



FEDERAL ELECTION COMMISSION  
 WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 7640  
 Christine O’Donnell; Friends of Christine )  
 O’Donnell and Christopher M. Marston )  
 in his official capacity as treasurer )  
 )

**STATEMENT OF REASONS OF CHAIRMAN ALLEN DICKERSON AND  
 COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

The Complaint alleges that former U.S. Senate candidate Christine O’Donnell was attempting to convert a campaign asset to personal use, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), by filing a lawsuit against Allegiance List Marketing, LLC (“ALM”).<sup>1</sup> The lawsuit sought to establish ownership over a mail and phone list being used by ALM, which the Respondents believed may belong to O’Donnell or her campaign committee.<sup>2</sup> If successful, the Complaint claims, the lawsuit would result in O’Donnell taking personal possession of the list and profiting from its use.<sup>3</sup>

For their part, the Respondents deny the allegations. They claim that they are merely attempting to understand the provenance and proper ownership of the list. At any rate, they argue, the Complaint is moot because O’Donnell subsequently voluntarily dismissed the suit in October 2019. O’Donnell has not refiled the suit at any point in the more than two years since.<sup>4</sup>

The Act authorizes the Commission to find reason to believe “that a person has committed, or is about to commit, a violation of this Act.”<sup>5</sup> But absent an imminent or impending violation,

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<sup>1</sup> Complaint at 4–6 (Aug. 30, 2019), MUR 7640 (Christine O’Donnell, *et al.*).  
<sup>2</sup> *Id.* at 4, Ex. 1 (attaching O’Donnell’s Petition for Accounting lawsuit against the Complainant in Virginia state court).  
<sup>3</sup> *Id.* at 4–6.  
<sup>4</sup> Response of Friends of Christine O’Donnell and Christopher M. Marston, in his official capacity as treasurer (Oct. 31, 2019), MUR 7640 (Christine O’Donnell, *et al.*); Response of Christine O’Donnell (Nov. 1, 2019), MUR 7640 (Christine O’Donnell, *et al.*).  
<sup>5</sup> 52 U.S.C. § 30109(a)(2); *see also* 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).

the Commission has no statutory authority to enforce against attempts or conspiracies to violate the Act, just as it cannot enforce against the aiding and abetting of such violations.<sup>6</sup>

In its First General Counsel’s Report, the Office of General Counsel (“OGC”) recommended dismissing the Complaint on the merits. OGC determined that the Complaint was likely not moot.<sup>7</sup> But it also found that it was speculative and lacked sufficient facts to establish that O’Donnell would be converting a committee asset to personal use through the lawsuit, or that the list was a committee asset to begin with.<sup>8</sup> In other words, while OGC concluded that O’Donnell was “about to” do something, there was not enough evidence to show that it was a campaign-finance violation, and so the Complaint should be dismissed.<sup>9</sup>

The Commission, however, disagreed with OGC’s analysis and found no reason to believe that the Respondents were about to commit a personal-use violation.<sup>10</sup> The Complaint about O’Donnell’s lawsuit was filed on August 30, 2019, and the Respondents filed their responses on November 3, 2019. Prior to the responses, O’Donnell filed a notice of nonsuit on October 16, 2019.<sup>11</sup> Although O’Donnell’s filing indicated that she may refile the suit, she had not by the time OGC completed the First General Counsel’s Report in April 2020. Nor had any new lawsuit been filed when the Commission considered this matter in December 2021.

On these facts, we voted to find no reason to believe because O’Donnell’s alleged conduct—that is, her alleged attempt to convert a campaign asset to personal use via a lawsuit—was not “about to occur.”<sup>12</sup> The Commission therefore lacked the legal authority to reach any determination on the allegation’s merits. While we would find it difficult to believe that any respondent could be found “about to commit” a violation of the Act based upon a pending lawsuit, the fact that O’Donnell’s lawsuit had been withdrawn over two years ago made this an easy case. At a minimum, in order find reason to believe that a violation is “about to occur,” it is necessary that the evidence show the violative conduct is both imminent and likely to occur.<sup>13</sup> By contrast, the notion that O’Donnell might refile and subsequently succeed in her lawsuit is speculative and

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<sup>6</sup> *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1115–16 (D. Utah 2018) (holding that the Commission exceeded its statutory authority in promulgating a regulation imposing secondary liability for aiding and abetting contributions in the name of another).

<sup>7</sup> First General Counsel’s Report at 8 n.34 (April 6, 2020), MUR 7640 (Christine O’Donnell, *et al.*).

<sup>8</sup> *Id.* at 6–8.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> Certification (Dec. 2, 2021), MUR 7640 (Christine O’Donnell, *et al.*).

<sup>11</sup> First General Counsel’s Report at 8 n.34 (April 6, 2020), MUR 7640 (Christine O’Donnell, *et al.*).

<sup>12</sup> 11 C.F.R. § 111.4(a).

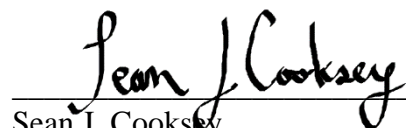
<sup>13</sup> *See FTC v. Shire ViroPharma, Inc.*, 917 F.3d 147, 155–61 & n.15 (3d Cir. 2019) (affirming the district court’s holding that the defendant was not currently violating or “about to violate” the Federal Trade Commission Act where the conduct ceased five years prior). *Cf. Abdul-Akbar v. McKelvie*, 239 F.3d 307, 315 (3d Cir. 2001) (en banc) (“‘Imminent’ dangers are those dangers which are about to occur at any moment or are impending.”).

contingent, and it cannot support the Commission’s exercise of jurisdiction.<sup>14</sup> As a result, we voted to find no reason to believe a violation was about to occur.



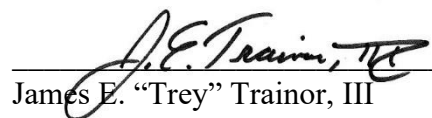
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Allen Dickerson  
Chairman

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January 13, 2022  
Date



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Sean J. Cooksey  
Commissioner

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January 13, 2022  
Date



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James E. “Trey” Trainor, III  
Commissioner

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<sup>14</sup> See *Shire ViroPharma*, 917 F.3d at 159 (rejecting the FTC’s argument that “‘is violating’ or ‘is about to violate’ language can be satisfied by showing a violation in the distant past and a vague and generalized likelihood of recurrent conduct”).