

OCT 28 2002

FEDERAL ELECTION COMMISSION

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FIRST GENERAL COUNSEL'S REPORT

2002 OCT 28 A 9 49

MUR: 4974

DATE COMPLAINT FILED: 02/22/00

DATES OF NOTIFICATION: 02/28/00 and
10/26/00

DATE ACTIVATED: 05/31/00¹

EXPIRATION OF STATUTE OF
LIMITATIONS: 02/01/04²

COMPLAINANT:

Jonathan Poe

RESPONDENTS:

Federal committees and candidate³

Patrick Joseph Tiberi

Tiberi for Congress and Jeffrey T. Benton, as
treasurer

Kasich 2000 and William L. Curlis, as treasurer
Leadership PAC 2002 and Pamela Sederholm, as
treasurer

Florida Republican Leadership PAC and Donna F.
Winterson, as treasurer

The Freedom Project and Bruce Gates, as treasurer
Promoting Republicans You Can Elect Project
(Pryce Project) and Barbara W. Bonfiglio, as
treasurer

Pioneer Political Action Committee and Jack
Hanson, as treasurer

¹ A prior version of this Report was circulated on April 30, 2001, and withdrawn before discussion on May 7, 2001. The attorney to whom the matter was assigned subsequently left the Commission, and this matter was transferred to an attorney on a different team on September 14, 2001.

² The statute-of-limitations ("SOL") date listed in CMS is February 1, 2005. However, since the earliest date of any violation alleged by Complainant is February 1, 1999, this Office intends to revise the SOL date in CMS to reflect an SOL date of 02/01/04.

³ Several committees have changed their names, and in one case a treasurer, since the complaint was filed. Tiberi for Congress was formerly called Tiberi 2000 and William L. Curlis was its former treasurer. Leadership PAC 2002 was formerly called Leadership PAC 2000. Florida Republican Leadership PAC was formerly called Leadership 2000. Promoting Republicans You Can Elect Project (Pryce Project) was called the New American Century Political Action Committee at the time the complaint was filed, having changed its name from the Next American Century Political Action Committee on February 18, 2000. This Report will refer to all committees by their current names and will include the current treasurers.

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Nonfederal committees

Friends of Tiberi and William L. Curlis, as treasurer
Citizens for Mead and Thomas J. Riley, as
Treasurer
Citizens for Gardner and Randy Gardner, as
treasurer⁴
Citizens for Hottinger and Larry D. Wise, as
Treasurer

RELEVANT STATUTES:

2 U.S.C. § 431(4)(A)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 434(b)
2 U.S.C. § 441f
11 C.F.R. § 102.5
11 C.F.R. § 102.5(b)(1)(ii)
11 C.F.R. § 110.3(d)
11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Jonathan Poe ("Complainant"), who alleges that Tiberi for Congress and Jeffrey T. Benton, as treasurer; Friends of Tiberi and William L. Curlis, as treasurer; Patrick Joseph Tiberi; Kasich 2000 and William L. Curlis, as treasurer; Citizens for Mead and Thomas J. Riley, as treasurer; Citizens for Gardner and Randy Gardner, as treasurer; Citizens for Hottinger and Larry D. Wise, as treasurer; Leadership PAC 2002 and Pamela Sederholm, as treasurer; The Freedom Project and Bruce Gates, as treasurer; Promoting Republicans You Can Elect Project ("Pryce Project") and Barbara W. Bonfiglio, as treasurer; and the Pioneer Political Action Committee ("Pioneer PAC") and Jack Hanson, as

⁴ Michael Silberman was treasurer of this committee at the time the complaint was filed.

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1 treasurer ("respondents"), violated provisions of the Federal Election Campaign Act of 1971; as
2 amended ("the Act").

