

BEFORE THE FEDERAL ELECTION COMMISSION

2012 DEC 19 PM 12: 26

In the Matter of)
2006 Committee to Elect Cynthia Rodriguez Matthews to)
26th Congressional District and Cynthia Rodriguez)
Matthews in her official capacity as treasurer)
Cynthia Rodriguez Matthews)

CELA
MUR 6513

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

(1) Take no further action as to the 2006 Committee to Elect Cynthia Rodriguez
Matthews to 26th Congressional District and Cynthia Rodriguez Matthews in her official
capacity as treasurer (the "Committee"); (2) take no further action as to Cynthia Rodriguez
Matthews; (3) close the file; and (4) approve the appropriate letters.

II. BACKGROUND

On December 13, 2011, the Commission found reason to believe that:

- (1) the Committee violated 2 U.S.C. § 434(a) by failing to file any disclosure reports since its 2006 Year-End Report;
- (2) the Committee violated 2 U.S.C. § 434(b) by failing to continuously report its last-disclosed cash-on-hand balance of \$67,070, or any disbursements it subsequently may have made that reduced that cash-on-hand balance;
- (3) Matthews violated 2 U.S.C. § 432(e)(1) by failing to file a Statement of Candidacy and designate an authorized campaign committee in connection with her 2008 candidacy for Congress.

See MUR 6513 Amended Certification (Dec. 15, 2011).¹ The Commission authorized an investigation with compulsory process to examine the Committee's reporting, to obtain information on the possible disposition of the \$67,070 cash-on-hand balance on the Committee's 2006 Year-End Report, and to ascertain whether Matthews received or spent in excess of \$5,000

¹ This matter originated with a Commission referral to OGC's Enforcement Division pursuant to Directive 6. See Certification dated April 7, 2011, in AT 10-01. See also Memorandum to the Commission dated March 25, 2011, in AT 10-01, attached to the First General Counsel's Report as Attachment 1.

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1 on her 2008 campaign and therefore should have filed a Statement of Candidacy in connection
2 with the 2008 election. *Id.*, see First General Counsel's Report at 7 ("First GCR").

3 **III. RESULTS OF INVESTIGATION**

4 The Committee did not respond to the Commission's reason-to-believe notification, nor
5 did it submit a designation of counsel. We contacted Matthews by telephone; Matthews stated
6 that she had not received the reason to believe notification, but declined to provide any contact
7 information. She also said that she would not respond to anything in writing, and would assert
8 the Fifth Amendment if we tried to depose her. During the course of the conversation, Matthews
9 stated that Kinde Durkee was the treasurer of the Committee, and claimed that Durkee had
10 substituted Matthews' name for Durkee's as treasurer without Matthews' knowledge.² Matthews
11 also said that she has no documents, that Durkee has them, and that Durkee took funds from
12 Matthew's campaign. According to Matthews, the Committee's bank account was closed in
13 2006, and the reported cash-on-hand balance of \$67,070 was inaccurate. She also represented
14 that her 2008 congressional campaign was entirely self-funded.³

15 We subsequently served a subpoena on Wells Fargo Bank, N.A. (the "Bank"), which held
16 the primary campaign account for the 2006 Committee, requesting records from January 1, 2006,

² Durkee officially served as the Committee's treasurer from March 2004 until she filed her resignation letter dated February 10, 2005, with the Commission. The Committee's 2005 disclosure reports show Matthews as treasurer, except for the 2005 July Quarterly Report, which lists no treasurer, and the 2005 October Quarterly Report, which shows Durkee as treasurer. The Committee's amended Statement of Organization dated February 16, 2006, shows Durkee as treasurer. Its amended Statement of Organization dated April 27, 2006, however, designates Matthews as treasurer, and she is shown as treasurer on the 2006 April Quarterly, 2006 Pre-Primary, 2006 October Quarterly, and 2006 Year-End Reports. The 2006 July Quarterly, 2006 Pre-General and 2006 Post-General Reports list Mark Linnartz as treasurer, as do the last amended 2006 April Quarterly and 2006 Pre-Primary Reports, and the amended 2006 July Quarterly Report. Requests for Additional Information ("RFAs") note that those reports should be amended because the proper committee official had not submitted them. In a telephone interview with Linnartz, he stated that he was the Committee's original treasurer, but that he performed no duties after February 2004.

