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SENSITIVE **FEDERAL ELECTION COMMISSION**
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6312
DATE COMPLAINT FILED: June 15, 2010
DATE OF NOTIFICATION: June 22, 2010
LAST RESPONSE RECEIVED: August 10, 2010
DATE ACTIVATED: August 31, 2010
EXPIRATION OF SOL: Earliest: April 15, 2015
Latest: May 27, 2015

COMPLAINANT: Citizens for Responsibility and Ethics in Washington
RESPONDENT: Committee to Elect Brian "Ryan B" Doyle to Congress, and Darryl Nettles, in his official capacity as treasurer¹
RELEVANT STATUTES: 2 U.S.C. § 431(2)(A)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 434(a)(2)(A)
INTERNAL REPORTS CHECKED: Disclosure Reports
FEDERAL AGENCIES CHECKED: none

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I. INTRODUCTION

The complaint alleges that the Committee to Elect Brian "Ryan B" Doyle to Congress and Darryl Nettles, in his official capacity as treasurer ("the Committee"), the authorized committee for Brian Lamont Doyle's primary campaign for South Carolina's Third Congressional seat, knowingly and willfully violated the Federal Election Campaign Act of

¹ Darryl Nettles, who is listed on the Committee's Statement of Organization as its treasurer, responded that he verbally agreed to work on Doyle's campaign, but never performed any treasurer duties. The Committee filed no disclosure reports during Mr. Doyle's campaign, but the Committee has not amended its Statement of Organization to remove Mr. Nettles' name. Patricia Smith, designated on the most recent Form 3 as Deputy Treasurer, filed an Amended Termination Report on behalf of the Committee following the Committee's receipt of the complaint in this matter.

1 1971, as amended ("the Act"), when it failed to file its April Quarterly Report, due on April 15,
2 2010, and its Pre-Primary Election Report, due on May 27, 2010.² 2 U.S.C. § 434(a)(2)(A)(i)
3 and (iii).

4 Brian Doyle submitted the Committee's Response. The Response requests that the
5 Commission dismiss the complaint because the candidate completely self-funded his campaign
6 and accepted no contributions from others, and therefore did not meet the \$5,000 contribution
7 threshold that would trigger the Act's reporting requirements. See Response at ¶¶ 6-8.³
8 However, this response reflects a mistaken understanding of the law as the loaning and spending
9 of a candidate's personal funds constitute contributions and expenditures. 2 U.S.C.
10 §§ 431(8)(A)(i) and (9)(A)(i).

11 Mr. Doyle declared himself a candidate and contributed and spent over \$5,000 of his
12 personal funds in connection with his campaign by February 2010. Thus, he became a candidate
13 at that time and his Committee was required to file an April Quarterly Report and a Pre-Primary
14 Election Report. See 2 U.S.C. §§ 431(2)(A), 434(a)(2)(A)(i) and (iii). Due to the Committee's
15 apparent confusion over the law, and the fact that it has now filed a Report that discloses the
16 campaign's total contributions and expenditures, we recommend that the Commission exercise

² Although CREW also alleged that Mr. Doyle failed to file these disclosure reports, the Act does not place the filing responsibilities on the candidate, so CELA did not notify Doyle as a respondent, and we recommend no findings as to him. Mr. Doyle responded to the Complaint on behalf of both himself and the Committee.

³ Mr. Doyle's Response also complained that the complaint had been redacted. However, CREW's complaint combined reporting allegations against several unrelated committees, and CELA, in sending out the complaints, redacted those portions not germane to the recipient committees. The Committee here received notification of all the allegations concerning it. Further, Mr. Doyle's Response included several discovery requests concerning CREW and a reference to the Freedom of Information Act (FOIA). GLA's Administrative Law Team addressed the portion of the complaint that could be regarded as a FOIA request, advising Mr. Doyle that FOIA only entitles him to records in the Commission's possession, and thus would not entitle him to any records in the complainant's possession; that he could find records of closed MURs generated by CREW's complaints on the Commission's website; and that records of open MURs in complaints filed by CREW were exempt from disclosure under FOIA.

