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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Derrick Shepherd Campaign Committee)
Derrick Shepherd, in his official capacity) MUR 6151
as treasurer)

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COMMISSION

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GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Take no further action, send a cautionary letter, and close the file as to Derrick Shepherd Campaign Committee and Derrick Shepherd, in his official capacity as treasurer.

II. BACKGROUND

In 2009, following a referral from the Audit Division, the Commission found reason to believe that Derrick Shepherd Campaign Committee and Derrick Shepherd, in his official capacity as treasurer ("the Committee"), the principal campaign committee for Derrick Shepherd's 2006 campaign for Louisiana's Second Congressional District, had violated 2 U.S.C. §§ 432(d), 441b, 441a(f), 434(b), and 11 C.F.R. §§ 104.3 and 104.14(b)(1). The violations included failing to maintain records relating to candidate loans, accepting various excessive and prohibited contributions, misstating the amounts of receipts and disbursements, failing to file certain 48 hour notices, and failing to obtain or disclose appropriate contributor identification information and dates of receipt of contributions. See MUR 6151, Factual and Legal Analysis, and Derrick Shepherd Campaign Committee Final Audit Report.

At the time of the Commission's reason to believe findings, the Committee was dormant and former candidate Derrick Shepherd was under federal criminal indictment on charges relating to a money laundering scheme. The Commission authorized an investigation to determine whether receipts reported as candidate loans came from Shepherd's personal funds,

1 whether receipts from various limited liability companies were from prohibited sources, and
2 whether the criminal indictment's reference to a \$20,000 payment from Shepherd's law firm to a
3 campaign vendor was a prohibited or excessive contribution. See MUR 6151, First General
4 Counsel's Report.

5 In October 2008, Shepherd pled guilty to conspiracy to commit money laundering in
6 connection with fraudulent construction bonds. In February 2010, after substantial delay,
7 Shepherd was sentenced to 37 months in federal prison and three years of probation, and fined
8 \$45,000. Shepherd, who surrendered his law license, is currently serving his prison sentence.
9 Although the criminal proceedings complicated the availability of both documents and
10 testimony, we were able to gather factual information that was not ascertained during the audit.
11 In addition to interviewing campaign staff, we obtained some documents from Shepherd :
12 , and used subpoenas to obtain additional records from numerous financial
13 institutions at which Shepherd maintained accounts.

14 As discussed below, the investigation has shed light on the Committee's operations and
15 has answered questions regarding the source of funds reported as candidate loans, various LLC
16 contributors to the Committee, and the \$20,000 payment. It does not appear that any of the
17 Committee's conduct was knowing and willful. Given that the Committee has had no assets or
18 activity for over three years, has no prospects for obtaining additional funds, that the former
19 candidate, who has no personal liability for the Committee's violations, is in jail and unlikely to
20 again run for public office, we recommend that the Commission exercise its prosecutorial
21 discretion and take no further action other than to caution the Committee, and close the file.

III. DISCUSSION

A. Campaign Operations

Derrick Shepherd registered as a congressional candidate and formed the Committee in August 2006. During the three month campaign, the Committee had a figurehead treasurer (now former treasurer), and entrusted its disclosure responsibility to an accountant located in Baton Rouge, Louisiana, while the campaign was headquartered in New Orleans. Based on our interviews of campaign staff, it appears that there were unclear divisions of responsibilities, poor communication between the two campaign locations, and a failure to either share or seek relevant information. For example, campaign staff acknowledged that the limited mechanism that was set up to process contributions broke down under the strain of increased campaign activity as the November 2006 general election neared.

According to campaign staff, Shepherd was a "hands on" candidate who was actively involved in the daily operations of the campaign. He collected contribution checks, and was the point person in the New Orleans campaign office in addressing questionable contributions. Though campaign staff processed contributions, Shepherd was the only one with access to the Committee's two bank accounts. That limitation made it difficult for campaign staff to track the Committee's disbursements and Shepherd's personal loans to the Committee.

