

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)
5)
6 Salvatore Trovato) MUR 5453
7)
8
9

10 **GENERAL COUNSEL'S BRIEF**

11
12 **I. INTRODUCTION**

13
14 On May 18, 2004, the Commission found reason to believe that Salvatore Trovato
15 ("Respondent") violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) by making an excessive
16 contribution to the Giordano for U.S. Senate Committee ("the Committee") during the 2000
17 election cycle.¹ The basis for these findings was information indicating that Respondent gifted
18 \$300,000 to his son-in-law, Philip Giordano, to use as direct cash collateral for a loan to the
19 Committee. Having conducted an investigation into the facts and circumstances of the
20 transaction, including a review of Respondent's response to the Commission's findings, as well
21 as documents subpoenaed from the Respondent and pertinent bank information, the General
22 Counsel is prepared to recommend the Commission find probable cause to believe Respondent
23 violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).

24 **II. STATEMENT OF FACTS**

25
26 On March 20, 2000, Mr. Giordano filed a Statement of Candidacy for the 2000 Senate
27 race in Connecticut designating the "Giordano for U.S. Senate Committee" as his authorized

¹ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

26044131139

committee. On July 5, 2000, the Committee and Mr. Giordano as co-borrower, submitted a Commercial Loan Application requesting a \$300,000 loan from Patriot National Bank ("PNB") to cover campaign expenses. *See* Affidavit of Phillip W. Wolford, Chief Operating Officer of PNB, at Tab 10. On July 14, 2000, PNB approved the loan application in the amount of \$300,000 at an 8.07% interest rate, with a due date of February 24, 2001 for the purpose of working capital for the Committee, upon the condition that it receive 100% cash collateral.² *See id.* at ¶¶ 4-17 and 22.

Simultaneously, on July 14, 2000, the Respondent gifted \$300,000 to Mr. and Mrs. Giordano, which was placed in certificate of deposit number _____ at PNB.³ *See id.* at Tab 14. Also, on July 14, 2000, certificate of deposit number _____ was pledged as collateral for the loan.⁴ *See id.* at Tabs 12 & 13.

² The loan was originally applied for in February 2000. The original loan applicants were Mr. Giordano's Exploratory Committee and Mr. Trovato, as co-guarantor. The original loan amount was \$200,000. In April 2000, the loan was restructured to increase the amount to \$300,000. In early July 2000, the Committee asked PNB to remove Mr. Trovato as co-guarantor and to substitute Mr. Giordano as a co-borrower, because the Committee realized that the original loan co-guaranteed by Mr. Trovato "was made in violation of FEC rules." *See* Amended 2000 April Quarterly Report filed November 1, 2000. PNB agreed to remove Mr. Trovato as co-guarantor, and to substitute Mr. Giordano as co-borrower, with the pledge of 100% cash collateral. *See* Wolford Affidavit at ¶¶ 4-17. During the events in question, Mr. Trovato was a board member of PNB. The investigation did not reveal any evidence that his then-board member position unduly influenced PNB in granting the loan to the Committee.

³ Mr. Trovato was the undisputed source of the funds of certificate of deposit number _____ which was held in the names of Philip and Dawn Giordano. *See* Response dated November 19, 2004. Both Philip and Dawn Giordano signed agreements pledging the entire proceeds of the certificate of deposit as collateral for the loan. The timing of the transactions establishes that Respondent's monetary gift was intended to influence a federal election. These facts establish a basis for concluding that Respondent made a contribution in the name of another.

⁴ The loan documents describe the collateral for the loan as (a) certificate of deposit number _____ in the amount of \$300,000, and (b) a mortgage on real property jointly owned by Mr. and Mrs. Giordano. The creditworthiness of the loan was based on the cash collateral in the form of the certificate of deposit. *See* Wolford Affidavit at ¶ 23. At the request of the Committee on or about August 2000, PNB took a mortgage on the Giordanos' home as additional collateral for the loan to help "Mr. Giordano to comply with campaign finance regulations." *See id.* at ¶ 24. Since the loan was already fully secured, the mortgage was taken "in the abundance of caution" as defined by banking regulations found at 12 C.F.R. § 34.43, and PNB was not required to perform an appraisal of the property. *See id.* at ¶ 25.

