

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)
5)
6 MUR 6331) CASE CLOSURE UNDER THE
7 COMMITTEE TO ELECT SHIRLEY) ENFORCEMENT PRIORITY
8 GIBSON FOR CONGRESS AND) SYSTEM
9 SIDNEY C. CALLOWAY, AS TREASURER)

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11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System, matters that are low-rated _____
13 _____ and are deemed inappropriate for review by the Alternative Dispute Resolution
14 Office are forwarded to the Commission with a recommendation for dismissal. The
15 Commission has determined that pursuing low-rated matters, compared to other higher-rated
16 matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to
17 dismiss these cases. The Office of General Counsel scored MUR 6331 as a low-rated matter.

18 In this matter, complainant Cynthia Green alleges that the Committee to Elect Shirley
19 Gibson for Congress and Sidney C. Calloway, in his official capacity as treasurer ("the
20 Committee")¹ violated several provisions of the Federal Election Campaign Act of 1971, as
21 amended ("the Act"), and underlying Commission regulations.

22 First, according to the complainant, a solicitation/fundraiser invitation allegedly
23 distributed by the Committee failed to include a disclaimer stating that the Committee had
24 paid for it, as required by 2 U.S.C. § 441d(a)(1) and 11 C.F.R. §§ 110.11(a) and (b)(1).
25 Second, the complainant asserts that the invitation includes several corporate logos, which
26 constitute "impermissible corporate endorsement and sponsorship" of the Gibson campaign,
27 in violation of 2 U.S.C. § 441b(a). Attached to the complaint is a photocopy of what appears

¹ Gibson was an unsuccessful candidate for Congress from Florida's 17th Congressional District.

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1 to be the invitation at issue. Although it is not entirely legible, the word "Taste!" is visible
2 toward the top, along with what appears to be a photograph of Ms. Gibson and the text
3 "Tuesday [several spaces] June 15, 2010." At the bottom of the invitation there are
4 approximately ten business or corporate logos and/or names, including "Grey Goose,"
5 "Bacardi," "Mahogany" [partially illegible], "Irie Spice," and "Rumcake" [partially
6 illegible].² A search of the public record reflects that the Mahogany Grille is a restaurant in
7 Miami, Florida, see <http://www.yelp.com/biz/the-mahogany-grille-miami>, the Rumcake Factory
8 is a bakery in Miami, Florida, see <http://shop.therumcakefactory.com/>, and Irie Spice is a chef
9 and caterer in Miami, Florida, see <http://www.partypop.com/Vendors/4270256.htm>.
10 The complainant provided no information as to the number of invitations distributed, or the
11 method by which they were distributed.

12 Responding on behalf of the Committee, treasurer Sidney Calloway submitted a
13 sworn affidavit accompanied by a cover letter. In the letter, Mr. Calloway states that neither
14 he nor the Committee had authored the invitation at issue or had any knowledge concerning
15 its dissemination, and denies that it was distributed by the Committee or authorized on its
16 behalf. Further, Mr. Calloway avers that the Committee paid all of the costs associated with
17 the June 15, 2010 fundraiser, which totaled approximately \$3,900.00. According to
18 Mr. Calloway, the Committee "neither solicited, accepted, or received any corporate
19 endorsement, sponsorships, in-kind or any other prohibited contribution, but rather, received
20 approximately \$4,400 in personal contributions." In his affidavit, Mr. Calloway reiterates the
21 points made in his letter and, although he acknowledges that the complainant's exhibit

² In addition to the logos, the complainant states that "some of the parties included on the solicitation" include the names of the corporations mentioned *supra*. However, this information is not legible on the copy of the solicitation provided by the complainant. Although we have asked the complainant to submit a more legible copy of the invitation or, preferably, an original, thus far she has not done so.

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1 contained an invitation, which failed to include "a proper disclaimer" and included a
2 "corporate logo," he nevertheless denies "unequivocally" that the Committee had any
3 knowledge of, or involvement with, "the subject solicitation document."

