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BEFORE THE FEDERAL ELECTION COMMISSION

2015 NOV 25 PM 2: 28

SENSITIVE

In the Matter of)

MUR 6498

CELA

Edward J. Lynch)

Lynch for Congress and)

Edward J. Lynch in his official capacity)

as treasurer)

THIRD GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED:

Authorize the Office of General Counsel to file a civil suit for relief in the United States

District Court against Edward J. Lynch and Lynch for Congress and Edward J. Lynch in his

official capacity as treasurer, and approve the appropriate letter.

II. BACKGROUND

On October 1, 2015, the Commission found probable cause to believe that Edward J.

Lynch violated 52 U.S.C. § 30114(b) and that Lynch for Congress and Edward J. Lynch in his

official capacity as treasurer (the "Committee") violated 52 U.S.C. §§ 30104(b) and 30114(b),

the personal use and reporting provisions of the Federal Election Campaign Act of 1971, as

amended (the "Act"), when Lynch used Committee funds to pay for personal expenses and filed

inaccurate reports with the Commission.¹ Those reports misreported a \$50,000 candidate loan,

failed to disclose Committee disbursements for personal use expenses, misreported other

disbursements, and contained inaccurate cash-on-hand balances. The Commission authorized

probable cause conciliation and approved a proposed joint conciliation agreement

¹ Commission Certification, MUR 6498 (Lynch for Congress) (Oct. 2, 2015).

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3 We notified Lynch and the Committee of the Commission's probable cause findings and
4 provided them with a copy of the Commission's proposed conciliation agreement.³ The
5 notification letter, dated October 14, 2015, specified that the Commission must attempt to
6 negotiate a settlement of this matter for at least 30 days, and that if the parties are unable to reach
7 an agreement, the Commission could authorize its Litigation Division to file a civil suit.⁴ We
8 have corresponded with Lynch by e-mail and telephone since that notification and have
9 repeatedly encouraged him to submit a counteroffer. As of this writing, Lynch has yet to do so.
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³ This letter was sent to Respondents via electronic, first class, and overnight mail on October 14, 2015. The UPS delivery confirmation indicates that the letter was delivered to Lynch on October 15, 2015.

⁴ *Id.*

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1-800-4-A-FLY

1 **III. DISCUSSION**

2 Pursuant to 52 U.S.C. § 30109(a)(4)(A)(i), "if the Commission determines . . . that there
3 is probable cause to believe that any person has committed, or is about to commit, a violation of
4 this Act . . . the Commission shall attempt, for a period of at least 30 days, to correct or prevent
5 such violation by informal methods of conference, conciliation, and persuasion, and to enter into
6 a conciliation agreement with any person involved." As noted above, Lynch knew of the
7 Commission's probable cause finding and its proposed conciliation agreement no later than
8 October 15, 2015. Following that notice, we contacted Lynch by telephone and e-mail to discuss
9 settlement of this matter. Lynch has failed to submit any counteroffer to the Commission in
10 response to our good-faith conciliation efforts and has stopped responding to our inquiries.

11 Because the statutory 30-day conciliation period has ended, the Commission may
12 properly proceed to the next stage of the enforcement process — instituting a civil action for
13 relief. 52 U.S.C. § 30109(a)(6). On balance, given the likelihood of success, the inherent
14 seriousness of an apparent violation of the personal use prohibition,⁷ and the overall amounts at
15 issue for both the personal use and reporting violations (over \$50,000), we believe that
16 proceeding to litigation in this matter is warranted and an appropriate use of the Commission's
17 resources. Similarly, the limitations issues in this case, Lynch's apparent efforts to delay during

⁷ The Commission has viewed the conversion of Committee funds to personal use as serious violations of the Act that are worth pursuing through litigation. *See, e.g.*, Commission Certification, MUR 6380 (Christine O'Donnell) (Jan. 5, 2015) (authorizing the Office of the General Counsel to file civil suit in matter involving personal use violations); Commission Certification, MUR 6128 (Craig for U.S. Senate) (May 3, 2012) (same). As of December 20, 2015, the amount of personal use violations and reporting violations within the statute of limitations would be \$1,374.12 and \$50,730.33 respectively. Although here the currently unexpired amounts of converted funds is not substantial, Lynch's activities in the matter involve the apparent conversion of more than \$53,000 during the course of conduct at issue, a significant personal use violation. The unexpired personal use violations include *per se* violations for a gym membership and retail purchases unrelated to campaign activity, as well as alleged mixed-use expenses that occurred months after Lynch lost a special election. The surviving reporting violations include personal use expenses and \$50,000 in misreported loans.

1 both our investigation and in prior negotiations, his unwillingness to toll, and his withdrawal
2 from negotiations outright at both the pre- and post-probable cause stages together suggest that
3 continuing to seek to engage him in conciliation discussions beyond the statutory 30-day period
4 would be a waste of Commission resources and time.

5 Accordingly, based on the legal analysis set forth in the General Counsel's Brief, dated
6 July 1, 2015, incorporated here by reference, we recommend that the Commission authorize the
7 Office of General Counsel to file suit against Edward J. Lynch and Lynch for Congress and
8 Edward J. Lynch in his official capacity as treasurer.


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IV. RECOMMENDATIONS

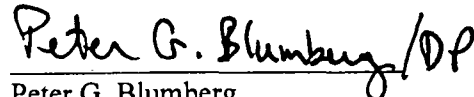
1. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against Edward J. Lynch and Lynch for Congress and Edward J. Lynch in his official capacity as treasurer.


2. Approve the appropriate letter.

11/25/15
Date


Daniel A. Petalas
Acting General Counsel


Kathleen Guith
Acting Associate General Counsel for Enforcement


Peter G. Blumberg
Assistant General Counsel


Ana J. Peña-Wallace
Attorney