

**FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

MUR: 6380
DATE COMPLAINT FILED: 9/20/2010
DATE OF NOTIFICATION: 10/29/2010
DATE OF LAST RESPONSE: 7/15/2011
DATE ACTIVATED: 1/12/2011

EXPIRATION OF SOL: 1/01/14 to 8/25/15

COMPLAINANTS: Melanie Sloan
Leonard S. Togman
Citizens for Responsibility and Ethics
in Washington ("CREW")

RESPONDENTS: Christine O'Donnell
Friends of Christine O'Donnell and Matt Moran,
in his official capacity as treasurer

RELEVANT STATUTES AND REGULATIONS:	2 U.S.C. § 439a 2 U.S.C. § 434(b) 11 C.F.R. § 113.1(g)(1) 11 C.F.R. § 104.3(b)
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INTERNAL REPORTS CHECKED: Disclosure Reports

OTHER AGENCIES CHECKED:

1. INTRODUCTION

34 The complaint in this matter alleges that Christine O'Donnell, a candidate for
35 U.S. Senate from Delaware in 2008 and 2010, used funds from her principal campaign
36 committee, Friends of Christine O'Donnell (the "Committee"), to pay various personal
37 expenses in 2009 and 2010, including rent, utilities, automobile, meal, travel and entertainment
38 expenses, in violation of the Federal Election Campaign Act of 1971, as amended ("the Act").
39 The complaint further alleges that the Committee improperly reported some of these expenses.

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1 Respondents deny that they paid for any of O'Donnell's personal expenses using campaign
2 funds.

3 Respondents filed an initial response to the complaint and a supplemental response on
4 July 22, 2011 ("Supplemental Response"). In connection with the same allegations, the
5 Commission also received four third-party submissions from non-respondent Jonathon Moseley,
6 on June 21, November 8, November 17 and November 21, 2011 ("Moseley Submissions").

7 Based on

8 the available information, it appears that O'Donnell used her personal residence as her
9 campaign headquarters in 2010 and used campaign funds to pay for rent and utilities, items that
10 are *per se* personal use expenses under the Commission's regulations. Therefore, we
11 recommend that the Commission find reason to believe that O'Donnell and the Committee
12 violated 2 U.S.C. § 439a(b). However,

we

13 recommend that the Commission dismiss the allegation that O'Donnell used campaign funds to
14 pay rent on her personal residence in 2009 along with other personal expenses, as well as the
15 allegation that the Committee improperly reported the 2009 rental payments. We further
16 recommend that the Commission enter into pre-probable cause conciliation with Respondents at
17 this time.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The complaint makes three basic allegations, one in connection with activities occurring
3 in 2010 and two that relate to 2009 activities. First, the complaint alleges that, in 2010,
4 O'Donnell and her Committee used campaign funds to pay \$20,362.17 in rent and utilities on a
5 Greenville, Delaware townhouse that were her personal obligations. Second, the complaint
6 alleges that O'Donnell used campaign funds to pay the March and April 2009 rent on her
7 Wilmington, Delaware residence and other personal expenses. Third, the complaint alleges that
8 the Committee "falsely" described the purpose of the 2009 rental payments on the Committee's
9 disclosure reports as expense reimbursements. Complaint at 5-6.

10 **A. Rent and Utility Expenses for Greenville Residence in 2010**

11 The complaint alleges that Respondents violated the Act when the Committee made
12 disbursements for rental payments for O'Donnell's Greenville, Delaware residence
13 (\$16,816.60) as well as payments for electrical power (\$1,030.32), cable (\$1,305.84) and phone
14 (\$1,209.41) for the unit. Complainant appears to have obtained these figures by reviewing
15 Committee reports covering the period from January 1, 2010 through August 25, 2010 for
16 disbursements connected to her townhouse (the Committee continued to disclose disbursements
17 for rent and utilities in reports filed after the date of the complaint). The complaint also relies
18 on a news article in which O'Donnell acknowledged that she was paying a portion of the rent on
19 her townhouse with campaign donations because she was using the premises as her campaign
20 headquarters. Ginger Gibson, *Delaware Politics: O'Donnell Faces Campaign Debt, Back-tax*
21 *Issues*, THE NEWS JOURNAL (Wilmington), March 21, 2010 (Exhibit D of Complaint). The
22 article included the following quote attributed to O'Donnell: "I'm splitting it, legally splitting it
23 and paying part of it . . . I am renting from the campaign . . ." *Id.*

