

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
JOHN LINDBACK
DIRECTOR
141 STATE CAPITOL
SALEM, OREGON 97310-0722
ELECTIONS—(503) 986-1518

BEFORE THE SECRETARY OF STATE
OF THE
STATE OF OREGON

In the matter of a Late Contribution and Expenditure Report)
by Close Friends (Betsy), Betsy L. Close, Candidate,) Final Order
Christopher Close, Treasurer, for the Second Supplement to)
the Second Pre-Election for the November 2, 2004, General) Case No. L8152
Election)

April 27, 2005

Close Friends (Betsy) (002725)
Betsy L. Close, Candidate / Christopher Close, Treasurer
5220 NW Winn Dr
Albany, OR 97321

Dear Ms. Close:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

On March 11, 2005, the secretary notified Close Friends (Betsy) (committee), pursuant to ORS 260.232(2), that it had failed to file the report and that the secretary may impose a civil penalty. An opportunity for a hearing was provided in that notice. The committee submitted written testimony in the form of a notarized statement in lieu of a personal appearance at a public hearing. Accordingly, after consideration of the applicable law and evidence presented, Jennifer Hertel, Hearings Officer with the Elections Division, is entering the following Order.

FINDINGS OF FACT

1. The committee's Statement of Organization (SEL 220), applicable during the reporting period, was filed with the secretary on March 15, 2004. The statement reported Christopher Close as the treasurer and 5220 NW Winn Dr, Albany, OR 97321 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a second supplement to the second pre-election report with the secretary on October 29, 2004, because it received a contribution exceeding \$500 from a single source between October 25 and October 28, 2004.

3. The committee reported the contribution required to be on the second supplement to the second pre-election report (\$2,500.00 from the Oregon Republican Party on October 28, 2004) on its post-election report filed on November 30, 2004, which is 20 business days after the second supplement to the second pre-election report was due.
4. On March 11, 2005, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the candidate and was sent by first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$1,000.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Betsy Close on March 12, 2005.
5. On March 18, 2005, the secretary received a notarized letter from Betsy Close in lieu of a public hearing.
6. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
7. The secretary has record of one previous late filing during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Betsy L. Close, Candidate, and Christopher Close, Treasurer, failed to file a timely second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Candidate Betsy L. Close's and Treasurer Christopher Close's failure to file a timely second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.068.

OPINION

Close Friends (Betsy)'s second supplement to the second pre-election contribution and expenditure report, filed on November 30, 2004, was late. It was due by 5:00 p.m., October 29, 2004.

By statute, a maximum \$10,000 civil penalty may be imposed for this violation. The *2004 Campaign Finance Manual*, which contains a penalty calculation matrix on pages 101 and 102, is designated in OAR 165-012-0005 as the procedure manual for Oregon campaign finance regulations.

After reviewing and considering the evidence and information on file in this office, the hearings officer finds that there has been a violation of Oregon election law. The explanation provided in the notarized testimony does not adequately mitigate the failure to file a report by the deadline. The testimony explains that the committee did not file a second supplement to the second pre-election report because it received the \$2,500.00 contribution from the Oregon Republican Party after 5 p.m. on October 28, 2004. Since it was after working hours, the committee made the decision that it could report this contribution in the next reporting period, on its post-election report, because contribution and expenditure reports are due by 5 p.m. on the "last day of a reporting period." Unfortunately, the committee confused "accounting/reporting periods" with "filing periods." An accounting period always ends the day before the filing period begins. The accounting period for the second supplement to the second pre-election was October 25 to October 28, 2004, between the eighth and the fifth day before the date of the election. The filing period was the next day, October 29, 2004, the fourth day before the election, and the committee had until 5 p.m. that day to file the report. While it is unfortunate that the committee did not file the report because of a misunderstanding of the filing deadline, this is not a valid mitigating circumstance; therefore, the civil penalty will not be waived or reduced.

Under the penalty matrix, the maximum statutory penalty of \$10,000 is reduced to 3% of the total contributions or total expenditures—whichever is greater—for each business day the report was late as this is the second late violation by the candidate.

Although the calculated penalty for the late report is \$1,500.00 ($\$2,500.00 \times 3\% \times 20$ days), the penalty matrix sets a maximum penalty of \$1,000.00 when the total contributions or total expenditures—whichever is greater—is between \$2,000.01 and \$10,000.

ORDER

It is ordered that a penalty of \$1,000.00 is assessed. If your payment is not received within 60 days from the date of service noted below, this Order will be sent to our accounting division for collection and may be subsequently sent to the Oregon Department of Revenue.

Please refer to case number L8152 when mailing your payment.

RIGHT TO JUDICIAL REVIEW

You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served to you. Because this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____

c: Christopher Close, Treasurer
5220 NW Winn Dr
Albany, OR 97321