B. Candidate Loans

Audit Finding 1 concerned twelve loans from Shepherd to the Committee totaling

1 \$154,125 (ranging from \$1,000 to \$50,000).¹ Neither Shepherd nor the Committee maintained
2 supporting documentation to determine whether the loans were made with Shepherd's personal
3 funds. See 11 C.F.R. § 100.33. As a result, the Commission found reason to believe that the
4 Committee and its treasurer violated 2 U.S.C. § 432(d) and 11 C.F.R. § 104.14(b)(1).

5 The investigation uncovered no evidence that the funds used to make the candidate loans
6 were not Shepherd's personal funds. Shepherd has maintained that all of the loans were made
7 with his personal funds, from his home equity loans and lines of credit.² Shepherd voluntarily
8 provided some of his bank records to support his position and permitted us to review records
9 from the federal criminal investigation, but those records were incomplete. Using information
10 we gleaned from records we had reviewed, we subpoenaed additional records from other
11 Shepherd bank accounts to further trace the loan funds.

12 The bank records we reviewed show that Shepherd maintained numerous accounts
13 relating to real estate ventures and his own law firm, while serving as a Louisiana State Senator.
14 During the relevant time period in late 2006, Shepherd had millions of dollars in offsetting assets
15 and liabilities, including real estate loans and lines of credit on his many real estate holdings.
16 Bank records show that significant amounts of money flowed through Shepherd's various

¹ The investigation shows that the total loan amount is actually \$152,500.25 and consists of eleven loans not twelve. The \$154,125 amount includes a \$1,624.75 receipt that was misreported as a loan from Shepherd. However, bank records show that the \$1,624.75 amount actually consists of two separate receipts from third parties - a \$1,000 contribution check from Smoke Bend Assoc. LLC PAC, a registered political committee which reported a \$1,000 contribution to the Committee, and a \$624.75 check from BELO Management Services, Inc. (a corporation which terminated as of January 31, 2008). It is unclear whether the unreported receipt of \$624.75 from BELO (which operates a TV station) was a contribution or a refund (or some other payment) to the Committee. Considering the irregular amount of the check, the \$624.75 is likely not a contribution.

² Shepherd, who has not retained an attorney in this matter, had several brief telephone conversations with the staff attorney early in the investigation. However, neither the Committee nor Shepherd, in his official capacity as treasurer, filed a formal response to the Commission's reason to believe notification. Most of our substantive contact with Shepherd has been through his criminal attorney, who is informally and voluntarily representing Shepherd in this matter.

1 personal and business bank accounts. Shepherd obtained a total of \$4,149,173 from several real
2 estate loans and revolving home equity lines of credit spanning the period of his candidacy
3 (\$3,929,173 in real estate loans and \$220,000 in lines of credit).

4 Notably, several of Shepherd's real estate loans (\$1,050,000 on 4/7/06; \$50,000 on
5 6/19/06; and \$509,955 on 7/10/06) and one of his lines of credit (\$20,000 on 10/26/06) were
6 obtained during or in fairly close proximity to his brief candidacy. Shepherd also received a total
7 of about \$36,000 annually in compensation as a Louisiana State Senator - a minimal salary of
8 \$16,800, an expense allowance, and per diem legislative session payments.³

9 Though Shepherd's financial portfolio is complicated by his substantial assets and
10 liabilities, the bank records show that he had sufficient funds in his various accounts to make the
11 campaign loans. Of the \$152,500.25 in personal loans Shepherd made to the Committee, we
12 were able to trace \$141,500 to Shepherd bank account records that we obtained during the
13 investigation. We have confirmed that a total of \$92,500 of that amount was from sources that
14 clearly were Shepherd's personal funds. Of that amount, \$81,500 represents seven complete
15 loans that were made with funds from Shepherd's various personal and business accounts that
16 contained a complex mix of funds, including: proceeds from various home equity loans and lines
17 of credit, distributions from his law firm and other business enterprises, and funds transferred
18 from Shepherd's accounts at several financial institutions. Two other loans were partially funded
19 by funds from Shepherd's accounts at Dryades Bank. Those nine loans are shown below:

20

³ Shepherd's two law firm accounts did not show significant cash inflows or cash balances during the August 2006 to November 2006 period. The largest monthly total deposit was \$29,519 and monthly balance was \$17,597.

