

September 30, 2013

VIA EMAIL AND U.S. MAIL

Lynn M. Fraser, Director
Alternative Dispute Resolution Office
Federal Election Commission
999 E. Street NW
Washington, D.C. 20463

Re: **FEC - MUR 6700 (ADR)**

Dear Ms. Fraser:

I am legal counsel for James B. Carson and Mervale ("Skip") Wolverton in the above referenced matter.¹ I write in response to a Complaint dated November 19, 2012 filed by John M. Kyslyczyn, the former Chair of the Fourth Congressional District - Republican Party of Minnesota ("CD 4" or "the Committee"). That Complaint alleged that the Committee, Mr. Carson, in his official capacity as a past and current Chair of CD 4, Mr. Wolverton, in his official capacity as a past Treasurer of CD 4, and Beverly Aplikowski, in her official capacity as the Treasurer of CD 4 at the time of the Complaint, failed to comply with portions of the Federal Election Campaign Act of 1971, as amended ("FECA"). The Complainant states that the allegations fall into "four basic areas:" (1) failure to file disclosure reports; (2) improperly obtaining administration termination; (3) fundraising without using proper disclaimers; and (4) failure to proportion event costs between federal and non-federal accounts. (See cover letter to the Complaint, Nov. 19, 2012.) Mr. Carson and Mr. Wolverton acknowledge that the Committee did not file two sets of reports during the period of 2009-2012. However, Mr. Wolverton and Ms. Aplikowski, in their official capacities as Treasurers, contacted the FEC on their own initiative in both instances respectively and became current with all reports. Respondents Carson and Wolverton deny all other allegations that they or the Committee failed to comply with the FECA. This letter addresses only those areas that you specifically asked Respondents to address.

1. Minnesota's Fourth Congressional District Republicans

CD 4 is a sub-unit of the Republican Party of Minnesota ("RPM") and is responsible for the day-to-day operation of the RPM for the Fourth Congressional District of Minnesota.

DOUGLAS A. KELLEY
STEVEN E. WOLTER
DANIEL M. SCOTT

¹ Beverly Aplikowski represents herself *pro se* in this matter, both as the Treasurer as an individual respondent and as the Treasurer of record for Respondent Fourth Congressional District - Republican Party of Minnesota. Mr. Carson, Mr. Wolverton and Ms. Aplikowski submitted confidential materials *pro se* to the FEC prior to Mr. Carson and Mr. Wolverton being represented by counsel.

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Geographically, CD 4 is quite diverse. It ranges from the capital city of Saint Paul to conventional suburbs to semi-rural townships, all in the eastern Twin Cities metro area. Approximately 20% of CD 4 changed as a result of redistricting that took effect in 2012.

CD 4 has always relied on volunteers having no paid staff. The officers of CD 4 include the Chair, Deputy Chair, State Executive Vice-Chair, Treasurer, Secretary and six Vice-Chairs. These officers are elected at CD 4's convention normally held in odd-numbered years, except the Treasurer, who is appointed by the Chair and approved by a majority vote of the Full Committee. The Full Committee is comprised of BPOU officers within the district. CD 4 delegates are elected by virtue of their election as state party delegates by the BPOUs in CD 4.

Minnesota's state legislative candidates are endorsed by State Senate and House of Representatives district BPOUs and secure the RPM's nomination following primary elections. CD 4's delegates endorse RPM's candidate for the Fourth Congressional District. They also elect delegates to the Republican National Convention and a Presidential Elector. Delegates to the RPM state convention endorse candidates for state-wide offices and elect Republican National Committee members.

Historically until 2010, the RPM allotted a portion of federal funds it raised to local party units. CD 4 typically supported candidates for Congress financially out of these funds and relied on its own fundraising efforts to cover other expenses. However, in 2012 the RPM was no longer able to give funds to its party units and discontinued the practice, dramatically reducing CD 4's financial resources.

2. CD 4's Convention Receipts

On February 21, 2012, the Minnesota Supreme Court issued an Order establishing election districts based on the 2010 census ("Redistricting Order"). The Order significantly altered the boundaries and composition of CD 4, effectively suspending its leadership and activities until delegates from the newly comprised BPOUs could adopt the constitution and elect new leadership. The RPM's Chair appointed Jim Carson, who had been CD 4's Chair prior to redistricting, to be the Convention Convener and issued the Call for all of Minnesota's Republican district conventions, including CD 4.

