



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

October 2, 2003

TO: LAWRENCE H. NORTON
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

ROBERT J. COSTA
DEPUTY STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REFERRAL OF CITIZENS COMMITTEE FOR GILMAN FOR CONGRESS

Citizens Committee for Gilman for Congress ("the Committee") received one hundred and forty two (142) excessive contributions from one hundred and two (102) individuals and five (5) political committees totaling \$78,469.00. The contributions in question were designated for the 2002 General Election, in which the candidate did not participate. The Committee failed to disclose the refund or redesignation of any of these contributions. Also, the Committee appears to have spent these contributions that were designated for the 2002 General Election. Additional excessive amounts totaling \$22,240.00 were refunded or redesignated to the 2002 Primary Election within 60 days of RAD's notification to the Committee. Although this amount is not referable to your office, the refunds and redesignations are referenced in the narrative of this referral. In accordance with the 2001-2002 Reports Analysis Division Review and Referral Procedures for Authorized Committees (Standard 2), an examination by your office is required.

Benjamin A. Gilman was the incumbent officeholder and a Republican candidate for New York's Twentieth (20th) District, but withdrew from the 2002 Primary Election on July 2, 2002, after congressional districts in New York were redrawn.

If you have any questions regarding this referral, please contact Karen Balderama at 694-1164.

Attachment

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

REPORTS ANALYSIS REFERRAL

DATE: October 2, 2003

ANALYST: Karen Balderama

- I. COMMITTEE: Citizens Committee for Gilman for Congress
C00007682
Murray M. Rosen, Treasurer
P.O. Box 3001
Middletown, NY 10940
- II. RELEVANT STATUTE: 2 U.S.C 441a
11 CFR 110.1(b)(3)

III. BACKGROUND:

Receipt of Excessive Contributions

Citizens Committee for Gilman for Congress ("the Committee") received one hundred and forty two (142) excessive contributions from one hundred and two (102) individuals and five (5) political committees totaling \$78,469.00, which were designated for the 2002 General Election. Since the candidate withdrew before the date of the 2002 Primary Election and did not participate in the 2002 General Election, these contributions became excessive. Attachment #2 provides a complete listing of the contributions in question. The Committee was required to refund or redesignate these 2002 General Election contributions within 60 days of the candidate's withdrawal date of July 2, 2002. However, the contributions in question were neither refunded nor redesignated.

On October 11, 2002, the Committee filed a 2002 October Quarterly Report. The report disclosed seventy-three (73) general election contributions totaling \$22,240.00 and one hundred thirty-five (135) primary election contributions received after July 2, 2002 totaling \$26,745.00. The report also discloses a refunded contribution of \$1,000.00 for the general election and two refunded contributions totaling \$2,836.00 for the primary election (Microfilm #22992017466).

On April 1, 2003, a Request for Additional Information (RFAI) referencing the 2002 October Quarterly Report was sent by RAD to the Committee (Microfilm #23038024269). The RFAI noted the Committee's receipt of excessive contributions and requested that the Committee refund all primary contributions received after July 2, 2002 and all contributions received for the general election.

On April 11, 2003, the Committee filed an Amended October Quarterly Report disclosing new primary election debts totaling \$84,428.34 (Microfilm #23990690205)

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The \$26,745 00 in 2002 Primary Election contributions received after the date the candidate withdrew were therefore acceptable. The Committee also disclosed the redesignation of \$5,280.00 in 2002 General Election contributions to the 2002 Primary for "Debt Reduction." In addition, on April 16, 2003, the Committee provided copies of refund checks totaling \$16,960.00 to individuals whose contributions were designated for the 2002 General Election (Microfilm #23038043116). On May 1, 2003, a Second Notice referencing the aforementioned report was sent by RAD to the Committee stating their failure to adequately respond to the initial RFAI (Microfilm #23038070423).

On May 7, 2003, the Committee filed a Termination Report covering the period April 1 through April 30, 2003. The report disclosed the refund of \$18,445.00 of 2002 General Election contributions (Microfilm #23990874284). The Committee had provided copies of the refund checks for \$16,960.00 of the \$18,445.00 on April 16, 2003.¹ On May 16, 2003, an Informational Notice was sent by RAD stating that the Committee was unable to terminate due to unresolved issues on previous reports (Microfilm #23038083937).

