

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL’S REPORT**

4
5 **MUR 7640**

6 DATE COMPLAINT FILED: Aug. 30, 2019

7 DATE OF NOTIFICATION: Sept. 4, 2019

8 DATE OF LAST RESPONSE: Nov. 7, 2019

9 DATE ACTIVATED: Feb. 6, 2020

10
11 EXPIRATION OF SOL: Prospective¹

12 ELECTION CYCLE: 2020²

13
14 **COMPLAINANT:**

Political.Law PLLC

15
16 **RESPONDENTS:**

Christine O’Donnell

17 Friends of Christine O’Donnell and Christopher M.
18 Marston in his official capacity as treasurer

19
20 **RELEVANT STATUTE**
21 **AND REGULATION:**

52 U.S.C. § 30114(b)

11 C.F.R. § 113.1(g)(3)

22
23 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

24
25 **FEDERAL AGENCIES CHECKED:**

None

26
27 **I. INTRODUCTION**

28 The Complaint alleges that former U.S. Senate candidate Christine O’Donnell and her
29 authorized committee, Friends of Christine O’Donnell and Christopher M. Marston in his official
30 capacity as treasurer (the “Committee”), are attempting to convert campaign committee assets, in
31 the form of contributor lists, to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R.

¹ The Complaint alleges that Respondents have engaged in conduct that will likely result in a violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), not that a violation has already occurred. Compl. ¶ 3 (Aug. 30, 2019); *see also* 52 U.S.C. § 30109(a)(2) (providing that at the initial stage of the enforcement process the Commission may determine that there is reason to believe “that a person has committed, *or is about to commit*, a violation of this Act”) (emphasis added); 11 C.F.R. § 111.4(a) (providing that any person who believes a violation of the Act or Commission regulations “has occurred *or is about to occur*” may file a complaint) (emphasis added).

² Although the activity the Complaint asserts will violate the Act—Respondents’ possession of committee property—has not yet occurred, the conduct that is the basis of the Complaint’s main allegation—the filing of a legal action in Virginia state court—occurred during the 2020 election cycle.

1 § 113.1(g)(3). More specifically, the Complaint alleges that O'Donnell filed a state court action
2 against Alliance List Marketing, LLC ("ALM"), a list brokerage company, in an attempt to
3 establish her ownership of the Christine O'Donnell Masterfile (the "Masterfile"), a commercial
4 mailing and phone list that the Complaint asserts is a Committee asset. O'Donnell denies the
5 allegation and argues that the Complaint was filed by Political.Law PLLC, a law firm that also
6 represents ALM, in retaliation for her bringing the state court action. The Committee contends
7 that the Complaint is moot because O'Donnell dismissed the state action.

8 The available information is insufficient to create a reasonable inference that the
9 Masterfile belonged to the Committee, and the allegation that O'Donnell is seeking an improper
10 personal benefit is speculative and appears to be based on a selective reading of the state court
11 petition. We therefore recommend that the Commission dismiss the allegation that Christine
12 O'Donnell and the Committee are attempting to convert campaign assets to personal use in
13 violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g)(3).

14 **II. FACTUAL BACKGROUND**

15 The Complaint appears to be related to a long-running dispute over ownership of certain
16 contributor lists. O'Donnell was most recently a candidate for Senate in 2010. In or around
17 2014, she discovered ALM was marketing a list called the Christine O'Donnell Masterfile.³
18 ALM's webpage for the Masterfile included O'Donnell's biography and highlighted her
19 background as a Senate candidate, political commentator, and author.⁴ O'Donnell states that she

³ O'Donnell Resp. at 1 (Nov. 7, 2019).

