

**STATE OF ILLINOIS
COUNTY OF COOK**

**BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS**

Diane McGinley
Complainant

Vs.

Board File # 16 CD 092

Citizens for Michelle Moore 31818
Respondent

REPORT OF HEARING OFFICER

This hearing was held as a result of a Complaint filed pursuant to “An Act to Regulate Campaign Financing” (Illinois Compiled Statutes, 10 ILCS 5/9-1, et seq. (hereafter referred to as the Act) alleging that the Respondent violated 10 ILCS 5/9-10 and 5/9-11. Specifically, Respondent failed to appropriately report contributions and expenditures. *Diane McGinley v Citizens for Michelle Moore*, see attached.

STATES EXHIBITS

To be made a part of this report, copies of the D-4, Complaint for Violation of the Campaign Disclosure Act, filed on February 1, 2016, at the Board’s Springfield office, 2329 S McArthur Blvd., Springfield, IL 62708; Notice and Summons regarding the Complaint; Notice of the Closed Preliminary Hearing to be conducted in the matter, Monday, February 22, 2016 at 10:00 a.m., at the Illinois State Board of Elections Office, 100 W. Randolph St., Suite 14-100, Chicago, IL, 60601; and proof of service.

COMPLAINANTS CASE –IN-CHIEF

The Complainant was represented by attorney Laura Jacksack.

Ms. Jacksack stated that the complaint is against Michelle Moore, a Republican candidate in the DuPage County Board District 4. She said this is usually a hotly contested race and that almost 15,000 people voted in the last Republican primary for this race. She said the funds spent on this race are typically close to a targeted State Representative race and all of the Republican candidates’ campaign disclosure reports reflect this with the exception of Ms. Moore’s Committee. Citizens for Michelle Moore did not report any expenditures in the 4th quarter of 2015 and Ms. Jacksack stated that the only opportunity the voters are going to have to observe Ms. Moore’s spending before the primary would have been on this report. The Complainant was very surprised to see that the Citizens for Michelle Moore did not report any spending of funds during the 4th quarter of 2015 or report receiving any in-kind contributions when Ms. Moore’s campaign distributed yard signs, walking pieces, and other campaign material during the quarter and they had a fundraiser on 11/15/15. Ms. Jacksack said her client originally thought that maybe the Committee had a new person filing their reports and they didn’t submit something correctly but as time passed and no amendment was filed the Complainant started further trying to contemplate why or how the Committee wouldn’t have any expenditures or in-kind contributions to account for their activity. The Complainant questioned whether it was possible for Ms. Moore to somehow have such a good working relationship with some or all of the vendors that they allowed her to run everything on credit and not have to pay for

items upfront however they did not feel that was very likely. Ms. Jacksack explained that trying to obtain invoices and receipts from vendors is typically impossible to do regarding trying to show that expenditures were made for signs, walking pieces, campaign material or a fundraiser as that type of material is private. However, through a FOIA request the Complainant was able to obtain information regarding the invoice and the receipt of payment for the November 15, 2015 fundraiser that was held at Reserve Twenty-Two, a government entity. Ms. Jacksack stated that the receipt attached to the Complaint shows that Scott Marquardt, Ms. Moore's campaign manager, made a deposit for the fundraiser on 10/29/15 in the amount of \$500 however they realize this transaction would have fallen before the Committee's creation date and therefore would not have had to have been disclosed. However, the Respondent believes that the payment made by Michelle Moore on her credit card for the remaining balance of the event on 11/15/15 for \$930 should have been reported on the Committee's quarterly report in the 4th quarter of 2015. She stated that the Campaign Disclosure Act requires a committee to itemize anything greater than \$150 during a quarter and this would include all contributions (including advances) and expenditures. Additionally, she stated that the Campaign Disclosure Act is very clear on when a contribution has to be disclosed and it is clearly during the same quarter in which the contributions are received. Therefore, the Complainant contends that the Citizens for Michelle Moore should have reported in the 4th quarter of 2015 that they either received a contribution in the form of a loan or an advance and reported an expenditure for the fundraiser or they should have reported the receipt of an in-kind contribution for the costs associated with the 11/15/15 fundraiser of \$930. Furthermore, the Complainant believes that Ms. Moore or potentially one or some of her supporters similarly have made thousands of dollars of reportable transactions that have gone unreported in a similar fashion. Ms. Jacksack noted that Ms. Moore had yard signs, walking pieces, and mail pieces that were dropped during the 4th quarter of 2015 yet her quarterly report does not reflect any of these items being acquired during the quarter. Ms. Jacksack stated that the Respondent knows what they produced and distributed in 2015 and they do not believe they were required to include pictures of the yard signs. The Complainant believes the remaining balance of the 11/15/15 fundraiser, the yard signs, and the other campaign material that was distributed in 2015 should have been accounted on the Respondent's D-2 for the 4th quarter of 2015. Ms. Jacksack stated that disclosing these contributions and expenditures during the correct quarter are especially important because these contributions have to be accounted for in relation to contribution limits. Furthermore, Ms. Jacksack said the Committee may believe they appropriately reported all of their expenditures in accordance with reasonable business procedures, however since this is not a business the campaign disclosure filing requirements must be followed and they believe the reporting requirements may differ. The Respondent is saying the Committee reimbursed their campaign manager and their candidate on 1/20/16 for the expenses related to 11/15/15 fundraiser however the Complainant believes the individuals within Ms. Moore's campaign should have known that this expense should have been reported in the 4th quarter of 2015. The chairman of the Committee is an incumbent County Board Member, the treasurer, their campaign manager, and the candidate are all attorneys, and all of these individuals have been involved in DuPage politics for many years. The Complainant requests that the Board determine that the complaint was filed on justifiable grounds, order Citizens for Michelle Moore to amend their 2015 Q4 report, and assess any fines or order other relief that they deem appropriate.

