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August 10, 1998

Via Hand Delivery

Jennifer H. Boyt
Office of the General Counsel
Federal Election Commission
999 E Street, N.W. - Sixth Floor
Washington, D.C. 20463

Aug 10 4 09 PM '98
FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

**Re: MUR 4759 - Friends of Phil Maloof, Dolores Gonzalez, as
Treasurer and Supporters of Phil Maloof, Theresa Keaveny, as
Treasurer**

Dear Ms. Boyt:

This is in response to the complaint filed against the above referenced Committees (hereinafter referred to as "Respondents") by the Republican Party of New Mexico. We ask that this complaint be dismissed and that the Commission take no action with respect to Respondents.

The complaint makes numerous allegations, principally that certain materials distributed on behalf of the Respondents did not contain adequate disclaimers and that certain reports were not timely filed. None of the allegations justify Commission investigation or action. Each allegation will be addressed in turn below.

Disclaimer Issues

The complaint alleges in three instances -- a mailing, an invitation and a billboard -- that Respondents' materials did not contain a disclaimer. This claim is correct. Due to administrative oversight, the disclaimer was left off these three items. These instances were, however, the exception rather than the rule. The campaign has sent out 30-35 additional mailings and invitations to date, all of which contained the proper disclaimer.

[29060-0001/DA982190.024]

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Further, there was never any doubt to the reader as to the sponsor of the communications. Each of the items cited displayed the Maloof campaign's distinctive logo and, in two of the three cases, the campaign's slogan: "A New Generation of Leadership."

The campaign has instituted steps to ensure that all future public political advertising will contain the proper disclaimers.

The final claim on disclaimers, about a television advertisement, does not allege any violation of the campaign laws. The complaint acknowledges, in fact, that the advertisement contained a disclaimer.

Reporting Issues

The complaint also alleges that the candidate failed to timely file his statement of candidacy. This claim is without merit, as a discussion of the political situation surrounding the start of the campaign will demonstrate. When the first expenditures were made in September 1997, the First Congressional District was represented by an incumbent Member of Congress, Steven Schiff. Representative Schiff was being treated for cancer and had not been present in Congress for many months. He had stated publicly, however, that he would seek reelection in the 1998 election. It was not until March 1998 that Mr. Schiff announced he would not seek reelection. He passed away about a month later.

In late 1997, Mr. Maloof was contemplating running for the seat against Representative Schiff. Several other individuals were also publicly identified as considering running. Because a campaign against an incumbent is much more difficult than running in an open seat, Mr. Maloof decided to make some exploratory expenditures to determine the vulnerability of the incumbent and to determine his own support in the district. For the most part, these expenditures were funded by the candidate's personal funds, donated to the exploratory committee formed for this purpose. (The first non-candidate contribution was not received until December 1997.)

The expenditures made during this exploratory period were perfectly appropriate under the Commission's guidance. See, for example, Advisory Opinion 1985-40. Expenditures for rent or telephones, cited specifically in the complaint, are

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legitimate testing-the-waters expenditures. The largest of the expenditures were for polling and other survey work, traditional exploratory activity.

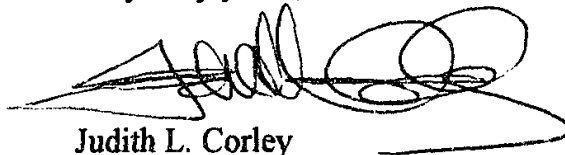
Once Mr. Maloof decided to seek the Democratic Party's nomination in January (see attached clippings), he filed his statement of candidacy. Friends of Phil Maloof, the committee formed to support his exploratory activities, filed as its first report the April 15 quarterly report, disclosing all expenditures made from September 1997 on, as required in the FEC's testing-the-waters regulations.

After Representative Schiff's death, the campaign formed a second committee to raise and spend funds in connection with the special election to be held to fill the remainder of his term. This Committee was the basis of the final allegation in the complaint: that the committees were not identified as "affiliated" committees on their statements of organization. This omission is easily explained: because the committees were formed for two separate, distinct elections, they are not subject to the same contribution limits. The committees have been told by the FEC's Reports Analysis Division that, for this reason, they did not need to identify themselves as affiliated.

Conclusion

We again ask that the Commission dismiss this complaint and take no action against Respondents.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Judith L. Corley', with a long, sweeping horizontal line extending to the right.