⁴ *Id.*, Ex. 2 (screenshot of ALM website listing the Christine O'Donnell Masterfile). The total file apparently contained 106,394 names, some with phone numbers and email addresses, with prices ranging from \$5 to \$135 per thousand names depending on the information and options selected. *Id.*

1 did not previously know of ALM or whether ALM had a contract with any of her political
2 committees.⁵ She therefore suspected “misconduct on the part of political consultants and list
3 brokers” who may have rented her personal lists or her committees’ lists without her
4 knowledge.⁶ She states that she contacted her former campaign manager, compliance vendor,
5 campaign attorney, and ALM to obtain information on any rentals of her personal or political
6 lists; O'Donnell also sought information from ALM on the contents of the Masterfile, how ALM
7 acquired that information, and how income from the Masterfile was disbursed.⁷ But all of these
8 parties, including ALM's counsel, Dan Backer of Political.Law PLLC, which is also the
9 Complainant in this matter, apparently refused to provide her with the information she
10 requested.⁸ As such, O'Donnell maintains she could not determine the contents of the Masterfile
11 or whether lists belonging to her or her committees were used to create it.⁹

⁵ *Id.* at 1.

⁶ *Id.* at 1, 5; *see also id.* at 1 (“Long before I ever ran for public office, I had an extensive supporter list created from over a decade of advocacy work. Additionally, I had a marketing list that was created during my 2011 book tour.”).

⁷ *Id.* at 1-2, 5.

⁸ *Id.* After O'Donnell was apparently unable to obtain information about the Masterfile and use of her personal and political lists, she sought to close down her political action committee, ChristinePAC, and settle all of its obligations. *Id.* at 6. She states that she was told she did not have authority to do so, and as a result, she resigned from the PAC in October 2014. *Id.* After her resignation, O'Donnell states that she learned the PAC was continuing to solicit donations in her name and that her signature had been applied to a Commission filing without her knowledge. *Id.* She also claims that she lost control of both ChristinePAC.com and ChristineODonnell.com, the ownership of which was “mysteriously transferred” to her former campaign manager, Matt Moran. *Id.* O'Donnell states that she then “informed the relevant parties” that she planned to raise these issues with the Commission “so that the parties involved would be compelled to clean it up.” Her former political attorney apparently replied: “If you send anything to the FEC you should be prepared for major wrath to descend upon your head. Led by me.” *Id.* O'Donnell contends that the current Complaint is the fulfillment of this threat, and that Moran has separately threatened to continue denying her access to the websites unless she withdraws the Petition and releases all parties from liability. *Id.* at 2, 7; *id.*, Ex. 1 (screenshots of messages from Moran).

⁹ *Id.* at 1-2.

1 According to O'Donnell, she stopped inquiring about the Masterfile for a period of time,
2 but in 2019, she filed a Petition for Accounting in Virginia state court.¹⁰ In that Petition,
3 O'Donnell argued that ALM marketed the Masterfile “without her knowledge or consent,” and
4 that she “may be entitled to payment of any fees received less broker’s fees for the rental of the
5 [Masterfile].”¹¹ O'Donnell requested that the court order ALM to produce records relating to its
6 use of the Masterfile and return all copies of it.¹² She also asked the court to order
7 reimbursement or restitution for any rental income owed to her or any other entity, and to enjoin
8 ALM from further distribution of the list.¹³

9 Two months after O'Donnell filed the Petition, Political.Law PLLC filed the Complaint
10 in this matter. The Complaint states that the Masterfile is a campaign asset and argues the
11 Petition is an attempt by O'Donnell to transfer that asset to herself and profit from it.¹⁴ The
12 Complaint emphasizes that O'Donnell filed the Petition on her own behalf, not through the
13 Committee or her former political action committee, ChristinePAC; that the Petition repeatedly
14 describes the Masterfile as “her” list; and that she personally requested restitution for rental
15 income from it.¹⁵ The Complaint argues that not only would O'Donnell’s legal action, if
16 successful, violate the personal use provision of the Act, it would also violate an injunction

¹⁰ *Id.* at 2; *see also* Compl., Ex. 1 (Petition for Accounting, *O'Donnell v. Allegiance List Marketing LLC*, CL19001561-00 (Loudon Cir. Ct., July 9, 2019) (“Petition”).

¹¹ Petition ¶¶ 25, 90.

¹² *Id.* ¶ 90.

