FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT CELA

MUR: 6672
DATE COMPLAINT FILED: October 23, 2012
DATE OF NOTIFICATION: November 1, 2012
LAST RESPONSE: December 19, 2012
DATE ACTIVATED: January 16, 2013

EXPIRATION OF SOL:
April 5, 2012 (earliest)
November 12, 2013 (latest)

COMPLAINANT: John T. Russell

RESPONDENTS: Bilirakis for Congress and John Koulianos in his official capacity as treasurer
Representative Gus Bilirakis

RELEVANT STATUTES AND REGULATIONS: 2 U.S.C. § 439a(b)
11 C.F.R. § 113.1(g)(1)(i)(F), (G)

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

The Complaint in this matter contends that Representative Gus Bilirakis and Bilirakis for Congress converted campaign funds to personal use by paying Bilirakis's membership dues and event registration to the Royal Order of Jesters, an invitation-only division of Shriners International. The Royal Order of Jesters describes its purpose as "spreading the gospel of mirth,

merriment and cheerfulness."[1] The Respondents acknowledge the payments to the Royal Order of Jesters but claim they were permissible because it is a "Masonic fraternity that clearly qualifies as a civic or community organization."[2] Respondents contend that language in the Commission's explanation and justification for the personal use regulations brings the activity within an exception to those regulations.[3] Accepting Respondents' position, however, would render meaningless the statutory and regulatory prohibitions against expending committee funds for dues to a "nonpolitical organization."[4] Therefore, we recommend that the Commission find reason to believe that Bilirakis and Bilirakis for Congress and John Koulianos in his official capacity as treasurer (the "Committee") converted campaign funds to personal use in violation of 2 U.S.C. § 439a(b).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Bilirakis currently represents the 12th congressional district of Florida and previously represented the 9th congressional district of Florida from 2003 to 2013.[5] In itemized disclosure reports, the Committee identifies disbursements of $339.13 to the Royal Order of Jesters for

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[1] Compl. at 1; *id.*, Attach. B at 7 (Final Determination of the Indiana Board of Tax Review); *see* http://royalorderofjesters.org/.

[2] Resp. at 2 (Dec. 19, 2012).

[3] *Id.* at 2-3; *see* Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7863 (Feb. 9, 1995) ("Personal Use E&J").

[4] *See* 2 U.S.C. § 439a(b); 11 C.F.R. § 113.2(g)(1)(i)(G).

[5] The 2012 general election was the first election following reapportionment after the 2010 census. *See* www.floridaredistricting.org/.

"event registration" on April 5, 2007 and disbursements of $25.00 and $780.13 on November 4 and 13, 2008, for "membership dues."[6]

The Royal Order of Jesters is a 501(c)(3) and 501(c)(10) tax-exempt entity under the Internal Revenue Code. It is affiliated with the Masonic fraternity, and its membership consists exclusively of men admitted by invitation only who must also be a Mason and a Shriner.[7] Its purpose is to "spread[] the gospel of mirth, merriment and cheerfulness," and its motto is "Mirth is King."[8]

The Complainant was one of Bilirakis's opponents in the 2012 general election. He identified Bilirakis's membership in the Royal Order of Jesters during a candidate forum[9] and alleged that the group had ties to human trafficking and prostitution.[10] The Committee staff later acknowledged Bilirakis's membership in the Tampa chapter but reportedly stated that he is an inactive member.[11]

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[6] These are the Committee's only known payments to the Royal Order of Jesters. *See* Bilirakis for Congress, 2007 July Quarterly Report at 83 (July 13, 2007); Bilirakis for Congress, 2008 Amended Post General Report at 85-86 (Dec. 10, 2008).

[7] Compl., Attach. B at 7 n.3.

[8] *Id.* at 7; *see* http://royalorderofjesters.org/; *see also* http://www.royalorderofjesters.net/ (stating that "the organization exists *solely* for fun and amusement") (emphasis added). The Royal Order of Jesters chapter to which the Committee disbursed funds, known as the Tampa Court No. 89, files its federal tax returns under section 501(c)(10) of the Internal Revenue Code. Its Form 990s are available for the years 2004 through 2011, and describe the avowed purpose of the chapter. *See* http://nccsdataweb.urban.org/orgs/profile/237147883?popup=1#forms. The entity's 2006-2011 Form 990s state that its primary exempt purpose is to "promote fellowship and mirth," and identifies as its achievements in furtherance of that purpose that "happiness and mirth was [*sic*] spread throughout the realm." *See, e.g.*, Royal Order Tampa Court No. 89, 2006 Form 990, *available at* http://dynamodata.fdncenter.org/990_pdf_archive/237/237147883/237147883_200612_990O.pdf.

[9] *See* WCTV, Complaint Filed Against Florida Congressman (Oct. 22, 2012) [hereinafter "WCTV, Complaint Filed"], http://www.wctv.tv/home/headlines/Florida-Congressman-174484421.html.

