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OFFICE OF GENERAL
COUNSEL

DAVID KRIKORIAN,

Complainant,

v.

MUR No. 6494

REP. JEAN SCHMIDT, et al.,

Respondents.

RESPONSE TO AMENDMENT TO COMPLAINT

Respondents Rep. Jean Schmidt, Schmidt for Congress Committee, Joseph Braun, Phillip Greenberg and Peter Schmidt submit that the allegations against them in both the Complaint and the Amendment to the Complaint are without merit and should be dismissed.

I. TCA'S PAYMENTS FOR THE LEGAL FEES AT ISSUE WERE NOT CONTRIBUTIONS.

Complainant argues in his new filings that statement in the Schmidt for Congress Committee's (since withdrawn¹) Advisory Opinion Request that the federal court legal "proceedings directly related to her campaign or duties as a Federal officeholder" constitutes an admission that TCA's payments for the legal fees at issue were contributions. It does not. Just because a Campaign Committee is *permitted* to pay an expense under 2 USC 439a does not mean that it is *required* to do so under 2 USC 431(8)(A) and 2 USC 441b(b)(2). Not everything is either required or prohibited.

¹ Complainant also speculates about why the Advisory Opinion Request was removed from the FEC's website. In fact, Counsel for Respondents was advised by the FEC that it might be less confusing to withdraw the Advisory Opinion Request and to have the MUR matter processed first. Schmidt for Congress Committee accepted the FEC's suggestion and withdrew its Request pending the MUR proceedings. Obviously, if Schmidt for Congress Committee saw any inconsistency between its MUR defense and its now withdrawn Advisory Opinion Request, it would not have filed it to begin with.

2 USC 439a(a)(1) and (2) provide that a campaign committee may expend funds, *inter alia*:

- “(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;
- (2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office. .
”

Mr. Krikorian's defamatory statements at issue in the Ohio Elections Commission and federal court litigation were made in the course of the 2008 general election campaign and falsely accused Congresswoman Schmidt of taking bribes from the Turkish government in return for using her federal office to oppose a condemnation of Turkey as a perpetrator of genocide. Thus, the expenses of the federal court amicus briefs (which were the sole expenses at issue in the Advisory Opinion request) were arguably incurred "in connection with" Jean Schmidt's campaign or duties as a Federal officeholder, and thus were expenses that arguably *could* be paid for by a Campaign Committee under 2 USC 439a. It does not follow that such expenses *must* be paid for by a Campaign Committee under 2 USC 431(8)(A) or 2 USC 441b(b)(2).

2 USC 431(8)(A) defines "contributions" as follows:

"The term 'contribution' includes —

- (i) any gift, subscription, loan advance, or deposit of money or anything of value made by any person *for the purpose of influencing any election for Federal office*; or
- (ii) the payment by any person of compensation for the personal services of another person which are *rendered to a political committee* without charge for any purpose."
[Emphasis added.]

The legal fees were not paid "for the purpose of influencing any election for Federal office" since no one was trying to influence the results of the 2008 general election after it was

over². Nor was anyone paid for services to a political committee. Thus, TCA's payments for the legal fees at issue herein do not meet 2 USC 431(8)(A)'s definition of "contribution".

2 USC 441b(b)(2) defines "contributions" to include:

"any direct or indirect payment . . . to any candidate, campaign committee, or political party or organization, in connection with any election".

The payments at issue were not "to any candidate, campaign committee, or political party or organization". For this reason alone, they do not meet 2 USC 441b(b)(2)'s definition of "contributions".

Moreover, as previously noted, this legal representation was not "in connection with" Jean Schmidt's election any more than the other post-election litigation expenses were that the Commission has found not to be "contributions" in Advisory Opinions such as AO 2003-15, 1993-15, 1990-1, 1981-16, 1983-37, 1983-30 and 1982-35.

A great many post-election litigation expenses may be paid either by a campaign committee or by other sources without becoming a campaign contribution. Whether or not Schmidt for Congress Committee's withdrawn Advisory Opinion Request had merit, TCA's payment of the legal fees at issue in this MUR does not meet the definition of "contribution" under either 2 USC 431(8)(A) or 441b(b)(2).

II. RESPONDENTS HAD NO KNOWLEDGE OF ANY "CONTRIBUTIONS" FROM TCA.

III. RESPONDENTS JOSEPH BRAUN AND PETER SCHMIDT ARE NOT PROPER PARTIES.

Complainant's new materials do not change the need to dismiss the Complaint because:

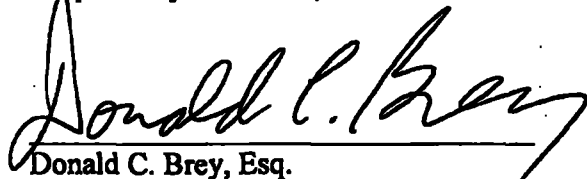
(a) Respondents had no knowledge of any contributions from TCA; and, (b) Respondents Joseph

² While Mr. Krikorian has since made himself the Harold Stassen of Ms. Schmidt's Congressional District (albeit with far less support or success than Harold Stassen had), this was not foreseeable at the time.

Braun and Peter Schmidt are not proper parties. These grounds, alone, are sufficient for dismissal.

WHEREFORE, for the above stated reasons, and for the reasons set forth in their prior response, Respondents Rep. Jean Schmidt, Schmidt for Congress Committee, Joseph Braun, Phillip Greenberg and Peter Schmidt respectfully submit that the Complaint against them should be dismissed.

Respectfully submitted,



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