4 Finally, Mr. Calloway's affidavit reaffirms that the June 15, 2010 fundraising event
5 cost approximately \$3,900 and raised only \$4,400; he further notes that the event was
6 attended by fewer than 100 persons. According to our review of the Committee's 2010 July
7 Quarterly Report, the fundraiser costs appear to consist of \$1,975 paid to "Drummer Boy
8 Sound Productions" for "Sound/Video/Music Equipment" on June 15, 2010, as well as
9 \$1,900 paid to "Circle of One Marketing" on June 15, 2010, for "Fundraiser Marketing
10 Expense," for a total cost of \$3,875.

11 Although the Committee did not include copies of its authorized invitations
12 to the June 15, 2010 fundraiser, we were able to locate what appear to be Committee-
13 authorized invitations on its Facebook page at
14 <http://www.facebook.com/photo.php?pid=6066191&o=all&op=1&view=all&subj=119137228112684&aid=-1&id=739479516&oid=119137228112684>, included as Attachment 2 to this Report, and
15 on the Facebook page of the Committee's marketing consultant, Circle of One Marketing, at
16 <http://www.facebook.com/event.php?eid=110618858984564&ref=mf>, included as
17 Attachment 3 to this Report. The invitations, which invite the public to a Gibson campaign
18 fundraiser featuring food prepared by local chefs and restaurants, including those mentioned
19 *supra*, and music by local bands, both include the disclaimer "Paid for by the Committee to
20 Elect Shirley Gibson for Congress." They also state that contributions are limited to \$2,400
21 per person and that corporate, union, and foreign national contributions are prohibited. Thus,
22 although Mr. Calloway's response and affidavit do not explicitly affirm that the Committee's
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1 fundraising solicitations included disclaimers, pursuant to 2 U.S.C. § 441d(a)(1) and
2 11 C.F.R. §§ 110.11(a) and (b)(1), based on the fact that at least two of the Committee's
3 invitations, included as Attachments 2 and 3, contained disclaimer information, it appears
4 that the Committee's invitations included the requisite disclaimer information.

5 On the other hand, both invitations include a set of approximately ten business or
6 corporate logos and/or names, which appear to be the same as those on the invitation
7 submitted with the complaint. A corporation's name or logo could be something "of value,"
8 see 2 U.S.C. § 431(8)(A) (defining "contributions") and, thus, to the extent that the
9 Committee's invitations included authorized use of corporate logos, the Committee
10 potentially accepted illegal corporate in-kind contributions, in violation of 2 U.S.C.
11 § 441b(a).

12 In light of the fact that Mr. Calloway, on behalf of the Committee, filed a sworn
13 affidavit denying that the Committee had sought corporate endorsements and contributions,
14 and the likelihood that the Committee's invitations included the appropriate disclaimer
15 information, coupled with the relatively low level of proceeds netted at the event, and in
16 furtherance of the Commission's priorities and resources relative to other matters pending on
17 the Enforcement docket, the Office of General Counsel believes that the Commission should
18 exercise its prosecutorial discretion and dismiss this matter. See *Heckler v. Chaney*, 470 U.S.
19 821 (1985). Additionally, this Office intends on reminding the Committee to Elect Shirley
20 Gibson for Congress and Sidney C. Calloway, in his official capacity as treasurer, of the
21 requirements under 2 U.S.C. § 441b(a) concerning corporate contributions.

RECOMMENDATIONS


The Office of General Counsel recommends that the Commission dismiss MUR 6331, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind the Committee to Elect Shirley Gibson for Congress and Sidney C. Calloway, in his official capacity as treasurer, of the requirements under 2 U.S.C. § 441b(a) concerning contributions by corporations.

Christopher Hughey
Acting General Counsel

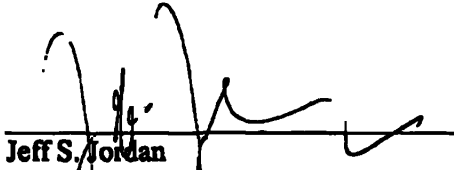
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12/15/10


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