¹³ *Id.*

¹⁴ Compl. ¶ 3.

¹⁵ *Id.* ¶¶ 14-19.

1 against O'Donnell from a prior but unrelated Commission action barring her from converting
2 campaign funds to personal use.¹⁶

3 The Committee responds that the Complaint is moot because O'Donnell voluntarily
4 dismissed the Petition after the Complaint was filed.¹⁷ O'Donnell, responding separately, argues
5 that the Complaint's allegations have no merit. She states that she does not know whether the
6 Committee or ChristinePAC developed the Masterfile, or if it instead contained information from
7 lists she personally compiled during many years of advocacy work and a national book tour.¹⁸
8 She notes that ALM is withholding the information she needs to determine the origin of the
9 list.¹⁹ Further, O'Donnell contends that she thought she had to file the Petition in her individual
10 capacity because ALM did not advertise the Masterfile as belonging to the Committee or
11 ChristinePAC.²⁰ She states that she is not seeking to convert the Masterfile to personal use but
12 rather to understand whether ALM or her past campaign staff misused it, and to have any
13 payments owed from the list be distributed appropriately, whether to her or to others.²¹
14 O'Donnell also argues that the Complaint is an "abuse of the regulatory system" and was filed to
15 intimidate and retaliate against her for pursuing ALM, as well as tangentially related issues
16 involving ChristinePAC, which are not raised in the Complaint.²²

¹⁶ *Id.* ¶ 22-23; *FEC v. O'Donnell*, No. 15-17-LPS, 2017 U.S. Dist. LEXIS 59524 (D. Del. Apr. 19, 2017), https://transition.fec.gov/law/litigation/odonnell_dc_order2.pdf.

¹⁷ Committee Resp. at 1 (Oct. 31, 2019); *id.*, Ex. A (Notice of Nonsuit, *O'Donnell v. Allegiance List Marketing LLC*, CL19001561-00 (Loudon Cir. Ct., Oct. 16, 2019)).

¹⁸ O'Donnell Resp. at 1, 3-4.

¹⁹ *Id.* at 3 (stating that the Complaint "lacks candor" because it is based on the same information that Backer and ALM have withheld from O'Donnell).

²⁰ *Id.* at 4.

²¹ *Id.* at 4-5.

²² *Id.* at 1, 7; *see also supra* note 8 (describing O'Donnell's efforts to close down ChristinePAC).

1 **III. LEGAL ANALYSIS**

2 The Act bars personal use, defined as “any use of funds in a campaign account of a
3 present or former candidate to fulfill a commitment, obligation or expense of any person that
4 would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”²³ The
5 Commission’s implementing regulation provides that the transfer of a campaign committee asset
6 “is not personal use so long as the transfer is for fair market value.”²⁴ The Commission has
7 concluded that a mailing list is a campaign committee asset subject to the regulation.²⁵

8 The Complaint offers insufficient information to establish that the Masterfile is a
9 campaign committee asset. The Complaint asserts, without providing any specifics, that the
10 Masterfile was “developed by [O’Donnell’s] committee with campaign funds.”²⁶ It also points
11 to general information about the Committee’s past activities from the 2010 election cycle
12 relating to fundraising and contributor lists.²⁷ But this information only suggests the Committee
13 had the opportunity to develop mailing lists. None of it links those activities to the Masterfile
14 advertised by ALM, particularly in light of the fact that O’Donnell states she developed several
15 lists outside of her political candidacies.²⁸ If the Masterfile is a campaign committee asset, the
16 Committee’s reports should reflect payments from ALM to the Committee for the profits of list

²³ 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g).

²⁴ 11 C.F.R. § 113.1(g)(3).

²⁵ *E.g.*, AO 2014-06 at 8 (Ryan) (approving proposal to rent campaign committee mailing list for fair market value pursuant to 11 C.F.R. § 113.1(g)(3)).

²⁶ Compl. ¶ 3.