20044131140

1 Excluding this gift, Respondent had not previously given a single monetary gift over the
2 amount of \$100,000 to Mr. Giordano, or any of the Respondent's other children. *See* Response
3 dated April 20, 2005. The only gifts described by the Respondent appear to be relatively limited,
4 such as paying for household repairs on behalf of the Giordanos. *See* Response dated March 30,
5 2005.

6 **III. LEGAL ANALYSIS**

7
8 At the time of the transactions at issue, individuals were permitted to make contributions
9 that did not exceed \$1,000 per election to any candidate for federal office. *See* 2 U.S.C.
10 § 441a(a)(1) (2002); *see also* 11 C.F.R. § 110.1(b). Individuals are prohibited from making
11 contributions in any calendar year which aggregate more than \$25,000. *See* 2 U.S.C.
12 § 441a(a)(3)(2002); *see also* 11 C.F.R. § 110.5(b). A "contribution" is defined as "a gift,
13 subscription, loan, advance or deposit of money, or anything of value made. . .for the purpose of
14 influencing any election for federal office." 11 C.F.R. § 100.7(a)(1).

15 Respondent, who happened to be Mr. Giordano's father-in-law, was subject to the same
16 contribution limitations as other individuals. *Buckley v. Valeo*, 424 U.S. 1 (1976) (immediate
17 family members are subject to the contribution limitations established by the Act). Because
18 Respondent was entitled to contribute \$2,000 to Mr. Giordano's campaign (\$1,000 to the primary
19 election and \$1,000 to the general election), the \$300,000 gift resulted in an excessive
20 contribution of \$298,000 from Salvatore Trovato to the Committee and exceeded the calendar
21 year limit by \$273,000.⁵

22 Respondent asserts that he did not intend to contribute to Mr. Giordano's campaign, but

⁵ Respondent had not made any contributions to the Committee during the 2000 election cycle prior to this monetary gift.

26044131141

1 rather to assist with the Giordano family's personal financial funding. *See* Response dated
2 March 30, 2005. Although candidates for federal office may make unlimited expenditures from
3 personal funds, *see* 11 C.F.R. § 110.10(a), the facts in this matter show that the monies in
4 question do not fall within the definition of "personal funds" of Mr. Giordano as defined in
5 11 C.F.R. § 110.10(b)(2). The Commission's regulations define "personal funds" as, *inter alia*,
6 "gifts of a personal nature which had been customarily received prior to candidacy." *Id.*

7 The Commission has explained that 11 C.F.R. § 110.10(b)(2) "is intended to be
8 consistent with that portion of the Supreme Court's opinion in" *Buckley* "concerning what funds
9 are personal funds of a candidate (not subject to contribution limits) and what funds are those of
10 immediate family members (which are subject to contribution limits)." Advisory Opinion
11 ("AO") 1981-15, *citing* Federal Election Regulations, Explanation and Justification for Part 114,
12 H.R. DOC. NO. 95-44, 95th Cong., 1st Sess. 70-71 (Jan. 12, 1977).

13 In AO 1988-7, the Commission focused on objective factors in interpreting the phrase
14 "gifts of a personal nature customarily received prior to candidacy" of 11 C.F.R. § 110.10(b)(2).
15 In that AO, the candidate received a gift of \$20,000 in each of the three years, 1985 through
16 1987, prior to his candidacy. The candidate believed that his parents would give him another gift
17 of \$20,000 during 1988. The Commission concluded that, based upon the candidate's statements
18 and because he was not a candidate for federal office in 1984 or 1986, the \$20,000 cash gifts he
19 had received for the years 1985 through 1987 appeared to be of a personal nature, rather than
20 made in anticipation of, or related to any campaign for, federal office. Moreover, because the
21 receipt of \$20,000 per year from the candidate's parents in 1985, 1986 and 1987 indicated a
22 "repetitious custom of monetary gifts," apparently without regard to the candidate's possible

26044151142

1 candidacy for federal office, the Commission concluded that another \$20,000 cash gift under
2 similar circumstances during 1988 would be considered personal funds.

