



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W.
Suite 600
Washington, DC 20007-5109

JUN 01 2012

RE: MUR 6380
Christine O'Donnell
Friends of Christine O'Donnell
and Matt Moran, in his official
capacity as treasurer

Dear Ms. Mitchell:

On September 24, 2010, the Federal Election Commission notified your clients, Christine O'Donnell and Friends of Christine O'Donnell and its treasurer, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided copies of the complaint.

After reviewing the complaint and your responses, the Commission, on May 22, 2012, found reason to believe that Christine O'Donnell and Friends of Christine O'Donnell and Matt Moran, in his official capacity as treasurer ("the Committee"), violated 2 U.S.C. § 439a(b) in connection with the Committee's rent and utility payments for a Greenville, Delaware townhouse. However, the Commission dismissed the allegations that Christine O'Donnell and the Committee violated 2 U.S.C. § 439a(b) by using campaign funds to pay rent on a personal residence and other personal expenses in 2009, and that the Committee violated 2 U.S.C. § 434(b) by improperly reporting the 2009 rental payments. Enclosed is the Factual and Legal Analysis that sets forth the bases for the Commission's determination.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its entire file in this matter. *See* 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed toward reaching a

MUR 6380
Cleta Mitchell, Esq.
Page 2 of 3

conciliation agreement in settlement of this matter prior to a determination by the Commission as to whether there is probable cause to believe that Ms. O'Donnell and the Committee violated the Act. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a means to resolve this matter at an early stage.

If Ms. O'Donnell and the Committee are interested in engaging in pre-probable cause conciliation, please contact Thomas Andersen, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to resolution of this matter. No action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission may be made public by the Commission without the written consent of the respondent and the Commission. 2 U.S.C. § 437g(a)(4)(B). The Commission may proceed to the next step in the enforcement process if your clients are not interested in pre-probable cause conciliation or a mutually acceptable conciliation agreement cannot be reached within 60 days. *See* 2 U.S.C. § 437g(a), 11 C.F.R. Part 111 (Subpart A). Further, if your clients are not interested in pre-probable cause conciliation, the Commission may vote to conduct formal discovery in this matter. Please note that once the Commission initiates the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. You may submit a written request for relevant information gathered by the Commission in the course of its investigation of this matter. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34986 (June 15, 2011).

MUR 6380
Cleta Mitchell, Esq.
Page 3 of 3

We look forward to your response.

On behalf of the Commission,

A handwritten signature in cursive script, appearing to read "Caroline C. Hunter".

Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Christine O'Donnell MUR 6380
Friends of Christine O'Donnell and
Matt Moran, in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Melanie Sloan, Leonard S. Togman, and Citizens for Responsibility and Ethics in Washington, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Christine O'Donnell and Friends of Christine O'Donnell and Matt Moran, in his official capacity as treasurer.

II. FACTUAL AND LEGAL ANALYSIS

The complaint makes three basic allegations, one in connection with activities occurring in 2010 and two that relate to 2009 activities. First, the complaint alleges that, in 2010, O'Donnell and her Committee used campaign funds to pay \$20,362.17 in rent and utilities on a Greenville, Delaware townhouse that were her personal obligations. Second, the complaint alleges that O'Donnell used campaign funds to pay the March and April 2009 rent on her Wilmington, Delaware residence and other personal expenses. Third, the complaint alleges that the Committee "falsely" described the purpose of the 2009 rental payments on the Committee's disclosure reports as expense reimbursements. Complaint at 5-6.