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Bank	Date	Loan Amount	Source of Funds
Chase	10/10/2006	\$10,000	Home equity loan
First USA	10/26/2006	\$20,000	Home equity loan
Hibernia Bank	11/3/2006	\$19,000	Home equity loan
USAA Bank	8/2/2006	\$20,000	Louisiana Senate salary and expenses
Hibernia Bank	10/26/2006	\$5,000	Distributions from Shepherd's businesses
Hibernia Bank	10/10/2006	\$2,500	Distributions from Shepherd's businesses
Hibernia Bank	8/6/2006	\$5,000	Existing funds
Dryades Bank	8/2/2006	\$3,000 (partial funding of a \$10,000 loan)	Existing funds
Dryades Bank	10/12/2006	\$11,000 (partial funding of a \$50,000 loan)	Existing funds

1
2 Although the remaining \$60,000 in reported candidate loans came from accounts owned
3 by Shepherd, we were only able to confirm that the funds came from other accounts owned by
4 Shepherd, and have not confirmed that all of the funds in those other accounts qualified as
5 Shepherd's personal funds. Bank records subpoenaed from Dryades Bank indicate that \$49,000
6 was transferred to Shepherd's Dryades account from other Shepherd accounts that we had not
7 subpoenaed, that were used to partially fund two of Shepherd's loans. We do not know whether,
8 if we subpoenaed additional bank records, they would settle the question or only produce new
9 leads or dead-ends. Records from GTE Credit Union show that a loan of \$10,000 on August 3,
10 2006 was funded by cash deposits of \$1,000 and \$9,000 that we have not been able to trace to
11 their sources. Finally, GNO Credit Union records show that a loan of \$1,000 on August 24,

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1 2006 came from funds withdrawn in the form of a certified check, but do not reveal whether or
2 not the check was drawn from Shepherd's personal funds.⁴

3 In sum, we have traced \$92,500 of the \$152,500.25 in loans to sources that clearly are
4 Shepherd's personal funds, with the remaining funds coming from Shepherd accounts for which
5 we did not obtain records. As noted previously, Shepherd maintains that all of the loans came
6 from his personal funds. Given that all of the loans we have been able to trace confirm
7 Shepherd's oral representations, and he had sufficient funds in the various accounts we reviewed
8 to fully fund his campaign loans, we do not believe it would be a worthwhile use of the
9 Commission's resources to continue the investigation to attempt to ascertain the original source
10 of the remaining \$60,000 in loans. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

11 C. Prohibited Contributions

12
13 Audit Finding 2 involved the Committee's receipt of potentially prohibited contributions
14 from twelve LLCs totaling \$22,900, for which there was insufficient documentation to determine
15 whether ten of the LLC contributions should be treated as from partnerships or corporations. *See*
16 11 C.F.R. § 110.1(g). Accordingly, the Commission found reason to believe the Committee and
17 its treasurer violated 2 U.S.C. § 441b(a).

18 To evaluate the ten LLC contributions for which the status was unknown, we contacted
19 and received appropriate documents from all but two of the companies. Of the twelve
20 contributions, we have identified six (totaling \$6,500) as prohibited corporate contributions.
21 Therefore, the Respondents violated 2 U.S.C. § 441b(a). Two companies did not respond; one of
22 them is out of business. Four companies are partnership contributions. Two of the partnership

⁴ The credit union advised that it is affiliated with other credit unions whose members would access their accounts through its branches and that it would be time consuming to determine who withdrew the funds. Considering the minimal amount involved, we have not asked the credit union to conduct additional research on the \$1,000 check.