²⁷ *Id.* ¶ 21 (stating that the Committee has received individual contributions, and made disbursements for direct mail expense, direct mail consulting, fundraising consulting, fundraising services, fundraising phone calls, list rental expense, and mailing list service).

²⁸ O’Donnell Resp. at 1.

1 rentals that ALM brokered on its behalf.²⁹ However, no such transactions were reported to the
2 Commission.³⁰ Thus, the allegation that the Masterfile is a campaign asset is speculative, even
3 though Complainant and those associated with it appear to be in a position to provide more
4 substantive information.

5 Even if the list was a campaign committee asset, the Complaint's allegation that
6 O'Donnell is seeking an improper personal benefit is also speculative and appears to be based on
7 a selective reading of the Petition. The Complaint notes that the Petition asks for "recovery or
8 restitution of any rental income from the use of Christine O'Donnell's list owed to Ms.
9 O'Donnell."³¹ But the Petition acknowledges that the funds may not be owed to her. The
10 Petition states that the requested "accounting and record of any [rental] contracts are needed to
11 determine *to whom, if anyone*, rental fees are now due" and states that O'Donnell "*may be*
12 entitled to payment."³² O'Donnell's Response states that she is seeking to have the court

²⁹ 11 C.F.R. § 113.1(g). List rental fees are reportable to the Commission under the category "Other Receipts." AO 2002-14 at 5 (Libertarian National Committee); 11 C.F.R. § 104.3(a)(3)(x). Commission regulations require authorized committees to report each person who provides an aggregate or amount of "other receipts" exceeding \$200 in a given election cycle. 11 C.F.R. § 104.3(a)(4)(vi). It is unlikely that ALM could have paid less than this amount. For example, in MUR 6937, a committee valued its list of 111,136 donors and supporters at \$177,817.60. Factual & Legal Analysis at 3-4, MUR 6937 (NextGen Climate Action Committee, *et al.*). The Masterfile appears to have contained 106,394 records. O'Donnell Resp., Ex. 2. And there is information in the Petition for Accounting that suggests the Masterfile was rented as many as 50-60 times during the 2014 election cycle alone. Petition ¶¶ 59-63.

³⁰ Searches for "Allegiance" and "ALM" among all receipts reported by the Committee return no results. Financial Summary, Friends of Christine O'Donnell, *available at* <https://www.fec.gov/data/committee/C00449595/> (principal campaign committee). All of the Committee's quarterly and year-end reports from 2011 through the end of 2014 were certified by the Committee's then-treasurer Matt Moran. Committee Filings 2011-2012, Friends of Christine O'Donnell, *available at* <https://www.fec.gov/data/committee/C00449595/?tab=filings&cycle=2012;> Committee Filings 2013-2014, Friends of Christine O'Donnell, *available at* [https://www.fec.gov/data/committee/C00449595/?tab=filings&cycle=2014.](https://www.fec.gov/data/committee/C00449595/?tab=filings&cycle=2014) O'Donnell claims that Moran threatened to withhold access to her web domains unless she withdrew her suit against ALM and "relieved all parties of future liability." O'Donnell Resp. at 6-7.

³¹ Compl. ¶ 19.

³² Petition ¶¶ 89-90 (emphasis added).

1 “require the payments be settled up with whatever entity is entitled to the payments.”³³ In other
 2 words, it appears that if the Masterfile contains lists that are O'Donnell's personally, she would
 3 receive compensation, and if the Masterfile contains lists that belong to the Committee, the
 4 Committee would receive compensation.³⁴

5 Given the sparse and speculative information presented by the Complaint, and the lack of
 6 any other available information, we recommend that the Commission dismiss the allegation that
 7 Christine O'Donnell and the Committee are about to convert campaign assets to personal use in
 8 violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g)(3).³⁵

9 **IV. RECOMMENDATIONS**

- 10 1. Dismiss the allegation that Christine O'Donnell and Friends of Christine
 11 O'Donnell and Christopher M. Marston in his official capacity as treasurer are
 12 about to violate 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g)(3);
- 13 2. Approve the attached Factual and Legal Analysis;
- 14 3. Approve the appropriate letters; and
- 15 4. Close the file.

