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June 20, 1997

BY COURIER

F. Andrew Turley, Esquire
Central Enforcement Docket
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

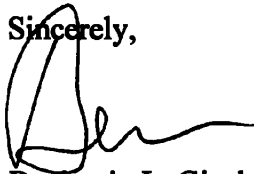
Re: Matter Under Review 4634 -- John and Ruth Stauffer

Dear Mr. Turley:

The attached is the response of John and Ruth Stauffer as respondents to the complaint filed in MUR 4634.

Thank you for your attention.

Sincerely,



Benjamin L. Ginsberg

BLG/jmt

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

JOHN H. AND RUTH G. STAUFFER

Respondents.

MUR 4634

RESPONSE TO COMPLAINT

As counsel to John H. and Ruth G. Stauffer, this will respond to the complaint filed in the above-captioned Matter Under Review. For the reasons set forth below, this complaint should be dismissed expeditiously by the Federal Election Commission ("Commission").

This is a politically-inspired complaint, filed by a Kansas Democratic Party county chair against an incumbent Senator on the ballot in 1998, whose allegations are rebutted by the facts. Uncontroverted sworn testimony by the Stauffers demonstrate that it is without merit and that the Stauffers did not violate the Federal Election Campaign Act ("Act") or the Commission's Regulations.

The allegations stem from seven contributions by Mr. Stauffer and seven contributions by Mrs. Stauffer in the summer of 1996 to seven multi-candidate political action committees. As the attached uncontroverted sworn testimony indicates, the Stauffers' contributions were not earmarked for any candidate, the Stauffers did not indicate either directly or indirectly that the recipient PACs should contribute to any specific candidate, and the Stauffers did not imply that their contributions should be used for any specific candidate or candidates. See Exhibits 1, 2, attached.

I. FACTS

John and Ruth Stauffer of Topeka, Kansas, are the in-laws of Senator Sam Brownback, who in the summer of 1996 was a member of the United States House of Representatives and a candidate for the United States Senate seat being vacated by Bob Dole. Pursuant to state law, a special election was called for 1996 to fill Senator Dole's unexpired term, thereby compressing what is usually an eight to twelve month campaign into a 10-week period following Senator Dole's announcement in May. Brownback faced an August 6, 1996 primary election against Sheila Fromm, the former lieutenant governor of Kansas who had been appointed pursuant to Kansas law to fill Senator Dole's seat until the 1996 special election.

The Stauffers describe themselves as political conservatives, see Affidavit of John H. Stauffer ("J. Stauffer Aff."), attached as Exhibit 1, and Affidavit of Ruth G. Stauffer ("R. Stauffer Aff."), attached as Exhibit 2. They were extremely interested in the political process as a result of their son-in-law's candidacy. Id. at ¶ . Each contributed to his campaign. Id. They also were concerned about the makeup of the Congress and its members. As part of this interest in the makeup of Congress, and believing that the country needed additional conservative legislators, they began to search for groups which shared their political beliefs and values. As a result of this effort, each also made contributions in 1996 to the PACs named in the complaint. Id.

John and Ruth Stauffer also became familiar with the Act and its contribution limits and rules, since they both wanted to participate but also to insure that nothing they did would violate the law or in any way damage Mr. Brownback's candidacy. J. Stauffer Aff. ¶ 4; R. Stauffer Aff. ¶ 4. As part of this educational process, they learned they could participate in the process by contributing to PACs with which they agreed, but that they could not specify or direct that a PAC

contribute to any specific candidate. J. Stauffer Aff. ¶ 5; R. Stauffer Aff. ¶ 5. As a result, they gave no such direction to any PAC to which they contributed. They did not seek or receive assurances that any of their contributions would be used in any particular manner, including a contribution to any specific candidate, such as Sam Brownback. Id. The Stauffers had no knowledge how any of the PACs to which they contributed funds would use their money.

J. Stauffer Aff. ¶ 8; R. Stauffer Aff. ¶ 8.

Mr. and Mrs. Stauffer each state explicitly that none of their contributions to PACs was made with the knowledge that a substantial portion would be contributed to the Brownback campaign. J. Stauffer Aff. ¶ 5; R. Stauffer Aff. ¶ 5. Indeed, neither John nor Ruth Stauffer ever told any of the PACs that they were related to or knew Sam Brownback. J. Stauffer Aff. ¶ 9; R. Stauffer Aff. ¶ 9. The Stauffers had no communications with either Sam Brownback or their daughter, Mary Brownback, or anyone working on his campaign concerning their contributions to the PACs. J. Stauffer Aff. ¶ 10; R. Stauffer Aff. ¶ 10.

