



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 19 2009

Neil Reiff, Esq.
Sandler, Reiff & Young, P.C.
300 M St. SE
Suite 1102
Washington, DC 20003

RE: MUR 5981
Jared Polis
Friends of Jared Polis and
Debbie K. Marquez, in her
official capacity as treasurer

Dear Mr. Reiff:

On March 21, 2008, the Federal Election Commission notified your clients, Jared Polis, Friends of Jared Polis and Debbie K. Marquez, in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 4, 2009, the Commission found, on the basis of the information in the complaint and information provided by Jared Polis and Friends of Jared Polis, that there is no reason to believe that your clients violated 2 U.S.C. § 434(b), a provision of the Act. 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). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg", with a long horizontal line extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Jared Polis Committee **MUR: 5981**
and Debbie K. Marquez, in her
official capacity as treasurer, and
Jared Polis

I. BACKGROUND

 This matter arises out of a complaint filed with the Federal Election Commission (the “Commission” or “FEC”) alleging that Friends of Jared Polis and Debbie K. Marquez, in her official capacity as treasurer, (the “Committee”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), when it failed to disclose employer or occupation information for over 50 contributors in its 2007 October Quarterly Report.¹ In its response, the Committee offers evidence that it used “best efforts” to comply with the disclosure requirements of the Act. In addition, the Complainant alleges that Jared Polis and the Committee (collectively “Respondents”) attempted to avoid FEC disclosure requirements in order to disguise how Committee funds were spent by reporting in-kind contributions from Polis in its 2007 October Quarterly and Year-End Reports, and in the same reports disclosing disbursements to Polis in the same amounts as the reported in-kind contributions. The Committee denies that contributions from and disbursements to Polis are in violation of the reporting requirements of the Act.

 After a review of the available information, the Commission found no reason to believe that Friends of Jared Polis and Debbie K. Marquez, in her official capacity as treasurer, and Jared Polis violated the Act by failing to disclose identifying information

¹ The Complainant, Will Shafroth, and Respondent, Jared Polis, were both Democrats seeking Colorado’s Second District Congressional seat.

1 for contributors in violation of 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 102.9(d) and
2 104.7(b). The Commission also found no reason to believe that Friends of Jared Polis
3 and Debbie K. Marquez, in her official capacity as treasurer, and Jared Polis violated
4 2 U.S.C. § 434(b) by failing to accurately report in-kind contributions and disbursements.

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Employer and Occupation of Contributors**

7 In this matter, the Complainant alleges that the Committee violated the Act when
8 it failed to obtain and disclose employer and occupation information for 50 contributors
9 included in its 2007 October Quarterly Report. See 2 U.S.C. § 434(b)(3)(A); 11 C.F.R.
10 §§ 100.12 and 104.8. In its disclosure report, the Committee reported that the required
11 “information [was] requested.” The Committee amended its 2007 October Quarterly
12 Report on January 8, 2008 and reported the employer and occupation for eight
13 contributors, leaving 42 contributors with unknown employers and occupations. The
14 contributions disclosed with missing employer and occupation information comprise
15 about 9% of the Committee’s 447 disclosed receipts for the reporting period.

16 The treasurer of a political committee must identify persons who make contributions that,
17 when aggregated, exceed \$200 for the election cycle by including the person’s name,
18 address, occupation and name of employer. 2 U.S.C. §§ 431(13)(a) and 434(b)(3)(A);
19 11 C.F.R. §§ 100.12 and 104.8. If the committee does not disclose this information, the
20 committee shall be considered in compliance with the Act if it submits evidence that
21 “best efforts” have been used to “obtain, maintain and submit this information.” 11
22 C.F.R. § 104.7(a). In order to demonstrate “best efforts,” written solicitations for
23 contributions must include a clear request for the required contributor information. 11

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1 C.F.R. § 104.7(b). In addition, the solicitation must include an accurate statement of
2 Federal Law regarding the collection and reporting of individual contributor information.
3 *Id.* In the event the contributor does not provide this information, the treasurer of the
4 committee must make at least one effort after the receipt of the contribution to obtain the
5 missing information. 11 C.F.R. § 104.7(b)(2). Such effort shall consist of either a
6 written request sent to the contributor or an oral request to the contributor documented in
7 writing. The written or oral request must be made no later than 30 days after the receipt
8 of the contribution. *Id.*

