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BEFORE THE FEDERAL ELECTION COMMISSION

2012 APR 25 AM 9: 52

In the Matter of)

Craig for U.S. Senate and Kaye O'Riordan,
in her official capacity as treasurer)
Larry E. Craig)

MUR 6128 CELA

THIRD GENERAL COUNSEL'S REPORT¹

I. BACKGROUND

On February 7, 2012, the Commission found probable cause to believe that Craig for U.S. Senate and Kay O'Riordan, in her official capacity as treasurer ("the Committee"), and Larry E. Craig (collectively "Respondents"), violated 2 U.S.C. §439a(b), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by disbursing \$257,920.93 in campaign funds to pay for legal fees that were unrelated to Craig's status as a Federal candidate or officeholder. The Commission authorized probable cause conciliation and approved a joint conciliation agreement

On February 22, we notified Respondents that the Commission found probable cause to believe and provided them with a copy of the Commission's proposed conciliation agreement. Letter from Mark Allen, Assistant General Counsel, Federal Election Commission to Andrew D. Herman, Brand Law Group (Feb. 22, 2012). Having received no response, we contacted Respondents' counsel by telephone, on March 19, to inquire whether he had received the proposed conciliation agreement and whether his clients were amenable to conciliation. That

¹ On August 25, 2011, the Office of General Counsel circulated to the Commission in MUR 6128 "General Counsel's Report #3." We subsequently withdrew GCR #3 in consideration of recently promulgated agency procedures. See 76 Fed. Reg. 63570 (October 13 2011); see also Withdrawal of General Counsel's Report #3 Memorandum (October 25, 2011). Because the former GCR #3 was withdrawn before the Commission made findings, the current document before the Commission is entitled "Third General Counsel's Report."

1 same day, counsel advised us that he had received the proposed conciliation agreement and had
2 relayed it to his clients, but that conciliation in this matter was unlikely. Counsel further advised
3 that he would forward written correspondence to the Office of General Counsel with a formal
4 response to the Commission's conciliation offer.

5 On March 23, Respondents' counsel sent a letter stating that Respondents "have carefully
6 reviewed the Federal Election Commission's offer and must, at this time, respectfully decline to
7 accept it." Attachment A. Because the March 23 letter did not explicitly terminate probable
8 cause conciliation discussions, on March 27, OGC wrote to counsel asking Respondents to
9 clarify whether they intended to conclude probable cause conciliation and inviting them "to
10 provide a proposed counter-offer." Attachment B. In a March 30 call, counsel confirmed that
11 Respondents did not intend to submit a counteroffer. Following the March 30 call, counsel sent
12 a confirming email, stating "we have opted not to engage in further probable cause conciliation
13 and consider that process to be at an end." Attachment C.

14 **II. DISCUSSION**

15 Pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), "if the Commission determines . . . that there is
16 probable cause to believe that any person has committed, or is about to commit, a violation of
17 this Act . . . the Commission shall attempt, for a period of at least 30 days, to correct or prevent
18 such violation by informal methods of conference, conciliation, and persuasion, and to enter into
19 a conciliation agreement with any person involved." As noted above, we notified Respondents
20 on February 22 of the Commission's probable cause finding and its proposed conciliation
21 agreement; Respondents, through counsel, confirmed on March 30, that they did not intend to
22 engage in conciliation. The 30-day statutory conciliation period has thus concluded, and the
23 Commission may properly proceed to the next stage of the enforcement process – instituting a

1 civil action for relief. 2 U.S.C. § 437g(a)(6)(A). We believe that there is a strong likelihood that
2 the Commission would prevail in such an enforcement action. Given the likelihood of success,
3 the seriousness of the apparent violation in this matter, and the significant amount at issue
4 (approximately \$250,000), we believe that litigation in this matter is an appropriate and proper
5 use of the Commission's resources. *See generally* MUR 6128 General Counsel's Report #2,
6 dated July 2, 2010.

7 Accordingly, based on the legal analysis set forth in the General Counsel's Brief, dated
8 April 8, 2011, which is herein incorporated by reference, we recommend that the Commission
9 authorize the Office of General Counsel to file suit against Craig for U.S. Senate and Kay
10 O'Riordan, in her official capacity as treasurer, and Larry E. Craig.

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III. RECOMMENDATIONS

1. Authorize the Office of General Counsel to file a civil suit for relief in the United States District Court against Craig for U.S. Senate and Kay O'Riordan, in her official capacity as treasurer, and Larry E. Craig.
2. Approve the appropriate letter.

April 25, 2012
Date

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