³ Following the phone conversation, we sent another copy of the reason-to-believe notification by certified mail to the most recent address that we were able to locate. The U.S. Post Office returned the package stamped "refused."

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1 to the present. We sought to determine the existence and disposition of the Committee's last-
2 reported cash-on-hand balance, including whether some of the funds were spent on Matthews'
3 2008 campaign. The bank provided the Committee's account records from January 1, 2006
4 through August 23, 2007, when the account was closed with a zero balance.

5 A reconciliation of the 2006 bank records with the Committee's 2006 disclosure reports
6 reveals a discrepancy between the Committee's actual cash-on-hand balance and what was
7 reported in its disclosure reports. Moreover, the bank records revealed additional misreporting
8 during 2006.

9 The Committee's bank records show a total of \$40,950 in deposits and \$40,903 in
10 withdrawals in 2006. Of these, the Committee failed to report \$22,465 in deposits as receipts
11 and \$24,838 in withdrawals as disbursements in its 2006 disclosure reports. The omitted
12 deposits/receipts appear to have been contributions to the Committee and the omitted
13 withdrawals/disbursements appear to have been for campaign-related expenses such as printing,
14 office supplies, flyers, and post cards. All of the deposit and withdrawal slips were signed with
15 what appears to be the initials "CM," which likely refers to Matthews.

16 The Committee also erroneously reported a total of \$36,000 in receipts on amended
17 reports for three reporting periods in 2006 by disclosing receipt of three separate loans of
18 \$12,000. It appears, however, that the entries do not reflect the infusion of new funds, but relate
19 to a single loan of \$12,000 that Matthews made to her Committee in 2004.⁴

⁴ It appears that these reporting errors, reflected in the Committee's amended 2006 April Quarterly, 2006 Pre-Primary and 2006 July Quarterly Reports, may reflect the Committee's attempt to respond to several earlier RFAs. See RFAs concerning the 2006 April Quarterly and 2006 Pre-Primary Reports dated July 11, 2006, and an RFA concerning the 2006 July Quarterly Report dated August 29, 2006. Those RFAs related either to the Committee's failure to properly report the \$12,000 loan that Matthews made to the Committee in 2004, including the failure to provide the due date of the loan, the interest rate, and whether the loan was from Matthews' personal funds, or to the discrepancy concerning the failure to report the loan on the summary page, but reporting it on Schedule C. When amending each of the three reports, the Committee reflected \$12,000 in loan receipts on the

1 The chart below summarizes the Committee's misreporting.

Cynthia Rodriguez Matthews Committee's 2006 Activity			
Item	Reported	Bank Records	Discrepancy
COH January 1, 2006	\$28,650	\$(8)	\$28,658 Overstated
Receipts	\$54,485	\$40,950	\$13,535 ⁵ Overstated
Disbursements	\$16,065	\$40,903	\$24,838 Understated
COH December 31, 2006	\$67,070	\$38.57	\$67,031 Overstated

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3 It does not appear that the Committee had other bank accounts; the Wells Fargo account
4 was established in December 2003 when the Committee was formed, and the Bank found no
5 other Committee accounts.

6 **IV. ANALYSIS**

7 **A. Committee**

8 Each treasurer of an authorized committee of a candidate must file reports of receipts and
9 disbursements in accordance with 2 U.S.C. § 434(a) disclosing information set forth in 2 U.S.C.
10 § 434(b). Based upon our investigation, the Committee failed to report receipts of \$22,465 and
11 disbursements of \$24,838; erroneously reported receipts of \$36,000; and overstated its beginning
12 and ending cash balances for 2006 by \$28,658 and \$67,031, respectively. Further, the bank
13 records gathered during the course of our investigation do not date back to the reporting periods
14 prior to 2006, during which the overstatement of beginning cash as of January 1, 2006, is
15 attributable. An additional subpoena would be necessary to obtain these records, as the original

summary pages, which in turn resulted in the Reports Analysis Division sending additional RFAI's requesting information about the apparent loans and the substantial increase in receipts. See RFAIs on the amended 2006 April Quarterly, amended 2006 Pre-Primary and amended 2006 July Quarterly Reports dated September 30, 2006.

