

FEDERAL ELECTION COMMISSION
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FEDERAL ELECTION COMMISSION
JUN 12 1996

GENERAL COUNSEL'S REPORT #8

SENSITIVE

In the Matter of)

MUR 4538

Alabama Republican Party and)

Timothy R. Baer, as treasurer)

Parker for Congress and)

Stan McDonald, as treasurer)

William R. Archer, Jr.)

Wayne Parker, Jr.)

I. ACTIONS RECOMMENDED

With respect to the remaining respondents and

allegations, take no action or find no reason to believe that they violated the Act.

II. BACKGROUND

This matter was generated by a complaint filed by U.S. Representative Robert "Bud" Cramer in connection with the 1996 general election campaign in Alabama's 5th Congressional District. The complaint alleged that former Congressman William R. "Bill" Archer, Jr. raised funds for "a massive television and radio advertising effort" by the Alabama Republican Party ("ARP") to benefit the campaign of his son-in-law, Wayne Parker, Jr., "giv[ing] the appearance" that the advertisements were not independent expenditures, but "carried out at the

direction of Bill Archer" in violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act").

On March 10, 1999, the Commission found reason to believe that the ARP and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) by making excessive in-kind contributions in 1996 by coordinating certain party expenditures with Wayne Parker's principal campaign committee, Parker for Congress, and 2 U.S.C. § 434(b) by not reporting them as in-kind contributions. The Commission also found reason to believe that the ARP and its treasurer violated 2 U.S.C. §§ 441b(a) and 441a(f), and 11 C.F.R. § 102.5, by making a portion of these expenditures directly from a non-federal account containing impermissible funds. On July 18, 2001, following an investigation, this Office delivered to the ARP's counsel a General Counsel's brief ("GC brief") in this matter recommending that the Commission find probable cause to believe that the ARP and its treasurer violated provisions of the Act and the Commission's regulations.¹ On September 4, 2001, after this Office granted a 30-day extension request based on its agreement to extend the statute of limitations by the same number of days, the ARP filed a reply brief with the Commission.

¹ The GC brief is incorporated in this Report in its entirety. Copies of documents referenced in the GC brief have been placed in the Commission Secretary's office for the Commission's convenience. Electronic versions of the five deposition transcripts cited to in the GC brief are available in the shared drawer, /MUR 4538. Copies of the exhibits used in each of the depositions are also available in the Commission Secretary's office.

On the same day that the GC brief was delivered to the ARP's counsel, this Office also sent a GC brief to counsel for Parker for Congress that included probable-cause-to-believe recommendations based on the coordination of ARP advertising expenditures with Parker for Congress in 1996. After receiving Parker for Congress' reply brief, this Office recommended in GCR #7, dated August 13, 2001, that the Commission find probable cause to believe that Parker for Congress and its treasurer violated 2 U.S.C. § 434(b) and 441a(f). The Commission considered GCR #7 at its August 21 executive session, but determined to hold the matter over to the next scheduled executive session.

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V. REMAINING ISSUES AND RESPONDENTS

A. Earmarking

In addition to the allegation of excessive coordinated expenditures by the ARP in 1996, the complaint also charged that the funds raised for the ARP by then-Rep. Archer had been "earmarked" to be spent on behalf of his son-in-law's congressional campaign in the 5th District. In considering the recommendations in the First GCR, the Commission determined to take no action concerning the latter allegation pending this Office's investigation into the

matter. The investigation has revealed that Mr. Archer, or persons assisting him, including his chief-of-staff Donald Carlson, raised at least \$186,000 in individual and PAC contributions for the ARP in 1996. See Attachment 2 at 8-12.⁸ However, as discussed below, this Office believes there is insufficient evidence of improper earmarking to warrant any further investigation of these activities.

The Act and regulations provide that all contributions by a person made on behalf of or to a candidate, including contributions that are in any way earmarked or otherwise directed to the candidate through a conduit or intermediary, are contributions from the person to the candidate. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(a). "Earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(1). A "conduit or intermediary" is any person, with certain exceptions, who forwards an earmarked contribution to a candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(2). Section 110.6(c)(2) imposes certain reporting obligations on the recipient committee with regard to earmarked contributions.