A. Rent and Utility Expenses for Greenville Residence in 2010

The complaint alleges that Respondents violated the Act when the Committee made disbursements for rental payments for O'Donnell's Greenville, Delaware residence (\$16,816.60) as well as payments for electrical power (\$1,030.32), cable (\$1,305.84) and phone (\$1,209.41)

1 for the unit. Complainant appears to have obtained these figures by reviewing Committee
2 reports covering the period from January 1, 2010 through August 25, 2010 for disbursements
3 connected to her townhouse (the Committee continued to disclose disbursements for rent and
4 utilities in reports filed after the date of the complaint). The complaint also relies on a news
5 article in which O'Donnell acknowledged that she was paying a portion of the rent on her
6 townhouse with campaign donations because she was using the premises as her campaign
7 headquarters. Ginger Gibson, *Delaware Politics: O'Donnell Faces Campaign Debt, Back-tax*
8 *Issues*, THE NEWS JOURNAL (Wilmington), March 21, 2010 (Exhibit D of Complaint). The
9 article included the following quote attributed to O'Donnell: "I'm splitting it, legally splitting it
10 and paying part of it . . . I am renting from the campaign" *Id.*

11 Respondents confirm that O'Donnell and the Committee shared the Greenville
12 townhouse. The response asserts that the Committee leased the townhouse as its headquarters,
13 and that O'Donnell and several campaign workers lived on the floors above the campaign
14 offices. O'Donnell states "I personally paid for my pro-rata share of the rental payments to
15 cover my living costs at the campaign's premises, although the campaign paid 100% of the living
16 costs for all other campaign workers sharing the living quarters with me." Response, Exhibit 1,
17 O'Donnell Affidavit ("O'Donnell Aff.").¹ The response includes two "Rental Application"
18 documents from 2010 for "Apt. No. 1242," listed as a three-bedroom townhouse, one of which
19 identifies the Committee as a "Corporate Applica[nt]" and the other which identifies Robert
20 David Hust as the "Occupant." Exhibits 3 & 4 of Response. A "Rental Agreement" dated

¹ O'Donnell further states that all disbursements for rent and utilities referenced in the complaint were for payment of office expenses of the Committee's headquarters at 1242 Presidential Drive in Greenville, Delaware. O'Donnell Aff. at 2. The complaint references 248 Presidential Drive (not 1242 Presidential Drive) as the address of O'Donnell's residence, *see* Complaint at 4, apparently obtaining that address from the Committee's disclosure reports. However, 248 Presidential Drive appears to be the address of the realty company that received rental payments from the Committee. *See, e.g.*, Exhibit 3 of Response (showing address of Mid-Atlantic Realty as 248 Presidential Drive).

1 January 8, 2010, and which appears to have been signed by O'Donnell, states that the tenant is
2 "Christine O'Donnell for U.S. Senate (Occupant, David Hust)." Exhibit 7 of Response.
3 O'Donnell describes Hust as the "primary occupant listed on the lease [and] one of the campaign
4 workers who did, in fact, move into the premises in February, 2010." O'Donnell Aff. at 1.

5 Also attached to the Response is a copy of a \$770 check from O'Donnell to the
6 Committee dated March 30, 2010, containing the handwritten notation "Rent Utilities Jan-
7 March." Exhibit 14 of Response. The Committee reported in its disclosure reports that it
8 received \$770 from O'Donnell on March 30, 2010 for "Reimbursement for Rent & Utilities."

9 Other supporting exhibits attached to the response include (1) photos of what appear to be
10 campaign staff working at the Greenville townhouse, (2) a copy of a \$770 check from Christine
11 O'Donnell to the Committee for "rent + utilities," dated June 28, 2010, and (3) pages of the
12 Committee's FEC disclosure reports showing two receipts of \$770 each from O'Donnell, dated
13 June 28 and September 27, 2010, each indicating they were for rent reimbursement. Exhibits 9-
14 16 of Response.

15 Respondents argue that since the Committee leased the Greenville townhouse in its own
16 name, *i.e.*, they were "campaign leases and *not* residential lease(s) of Christine O'Donnell
17 personally" (emphasis in original), it was lawful for the Committee to pay the rent and utilities as
18 long as O'Donnell reimbursed it for her "share" of the costs. Response at 2. However, as
19 discussed below, regardless of how the lease was structured, because the townhouse served as
20 O'Donnell's residence, the Committee's payments for rent and utilities constituted an
21 impermissible *per se* personal use expense under the Commission's regulations.

