



Federal Election Commission  
Washington, DC 20463

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

November 17, 2006

Timothy O'Bayley  
2250 N. Leonard Road  
Palm Springs, CA 92262

Re: ADR 348 (MUR 5756)

Dear Mr. O'Bayley:

On May 30, 2006 the Federal Election Commission ("FEC" or "Commission") received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Respondents, Marty Schwimmer Congressional Campaign and Marty Schwimmer, Treasurer. In its memorandum to the Commission, dated October 10, 2006, this office stated:

**Summary:** Complainant, Timothy O'Bayley, alleges that the Marty Schwimmer Congressional Campaign and Marty Schwimmer, Treasurer, ("Respondents" or the "Committee") failed to file a Pre-Election Report, and also distributed public communications without appropriate disclaimers and without the appropriate inquiries to contributors. Complainant alleges that Respondents failed to file a timely 2006 Pre-Primary Report. The complaint goes on to state the Primary election was scheduled for June 6, 2006, and thus, the first report should have been filed by May 25, 2006. The Complainant also alleges that Respondents may be utilizing unreported personal funds from the Candidate. The complaint goes on to allege that campaign communications distributed by Respondents do not contain a proper disclaimer, and that the Committee, when soliciting contributions on a website, did not request required information from contributors.

Respondents contend that they did in fact file a timely 2006 Pre-Primary Report. The report was filed on May 24, 2006. As to the Committee's website and newspaper advertisement, Respondents argue that the allegations are too vague to respond to.

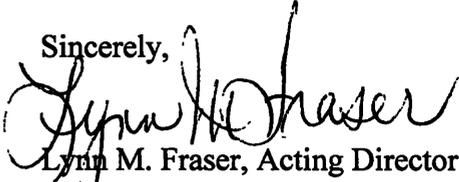
Accordingly, the Commission closed its file in this matter on November 2, 2006.

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The FEC is obligated by federal regulations to make a finding to terminate its proceedings public, as well as the basis therefore. 11 C.F.R. § 111.20(b). In addition, the Commission will also place on the record copies of the complaint, correspondence exchanged between Respondents and the Commission, and reports prepared for the Commission by this office to assist in its consideration of this matter. Accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,



Lynn M. Fraser, Acting Director  
Alternative Dispute Resolution Office

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