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1 Respondents confirm that O'Donnell and the Committee shared the Greenville
2 townhouse. The response asserts that the Committee leased the townhouse as its headquarters,
3 and that O'Donnell and several campaign workers lived on the floors above the campaign
4 offices. O'Donnell states "I personally paid for my pro-rata share of the rental payments to
5 cover my living costs at the campaign's premises, although the campaign paid 100% of the
6 living costs for all other campaign workers sharing the living quarters with me." Response,
7 Exhibit 1, O'Donnell Affidavit ("O'Donnell Aff.").² The response includes two "Rental
8 Application" documents from 2010 for "Apt. No. 1242," listed as a three-bedroom townhouse,
9 one of which identifies the Committee as a "Corporate Applica[nt]" and the other which
10 identifies Robert David Hust as the "Occupant." Exhibits 3 & 4 of Response. A "Rental
11 Agreement" dated January 8, 2010, and which appears to have been signed by O'Donnell, states
12 that the tenant is "Christine O'Donnell for U.S. Senate (Occupant, David Hust)." Exhibit 7 of
13 Response. O'Donnell describes Hust as the "primary occupant listed on the lease [and] one of
14 the campaign workers who did, in fact, move into the premises in February, 2010." O'Donnell
15 Aff. at 1.

16 Also attached to the Response is a copy of a \$770 check from O'Donnell to the
17 Committee dated March 30, 2010, containing the handwritten notation "Rent Utilities Jan-
18 March." Exhibit 14 of Response. The Committee reported in its disclosure reports that it
19 received \$770 from O'Donnell on March 30, 2010 for "Reimbursement for Rent & Utilities."
20 Other supporting exhibits attached to the response include (1) photos of what appear to be

² O'Donnell further states that all disbursements for rent and utilities referenced in the complaint were for payment of office expenses of the Committee's headquarters at 1242 Presidential Drive in Greenville, Delaware. O'Donnell Aff. at 2. The complaint references 248 Presidential Drive (not 1242 Presidential Drive) as the address of O'Donnell's residence, *see* Complaint at 4, apparently obtaining that address from the Committee's disclosure reports. However, 248 Presidential Drive appears to be the address of the realty company that received rental payments from the Committee. *See, e.g.*, Exhibit 3 of Response (showing address of Mid-Atlantic Realty as 248 Presidential Drive).

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1 campaign staff working at the Greenville townhouse, (2) a copy of a \$770 check from Christine
2 O'Donnell to the Committee for "rent + utilities," dated June 28, 2010, and (3) pages of the
3 Committee's FEC disclosure reports showing two receipts of \$770 each from O'Donnell, dated
4 June 28 and September 27, 2010, each indicating they were for rent reimbursement. Exhibits 9-
5 16 of Response.

6 Respondents argue that since the Committee leased the Greenville townhouse in its own
7 name, *i.e.*, they were "campaign leases and *not* residential lease(s) of Christine O'Donnell
8 personally" (emphasis in original), it was lawful for the Committee to pay the rent and utilities
9 as long as O'Donnell reimbursed it for her "share" of the costs. Response at 2. However, as
10 discussed below, regardless of how the lease was structured, because the townhouse served as
11 O'Donnell's residence, the Committee's payments for rent and utilities constituted an
12 impermissible *per se* personal use expense under the Commission's regulations.³

13 The Act provides that contributions accepted by a candidate may be used by the
14 candidate "for otherwise authorized expenditures in connection with the campaign for Federal
15 office of the candidate . . ." 2 U.S.C. § 439a(a)(1). Such campaign funds, however, shall not
16 be converted to "personal use" by "any person." 2 U.S.C. § 439a(b)(1). "Personal use" is
17 defined as the use of campaign funds of a present or former candidate "to fulfill any
18 commitment, obligation or expense of a person that would exist irrespective of the candidate's

³ The Supplemental Response provides no new information or arguments regarding the allegations relating to activities occurring in 2010, other than noting that the U.S. Attorney has investigated all of the allegations and advised Respondents that the "investigation is closed." Supplemental Response at 3.

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1 election campaign or individual duties as a holder of Federal office." 2 U.S.C. § 439a(b)(2).
2 The Act contains a list of examples of personal use expenses that includes, *inter alia*, a home
3 mortgage, rent, or utility payment; a noncampaign-related automobile expense; a vacation or
4 other noncampaign-related trip; and admission to a sporting event, concert, theater, or other
5 form of entertainment not associated with an election campaign. 2 U.S.C. § 439a(b)(2)(A), (C),
6 (E) & (H).