22 The Act provides that contributions accepted by a candidate may be used by the
23 candidate "for otherwise authorized expenditures in connection with the campaign for Federal

1 office of the candidate” 2 U.S.C. § 439a(a)(1). Such campaign funds, however, shall not be
2 converted to “personal use” by “any person.” 2 U.S.C. § 439a(b)(1). “Personal use” is defined
3 as the use of campaign funds of a present or former candidate “to fulfill any commitment,
4 obligation or expense of a person that would exist irrespective of the candidate’s election
5 campaign or individual duties as a holder of Federal office.” 2 U.S.C. § 439a(b)(2). The Act
6 contains a list of examples of personal use expenses that includes, *inter alia*, a home mortgage,
7 rent, or utility payment; a noncampaign-related automobile expense; a vacation or other
8 noncampaign-related trip; and admission to a sporting event, concert, theater, or other form of
9 entertainment not associated with an election campaign. 2 U.S.C. § 439a(b)(2)(A), (C), (E) &
10 (H).

11 The Commission’s regulations at 11 C.F.R. § 113.1(g)(1)(i) also describe uses of
12 campaign funds that constitute personal use *per se*, including, as they regard these allegations:

13 E) Mortgage, rent or utility payments--

14 (1) For any part of any personal residence of the candidate or a
15 member of the candidate’s family; or

16 (2) For real or personal property that is owned by the candidate or
17 a member of the candidate’s family and used for campaign purposes, to
18 the extent the payments exceed the fair market value of the property
19 usage.

20 (F) Admission to a sporting event, concert, theater or other form of
21 entertainment, unless part of a specific campaign or officeholder
22 activity.

23
24 Further, in the Explanation & Justification (E&J) for the personal use regulations, the
25 Commission noted that the regulation prohibits this type of allocation: “the rule draws a clear
26 line, and avoids the need to allocate expenses associated with the residence between campaign
27 and personal use.” 60 Fed. Reg. 7865 (1995). The Commission clarified that the candidate
28 “retains the option of using his or her personal residence in the campaign, *so long as it is done at*
29 *no cost to the committee.*” *Id.* (emphasis added). The personal use provisions of the Act and its

1 corresponding regulations thus make clear that the rental payments for *any part* of any personal
2 residence constitute *per se* personal use. Therefore, the Act and regulations refute Respondents'
3 argument that the sharing arrangement for the Greenville residence was permissible because the
4 lease was a Committee lease and that O'Donnell reimbursed the Committee her "pro rata share"
5 of the expenses.

6 In AO 2000-2 (Hubbard), the Commission allowed a candidate to pay for office space in
7 the same building as his residence, but noted several factors that made the candidate's situation
8 "somewhat unique," including that (1) the use of the leased property as both a residence and an
9 office pre-dated his candidacy by several years; (2) the leased premises were located in a
10 commercial building; (3) the premises served as the candidate's sole office space and for several
11 years he followed a tax treatment that reflected a division between residential and office space;
12 and (4) the campaign funds would pay only the portion of rent previously ascribed to the office
13 use. None of those factors is present here. O'Donnell's use of the premises as her personal
14 residence ran concurrently with the Committee's use, and the townhouse appears to be part of a
15 residential development; in fact, the lease signed by O'Donnell is a residential lease that contains
16 a provision requiring that the premises be used "as a single family residence and not for any
17 other purposes."² Exhibit 7 of Response. *See also* MUR 5218 (Francis), First General Counsel's
18 Report dated Sept. 2, 2003, at 6 ("notwithstanding that part of Francis' home was used by the
19 campaign . . . it appears that Francis used campaign funds to pay for a *per se* personal use – his
20 mortgage payments").

² The circumstances surrounding the use of the Greenville townhouse are more akin to those Advisory Opinions that were expressly superseded by the 1995 personal use regulations. *See, e.g.*, AO 1988-13 (Ray) (superseded) (candidate committee may pay pro rata share of rent and utilities to candidate for campaign office space in candidate's house); AO 1985-42 (Taylor) (superseded) (candidate committee may pay a portion of candidate's rent where campaign staff use candidate's apartment for lodging); AO 1983-01 (Coughlin) (superseded) (candidate committee may pay a portion of the rent of a candidate's residence where a part of the house is used for campaign equipment storage).