[10] *See* Compl., Attach. A (DVD containing video footage of candidate forum held October 15, 2012).

[11] *See* WCTV, Complaint Filed, *supra*.

In support of the personal use allegation, the Complaint provides a copy of a 2010 plea agreement with a New York Royal Order of Jesters member.[12] This member pleaded guilty in federal district court to a violation of the Mann Act, 18 U.S.C. § 242, for transporting women across state lines to engage in prostitution.[13] The factual basis for the plea details that the defendant — acting with the knowledge and agreement of senior members of the Buffalo chapter of the Royal Order of Jesters and representatives of the national organization — transported women referred to as "jester girls" from New York to Ontario, Canada for the purpose of engaging in acts of prostitution with Royal Order of Jesters members at the organization's national meeting in 2005.[14] As part of the same federal investigation, other Royal Order of Jesters members also pleaded guilty to Mann Act violations and admitted to transporting women to Royal Order of Jesters gatherings in Pennsylvania, Florida, Kentucky, and New York in 2001, 2005, 2006, and 2007.[15]

The Complaint also provides a January 2012 Final Determination by the Indiana Board of Tax Review ("Indiana Tax Board") revoking the property tax exemption for the national headquarters of the International Royal Order of Jesters, Inc.[16] The Indiana Tax Board

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[12] Plea Agreement, *United States v. Lesinski*, 10-CR-327 (W.D.N.Y. Nov. 19, 2010) (Attachment D to the Complaint).

[13] *Id.* at 2.

[14] *Id.* at 3.

[15] *See* Plea Agreement, *United States v. Trowbridge*, 08-CR-074 (W.D.N.Y. Mar. 20, 2008); Plea Agreement, *United States v. Tills*, 08-CR-242 (W.D.N.Y. Sept. 4, 2008); *see generally* Joel Stashenko, *Former Judge Pleads Guilty to Transporting Prostitute Across State Lines*, N.Y. L.J., Sept. 8, 2008, *available at* http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202424301903&slreturn=20130022131759.

[16] Final Determination, Pet. Nos.. 49-600-08-2-8-00010, 49-600-10-2-8-01551 (Ind. Bd. Tax Rev. Jan. 9, 2012), *available at* http://www.in.gov/ibtr/files/International_Royal_Order_of_Jesters_49-600-08-2-8-00010_et_al.pdf. The Indiana Tax Board decision states that the International Royal Order of Jesters, Inc. incorporated in 2003 to purchase the Royal Order headquarters, located in Indiana. *Id.* ¶ 22.

concluded that the Royal Order of Jesters failed to establish a prima facie case that its purpose was charitable, educational, or religious.[17] The Indiana Tax Board decision notes that, according to the Royal Order of Jesters' executive director, its exclusive function is "to promote the members' fraternalism, spreading mirth and cheerfulness and promoting good fellowship."[18]

The Response does not describe the purpose of the Royal Order of Jesters or the activities in which it engages. It simply asserts that, "[a]s described in one of the Complaint's exhibits, the Royal Order of Jesters is a Masonic fraternity that clearly qualifies as a civic or community organization."[19]

B. Legal Analysis

The Act provides that contributions accepted by a candidate shall not be converted to personal use.[20] Contributions "used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of" the candidate's campaign or individual's duties as a federal officeholder are considered converted to personal use.[21] The Act and Commission regulations deem a committee's payment of certain expenses — including "[d]ues, fees, or gratuities at a country club, health club, recreational facility, or *other nonpolitical*

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17 *Id.* ¶ 53.

18 *Id.* ¶ 45; *see also id.* ¶ 21 ("The purpose of the Jesters is spreading the gospel of mirth, merriment and cheerfulness, promoting fellowship and fraternity among members, and extending good cheer and assistance to the general public, which furthers the Masonic principles of brotherly love, belief, and truth."); *id.* ¶ 36 (describing the Royal Order as "a non-profit organization whose purpose is spreading mirth and cheerfulness, promoting good fellowship, extending assistance and good cheer to others, promoting fraternalism"); *id.* ¶ 45 ("The Jesters's main function, as Mr. Rogers repeatedly testified, is to promote the members' fraternalism, spreading mirth and cheerfulness and promoting good fellowship.").

19 Resp. at 2.

20 2 U.S.C. § 439a(b)(1).

