

# KAUFMAN DOWNING LLP

June 19, 2006

Direct (213) 452-6550

**VIA FACSIMILE & FEDERAL EXPRESS**

Lawrence H. Norton, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**MUR #** 5763

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2006 JUN 20 P 4: 01

**Re: Complaint Against Martin Schwimmer and  
The Marty Schwimmer Congressional Campaign, Respondents  
Treasurer: Martin Schwimmer**

Dear Mr Norton:

We write on behalf of our client, David Roth, Democratic candidate for the 45<sup>th</sup> Congressional District, to formally lodge this complaint pursuant to 2 U.S.C. § 437g(a)(1) against Martin Larry Schwimmer, also a Democratic candidate for the 45<sup>th</sup> Congressional District, and his authorized committee, the Marty Schwimmer Congressional Campaign (ID No. C00423566), for their failure to comply with the filing and disclosure requirements under the Federal Election Campaign Act. With less than one week before the June 6, 2006 primary election, Mr. Schwimmer failed to disclose *any* campaign contributions or expenditures to the Federal Election Commission despite distributing numerous mail pieces and publishing newspaper advertisements that are attributed to his campaign. Mr. Schwimmer's inexcusable conduct, at this critical stage in the election cycle, deprived the public, the press, and other candidates of crucial information.

We recently received a copy of the FEC complaint filed against Mr. Schwimmer by Timothy O'Bayley (see attached) that describes a number of serious campaign finance reporting violations by Mr. Schwimmer and his campaign committee. Mr. O'Bayley's complaint identified two large expenditures during the week of May 15, 2006 – a large *four-full page* newspaper advertisement published in the *Press Enterprise* and a widely distributed mailer – expenditures were not reported, as required by law. We have reviewed the complaint and its accompanying exhibits, and based on information and belief, we believe these allegations to be true and by reference incorporate them into this complaint.

Notwithstanding the reporting violations identified in Mr. O'Bayley's complaint, Mr. Schwimmer continued to flaunt FEC reporting requirements by making additional large unreported expenditures. The May 31, 2006 edition of the *Desert Sun* ("Mystery money fuels bid for votes") (see attached), revealed that Mr. Schwimmer was in the process of sending his *third* mailer in three weeks. The *Desert Sun* reported that this latest mailer would reach 90,000 voters. Despite these massive expenditures which, at a minimum, include three mailers, a four page newspaper advertisement, and a website, Mr. Schwimmer steadfastly refused to comply with federal law

Our estimates indicate that these expenditures, individually or together, exceed the threshold limits that trigger electronic filing requirements. We are informed and believe that Mr. Schwimmer's latest mailing to 90,000 voters would alone cost in excess of \$50,000.00, the threshold for filing all reports and statements electronically. See 11 C.F.R. § 104.18(a)(2). The public is left without recourse to determine the sources of Mr. Schwimmer's support, or whether he engaged in prohibited coordinated communications or receiving prohibited contributions. Mr. Schwimmer has not filed any electronic reports with the FEC

Additionally, during the last weeks of an election campaign cycle, compliance with reporting requirements is even more critical. Here too, Mr. Schwimmer apparently ignored reporting requirements and has failed to file any 48-hour reports for last-minute contributions of \$1,000 or more received since May 18, 2006. See 11 C.F.R. § 104.5(f).

Mr. Schwimmer's callous disregard for federal campaign finance laws is evidenced by statements made to the press in response to issues raised about his lack of disclosure. The *Desert Sun* quotes him as stating the following: "I'm not comfortable releasing individual contributors' names until the FEC approves my report and puts them on line." The article also quotes Schwimmer as stating. "Roth is being petty. I can't imagine what his motivation is . . . ." Contrary to Mr. Schwimmer's dismissive assertions, timely and accurate compliance with campaign finance requirements is not petty – it is the law. Mr. Roth is motivated solely to ensure that *everyone* is on a level playing field and that no one – including Mr. Schwimmer – ignores rules that were enacted to protect the integrity of the electoral process.

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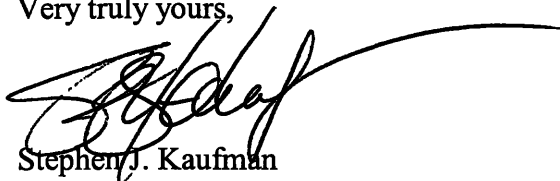
Lawrence H. Norton, Esq.

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In sum, Mr. Schwimmer apparently 1) failed to file pre-primary reports; 2) failed to file reports electronically; and 3) failed to file 48-hour notices. We urge the Federal Election Commission to take immediate action to address these serious violations.

Very truly yours,



Stephen J. Kaufman

SJK:jd

Enclosures

Complainant:

Stephen J. Kaufman

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Los Angeles, CA 90017

(213) 452-6565

Respondents:

Martin Larry Schwimmer

Marty Schwimmer Congressional Campaign

54810 Avenida Juarez

La Quinta, CA 92253

[NOTARY PUBLIC ~~ACKNOWLEDGMENT~~]

SEE ATTACHED JURAT

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**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

State of California

County of LOS ANGELES

} ss.

