



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 14 2009

**Joseph R. Hawver, Counsel
Cooney for Congress Committee
Post Office Box 355
Lawton, Michigan 49065**

**RE: MURs 6171/6172
Cooney for Congress Committee
and Robert Snyder, in his official
capacity as treasurer**

Dear Mr. Hawver:

On February 10 and 11, 2009, the Federal Election Commission notified the Cooney for Congress Committee and Robert Snyder, in his official capacity as treasurer (the "Committee"), of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to the Committee at that time.

After considering the circumstances in this matter, including the Committee's responses, the Commission, on September 1, 2009, voted to find no reason to believe that a violation of the Act occurred in MUR 6171, and voted to dismiss the matter in MUR 6172. Accordingly, the files in these matters have been closed. The Factual and Legal Analysis, which more fully explains the Commission's decisions, is enclosed for the Committee's information.

Based on the information before the Commission concerning MUR 6172, it appears that the Committee failed to file a 48-Hour Report of Contribution for a \$1,000 contribution and failed to report the contribution in its 2008 Post-General Election Report. The Act requires authorized committees to file 48-hour notices of all contributions of \$1,000 or more received after the 20th day before, but more than 48 hours before, a federal election, and to report all contributions received. 2 U.S.C. §§ 434(a)(6)(A), 434(b)(2)(C), (I). The Commission cautions the Committee to take steps to ensure that it properly reports contributions with the Commission in accordance with the Act and Commission regulations.

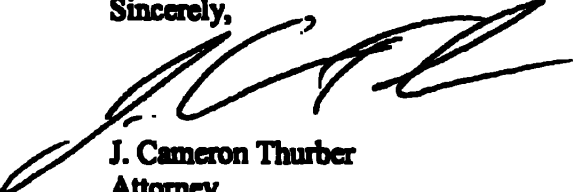
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Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,



J. Cameron Thurber
Attorney

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT: Cooney for Congress Committee MURs: 6171/6172**
6 **and Robert Snyder, in his official**
7 **capacity as treasurer**
8

9 **I. INTRODUCTION**

10 These matters were generated by complaints filed with the Federal Election Commission
11 ("Commission") by the Michigan Republican Party. See 2 U.S.C. § 437g(a)(1). For the reasons
12 set forth below, the Commission found no reason to believe that the Cooney for Congress
13 Committee and Robert Snyder in his official capacity as treasurer ("Cooney Committee"),
14 violated the Federal Election Campaign Act of 1971, as amended (the "Act") in MUR 6171 and
15 decided to exercise its prosecutorial discretion and dismiss the complaint in MUR 6172, and
16 closed the files.

17 **II. FACTUAL AND LEGAL ANALYSES**

18 **A. MUR 6171**

19
20 **1. Factual Summary**

21 The complaint states that in its 2008 Post-General Report, the Kalamazoo County
22 Democratic Party Federal Committee and Carolyn Cardwell, in her official capacity as treasurer,
23 ("KCDP") reported a total of \$11,214.35 in anonymous cash contributions received on seven
24 separate occasions between October 14 and November 14, 2009, and alleges that the KCDP
25 either knew or should have known the identity of the contributors. The complaint cites to
26 Advisory Opinion 1991-20 (Call Interactive) for the proposition that contributions are "not
27 'anonymous' contributions for the purposes of 11 C.F.R. 110.4(c)(3)" if the contributors'
28 identities are able to be determined, and alleges that the contributions may have come from

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1 sources "not in compliance with the prohibitions and limitations of the" Act. MUR 6171
2 Complaint at 1. The complaint further alleges that because the KCDP contributed a total of
3 \$5,000 to the Cooney Committee between October 18 and October 31, 2008,¹ the funds used to
4 contribute to, and accepted by, the Cooney Committee may not have been federally compliant in
5 violation of the Act and 11 C.F.R. § 110.9.

6 The Cooney Committee responded that it received the contribution, which it states is the
7 maximum amount allowed by law, and asserts that the KCDP is not a prohibited source and it
8 has "no knowledge of the KCDP's fundraising efforts." Cooney Committee Response at 1.

