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BEFORE THE FEDERAL ELECTION COMMISSION

CELA

In the Matter of )

MUR 6422 )

MARJORIE ("MISSY") REILLY SMITH )

MISSY SMITH FOR CONGRESS )

DIANA E. ROCCOGRANDI, )

AS TREASURER )

THE SOCIETY FOR TRUTH )

AND JUSTICE )

DISMISSAL AND  
CASE CLOSURE UNDER  
THE ENFORCEMENT  
PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Act, and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases, or in certain cases where there are no facts to support the allegations, to make no reason to believe findings. For the reasons set forth below, this Office recommends that the Commission dismiss some of the allegations, and make no reason to believe findings as to other allegations, in MUR 6422.

In this matter, complainant Elizabeth Kingsley asserts that respondents Marjorie ("Missy") Reilly Smith and Missy Smith for Congress, and Diana E. Roccograndi, in her

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1 official capacity as treasurer ("the Committee"), violated the Federal Election Campaign  
2 Act of 1971, as amended ("the Act"), by failing to include requisite disclaimers on  
3 campaign flyers, lawn signs, and the Committee's website; failing to register with the  
4 Commission in a timely manner; accepting excessive contributions; and accepting in-kind  
5 contributions from a prohibited corporate source, respondent The Society for Truth and  
6 Justice ("the Society").<sup>1</sup>

7 Ms. Smith ran for the congressional Delegate seat in the District of Columbia as  
8 the 2010 Republican nominee. She filed her Statement of Candidacy and her  
9 Committee's Statement of Organization on October 14, 2010. The Committee's 30-Day  
10 Post-Election Report reflects \$67,955.24 in contributions and \$67,388.16 in  
11 disbursements. Among its receipts are two in-kind contributions from the Society on  
12 September 29, 2010 for \$250, and on October 1, 2010 for \$630. In response to the  
13 complaint, the Committee filed an amended disclosure report in mid-February that  
14 reflects that Randall Terry, rather than the Society, made the in-kind contribution of  
15 \$880.

16 In analyzing the disclaimer issues, we note that the respondents maintain the  
17 campaign flyers and lawn signs were independent expenditures and that it did not initially  
18 pay for the website when it was first launched. Under the Act and Commission  
19 regulations, all public communications<sup>2</sup> made by a political committee must include  
20 disclaimers. 2 U.S.C. § 441d; *see also* 11 C.F.R. § 110.11(a)(1). While a flyer and lawn

<sup>1</sup> The Society was founded in Florida by Randall Terry. The Society registered for incorporation in Florida in August 2007, but its status was revoked in September 2008. The Florida Department of State Division of Corporations reflects the organization's status as "inactive."

<sup>2</sup> "Public communications" include any communication "by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 11 C.F.R. § 100.26.

1 sign made by a political committee must include a disclaimer, the complaint is based on  
2 the allegation that “an acquaintance [ ] observed the candidate herself distributing the  
3 flyer on September 18, 2010,” but does not provide the identity of this witness or details  
4 about the time and location that the witness observed Ms. Smith distributing the flyers.  
5 Absent additional information that indicates the Committee produced and distributed the  
6 flyers and lawn signs, coupled with the respondents’ denials and the complaint’s failure  
7 to provide more specific information, there is insufficient information indicating that the  
8 Committee violated the disclaimer provisions of the Act and Commission regulations.  
9 Therefore, this Office recommends that the Commission dismiss the allegations as to  
10 whether Marjorie (“Missy”) Reilly Smith and Missy Smith for Congress, and Diana E.  
11 Roccograndi, in her official capacity as treasurer, violated the Act by failing to include  
12 the requisite disclaimers on campaign flyers and lawn signs.

13 Additionally, the joint response maintains that the Committee did not initially pay  
14 for the creation or posting of the campaign website, and, presumably, was not responsible  
15 for including a disclaimer. Indeed, information available on the public record indicates  
16 that the Society created and registered the domain name for the website on August 24,  
17 2010. However, the Committee appears to have eventually used and assumed control of  
18 “www.missysmith2010.com” as its official website to solicit contributions, announce the  
19 candidate’s television advertisement schedule, and to recruit volunteers. The available  
20 information does not indicate when the Committee officially assumed control of the  
21 website or if it posted the disclaimer at that time, but the Committee states that it first

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1 paid the webmaster for use of the website on October 26, 2010,<sup>3</sup> and that the webmaster  
2 believes the disclaimer was posted on or around October 24, 2010.<sup>4</sup> Nevertheless, if the  
3 Committee began using the website before October 24, 2010, a disclaimer would have  
4 been necessary at that time.<sup>5</sup> Similarly, if the website's content prior to the Committee's  
5 assumption of control was substantially similar to the website content at the time of the  
6 complaint, the Society would have been required to post a disclaimer.