³³ O'Donnell Resp. at 5.

³⁴ It seems unlikely that the Complaint is moot, as the Committee has argued. Committee Resp. at 1. Although O'Donnell voluntarily dismissed the Virginia suit, she stated to the court that she “expect[s] the cause of action to [be] re-filed in another forum where additional causes of actions may be added to more thoroughly address concerns.” Committee Resp., Ex. A at 1 (Notice of Nonsuit, *O'Donnell v. Allegiance List Marketing LLC*, CL19001561-00 (Loudon Cir. Ct., Oct. 16, 2019)).

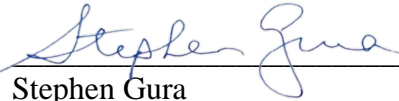
³⁵ See First Gen. Counsel's Report at 5, MUR 5467 (Michael Moore, *et al.*) (“The Commission cannot entertain complaints based on mere speculation that a person may violate the law at some future date.”); Certification ¶ 1, MUR 5467 (Michael Moore, *et al.*) (approving recommendation to dismiss matter).

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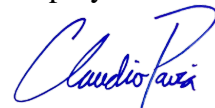
Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

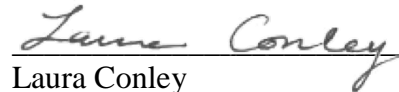
04/06/20
Date



Stephen Gura
Deputy Associate General Counsel



Claudio J. Pavia
Acting Assistant General Counsel



Laura Conley
Attorney

Attachment:
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3
4

5 Respondents: Christine O'Donnell
6 Friends of Christine O'Donnell
7 and Christopher M. Marston in his
8 official capacity as treasurer
9

MUR 7640

10 **I. INTRODUCTION**

11 This matter was generated by a Complaint filed with the Federal Election Commission by
12 Political.Law PLLC, alleging that former U.S. Senate candidate Christine O'Donnell and her
13 authorized committee, Friends of Christine O'Donnell and Christopher M. Marston in his official
14 capacity as treasurer (the "Committee"), are attempting to convert campaign committee assets, in
15 the form of contributor lists, to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R.
16 § 113.1(g)(3). More specifically, the Complaint alleges that O'Donnell filed a state court action
17 against Alliance List Marketing, LLC ("ALM"), a list brokerage company, in an attempt to
18 establish her ownership of the Christine O'Donnell Masterfile (the "Masterfile"), a commercial
19 mailing and phone list that the Complaint asserts is a Committee asset. O'Donnell denies the
20 allegation and argues that the Complaint was filed by Political.Law PLLC, a law firm that also
21 represents ALM, in retaliation for her bringing the state court action. The Committee contends
22 that the Complaint is moot because O'Donnell dismissed the state action.

23 The available information is insufficient to create a reasonable inference that the
24 Masterfile belonged to the Committee, and the allegation that O'Donnell is seeking an improper
25 personal benefit is speculative and appears to be based on a selective reading of the state court
26 petition. The Commission therefore dismisses the allegation that Christine O'Donnell and the
27 Committee are attempting to convert campaign assets to personal use in violation of 52 U.S.C.
28 § 30114(b) and 11 C.F.R. § 113.1(g)(3).

1 **II. FACTUAL BACKGROUND**

2 The Complaint appears to be related to a long-running dispute over ownership of certain
3 contributor lists. O'Donnell was most recently a candidate for Senate in 2010. In or around
4 2014, she discovered ALM was marketing a list called the Christine O'Donnell Masterfile.¹
5 ALM's webpage for the Masterfile included O'Donnell's biography and highlighted her
6 background as a Senate candidate, political commentator, and author.² O'Donnell states that she
7 did not previously know of ALM or whether ALM had a contract with any of her political
8 committees.³ She therefore suspected "misconduct on the part of political consultants and list
9 brokers" who may have rented her personal lists or her committees' lists without her
10 knowledge.⁴ She states that she contacted her former campaign manager, compliance vendor,
11 campaign attorney, and ALM to obtain information on any rentals of her personal or political
12 lists; O'Donnell also sought information from ALM on the contents of the Masterfile, how ALM
13 acquired that information, and how income from the Masterfile was disbursed.⁵ But all of these
14 parties, including ALM's counsel, Dan Backer of Political.Law PLLC, which is also the
15 Complainant in this matter, apparently refused to provide her with the information she

¹ O'Donnell Resp. at 1 (Nov. 7, 2019).

