page (Image 10020960029). The Committee also reported \$1,159,122.76 in disbursements on Line 17 of the Detailed Summary Page (Image 10020960030).

On April 15, 2011, the Committee filed an Amended 2010 October Quarterly Report disclosing \$1,108,484.20 in receipts on Line 11(a)(i), \$2,666,461.26 in receipts on Line 11(a)(ii), \$53,700.00 in receipts on Line 11(c), \$3,259.86 in receipts on Line 14, and \$133.28 in receipts on Line 15 of the Detailed Summary Page, a total increase in receipts of \$59,767.55 from the amended report filed on October 21, 2010 (Image 11020190004, Attachment 3). The Committee also reported \$1,257,378.99 in disbursements on Line 17 of the Detailed Summary Page, a total increase in disbursements of \$98,256.23 from the October 21, 2010 amendment (Image 11020190005, Attachment 4).

2010 12 Day Pre-General Report

On October 21, 2010, the Committee filed the original 2010 12 Day Pre-General Report covering the period from October 1, 2010 through October 13, 2010. The report disclosed \$556,101.72 in receipts on Line 11(a)(ii) (Unitemized Contributions from Individuals), of the Detailed Summary Page (Image 10020933414). The Committee also reported \$2,143,386.93 in disbursements on Line 17 (Operating Expenditures) of the Detailed Summary Page (Image 10020933415).

On April 15, 2011, the Committee filed an Amended 2010 12 Day Pre-General Report disclosing \$572,722.19 in receipts on Line 11(a)(ii) of the Detailed Summary Page, an increase of \$16,620.47 from the original report (Image 11020192404, Attachment 3). The Committee also reported \$2,219,562.63 in disbursements on Line 17 of the Detailed Summary Page, an increase of \$76,175.70 from the original report (Image 11020192405, Attachment 4).

2010 30 Day Post-General Report

On December 2, 2010, the Committee filed the original 30 Day Post-General Report covering the period from October 14, 2010 through November 22, 2010. The report disclosed \$2,808,631.99 in disbursements on Line 17 (Operating Expenditures) of the Detailed Summary Page (Image 10021013343).

On April 15, 2011, the Committee filed an Amended 30 Day Post-General Report disclosing \$2,950,553.87 in disbursements on Line 17 of the Detailed Summary Page, an increase of \$141,921.88 from the original report (Image 11020192781, Attachment 4).

On May 3, 2013, Matthew Moran, Committee's Treasurer, called the Reports Analysis Division (RAD) Analyst to ask if the Committee's amendments had been reviewed and to determine if the Committee had any outstanding issues. He explained

that the Committee would like to terminate as soon as possible. The Analyst reviewed the amendments and notified Mr. Moran that the Committee will be receiving a Request for Additional Information regarding the increase in activity disclosed on multiple reports filed (Attachment 5).

On May 23, 2013, an RFAI was sent to the Committee referencing the Amended 2010 30 Day Post-General Report, received on April 15, 2011. The RFAI requested clarification regarding the substantial increase in receipts and disbursements disclosed on the 2009 April Quarterly, 2010 April Quarterly, 2010 July Quarterly, 2010 October Quarterly, 2010 12 Day Pre-General, and 2010 30 Day Post-General Reports that were not disclosed previously (Image 13330032399).

On June 27, 2013, the Committee filed a Form 99 in response to the RFAI which stated, in part:

"The committee has reviewed all of the referenced reports and has reviewed our responses to your previously issued informational requests (RFAI-April 2009 Quarterly, 11/16/10; RFAI-April 2010 Quarterly, 11/16/10; July 2010 Quarterly, 11/23/10; RFAI-Pre-Primary 2010, 11/23/10; RFAI-Oct 2010 Quarterly, 8/2/12 & 8/8/12; RFAI-Pre-General 2010, 8/8/12 and RFAI-Post-General 2010, 10/18/12).