21 *See id.* § 439a(b)(2); 11 C.F.R. § 113.1(g); Personal Use E&J, 60 Fed. Reg. at 7863.

organization"— as *per se* personal use.[22] In identifying these particular expenses, the Commission noted that they are personal in nature because they would exist regardless of an individual's status as a federal candidate or officeholder.[23]

Respondents disbursed campaign funds to pay Bilirakis's membership dues to the Royal Order of Jesters and to register for an unspecified Royal Order of Jesters event. We believe that the obligation to make dues payments to the Royal Order of Jesters would "exist irrespective of" Bilirakis's candidacy or status as a Member of Congress. The uncontradicted record shows that the Royal Order of Jesters is a social, fraternal organization — its sole purpose is fostering mirth and friendship. On this record, it thus appears that the Royal Order of Jesters is a "nonpolitical organization," and the payment of dues by the Committee constitutes *per se* personal use.[24]

The Respondents contend that because membership in the Royal Order of Jesters, a "civic organization," helps Bilirakis maintain contact with his constituents, the Committee's payment of his membership dues is not conversion to personal use. The argument proves too much. The same can be said for candidates and officeholders' involvement in *any* organization that involves social interaction with constituents — including a "country club, health club, recreational

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[22] 11 C.F.R. § 113.1(g)(1)(i)(G) (emphasis added); *see* Personal Use E&J, 60 Fed. Reg. at 7864, 7866. All other expenses not included in the *per se* list are analyzed on a case-by-case basis under the "irrespective test." *Id.* at 7867; *see* 11 C.F.R. § 113.1(g)(1)(ii).

[23] *See* Personal Use E&J, 60 Fed. Reg. at 7864.

[24] We have found two instances in which the Commission has considered membership dues paid to a putatively nonpolitical organization. In one, the Commission found reason to believe and admonished a candidate for using committee funds to pay $100 in membership dues to a local Chamber of Commerce that was located outside her district. *See* MUR 5424 (Virginia Foxx for Congress). In the other (involving the father of the candidate here), the Commission disposed of the MUR through a non-precedential dismissal following its assignment to ADR. *See* Certification (Feb. 15, 2002), ADR 056 (Mike Bilirakis for Congress). That matter resolved allegations that the candidate "used excess campaign funds in 1999 and 2000 to pay dues to approximately thirty-eight (38) organizations, totaling over $1,900." Negotiated Settlement ¶ 3 (Feb. 15, 2002), ADR 056. The organizations included, among others, local Chambers of Commerce, the Moose, Rotary and Elk Lodges, local Masonic organizations, various Republican organizations, and assorted alumni and veterans groups. The negotiated settlement accepted without analysis the respondents' contention that, in light of the language of the Personal Use E&J recited above, all of the payments were permissible because the memberships "[were] undertaken as part of the candidate's effort to stay in touch with his constituents." *Id.* ¶ 5.

facility, or other nonpolitical organization."[25] And many, if not all of these organizations, also would be considered by some to be "civic organizations." The Respondents' interpretation therefore cannot be correct because it would directly contravene the plain language of the Act and Commission regulations.

Notwithstanding the relatively small civil penalty resulting from the violation, discussed below, we recommend that the Commission find reason to believe, and not dismiss the Complaint. In concluding that this matter warrants further administrative action, we place significant emphasis on the fact that the violation in question involves conversion of committee funds to personal use. In our view, Commission action is particularly appropriate in such cases — even where, as here, the conduct is unaccompanied by knowing and wilful intent — unless the use that constitutes the violation is truly trivial or incidental, or the payment inadvertent in fact. The Committee's payment of approximately $800 in membership dues for a fraternal organization devoted solely to "mirth" and with no evident political purpose strikes us as neither trivial nor incidental, and the payment was apparently knowingly made.

[26]

The Complaint also challenges a $339.13 disbursement by the Committee to the Royal Order of Jesters for "event registration." That payment was made April 5, 2007, however, and

[25] Respondents rely on language in the Personal Use E&J, stating that the personal use rule would not prevent "a candidate or officeholder to use campaign funds to pay membership dues in an organization that may have political interests." 60 Fed. Reg. at 7866; Resp. at 1-2. The reliance is misplaced. The sole purpose of the Royal Order of Jesters is to spread mirth and cheerfulness. It does not profess to have "political interests."

[26] We note that in MUR 5424 (Virginia Foxx for Congress) this Office recommended that the Commission find reason to believe and send admonishment letters, but take no further action where the candidate used $100 in committee funds to pay membership dues in a local Chamber of Commerce based on the *de minimis* amount involved. *See* First Gen. Counsel's Rpt. at 9, 11, 14, MUR 5424. The Commission approved that recommendation. Certification (Feb. 8, 2005), MUR 5424.

thus occurred outside the applicable five-year limitations period.[27] Accordingly, we recommend that the Commission dismiss the allegation regarding that payment.

IV. RECOMMENDATIONS

1. Find reason to believe that Gus Bilirakis and Bilirakis for Congress and John Koulianos in his official capacity as treasurer violated 2 U.S.C. § 439a(b) by using $805.13 to pay for membership dues.

2. Dismiss the allegations that Gus Bilirakis and Bilirakis for Congress and John Koulianos in his official capacity as treasurer violated 2 U.S.C. § 439a(b) by using $339.13 on April 7, 2012, for event registration.

3. Approve the attached Factual and Legal Analysis.

4.

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[27] *See* 2 U.S.C. § 2462.

6. Approve the appropriate letters.

Anthony Herman
General Counsel

02/15/13
Date

BY: _____
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