BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Mary Robert	)	MUR 5321
Janet Robert	)	
Minnesotans for Janet Robert, and	)	
Rob LaFrentz, as Treasurer[1]	)	

STATEMENT OF REASONS OF CHAIRMAN BRADLEY A. SMITH AND COMMISSIONER MICHAEL E. TONER

On March 4, 2004, the Commission found reason to believe that Janet Robert ("Candidate") violated 2 U.S.C. § 441a(f); Janet Robert for Congress and Teresa Silha, as Treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b); and that Mary Robert ("Candidate's mother") violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) regarding an $800,000 gift from the Candidate's mother to the candidate during her candidacy. The Commission also authorized the use of compulsory process in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas to Mary Robert, Janet Robert, and Janet Robert for Congress, as well as additional interrogatories, document subpoenas and deposition subpoenas, as necessary.[2]

On June 8, 2004, after an extensive investigation, the Commission failed by a vote of 3-3 to approve the General Counsel's recommendations to enter into conciliation with the above named respondents and to levy a civil penalty of $200,000 against both the Candidate's Committee and the Candidate's mother.[3] The Commission then voted 5-1 to take no further action and close the file.[4]

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[1] Since the Commission's reason to believe findings, Janet Robert has submitted an amended Statement of Organization indicating that the committee has been renamed Minnesotans for Janet Robert and that the new treasurer is Rob LaFrentz.

[2] Chairman Smith, Vice-Chair Weintraub and Commissioners Mason and McDonald voted in favor of the General Counsel's recommendations. Commissioner Toner dissented and Commissioner Thomas did not vote.

[3] Commissioners Mason, McDonald and Weintraub voted affirmatively for the motion. Chairman Smith, and Commissioners Thomas and Toner dissented.

[4] Commissioners Smith, Weintraub, Mason, Thomas and Toner voted affirmatively. Commissioner McDonald dissented.

Analysis and Conclusions

This matter arose out of a complaint filed by Donald F. McGahn II, General Counsel, National Republican Congressional Committee, alleging that during the 2002 election cycle Janet Robert accepted a contribution from Mary Robert in excess of the contribution limits permitted by the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act").[5]

FECA prohibits individuals from contributing to any candidate and his or her authorized political committees with respect to any election for Federal office which in the aggregate exceed $1,000.[6] 2 U.S.C. § 441a(a)(1)(A). The Commission has defined the term "contribution" as: "A gift, subscription, loan… advance, or deposit of money or anything of value made… for the purpose of influencing any election for Federal office." 11 CFR §100.7(a)(1). The Regulations allow candidates for Federal office to make unlimited expenditures from personal funds. 11 CFR §110.10(a). The Commission has defined the term "personal funds" as including: "bequests to the candidate; income from trust established before candidacy; income from trust established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy." 11 CFR §110.10(b)(2). The Commission has interpreted gifts to a candidate not to be contributions if they are "of a personal nature which had been customarily received prior to candidacy." 11 CFR §110.10(b). *See also* AO 2000-8, 1988-7.

The Supreme Court has upheld the constitutionality of FECA's contribution limits as applied to members of a candidate's family, while invalidating any limits on a candidate's use of his or her own funds. In *Buckley v. Valeo,* 424 U.S. 1, 51 n.57 (1976) ("Buckley"), the Court noted that the legislative history of the Act indicated that "[i]t is the intent of the conferees that the members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation…. The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than $1,000 for each election involved." S. Conf. Rep. No. 93-1237, p. 58 (1974), U.S. Code Cong. & Admin. News 1974, p. 5627.

However, even while upholding FECA's limits against family member contributions, the Court in *Buckley* made clear that the potential for actual or apparent corruption from familial contributions is not as great as from contributions received from persons outside a candidate's family. "The prevention of actual or apparent corruption of the political process does not support the limitation on the candidate's expenditure of his own personal funds… Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily contributors." *Buckley* at 53 n.59.

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[5] The Federal Election Campaign Act of 1971, as amended, governs the activity in this matter and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations herein exclude the changes made by BCRA.

[6] BCRA raised the individual contribution limit to candidates from $1,000 to $2,000.