its prosecutorial discretion to dismiss this matter and caution the Committee regarding the obligation to file required disclosure reports. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Brian Lamont Doyle sought the Democratic Party's nomination for the South Carolina Third Congressional District seat in the June 8, 2010, primary election. He submitted a Statement of Candidacy dated December 1, 2009 to the Commission, received on December 16, 2009, designating the Committee as his principal campaign committee. In his accompanying cover letter, Mr. Doyle stated that "[m]y State Party requires filing of form in order to be place [sic] on state web-site or affiliation with the party. I am hereby filing my form now as I have not met the federal requirement of \$5,000 dollars yet." Mr. Doyle also attached to his Statement of Candidacy his Declaration of Candidacy for the Democratic Party of South Carolina dated December 2, 2009, giving formal notice to the South Carolina Democratic Party of his intention to run for the seat in the Third Congressional District in the 2010 election. Thereafter, the Committee filed its Statement of Organization dated January 4, 2010, received on January 11, 2010, listing Darryl Nettles as the Committee's treasurer. *See footnote 1.*

Mr. Doyle lost the Democratic primary election on July 8, 2010, garnering 35% of the vote. The Committee did not file any disclosure reports with the Commission during the course of the campaign, and only did so after the Commission mailed notice of the Complaint in this matter on June 22, 2010. On June 30, 2010, the Committee filed what appears to be a combined 2010 April Quarterly/ 12-Day Pre-Primary Election/ Termination Report ("Termination

Report"). The Termination Report disclosed an undated \$25,000 loan from the candidate, a single un-itemized \$100.00 contribution, and un-itemized expenditures totalling \$20,899.00, including \$7,500 in disbursements for "Media Services (Radio)" made April 24, 2010 through May 28, 2010, and \$8,199 in disbursements for "Mailing Material, Sign, etc." made April 12, 2010 through May 20, 2010. The Committee also reported outstanding debt of \$29,150.00, including \$21,400 owed to the Eleazer Carter Law Firm for legal fees stemming from a lawsuit Doyle brought against the South Carolina Democratic Party and \$7,750.00 owed to MTG Services for "consultant services legal assistance." See FEC Form 3, June 30, 2010.

The Committee then filed its response to the complaint in this matter. In the response, the Committee stated:

Respondents show that they have rightfully relied on the information provided to them by this honorable Commission and its representatives. Specifically Respondents were informed that no reporting would be necessary unless and until an amount in excess of five-thousand dollars (\$5,000.00 USA) had been donated/collected. For the very purpose of avoiding situations such as this no campaign contributions were accepted by Respondents. The campaign was completely self-funded by Respondent Doyle. Of [sic] information and belief Respondents have faithfully and fully complied with all the requirements placed upon them.

Committee Response at ¶¶ 6-8.

On July 13, 2010, RAD sent the Committee a Request for Additional Information ("RFAP"), informing the Committee that it had not met the requirements for termination and noting several deficiencies in the Termination Report. In addition, on August 3, 2010, RAD sent the Committee a failure to file notice regarding the Committee's failure to file its 2010 July Quarterly Report.

On August 17, 2010, the Commission received the Committee's Amended Termination Report dated August 13, 2010, correcting and clarifying certain deficiencies identified in the RFAI, and including itemized contributions and expenditures from December 31, 2009 through June 8, 2010, the date of the primary. Based on the itemized expenditures, which began on December 31, 2009, it appears that the Committee's spending exceeded \$5,000 on February 24, 2010, thus triggering its reporting obligations under the Act. The Amended Termination Report also itemized the previously undated candidate loan(s) of \$25,000 by disclosing a \$10,000 candidate loan made on May 10, 2010, and a \$15,000 candidate loan made on May 25, 2010, and identified the single previously un-itemized \$100 contributor as the candidate's father. In letters dated August 10, 2010, attached to the Amended Termination Report, Doyle states that he forgives the \$25,000 in loans he made to his campaign and removes from the Committee's Schedule D the debt and obligations reported on the June 30, 2010 Termination Report to the Eleazer Carter Law Firm and MTG Services; the first he states is now a personal debt pending a lawsuit, and the second has been repaid. The Amended Termination Report discloses a disbursement to MTG Media of \$7,543.00 on April 18, 2010, and a May 20, 2010 disbursement to the Eleazer Carter Law Firm of \$2,500.00. Lastly, on November 4, 2010, RAD sent the Committee a failure to file notice regarding the Committee's failure to file its 2010 October Quarterly Report.