In October 1996, when Mr. Archer chaired the Ways and Means Committee in the U.S. House of Representatives, an ad hoc group of individuals representing various segments of the housing and banking industries invited him to speak at a meeting in Washington, D.C. The central topic of discussion at the meeting was the Low Income Housing Tax Credit, which

⁸ Most of Mr. Archer's response was appended to GCR #3, dated April 17, 2000. Only the relevant pages are attached herein.

1 provides tax advantages for financing the building and improvement of affordable housing.

2 The group supported the continuance of the Credit, while Mr. Archer had voiced opposition to
3 it. See Attachment 2 at 5; Carlson Dep. Tr. at 92-93 (these facts are discussed in depth in
4 GCRs #1, 2, 4 and 5). In their depositions, Mr. Archer and his chief-of-staff Don Carlson both
5 denied that they discussed fundraising or that they solicited contributions from anyone during or
6 after the meeting. Archer Dep. Tr. at 87-90; Carlson Dep. Tr. at 93. See also Attachment 2 at
7 5-6.

8 Certain members of the group, upon learning of Mr. Archer's interest in raising funds
9 for the ARP, organized an informal effort to solicit personal contributions to the ARP from
10 their industry colleagues and to collect and forward any such contribution checks to
11 Mr. Archer's residence. A solicitation letter from one of these individuals references
12 "Contribution[s] to Alabama State Republican Party on behalf of U.S. Representative
13 Bill Archer and Wayne Parker," and informs the recipient:

14 As I have discussed with each of you, I have been asked by [an industry
15 colleague] to assist in raising funds that U.S. Representative Bill Archer
16 (R) Texas will be giving to the Alabama State Republican Party.
17 *Presumably these funds will be used by the State Party to help in the*
18 *election of Wayne Parker (Bill Archer's son in law) in his bid to unseat*
19 *U.S. Representative Bud Cramer (emphasis added).*
20

21 In a sworn declaration, the author of the letter averred that he did not suggest to the ARP
22 that the contributions "were intended or directed to support any particular candidate," and
23 added in a subsequent response that he "did not provide any instructions or advice on how to
24 use the funds" and that "he has no information regarding how they were used." See GCR #2,

22-04-405-4794

1 dated March 9, 2000, at 18-19.⁹ When questioned about this letter during their depositions,
2 Messrs. Archer and Carlson denied knowing the author or seeing the letter before the complaint
3 was filed. They each indicated that the letter was factually incorrect insofar as it implied that
4 the funds raised by Mr. Archer were to be spent by the ARP solely on behalf of Wayne Parker.

5 In addition to this letter, the only documentary evidence connected to the earmarking
6 allegation that identified Wayne Parker was in the form of copies of ARP contribution checks
7 that were collected and forwarded by Messrs. Archer or Carlson. Two of those checks, out of
8 over one-hundred that were collected and forwarded, contain notations in the lower left corner
9 that reference Mr. Parker's candidacy. The first is a \$1,000 contribution check from American
10 Health Care Association PAC to "Alabama Republican Party-Victory '96," reported by the
11 ARP's federal account as received on 10/4/96. The memo line contains the entry "96G-
12 Wayne Parker." Attachment 2 at 13. The second is a \$500 contribution from Bill Dinsmore to
13 the "Alabama State Republican Party," reported by the ARP's federal account as received on
14 10/9/96, with the notation "Contribution/Wayne Parker" on the memo line. *Id.* Parker for
15 Congress did not disclose any contributions from the PAC or from Mr. Dinsmore in 1996.

16 In telephone interviews with ARP contributors who sent their checks to Mr. Archer (or
17 to other persons who then forwarded the checks to him), the contributors generally professed an
18 interest in certain tax issues but claimed to have no desire or expectation that the ARP spend
19 their contributions on behalf of any particular candidate. Messrs. Archer and Carlson both
20 stated under oath that, although they may have mentioned Wayne Parker's candidacy to

21

⁹ This individual, Allan Rappuhn, was dropped as a respondent in this matter following the Commission's acceptance of a conciliation agreement pertaining to non-earmarking violations. See GCR #4, dated May 30, 2000.

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1 prospective ARP contributors, there was never any understanding or expectation that the funds
2 would be spent by the ARP solely on behalf of the Parker campaign. Archer Dep. Tr. at 50-58,
3 115; Carlson Dep. Tr. at 53-58, 80-81. The evidence indicates that the only substantive
4 communications between Mr. Archer or his staff and ARP personnel were two phone
5 conversations between Archer chief-of-staff Carlson and ARP executive director Burton.

