



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Neil P. Reiff, Esq.
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1025 Vermont Ave., Suite 300
Washington, DC 20005

JUN 23 2014

RE: MUR 6749
Trust Women PAC, et al.

Dear Mr. Reiff:

On August 22 and November 14, 2013, the Federal Election Commission notified your clients, Trust Women PAC and Amber L. Lockner in her official capacity as treasurer, (the "Committee") and Julie Burkhart, of a Complaint and Supplemental Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the Complaint and Supplemental Complaint were forwarded to your clients at that time.

Upon further review of the allegations contained in the Complaint, Supplemental Complaint, and information supplied by your clients, the Commission, on June 10, 2014, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

A political committee other than an authorized committee must report, among other things, its cash-on-hand as of the beginning of the reporting period. *See* 2 U.S.C. § 434(b)(1); 11 C.F.R. § 104.3(a)(1). The Commission cautions the Committee to correct its cash-on-hand balances on its disclosure reports from 2011 through 2014. The Commission further cautions the Committee to ensure that its future reports are in compliance with the Act and the Commission's Regulations.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



William A. Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1-800-OUTLINE-4041

1 FEDERAL ELECTION COMMISSION

2
3 FACTUAL AND LEGAL ANALYSIS
4

5 **RESPONDENTS:** Trust Women PAC and
6 Amber L. Lockner in her official capacity as treasurer
7 South Wind Women's Center LLC
8 Julie Burkhart

MUR: 6749

9
10 **I. INTRODUCTION**

11
12 This matter was generated by a Complaint filed with the Federal Election Commission by
13 Cheryl Sullenger of Operation Rescue, alleging violations of the Federal Election Campaign Act
14 of 1971, as amended (the "Act"), by the Trust Women PAC and Amber L. Lockner in her
15 official capacity as treasurer (the "Committee") and Julie Burkhart, the Committee's President.
16 See 2 U.S.C. § 437g(a)(1).

17 The Complaint alleges the Committee used its funds and resources to operate a for-profit
18 business, the South Wind Women's Center, LLC (the "Clinic"). Specifically, the Complaint
19 alleges that the Committee violated the Act by making a direct loan to the Clinic and making
20 purchases of goods for use by the Clinic.¹ The Complaint also alleges that the Clinic's
21 repayment of the direct loan and in-kind purchases were corporate or excessive contributions to
22 the Committee. The Complaint further alleges that the Committee made numerous reporting
23 errors, related to, and independent of, its transactions with the Clinic.²

¹ See Compl. (Aug. 16, 2013); see also Supp. Compl. (Nov. 12, 2013); see also Letter from Complainant to the Reports Analysis Division ("RAD"), FEC. (Dec. 12, 2013).

² *Id.* The Complaint further alleges that in 2012, the Committee should have registered as a political committee with the Kansas Secretary of State because it made a contribution to a Kansas state senator's campaign. Compl. at 5. Because this allegation is not within the Commission's jurisdiction, we make no findings as to this allegation.

1 The Response, filed on behalf of the Committee and Burkhart,³ acknowledges that the
2 Committee paid for items for the Clinic's use, but contends that the Clinic reimbursed the
3 Committee for those payments and argues that the Committee did not use its funds or resources
4 to operate a for-profit business.⁴ The Response asserts that, even assuming *arguendo* that the
5 Committee's funds were used for such purposes, the Committee is not barred from doing so by
6 the Act or the Commission's regulations.⁵ With respect to its disclosure reports, the Committee
7 asserts that it has adequately complied with all reporting requirements and has retained an
8 auditor to rectify any erroneous reports, thus the Commission should close the file.⁶

9 Based on the specific conduct and small dollar amounts at issue in this matter, the
10 Commission concludes that pursuing this matter further would not be an efficient use of the
11 Commission's resources and, thus, exercises its prosecutorial discretion to dismiss this matter.
12 *See Heckler v. Chaney*, 470 U.S. 821 (1985).