1 In short, there is no support for Respondents' contention that the rental payments made
2 by the Committee were permissible. It appears that O'Donnell used campaign funds to pay for a
3 *per se* personal use, which includes rent or utility payments "for *any* part of *any* personal
4 residence of the candidate" 11 C.F.R. § 113.1(g)(1)(i)(E)(1) (emphasis added).
5 Accordingly, there is reason to believe that the Committee's rent and utility payments for the
6 Greenville townhouse in 2010 constituted a *per se* personal use violation of 2 U.S.C. § 439a(b)
7 by O'Donnell and the Committee.

8 **B. Rent for Wilmington Residence and Other 2009 Expenses**

9 There are two specific allegations related to the Committee's 2009 activities. First, the
10 complaint alleges that Respondents violated the Act by using campaign funds to pay
11 O'Donnell's rent on her Wilmington residence and other personal expenses, including food, gas
12 and entertainment, in 2009. Second, the complaint alleges that the Committee misreported the
13 disbursements for the rental payments. These allegations are based on an affidavit from
14 purported former O'Donnell campaign consultant David Keegan, who states that he became
15 familiar with the campaign's spending through his role as a "financial consultant and fundraiser,"
16 and that he "became concerned about Ms. O'Donnell's campaign spending because she had no
17 other visible source of personal income." Complaint Exhibit A, Keegan Affidavit ("Keegan
18 Aff."). The response asserts that Keegan was not a consultant to the campaign but rather a
19 "volunteer" who lacked personal knowledge of the facts, Response at 2.³

20 Keegan asserts that his nephew, Brent Vasher, purchased O'Donnell's residence from her
21 in 2008 and then rented it back to her in the amount of \$750 per month. Keegan Aff. at 1. The
22 Committee disclosed a \$750 payment made to Vasher on March 10, 2009, describing it as an

³ Notwithstanding Respondents' assertion, the Committee disclosed a \$1,000 payment to Keegan in August 2008 for "Finance Consulting." See Committee's 2008 Pre-Primary Report.

1 “expense reimbursement.” *See* Committee’s 2009 April Quarterly Report. The Committee
2 reported another \$750 payment to Vasher on April 13, 2009, describing it as “reimbursement for
3 services.” *See* Committee’s 2009 Year-End Report. In her response, O’Donnell states that the
4 payments “to Brent Vasher . . . were for expense reimbursements related to the campaign and
5 were not for rent or my personal living expenses.” O’Donnell Aff. at 2.

6 Respondents’ co-counsel filed a complaint with the Delaware Attorney General alleging
7 that Keegan perjured himself in his affidavit, based on allegedly conflicting statements he made
8 in a telephone interview purportedly conducted by an unnamed “free-lance journalist.”
9 Attachment B of Supplemental Response. Co-counsel’s complaint attacks Keegan’s veracity and
10 alleges that he “admits” that the two payments at issue were actually reimbursements for
11 Vasher’s expenses. *Id.*

12 In addition, other available information purportedly challenges Keegan’s affidavit.
13 Jonathon Moseley, former Committee treasurer, asserts, for example, that at the time the
14 Committee made the payments to Vasher, the Committee owed Vasher \$3,000 to \$5,000 in
15 expenses apparently related to O’Donnell’s 2008 campaign.⁴ However, Moseley provides no
16 documentation to support these assertions. Vasher states that he bought O’Donnell’s
17 Wilmington home in the summer of 2008, and that O’Donnell continued to live there after the
18 sale. Vasher apparently considered her to be living at the house for free and paying him back
19 \$750 per month for money she owed him. Vasher asserts that he accepted the two \$750
20 payments by the campaign in 2009 because O’Donnell convinced him that he was being
21 reimbursed for 2008 campaign expenses. Vasher did not recall submitting any receipts to the
22 Committee – and the Committee did not report any debts or obligations to Vasher – but Vasher

⁴ The Committee did not report any debts or obligations to Vasher. *See* 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

1 believes that he provided enough cash payments for campaign items, including printing charges
2 and gas, to justify that payment to him. While Vasher asserts that he was owed more than \$750
3 by the Committee, he did not provide documentation nor did the Committee's response indicate
4 for what items he was reimbursed.