6 While Mr. Carlson could not recall the nature of such conversations, Mr. Burton testified that
7 they acknowledged that the contributions raised by Mr. Archer could not be earmarked for any
8 candidate. Mr. Burton stated under oath that the ARP did not "tally" any contributions raised
9 from a particular source to be spent on particular candidates, adding that contribution checks
10 were segregated solely in terms of the account in which they were to be deposited:

11 [W]e put all the money we raised into two big pots. We put it in a pot that
12 I called the state pot and we put it into a pot I called the federal pot. And it
13 doesn't matter who raises that money or where it comes from.
14

15 Burton Dep. Tr. at 245.

16 Although the investigation has revealed some evidence of "designations, instructions, or
17 encumbrances" in the form of check notations and language in the solicitation letter, this Office
18 believes that further investigation is unlikely to provide more substantial evidence of improper
19 earmarking and would be an inefficient use of Commission resources at this late stage. Since
20 the Commission has never made any findings based on possible earmarking activities, this
21 Office recommends that the Commission take no action against the following respondents in
22 connection with allegations of improper earmarking: the Alabama Republican Party and
23 Timothy R. Baer, as treasurer, Parker for Congress and Stan McDonald, as treasurer, and

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1 William R. Archer, Jr. Because there are no other unresolved issues pertaining to William R.
2 Archer, Jr., this Office recommends that the Commission close the file with respect to him.

3 B. Volunteer Materials

4 Documents produced in the first phase of discovery raised questions about the ARP's
5 disbursements for exempt party activities on behalf of the Parker campaign.¹⁰ The ARP
6 reported a total of \$61,150.20 in disbursements to two vendors in September and October 1996
7 for mass mailings, brochures and political signs, and claimed in an affidavit that these materials
8 were covered under the "volunteer materials" exemption to the Act's definition of
9 "contribution." See Attachment 3.

10 The invoices corresponding with the payments initially suggested that party volunteers
11 may not have been sufficiently involved in distributing these materials for ARP to warrant the
12 exemption, and further questions were raised concerning other conditions of the exemption. In
13 order to resolve these questions, the Commission approved subpoenas and orders to the vendors
14 that produced these materials. See GCR #3, dated April 17, 2000. As discussed below, this
15 Office concludes that there is insufficient evidence that the ARP's disbursements for these
16 materials fall outside of the volunteer materials exemption.¹¹

17 The Act defines "contribution" and "expenditure" so as to exclude payments by a state
18 committee of a political party for the costs of campaign materials, such as brochures and yard

¹⁰ Any such disbursements not covered by the exemption, if made for the purpose of influencing a federal election and deemed to have been coordinated with the Parker campaign, would constitute excessive contributions by the ARP, as it had already exhausted its general election contribution limit for Parker for Congress and assigned its section 441a(d) coordinated expenditure limit to the NRCC.

¹¹ Affidavits from the two "volunteer materials" vendors, which include checks, invoices and copies of the materials, were appended to GCR #3, dated April 17, 2000, at Attachment 3. Only the responses received pursuant to the Commission's subpoenas and orders issued following GCR #3 are attached to this Report.

22-04-405-4797

signs. See 2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii), and 11 C.F.R. §§ 100.7(b)(15) and 100.8(b)(16). Payments qualifying for this "volunteer materials" exemption are therefore not subject to the Act's limitations on a state party committee's contributions or expenditures. To qualify for this exemption, the payments must be "used by such committee in connection with volunteer activities on behalf of nominees of such party" *provided that*:

- 1) such payments are *not* for the cost of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;
- 2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and
- 3) such payments are *not* made from contributions designated to be spent on behalf of a particular candidate or particular candidates.

2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii) (emphasis added).

The term "direct mail" as used in this section means any mailings by a commercial vendor or any mailings made from "commercial lists." 11 C.F.R. §§ 100.7(b)(15)(i) and 100.8(b)(16)(i). The Explanation and Justification for the regulations promulgated with respect to the state and local party exemptions states that:

[t]he term 'commercial lists' refers generally to lists that were not developed by the State or local party committee, that is, to lists developed by a commercial vendor or lists purchased or obtained by such committee, *except* where the lists are obtained from a public office, such as voter registration lists obtained from a Secretary of State. Mailings from lists developed by a State or local committee are permissible.