13 II. FACTUAL AND LEGAL ANALYSIS

14 A. Statement of Facts

15 Trust Women PAC registered with the Commission as a nonconnected multicandidate
16 political action committee in 2009.⁷ Amber Lockner is treasurer of the Committee and Julie

³ The Office of Complaints Examination and Legal Administration ("CELA") clarified with counsel that the October 21, 2013, Response was filed on behalf of the Committee and Burkhart and that they will not be filing a response to the Supplemental Complaint. The Clinic has not filed a Response to the Complaint or Supplemental Complaint.

⁴ Resp. at 1, 7 (Oct. 21, 2013).

⁵ *Id.*

⁶ *Id.* at 1, 2.

⁷ *See* FEC Form 1, Statement of Organization (Aug. 21, 2009).

1 Burkhart is President of the Committee.⁸ South Wind Women's Center LLC is a limited liability
2 company ("LLC") that has been active and registered in good standing with the Kansas Secretary
3 of State since November 19, 2012.⁹ Julie Burkhart is the registered agent of the Clinic.¹⁰

4 In March 2013, the Committee purchased robes (\$342.80), webhosting (\$208), and a
5 washer and dryer (\$837.92) for the Clinic and made a direct \$7,000 loan to the Clinic.¹¹

6 According to the Committee's disclosure reports, the Clinic repaid these amounts on August 1,
7 2013.¹² While the Committee timely disclosed disbursements for the three purchased
8 items/services on Schedule B (Disbursements) of its 2013 April Quarterly report, it did not report
9 making any loans (direct or in-kind) during that period.¹³ In January 2014, the Committee
10 amended its 2013 July Quarterly report to disclose a loan owed by the Clinic in the amount of
11 \$7,000.¹⁴ In March 2014, the Committee amended its 2013 July Quarterly report again to disclose
12 that the Clinic owed the Committee \$8,410.25.¹⁵

13 **B. Committee Loan and Other Disbursements to the Clinic**

14 The Complaint alleges that the Committee used its resources to conduct Clinic business
15 and violated the Act by making a direct loan to the Clinic and purchases of goods for use by the

⁸ See FEC Form 1, Statement of Organization (Aug. 2, 2013); Resp. at 8.

⁹ Compl. at Attach. 13.

¹⁰ See *id.*

¹¹ Resp. at 7, 8.

¹² 2013 Amended October Quarterly Report at 7 (Apr. 23, 2014).

¹³ 2013 April Quarterly Report at 4 (line 27), 13-14, 18 (Apr. 15, 2013).

¹⁴ See 2013 Amended July Quarterly Report at 30 (Jan. 8, 2014).

¹⁵ See 2013 Amended July Quarterly Report at 31 (Mar. 6, 2014). There is a \$25 discrepancy between the loan amount and the repayment amount, which we cannot explain.

1 Clinic. The Complaint also notes that the Committee disclosed receipt of a loan repayment of
2 \$8,410.25 from the Clinic, but “listed no outstanding loans on its previous reports.”¹⁶ The
3 Complaint further alleges that the Clinic’s repayment of the \$8,410.25 in loans resulted in
4 prohibited corporate and excessive contributions to the Committee because “depending on its tax
5 status, the company may classify as a corporation under FEC regulations, and thus be prohibited
6 from giving funds to a PAC.”¹⁷ Finally, the Complaint asks: “Is [the Clinic] nothing more than a
7 money laundering scheme for PAC employees to embezzle funds, without suspicion of
8 malfeasance?”¹⁸

9 The Response denies that it used committee funds or resources to operate the Clinic but
10 concedes that it paid for some expenses and made a loan to the Clinic, all of which the Clinic
11 reimbursed to the Committee.¹⁹ The Response alternatively argues that even if the Committee
12 had used its funds to finance a for-profit business, the Commission’s regulations would not
13 prohibit such use.²⁰

14 The Act permits political committees to make loans.²¹ Based on the information
15 available, the Committee’s provision of loans to the Clinic — both a direct loan and in-kind
16 loans in the form of the purchase of goods — does not appear to violate the Act. Furthermore,
17 there is no available evidence to support the speculative allegations related to embezzlement.