3 Respondents were notified of the complaint on February 28, 2000.⁵

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Law**

16 The Act defines a contribution as a gift, loan, advance, deposit of money, or anything of
17 value. 2 U.S.C. § 431(8)(A)(i). For the purposes of the Act, the term "person" is defined as

⁵ Since it appeared on the face of the complaint that only one Leadership PAC was involved in this matter, Central Enforcement Docket ("CED") originally notified Leadership PAC 2000, now known as Leadership PAC 2002, based in Alexandria, Virginia. After further analysis and research of the complaint materials, it became apparent that there was another Leadership PAC involved, Leadership 2000, now known as Florida Republican Leadership PAC, based in Lake Worth, Florida. CED then sent a notification to this committee on October 26, 2000, and its response was received on November 13, 2000.

⁶ On March 15, 2000, counsel for Tiberi's federal committee, Citizens for Gardner, and Pioneer PAC sent Designations of Counsel to the Commission and requested a 15-day extension to respond to the complaint. On March 17, March 21, and March 23, 2000, the same counsel sent Designations of Counsel for Kasich 2000, Citizens for Mead, and Leadership PAC 2002, respectively. Patrick J. Tiberi signed the Designation of Counsel for Tiberi's federal committee. Tiberi's state committee did not submit a Designation of Counsel.

1 including "an individual, partnership, committee, association, corporation, labor organization, or
2 any other organization or group of persons" 2 U.S.C. § 431(11). The Act defines a political
3 committee as "any committee, club, association, or other group of persons which receives
4 contributions aggregating in excess of \$1,000 during a calendar year or which makes
5 expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4)(A).
6 Pursuant to 2 U.S.C. §§ 433 and 434, any organization that qualifies as a "political committee"
7 must register with the Commission and file periodic reports of all receipts and disbursements.⁷
8 Furthermore, each report filed by a political committee shall disclose the information specified in
9 2 U.S.C. § 434(b).

10 In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the Act's references
11 to "political committee" in such a manner as to prevent their "reach [to] groups engaged purely in
12 issue discussion." The Court recognized that "[t]o fulfill the purpose of the Act [the definition of
13 'political committee'] need only encompass organizations that are under the control of a
14 candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S.
15 at 79.⁸

⁷ Political committees may set up separate federal and nonfederal accounts. 11 C.F.R. § 102.5(a). Wholly nonfederal activity may be paid for from the nonfederal account and need not be reported to the Commission, except for nonfederal activity by national party committees. See 11 C.F.R. §§ 104.8(e) and (f) and 104.9(c), (d), and (e). Organizations that are not political committees under the Act may make contributions and expenditures consistent with 11 C.F.R. § 102.5(b).

⁸ In *Akins v. FEC*, 101 F.3d 731 (D.C. Cir. 1996) (*en banc*), the court held that the Commission's application of the "major purpose" test to find political committee status in MUR 2804 was inappropriate. The court held that the statutory language defining "political committee" is not ambiguous. 101 F.3d at 740, but further noted that the Supreme Court's discussion of "major purpose" in *Buckley* and *MCFL* applied only to independent expenditures, not to coordinated expenditures and direct contributions. *Id.* at 741-42. The Supreme Court subsequently vacated this decision for other reasons, see *FEC v. Akins, et al.*, 524 U.S. 11 (1998), without ruling on the criteria for an organization to be deemed a "political committee."

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Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited. 11 C.F.R. § 110.3(d).

The Act prohibits contributions in the name of another. The Act states that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person." 2 U.S.C. § 441f. Examples of contributions in the name of another include giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing to the recipient candidate or committee the source of money or the thing of value at the time the contribution is made; or making a contribution of money or anything of value and attributing another person as the source of the money or thing of value when in fact the contributor is the source. 11 C.F.R. § 110.4(b)(2). In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii). This prohibition also applies to any person who provides the money to others to effect contributions in their names. 11 C.F.R. § 110.4(b)(2).

