

FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

Matthew Doheny

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RESPONSE OF MATTHEW DOHENY TO THE COMPLAINT

This responds on behalf of our client, Matthew Doheny, to the notification from the Federal Election Commission ("Commission") that a complaint was filed against him in the above-referenced matter. The complaint was filed by a political opponent of the Strickland campaign, misstates the law, and is nothing more than a baseless, speculative attack that has no merit. For the reasons set forth below, the Commission should dismiss the complaint, close the file, and take no further action.

The Act and Commission regulations limit contributions from an individual to a federal campaign to \$2,500 per election. 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 110.1. For contribution limit purposes, the regulatory test for determining whether a contribution is made prior to the date of a particular election looks to the date a contribution is *made* by the contributor, not when the contribution is *received* by the campaign. *See* 11 C.F.R. § 110.1(a)(2)(ii). With respect to credit card contributions, a contribution is deemed made on the date the contributor confirms making the transaction or authorizes the campaign to charge the contribution. *See* FEC AOs 1995-09 & 1990-04. Campaign treasurers are permitted to redesignate contributions to the general election if the primary election contribution exceeds \$2,500. 11 C.F.R. § 110.1(b)(5).

The complaint here concerns a false charge that Mr. Doheny made an excessive contribution to the Strickland campaign by contributing \$5,000 from his personal funds after the date of the California June 5, 2012 primary election. Compl. at 1. Specifically, the complaint falsely states that the contribution was made on June 28, 2012. *See id.* at 2. However, as the Strickland campaign publicly stated, the contribution was actually made on June 4, 2012 – the day before California's

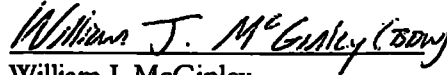
June 5, 2012 primary election. Tim Herdt, *Brownley Files FEC Complaint Over Contributions to Strickland from N.Y. Bankers*, Ventura County Star, September 13, 2012 (Exhibit A) ("Joe Justin, a consultant in charge of Strickland's campaign, said the contributions were made June 4. He provided The Star internal "donation reports" documenting the date of the contributions.").

The public statements made by the Strickland campaign – that the contribution in question was made prior to the California primary election date – directly contradict the erroneous allegations made in the complaint. *See* Commissioners Wold, Mason, Thomas, Statement of Reasons, MUR 4850 ("A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents. . . . The burden of proof does not shift to a respondent merely because a complaint is filed."); Commissioners Mason, Sandstrom, McDonald, Smith, Thomas, Wold, Statement of Reasons, MUR 5141 ("A complainant's unwarranted legal conclusions from asserted facts, will not be accepted as true."). The complaint also relies on mere speculation to manufacture an allegation against Mr. Doheny, an insufficient basis for finding reason to believe. *See* Commissioners Mason, Sandstrom, Smith, Thomas, Statement of Reasons, MUR 4972 ("Mere speculation will not support an RTB finding."); Commissioners Mason, Sandstrom, Smith, Thomas, Statement of Reasons, MUR 4960 ("Such purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred."). Accordingly, there is no factual or legal basis for the Commission to find reason to believe in this matter.

Alternatively, the Commission should exercise its prosecutorial discretion and dismiss the complaint against Mr. Doheny because he has requested that his contribution be refunded. *Heckler v. Chaney*, 470 U.S. 821 (1985). Out of an abundance of caution, and without admitting liability, Mr. Doheny has requested a refund of \$2,500 from the Strickland campaign. A copy of the letter from Mr. Doheny to the Strickland campaign requesting the refund is attached at Exhibit B.

For all the reasons stated above, there is no factual or legal basis for finding reason to believe a violation occurred in this matter. We respectfully request that the Commission dismiss the complaint, close the file, and take no further action in this matter.

Respectfully submitted,



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November 7, 2012

EXHIBIT A



Printer friendly story
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Brownley files FEC complaint over contributions to Strickland from N.Y. bankers

By Timm Herdt

Thursday, September 13, 2012

Because separate \$2,500 contributions from two New York bankers to Republican congressional candidate Tony Strickland apparently were initially declined by the bankers' credit card companies, a dispute has arisen over their legality, leading Democrat Julia Brownley on Thursday to file a formal complaint with the Federal Elections Commission.

Brownley says the donations exceed allowable limits because contributions from Matt Doheny and David Hilty, executives with New York investment firms, were reported as received by Strickland on June 28, after California's June 5 primary. That election whittled the field in the new 26th Congressional District to Strickland and Brownley.

Both bankers gave a total of \$5,000 to Strickland, and federal campaign finance law allows individuals to give a maximum of \$2,500 to candidates for each election cycle. But contributions cannot be designated to a primary campaign if they are made after the primary election.

"To give for the primary election, Doheny and Hilton must have made their contributions on or before June 5, and Strickland must have deposited them within 10 days of receiving them," Brownley's complaint says.

The complaint asks the commission to investigate. If the agency upholds the complaint, Brownley wants the Strickland campaign to be fined "the maximum amount permitted by law."

Joe Justin, a consultant in charge of Strickland's campaign, said the contributions were made June 4. He provided The Star internal "donation reports" documenting the date of the contributions. Those forms include two handwritten notations of "Dec," which Justin said indicates that the transactions were twice declined by the contributors' credit card companies.

Commission investigators will have to decide whether to sort out the allegations, but regulations appear to conflict. On the one hand, all contributions must be deposited within 10 days of receipt; conversely, commission guidelines state, "While all contributions must be deposited within 10 days, the date of deposit is not used for reporting or contribution purposes."

Justin said the Strickland campaign deposited the funds within 10 days of the transactions that were finally authorized by the credit card issuers.

Lenny Young, a consultant for the Brownley campaign, said the "10 days" regulation is absolute and is designed to prevent contributors from backdating checks to circumvent the law.

"They just gave you evidence that they broke the law," he said, referring to the Strickland campaign's documentation. "They took the contribution on the 28th."

Although he did not challenge Justin's explanation, Young said it seemed "a bit strange that two bankers both had cards declined on the same day."

Doheny, whose firm manages hedge funds, lent \$650,000 in personal funds to his own campaign for the House of Representatives in 2010. He is a candidate again this year.

The Brownley campaign is the one that has a problem with full and accurate disclosure of its campaign finances, Justin said.

"According to the independent campaign finance watchdog the Center for Responsive Politics, Julia Brownley shows nearly \$200,000 of campaign contributions as either not disclosed or incomplete," he said. "Throwing stones from a glass house in Los Angeles — that's Julia Brownley."

Young said the reason many of Brownley's contributions are undisclosed is that neither her campaign nor Strickland individually reports contributions of less than \$200 and that Brownley has received more than 6,000 contributions of less than \$100, mostly from people in Ventura County.

"The reason Tony's score is so high is that he mostly gets big contributions from special interests, which have to be disclosed," Young said.

Brownley's news release announcing the complaint also says Strickland received \$26,750 in contributions from the financial services industry in the week leading up to his July 2 vote in the state Senate against an industry-opposed bill called the "Homeowner's Bill of Rights."

That legislation included new regulations on foreclosure procedures, including a requirement that banks stop pursuing foreclosures while trying to renegotiate mortgages with homeowners and provide homeowners a single point of contact as they work to avoid foreclosure.

Strickland said the timing of the donations and his vote on the bill were coincidental. Contributors give to his campaigns because they agree with his positions on issues, he said.

Brownley said Strickland has "a long and alarming record of voting with those who finance his campaigns, rather than voting for the best interests of his constituents."



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