¹⁶ Suppl. Compl. at 1-2 ; *see also* 2013 July Quarterly Report filed July 15, 2013.

¹⁷ Suppl. Compl. at 1; *see also* 2 U.S.C. § 441b(a); 11 C.F.R. § 110.1(g).

¹⁸ Compl. at 7.

¹⁹ According to the Response, “[t]he for-profit business in question has also reimbursed Trust Women PAC for all expenses cited by Operation Rescue. These reimbursements will appear on Trust Women PAC’s October FEC report.” Resp. at 7, 8.

²⁰ *Id.* at 7, n.31.

²¹ *See* 2 U.S.C. § 431(9)(A)(i) (providing that a loan is a kind of expenditure).

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1 Although the making of the loans to the Clinic do not themselves appear to result in any
2 violations of the Act, the Complaint specifically alleges that the Committee disclosed receipt of a
3 loan repayment of \$8,410.25 from the Clinic, but "listed no outstanding loans on its previous
4 reports."²² The Complaint further alleges that the Clinic's repayment of the \$8,410.25 in loans
5 resulted in prohibited corporate and excessive contributions to the Committee because
6 "depending on its tax status, the company may classify as a corporation under FEC regulations,
7 and thus be prohibited from giving funds to a PAC."²³ The Response does not address these
8 allegations, except to concede that the Clinic has repaid all loans or disbursements to the
9 Committee.²⁴

10 Debts and obligations owed to a political committee that remain outstanding must be
11 continuously reported until extinguished.²⁵ Further, while the Act and the Commission's
12 regulations permit political committees to make loans to any person, the source prohibitions
13 apply to the repayment of those loans.²⁶

14 It is clear that the Committee failed to disclose the outstanding loans to the Clinic on its
15 original disclosure reports in violation of 2 U.S.C. § 434(b). While the disbursements for the in-
16 kind loans were timely reported by the Committee on its 2013 July Quarterly report, they were
17 not identified as outstanding loans to the Clinic until nearly a year later in March 2014. Further,
18 the additional \$7,000 direct loan to the Clinic was not reported by the Committee whatsoever

²² Suppl. Compl. at 1-2; *see also* July Quarterly Report filed July 15, 2013.

²³ Suppl. Compl. at 1; *see also* 2 U.S.C. § 441b(a); 11 C.F.R. § 110.1(g).

²⁴ Resp. at 7.

²⁵ 2 U.S.C. § 434(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

²⁶ *See* 2 U.S.C. §§ 434(b)(8), 441b(a); 11 C.F.R. § 100.52(b)(5).

1 until March 2014. Thus, the Committee clearly violated 2 U.S.C. § 434(b)(8) by failing to
2 disclose the loans properly.

3 Further, because the Clinic is registered as an LLC, the Commission cannot determine,
4 whether the Clinic's repayment of the principal amount of the loan to the Committee was made
5 with permissible funds because there is no publicly available information to indicate whether the
6 LLC is established as a corporation under the Internal Revenue Code.²⁷ If the Clinic elects to be
7 treated as a corporation for tax purposes, or if it has publicly-traded shares, then the repayment of
8 this loan to the Committee would be prohibited. Alternatively, if the Clinic elects to be treated
9 by the IRS as a partnership or individual member organization, then its repayment of the loan is
10 permissible under the Act and Commission regulations.²⁸ Based on publicly available
11 information, the Clinic does not have publicly-traded shares. Therefore, the Clinic's tax status is
12 necessary to determine whether the loan repayment is permissible under the Act.