☒ See Attached Document (Notary to cross out lines 1-6 below)

☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 \_\_\_\_\_  
2 \_\_\_\_\_  
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Signature of Document Signer No 1 \_\_\_\_\_ Signature of Document Signer No 2 (if any) \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me on this

19TH day of JUNE, 2006, by  
Date Month Year

(1) STEPHEN JAY KAUFMAN,  
Name of Signer

☐ Personally known to me

☒ Proved to me on the basis of satisfactory evidence  
to be the person who appeared before me ( ) (,)

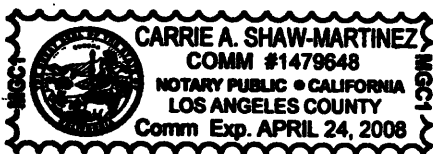
~~and~~

(2) \_\_\_\_\_,  
Name of Signer

☐ Personally known to me

☐ Proved to me on the basis of satisfactory evidence  
to be the person who appeared before me

Carrie A. Shaw-Martinez  
Signature of Notary Public



Place Notary Seal Above

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**Further Description of Any Attached Document**

Title or Type of Document FEC COMPLAINT

Document Date 6-19-06 Number of Pages 3 DOC 3 EXH

Signer(s) Other Than Named Above NONE

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## Cindy Uken

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# Mystery money fuels bid for votes

Cindy Uken  
The Desert Sun  
May 31, 2006

With less than one week before the June 6 Primary, congressional candidate Marty Schwimmer is sending his third mailer in as many weeks with the intent of reaching about 90,000 voters in the 45th Congressional District. Where is the money coming from and who are his contributors?

Schwimmer isn't saying.

"I'm not comfortable releasing individual contributors' names until the FEC approves my reports and puts them online," Schwimmer said Tuesday.

Schwimmer's trio of campaign brochures will augment a four-page advertisement insert he recently placed in a regional newspaper.

The brochures, the newspaper insert and associated postage expenses surely cost big bucks but the money trail is cold.

The lack of answers is not sitting well with his primary opponent.

Schwimmer's disclosure reports are not available on the Federal Elections Commission Web site though Schwimmer says he sent them overnight via UPS. A UPS Tracking Report shows that Schwimmer sent a package to Washington, D.C., on May 24. A receipt from the La Quinta Postal Connection also shows that Schwimmer spent \$53.89 for next-day air service to the FEC.

Schwimmer has not had to file disclosure reports until now because he had not raised the threshold amount required to file disclosure reports. The FEC requires a report only after a candidate has raised at least \$5,000.

The latest round of finance reports were due Thursday; Schwimmer said he sent them last Wednesday by overnight mail but they were held up by bad weather in Tennessee. Schwimmer said he called the FEC a "couple of times" to alert them.

"This is not an intentional or purposeful violation of federal election law," said Schwimmer who serves as his own campaign manager and treasurer.

The FEC had not received Schwimmer's reports as of the close of business on Tuesday, according to an FEC spokesman.

Schwimmer said an analyst for the FEC said his reports had been received and were in the mailroom.

Schwimmer said he's raised \$30,924 and spent \$23,443, most of which he said is his own money. However, Schwimmer's Statement of Organization form, which he filed in April, indicates that he did not intend to spend personal money for either the primary or general election. Schwimmer, a public defender, said some of his money has also come from the legal community. Schwimmer said the money he has contributed to his campaign are "loans" that will be repaid from contributions he garners after winning the primary so in essence he will not spend any of his "own money."

The receipts and expenditures Schwimmer quotes jibe with a "preliminary" release of "summary pages" he shared with me Tuesday, though he said the report "has not been approved or officially accepted by the FEC."

Schwimmer's campaign has raised the ire of David M. Roth. Schwimmer and Roth, both of La Quinta, are vying to

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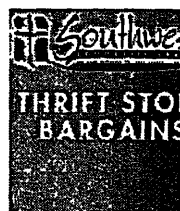
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be the Democrat to challenge Republican Rep. Mary Bono in November

Roth estimates Schwimmer has spent close to \$100,000 on campaign advertising, his Web site, etc.

Roth also wonders whether Schwimmer is violating the federal 48-hour reporting requirement that all donations above \$1,000 be reported; the requirement for the June 6 Primary which kicked in May 18 - a full seven days before the pre-primary report was due - so voters can tell precisely what is being raised and spent in the final days before an election

Tim O'Bayley filed a formal complaint with the FEC, identifying himself as a "registered voter and Palm Springs resident in the 45th Congressional District." O'Bayley also works for Roth's campaign. The complaint was sent by overnight mail on Friday, alleging that Schwimmer has failed to file the required contribution and expenditure reports. The complaint also alleges that Schwimmer's Web site is in violation of federal law because the solicitation form does not appear to contain the required disclaimer and the solicitation does not request important information from the contributor to ensure that contributions are not from corporations or unions.

O'Bayley further alleges that Schwimmer's failure to disclose his campaign activities could have an impact on the outcome of the June 6 primary election.

"Roth is being petty," Schwimmer said. "I can't imagine what his motivation is. I think he's acting out of desperation."

Roth, who has raised about \$272,000 for the full election cycle, said he is dismayed at Schwimmer's "blatant disregard" for Federal Campaign Finance Laws. It is not a question of believing or not believing Schwimmer, Roth said. The legal deadline, for which there is no leeway, was May 25, Roth added.

"Schwimmer did not file when legally required, and therefore did not allow the public to know what they must about his finances," Roth said. "One of the most important responsibilities a federal candidate has is to ensure complete financial transparency regarding all campaign activities," Roth said. "Unfortunately, there has been absolutely no transparency in Mr. Schwimmer's short-lived campaign. However, I am confident that the people of this district recognize the integrity of my candidacy and of my positions, and will recognize the hypocrisy in Mr. Schwimmer's attempts to ignore federal laws while campaigning to represent the people of this district in federal office."

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