

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAR 30 11 20 AM '99

FIRST GENERAL COUNSEL'S REPORT

MUR: 4856

DATE COMPLAINT FILED: November 12, 1998

DATE OF NOTIFICATION: November 12, 1998

DATE ACTIVATED: January 26, 1999

SENSITIVE

STAFF MEMBER: Mark Allen

COMPLAINANTS: New York Republican State Committee

RESPONDENTS: Liberal Party of New York State and Anne Peskin, as treasurer
Independence Party Federal Committee and Laureen Oliver, as treasurer
Reform Party of the United States of America and Michael Morris, Jr.,
as treasurer
Democratic Senatorial Campaign Committee and Joe Hansen,¹
as treasurer
Schumer '98 and Steven Goldenkranz, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(15)
2 U.S.C. § 431(16)
2 U.S.C. § 441a(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The New York Republican State Committee filed a complaint on November 12, 1998 alleging that Schumer '98 violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by accepting excessive coordinated expenditures by three party committees.² The respondent committees all responded during December 1998.

¹ The DSCC filed an amended Statement of Organization on February 1, 1999, replacing Paul Johnson as treasurer.

² Charles Schumer won the 1998 Senate general election in New York with 54% of the vote

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Act defines "political party" as "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. § 431(16). The Act also defines "State committee" as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. § 431(15). Finally, the Act defines "national committee" as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission." 2 U.S.C. § 431(14).

Section 441a of the Act sets forth limits on contributions that can be made to candidates and their authorized political committees as well as on expenditures that can be made by party committees in connection with certain elections. Specifically, the Act prohibits persons and multicandidate political committees from making contributions to authorized committees with respect to any election to federal office which in the aggregate exceed \$1,000 and \$5,000, respectively. 2 U.S.C. § 441a(a)(1)(A) and (2)(A). In addition, national and state political party committees may make limited expenditures in connection with the general election campaign of a candidate for federal office who is affiliated with such party. 2 U.S.C. § 441a(d)(3).³ The party expenditure limit for election to the office of Senator is the greater of \$20,000 or 2 cents multiplied by the voting age population of the state in which the candidate is running. 2 U.S.C. § 441a(d)(3)(A). Finally, the Act prohibits candidates and political committees from knowingly accepting contributions or making expenditures in violation of the provisions of section 441a. 2 U.S.C. § 441a(f).

³ A federal district court in Colorado recently struck down the section 441a(d) coordinated party expenditure limits as unconstitutional. See FEC v. Colorado Republican Federal Campaign Committee, Civil Action No. 89 N 1159 (D. Colo. February 18, 1999).

B. Analysis

1. Party Committee Status

In 1976, the Commission recognized the Liberal Party of New York State as a state committee of a political party. See *Advisory Opinion* ("AO") 1976-95;⁴ 2 U.S.C. § 431(15). In early 1998, the Commission recognized the Reform Party USA as a national committee of a political party and the Independence Party of New York as a state committee of the Reform Party USA. See AO 1998-2; 2 U.S.C. § 431(14) and (15). As a result of their status as state and national committees, they may make coordinated party expenditures. See 2 U.S.C. § 441a(d)(3); AO 1998-24.

2. Facts

Charles Schumer appeared on the 1998 general election ballot in New York as the U.S. Senate nominee of three political parties: the Liberal Party, the Independence Party, and the Democratic Party.⁵ The 1998 coordinated party expenditure limit for the Senate general election in New York was \$883,863. See 2 U.S.C. § 441a(d)(3)(A). The Liberal and Independence parties disclosed \$560,500 and \$439,700, respectively, in section 441a(d) coordinated party expenditures in support of Mr. Schumer. The Reform Party USA disclosed no section 441a(d) expenditures in connection with the 1998 Senate race in New York. The Democratic National Committee assigned its coordinated party expenditure limit to the Democratic Senatorial Campaign Committee ("DSCC"), which in turn assigned the limit to the New York Democratic Party, thus entitling the state party to spend up to

⁴ The Liberal Party has had three registered federal committees, two of which were administratively terminated in 1993. The Liberal Party's third federal committee filed its Statement of Organization on August 10, 1998 identifying itself as the state committee of the Liberal Party of New York. The Reports Analysis Division ("RAD") questioned the new committee's status as the successor federal committee of the Liberal Party. The Liberal Party's response to RAD dated December 4, 1998 provided sufficient evidence of the new committee's successor status.

⁵ New York law allows multiple-party candidacies. In June 1998 then-Congressman Schumer was separately designated as the U.S. Senate candidate by the Liberal Party and the Independence Party. On September 15, 1998 Congressman Schumer won the Democratic Party primary for the U.S. Senate. As a result of the party designations and primary victory, Congressman Schumer's name appeared three times on the general election ballot. His general election opponent, then-Senator Al D'Amato, appeared on the ballot as the candidate of the Republican, Conservative, and Right to Life parties.