3 The Respondent's \$300,000 transfer to the Giordanos does not meet the legal standard for
4 a personal gift. There was no repetitious custom of monetary gifts in amounts similar to the
5 monies in question from Respondent to Mr. Giordano prior to the 2000 election cycle. Indeed,
6 the first single monetary gift that the Respondent gave Mr. Giordano (or Mrs. Giordano) in an
7 amount over \$100,000 occurred not only after Mr. Giordano's candidacy was announced, but
8 also on the precise day and in the exact amount that Mr. Giordano's Committee needed cash to
9 secure the loan. Further, as noted *supra*, the Committee asserted that it realized that the original
10 loan, for which the Respondent was a co-guarantor, "was made in violation of FEC rules,"
11 although they did not specify what particular rule they were concerned about. *See* discussion
12 *supra* at footnote 2. The timing of the monetary gift to be used as collateral for the second
13 restructured loan indicates that it may have been an attempt to accomplish a similar result
14 through alternative means. Therefore, the \$300,000 at issue cannot be deemed Mr. Giordano's
15 "personal funds," nor was it the sort of gift "which had been customarily received prior to
16 candidacy." 11 C.F.R. § 110.10(b)(2). Instead, those funds constitute contributions from
17 Salvatore Trovato to the Committee pursuant to 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).⁶

⁶ As discussed *supra* in footnote 3, the fact that the funds were placed in a certificate of deposit held in the names of Mr. and Mrs. Giordano does not establish that the funds were intended as a gift to both Mr. Giordano and his spouse. Rather, the timing and circumstances of the gift establish that the funds were intended to be used by Mr. Giordano to finance his campaign. *See* 2 U.S.C. § 432(e)(2) (any candidate who receives a contribution for use in connection with his campaign, shall be considered, for purposes of the Act, as having received the contribution as an agent of his authorized committee).

26044131143

1 This conclusion is further bolstered by the fact that Mr. Giordano did not have additional
2 resources of his own to use as collateral for the loan to his Committee.⁷ In MUR 5318 (Ferguson
3 for Congress), the Commission found, *inter alia*, reason to believe that the candidate's family
4 violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) with respect to funds paid to the candidate from a
5 family trust. The candidate had made loans to his committee in the 1998 and 2000 election
6 cycles from "personal funds." However, there was no evidence that the candidate had enough
7 assets, without the monetary transfers from his parents, to make the loans to his campaign.⁸
8 *Compare* MUR 5318 with MUR 5321 (Janet Robert for Congress) (The benefactor gave
9 \$800,000 to each of her ten children, which included a candidate, as part of an estate plan.
10 However, there was evidence showing that the candidate had ample funds of her own, and
11 therefore, did not need additional funds to make loans to her campaign. The Commission, by a
12 3-3 vote, declined to pursue this matter.).

13 Based on the foregoing, this Office is prepared to recommend that the Commission find
14 probable cause to believe that Salvatore Trovato violated 2 U.S.C. § 441a(a)(1)(A) by making an
15 excessive contribution to the Giordano for U.S. Senate Committee and 2 U.S.C. § 441(a)(3) by
16 making a contribution aggregating more than \$25,000 in a calendar year.

⁷ In 2000, the Giordano home had a fair market value of \$220,000 and was encumbered by a preexisting mortgage of \$124,000. *See* Second Amended July Quarterly Report filed September 5, 2000. Therefore, the total equity in the home was \$98,000. The equity in the home was far below the amount needed to secure the \$300,000 loan to his Committee. In any event, the certificate of deposit fully secured the loan. *See also* discussion *supra* at footnote 4.

⁸ In other instances where a donor asserted the subjective intent to provide the candidate with living expenses or financial resources not intended to be placed directly into the campaign, the Commission treated all of the transferred funds as contributions, recognizing that the candidate's receipt of such funds frees up other funds for campaign purposes and permits the candidate to spend more time campaigning and less time earning a living. *See e.g.*, MUR 3968 (Missourians for Carroll) (Commission found reason to believe respondents violated the Act and entered into pre-probable cause conciliation); *see also* AOs 1982-64, 1978-40, 1976-70.

26044131144

IV. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Salvatore Trovato violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).

Date 5/18/05

Lawrence H. Norton
Lawrence H. Norton
General Counsel

Rhonda J. Vosdignh
Rhonda J. Vosdignh
Associate General Counsel for Enforcement

Sidney Locke
Sidney Locke
Assistant General Counsel

Christine C. Gallagher
Christine C. Gallagher
Attorney

26044131145