



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 11 2013

Stefan C. Passantino, Esq.
McKenna Long & Aldridge LLP
1900 K Street, NW
Washington, D.C. 20006

RE: MUR 6654
Roraback for Congress

Dear Mr. Passantino:

On October 4, 2012, the Federal Election Commission notified your clients, Roraback for Congress and Anna-Elysabeth McGuire in her official capacity as treasurer of a complaint alleging violations of certain sections of the Commission's Regulations. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on December 3, 2013, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

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. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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

Sincerely,

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Roraback for Congress and Anna-Elysabeth McGuire in her official capacity as treasurer MUR 6654

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by the Democratic Party of Connecticut alleging violations of the Commission's regulations by Roraback for Congress and Anna-Elysabeth McGuire in her official capacity as treasurer.

II. FACTUAL AND LEGAL ANALYSIS

Roraback for Congress ("Roraback Committee") participated in a fundraising event in Darien, Connecticut on the evening of September 18, 2012 ("event"). Complainant alleges that this was a joint fundraising event and that Roraback for Congress violated 11 C.F.R. § 102.17 by failing to comply with Commission regulations regarding joint fundraising.¹ Specifically, the Complaint asserts that Respondents failed to (1) establish a joint fundraising committee for the purpose of administering the event and (2) provide the appropriate joint fundraising notice to prospective donors in the event invitation.²

In 2012, Andrew Roraback and Steve Obsitnik were the Republican nominees in adjacent Connecticut Congressional districts — Roraback in the 5th Congressional District and Obsitnik in the 4th Congressional District. On September 18, 2012, a fundraising event was held at the Darien, Connecticut residence of Mac and Cynthia Brighton.³ The invitation describes the event as a "cocktail reception" to support "U.S. CONGRESS CANDIDATES STEVE OBSITNIK, FOURTH

¹ Joint fundraising is election-related fundraising conducted jointly by a political committee and one or more other political committees or unregistered organizations. 11 C.F.R. § 102.17(a)(1)(i).

² Compl. at 1; 11 C.F.R. § 102.17(a)-(c).

³ Compl., Ex. A.

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CONGRESSIONAL DISTRICT & ANDREW RORABACK, FIFTH CONGRESSIONAL DISTRICT.”⁴ The first page features the logos of the Roraback and Obsitnik campaigns at the top followed by a list of the evening’s hosts, which included former state senator and 2010 Republican candidate for the 4th Congressional district Dan Debicella, and 16 office holders and party officials.⁵ In addition to providing the date, time, and location of the event, the invitation states that the “[S]UGGESTED CONTRIBUTION IS \$500 PER CANDIDATE (\$1,000 TOTAL).” Invitees are advised to respond by telephone or via e-mail to Ali Almour.⁶ A box at the bottom of the invitation contains the following disclaimer: “PAID FOR BY OBSITNIK FOR CONGRESS & RORABACK FOR CONGRESS.”⁷

The invitation also includes a response form, with the names of the two Committees in bold at the top of the form. Invitees were asked to check off a box if they were attending the event and indicate the amount of their contribution: “\$ ___ FOR ___ RESERVATIONS AT \$500 FOR OBSITNIK FOR CONGRESS AND \$500 FOR RORABACK FOR CONGRESS (COMBINED \$1,000 PER PERSON).”⁸ The response form directs invitees to make contribution checks directly payable to Obsitnik for Congress or Roraback for Congress and provides a separate address for each

⁴ A second invitation to the event is attached to the Complaint as Exhibit B. This invitation is identical to the joint invitation found at Exhibit A, except that it references only candidate Obsitnik and does not include a response form. (It is unlikely that this particular version of Exhibit B was ever distributed as it contains a typographical error.) The Complaint alleges that in response to press inquiries regarding whether the Roraback and Obsitnik Committees were holding a joint fundraiser in violation of Commission regulations, each Committee attempted to conceal their actions by subsequently issuing separate invitations that did not reference the other joint participant. According to the Complaint, Exhibit B may be one of these invitations. Compl. at 2. The Roraback Committee denies attempting to conceal potential violations of the Commission’s regulations in this manner. Roraback Committee Resp. at 8-10.

