

2011 AUG 29 PM 1:20

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 6457

PECKINPAUGH FOR CONGRESS AND

PAUL L. MAXWELL, IN HIS OFFICIAL

CAPACITY AS TREASURER

JANET PECKINPAUGH

)

) DISMISSAL AND

) CASE CLOSURE UNDER THE

) UNDER THE SYSTEM

) ENFORCEMENT PRIORITY

)

)

CELA

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 Federal Election Campaign Act of 1971, as amended ("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. The Office of General Counsel has scored MUR 6457 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6457.

In this matter, complainant Nancy J. DiNardo, Chairwoman of the Connecticut Democratic Party, alleges that U.S. House candidate Janet Peckinpaugh and Peckinpaugh for

11044304238

1 Congress and Paul L. Maxwell, in his official capacity as treasurer ("the Committee"), violated
2 the Federal Election Campaign Act of 1971, as amended (the "Act"), when the Committee filed
3 incomplete and incorrect reports with the Commission during the 2010 election cycle.²
4 Specifically, the complaint alleges that the Committee failed to explain the purpose of numerous
5 disbursements, totaling \$68,090.57, in three reports filed during the 2010 election cycle,
6 including \$8,051.21 in disbursements to candidate Janet Peckinpough, in violation of 2 U.S.C.
7 §§ 432(c)(5) and 434(b)(4) and 11 C.F.R. § 104.3(b). The complaint also alleges that while the
8 Committee currently reports a negative cash on hand balance of -\$22,359.12, it has failed to
9 report any debts or obligations as required under 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d)
10 and 104.11(a).

11 In response, Paul L. Maxwell, the Committee's treasurer, maintains that the disbursement
12 omissions were his fault, and that when the Committee learned of the complaint it amended its
13 reports to include the disbursement information.³ The response also acknowledges that the
14 Committee is required to report debts and obligations continuously until repaid, and states that
15 the Committee is currently negotiating with vendors to settle its remaining debts and will file the
16 "appropriate report" when the debts are settled.⁴

17 The Act requires that political committees keep an account of the name and address of
18 every person to whom any disbursement is made, as well as the purpose of every disbursement.

² Ms. Peckinpough was defeated in the 2010 general election for Connecticut's 2nd Congressional District.

³ It appears the press was informed of the complainants' intention to file a complaint against the Committee on or before February 1, 2011. See, e.g., Mary E. O'Leary, *Updated: Elections complaints filed over Janet Peckinpough's expense reports*, NEW HAVEN REGISTER, February 1, 2011, at <http://goo.gl/sTYSb>. The Committee amended its reports on February 2, 2011. However, the complaint was not filed with the Commission until February 22, 2011.

⁴ As of August 24, 2011, the Committee had not amended its reports to reflect any debts. Additionally, on May 3, 2011 and August 1, 2011, the Commission sent the Committee notices for its failure to file its 2011 April and July Quarterly Reports.

1 2 U.S.C. §§ 432(c)(5) and 434(b)(4) and 11 C.F.R. § 104.3(b). Commission regulations define
2 “purpose” as a brief statement or description of why the disbursement was made, e.g., “media,
3 salary, polling.” 11 C.F.R. § 104.3(b)(4). Moreover, political committees must disclose the
4 amount and nature of outstanding debts and obligations owed by or to the committee until those
5 debts are extinguished, together with a statement explaining the circumstances and conditions
6 under which each debt and obligation was incurred or extinguished, as well as any payments to
7 reduce the principal on such debts. See 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and
8 104.11(a).

9 With respect to the disbursement reporting allegations, it appears that the Committee
10 failed to include the purpose for several disbursements in its 2010 October Quarterly and Pre-
11 and Post-General reports. However, as the response notes, the Committee took remedial action
12 and amended its three reports on February 2, 2011, nearly three weeks before the complaint was
13 filed. It also appears that the Committee was inexperienced and confused about the requirement
14 to continuously report debts. The Committee reports reflect a negative cash on hand balance and
15 the Committee admits in its response that it owes outstanding debts to campaign vendors, but
16 states that it will file the appropriate reports when the debts are settled. Thus, the Committee
17 appears to have misidentified its debts as a negative cash on hand balance in its disclosure
18 reports. Furthermore, the Committee seems to be attempting to negotiate with its vendors in
19 order to settle its campaign debts, although it has yet to file a debt settlement plan with the
20 Commission as required under 11 C.F.R. §§ 116.1(b), 116.2(c), and 116.7.

21 The complaint in this matter focuses on three disclosure reports, all of which have been
22 subsequently amended. The amendments addressed the allegations concerning the Committee's
23 disbursements, but failed to resolve the Committee's negative cash on hand balance. Although

11044304240

1 the Committee did not completely rectify its reporting errors, further Enforcement action is not
2 warranted in light of the relatively small dollar amount at issue. Accordingly, under EPS, the
3 Office of General Counsel has scored MUR 6457 as a low-rated matter and therefore, in
4 furtherance of the Commission's priorities as discussed above, the Office of General Counsel
5 believes that the Commission should exercise its prosecutorial discretion and dismiss this matter.
6 See *Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this office recommends that the
7 Commission remind Peckinpaugh for Congress and Paul L. Maxwell, in his official capacity as
8 treasurer, of the provisions concerning the need to continuously report debts and obligations
9 under 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11(a); and to file a debt settlement
10 plan before settling its debts with its vendors under 11 C.F.R. §§ 116.1(b), 116.2(c), and 116.7.


11 **RECOMMENDATIONS**


12 The Office of General Counsel recommends that the Commission dismiss MUR 6457,
13 close the file, and approve the appropriate letters. In addition, this Office recommends that the
14 Commission remind Peckinpaugh for Congress and Paul L. Maxwell, in his official capacity as
15 treasurer, of the provisions concerning the need to continuously report debts and obligations
16 under 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11(a); and to file a debt settlement
17 plan before settling its debts with its vendors under 11 C.F.R. §§ 116.1(b), 116.2(c), and 116.7.

18
19 Christopher Hughey
20 Acting General Counsel

21
22 8/09/10
23 Date

24 BY:

25 
26 Gregory R. Baker
27 Special Counsel
28 Complaints Examination
29 & Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration



Joshua B. Smith
Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

11044304242