\$1,767,726 in coordinated party expenditures. Reports filed by the New York Democratic Party reveal that it spent \$1,575,000 in coordinated party expenditures in support of Mr. Schumer.

3. The Complaint

The complaint alleges that Schumer '98 violated the Act by accepting excessive coordinated expenditures by three party committees, citing the example of the Independence Party and the Liberal Party coordinating with Schumer '98 on expenditures for television advertisements shortly before the 1998 general election. The complaint acknowledges the state committee status of the Liberal Party and the Independence Party and that multi-party nominations are permitted in New York, but asserts that Federal election law limits coordinated expenditures to one party committee, and thus the Independence and Liberal Party expenditures on behalf of Schumer constitute large excessive contributions. See 2 U.S.C. § 441a(a). The complaint supports its argument by analogy, that the Commission has ruled that candidate committees only have a single contribution limit when the candidate is the nominee of more than one party. See AOs 1982-47 and 1994-29.

4. Responses to the Complaint

The Liberal Party, the Independence Party, and Schumer '98 filed a joint response asserting that the Act and Commission regulations permit each state party committee to make section 441a(d) coordinated party expenditures in connection with the general election campaigns of the party's nominees for federal office, and that such spending does not count against contribution limits. Regarding the activity at issue, the response asserts that the Liberal Party and the Independence Party made permissible coordinated party expenditures on behalf of their U.S. Senate candidate, then-Congressman Schumer, within the \$883,863 limit for such expenditures. Finally, the joint response distinguishes AOs 1982-47 and 1994-29, which rejected additional contribution limits, from permissible section 441a(d) expenditure limits.

The DSCC responded that it transferred its entire section 441a(d) limit to the New York Democratic Party, and that it has no responsibility to monitor the activities of other parties and need not defer to them by refraining from its own programs and activities.

Finally, the Reform Party USA response simply states that it made no section 441a(d) expenditures in connection with the Schumer campaign. *This is consistent with the Reform Party's USA's disclosure reports, as noted above.*

5. Analysis and Conclusion

The complaint asserts that multiple party committees may not make section 441a(d) coordinated party expenditures on behalf of the same candidate. The Act and Commission precedent, however, do not appear to prohibit such activity. Section 441a(d) provides that national and state party committees may make expenditures on behalf of general election campaigns of federal candidates. The only express limitation is the amount that each national and state party committee may spend. Section 441a does not limit the overall amount of coordinated party expenditures on behalf of a candidate.⁶

The Advisory Opinions relied upon in the complaint also do not support the argument against multiple parties' coordinated party expenditures on behalf of a candidate. Advisory Opinions 1982-47 and 1994-29 both considered contribution limits in connection with candidates appearing on the primary ballots of multiple political parties. The requesters asked if a separate contribution limit applied to each of the primary elections. The Commission ruled that multiple party nominations constitute the same primary election, since the candidate is seeking one federal office, and so a single contribution limit applies. The complaint would analogize the single contribution limit to a single coordinated party expenditure limit. The better analogy to the latter, however, is that more than one contributor can give to the same candidate. Each contributor is limited by the relevant statutory

⁶ This Office's review of the legislative history of section 441a(d) did not reveal any discussion of multiple parties spending on behalf of a candidate.

contribution ceiling, but the recipient candidate committee is not limited in the overall amount of contributions received. See 2 U.S.C. § 441a(a).

Finally, there is support for multiple party coordinated spending in a prior enforcement matter, although the issue was not directly raised. In MUR 1739, the Liberal Party was treated as having a section 441a(d) spending limit in a situation where the 1982 Liberal Party candidate, Senator Moynihan, was also the Democratic Party candidate. In that case, Commission conciliated with the Liberal Party for, *inter alia*, violations of section 434(b)(6)(B)(iv) for failing to report that certain expenditures were on behalf of Senate candidates in 1980 and 1982. See the General Counsel's Report dated September 14, 1984 (noting the Liberal Party's section 441a(d) spending limits on behalf of Senate candidates in New York for the 1980 and 1982 elections).

Therefore, because there appears to be no prohibition on more than one party committee making section 441a(d) expenditures on behalf of the same candidate, this Office recommends that the Commission find no reason to believe that respondents violated the Act and close the file in this matter.


III. RECOMMENDATIONS

1. Find no reason to believe that the Liberal Party of New York State and Anne Peskin, as treasurer, violated the Act.
2. Find no reason to believe that the Independence Party Federal Committee and Laureen Oliver, as treasurer, violated the Act.
3. Find no reason to believe that the Reform Party of the United States of America and Michael Morris, Jr., as treasurer, violated the Act.
4. Find no reason to believe that the Democratic Senatorial Campaign Committee and Joe Hansen, as treasurer, violated the Act.
5. Find no reason to believe that Schumer '98 and Steven Goldenkranz, as treasurer, violated the Act.
6. Close the file.

7. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

3/26/99
Date

BY: 
Lois G. Lerner
Associate General Counsel