13 Based on the circumstances presented here, including the small amount at issue, the
14 Commission concludes that pursuing this matter further would not be an efficient use of
15 Commission resources. Therefore, the Commission exercises its prosecutorial discretion to
16 dismiss the allegations related to the Committee's loan and other disbursements to the Clinic.²⁹

17 **C. Disclosure Reports**

18
19 In addition to the Committee's failure to properly disclose the loans, the Complaint
20 alleges other reporting and filing errors.³⁰ It relies on Requests for Additional Information

27 See 11 C.F.R. § 110.1(g).

28 See 11 C.F.R. § 110.1(g)(2),(4).

29 See *Heckler v. Chaney*, 470 U.S. 821 (1985).

30 See Resp. at 4.

1 (“RFAs”) RAD sent to the Committee and two closed Administrative Fines cases.³¹ The
2 Committee counters that it used best efforts to comply with the RFAs and its reporting
3 requirements and will file amended reports.³² Additionally, the Response explains that the
4 Committee had problems with its vendor software.³³

5 Every political committee must have a treasurer, identify the treasurer on its Statement of
6 Organization, and amend that statement within ten days of any change.³⁴ In most cases, once
7 political committees pass certain financial thresholds, they must file their reports and statements
8 electronically.³⁵ All political committees must file regular reports of their receipts and
9 disbursements, and the treasurer must sign and file them.³⁶ A political committee other than an
10 authorized committee must report, among other things, its cash-on-hand as of the beginning of
11 the reporting period, its total contributions received, and its total operating expenditures.³⁷ It
12 must also itemize the full name and address of each person who received aggregate annual
13 disbursements in excess of \$200, and provide the date, amount, purpose of the expense.³⁸ Such a

³¹ Compl. at 2-4. The closed Administrative Fines cases in which the Committee has paid fines are: (1) AF #2559, paid \$550 on Dec. 11, 2012, for failure to file the 2012 July Quarterly report; and (2) AF # 2686, paid \$3,712 in installments from July 2013 through December 2013, for failure to file the 2012 Post-General report.

³² *Id.*

³³ Resp. at 5.

³⁴ See 2 U.S.C. §§ 432(a), 433(b)(4), (c); 11 C.F.R. §§ 102.2(a)(1)(iv), (2), 102.7(a).

³⁵ See 11 C.F.R. § 104.18.

³⁶ See 2 U.S.C. § 434(a)(1), (b); 11 C.F.R. § 104.1(a), 104.3(a), (b). The required number and timing of these reports depends on the committee’s type and, to some extent, the committee’s choice. 2 U.S.C. § 434(a)(2) – (4).

³⁷ See 11 C.F.R. §§ 104.3(a)(1), (2), (b)(1), (b)(3).

³⁸ See 11 C.F.R. § 104.3(b)(1)(A), (3)

1 committee must itemize contributions from a single contributor if those aggregate annual
2 contributions are greater than \$200.³⁹

3 Many of the allegations regarding reporting violations in the complaint describe *de*
4 *minimis* violations or are unfounded; only two merit discussion. First, the Complaint contends
5 that the Committee's cash-on-hand figures on its reports were consistently wrong.⁴⁰ The
6 Response states that the Committee has either fixed all of these errors, or will do so.⁴¹

7 Second, the Complaint alleges, without any support, that since July 2011, the Committee
8 failed to properly report "at least \$72,000" of unitemized contributions since 2011.⁴² The
9 Response argues that the Committee did not have to itemize contributions of \$200 or less, and
10 the Complaint's accusations are legally insufficient and factually unsubstantiated.⁴³ There is no
11 available evidence that the Committee did not receive \$72,000 in contributions of \$200 or less.

12 Therefore, the Commission dismisses the allegations that Trust Women PAC and Amber
13 L. Lockner, in her official capacity as treasurer, violated 2 U.S.C. § 434(b) and cautions the
14 Committee to correct its reports. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

³⁹ See 11 C.F.R. § 104.3(a)(4)(i).

⁴⁰ See Compl. at 3-4.

⁴¹ See Resp. at 4.

⁴² Comp. at 4.

⁴³ Resp. at 9. See 11 C.F.R. §§ 111.4(c), (d)(2).