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5 FIRST GENERAL COUNSEL'S REPORT

6 MUR: 6140

7 DATE COMPLAINT FILED: December 2, 2008

8 LAST RESPONSE RECEIVED: January 28, 2009

9 DATE ACTIVATED: March 24, 2009

10 EXPIRATION OF STATUTE OF LIMITATIONS:
11 June 9, 2012 / September 2, 2013

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15 COMPLAINANT:

Citizens for Responsibility and Ethics in
Washington

16
17
18 RESPONDENTS:

19 Rep. Robert E. Andrews
20 Andrews for Congress Committee, and Maureen
21 Doherty, in her official capacity as treasurer
22 Rep. Loretta Sanchez
23 Committee to Re-Elect Loretta Sanchez, and Kinde
24 Durkee, in her official capacity as treasurer
25 Bill Dew
26 Bill Dew for Congress, and Mike McCauley, in his
27 official capacity as treasurer
28 William James Breazeale
29 Breazeale for Congress, and Kenneth Ray Pervine,
30 in his official capacity as treasurer
31 Andrew MacPherson
32 Barr 2008 Presidential Committee, and David
33 Chastain, in his official capacity as treasurer

34 RELEVANT STATUTES
35 AND REGULATIONS:

2 U.S.C. § 439a(b)
11 C.F.R. § 113.1(g)

36
37
38 INTERNAL REPORTS CHECKED:

Disclosure Reports

39
40 FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

The complaint alleges that five different respondent groups, all of which include authorized campaign committees, improperly used campaign funds for candidate or campaign staff clothing purchases in violation of the personal use prohibition in 2 U.S.C. § 439a(b)(2)(B) and 11 C.F.R. § 113.1(g). Section 439a(b)(1) states, "A contribution or donation described in sub-section (a) shall not be converted by any person to personal use." Sub-section (a) refers to "[a] contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office" The statute further states in sub-section (b)(2) that "a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including . . . (B) a clothing purchase" See also 11 C.F.R. § 113.1(g)(1)(i)(c) (use of campaign funds for the purchase of clothing, other than items of *de minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign slogans, constitutes personal use).

Each of the respondent groups filed responses; four of the responses acknowledged the alleged clothing purchases with campaign funds, but stated that the funds, which ranged from \$145 to \$1,089, had been repaid to the committees and the committees' reports had been amended or updated to show the reimbursements. Given the relatively low amounts in violation and the remedial efforts already undertaken, we recommend that the Commission exercise its prosecutorial discretion and dismiss the complaint as to Rep. Robert E. Andrews, the Andrews for Congress Committee, and Maureen Doherty, in her official capacity as treasurer ("Andrews

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1 Committee”);¹ Rep. Loretta Sanchez, the Committee to Re-Elect Loretta Sanchez, and Kinde
2 Durkee, in her official capacity as treasurer (“Sanchez Committee”); Bill Dew, Bill Dew for
3 Congress, and Mike McCauley, in his official capacity as treasurer (“Dew Committee”); and
4 William James Breazeale, Breazeale for Congress, and Kenneth Ray Pervine, in his official
5 capacity as treasurer (“Breazeale Committee”) (collectively “Group 1”). *See Heckler v. Chaney*,
6 470 U.S. 821 (1985).

7 The final response stated, and supported with sworn affidavits, that the committee had
8 mistakenly disclosed a \$500 disbursement as a “clothing allowance” when in fact it represented
9 additional compensation for a campaign staffer. Based on the response, we recommend that the
10 Commission find no reason to believe that Andrew MacPherson, the Barr 2008 Presidential
11 Committee, and David Chastain, in his official capacity as treasurer (“Barr Committee”)
12 (collectively, “Group 2”), violated 2 U.S.C. § 439a(b)(2)(B) and 11 C.F.R. § 113.1(g).

13 **II. FACTUAL SUMMARIES**

14 **A. Group 1**

15 **1. Andrews Committee**

16 The complaint alleges that on June 11, 2007, the Andrews Committee spent \$952.04 for
17 clothing items at Benjamin Peters, Bon-Ton, and Target for Rep. Andrews’s personal use, as
18 reflected in its 2007 Amended July Quarterly Report filed on April 12, 2008.

19 In its response, the Andrews Committee states that Rep. Andrews purchased the clothing
20 because when he travelled on the morning of June 9, 2007, to give a keynote speech that evening
21 at Cornell University, the airline lost his luggage. The response further states that Rep.

¹ The Andrews Committee was incorrectly captioned and referred to in the complaint as Rob Andrews U. S. House Committee.