Mr. Carson and an informal committee organized the April 21, 2012 CD 4 Convention, modeling it on past conventions. The cost of the convention and the registration fees varied little from recent past conventions: \$20 for registration in advance, \$30 for registration at the door, \$10 for guests and \$10 for a pre-ordered lunch.² (See Fourth Congressional District and Second

² The convention fees were not inflated. At least one of the past conventions set the advance registration fee at \$15. However, in 2012, the cost of the lunches were \$9.95 each, so CD 4 basically broke even by charging \$10 for them. An advance registration fee at \$20, \$30 at the door, is typical of BPOU and district conventions. For example, a BPOU in CD 4, Senate District 39, had the same pricing (\$20 in advance, \$30 at the door) as did CD 4, which is one step up in the caucus system.

Judicial District Republican Party of Minnesota Official Convention Call for April 21, 2012
("Convention Call")

The purpose of CD 4's Convention, as set forth in the Convention Call, was:

1. Adoption of Congressional District Constitution
2. Consideration of Resolutions to the Republican Party of MN Platform
3. Consideration of Endorsement of candidate for Congress
4. Election of a Presidential Elector
5. Election to the RNC of three delegates and three alternates for two year terms
6. Election of Congressional District Board positions
7. Transaction of other business as may properly come before the convention.

(*Id.*) CD 4's by-laws contain only one express statement of CD 4's purpose with respect to candidates for elected office: "One of the main responsibilities of the Full Committee is to support and elect a U. S. Representative." (Article III, Sec. 3.G.)

In addition to conducting the ordinary business associated with convening a district convention, the delegates recognized CD 4's previously established committees, including the nominating committee, and adopted the rules governing the convention's proceedings. CD 4's delegates proceeded to approve the nomination of three candidates for the RPM's endorsement for U.S. Congress, listened to speeches by the candidates and their supporters and endorsed a candidate after voting by secret ballot. (See Convention Minutes at 2, attached.) The delegates then elected three RNC Delegates, after listened to speeches from 23 candidates and voting by secret ballot. (See *id.* at 3.) They also heard from three nominees for Presidential Elector and elected one candidate again by secret ballot. (See *id.* at 3-4.) At various times during the convention, particularly during extended periods of time in which volunteers counted ballots, various party and elected officials, candidates for other state-wide and local offices and advocates for constitutional amendments and other causes spoke to the delegates, including three candidates for the RPM's endorsement for U.S. Senate. None, however, sought the endorsement or other action by the delegates.

Having conducted its primary tasks of endorsing a candidate for Congress and electing RNC Delegates and a Presidential Elector, delegates approved CD 4's Constitution, elected its officers and began debate on a wide variety of resolutions. The convention hall required that the convention adjourn by 3 pm due to another event scheduled that evening, however, cutting off further debate and preventing the Second Judicial District Convention from convening.

a. Reporting Net Revenue from the Conventions

Because of redistricting, the convention organizers did not know how many delegates, alternates and visitors would attend. Attendance was much larger than expected. New

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boundaries included party activists who previously had been involved in other Congressional Districts. Supporters of Ron Paul's presidential race were exceptionally well organized and turned out for the CD 4 and other district conventions in large numbers. In addition to a three-way race for CD 4's RPM endorsement for Congress, the four-way endorsement race for U.S. Senate was extremely competitive and the candidate that ultimately received the endorsement at the State Convention won with strong support from the Ron Paul delegates.

As a result of redistricting and the surge of Ron Paul delegates, the Convention netted more revenue than expected. Expenses totaled \$3108 and revenues totaled \$10,130, yielding net revenue of \$7,022. These disbursements and receipts were reported on Schedule B to CD 4's May 4, 2012 FEC Form 3X.

There is little statutory or regulatory guidance regarding the treatment of revenue derived from district party convention registration fees. It is clear, however, that "[t]he costs of State, district, or local political convention[s]..." are not included in the definition of federal election activity. See 11 C.F.R. § 100.24(c)(3). Despite the paucity of guidance from FEC's publications or the underlying regulations themselves,³ CD 4 reported the convention registration fees, each far less than the level required for itemized reporting, as unitemized contributions from individuals on line 11(a)(iii) of the July 15, 2012 Quarterly (Q2) Report. Written next to "unitemized" is the word "convention."

