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Federal Election Commission
Washington, DC 20463

SENSITIVE

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

BY: Lynn M. Fraser
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: November 3, 2004

On October 22, 2004, the ADR Office received from OGC/CELA the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 202/RR 04L-12, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 202/RR 04L-12: The Reports Analysis Division ("RAD") referred the Friends of Mark Henry and Carol Claypool, Treasurer (collectively "Respondents") because they filed an amended 2004 April Quarterly Report which disclosed additional receipts and disbursements without explanation. The amended 2004 April Quarterly Report, filed July 15, 2004, disclosed additional receipts totaling \$12,639.10 (63% increase) for a \$6,000.00 loan from the candidate and a refund from a vendor as an offset to operating expenditures. The additional disbursements of \$95,401.46 (100% increase) reflected all disbursements made by the Committee for the reporting period.

Respondents did not file an answer by the deadline to the RFAI sent by RAD due to a change of address. In September 2004 an e-text response was filed, followed by a second amended 2004 April Quarterly Report, explaining that the committee was given incorrect information on the expenditures made during the report period.

Attached for the Commission's review is the *ADR Case Analysis Report* on ADR 202, along with copies of the EPS Rating and ADR Rating reports. The *ADR Case*

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Analysis Report includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is assigned to ADR. In addition, the *ADR Case Analysis Report* has been reviewed by OGC, which concurs in the description of the case.

If the Commission concurs in the recommendation to assign the matter to ADRO, the above case description will be provided to Respondents as part of ADRO's notification package sent to Respondents.

ADR Director's Recommendation: We recommend that ADR 202/RR 04L-12 be assigned to the ADR Office for processing.

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ADR CASE ANALYSIS REPORT

ADR Case: 202

Respondents:

Friends of Mark Henry
Carol Claypool, Treasurer

RAD Referral: 04L-12

Respondents' Rep.: Carol Claypool

Date Forwarded to ADRO: 10/22/2004

Committee Type: Authorized

Date Reviewed by ADRO: 10/26/2004

Committee Name: Friends of Mark Henry

District & State: TX 2nd C.D.

Election Cycle: 2004

Summary of Referral: The Reports Analysis Division ("RAD") referred the Friends of Mark Henry and Carol Claypool, Treasurer (collectively "Respondents" or "Committee") because an amended 2004 April Quarterly Report disclosed additional receipts and disbursements without explanation. The amended 2004 April Quarterly Report, filed July 15, 2004, disclosed additional receipts totaling \$12,639.10 (63% increase) for a \$6,000.00 loan from the candidate and a refund from a vendor as an offset to operating expenditures. The additional disbursements of \$95,401.46 (100% increase) reflected all disbursements made by the Committee for the reporting period. Respondents did not file an answer by the deadline to the RFAI sent by RAD due to a change of address.

Alleged Violations: 2 U.S.C. §§ 434(b)(2)(G), 434(b)(2)(I), 434(b)(4), 11 C.F.R. §§ 104.3(a)(3)(vii)(B), 104.3(a)(3)(vii)(C), 104.3(a)(3)(ix), 104.3(b)

Respondents' Reply to RAD: Respondents contend the errors were due to staff inexperience and incorrect data. A second amended 2004 April Quarterly Report was filed on October 13, 2004. Respondents also stated that after the candidate lost the Primary election there was no paid staff with experience to assist in the process of filing the reports and closing down the Committee while the Treasurer was out on maternity leave.

Analysis: The statute and implementing regulations are clear that a candidate's authorized committee must report all receipts and disbursements for both the reporting period and the election cycle. The statute and regulations extensively categorize the receipts and disbursements to eliminate confusion. The committee brochures (available at the Commission or on-line at the FEC website) also go over the disclosure of receipts and

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disbursements as required. Respondents stated they had inexperienced individuals gathering data and providing information for the reports. While these facts may be true they do not negate the violations.

Issues:

- Reporting receipts and disbursements 2 U.S.C. §§ 434(b)(2)(G), 434(b)(2)(I), 434(b)(4), 11 C.F.R. §§ 104.3(a)(3)(vii)(B), 104.3(a)(3)(vii)(C), 104.3(a)(3)(ix), 104.3(b)

Related FEC Experience/Guidance: RAD referred the matter based on the fact that Respondents filed an amended 2004 April Quarterly Report in which they disclosed a 100% increase in disbursements over the \$0 disbursements originally reported by the Committee. In addition, Respondents reported a 63% increase in receipts. There have been a multitude of MURs dealing with these issues, with a wide range of conditions, to provide guidance on the terms of settlement.

ADR Director's Recommendation: Assign to ADRO

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