To the best of its information and knowledge, it has reported all receipts and disbursements in accord with all applicable campaign finance laws and regulations. In addition, the committee conducted an extensive/exhaustive review of its general ledger and filed amended reports, as needed, in an effort to reflect the most accurate public disclosure reports possible" (Image 13020270439).

On September 3, 2013, the RAD Analyst called Mr. Moran. The Analyst said the matter involving increased activity disclosed on the amendments would be forwarded to another office for further Commission action. The Analyst stated that if the Committee wanted to provide further clarification on the issue, they could submit additional information for the public record (Attachment 5).

On September 4, 2013, Mr. Moran called the RAD Analyst to request additional time to consult with the Committee's legal staff. He indicated they would like to file a supplemental response to the referable issue (Attachment 5).

Later on the same day, Committee's counsel, Cleta Mitchell, called the RAD Analyst. She stated that the increases in activity on amended reports resulted from the Committee's difficulty in processing large amounts of receipts and disbursements in absence of professional help with reporting. Ms. Mitchell explained that the Committee initially had low activity, and when an influx of receipts occurred, it was ill-equipped to handle reporting. She indicated she would submit a Form 99 by the end of the week (Attachment 5).

On September 6, 2013, the RAD Analyst called Ms. Mitchell and asked her to fax a copy of the Committee's response (Attachment 5).

On September 9, 2013, Mr. Moran called the RAD Analyst and stated that a response had been prepared and the Committee would submit the response as soon as all responsible parties sign off on the document (Attachment 5).

Later that same day, Ms. Mitchell, filed a Form 99, which stated, in part:

"...As background, please note that the Committee operated with very little funding and no professional compliance, legal or accounting vendor(s) or professionals for the entire 2010 election cycle until shortly before the primary election on September 14, 2010...

...Immediately, there was a huge influx of online contributions to the Committee from donors all over the country. The number of donors and donations accelerated exponentially virtually overnight and the Committee was not structured to handle the incredible increase in contributions...

...The Committee was quite fortunate to be able to retain the services of excellent compliance vendors, Tim Beall of Compliance Consulting, and a highly respected and competent firm, CMDI -- together, they were able to construct a compliance system and a campaign donor database in a very short period of time, but at the very same time, the campaign was in full swing and contributions were pouring into the campaign. There was not a slow 'ramp-up' period for this Committee from the perspective of the FEC compliance vendors, who had to try to manage the huge volume of activity of the campaign while trying to create a workable system to handle it.

The challenges were exacerbated by the fact that the online fundraising vendor the Committee had retained before the primary utilized an online processing system (Pirya) that failed to forward contributions and contributions data either timely or correctly and further failed to batch contributions, such that the online processing fees and costs were not tied to the contributions. The reports the Committee received from the online processing vendor were neither correct nor timely. There were so many errors in the software system at the online processing end, that it actually took months to go back through the online contributions and to reconstruct (*manually!*) the contributions and the online costs and fees associated with those contributions.

It was, quite simply, a nightmare to reconcile the records received from Pirya in order to be able to amend the reports to fully and properly report to the FEC the correct amount of contributions and disbursements. The problems associated with the Pirya system were massive.

It was always the intent of the Committee, the Candidate, Christine O'Donnell, the Committee treasurer, Matt Moran and the outside professionals who came onto the scene late in the cycle, after the primary, that the Committee's books and records be correct, that all the FEC reports be accurate and that amendments be filed to accurately report all contributions and expenditures.

The process was made extremely difficult because of the issues resulting from the online processing system. Notwithstanding the difficulties caused by the online processing firm, the Committee *did* go the extra mile to sort through the reports from Piryx, to reconcile the books and records and to prepare and file accurate reports with the Commission. It took time but the Committee and its compliance team did get the job done...

...We would respectfully request that the FEC waive any further referral based on the unfortunate situation caused by the online contributions processor and the facts and circumstances faced by the Committee in its efforts to comply with the law... (Image 13020402078).

To date, no further communications have been received from the Committee regarding this matter.