



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1999

Udall for Us All Committee
Carolyn H. Gonzales, Treasurer
P.O. Box 208
Santa Fe, NM 87594

RE: MURs 4830 and 4845

Dear Ms. Gonzales:

On October 30, 1998, the Federal Election Commission notified Udall for Us All Committee ("Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to the Committee at that time.

Upon further review of the allegations contained in the complaint, and information provided by the Committee, the Commission, on July 20, 1999, found that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f), provisions of the Act. The Commission also found reason to believe the Committee and you violated 2 U.S.C. § 441b by receiving a \$5,000 contribution from the South Bay Voter Registration PAC. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

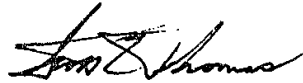
Ms. Carolyn H. Gonzales
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Eugene H. Bull, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Designation of Counsel Form
Factual and Legal Analysis
Conciliation Agreement

cc: Honorable Tom Udall

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Udall For Us All Committee
and Carolyn H. Gonzalez, as treasurer

MURs: 4830 and 4845

I. GENERATION OF THE MATTER

The Republican Party of New Mexico (the "RPNM"), by and through its Chairman, John Dendahl, filed a complaint and amended complaint on October 22 and October 28 of 1998, respectively, alleging that certain persons and entities violated sections of the Federal Election Campaign Act of 1971, as amended (the "Act") and the Commission's regulations.

Specifically, the October 22nd complaint alleges that Tom Udall—a candidate in New Mexico's Democratic primary election for the 3rd Congressional District—through Udall for Us All Committee and Carolyn H. Gonzalez, as treasurer (the "Udall Committee" or "Committee") received 1,687 contributions that were earmarked for non-existent primary election debt, 142 days after the primary election. The complaint alleges that the improper contributions totaled \$485,236.81, and specifically names 58 individuals and entities who allegedly gave improper contributions. It further alleges that Udall, through the Udall Committee, accepted a single contribution that was up to 80 times the permissible Federal limit from his wife, Jill Z. Cooper, in the form of a \$30,000 loan on May 22, 1998, and a \$50,000 loan on September 15, 1998; and states that one of the loans was not properly reported.

After the Udall Committee filed a letter and two amended disclosure reports with the Commission which indicated that large amounts of general election contributions had been

designated as primary election contributions due to a clerical error, the RPNM filed an amended complaint in this matter on October 28, 1998. Since the Udall Committee's amended disclosure reports apparently account for nearly the entire \$485,236.81 in allegedly improper contributions mentioned in the original complaint, the amended complaint appears to drop this larger allegation. However, the amended complaint alleges that South Bay Voter Registration PAC ("SBVR")—one of the contributors named in the RPNM's original complaint—is not a registered Federal committee, and thus, made an excessive contribution when it gave \$5,000 to the Udall Committee. The amended complaint also alleges that, irrespective of the explanation and amended disclosure reports provided to the Commission by the Udall Committee on October 23, 1998, the Committee nonetheless received some post-primary election contributions in excess of its existing primary election debt.

II. FACTUAL AND LEGAL ANALYSIS

A. Response

The Commission received the Udall Committee's response to the complaint and amended complaint on November 30, 1998. The response states the Committee's belief that by filing amended reports on October 23, 1998, it corrected the misreporting of general election contributions as primary contributions, and "cured any defects that may have been the basis of naming individual contributors" in the complaint. The response acknowledges that the \$30,000 loan—initially reported as having come from Tom Udall and his wife, Jill Cooper—was not properly shown on the first page of the Udall Committee's 1998 July 15 Quarterly Report, but points out that the amount was otherwise listed on the Detailed Summary at page two, and on Schedule C of the report. The response also avers that the \$30,000 loan, and a later \$50,000 loan, were improperly reported as having been made by Tom Udall and Jill Cooper. It asserts

that, in fact, the loans were made from Tom Udall's half of funds jointly controlled by the candidate and his wife.

After reiterating that a clerical error resulted in the reversal of primary and general election designations for a large number of contributions reported on the Udall Committee's 1998 October 15 Quarterly report, the response contends that the remaining contributions made for debt retirement after the primary election were lawful, because the debt and obligations incurred for the primary election exceeded the post-primary contributions made to retire primary election debt.

The response further contends that the Udall Committee mistakenly accepted the \$5,000 contribution from South Bay Voter Registration PAC. According to the Udall Committee's response, as soon as the error was discovered, the improper contribution was returned.

B. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), specifically provides that the contribution limitations shall apply separately with respect to each election. 2 U.S.C. § 441a(a)(6). Contributors to candidates are encouraged to designate their contributions in writing for particular elections. 11 C.F.R. § 110.1(b)(2)(i). In cases where a contribution is not designated in writing by the contributor for a particular election, the contribution is considered to be in connection with the next election for that Federal office after the contribution is made. 11 C.F.R. §§ 110.1(b)(2)(ii) and 110.2(b)(2)(ii). Contributions which are designated for a particular election, but made after the date of that election, may only be accepted to the extent the contributions do not exceed a committee's "net debts outstanding" for that election. 11 C.F.R. §§ 110.1(b)(3)(i) and 110.2(b)(3)(i). Net debt outstanding is calculated as of the day of election and means, the total amount of unpaid debt and obligations incurred with respect to

an election, less the sum of: the total available cash on hand to pay those debts and obligations, and the total amount owed to the candidate or political committee in the form of credits, refunds of deposits, returns, or receivables, etc. *See* 11 C.F.R. § 110.1(b)(3)(ii). Accordingly, if net debts outstanding do exist, then as additional funds are received and expenditures made, the amount of net debts outstanding shall be adjusted. 11 C.F.R. § 110.1(b)(3)(iii). Conversely, if net debts outstanding do not exist after an election, then a committee may not lawfully accept any post-election contributions for any purpose. Candidates who participate in both the primary and general elections may pay primary election debts and obligations with funds which represent contributions made with respect to the general election. 11 C.F.R. § 110.1(b)(3)(iv).

Pursuant to 11 C.F.R. §§ 110.1(b)(3)(i) and 110.2(b)(3)(i), when a treasurer of a campaign committee receives post-election contributions in the absence of, or in excess of, net debts outstanding, then within ten days of receipt, the treasurer must either deposit the contribution or return it to the contributor. If deposited, the treasurer has sixty (60) days from the date of receipt to obtain a reattribution or redesignation of the contribution to cure the illegality. 11 C.F.R. §§ 103.3(b)(3) and 110.1(b). Those contributions not reattributed or redesignated must be refunded to the contributor within sixty (60) days. 11 C.F.R. § 103.3(b)(3).

Section 110.10(a) allows candidates to make unlimited contributions from personal funds. For the purposes of this section, personal funds includes any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either (i) legal and rightful title, or (ii) an equitable interest. 11 C.F.R. § 110.10(b)(1)(i) and (ii). A candidate may use a portion of assets jointly owned with his or her spouse as personal funds.

11 C.F.R. § 110.10(b)(2). The portion of the jointly owned assets that shall be considered as

personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. *Id.* If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate. *Id.*

The Act contemplates loans made by or guaranteed by a candidate as political committee receipts which must be reported pursuant to Section 434(b). *See also* 11 C.F.R. § 104.3(a)(4)(iv).

Corporations and labor organizations are prohibited from making any contribution or expenditure in connection with Federal elections. 2 U.S.C. § 441b. The Act also makes it unlawful for any political committee or federal candidate to receive such a contribution. *Id.* An organization that does not qualify as a political committee under the Act, which makes contributions or expenditures, must establish a separate account to which only funds subject to the prohibitions and limitations of the Act shall be deposited, and from which contributions, expenditures, and exempted payments shall be made. *See* 11 C.F.R. § 102.5(b)(1)(i).

No person may make a contribution to a candidate for Federal office, and his authorized campaign committee, in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). The term "person" includes committees other than multicandidate political committees. *See* 2 U.S.C. §§ 431(11) and 441a(a)(2). Multicandidate political committees are political committees which have been registered under Section 433 of the Act for a period of not less than 6 months, which have received contributions from more than 50 persons, and, except for any State political party organization, have made contributions to 5 or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). Pursuant to 2 U.S.C. § 441a(f), candidates and political

committees are prohibited from knowingly accepting any contribution in violation of the provisions of Section 441a.

C. Analysis

1. Post-Primary Contributions

Some contributors and "1,687 contributions" are mentioned in the complaint solely because, at one time, the Udall Committee was mistakenly reporting general election contributions as primary election contributions. As the Committee amended disclosure reports demonstrate that these contributions were really general election contributions, there is no reason to believe its receipt of these contributions were receipts of post-primary contributions in excess of outstanding primary debt, as alleged. Thus, the Committee did not violate the Act's contribution limits with respect to these contributions.

However, the Committee did receive post-primary election contributions in 1998, purportedly to retire primary debt. Some of these post-primary contributions were in excess of outstanding primary election debt in violation of the Act. A review of the Udall Committee's 1998 July 15 Quarterly Report and amendments suggests that, with the exception of the reported \$30,000 loan and an additional \$4,761.25 in obligations that appeared in an amendment to the July 15 Quarterly Report, as of June 30, 1998, the Committee had retired all outstanding debts or accounts payable from the primary election. The Committee apparently lawfully retired outstanding primary election debts or accounts payable, other than the reported \$34,761.25 in obligations, with funds raised in connection with the upcoming general election. See 11 C.F.R. § 110.1(b)(3)(iv). Having done so, the Udall Committee could no longer accept post-primary election contributions in excess of the \$34,761.25 remaining primary debt. See MUR 4750 (Harvey Gantt for Senate Campaign Committee). However, the Committee's disclosure

reports indicate that during the remainder of 1998 the Committee received primary election refunds, and additional contributions to primary debt that exceeded this amount by September 17, 1998, and resulted in the receipt of excessive contributions by the Committee. As Udall for Us All Committee and Carolyn H. Gonzalez, as treasurer, accepted contributions for primary election debt at a time when all primary election debts were extinguished, and did not refund or seek redesignations for these contributions; and, as several of the improper contributions to primary debt were made by persons or entities that otherwise made the maximum allowable contribution to the Udall Committee's general election campaign, there is reason to believe the Committee violated 2 U.S.C. § 441a(f).