² *Id.*, Ex. 2 (screenshot of ALM website listing the Christine O'Donnell Masterfile). The total file apparently contained 106,394 names, some with phone numbers and email addresses, with prices ranging from \$5 to \$135 per thousand names depending on the information and options selected. *Id.*

³ *Id.* at 1.

⁴ *Id.* at 1, 5; *see also id.* at 1 ("Long before I ever ran for public office, I had an extensive supporter list created from over a decade of advocacy work. Additionally, I had a marketing list that was created during my 2011 book tour.").

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1 requested.⁶ As such, O'Donnell maintains she could not determine the contents of the Masterfile
2 or whether lists belonging to her or her committees were used to create it.⁷

3 According to O'Donnell, she stopped inquiring about the Masterfile for a period of time,
4 but in 2019, she filed a Petition for Accounting in Virginia state court.⁸ In that Petition,
5 O'Donnell argued that ALM marketed the Masterfile “without her knowledge or consent,” and
6 that she “may be entitled to payment of any fees received less broker’s fees for the rental of the
7 [Masterfile].”⁹ O'Donnell requested that the court order ALM to produce records relating to its
8 use of the Masterfile and return all copies of it.¹⁰ She also asked the court to order
9 reimbursement or restitution for any rental income owed to her or any other entity, and to enjoin
10 ALM from further distribution of the list.¹¹

11 Two months after O'Donnell filed the Petition, Political.Law PLLC filed the Complaint
12 in this matter. The Complaint states that the Masterfile is a campaign asset and argues the

⁶ *Id.* After O'Donnell was apparently unable to obtain information about the Masterfile and use of her personal and political lists, she sought to close down her political action committee, ChristinePAC, and settle all of its obligations. *Id.* at 6. She states that she was told she did not have authority to do so, and as a result, she resigned from the PAC in October 2014. *Id.* After her resignation, O'Donnell states that she learned the PAC was continuing to solicit donations in her name and that her signature had been applied to a Commission filing without her knowledge. *Id.* She also claims that she lost control of both ChristinePAC.com and ChristineODonnell.com, the ownership of which was “mysteriously transferred” to her former campaign manager, Matt Moran. *Id.* O'Donnell states that she then “informed the relevant parties” that she planned to raise these issues with the Commission “so that the parties involved would be compelled to clean it up.” Her former political attorney apparently replied: “If you send anything to the FEC you should be prepared for major wrath to descend upon your head. Led by me.” *Id.* O'Donnell contends that the current Complaint is the fulfillment of this threat, and that Moran has separately threatened to continue denying her access to the websites unless she withdraws the Petition and releases all parties from liability. *Id.* at 2, 7; *id.*, Ex. 1 (screenshots of messages from Moran).

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⁹ Petition ¶¶ 25, 90.

¹⁰ *Id.* ¶ 90.

¹¹ *Id.*

1 Petition is an attempt by O'Donnell to transfer that asset to herself and profit from it.¹² The
2 Complaint emphasizes that O'Donnell filed the Petition on her own behalf, not through the
3 Committee or her former political action committee, ChristinePAC; that the Petition repeatedly
4 describes the Masterfile as “her” list; and that she personally requested restitution for rental
5 income from it.¹³ The Complaint argues that not only would O'Donnell's legal action, if
6 successful, violate the personal use provision of the Act, it would also violate an injunction
7 against O'Donnell from a prior but unrelated Commission action barring her from converting
8 campaign funds to personal use.¹⁴