II. LEGAL ANALYSIS

The complaint charges that the Stauffers' contributions constituted a violation of the limits in 2 U.S.C. § 441a(a)(1) and the accompanying regulations. However, the plain wording of 11 C.F.R. §110.1(h), as well as its legislative history, previous Commission MURs and Advisory Opinions, as well as the facts of this case, make clear that the Stauffers' contributions were permissible and did not violate either the Act or the regulations.

A. The Regulations

In drafting the Act, Congress foresaw the situation presented here of a person contributing to a candidate and then contributing to a PAC which also gave to the same candidate. Congress determined that this did not require the aggregation of the contributions and did not constitute a violation of the Act, as long as certain criteria were met. See H.R. Rep. No. 94-1057, 94th Cong. 2d Sess. 57-58 (1976); *see also* 52 Fed. Reg. 765 (Jan. 9, 1987) (final rule concerning contribution limitations and contributions by persons and multi-candidate committees leaving unchanged 11 C.F.R. § 110.1(h)). Those criteria are set forth in 11 C.F.R. § 110.1(h), which states:

A person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as --

- (1) The political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee;
- (2) The contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and
- (3) The contributor does not retain control over the funds.

The Commission's initial policy statement on the regulation, issued as part of MUR 150 (1976) in the context of independent expenditures, confirms that "a person may contribute \$1,000 to a candidate, and also contribute to a political committee which has supported, or anticipates supporting that candidate without violating the \$1,000 per election limitation, as long as the contributor does not give to the committee with the knowledge that a substantial portion of the contributor's funds will be contributed by the committee to that candidate."

B. Commission Advisory Opinions

So rudimentary is the principle that a person may give to both a candidate and a PAC which in turn may chose to give to a candidate already supported by the donor without a violation ensuing that few Advisory Opinions have dealt with the subject. The closest guidance is in FEC AO 1978-12, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5306 (1978), where the Commission found that even a PAC organized with the help of a candidate could accept contributions from persons who had also given to the candidate as long as the candidate "does not give written authorization to the [PAC], it will not be considered one of his authorized committees, and contributors to the Committee will not be regarded as making contributions with respect to [the candidate's] 1978 House campaign."

C. Commission Enforcement Actions

The precedents of the Commission hold that a violation can only occur when the contributor to a candidate donates to a PAC "with the knowledge that a substantial portion [of that contribution] will be contributed to ... that candidate." MUR 2898, General Counsel's Report at 10. The complaint in MUR 2898 involved three individuals charged with using a PAC as a conduit to evade their individual contribution limits to a candidate. The three individuals contributed to a candidate and then to a multi-candidate PAC at the recommendation of the candidate which also contributed to that candidate. The complaint further noted that the contributions from the individuals to the PAC came in close proximity to the PAC's contributions to the candidate, and that the PAC gave a disproportionate amount of its support to that candidate.

The Office of General Counsel recommended a finding of no reason to believe because there was never any discussion, either directly or indirectly, by the PAC with its donors about which candidates would receive its contributions. In addition, the General Counsel's report noted that the candidate urged the individuals to contribute to the PAC on the grounds it was an "organization sharing his political philosophy". General Counsel's Report at 12-13.

In MUR 3313, the complaint charged that a PAC was an "alter ego" of a candidate's campaign committee making any contribution to the PAC a contribution to that candidate. The General Counsel recommended the finding of a violation on the grounds that the contributors gave with the knowledge that a substantial portion of their contribution would aid the candidate since the solicitations themselves were allegedly made with the involvement of the candidate's committee. General Counsel's Report at 28. As a factual matter, this level of coordination existed because the PAC operated exclusively with contributions arranged by the candidate and all the PAC's expenses were devoted entirely to the candidate's race.

In another instance, MUR 2668, the Office of General Counsel's report recommended that the Commission find a violation because the PAC in question was formed exclusively by members of a family who owned a corporation that was also accused of making illegal contributions to a Senate race. The corporation was the PAC's connected organization, the family's contributions amounted to 99 percent of the money raised by the PAC and 47 percent of the PAC's contributions were to the one candidate. Under these circumstances, the General Counsel's Office found a violation of 11 C.F.R. §110.1(h) since the "individuals may have contributed to [the PAC] knowing that a substantial portion of their contributions would go to" the specific candidate. General Counsel's Report at 10-11.