RESPONDENTS CASE-IN-CHIEF

The Respondent was represented by attorney John Fogarty.

Mr. Fogarty introduced an Affidavit from the chairman of Citizens for Michelle Moore, Karyn Romano, as Respondent Exhibit 1. Both Mr. Fogarty and the Affidavit state that Scott Marquardt put on his credit card the deposit for the Glen Ellyn fundraiser on 10/29/15 and that the candidate, Michelle Moore, put the remaining balance for the event on her credit card on 11/15/15. These two individuals did not submit

these charges to the Committee for reimbursement until January of 2016 in which they were reimbursed on 1/20/16. Ms. Romano stated that these two individuals had no intent not to follow the campaign finance laws and they believe the Committee reported both contributions and expenditures in accord with the law, and in due course according to reasonable business procedures. Ms. Romano stated on the Affidavit that all of the deposits in conjunction with the Glen Ellyn fundraiser have been reported and the contributions were reported as being received as of the deposit date. Additionally, Ms. Romano stated that the Committee did not pay for any expenditures during the 4th quarter of 2015 therefore they take the position that they did not have any expenditures to report. Furthermore, Mr. Fogarty stated that since both the deposit and the payment were paid for by credit card it is completely reasonable for the campaign manager and the candidate to wait until after they received their credit card statements before they turned in those transactions for reimbursement to the Committee. Mr. Fogarty said this is in accord with what happens in real life. In relation to the other campaign material both Mr. Fogarty and Ms. Romano explained that the material may have been delivered in 2015 however the invoices for these materials and the payment for these materials was not made until the 1st quarter of 2016. As such those expenses will be reported on the Committee's 1st Quarter report of 2016. The Respondent contends that the statute does not require an expenditure to be called an expenditure and require any disclosure until the Committee actually pays for an item. In relation to something being an advance Mr. Fogarty noted that the definition of an expenditure does not contain a time frame in which an advance needs to be repaid or whether an advance is a loan or not. Mr. Fogarty said that he believes it was the Committee's intent that these amounts simply be reimbursed and they were reimbursed in January of 2016. Mr. Fogarty said he realizes how the Complainant could be frustrated regarding these matters however the Respondent believes their frustration should be with the Campaign Disclosure Act and what it requires rather than his client's filings. Mr. Fogarty said looking at the definition of a contribution and applying it to this case brings the Respondent to the interpretation that no violation has occurred and they request that the Board find the matter not to have been filed on justifiable grounds. Mr. Fogarty stated that it is the Complainant's responsibility to demonstrate that there was a violation of the Act and they do not believe the Complainant has meet this responsibility. In relation to the campaign material allegations he said the Complainant at least needed to include some of the material that they allege was distributed to meet their burden of proof which they did not and he questions how they are suppose too defend an allegation when they don't specifically know what material they are defending. The Respondents requests that this alleged violation also be determined not to be filed on justifiable grounds.