9 The Committee responds that the Complaint is moot because O'Donnell voluntarily
10 dismissed the Petition after the Complaint was filed.¹⁵ O'Donnell, responding separately, argues
11 that the Complaint's allegations have no merit. She states that she does not know whether the
12 Committee or ChristinePAC developed the Masterfile, or if it instead contained information from
13 lists she personally compiled during many years of advocacy work and a national book tour.¹⁶
14 She notes that ALM is withholding the information she needs to determine the origin of the
15 list.¹⁷ Further, O'Donnell contends that she thought she had to file the Petition in her individual
16 capacity because ALM did not advertise the Masterfile as belonging to the Committee or

¹² Compl. ¶ 3.

¹³ *Id.* ¶¶ 14-19.

¹⁴ *Id.* ¶ 22-23; *FEC v. O'Donnell*, No. I5-17-LPS, 2017 U.S. Dist. LEXIS 59524 (D. Del. Apr. 19, 2017), https://transition.fec.gov/law/litigation/odonnell_dc_order2.pdf.

¹⁵ Committee Resp. at 1 (Oct. 31, 2019); *id.*, Ex. A (Notice of Nonsuit, *O'Donnell v. Allegiance List Marketing LLC*, CL19001561-00 (Loudon Cir. Ct., Oct. 16, 2019)).

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¹⁷ *Id.* at 3 (stating that the Complaint “lacks candor” because it is based on the same information that Backer and ALM have withheld from O'Donnell).

1 ChristinePAC.¹⁸ She states that she is not seeking to convert the Masterfile to personal use but
2 rather to understand whether ALM or her past campaign staff misused it, and to have any
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5 intimidate and retaliate against her for pursuing ALM, as well as tangentially related issues
6 involving ChristinePAC, which are not raised in the Complaint.²⁰

7 **III. LEGAL ANALYSIS**

8 The Act bars personal use, defined as “any use of funds in a campaign account of a
9 present or former candidate to fulfill a commitment, obligation or expense of any person that
10 would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”²¹ The
11 Commission’s implementing regulation provides that the transfer of a campaign committee asset
12 “is not personal use so long as the transfer is for fair market value.”²² The Commission has
13 concluded that a mailing list is a campaign committee asset subject to the regulation.²³

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15 campaign committee asset. The Complaint asserts, without providing any specifics, that the
16 Masterfile was “developed by [O’Donnell’s] committee with campaign funds.”²⁴ It also points

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 4-5.

²⁰ *Id.* at 1, 7; *see also supra* note 6 (describing O’Donnell’s efforts to close down ChristinePAC).

²¹ 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g).

²² 11 C.F.R. § 113.1(g)(3).

²³ *E.g.*, AO 2014-06 at 8 (Ryan) (approving proposal to rent campaign committee mailing list for fair market value pursuant to 11 C.F.R. § 113.1(g)(3)).

²⁴ Compl. ¶ 3.

MUR 7640 (O'Donnell, *et al.*)
Factual and Legal Analysis
Page 6 of 8

1 to general information about the Committee's past activities from the 2010 election cycle
2 relating to fundraising and contributor lists.²⁵ But this information only suggests the Committee
3 had the opportunity to develop mailing lists. None of it links those activities to the Masterfile
4 advertised by ALM, particularly in light of the fact that O'Donnell states she developed several
5 lists outside of her political candidacies.²⁶ If the Masterfile is a campaign committee asset, the
6 Committee's reports should reflect payments from ALM to the Committee for the profits of list
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8 Commission.²⁸ Thus, the allegation that the Masterfile is a campaign asset is speculative, even

²⁵ *Id.* ¶ 21 (stating that the Committee has received individual contributions, and made disbursements for direct mail expense, direct mail consulting, fundraising consulting, fundraising services, fundraising phone calls, list rental expense, and mailing list service).

²⁶ O'Donnell Resp. at 1.