5 As discussed, any payments by the Committee for O'Donnell's residential expenses
6 would constitute *per se* personal use, and would therefore violate 2 U.S.C. § 439a(b)(1). *See*
7 11 C.F.R. § 113.1(g)(1)(i)(E)(1). Further, the failure to properly disclose the purpose of the
8 payments by the Committee would result in a violation of 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R.
9 § 104.3(b)(3)(i) (authorized committee shall disclose the name and address of each person to
10 whom an expenditure in excess of \$200 is made within the calendar year, together with the date,
11 amount and purpose of the expenditure). Although the sworn affidavits conflict (*e.g.*, Keegan's
12 affidavit alleges that the Committee's payments to Vasher were for O'Donnell's rent, which
13 O'Donnell denies in her affidavit), other information suggests that the two \$750 payments may
14 have been intended to cover campaign expenses paid for by Vasher. Assuming the payments
15 were for campaign expenses, it is not clear as to which specific items paid for by Vasher were
16 being reimbursed by the Committee, when Vasher first incurred any expenses on behalf of the
17 Committee and for how much, or why the Committee did not report any debts or obligations to
18 Vasher. However, given the small amount at issue and the fact that Vasher appears to have
19 accepted the checks based on a reasonable belief that he was owed money by the Committee for
20 campaign expenses he incurred, the allegations related to the 2009 activities, including any
21 potential reporting violations stemming from the Committee's failure to report debts owed to
22 Vasher, do not warrant further use of the Commission's resources.

1 In connection with other disbursements, the complaint alleges that Respondents violated
2 the Act by using campaign funds for “other personal expenses, including gas, meals and . . . an
3 outing to a bowling alley.” Keegan Aff. at 1. The Committee’s disclosure reports reflect
4 numerous disbursements to gas stations and food establishments throughout 2009, and reported a
5 \$19 disbursement to a bowling alley on March 2, 2009. Respondents assert that all expenses
6 referenced in Keegan’s affidavit were for campaign expenses, including gas and meals, and that
7 Keegan had no personal knowledge of O’Donnell’s “personal finances.” Response at 2.
8 O’Donnell specifically asserts that a payment to a bowling alley represented “volunteer and/or
9 fundraising activities associated with the campaign.” O’Donnell Aff. at 2. Vasher stated that
10 O’Donnell took him bowling in 2009 as a “thank you for the campaign.” Vasher was not aware
11 at the time that O’Donnell used the campaign debit card to pay for the bowling event; however,
12 he observed her using the campaign debit card to pay for meals they shared while going to and
13 from campaign events.

14 In addition to the examples of *per se* personal use discussed above, the regulations list a
15 number of uses of campaign funds that the Commission “will determine, on a case-by-case
16 basis,” whether they constitute personal use, including meal, travel, and vehicle expenses.
17 11 C.F.R. § 113.1(g)(1)(ii)(B), (C) and (D). There appears to be little information about which
18 of the “other personal expenses” referenced in Keegan’s affidavit were paid for with campaign
19 funds. Given the small amounts at issue (*e.g.*, the \$19 disbursement for bowling) and the lack of
20 specific allegations regarding other personal expenses (*e.g.*, information about which “gas” and
21 “meal” payments disclosed by the Committee constituted personal use), the allegations related to
22 other 2009 activities do not warrant further use of the Commission’s resources.

1 Accordingly, the Commission dismisses the allegations that Christine O'Donnell and
2 Friends of Christine O'Donnell and Matt Moran, in his official capacity as treasurer, violated
3 2 U.S.C. § 439a(b) by using campaign funds to pay rent on a personal residence and other
4 personal expenses in 2009, and that Friends of Christine O'Donnell and Matt Moran, in his
5 official capacity as treasurer, violated 2 U.S.C. § 434(b) by improperly reporting the 2009 rental
6 payments. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).