III. DISCUSSION

Under the law, the facts of this case and the Commission's precedents, John H. Stauffer and Ruth G. Stauffer did not violate the Act or the Commission's regulations. The contribution limits of 2 U.S.C. § 441a(a) were not violated since all the contributions by the Stauffers to multi-candidate PACs complied with 11 C.F.R. § 110.1(h).

The Commission's regulations and precedents are explicit in permitting a contributor to donate to both a candidate and a PAC that also contributes to that candidate as long as the contributor does not give with the knowledge that a substantial portion will be contributed to that candidate for the same election. 11 C.F.R. § 110.1(h)(2). The affidavits of John and Ruth Stauffer state unequivocally that they had no knowledge or assurances or expectations that any of their contributions to the PACs would go to any specific candidate, including Sam Brownback. J. Stauffer Aff. ¶ 5; R. Stauffer Aff. ¶ 5. The only knowledge or assurances that they had was that their contributions would go to candidates whom each PAC believed held positions consistent with its own. *Id.*

In addition, the Stauffers' affidavits state that they retained no control over the funds they contributed to any of the PACs. J. Stauffer Aff. ¶¶ 6-8; R. Stauffer Aff. ¶¶ 6-8; *see also* 11 C.F.R. § 110.1(h). There is no indication that any of the PACs in question, as matter of principle and policy, accept contributions from donors who retain any control over their funds or accept contributions earmarked in any way.

As for the allegations in the complaint, direct and sworn testimony from John Stauffer and from Ruth Stauffer refutes the notion that any of the contributions from either were in any way earmarked or otherwise directed through an intermediary or conduit as defined in 11 C.F.R.

§ 110.6(a). J. Stauffer Aff. ¶ 6; R. Stauffer Aff. ¶ 6. In other words, there is absolutely no evidence that the Stauffers in any way instructed the PACs about the use of their contributions, either directly or indirectly, expressly or implicitly, orally or in writing. *Id.*; *see* 11 C.F.R. §110.6(b).

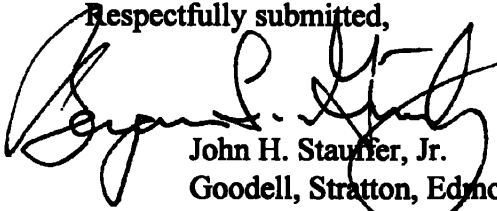
The Commission's precedents also demonstrate why this matter should be dismissed. It is uncontroverted that the Stauffers had no knowledge, and gave no directive of any kind, that their contributions to any PAC should be expended on behalf of Sam Brownback, or any other candidate. *Cf.* MUR 3313. John and Ruth Stauffer did contribute to PACs they determined shared their political beliefs, and so believed that the PACs would contribute to candidates of whom they approved, but they gave no direction about any specific candidate or candidates. J. Stauffer Aff. ¶ 5; R. Stauffer Aff. ¶ 5. Neither John nor Ruth Stauffer had any knowledge whether any portion of their contribution to the PACs would accrue to the benefit of any specific candidate, including Sam Brownback. *See* MUR 3313. All of the PACs involved supported far more than one candidate, so it was impossible for the Stauffers to know under any circumstances whether their funds would help any specific candidate, including Sam Brownback. *See* MUR 1309; MUR 1052.

Furthermore, none of the Stauffers' contributions went to a closely held PAC like the one investigated in MUR 2668. None of the contributions went to PACs controlled by their family and the Stauffers were not cognizant at any time that any of the PACs to which they contributed would give to Sam Brownback. J. Stauffer Aff. ¶¶ 5-9; R. Stauffer Aff. ¶¶ 5-9. The Stauffers never advised, and did not ask, what if any portion of their contributions to any of the PACs would go any candidate, including Sam Brownback. *Id.*

IV. CONCLUSION

The review of the law, the Commission's precedents and the facts of this case lead to the inescapable conclusion that the contributions of John and Ruth Stauffer complied with the Act and regulations, and that no violation occurred. The complaint in this matter is clearly politically motivated and designed to paint a false picture of culpability by the Stauffers, where none exists. Such a false picture in the face of overwhelming sworn evidence to the contrary is insufficient to sustain action on this complaint. This matter should be dismissed by the Commission.