²⁷ 11 C.F.R. § 113.1(g). List rental fees are reportable to the Commission under the category "Other Receipts." AO 2002-14 at 5 (Libertarian National Committee); 11 C.F.R. § 104.3(a)(3)(x). Commission regulations require authorized committees to report each person who provides an aggregate or amount of "other receipts" exceeding \$200 in a given election cycle. 11 C.F.R. § 104.3(a)(4)(vi). It is unlikely that ALM could have paid less than this amount. For example, in MUR 6937, a committee valued its list of 111,136 donors and supporters at \$177,817.60. Factual & Legal Analysis at 3-4, MUR 6937 (NextGen Climate Action Committee, *et al.*). The Masterfile appears to have contained 106,394 records. O'Donnell Resp., Ex. 2. And there is information in the Petition for Accounting that suggests the Masterfile was rented as many as 50-60 times during the 2014 election cycle alone. Petition ¶¶ 59-63.

²⁸ Searches for "Allegiance" and "ALM" among all receipts reported by the Committee return no results. Financial Summary, Friends of Christine O'Donnell, *available at* <https://www.fec.gov/data/committee/C00449595/> (principal campaign committee). All of the Committee's quarterly and year-end reports from 2011 through the end of 2014 were certified by the Committee's then-treasurer Matt Moran. Committee Filings 2011-2012, Friends of Christine O'Donnell, *available at* <https://www.fec.gov/data/committee/C00449595/?tab=filings&cycle=2012;> Committee Filings 2013-2014, Friends of Christine O'Donnell, *available at* [https://www.fec.gov/data/committee/C00449595/?tab=filings&cycle=2014.](https://www.fec.gov/data/committee/C00449595/?tab=filings&cycle=2014) O'Donnell claims that Moran threatened to withhold access to her web domains unless she withdrew her suit against ALM and "relieved all parties of future liability." O'Donnell Resp. at 6-7.

1 though Complainant and those associated with it appear to be in a position to provide more
2 substantive information.

3 Even if the list was a campaign committee asset, the Complaint's allegation that
4 O'Donnell is seeking an improper personal benefit is also speculative and appears to be based on
5 a selective reading of the Petition. The Complaint notes that the Petition asks for "recovery or
6 restitution of any rental income from the use of Christine O'Donnell's list owed to Ms.
7 O'Donnell."²⁹ But the Petition acknowledges that the funds may not be owed to her. The
8 Petition states that the requested "accounting and record of any [rental] contracts are needed to
9 determine *to whom, if anyone*, rental fees are now due" and states that O'Donnell "*may be*
10 entitled to payment."³⁰ O'Donnell's Response states that she is seeking to have the court
11 "require the payments be settled up with whatever entity is entitled to the payments."³¹ In other
12 words, it appears that if the Masterfile contains lists that are O'Donnell's personally, she would
13 receive compensation, and if the Masterfile contains lists that belong to the Committee, the
14 Committee would receive compensation.³²

15 Given the sparse and speculative information presented by the Complaint, and the lack of
16 any other available information, the Commission dismisses the allegation that Christine

²⁹ Compl. ¶ 19.

³⁰ Petition ¶¶ 89-90 (emphasis added).

³¹ O'Donnell Resp. at 5.

³² It seems unlikely that the Complaint is moot, as the Committee has argued. Committee Resp. at 1. Although O'Donnell voluntarily dismissed the Virginia suit, she stated to the court that she "expect[s] the cause of action to [be] re-filed in another forum where additional causes of actions may be added to more thoroughly address concerns." Committee Resp., Ex. A at 1 (Notice of Nonsuit, *O'Donnell v. Allegiance List Marketing LLC*, CL19001561-00 (Loudon Cir. Ct., Oct. 16, 2019)).

THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.

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- 1 O'Donnell and the Committee are about to convert campaign assets to personal use in violation
- 2 of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g)(3).³³

³³ See First Gen. Counsel's Report at 5, MUR 5467 (Michael Moore, *et al.*) ("The Commission cannot entertain complaints based on mere speculation that a person may violate the law at some future date."); Certification ¶ 1, MUR 5467 (Michael Moore, *et al.*) (approving recommendation to dismiss matter).