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NEWSLETTER

Criminal Charges Brought for False Statements to the Office of Congressional Ethics

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By Jan Witold Baran and Robert L. Walker

On September 3, 2015, Paul O'Donnell—principal in O'Donnell & Associates, a high profile Washington, DC-area political and corporate strategic communications firm—pled guilty in Federal District Court in the Middle District of Georgia to a Criminal Information charging him with one count of violating Title 18 U.S. Code Section 1001 (False Statements statute), a felony. According to the "Factual Basis for Guilty Plea," filed in connection with the Information to which Mr. O'Donnell pled guilty, Mr. O'Donnell entered his plea in connection with statements he made to the Office of Congressional Ethics (OCE) when he was interviewed by the OCE in June 2014 as part of its inquiry into allegations that now former Congressman Paul Broun (named only as "Congressman A" in the Information) improperly used appropriated congressional funds to pay Mr. O'Donnell for campaign-related services.

Mr. O'Donnell's Plea Agreement, entered into with the U.S. Department of Justice (DOJ) through attorneys in its Public Integrity Section, includes provisions under which he could receive credit at sentencing for providing "substantial assistance" if he cooperates fully with the United States, including potentially through testimony before a grand jury. Based on these cooperation provisions—and on the fact that other witnesses before the OCE made statements similar to those which Mr. O'Donnell has now sworn were criminally false—it appears that DOJ's investigation of this matter is ongoing and that the filing of criminal charges, including potential conspiracy charges, against others is likely.

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According to the "Factual Basis for Guilty Plea" in this matter, "in addition to services [Mr. O'Donnell] provided in support of Congressman A's official office and duties, [he] also provided substantial services to Congressman A's campaigns." The plea document states, in particular, that "during Congressman A's House reelection campaign in June and July 2012 and the Congressman's Senate race in 2013 and 2014, O'Donnell regularly assisted Congressman A with his campaign debate preparation," "also helped to draft the Congressman's opening and closing remarks for his campaign debates and provided the Congressman with campaign message advice." However, the plea document also states, "[d]espite the substantial work O'Donnell performed for Congressman A's political campaigns,"

All of the [$43,400] O'Donnell received for his services to Congressman A was paid from taxpayer money appropriated by the U.S. Congress to Congressman A's office. By law, and pursuant to House rules, those appropriated, congressional funds were to be used for the sole purpose of paying for strictly official congressional expenses and expenditures. By law, and pursuant to House rules, it was unlawful and improper to use appropriated, congressional funds, to pay for political campaign-related expenses and expenditures.

The plea documents in this matter also highlight the conduct of "Person A . . . Chief of Staff for Congressman A." It was Person A, according to these documents, who negotiated Mr. O'Donnell's contractual agreements regarding his work for the Congressman. In connection with the OCE inquiry into Mr. O'Donnell's work for the Congressman, Person A, according to the plea documents, "told O'Donnell that OCE could go 'f@@k themselves'" and told O'Donnell that he had been a "volunteer" for the campaign, by which "O'Donnell understood that Person A was telling [him] how he should characterize his role on Congressman A's political campaign in his interview with OCE."

It appears that no date has been set for Mr. O'Donnell's sentencing, another indication that Mr. O'Donnell is likely cooperating actively in an ongoing investigation into whether other individuals knowingly and willfully provided false information to the OCE in connection with its inquiry concerning former Congressman Broun.

This matter is noteworthy for the fact that it appears to represent the first instance in which criminal charges have been brought by DOJ for providing false information to the OCE. But the more important, more general point underscored by this case may be the broad and comprehensive scope of the False Statement statute, 18 USC Section 1001, as applied in the legislative context. The proscriptions of the statute apply in any circumstance in which an individual or organization provides information—whether in oral or documentary form and whether or not pursuant to a sworn oath—in "any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress . . .." But the statute applies as well in any "administrative matter" of the legislative branch, including, for example, in connection with the filing of reports by individuals and organizations under the Lobbying Disclosure Act.