⁵ This figure represents the net overstatement of receipts consisting of \$36,000 in erroneously reported receipts and \$22,465 in unreported receipts.

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1 subpoena to the Bank did not cover the time period prior to 2006. Such records would likely
2 reveal additional misreporting as the cause of the discrepancies at the beginning of 2006. We
3 note, however, that the Committee reported the same ending cash-on-hand balance of \$28,650 on
4 its 2005 July Quarterly, October Quarterly and Year-End Reports that it reported as its beginning
5 cash-on-hand on its 2006 April Quarterly Report, which suggests that the cash-on-hand
6 discrepancy extends much earlier.

7 The statute of limitations has expired as to the apparent violations of 2 U.S.C. § 434(b)
8 revealed by the investigation. *See* 28 U.S.C. § 2462. Therefore, notwithstanding these apparent
9 violations, and the possibility of additional violations prior to 2006, we do not recommend that
10 the Commission proceed further against the Committee.

11 Further, although the Committee's violation of 2 U.S.C. § 434(a) is continuing – because
12 the Committee has not terminated and has not filed any disclosure reports since its 2006 Year-
13 End Report – we do not recommend that Commission pursue the section 434(a) violations. It
14 appears that the Committee permanently ceased activity following the 2006 election and had less
15 than \$40 cash-on-hand as of December 31, 2006, and a zero balance as of August 23, 2007. The
16 investigation shows that the Committee did not improperly dispose of the \$67,070 cash-on-hand
17 that it reported as of December 31, 2006, but simply misreported its actual cash-on-hand balance.
18 Accordingly, under these circumstances, we recommend that the Commission take no further
19 action as to the Committee.

20 **B. Cynthia Rodriguez Matthews**

21 An individual becomes a candidate for federal office when he or she has received
22 contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2). The Federal
23 Election Campaign Act of 1971, as amended, (the "Act") requires candidates for federal office to

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1 file a Statement of Candidacy and designate in writing a political committee to serve as their
2 principal campaign committee no later than 15 days after becoming a candidate. 2 U.S.C. §
3 432(e)(1).

4 Matthews paid \$1,652 to the California Secretary of State's Office to have her name
5 placed on the primary ballot for the 2008 congressional election. See Directive 6 Referral,
6 Attachment 2 at 30-31. Ballot access fees count toward the expenditure threshold for candidate
7 status under section 431(2). See First GCR at note 2. During our investigation, Matthews
8 represented that she self-funded her 2008 campaign, and we discovered that the Committee had
9 no remaining funds that could have been used to fund the campaign. We did not locate any
10 information showing that Matthews exceeded the \$5,000 threshold that would have required her
11 to file a Statement of Candidacy and designate an authorized committee for her 2008 campaign.

12 Based on all of these facts, it does not strike us as a prudent use of Commission resources
13 to issue a document or deposition subpoena to Matthews --

14 -- to gain additional information about her unsuccessful
15 2008 campaign. See *Heckler v. Chaney*, 470 U.S. 821 (1985). We therefore recommend that the
16 Commission take no further action as to Matthews, and close the file.

17 **V. RECOMMENDATIONS**

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19 1. Take no further action as to the 2006 Committee to Elect Cynthia Rodriguez
20 Matthews to 26th Congressional District and Cynthia Rodriguez Mathews in her
21 official capacity as treasurer;
- 22 2. Take no further action as to Cynthia Rodriguez Matthews;
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24 3. Close the file; and

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4. Approve the appropriate letters.

12-19-12
Date

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