7 The Commission's regulations at 11 C.F.R. § 113.1(g)(1)(i) also describe uses of
8 campaign funds that constitute personal use *per se*, including, as they regard these allegations:

9 E) Mortgage, rent or utility payments--
10 (1) For any part of any personal residence of the candidate or a
11 member of the candidate's family; or
12 (2) For real or personal property that is owned by the candidate or
13 a member of the candidate's family and used for campaign purposes, to
14 the extent the payments exceed the fair market value of the property
15 usage.
16 (F) Admission to a sporting event, concert, theater or other form of
17 entertainment, unless part of a specific campaign or officeholder
18 activity.

19 Further, in the Explanation & Justification (E&J) for the personal use regulations, the
20 Commission noted that the regulation prohibits this type of allocation: "the rule draws a clear
21 line, and avoids the need to allocate expenses associated with the residence between campaign
22 and personal use." 60 Fed. Reg. 7865 (1995). The Commission clarified that the candidate
23 "retains the option of using his or her personal residence in the campaign, *so long as it is done*
24 *at no cost to the committee.*" *Id.* (emphasis added). The personal use provisions of the Act and
25 its corresponding regulations thus make clear that rental payments for *any part* of any personal
26 residence constitute *per se* personal use. Therefore, the Act and regulations refute Respondents'
27 argument that the sharing arrangement for the Greenville residence was permissible because the
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1 lease was a Committee lease and that O'Donnell reimbursed the Committee her "pro rata share"
 2 of the expenses.

3 In AO 2000-2 (Hubbard), the Commission allowed a candidate to pay for office space in
 4 the same building as his residence, but noted several factors that made the candidate's situation
 5 "somewhat unique," including that (1) the use of the leased property as both a residence and an
 6 office pre-dated his candidacy by several years; (2) the leased premises were located in a
 7 commercial building; (3) the premises served as the candidate's sole office space and for several
 8 years he followed a tax treatment that reflected a division between residential and office space;
 9 and (4) the campaign funds would pay only the portion of rent previously ascribed to the office
 10 use. None of those factors is present here. O'Donnell's use of the premises as her personal
 11 residence ran concurrently with the Committee's use, and the townhouse appears to be part of a
 12 residential development; in fact, the lease signed by O'Donnell is a residential lease that
 13 contains a provision requiring that the premises be used "as a single family residence and not
 14 for any other purposes."⁴ Exhibit 7 of Response. *See also* MUR 5218 (Francis), First General
 15 Counsel's Report dated Sept. 2, 2003, at 6 ("notwithstanding that part of Francis' home was
 16 used by the campaign . . . it appears that Francis used campaign funds to pay for a *per se*
 17 personal use – His mortgage payments").

18 In short, there is no support for Respondents' contention that the rental payments made
 19 by the Committee were permissible. It appears that O'Donnell used campaign funds to pay for
 20 a *per se* personal use, which includes rent or utility payments "for any part of any personal

⁴ The circumstances surrounding the use of the Greenville townhouse are more akin to those Advisory Opinions that were expressly superseded by the 1995 personal use regulations. *See, e.g.*, AO 1988-13 (Ray) (superseded) (candidate committee may pay pro rata share of rent and utilities to candidate for campaign office space in candidate's house); AO 1985-42 (Taylor) (superseded) (candidate committee may pay a portion of candidate's rent where campaign staff use candidate's apartment for lodging); AO 1983-01 (Coughlin) (superseded) (candidate committee may pay a portion of the rent of a candidate's residence where a part of the house is used for campaign equipment storage).

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1 residence of the candidate" 11 C.F.R. § 113.1(g)(1)(i)(E)(1) (emphasis added).
2 Accordingly, we recommend that the Commission find reason to believe that the Committee's
3 rent and utility payments for the Greenville townhouse in 2010 constituted a *per se* personal use
4 violation of 2 U.S.C. § 439a(b) by O'Donnell and the Committee.

5 **B. Rent for Wilmington Residence and Other 2009 Expenses**

6 There are two specific allegations related to the Committee's 2009 activities. First, the
7 complaint alleges that Respondents violated the Act by using campaign funds to pay
8 O'Donnell's rent on her Wilmington residence and other personal expenses, including food, gas
9 and entertainment, in 2009. Second, the complaint alleges that the Committee misreported the
10 disbursements for the rental payments. These allegations are based on an affidavit from
11 purported former O'Donnell campaign consultant David Keegan, who states that he became
12 familiar with the campaign's spending through his role as a "financial consultant and
13 fundraiser" for the Committee, and that he "became concerned about Ms. O'Donnell's
14 campaign spending because she had no other visible source of personal income." Complaint
15 Exhibit A, Keegan Affidavit ("Keegan Aff."). The response asserts that Keegan was not a
16 consultant to the campaign but rather a "volunteer" who lacked personal knowledge of the facts.