45 Fed. Reg. 15081 (March 7, 1980) (emphasis added). See also AOs 1988-40, 1986-29, 1984-28, 1980-87. Further, in order for a party committee's mass mailing expenses to be covered by the exemption, volunteers must affix labels or stamp on each piece, individually, the return address/bulk mail permit indicia, and sort and bundle the materials by ZIP code (the

1 vendor may use sequential address labeling to make sorting and bundling simpler). The
2 commercial vendor may print, fold, and ship the materials to the state or local party, but only
3 volunteers may deliver the materials to the post office for mailing to the public.¹²

4 The exclusion of "designated" contributions from the volunteer materials exemption
5 means "the party committee disbursing the funds makes the final decision regarding which
6 candidate(s) shall receive the benefit of such disbursement." 11 C.F.R. §§ 100.7(b)(15)(iii) and
7 100.8(b)(16)(iii). Further, materials purchased with funds donated by a national party
8 committee do not qualify for the exemption. 11 C.F.R. §§ 100.7(b)(15)(vii) and
9 100.8(b)(16)(vii). Finally, since the purpose of the exemption is "to encourage volunteers to
10 work for and with local and State political party organizations," it is imperative that, in order
11 for the exemption to apply, all such materials must be distributed by volunteers rather than by
12 commercial or for-profit organizations. H.R. Rep. No. 422, 96th Cong., 1st Sess. 9 (1979),
13 *reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of 1979 at*
14 *193 (GPO 1983); 11 C.F.R. §§ 100.7(b)(15)(iv) and 100.8(b)(16)(iv).*

15 The checks produced by the ARP and the vendors for these volunteer materials, as well
16 as the ARP's reports covering the activity at issue, show that these disbursements were made
17 entirely from contributions subject to the limitations and prohibitions of the Act. Also, based
18 on this Report's earlier conclusion that no earmarking occurred with respect to the contributions
19 at issue, and given that no other evidence has surfaced regarding any designated contributions,
20 it appears that payments for the materials were not made from contributions designated to be

¹² See MURs 2377 (Texas Republican Congressional Committee), 2559 (Oregon Republican Party), 2994 (Wyoming State Democratic Central Committee), 3218 (Blackwell for Congress Committee), 4471 (Montana State Democratic Committee) and 4754 (Heather Wilson for Congress).

1 spent by the ARP on behalf of a particular candidate. Accordingly, the ARP's disbursements
2 for the volunteer materials satisfy two of the requirements set out in section 431(8)(B)(x) and
3 (9)(B)(viii).

4 As stated, the exemption also does not cover materials purchased by a state party
5 committee using funds donated by a national party committee. While the RNC made large
6 transfers of federal funds to the ARP in 1996, the ARP appears to have had sufficient
7 non-national party funds when the payments for the mailings and signs were made. This Office
8 could discern no pattern between the timing and amount of particular RNC transfers and the
9 timing and amount of any of the ARP's disbursements for its volunteer materials. Further, ARP
10 executive director Burton testified that, to his knowledge, neither the RNC nor the NRCC had
11 any involvement in the payments for these materials. Burton Dep. Tr. at 278.

12 Regarding the ARP's mass mailings on behalf of Parker for Congress, Mr. Burton
13 testified that "[t]he state party maintained in '96 what was referred to as enhanced voter file
14 where the state party purchased individual county voter registration lists." Burton Dep. Tr. at
15 282. The ARP purchased these county voter registration lists from county election boards. *Id.*
16 Because the voter lists for the mass mailings paid for by the ARP were apparently obtained
17 from a public office, they are not considered "commercial lists" that fall under the regulatory
18 definition of "direct mail." 11 C.F.R. §§ 100.7(b)(15)(i) and 100.8(b)(16)(i).