b. Federal/State Allocation of Convention Revenue

The receipts generated from the April 21, 2012 CD 4 Convention were properly allocated as associated with federal election activity. CD 4's primary purpose is to recruit, endorse and support a candidate for Congress. That purpose is clearly stated in the by-laws and the agenda and minutes show that the convention's election activity was entirely federal in nature: i.e., endorsement of a Congressional candidate, election of RNC delegates and selection of a Presidential Elector. The delegates did not endorse or take any action in support of candidates for Minnesota's legislature or other local office. In fact, the endorsements of the state or local

³ See AO 1975-87 (F.E.C.) at p. 5. This Advisory Opinion, entitled "Whether Costs of Republican Candidates Conference are Contributions by the Republican National Congressional Conference" (the "NRCC"), considers questions related to the costs and fees associated with organizing and attending the NRCC's annual "general forum on campaigns which is open to and intended to benefit all Republican Congressional candidates as a class, rather than particular candidates within that class." *Id.* at 2. The attendees are comprised not only of sitting and former elected officials and candidates, but any Republican that would like to attend the conference. The FEC advised that "with respect to participants who are not candidates and who do not represent candidates, since the registration fee does involve a payment to a political committee and since directly or indirectly, the fee will serve partisan ends, it must be reported by NRCC as a contribution." *Id.* at 5. The conference is a conference with the express purposes of educating candidates and others and raising revenue. A party convention is distinguishable. Its main purposes are party governance and fielding candidates who win elections. BPOU delegates who want to play a role in the party units in which they live must attend their BPOU, CD or even State Conventions in order to participate in many of the party's rolls. Although Respondents do not contest that registration fees to CD 4's convention are reportable as receipts, and not revenue is reportable as contributions, they wish to point out that there is very little guidance, if any, directly on point pertaining not only to reporting issues but to allocation and other issues as well. Respondents respectfully hope that subsequent editions of the FEC's Party Political Committees' Guide for example will provide direct guidance on these issues.

candidates for offices within CD 4 were not contested. And, CD 4 did not make any financial contributions to state or local candidates in 2012.

Other activities such as recognizing the Convention Convener and other temporary officials, rules and documents were in service of the federal activity. Speakers not running for a CD 4 office who addressed the Convention neither sought nor received any action from the delegates. As frequently happens at political conventions, these speakers were addressing a captive audience and their purpose was tangential to the objectives of the convention. While many of the speaker's topics would be considered federal in nature, others were broader exhortations of the conservative causes. The candidates for state legislative office who addressed the convention were endorsed by their BPOU, not the CD. The only activity, had it proceeded, that would have been expressly non-federal political activity was the Second Judicial District Convention, which seeks to endorse state judicial candidates. However, it did not convene at the Convention. Finally, CD business such as approving a constitution, electing new officers, adopting platform planks or passing resolutions are all necessary activities that enable CD 4 to undertake the federal election activity for which it exists.

CD 4 certainly supports candidates for state and local offices and conducts non-federal election activity. But, it did not do so at this endorsing convention. Therefore, the revenue from the convention was properly allocated to CD 4's federal account and ultimately transferred as contributions to CD 4's Congressional candidate's election campaign.

3. Late Reports

Mr. Wolverton acknowledges that he missed filing the mid-year report for 2009 and the 2010 reports due to an extremely challenging personal situation. In early 2011, before any report was due for that year, Mr. Wolverton received a notice that the FEC was administratively terminating the reporting obligations of the committee due to lack of activity.⁴ In early 2012, when the election cycle was beginning (and before receiving any failure-to-file notices), Mr. Wolverton contacted the FEC for advice on catching up on CD 4's reporting obligations. He was told to file a report covering the entire period of missed filings rather than separate reports for each reporting period. He filed that report and included in it the first quarter of 2012. Mr. Wolverton did not have any further communication with the FEC until he received a letter in response to the Complaint at issue in the above referenced matter.

Mr. Carson and Mr. Wolverton understand that subsequently the Committee's next Treasurer, Ms. Aplikowski, did not file CD 4's July 15, 2012 report on time due to an inadvertent oversight. After Mr. Wolverton brought the missed filing to her attention, she contacted the FEC and made arrangements to file the report, bringing the Committee current on all required reports. Ms. Aplikowski also did not have any further communication with the FEC until she received a letter in response to the Complaint at issue in the above referenced matter.

⁴ From the date CD 4 received the letter until shortly before its April 21, 2012 convention, CD 4 engaged in no federal election activity.

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The Committee sincerely wishes to ensure it is in full compliance with all relevant laws and regulations and welcomes any other measures the Commission deems appropriate.

Sincerely,

KELLEY, WOLTER & SCOTT, P.A.



Kevin M. Magnuson