17 Response at 2.⁵

18 Keegan asserts that his nephew, Brent Vasher, purchased O'Donnell's residence from
19 her in 2008 and then rented it back to her in the amount of \$750 per month. Keegan Aff. at 1.⁶
20 The Committee disclosed a \$750 payment made to Vasher on March 10, 2009, describing it as

⁵ Notwithstanding Respondents' assertion, we note that the Committee disclosed a \$1,000 payment to Keegan in August 2008 for "Finance Consulting." See Committee's 2008 Pre-Primary Report.

⁶ Although Keegan's affidavit does not provide the source of his knowledge of the alleged rent arrangement he learned about it through Vasher.

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1 an "expense reimbursement." *See* Committee's 2009 April Quarterly Report. The Committee
2 reported another \$750 payment to Vasher on April 13, 2009, describing it as "reimbursement
3 for services." *See* Committee's 2009 Year End Report. In her response, O'Donnell states that
4 the payments "to Brent Vasher . . . were for expense reimbursements related to the campaign
5 and were not for rent or my personal living expenses." O'Donnell Aff. at 2.

6 Attached to the Supplemental Response is a complaint to the Delaware Attorney General
7 by Respondents' co-counsel alleging that Keegan perjured himself in his affidavit, based on
8 allegedly conflicting statements he made in a telephone interview purportedly conducted by an
9 unnamed "free-lance journalist." Attachment B of Supplemental Response. Co-counsel's
10 complaint attacks Keegan's veracity and alleges that he "admits" that the two payments at issue
11 were actually reimbursements for Vasher's expenses. *Id.* In addition, the submissions from
12 former O'Donnell campaign manager Jonathon Moseley contain information challenging
13 Keegan's affidavit.⁷ Moseley asserts, for example, that at the time the Committee made the
14 payments to Vasher, the Committee owed Vasher \$3,000 to \$5,000 in expenses apparently
15 related to O'Donnell's 2008 campaign. *See* Moseley Submissions dated June 21 and
16 November 8, 2011 ("[Moseley Aff.] Concerning Interview with Marie Redfield").

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18 Vasher states that he bought
19 O'Donnell's Wilmington home in the summer of 2008, and that O'Donnell continued to live
20 there after the sale. "According to Vasher, O'Donnell
21 was living in the house for free and paying him back \$750 per month for the thousands of

⁷ Moseley recently filed a complaint with the Commission alleging that the Committee owes him money for services provided and expenses incurred during O'Donnell's 2008 campaign for U.S. Senate. In its response, the Committee attacks Moseley's credibility, noting that he was once suspended by the Virginia State Bar for misconduct. *See* MUR 6525 Response (Mar. 13, 2012).

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1 dollars that O'Donnell owed him." *Id.* at 4. Regarding the two \$750 payments Vasher received
2 from the Committee in 2009, Vasher accepted them because O'Donnell "convinced him that he
3 contributed much to the [2008] campaign and was being reimbursed for that." *Id.* Vasher did
4 not recall submitting any receipts to the Committee – and the Committee did not report any
5 debts or obligations to Vasher – but he reviewed his credit card receipts and found printing
6 charges and gas receipts to "justify" the first \$750 payment. *Id.* at 4-5. Regarding the second
7 \$750 payment, Vasher believes that he provided enough cash payments for campaign items to
8 "justify" that payment to him. *Id.* at 5.

9 As discussed, any payments by the Committee for O'Donnell's residential expenses
10 would constitute *per se* personal use, and would therefore violate 2 U.S.C. § 439a(b)(1). *See*
11 11 C.F.R. § 113.1(g)(1)(i)(E)(1). Further, the failure to properly disclose the purpose of the
12 payments by the Committee would result in a violation of 2 U.S.C. § 434(b)(5)(A) and
13 11 C.F.R. § 104.3(b)(3)(i) (authorized committee shall disclose the name and address of each
14 person to whom an expenditure in excess of \$200 is made within the calendar year, together
15 with the date, amount and purpose of the expenditure). Although the sworn affidavits conflict
16 (*e.g.*, Keegan's affidavit alleges that the Committee's payments to Vasher were for O'Donnell's
17 rent, which O'Donnell denies in her affidavit), the other submissions suggest
18 that the two \$750 payments may have been intended to cover campaign expenses paid for by
19 Vasher.