7 In light of the fact that the record in this matter does not conclusively establish  
8 when the disclaimers were required to be posted, this Office recommends that the  
9 Commission dismiss the allegations that respondents Marjorie ("Missy") Reilly Smith,  
10 Missy Smith for Congress, and Diana E. Roccograndi, in her official capacity as  
11 treasurer, and The Society for Truth and Justice (operated through Randall Terry)  
12 violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1), by failing to include a  
13 disclaimer on the Committee's website.

14 In analyzing the allegations that the candidate and Committee failed to timely  
15 register with the Commission, the complaint asserts that Ms. Smith publicly announced  
16 her candidacy as early as September 14, 2010, and speculates that because the Committee  
17 printed and distributed campaign signs "no later than October 16," and ran television  
18 advertisements starting October 21, Ms. Smith "had sufficient funding available well in  
19 advance of that date to pay for production of the ads and to book the broadcast time."

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<sup>3</sup> The Committee's 30-day post election report, however, reflects payment for "Website set up and maintenance" on October 25, 2010.

<sup>4</sup> The complaint includes a printout of the website as of October 25, 2010, but the website times not reflect a disclaimer as of that date.

<sup>5</sup> The response indicates that it first received contributions via PayPal on October 8, 2010. Thus, it is possible that the Committee might have received those contributions through the PayPal link on [www.missysmith2010.com](http://www.missysmith2010.com) prior to posting a website disclaimer.

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1           The joint response from the Committee and Ms. Smith maintains that the  
2 candidate announced her candidacy at a press conference on October 8, 2010. It further  
3 states that other than a \$200 contribution the Committee received at an earlier date, it had  
4 not received any contributions until the day Ms. Smith announced her candidacy. The  
5 Committee maintains that its contributions did not total \$5,000 until October 14, 2010,  
6 when it raised \$3,125 in contributions and transferred \$4,811 from contributions it  
7 received via PayPal. The Committee's disclosure reports corroborate its assertion that  
8 Ms. Smith did not trigger candidate status until mid-October 2010.<sup>6</sup> However, based on  
9 the Committee's post-election report, the candidate raised at least \$5,000 on October 13,  
10 2010, one day earlier than the Committee had acknowledged. Nevertheless, the  
11 candidate and Committee registered with the Commission well within the time period  
12 specified under the Act and Commission regulations. Therefore, this Office recommends  
13 that the Commission find no reason to believe that the Committee violated the Act by  
14 failing to register in a timely manner with the Commission.

15           In analyzing the allegation that the Committee accepted an excessive contribution  
16 from Mr. Richard Retta on October 26, 2010, we note that the Committee's 30-Day Post-  
17 Election Report reflects two contributions from Mr. Retta in the amounts of \$2,400 and  
18 \$200. We also recognize that while the Committee's disclosure report reflects a refund  
19 of \$200, which is unitemized and does not reflect whether the refund was issued to

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<sup>6</sup> Under the Act, an individual becomes a candidate for federal office (and thus triggers registration and reporting obligations) when his or her campaign either receives in excess of \$5,000 in contributions or makes in excess of \$5,000 in expenditures. 2 U.S.C. § 431(2). Achieving "candidate" status triggers registration and reporting requirements for the candidate and for his or her principal campaign committee. Within 15 days of becoming a candidate the individual must file a Statement of Candidacy with the Commission that designates the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of Organization no later than ten days after it has been designated by the candidate. 2 U.S.C. § 433(a).

1 Mr. Retta. In a supplement to the joint response, the Committee states that Mr. Retta's  
2 second contribution in the amount of \$200 consisted of funds from his son, who lives in  
3 Taiwan but wanted to contribute to the Committee. The supplemental response clarifies  
4 that the Committee issued a \$200 refund to Mr. Retta on November 11, 2010.<sup>7</sup> Due to  
5 the manner in which the contribution was made, it appears Mr. Retta may have made, and  
6 the Committee may have received, an excessive contribution in the amount of \$200.<sup>8</sup> The  
7 Committee, however, appears to have refunded the excessive amount in a timely manner.  
8 Therefore, this Office recommends that the Commission find no reason to believe that the  
9 Committee violated the Act by failing to refund excessive contributions in a timely  
10 manner.