9 In response to the Complaint, the Committee asserts that it complied with the
10 requirements of 11 C.F.R. § 104.7(b) in attempting to obtain the required contributor
11 information. As evidence of its compliance, the Committee submitted a sworn affidavit
12 from its Finance Director, which attests to the Committee's efforts, including contacting
13 each contributor by letter and reviewing previous contributor information in an attempt to
14 obtain missing information. The Committee also attached to the affidavit its standard
15 solicitation, which requests all identifying information required by the Act and utilizes
16 language recommended by 11 C.F.R. § 104.7(b)(1) informing contributors that Federal
17 law requires "best efforts" to collect and report the name, mailing address, occupation,
18 and name of employer of individuals whose contributions exceed \$200 in an election
19 cycle. In addition, the Committee attached to the affidavit a sample follow-up letter,
20 which the Finance Director states in the affidavit was sent to any individual donor who
21 failed to provide occupation and employer information at the time of the contribution.
22 The letter requests the missing information and again informs the contributor that Federal
23 law requires that the Committee obtain identifying information. The Committee also

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1 points out that when it received responses to its request for the identifying information, it
2 amended disclosure reports accordingly.

3 Therefore, based on the available information, the Commission found no reason
4 to believe that Friends of Jared Polis and Debbie K. Marquez, in her official capacity as
5 treasurer, and Jared Polis violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 102.9(d) and
6 104.7(b) by failing to disclose identifying information for contributors.

7 **B. In-Kind Contributions from the Candidate**

8 The complaint alleges that the Committee is attempting to disguise financial
9 activity and avoid FEC disclosure requirements by accepting in-kind contributions from
10 the candidate in the form of payments for campaign expenses from his personal funds,
11 and then later reimbursing him for the payments and reporting the reimbursements as
12 disbursements. In support, the complaint identifies two in-kind contributions from the
13 candidate, one for \$11,000 reported in the Committee's 2007 October Quarterly Report
14 and one for \$10,000 reported in the Committee's 2007 Year-End Report for "labor
15 costs." Polis and the Committee claim that the contributions were related to expenses for
16 hiring individuals specifically to assist with a fact-finding tour that the candidate took to
17 Iraq. Polis paid these expenses out of his own pocket and was reimbursed by the
18 Committee.

19 Under the Act, an expenditure by a candidate from his or her personal funds for
20 campaign expenses is considered a contribution to the committee. *See* 2 U.S.C.
21 § 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§ 100.52(a) and 100.111(a). Polis paid almost
22 \$20,000 for Committee expenses from his personal funds between July 1 and October 31,
23 2007, and another \$7,843 from November 1, 2007 through December 1, 2007. These

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1 expenditures were reported as in-kind contributions in the Committee's disclosure
2 reports. Almost immediately after these expenses were paid by Polis, the Committee
3 reimbursed Polis for all of the expenditures he had made from personal funds. The
4 reimbursements were reported as disbursements to the candidate. This is consistent with
5 the Commission's regulations and guidance set forth in Advisory Opinions, in that the
6 reimbursed contributions are considered "expenditures . . . that were initially treated as
7 contributions," and are both expenditures and contributions under the Act because they
8 constitute a payment made, and a loan or something of value given, for the purpose of
9 influencing an election for Federal office. 11 C.F.R. §§ 100.111 and 100.52. The
10 "contributions" in the form of payments from the candidate's personal funds for
11 campaign expenses were reported as in-kind contributions to the Committee, and the
12 reimbursement of funds to the candidate is considered an expenditure by the Committee
13 and were reported as disbursements to the candidate.² See 11 C.F.R. §§ 104.13(a);
14 104.3(b) and Advisory Opinions 1992-1 and 2003-31 (advising a committee that
15 expenditures made from a candidate's personal funds for campaign expenses are
16 contributions and should be reported as in-kind contributions by the committee, while the
17 reimbursement by the committee to the candidate should be reported as a disbursement
18 by the committee).

19 Based on available information, it appears that the Committee properly disclosed
20 the in-kind contributions it received from the candidate and the subsequent
21 reimbursements it made to the candidate. The Committee adhered to the relevant

² The candidate must provide the committee with appropriate documentation of each expense exceeding \$200 for which he pays. Appropriate documentation consists of a receipt or invoice from the payee, or a cancelled check, or in the case of payment by credit card, a monthly billing statement or customer receipt and the cancelled check used to pay the credit card account. See 11 C.F.R. § 102.9. There is no allegation or information to suggest the Committee does not have appropriate documentation in this matter.

1 reporting requirements by disclosing the payment of expenses by the candidate as in-kind
2 contributions and reporting the reimbursement of the expenses as disbursements to the
3 candidate. Accordingly, the Commission found no reason to believe that Friends of Jared
4 Polis and Debbie K. Marquez, in her official capacity as treasurer, and Jared Polis
5 violated 2 U.S.C. § 434(b) by failing to accurately report in-kind contributions and
6 disbursements.

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