19 In response to the Commission's subpoena and order, the president of the mail vendor
20 that produced the ARP's mailings stated that, after his firm "printed and mailshopped the

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1 mailings,¹³ the printed materials were shipped to Alabama where volunteers hand stamped the
2 indicia." Attachment 4 at 3. Mike Slanker, Parker for Congress' campaign manager, testified
3 that the mailings "were shipped to Huntsville where the [ARP] had a volunteer room, . . . a
4 typical mail room, . . . where volunteers stamped the mail indicia . . . [a]nd then . . . took [the
5 mailings] to the post office. It was your typical party mail center." Slanker Dep. Tr. at 137.
6 ARP executive director Burton, although lacking any specific recollection of party involvement
7 in the mailings at issue, testified that party volunteers generally sort such mailings by ZIP code,
8 bundle them and then deliver them to the post office. Burton Dep. Tr. at 235. While there is
9 some question as to whether the volunteers were supervised by the Madison County Republican
10 Party rather than directly by the ARP, see Burton Dep. Tr. at 275-76, they nevertheless qualified
11 as ARP volunteers since the county parties in Alabama are subordinate party units controlled by
12 the state party.¹⁴ Accordingly, the information gathered shows that the ARP's disbursements
13 for mass mailings on behalf of the Parker campaign were covered by the "volunteer materials"
14 exemption of the Act.

15 Regarding the brochures and political signs paid for by the ARP, the Act requires that
16 the materials under the exemption be "used" by the ARP, which would preclude receipt and
17 distribution of such materials by the Parker campaign. Two of the invoices from the sign

¹³ During an informal interview, the president of the firm explained to this Office that "mailshopped" refers to the process by which names and addresses from a floppy disk (provided by the ARP from lists obtained from county election boards) are inkjetted onto the mailings. See also Slanker Dep. Tr. at 148. This process appears to constitute "sequential address labeling" by a commercial vendor, which has been found to be permissible by the Commission. See MURs 3218 (Blackwell for Congress Committee) and 4754 (Heather Wilson for Congress).

¹⁴ See <<http://madisoncountyGOP.org>>, <<http://www.algop.org>> (accessed August 6, 2001). A subordinate party committee is "any organization which is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the direction or control of the State committee." 11 C.F.R. § 100.14(b).

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1 vendor say "Ship To: Parker for Congress," while the president of the firm, in response to the
2 Commission's subpoena and order, stated that he presumed the signs were "picked up" at his
3 facility by the Parker campaign. Attachment 5 at 2. During a follow-up interview with staff of
4 this Office, he stated that he was "fairly certain" the signs were picked up rather than delivered,
5 because the invoices did not include any delivery charges. He conceded, however, that it was
6 just as likely volunteers for the Madison County Republican Party picked up the signs.

7 This Office's investigation has revealed that many persons who engaged in party
8 volunteer activities in north Alabama in 1996 also served as Parker campaign volunteers,
9 making it difficult to discern which organization was actually responsible for distributing the
10 brochures and signs. See, e.g., Slanker Dep. Tr. at 140, 152. Given the lack of concrete
11 evidence regarding who actually "used" the brochures and signs, and in light of statute of
12 limitations concerns, this Office does not believe that this issue merits further investigation. As
13 no allegations were made in the complaint about these activities, no recommendations are
14 necessary.

15 **C. Remaining Respondent**

16 The candidate Wayne Parker was named as a respondent in the complaint. In order to
17 more fully investigate Mr. Parker's role in this matter, the Commission took no action against
18 him at the time of the initial reason-to-believe findings. First GCR, dated February 19, 1999, at
19 47. Because the investigation has developed no evidence of liability on the part of Mr. Parker,
20 this Office recommends that the Commission find no reason to believe that Wayne Parker, Jr.
21 violated any provision of the Act or Commission regulations in this matter, and close the file as
22 to him.

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VI. RECOMMENDATIONS

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6. Take no action against the Alabama Republican Party and Timothy R. Baer, as treasurer, with respect to allegations of improper earmarking.
7. Take no action against Parker for Congress and Stan McDonald, as treasurer, with respect to allegations of improper earmarking.
8. Take no action against William R. Archer, Jr. with respect to allegations of improper earmarking.
9. Close the file with respect to William R. Archer, Jr.
- 10.
- 11.
12. Find no reason to believe that Wayne Parker, Jr. violated any provision of the Act or Commission regulations in connection with this matter.
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10. Approve the appropriate letters.

9/11/01
Date

Lois G. Lerner by AJS
Lois G. Lerner
Acting General Counsel

Staff assigned:
Thomas Andersen
Michael Scurry

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