On May 19, 2003, the Committee treasurer, Mr. Murray Rosen, spoke with a RAD Analyst regarding the excessive contributions (Attachment #3). The Analyst informed Mr. Rosen that since the candidate had withdrawn from the 2002 Primary Election and did not participate in the 2002 General Election, all contributions received by the Committee that were designated for the 2002 General Election had to be refunded. Mr. Rosen explained that the Committee had closed its offices and had no cash left in its accounts to issue refunds. He said he would speak with Congressman Gilman regarding the matter.

On June 10, 2003, after further review, an RFAI referencing the 2001 Mid-Year and Year-End Reports and the 2002 April Quarterly and July Quarterly Reports was sent by RAD to the Committee (Microfilm #23038102166, #23038102168, #23038102170, and #23038102172, respectively). The RFAI noted the Committee's receipt of contributions designated for the 2002 General Election before the candidate's withdrawal and requested that the Committee take appropriate action to refund all contributions designated for the general election as required by Commission Regulations, since the Congressman did not participate in the general election.

On July 3, 2003 a Second Notice referencing the aforementioned reports was sent by RAD to the Committee stating their failure to respond to the initial RFAI (Microfilm #23038120998, #23038121001, #23038121004, #23038121007, respectively). On July 23, 2003, the Committee filed a response to the Second Notice, stating that it had previously responded to the matter and attached its response to the RFAI sent for the 2002 October Quarterly Report. The Committee further stated, "[w]e believe that this

¹ On Schedule B of the Termination Report, the Committee designated these refunds as primary election contribution refunds. The purpose of disbursement provided for the refunds, however, indicated that they were general election contribution refunds. The copies of refund checks provided by the Committee also reflect the refunds as being general election contribution refunds.

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response had effectively closed the books on Citizens for Gilman since all remaining funds had been disbursed." (Microfilm #23038152595)

On August 4, 2003, the Analyst attempted to contact Mr. Rosen regarding a possible referral to the Office of the General Counsel (OGC) Mr. Rosen was unavailable and the Analyst left a message requesting that Mr. Rosen contact the Analyst.

On August 5, 2003, a representative of the Committee, Sandy Will, returned the call and informed the Analyst that Congressman Gilman requested that the Analyst speak with Mr. Don McGahn at the National Republican Congressional Committee (Attachment #4). The Analyst attempted to contact Mr. McGahn; however, Mr. McGahn was unavailable and a message was left.

On August 6, 2003, Mr. McGahn returned the phone call (Attachment #5). The Analyst informed Mr. McGahn that letters were sent to the Committee regarding contributions designated for the 2002 General Election that must be refunded. However, the Commission had not received an adequate response and a response is required or the Committee will be referred to OGC. Mr. McGahn said that he would like the issue to be resolved through Alternative Dispute Resolution (ADR) and said that he was going to speak with Mr. Lawrence Norton regarding the matter.

On August 11, 2003, Mr. McGahn called to say that he had not been able to speak with Mr. Norton (Attachment #6). The Analyst again reminded him that a response was due the following Friday or the matter will be referred to OGC.

On August 12, 2003, Sandy Will again called the Analyst (Attachment #7). She said that Mr. McGahn had informed her that the Committee had a response due on Friday. Ms. Will said that the Committee had already responded on July 23, 2003. The Analyst informed her that the response was considered inadequate because it did not address all the contributions designated for the 2002 General Election disclosed on the reports referenced by the RFAI. The Analyst informed Ms. Will that the Committee must refund the excessive contributions or be referred to OGC.

On August 15, 2003, Mr. McGahn faxed a letter to the Commission that stated, "[a]s the Committee has already stated several times, it has refunded all remaining campaign funds, and has amended its reports to reflect this." (Microfilm #23038194318). He stated that the Committee believes it had acted lawfully and filed all appropriate reports. He also stated that the Committee intended to cooperate fully with the Commission and he expressed his desire to resolve any outstanding issues through ADR.

To date, no further communications have been received from the Committee regarding this matter.