20 At this time, it is not clear as to which specific items paid for by Vasher were being
21 reimbursed by the Committee and why the Committee did not report any debts or obligations to
22 Vasher, assuming he incurred such expenses prior to the 2008 general election. However, given
23 the small amount at issue (\$1,500) and the fact that Vasher appears to have accepted the checks

1 based on a reasonable belief that he was owed money by the Committee for campaign expenses
2 he incurred, we do not believe the allegations related to the 2009 activities warrant further use
3 of the Commission's resources.

4 In connection with other disbursements, the complaint alleges that Respondents violated
5 the Act by using campaign funds for "other personal expenses, including gas, meals and . . . an
6 outing to a bowling alley." Keegan Aff. at 1. The Committee's disclosure reports reflect
7 numerous disbursements to gas stations and food establishments throughout 2009, and reported
8 a \$19 disbursement to a bowling alley on March 2, 2009. Respondents assert that all expenses
9 referenced in Keegan's affidavit were for campaign expenses, including gas and meals, and that
10 Keegan had no personal knowledge of O'Donnell's "personal finances." Response at 2.
11 O'Donnell specifically asserts that a payment to a bowling alley represented "volunteer and/or
12 fundraising activities associated with the campaign." O'Donnell Aff. at 2.
13 Vasher states that O'Donnell took him bowling in 2009 as a "thank you for the campaign."

14 Vasher was not aware at the time that O'Donnell used the
15 campaign debit card to pay for the bowling event; however, he observed her using the campaign
16 debit card to pay for meals they shared while going to and from campaign events. *Id.*

17 In addition to the examples of *per se* personal use discussed above, the regulations list a
18 number of uses of campaign funds that the Commission "will determine, on a case-by-case
19 basis," whether they constitute personal use, including meals, travel, and vehicle expenses.
20 11 C.F.R. § 113.1(g)(1)(ii)(B), (C) and (D). We have little information about which of the
21 "other personal expenses" referenced in Keegan's affidavit were paid for with campaign funds.
22 Given the small amounts at issue (e.g., the \$19 disbursement for bowling) and the lack of
23 specific allegations regarding other personal expenses (e.g., information about which "gas" and

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1 "meal" payments disclosed by the Committee constituted personal use), we do not believe the
2 allegations related to other 2009 activities warrant further use of the Commission's resources.

3 Accordingly, we recommend that the Commission dismiss the allegations that Christine
4 O'Donnell and Friends of Christine O'Donnell and Matt Moran, in his official capacity as
5 treasurer, used campaign funds to pay rent on a personal residence in 2009 along with other
6 personal expenses, and that Friends of Christine O'Donnell and Matt Moran, in his official
7 capacity as treasurer, improperly reported the 2009 rental payments. *See Heckler v. Chaney*,
8 470 U.S. 821, 831 (1985).

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7 **IV. RECOMMENDATIONS**

- 8 1. Find reason to believe that Friends of Christine O'Donnell and Matt Moran, in his
9 official capacity as treasurer, violated 2 U.S.C. § 439a(b).
- 10 2. Find reason to believe that Christine O'Donnell violated 2 U.S.C. § 439a(b).
- 11 3. Dismiss the allegations that Christine O'Donnell and Friends of Christine
12 O'Donnell and Matt Moran, in his official capacity as treasurer, violated 2 U.S.C.
13 § 439a(b) by using campaign funds to pay rent on a personal residence and other
14 personal expenses in 2009, and that Friends of Christine O'Donnell and Matt
15 Moran, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by
16 improperly reporting the 2009 rental payments.
- 17 4. Enter into conciliation with Friends of Christine O'Donnell and Matt Moran, in his
18 official capacity as treasurer, and Christine O'Donnell, prior to a finding of
19 probable cause to believe.
- 20 5. Approve the attached proposed conciliation agreement.

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2 6. Approve the attached Factual and Legal Analysis.
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4 7. Approve the appropriate letters.
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Anthony Herman
General Counsel

Daniel A. Petalas
Associate General Counsel
for Enforcement

14 Date: 4-27-12

15 BY: Kathleen Guith
16 Kathleen Guith
17 Deputy Associate General Counsel
18 for Enforcement

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Peter G. Blumberg
Assistant General Counsel

Thomas J. Andersen, PS
Thomas J. Andersen
Attorney