Further, one of the contributions to extinguish the Udall Committee's primary debt was a \$5,000 contribution from the South Bay Voter Registration PAC. Because the SBVR is not a multicandidate political committee pursuant to the Act, it can not make contributions in excess of \$1,000 per election to a political candidate. See 2 U.S.C. § 441a(a)(1)(A). Moreover, the organization is registered with the California Fair Political Practices Commission, and not at all with the Federal Election Commission. As California law remains uncertain with respect to individual contribution limits, but permits PACs to accept corporate and labor contributions, the SBVR's \$5,000 contribution to the Udall Committee's primary election campaign likely contained impermissible funds. See *Service Employees Int'l Union v. Fair Political Practices Comm'n*, 955 F.2d 1312 (9th Cir. 1992), *cert denied*, 112 S.Ct. 3056-57; see also California Government Code §§ 85102(b) and (c), and 85305(c)(1). Accordingly, there is reason to believe Udall for Us All Committee and Carolyn H. Gonzalez, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b by receiving this contribution.

2. Loans to the Udall Committee

Another allegation in the complaint involves the Udall Committee's purported receipt of an excessive contribution from Jill Cooper in the form of two loans, one of which was improperly reported. The Committee's response to the complaint, at Exhibit G, provides copies of Merrill Lynch Priority Cash Management Account statements for May and September of 1998. The brokerage margin account reflected in the statements is in the names of Tom S. Udall and Jill Z. Cooper, as joint tenants with rights of survivorship. The statements of account show that on May 26, 1998, a check in the amount of \$30,000 was drawn on the account, and on September 17, 1998, a check in the amount of \$50,000 was drawn on the account.¹ Both times the Udall Committee was the designated payee. It is the receipt of these checks by the Committee which the RPNM alleges resulted in excessive contributions by Jill Cooper to her husband, Tom Udall; and in the instance of the \$30,000 check, a reporting violation.

With respect to the allegation that Jill Cooper loaned or guaranteed either some or all of the \$80,000 the Committee received from the joint brokerage account owned by the candidate and his wife, the Commission is persuaded on the basis of the available evidence that the loans to the Committee were based entirely on Tom Udall's half of assets jointly controlled with Jill Cooper. The starting and closing portfolio values for the account at issue between April 30, 1998 and May 29, 1998, were _____ respectively; between August 31, 1998 and September 30, 1998, the starting and closing portfolio values for this account were _____

Thus, Tom Udall's share of the assets in the account on May 26, 1998 and September

¹ The complaint in this matter focuses on the date the checks were written, whereas the analysis herein focuses on the date the checks cleared or were actually drawn against the brokerage account.

17. 1998—the dates the \$30,000 and \$50,000 checks were drawn on the account, respectively—was more than sufficient to guarantee the proceeds of the loans. The Committee has provided an explanation and amended its disclosure reports to reflect that at all times, Tom Udall—and not Udall and his wife—was the sole source of the loans. As there is no persuasive reason in the record to doubt that the loans were based on Tom Udall's share of assets in the account, there is no reason to believe the Udall for Us All Committee and Carolyn H. Gonzalez, as treasurer, received an excessive contribution from Jill Cooper in violation of 2 U.S.C. § 441a(f).

The complaint also alleges that the Committee failed to list the \$30,000 loan on the first page of its 1998 July 15 Quarterly Report in the space designated for debts and obligations owed by the Committee. Even though this same information is provided on page 2 of the report where the amount is shown as a loan made or guaranteed by the candidate, the \$30,000 loan was not further itemized on the report's Schedule C as a candidate loan until the Committee filed an amendment to the 1998 July 15 Quarterly Report on October 23, 1998. The Committee's failure to put the loan information in each place where it was required apparently compromised the utility of the disclosure report, as itemization involves recording important, specific information. The utility of the Committee's 1998 October 15 Quarterly Report was further compromised because the Committee incorrectly checked off general election contributions as having been made for the primary election. In light of these problems with the Committee's reporting of its financial activity, there is reason to believe that the Udall for Us All Committee and Carolyn H. Gonzalez, as treasurer, violated 2 U.S.C. § 434(b).