Judith L. Corley
Counsel to Respondents

Attachments

Albuquerque Journal
 JAN 13, 1998
 New Mexico Press Clipping Bureau
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 Albuquerque, NM 87102
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NEW MEXICO

••• TUESDAY, JANUARY 13, 1998 C3

Few Jumping for Schiff's Seat

Health Is Concern In 1st District Race

By CYNTHY GLADYER
 Journal Staff Writer

The first gusts of election season are blowing through most of New Mexico, but there's an eerie quiet so far in Rep. Steve Schiff's 1st Congressional District.

Nine Democrats are out in forces in the 3rd Congressional District in the northern part of the state, jockeying for a chance to unseat first-term Rep. Bill Redmond, R-N.M., this fall.

In the mostly southern 2nd District, represented by Rep. Joe Steen, R-N.M., one Democrat — former state Rep. E. Shirley Biscoe of Las Cruces — is in the field and five others are waiting in the wings.

But with less than a month until filing day, no Democrat has formally announced plans to run against five-term Republican Schiff in his central district, which includes Albuquerque.

State Sen. Phil Maloot and lawyer David Campbell, both of Albuquerque, have been circulating nominating petitions. They would need 1,025 registered Democrat signatures by Feb. 10 to qualify for the Democratic pre-primary nominating convention. State Democratic Party Chairman Ray Sene speculated that Democrats might be

hanging back because Schiff, who has been popular with voters, has been fighting a highly publicized battle with skin cancer.

"When you have an extraordinarily strong candidate, other people look around and don't want to run," Sene said. "It all depends on Steve Schiff's health."

Schiff has been sidelined for nine months, undergoing two surgeries, 33 radiation treatments and now chemotherapy in a battle with a squamous cell carcinoma that started in his ear. His voting participation record on House rolls calls for a year was 9.5 percent, compared with nearly 100 percent for New Mexico's two other House incumbents, according to Roll Call Report Syndicate.

He was unavailable for comment Monday, but his spokesman, J. Barry Bitter, said Schiff definitely plans to seek reelection. "We're 100 percent 'go' for reelection," Bitter said.

Bitter said campaign workers for Schiff have been circulating nominating petitions. He needs at least 625 to qualify for the June 2 primary election ballot, because there are fewer Republicans in New Mexico than Democrats.

If Schiff does run again, Sene said, he



MALOOT, state senator from Albuquerque



CAMPBELL, attorney from Albuquerque



SCHIFF in fifth year in Washington

expect a very close race that could go either way. However, if someone else runs under the Republican banner, Sene said, "I think we'll win it hands down."

Republican chairman John Dendahl acknowledged last week that the party has been making some contingency plans, in case Schiff's condition worsens.

"We're all personally concerned for him and his family. We also want to keep what I consider to be one of the best congressmen in the country in office. But we can't control what cancer does," Dendahl said. "If it becomes clear in the next few months that Steve can't run, we need to be able to move him someone quickly so we don't lose that seat."

One person whose name has been bandied about is freshman state Sen. Ramsey Gortman, whose husband, Frank, is chairman of the Bernalillo County Republican Party.

"People have talked to me about it," Sen. Gortman acknowledged Monday. "But I don't want to split my family up. I'm not going to be running unless absolutely no one else steps forward, and I don't see that happening."

She added that the party would put forward an alternative candidate only if it had

reached an agreement with Schiff. "They're not going to go behind his back," she said.

Dendahl declined to identify any other Republicans who could run in Schiff's place.

"It would be a lie to say I haven't had conversations, but I'm not picking up the phone term in Washington every day calling 1st Congressional District Republicans to see if they're interested in filing," he said.

Campbell, a former city attorney for Albuquerque, said he plans to decide within the next 2 1/2 weeks whether to run. "There are a number of opportunities certainly prime among them are time and money," Campbell said.

"I personally hope that Steve Schiff is well and is well enough to run in this race. I think he'd been a good congressman for us," he added. "But I do believe that it's important for the Democrats to choose a candidate for the congressional race who can garner Democratic support and perhaps Republican support."

Former state Rep. Richard Key Sanchez, an Albuquerque Democrat, had announced in July that he would seek Schiff's seat, but he withdrew from the race in October citing "business and family responsibilities."

[illegible]