In deference to the Court's ruling in *Buckley*, we accept and respect that family member contributions to a federal candidate are subject to FECA's contribution limits. However, we also believe the Commission has the power, and indeed the responsibility, to ensure that any penalties that are levied in this area are commensurate with the seriousness of the offense and take into account the relative importance of these kinds of violations relative to other types of FECA violations. *See* Statement of Reasons of Commissioners Smith and Toner in MUR 5138 at 3, Ferguson for Congress, et al. (dissenting from Commission's decision to levy a $210,000 civil penalty given "the Supreme Court's admonition in *Buckley* that contributions from family members do not have the same potential for actual or apparent corruption as other kinds of contributions"). *See also* Friends of Weiner, Audit Referral 03-05 (assessing statutory minimum civil penalty of $5,500 for reporting violations arising out of excessive family contributions).

The relevant facts in this matter are undisputed. Bruce and Mary Robert began giving gifts of stock to their children on February 1, 1968. Between February 1, 1968, and January 1, 1995, they made at least twenty-nine gifts to their children in amounts ranging from approximately $5,000 to $138,000. Gen. Counsel's Report #2 at Att. 2, pp. 1-4. Following her husband's death in 1996, Mary Robert continued their traditional gift giving by making at least thirty gifts, including two gifts of over $669,000 and nine gifts ranging from $1.042 million to $1.855 million *before* the $800,000 gift to Janet Robert at issue here. *Id.* at 2-4. This same pattern of gift giving has continued with Mary Robert giving gifts to her children throughout 2003 and 2004 in amounts up to $450,000. *Id*. at 4.

Respondents submitted extensive factual information to the Commission to support their claim that Mary Robert's $800,000 gift to her daughter was, in fact, a gift consistent with the prior gifts to Janet and her siblings since 1968. To support their contention that this gift was part of an established pattern of gift giving by the parents, respondent's counsel submitted a chart of the Robert family gift history; an affidavit from the Candidate; bank statements from Mary Robert showing the source of funds for the $800,000 gift; financial documents from the candidate relating to the sources of funds for her loans to the campaign; and notes from the Candidate's mother that were attached to each of the $800,000 checks to all ten children. Gen. Counsel's Report #2 at 2.

Despite the extensive amount of evidence presented by the respondents to substantiate their claim that the gifts in question were equal, unconditional $800,000 gifts to each of her ten children and were consistent with the pattern of gifts previously made by the candidate's mother for personal and estate planning reasons, the General Counsel's office recommended that the Commission find that the $800,000 gift to the candidate was not a legitimate gift that fit the pattern of gifts previously made but was an $800,000 excessive contribution. Gen. Counsel's Report #2 at 2-3. The General Counsel's office contended that most of the parent's gifts from 1968-2002 were made largely in the form of Siegel-Robert, Inc. stock rather than in cash, and thus materially differed from the record of gifts "which had been customarily received prior to candidacy." *Id*. at 3.

However, Mary Robert's response provided unrebutted evidence that by September of 2002, she had already given or sold most of her Siegel-Robert, Inc. stock to her children and now held over $40,000,000 in liquid assets that helped generate over $9,500,000 of annual income to her.

See First General Counsel's Report dated February 27, 2004, at 8. Mary Robert further asserted that she decided to give each of her ten children $800,000 after considering her "age, nature and amount of assets, the applicable gift and estate tax rules, and her personal desire that her children receive substantial portions of her estate while she was still alive."[7] *See* Mary Robert Response at 3.

In light of the records, documents, bank statements and affidavit provided by the respondents regarding this $800,000 gift, it is clear that this gift to the candidate was consistent with Mary Robert's established pattern of gift giving before candidacy; was given for "personal and estate planning" reasons, unconnected to the Candidate's campaign; and thus became the "personal funds" of the candidate to be used in any manner the candidate so chose. Accordingly, we voted against entering into conciliation with the respondents in this matter.

Even if we had concluded that the funds at issue were not the personal funds of the candidate, we would not have supported seeking a civil penalty here totaling $400,000, which we regard as grossly disproportionate. As we emphasized in MUR 5138 (Ferguson for Congress),

> [W]e do not believe a civil penalty of nearly a quarter of a million dollars in this matter- which is one of the highest penalties the Commission has ever assessed against a congressional candidate- is consistent with the Court's teaching in *Buckley*. The civil penalty here greatly exceeds the civil penalties that the Commission has imposed in other matters that involve much more serious violations of core provisions of FECA.

For all the foregoing reasons, we declined to support the General Counsel's recommendation to enter into conciliation with the above named respondents, and voted to take no further action and close the file.

July 1, 2004

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Bradley A. Smith, Chairman

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Michael E. Toner, Commissioner

[7] Mary Robert, the Candidate's mother, is the 83-year-old widow of Bruce Robert, who died in 1996. Bruce Robert was the founder of Siegel-Robert, Inc., a privately held corporation.