Respectfully submitted,



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Goodell, Stratton, Edmonds & Palmer, L.L.P.
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Topeka, Kansas 66603-3999
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EXHIBIT 1

Respondents.

AFFIDAVIT OF JOHN H. STAUFFER

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

JOHN H. STAUFFER, being duly sworn, deposes and says:

1. I am John H. Stauffer and I reside in Topeka, Kansas.
2. I am familiar with the allegations contained in Federal Election Commission Matter Under Review 4634. I became extremely interested in the elections of 1996, in large part because my son-in-law, Sam Brownback, was a candidate for the United States Senate from Kansas.

3. In order to support Sam's candidacy, I contributed \$1,000 to both his primary and general election campaigns. Along with my wife, I also began to research political action committees which would contribute to conservative candidates who shared my points of view on various issues. In that regard, I also contributed to a number of political action committees which are named in the complaint in MUR 4634 and which I believed shared my points of view.

4. I also learned that various limitations controlled giving to federal elections. I wanted to both participate in the process and do nothing that would be harmful to Sam Brownback's candidacy.

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5. In order to do this, I did contribute to PACs whose positions I agreed with but I never specified or directed any PAC to give to any specific candidate, including Sam Brownback.

6. I did not in any way earmark or otherwise direct through an intermediary or conduit any use for my contributions to the PACs. I did not in any way instruct the PACs about their use of the contributions I sent to them, either directly or indirectly, expressly or implicitly, orally or in writing.

7. I did not at any time either seek or receive assurances or information from any of the PACs that their contributions would be used in any particular manner, such as a contribution to any specific candidate, including Sam Brownback.

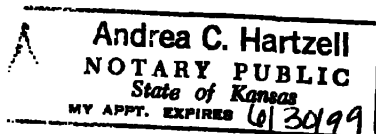
8. I had absolutely no knowledge or assurances or expectations how any of the PACs to whom I contributed would use the funds I sent them other than that they would be used to aid conservative candidates and projects. I certainly never retained any control over the funds I contributed to any PAC.

9. I never told any of the PACs that I contributed to that I was related to Sam Brownback.

IN WITNESS WHEREOF, I have executed this Affidavit this 19 day of June, 1997.

John H. Stauffer
John H. Stauffer

Subscribed and sworn to before me, a Notary Public, this 19th day of June, 1997.



Andrea C Hartzell
Notary Public
My appt. expires: 6-30-99

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EXHIBIT 2

JOHN AND RUTH STAUFFER)
)
) MUR 4634
)
 Respondents.)

STATE OF KANSAS)
)ss:
COUNTY OF SHAWNEE)

1. I am Ruth G. Stauffer and I reside in Topeka, Kansas.

3. In order to support Sam's candidacy, I contributed \$1,000 to both his primary and general election campaigns. Along with my husband, I also began to research political action committees which would contribute to conservative candidates who shared my points of view on various issues. In that regard, I also contributed to a number of political action committees which are named in the complaint in MUR 4634 and which I believed shared my points of view.

4. I also learned that various limitations controlled giving to federal elections. I wanted to both participate in the process and do nothing that would be harmful to Sam Brownback's candidacy.

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5. In order to do this, I did contribute to PACs whose positions I agreed with but I never specified or directed any PAC to give to any specific candidate, including Sam Brownback.

6. I did not in any way earmark or otherwise direct through an intermediary or conduit any use for my contributions to the PACs. I did not in any way instruct the PACs about their use of the contributions I sent to them, either directly or indirectly, expressly or implicitly, orally or in writing.

7. I did not at any time either seek or receive assurances or information from any of the PACs that their contributions would be used in any particular manner, such as a contribution to any specific candidate, including Sam Brownback.

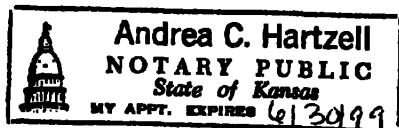
8. I had absolutely no knowledge or assurances or expectations how any of the PACs to whom I contributed would use the funds I sent them other than that they would be used to aid conservative candidates and projects. I certainly never retained any control over the funds I contributed to any PAC.

9. I never told any of the PACs that I contributed to that I was related to Sam Brownback.

IN WITNESS WHEREOF, I have executed this Affidavit this 19th day of June, 1997.

Ruth G. Stauffer
Ruth G. Stauffer

Subscribed and sworn to before me, a Notary Public, this 19th day of June, 1997.



Andrea C. Hartzell
Notary Public
My appt. expires: 6-30-99