B. Legal Analysis

An individual triggers registration and reporting responsibilities under the Act when the individual and/or persons he or she has authorized to conduct campaign activity receive over \$5,000 in contributions or make over \$5,000 in expenditures. 2 U.S.C. § 431(2)(A). The Act defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything

1 of value made by any person for the purpose of influencing any election for Federal office.” *See*
2 2 U.S.C. § 431(8)(A)(i). An expenditure is “any purchase, payment, distribution, loan, advance,
3 deposit, or gift of money or anything of value, made by any person for the purpose of influencing
4 any election for Federal office.” 2 U.S.C. § 431(9)(A)(i). The Campaign Guide for
5 Congressional Candidates and Committees, available on the Commission’s website, states that
6 “[w]hen candidates use their personal funds for campaign purposes, they are making
7 contributions to their campaigns. Unlike other contributions, these candidate contributions are
8 not subject to any limits. [Citation omitted.] *They must, however, be reported.*” *See* Campaign
9 Guide for Congressional Candidates and Committees at p. 26, Chapter 4, Section 12,
10 “Candidate’s Personal Funds,” available at <http://www.fec.gov/pdf/candgui.pdf> (emphasis
11 added).

12 The Amended Termination Report the Committee filed indicates that the Committee
13 made expenditures exceeding \$5,000 as of February 24, 2010, thus triggering the reporting
14 requirements of the Act. In all, the Committee disclosed \$25,100 in contributions and loans to
15 the Committee, \$25,096 in expenditures, and \$18,900 in remaining debts, which the candidate
16 has stated he is assuming as a personal debt, rather than it remaining a Committee debt.

17 In an election year, a principal campaign committee must file a pre-election report 12
18 days before any election, including a primary election, and must file quarterly reports, to be filed
19 no later than 15 days after the last day of each calendar quarter. *See* 2 U.S.C. § 434(2)(A)(i) and
20

1 (iii). The Committee failed to timely file its 2010 April Quarterly, July Quarterly, and October
2 Quarterly Reports, and its election-sensitive 2010 Pre-Primary Report, thereby violating the Act.⁵

3 Failure to timely report is a serious violation of the Act. However, we do not recommend
4 that the Commission pursue an enforcement action under the circumstances presented by this
5 matter. The response indicates that the Committee still does not understand that a candidate's
6 personal funds loaned to his or her principal campaign committee constitute contributions, and
7 that expenditures, even from the candidate's own funds loaned to the committee, can trigger the
8 \$5,000 expenditures threshold. There is no information indicating that the Committee's failure
9 to file its reports timely was knowing and willful. It appears that the violations arose from the
10 sincere but mistaken belief that self-funded campaigns do not have to file disclosure reports with
11 the Commission, and it appears that the candidate and the Committee avoided soliciting
12 contributions from others in order to avoid triggering reporting obligations, in adherence to that
13 mistaken belief.

14 The Factual and Legal Analysis and cautionary letter, with a courtesy copy sent to the
15 candidate, should educate the Committee, and remove any confusion should Mr. Doyle choose to
16 run again for federal office.⁶ Moreover, the Committee, albeit too late to inform the voters in
17 South Carolina's Democratic primary election, has now placed its itemized contributions and

⁵ Mr. Doyle, who submitted the Committee's response, indicates, without further explanation, that his understanding that a self-funding campaign has no reporting requirements came from information provided to him by the Commission. See Response at ¶¶ 6-7. However, RAD's phone log of conversations with Doyle does not reflect that he asked for or received information from RAD regarding reporting requirements. Rather, RAD's phone log lists two phone calls in January 2010 with Doyle in which the only topic was whether the Commission had received Doyle's Statement of Candidacy.

⁶ Mr. Doyle ran for the same federal office in the 2008 election cycle as a write-in candidate. He filed only a Statement of Candidacy with the Commission. There is no available information concerning whether Mr. Doyle's 2008 campaign received or spent in excess of \$5,000.

1 expenditures for Mr. Doyle's campaign on the public record. Accordingly, we recommend that
2 the Commission exercise its prosecutorial discretion and dismiss the complaint and send a
3 cautionary letter. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Once this matter has been
4 closed, RAD will process the Committee's termination request in the usual course.

5 **III. RECOMMENDATIONS**

- 6 1. Dismiss the complaint and send a cautionary letter.
- 7 2. Approve the attached Legal and Factual Analysis.
- 8 3. Approve the appropriate letter.
- 9 4. Close the file as to all Respondents.

10 November 19, 2010
11 Date

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