CONCLUSIONS AND RECOMMENDATIONS

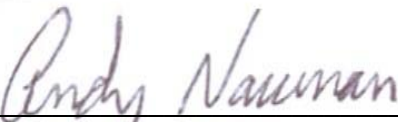
The Complainant alleges that the Citizens for Michelle Moore failed to appropriately report contributions and expenditures in the 4th quarter of 2015. The Respondent claims that all of the financial activity was reported during that period of time and that the Committee did not receive any bills, invoices, or requests for reimbursement until January of 2016 therefore the Committee believes they were not required to report any of the alleged expenses until the close of the current reporting period.

The Complainant has the burden of introducing evidence or information to show the transactions took place in 2015 rather than 2016 and it is the opinion of the hearing officer that the receipts from Reserve 22, the information provided by the Respondent's attorney, and the Affidavit shows at least the deposit and the fundraiser payment to Reserve 22 would have been billed during the 4th quarter of 2015. The Hearing Officer is of the opinion that the campaign manager and the candidate would both be an extension of the Committee and even if they did not submit these bills to the Committee for reimbursement until 2016 that those transactions are reportable transactions that should have been accounted for in the 4th quarter of 2015 even if those individuals were not reimbursed until 2016. Since, the deposit for the 11/15/15 fundraiser was made by the campaign manager, Scott Marquardt, prior to the

committee's creation date the Hearing Officer is of the opinion that the Committee should have reported on their December 2015 Quarterly Report that they had an outstanding debt owed to Mr. Marquardt in the amount of \$500. In relation to the \$930 payment for the remaining balance of the fundraiser that was paid for by the candidate, Michelle Moore, the Hearing Officer is of the opinion that this payment should have been recorded as: a \$930 loan from the candidate on 11/11/15, a \$930 expense to Reserve 22 on 11/11/15, and an outstanding obligation of \$930 owed to the candidate as of 11/15/15. The Hearing Officer is of the opinion that the date an invoice is paid whether that is by credit card, check, cash, or any other form of payment should be the date reported for campaign disclosure purposes even if the statute does not identify specifically when an expenditure is deemed to have been made in circumstances such as this. The Hearing Officer believes that these transactions should be reported in this way otherwise a committee could potentially hide political activity by saying the committee did not spend any money therefore it does not need to disclose all of the items that the candidate or a campaign worker put on his or her credit card until after the committee pays that individual back at a later date. In relation to the yard signs, walking pieces and the other campaign material that was not specifically identified, the Hearing Officer cannot determine with the information that was provided during the hearing whether these materials were dealt with in a similar way by the Committee or not. However, since the Committee admitted that they had received campaign material including yard signs in the 4th quarter of 2015 the Hearing Officer is of the opinion that the Committee should have accounted for these items during the 4th quarter of 2015 even if they did not receive the final invoice. The Hearing Officer believes that someone within the Committee could have paid for some or all of these items and they did not submit their reimbursement in similar fashion to the way the Reserve 22 matter was handled or the Committee should have at least estimated the costs associated with these materials if they had not received an invoice from the vendor and reported the amount(s) or the estimated amounts as an outstanding debt. For the forgoing reasons, I recommend the Board find the complaint was filed on justifiable grounds however I do not believe the matter should proceed to public hearing. Rather, I recommend the Board Order the Respondent to amend their 4th quarter 2015 report to account for:

1. the outstanding debt owed to Mr. Marquardt in the amount of \$500
2. a \$930 loan being received on 11/11/15 from Ms. Moore
3. an expenditure that was made to Reserve 22 on 11/11/15 for \$930
4. a \$930 obligation that is owned to Ms. Moore
5. any other campaign material that was not accounted for during the quarter that was paid for by someone within the organization even if they did not submit the reimbursement to the Committee until after the period had ended be reported (if applicable)
6. any other campaign material that was received during the quarter be accounted for as an outstanding obligation even if the final invoice was not provided and the Committee has to estimate the value (if applicable)

Furthermore, I also recommend that the amendment to be filed within 10 days of the Final Board Order in this matter.



Andy Nauman – Hearing Officer
February 29, 2016