9 **2. Legal Analysis**

10 There do not appear to be violations of the Act concerning the amounts, sources or
11 reporting of the contributions. Political committees are required to keep an account of the name
12 and address of person who makes any contribution in excess of \$50, together with the date and
13 amount of any such contribution. 2 U.S.C. § 432(c). There is no information that contributions
14 that the Cooney Committee received from the KCDP came from a prohibited source. Without
15 context or any other specific facts, this allegation is merely speculative and does not provide a
16 sufficient threshold to support reason to believe findings. See Statement of Reasons of
17 Commissioners Mason, Smith, Sandstrom and Thomas in MUR 44960 (Hillary Rodham Clinton,
18 issued Dec. 21, 2000). Moreover, the KCDP, as a multicandidate committee, could legally
19 contribute \$5,000 to the Cooney Committee. See 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R.
20 §§ 110.2(a)(2)(b), 110.3(b)(3).

¹ Commission filings show the KCDP made, and the Cooney Committee accepted, three separate contributions in October 2008 totaling \$5,000: \$1,000 on October 18, \$1,700 on October 22, and \$2,300 on October 31.

B. MUR 6172

1. Factual Summary

The complaint alleges that the Allegan County Democratic Committee ("ACDC") contributed \$1,000 to the Cooney Committee on October 1, 2008, which the Cooney Committee never reported.

The Cooney Committee response states it tried to return the second \$1,000 contribution upon its receipt, but was unable to contact the ACDC's treasurer, who was on vacation. The Cooney Committee states it then tried to report the second contribution, but was unable to do so because the Commission's software "does not allow a State Committee ID number to be used." Cooney Committee Response at 1. The Cooney Committee did not elaborate, but it was evidently able to report the first \$1,000 contribution and the eventual refund of the second \$1,000 contribution. The Cooney Committee claims it used its "best efforts" to contact the ACDC's treasurer and kept enough of an account balance to be able to refund the second contribution from late 2008 through February 2009. The Cooney Committee states that the ACDC's treasurer finally contacted it on February 21, 2009, and the second contribution was refunded shortly thereafter.

The Cooney Committee reported the receipt of the first contribution in its original and amended 2008 October Quarterly Reports, but never reported the receipt of the second contribution. It reported the refund of the second contribution as being made on February 22, 2009, in its 2009 April Quarterly Report. There is no record of the Cooney Committee filing a 48-Hour Report of Contribution for the October 20, 2008, contribution.

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1 **2. Legal Analysis**

2 **The Cooney Committee was required to report all contributions received, and to file 48-**
3 **hour notices of all contributions of \$1,000 or more that it received after the 20th day before, but**
4 **more than 48 hours before, a federal election. 2 U.S.C. §§ 434(a)(6)(A), 434(b)(2)(C), (I);**
5 **11 C.F.R. § 104.5(f). The Cooney Committee failed to report the ACDC's second \$1,000**
6 **contribution from the ACDC and to file a 48-Hour Report of Contribution for the October 20,**
7 **2008, contribution.² Therefore, it appears that the Cooney Committee violated 2 U.S.C.**
8 **§§ 434(a)(6)(A) and (b)(2)(C).**

9 **Despite the apparent violations by the Cooney Committee's failure to file a 48-Hour**
10 **Report of Contribution concerning the ACDC's second \$1,000 contribution and failure to report**
11 **the contribution in its 2008 Post-General Election Report, it appears to have always intended to**
12 **refund it and did so, and it properly reported the refund.**

13 **Therefore, the Commission found no reason to believe that the Cooney Committee**
14 **violated the Act in MUR 6171 and decided to exercise its prosecutorial discretion and dismiss**
15 **the complaint in MUR 6172, and closed the files. See *Heckler v. Chaney*, 470 U.S. 821 (1985).**

² Despite the Cooney Committee's claim that it was "thwarted by the FEC's reporting software" because it did not allow a state committee identification number to be used, Cooney Committee Response at 1, according to the Reports Analysis Division, the state number has no bearing on the reporting of contributions using the Commission's reporting software and the Cooney Committee could have just left the space for the identification number blank.