

RECEIVED  
FEDERAL ELECTION  
COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION

**BEFORE THE FEDERAL ELECTION COMMISSION**

2014 DEC 24 AM 10:15

2014 DEC 23 PM 4:59

In the Matter of  
Christine O'Donnell  
Friends of Christine O'Donnell and  
Matt Moran in his official capacity as treasurer

CELA

MUR 6380

SENSITIVE

**SECOND GENERAL COUNSEL'S REPORT**

**I. RECOMMENDED ACTIONS**

Authorize the Office of General Counsel to file a civil suit for relief in the United States District Court against Christine O'Donnell and Friends of Christine O'Donnell and Matt Moran in his official capacity as treasurer, and approve the appropriate letter.

**II. BACKGROUND**

On November 18, 2014, the Commission found probable cause to believe that Friends of Christine O'Donnell and Matt Moran in his official capacity as treasurer ("the Committee"), and Christine O'Donnell (collectively "Respondents"), violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C. §439a(b)), the personal use provision of the Federal Election Campaign Act of 1971, as amended ("the Act")<sup>1</sup>, when the Committee made rent and utility payments of more than \$20,000 for O'Donnell's residence.<sup>2</sup> The Commission authorized probable cause conciliation and approved a proposed joint conciliation agreement

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act, as amended, (the "Act") was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

<sup>2</sup> Commission Certification, MUR 6380 (Friends of Christine O'Donnell) (Nov. 20, 2014).

1           On November 20, we notified Respondents of the Commission's probable cause finding  
2 and provided them with a copy of the Commission's proposed conciliation agreement.<sup>4</sup> The  
3 notification letter specified that the Commission must attempt to negotiate a settlement of this  
4 matter for at least 30 days, and that if the parties are unable to reach an agreement after that time,  
5 the Commission could authorize its Litigation Division to file a civil suit.<sup>5</sup> O'Donnell responded  
6 the same day on behalf of herself and the Committee,<sup>6</sup> by acknowledging receipt of the  
7 notification letter and conciliation agreement and asking what the deadline was for a response.  
8 The following day, we responded by reiterating the 30-day minimum timeframe for conciliation,  
9 and that the matter could be referred for potential litigation after that time. O'Donnell confirmed  
10 receipt of our response the same day and stated that she was forwarding the information to a  
11 potential new lawyer.<sup>7</sup> We contacted O'Donnell again on December 5 and reminded her of the  
12 probable cause conciliation deadlines and offered to meet with her or participate in a conference  
13 call to discuss conciliation. O'Donnell responded immediately, stating that she was meeting  
14 with her new legal team the next week (the week of December 7) to discuss the case and  
15 determine a course of action, and that she or her attorney would contact us afterwards. Neither  
16 O'Donnell nor her putative counsel contacted us, so we initiated a telephone conference on

---

<sup>4</sup> This letter was sent to Respondents via electronic, first class, and certified mail. *See* Letter from Kathleen M. Guith, Deputy Associate General Counsel, Federal Election Commission to Christine O'Donnell (Nov. 20, 2014).

<sup>5</sup> *Id.*

<sup>6</sup> Cleta Mitchell withdrew as counsel for Respondents on June 5, 2014. *See* Letter from Cleta Mitchell, Esq. to Lisa J. Stevenson, Deputy General Counsel — Law, FEC (June 5, 2014).

<sup>7</sup> O'Donnell's assertions that Respondents are securing new legal counsel date back to June, but she has not substantiated those assertions. *See* Memorandum to Commission Re: Office of the General Counsel's Notice to Commission Following the Submission of Probable Cause Brief (Aug. 29, 2014) at fn 3. We have repeatedly instructed O'Donnell to submit a formal designation of counsel as soon as Respondents secured new representation, but she has never done so.

1 December 17. During this teleconference, O'Donnell stated that she was unwilling to admit to a  
2 violation of the Act and was ready to take the matter to court. As such, in a letter dated  
3 December 19, we informed Respondents that we intended to recommend that the Commission  
4 file a civil suit against them.<sup>8</sup>

### 5 **III. DISCUSSION**

6 Pursuant to 52 U.S.C. § 30109(a)(4)(A)(i) (formerly 2 U.S.C. § 437g(a)(4)(A)(i)), "if the  
7 Commission determines . . . that there is probable cause to believe that any person has  
8 committed, or is about to commit, a violation of this Act . . . the Commission shall attempt, for a  
9 period of at least 30 days, to correct or prevent such violation by informal methods of  
10 conference, conciliation, and persuasion, and to enter into a conciliation agreement with any  
11 person involved." As noted above, we notified Respondents of the Commission's probable  
12 cause finding and its proposed conciliation agreement on November 20. Following this  
13 notification, we repeatedly contacted Respondents via electronic mail, telephone, and letter to  
14 discuss a mutually agreeable settlement of this matter. Respondents, however, have failed to  
15 submit any counteroffer to the Commission or engage in any conciliation negotiations  
16 whatsoever during the mandatory 30-day conciliation period. Further, it appears that  
17 Respondents remain firm in their refusal to sign an agreement that admits a violation of the Act.  
18 Accordingly, we do not believe that this matter can be resolved administratively through a  
19 negotiated conciliation agreement.

20 Because the statutory 30-day conciliation period has concluded, the Commission may  
21 properly proceed to the next stage of the enforcement process – instituting a civil action for

---

<sup>8</sup> See Letter from Peter G. Blumberg, Assistant General Counsel, Federal Election Commission to Christine O'Donnell (Dec. 19, 2014).

1 relief. 52 U.S.C. § 30109(a)(6) (formerly 2 U.S.C. § 437g(a)(6)). On balance, given the  
2 likelihood of success, the inherent seriousness of an apparent violation of the personal use  
3 prohibition, the amount at issue (over \$20,000), and the importance of vindicating the  
4 Commission's enforcement authority where respondents in such a context decline to engage in  
5 meaningful conciliation efforts, we believe that litigation in this matter is an appropriate and  
6 proper use of the Commission's resources.

7 Accordingly, based on the legal analysis set forth in the General Counsel's Brief, dated  
8 July 2, 2014, which is herein incorporated by reference, we recommend that the Commission  
9 authorize the Office of General Counsel to file suit against Christine O'Donnell and Friends of  
10 Christine O'Donnell and Matt Moran in his official capacity as treasurer.

1 **IV. RECOMMENDATIONS**

- 2 1. Authorize the Office of General Counsel to file a civil suit for relief in the United
- 3 States District Court against Christine O'Donnell and Friends of Christine
- 4 O'Donnell and Matt Moran in his official capacity as treasurer.
- 5
- 6 2. Approve the appropriate letter.
- 7
- 8
- 9

10  
11 10/22/14  
12 Date

LISA STEVENSON *ag jpm*  
13 Lisa J. Stevenson  
14 Deputy General Counsel — Law

Daniel Petalas  
15 Daniel Petalas  
16 Associate General Counsel for  
17 Enforcement

Kathleen M. Guith  
18 Kathleen M. Guith  
19 Deputy Associate General Counsel for  
20 Enforcement

Peter G. Blumberg  
21 Peter G. Blumberg  
22 Assistant General Counsel

Marianne Abely *by DCB*  
23 Marianne Abely  
24 Attorney

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36