11 In analyzing the allegation that the Committee received impermissible corporate  
12 contributions from the Society,<sup>9</sup> we note that the supplemental complaint refers to the fact  
13 that the complainant could not determine whether and where the Society registered for

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<sup>7</sup> There is no information in the record to suggest that Mr. Retta's son is a foreign national who may be prohibited from making campaign contributions under 2 U.S.C. § 441e or that the Mr. Retta failed to provide the Committee with the necessary contributor information concerning his son. Thus, there is insufficient information in the record to conclude that Mr. Retta either intended to make or made a \$200 contribution in the name of another, which could have violated the provisions of 2 U.S.C. § 441f.

<sup>8</sup> The Act provides that no person shall make contributions to a federal candidate for federal office or his authorized political committee, which (for the 2010 election cycle) in the aggregate exceed \$2,400 each for the primary and general elections. 2 U.S.C. § 441a(a)(1)(A). The Act further prohibits a candidate or political committee from knowingly accepting contributions in violation of the contribution limits. 2 U.S.C. § 441a(f). Where a committee has received an excessive contribution, it has 60 days to identify and redesignate, reattribute, or refund the excessive amount. 11 C.F.R. § 110.1(b).

<sup>9</sup> The Act prohibits corporations and labor organizations from making contributions in connection with any federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). The term, "contribution," includes "any direct or indirect payment, distribution, loan, advance, deposit, gift of money, or any services, or anything of value" made to a candidate, campaign committee, or political party organization. 2 U.S.C. § 441b(b)(2). The Act further prohibits corporations and labor organizations from making in-kind contributions in connection with any federal election. 2 U.S.C. § 441b(a), (b); 11 C.F.R. § 114.2(b)(1); see also 11 C.F.R. § 100.52(d)(1).

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1 incorporation, but speculates that it may serve as "a fictitious or trade name assumed by  
2 either Mr. Terry or another group" through which contributions are made.

3 In its response, the Society clarifies it is not incorporated, but instead operates as a  
4 sole-proprietorship. Further, the Society states that the Committee should have recorded  
5 that the in-kind contributions, totaling \$880, were from Randall Terry, the Society's  
6 founder. The Committee's joint response corroborates the assertion that the contribution  
7 should reflect that it was from Mr. Terry, and further noted that it filed an amended 30-  
8 Day Post General Election Report on February 16, 2011, which reflects this information.  
9 Therefore, this Office recommends that the Commission find no reason to believe that the  
10 Committee violated the Act by accepting prohibited in-kind contributions.

11 **RECOMMENDATIONS**

- 12 1. Dismiss allegations that Missy Smith for Congress and Diana E. Roccograndi,  
13 in her official capacity as treasurer, violated 2 U.S.C. § 441d(a) and 11 C.F.R.  
14 § 110.11(a)(1) as to disclaimers on campaign flyers and lawn signs;  
15  
16 2. Dismiss allegations that Missy Smith for Congress, Diana E. Roccograndi, in  
17 her official capacity as treasurer, and The Society for Truth and Justice  
18 (operated through Randall Terry) violated 2 U.S.C. § 441d(a) and 11 C.F.R.  
19 § 110.11(a)(1) as to a disclaimer on its official website;  
20  
21 3. Find no reason to believe that Marjorie ("Missy") Reilly Smith violated  
22 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a);  
23  
24 4. Find no reason to believe that Missy Smith for Congress and Diana E.  
25 Roccograndi, in her official capacity as treasurer, violated 2 U.S.C. § 433(a);  
26  
27 5. Find no reason to believe that Missy Smith for Congress and Diana E.  
28 Roccograndi, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f)  
29 and 11 C.F.R. § 110.1(b);  
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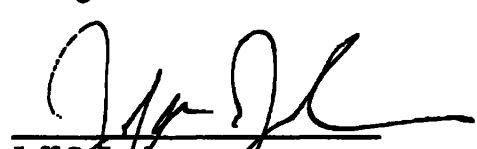
6. Find no reason to believe that Missy Smith for Congress and Diana E. Roccograndi, in her official capacity as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b);
7. Close the file and send the appropriate letters.

Christopher Hughey  
Acting General Counsel

5/31/11  
Date

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