- 1 contributions (Live Oak and Willowridge) resulted in excessive contributions totaling \$7,200 and
2 are addressed in the following Excessive Contributions section of this report. The twelve
3 contributions identified by Audit, and the status as to each, are shown in the chart below:

Name	Date	Contribution Amount	Business Status
Exceptional Inspections LLC	9/8/2006	\$2,100	Corporation
Fredro Knight LLC	8/8/2006	\$2,100	Corporation
Max M Chotto Inc	8/24/2006	\$250	Corporation
Paul Flum Idea Center Co	10/26/2006	\$50	Corporation
BFM Corporation LLC	11/6/2006	\$1,000	Subchapter S Corporation
LA Mar LLC	10/30/2006	\$1,000	Subchapter S Corporation
Live Oak Minerals LLC	8/11/2006	\$5,700	Partnership
Willowridge Estates LLC	8/11/2006	\$5,700	Partnership
Sunex Holding Company LLC	11/8/2006	\$1,500	Partnership
Infinity Engineering Consultants LLC	11/6/2006	\$1,000	Partnership
Jewell Management Company LLC	11/6/2006	\$1,500	No response
Magnolia Connections LLC	11/3/2006	\$1,000	Out of business

4
5 **D. Excessive Contributions**

6 Audit Finding 3 identified 36 potentially excessive contributions totaling \$61,310. Of
7 that amount, \$31,310 was eligible for presumptive redesignation or reattribution. However, the
8 Committee did not follow the procedures set forth in the Commission regulations for such
9 redesignation or reattribution. See 11 C.F.R. §§ 103.3(b), 110.1(b)(5), 110.1(i)(2). Therefore,
10 the Commission found reason to believe that the Committee and its treasurer violated 2 U.S.C.
11 § 441a(f).

12 The bulk of the excessive contributions consist of donations from individuals who made
13 contributions for the primary, general, and runoff elections on the same date. Two LLC
14 partnerships (Live Oak and Willowridge) also each gave a total of \$5,700 (\$1,900 each for the

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1 primary, general, and runoff elections) on the same date. In cases where the contributor had not
2 given the maximum for the primary, at least some of the contributions could have been
3 presumptively reattributed or redesignated to the primary election with the appropriate
4 contributor notifications or authorizations.⁵ However, the Committee routinely redesignated or
5 reattributed contributions without appropriate contributor notifications or authorizations. The
6 runoff contributions appear to have been lawful at the time they were made and only became
7 problematic when the candidate lost the general election and was ineligible for a runoff election.
8 As Shepherd was not a candidate for the December 9, 2006 runoff election, the Committee
9 should have refunded runoff election contributions made by contributors who had already
10 contributed the maximum amount to the primary and general elections. However, the
11 Committee promptly became inactive after the general election and did not have sufficient funds
12 to make the refunds.⁶ In other cases, the Committee accepted excessive contributions that were
13 eligible, in part or full, for redesignation or reattribution and failed to refund them.

14 In sum, none of the excessive contributions were properly redesignated, reattributed, or
15 refunded, and the Committee has not filed any appropriate amendments. Therefore, the
16 Respondents violated 2 U.S.C. § 441a(f). To a large extent, the disorganized and dysfunctional
17 campaign operations described in Section III, A., *supra*, appear to explain, though do not excuse,

⁵ Since Louisiana does not have a separate primary, the state's ballot access deadline (August 11, 2006) is treated as a primary election. See 11 C.F.R. § 100.2(c)(4)(i). Therefore, a portion of Shepherd's contributions could have been presumptively redesignated to the primary election.

⁶ The audit showed that the Committee did not maintain sufficient funds in its account to refund the excessive contributions. The Committee's Post Election and Year End Reports show that it used most of its available receipts to pay campaign debt and so partially repay Shepherd's campaign loans. The Committee filed an unsuccessful Termination Report on August 29, 2007 (during the audit) showing zero closing cash on hand - cancelling out the candidate loans. The Committee later amended the Termination Report on March 11, 2008 to permit candidate forgiveness of the campaign loans.

1 the Committee's acceptance of excessive contributions and its failure to properly resolve or
2 refund them.