1 Andrews paid for the clothes using a personal credit card "primarily used for campaign-related
2 expenditures and trips, but Mr. Andrews is personally and solely responsible for all expenditures
3 on the card." Response at 1. The response attaches a copy of the check drawn on the Andrews
4 Committee's bank account that was used to pay for the credit card charges, including the clothing
5 purchases. The response states, and attached documents show, that on July 20, 2007, the airline
6 reimbursed Rep. Andrews, and he endorsed the check over to the Andrews Committee, which
7 deposited it into the Committee's account. The Andrews Committee treasurer, who filed the
8 response, states she contacted RAD by telephone about reporting this series of events and
9 thereafter filed a Form 99 (Miscellaneous Report) on October 12, 2007. The Andrews
10 Committee also reported the candidate's repayment on its 2007 October Quarterly Report filed
11 the same day.

12 2. Sanchez Committee

13 The complaint alleges that on August 30, 2007, the Sanchez Committee spent \$145.12 for
14 clothing items at Lua Dao for Rep. Sanchez's personal use, and on November 20, 2007, the
15 Sanchez Committee reimbursed Rep. Sanchez \$188.97 for "meeting clothing," as reflected in its
16 2007 Year End Report filed on January 11, 2008.

17 The Sanchez Committee responded that only \$145.12 was for clothing, and was a part of
18 the \$188.97 reimbursement listed in the Report; the \$145.12 appears on a separate memo entry
19 identifying the portion of the reimbursement used for clothing (another memo item directly
20 following the Lua Dao entry appears to be for expenses constituting most of the remainder of the
21 total reimbursement). The Sanchez Committee states that the clothing purchases were for two
22 traditional Vietnamese dresses used for Rep. Sanchez's official appearances as a Member of
23 Congress and for campaign events. The Sanchez Committee's response further states that Rep.

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1 Sanchez has one of the largest constituencies of Vietnamese-Americans in the country, and that it
2 would have been "inappropriate," "disrespectful[,] and culturally insensitive" to attend these
3 events in non-traditional/non-Vietnamese dress. Response at 2. The Sanchez Committee
4 contends that as Rep. Sanchez would not have bought the dresses to attend the events irrespective
5 of her duties as a Member of Congress and a candidate for federal office, the reimbursement was
6 legal. Nevertheless, Rep. Sanchez returned the amount to her committee in an effort to "avoid
7 incurring any further costs and expenses" over such a "small" amount. *Id.* at 3.

8 3. Dew Committee

9 The complaint alleges that on August 25 and September 2, 2008, the Dew Committee
10 spent a total of \$1,089.16 for clothing items at The Men's Wearhouse for the candidate's
11 personal use, as reflected in its 2008 October Quarterly Report filed on October 15, 2008.

12 In its response, the Dew Committee states that after reviewing the issue with the
13 candidate, although the "clothing purchase was a necessary campaign expenditure and for a
14 specific campaign event," the expenditure violated the Act. It further states that Mr. Dew
15 refunded the amount to the campaign and that it would be reflected in a future filing. The Dew
16 Committee's 2009 April Quarterly Report discloses the refund as made on January 20, 2009.

17 4. Breazeale Committee

18 The complaint alleges that on October 4, 2007, the Breazeale Committee spent \$1,000 for
19 "clothes for campaign events" at Fisher's Men's Store for the candidate's personal use, as
20 reflected in its 2007 Amended Year End Report filed on April 25, 2008.

21 In his response on behalf of his committee, Mr. Breazeale states that because he is an
22 airline pilot and U.S. Army Reserve officer, he did not have "the type of clothing required for a
23 Congressional campaign." He further states, "In my judgment, I was authorized to buy clothes

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1 for my campaign using campaign funds because it could be argued the clothes would not be for
2 my personal use except as required by the campaign." Response at 1. Nevertheless, after
3 conferring with his treasurer and having the treasurer call the Commission for advice, Mr.
4 Breazeale reimbursed his committee months before the complaint was filed. He attached to the
5 response a copy of his personal check used for this purpose. According to the response, this
6 "was a simple and unintentional mistake" that was "self-disclosed to the FEC [through a phone
7 call requesting advice] when discovered in September 2007." The Breazeale Committee's 2007
8 Amended October Quarterly Report, filed on March 26, 2009, disclosed the candidate's
9 reimbursement.

10 **B. Group 2**

11 The complaint alleges that on August 12, 2008, the Barr Committee spent \$500 for a
12 "clothing allowance" for the personal use of Andrew MacPherson, a campaign staffer, as
13 reflected in the committee's 2008 September Monthly Report filed on September 19, 2008.

14 In its response, the Barr Committee states the \$500 disbursement was mistakenly called a
15 "clothing allowance" when in fact it was additional compensation for Mr. MacPherson and
16 should have been described as such. The Barr Committee's response included supporting sworn
17 affidavits from both Mr. MacPherson and the committee's treasurer. The Barr Committee further
18 states that it will amend its 2008 September Monthly Report to reflect the correct purpose of the
19 distribution, but has not done so to date.