⁵ Compl., Ex. A.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

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campaign.⁹ The response form concludes with the disclaimer "PAID FOR BY OBSITNIK FOR CONGRESS AND RORABACK FOR CONGRESS."¹⁰

The record does not reflect how many invitations were distributed or how many individuals responded with contributions or attended the event, although the available information indicates that each campaign raised approximately \$11,000 in connection with the fundraiser. Disclosure reports indicate that 14 individuals made contributions in amounts between \$500 and \$1,500 (totaling \$20,500) to the Roraback Committee and the Obsitnik Committee on the day of, or within several days of, the event.¹¹ Eleven of these contributors, including Mac Brighton and the event host Dave Debicella, each gave the same amount of money to both the Roraback Committee and the Obsitnik Committee on the same dates (either September 18 or 19, 2012).¹² The Roraback Committee raised \$520,850.54 in contributions during the relevant time period.

Although the event invitation and response card have a disclaimer indicating that both committees paid for the invitation, it appears that the event was conducted with minimal expenses, and most expenses were incurred by the Brightons. The available information indicates that the Brightons used personal funds to pay for event costs, including food and beverages, catering staff, and flowers. The Brightons' food and beverage costs apparently did

⁹ *Id.* Contributors opting to make their donation by credit card are asked to provide the amount to be charged, card number/expiration date, and signature in a separate box. The response form also requests that contributors whose contributions exceed \$200 provide his/her name, address, occupation, and contact information. *Id.*

¹⁰ *Id.*

¹¹ See Roraback Committee 2012 October Quarterly Report at Schedule A; Obsitnik Committee 2012 October Quarterly Report at Schedule A.

¹² See Roraback Committee 2012 October Quarterly Report at Schedule A at 17, 35; Obsitnik Committee October Quarterly Report at Schedule A at 20, 37.

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not exceed \$1,000, and the catering staff and flowers cost approximately \$650.¹³ The available information also indicates that logistics for the event were handled by the Obsitnik Committee's fundraising consultant, Alexandra Almour of Tusk Productions, LLC ("Tusk"). Almour produced and distributed (via e-mail) the event invitation and served as the contact person for event attendees and the two participating committees.¹⁴

The available information indicates that the Obsitnik Committee paid an unknown amount of money for services that Almour rendered in connection with this specific event. The Obsitnik Committee's disclosure reports reflect three payments to Almour during the general election period: \$5,000 on August 14, 2012, for "fundraising consulting", \$2,071.93 for "in-kind printing and design services" as well as a "contribution refund" for the same amount on September 4, 2012; and \$5,140.71 on October 10, 2012, for "fundraising consulting."¹⁵ There is insufficient information to indicate which, if any, of these disbursements were made in connection with the event.

Respondent denies that the event was a joint fundraiser conducted in violation of section 102.17.¹⁶ According to the Roraback Committee, the event was a private gathering held to honor

¹³ The \$650 that the Brightons' spent on the flowers and catering was well below the \$2,500 per election contribution limit for individuals and the \$2,000 limit per election contribution limit between authorized committees. 2 U.S.C. §§ 441a(a)(1), 432(e)(3)(B). Mac Brighton contributed \$500 to the Roraback Committee on September 19, 2012 and the same amount to the Obsitnik Committee on September 18, 2012. There is no indication that the \$650 the Brightons spent on flowers or the catering staff was reported as an in-kind contribution by the Roraback Committee, nor is the amount reflected on any disclosure report as a contribution from the Obsitnik Committee to the Roraback Committee.

¹⁴ Compl., Ex. A; Roraback Committee Resp. at 4-6; Roraback Committee Supp. Resp. at 2 (Apr. 29, 2013).

¹⁵ See 2012 October Quarterly Report at 157, 158, 232; 2012 Pre-General Report at 41.