3 **E. Reporting Violations**

4
5 Audit Findings 4, 5, 6, and 7 revealed several reporting violations consisting of the
6 following: 1) 15 unreported 48-hour notices totaling \$94,100; 2) 44 undisclosed contributor
7 occupation and employer information entries totaling \$55,350; 3) 38 undisclosed contributor
8 name/address/contribution receipt date information entries totaling \$46,150; and 4) overstated
9 receipts and cash on hand balances totaling \$54,740. The Commission found reason to believe
10 that the Committee and its treasurer violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3. No
11 committee personnel (including Shepherd) have denied or rebutted the Commission's reason to
12 believe findings regarding these violations. In interviews, campaign staff acknowledged the
13 reporting deficiencies, and again, their description of the poor communication mechanisms
14 employed by the Committee appear to explain, though not excuse, the reporting violations. See
15 Section III A, *supra*. Therefore, respondents violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3.

16 **F. \$20,000 In-Kind Contribution**

17 As previously mentioned, the federal criminal investigation showed that Shepherd
18 engaged in a money laundering scheme that sold fraudulent construction bonds from an
19 unlicensed bond company. Under the scheme, Shepherd used \$20,000 of the money laundering
20 proceeds that were deposited into his law firm's accounts to pay for campaign expenses, which
21 the Committee did not disclose as an in-kind contribution. Based on that information, the
22 Commission found reason to believe the Committee violated 2 U.S.C. § 434(b) and 11 C.F.R.
23 § 104.3 for failing to disclose the resulting in-kind contribution. As it was unclear whether

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1 Shepherd's law firm was a partnership or a corporation, the Commission also found reason to
2 believe the Committee violated either 2 U.S.C. § 441a(f) or 2 U.S.C. § 441b(a).

3 During the investigation, we obtained bank records and other information relevant to the
4 disbursement. The records confirm that on December 13, 2006, Shepherd used \$20,000 (of a
5 \$45,000 deposit from the fraudulent bond proceeds) to pay Buisson Creative Strategies for prior
6 campaign expenses. Our investigation also clarified that the law firm is a sole proprietorship
7 LLC owned by Shepherd. The Commission's regulations at 11 C.F.R. § 110.1(g)(4) attribute
8 contributions by a sole proprietor LLC as a contribution of the sole proprietor. As such, the
9 \$20,000 payment would be treated as an in-kind contribution by Shepherd. Although the
10 unreported payment constitutes a violation of 2 U.S.C. § 434(b), since Shepherd had no
11 contribution limit for his campaign, there are no 2 U.S.C. §§ 441a(f) or 441b(a) violations from
12 the payment.

13 **IV. CONCLUSION**

14
15 Shepherd represented that all of his loans were made from personal funds, and his bank
16 accounts contained sufficient funds to make the loans. Based on our investigation, we were able
17 to confirm that Shepherd made approximately 60% of his loans to the Committee from his
18 personal funds, and we obtained no evidence showing that any of the remaining loans were not
19 from his personal funds. The investigation also demonstrated that the Committee accepted
20 \$6,500 in prohibited contributions and \$61,310 in excessive contributions, some of which could
21 have been properly redesignated or reattributed, or should have been refunded, but were not.
22 The Committee also failed to report or improperly reported numerous items, including fifteen 48-
23 Hour Notices totaling \$94,100 and a \$20,000 in-kind contribution. It appears that these

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violations resulted from a weak campaign organization that lacked proper internal controls,
rather than from knowing and willful conduct.

Under these
circumstances, we recommend that the Commission exercise its prosecutorial discretion and take
no further action other than to send a cautionary letter to the Respondents, and close the file. See
Heckler v. Chaney, 470 U.S. 821 (1985).

V. **RECOMMENDATIONS**

1. Take no further action as to Derrick Shepherd Campaign Committee and Derrick Shepherd, in his official capacity as treasurer, and send a cautionary letter.
2. Approve the appropriate letters.
3. Close the file.

Christopher Hughey
Acting General Counsel

September, 2010
Date

BY:

Susan L. Lebeaux
Susan L. Lebeaux

Acting Deputy Associate General Counsel
for Enforcement

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Kamau Philbert
Kamau Philbert
Staff Attorney

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