20 **III. LEGAL ANALYSIS**

21 In each of the scenarios described above regarding Group 1, the respondent candidates
22 used campaign funds from their authorized committees for clothing purchases, which were of
23 more than *de minimis* value, in violation of the prohibition on personal use of campaign funds.

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1 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g). Moreover, the Explanation and Justification for the
2 regulation states that all but a *de minimis* amount spent on clothing is *per se* personal use, and
3 specifically supersedes Advisory Opinion 1985-22 (Clay), which could be read to allow
4 "specialized attire" to be worn at both social and politically-related functions. Personal Use of
5 Campaign Funds, 60 Fed. Reg. 7861, 7864-5 (Feb. 9, 1995). Therefore, the responses from the
6 Sanchez and Breazeale Committees indicating that the clothing purchases would exist
7 "irrespective" of the candidates' election campaigns or Sanchez's duties as a holder of Federal
8 office, do not provide a valid defense under the circumstances presented. See 2 U.S.C. § 439a(b)
9 and 11 C.F.R. § 113.1(g).²

10 Despite the violations, the respondent candidates all reimbursed their respective
11 committees either before the complaint was filed or upon learning of the alleged violations.
12 Moreover, the alleged amounts in violation ranged from \$145 to \$1,089, which, when coupled
13 with a pre-probable cause discount, would render the civil penalties so low that it would not
14 merit the further use of Commission resources to pursue this matter. See Statement of Policy
15 Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed.
16 Reg. 12545, 12545-6 (Mar. 16, 2007). Accordingly, we recommend that the Commission
17 exercise its prosecutorial discretion and dismiss the complaint as to Rep. Robert E. Andrews,
18 Andrews for Congress Committee and Maureen Doherty, in her official capacity as treasurer,
19 Rep. Loretta Sanchez, Committee to Re-Elect Loretta Sanchez, and Kinde Durkee, in her official
20 capacity as treasurer; Bill Dew, Bill Dew for Congress, and Mike McCauley, in his official

² The Sanchez Committee maintains that under 11 C.F.R. § 113.1(g)(1)(i)(C), an "irrebuttable presumption" seems to be established that clothing can never meet the "irrespective test," and therefore the regulation "exceeds the scope of the statute." However, this argument is incorrect as the regulation provides a *de minimis* exception for items such as campaign t-shirts and caps with campaign slogans.

1 capacity as treasurer; William James Breazeale, and Breazeale for Congress, and Kenneth Ray
2 Pervine, in his official capacity as treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985). We
3 further recommend the Commission include appropriate cautionary notifications to the
4 respondents.

5 With respect to Group 2, the Barr Committee's response and supporting affidavits state
6 that it mistakenly disclosed the purpose of the disbursement as a "clothing allowance," rather
7 than compensation, and that it will correct the error. Therefore, we recommend that the
8 Commission find no reason to believe that Andrew MacPherson, and Barr 2008 Presidential
9 Committee, and David Chastain, in his official capacity as treasurer, violated 2 U.S.C.
10 § 439a(b)(2)(B) and 11 C.F.R. § 113.1(g). We plan to include a reminder in the Barr
11 Committee's closing letter to amend its 2008 September Monthly Report to correct the purpose
12 of the disbursement in issue.

13 **IV. RECOMMENDATIONS**

- 14 1. Dismiss the complaint as to Rep. Robert E. Andrews and the Andrews for
15 Congress Committee, and Maureen Doherty, in her official capacity as treasurer,
16 and send a cautionary notification.
17
- 18 2. Dismiss the complaint as to Rep. Loretta Sanchez and the Committee to Re-Elect
19 Loretta Sanchez, and Kinde Durkee, in her official capacity as treasurer, and send
20 a cautionary notification.
21
- 22 3. Dismiss the complaint as to Bill Dew and Bill Dew for Congress, and Mike
23 McCauley, in his official capacity as treasurer, and send a cautionary notification.
24
- 25 4. Dismiss the complaint as to William James Breazeale and Breazeale for Congress,
26 and Kenneth Ray Pervine, in his official capacity as treasurer, and send a
27 cautionary notification.
28
- 29 5. Find no reason to believe that Andrew MacPherson, Barr 2008 Presidential
30 Committee, and David Chastain, in his official capacity as treasurer, violated
31 2 U.S.C. § 439a(b)(2)(B) and 11 C.F.R. § 113.1(g).
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6. Approve the attached Factual and Legal Analyses.
7. Approve the appropriate letters.
8. Close the file as to all respondents.

Thomasenia P. Duncan
General Counsel

6/19/09
Date

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