¹⁶ Roraback Committee Resp. at 2-3. The Roraback Committee is listed as a joint fundraising participant on the Statement of Organization filed by a joint fundraising committee called Young Guns 2012 Round 4 ("Young Guns"). (RAD sent the Roraback Committee a Request for Additional Information, dated Jan. 9, 2013, regarding its failure to list its participation in this joint fundraising committee on its Statement of Organization.) Young Guns disbursed over \$3,000 to the Roraback Committee in September 2012.

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Roraback and Obsitnik, Republican members of the Connecticut General Assembly, officials from the Connecticut Republican party, and other individuals.¹⁷ The Roraback Committee states that the event provided an opportunity for the candidates in attendance to engage in fundraising, although the Committee emphasizes that the event did not involve the joint collection and sharing of donations from event attendees.¹⁸

According to the Roraback Committee, the event was planned and promoted without its "direct knowledge" by Tusk.¹⁹ The Roraback Committee denies having any relationship or affiliation with Tusk or retaining Tusk for any purpose during the 2012 election, and states that it did not plan, develop, or market the event in association with Tusk, or make any payments to Tusk in connection with the event.²⁰ The Roraback Committee asserts that the only interaction between the campaign and Tusk were employee communications necessary "to ensure Mr. Roraback's attendance" at the Darien event and for "overall logistical ease."²¹ The Roraback Committee also denies coordinating the event with the Obsitnik Committee or participating in the development, production, printing, or distribution of materials characterizing the event as a joint event.²²

According to the Roraback Committee, any indication that the event was a joint fundraiser was the result of an "inadvertent" mistake made by event planner Tusk, which made

¹⁷ Roraback Committee Resp. at 4.

¹⁸ *Id.*

¹⁹ *Id.* at 7.

²⁰ Roraback Committee Supp. Resp. at 3.

²¹ Roraback Committee Resp. at 5; Roraback Committee Supp. Resp. at 2.

²² Roraback Committee Resp. at 5-6.

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errors while "drafting or printing the invitations."²³ The Roraback Committee suggests that the existence of two different "flyers" (Compl., Ex. A, Ex. B) supports the theory that Tusk made an error in identifying the event as a joint event for the Committees.²⁴

The Commission has determined that, because of the low dollar amounts involved, it is appropriate to dismiss the Complaint. If political committees engage in joint fundraising efforts pursuant to the provisions set forth in 11 C.F.R. § 102.17, they must either establish a separate committee or designate a participating committee as the fundraising representative.²⁵ The regulations also require that participating committees must enter into a written agreement that identifies the fundraising representative and states the formula for the allocation of fundraising proceeds, and also include a joint fundraising notice with every solicitation for contributions.²⁶ The fundraising representative must retain a copy of the agreement for a period of three years and make it available to the Commission upon request.²⁷ Furthermore, joint fundraising participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds.²⁸ Gross proceeds as well as expenses and the distribution of net proceeds from joint fundraising efforts are to be allocated according to the formula provided in the written agreement.²⁹

²³ *Id.* at 4.

²⁴ Roraback Committee Resp. at 6.

²⁵ 11 C.F.R. § 102.17(a)(1)(i).

²⁶ 11 C.F.R. § 102.17(c)(1), (c)(2)(i).

²⁷ *Id.*

²⁸ 11 C.F.R. § 102.17(c)(3)(i).

²⁹ 11 C.F.R. § 102.17(C)(6)-(7).

Here, the Roraback Committee did not establish or designate a joint fundraising committee, did not provide the required joint fundraising notice, did not enter into a shared written agreement or determine an allocation formula.³⁰ However, it appears the event at issue was both conducted with minimal expense and generated only a small amount in contributions.³¹ Furthermore, there also appears to have been no shared receipts, eliminating concerns over any possible misallocation of proceeds from the fundraiser. Therefore, even if the participating committees had reported the joint costs through a joint fundraising representative, the costs were *de minimis*.

Accordingly, the Commission exercised its prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismissed the allegation that Roraback for Congress violated 11 C.F.R. § 102.17 by failing to adhere to the Commission's regulations pertaining to joint fundraising.

³⁰ See 11 C.F.R. § 102.17(c).

³¹ The two committees each raised approximately \$11,500 from the event.