B. Complaint

Complainant made three separate allegations. First, he alleged that Tiberi's state committee, Tiberi's federal committee, Citizens for Mead, Citizens for Hottinger, Citizens for Gardner, Leadership PAC 2002, Florida Republican Leadership PAC, and Kasich 2000 violated the Act by "laundering" campaign funds from Tiberi's state committee through various state and federal committees and then from those various committees to Tiberi's federal committee.

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In support of his first allegation, Complainant claimed that between February 1, 1999, and

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December 31, 1999, Tiberi's state committee made contributions of \$1,000 each to Citizens for

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Hottinger, Citizens for Mead, Citizens for Gardner, Kasich 2000, and Leadership PAC 2002.

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The complaint alleged that after these committees received these contributions, each then

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contributed the same amount to Tiberi's federal committee.⁹ The complaint stated that as a result

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of the transfer of money from Tiberi's nonfederal account to his federal account via these

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committees, Tiberi "made use of at least \$6,000 of nonfederal campaign contributions in his

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federal campaign."

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⁹ With one exception: According to the complaint, Tiberi's state committee contributed \$1,000 to "Leadership PAC," and then "Leadership PAC" contributed \$2,000 to Tiberi's federal committee. Disclosure reports indicate that the complaint failed to recognize another step in this transaction. In September 1999, Tiberi's state committee made a \$1,000 contribution to Leadership PAC 2002. Leadership PAC 2002 then made a \$2,000 contribution to the Florida Republican Leadership PAC. In October 1999, the Florida Republican Leadership PAC contributed \$2,000 to Tiberi's federal committee. See chart at p. 11, *infra*.

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8 **C. Responses**

9 According to nearly identical responses filed on behalf of Pioneer PAC, Leadership PAC
10 2002, and Kasich 2000, nothing in the complaint provides any fact or theory under which these
11 respondents could have violated the Act. These respondents stated that their sole mention in the
12 complaint consists of the dates and amounts of contributions that they received from Tiberi's
13 state committee, and contributions from them to Tiberi's federal committee. Respondents
14 claimed that "[e]ven if the Commission accepts this statement as fact, it does not demonstrate a
15 violation of the Act." Responses at 2.

16 Citizens for Hottinger's response claimed that the complaint is factually incorrect, and
17 that "[a] review of complainant's own documentation reveals a contribution was made by
18 'Friends of Tiberi' to 'Neighbors For Hottinger.'" Response at 1. The response stated that
19 Neighbors for Hottinger is not a campaign committee of or for Jay Hottinger, the candidate
20 supported by Citizens for Hottinger; rather, Neighbors for Hottinger is a committee to support the
21 election of Cheri Hottinger to the Newark, Ohio, City Council as a Council Member at-Large.
22 Citizens for Hottinger admitted that it made a \$1,000 contribution to Tiberi's federal committee,
23 but noted that its contribution preceded the contribution from Tiberi's state committee to

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Neighbors for Hottinger. Therefore, this response contended that even if the committees were one and the same, "The timing of such contributions, (notwithstanding the committees are different entities), is completely contrary to complainant's own laundering theory." Response at 3.

The Freedom Project's response stated that the Act and regulations permit a federal committee such as itself to accept up to \$1,000 from a nonfederal committee under 11 C.F.R. § 102.5, and that only committees making contributions in excess of \$1,000 are required to register with the Commission. It further claimed that the contribution received from Tiberi's state committee met all legal thresholds, being from legally permissible sources and in legally permissible amounts. According to the response, Ohio law prohibits corporate and labor union contributions, Ohio Rev. Code Ann. § 3599.03, as does section 441b of the Act. Ohio law also limits individual and PAC contributions to State House and Senate candidates to \$2,500. Ohio Rev. Code Ann. § 3517.102(B)(1)(b) and (c), and (2)(b) and (c). The Freedom Project's response stated that it could accept \$5,000 in contributions under section 441a(a)(1)(C) of the Act. The committee stated that the contribution it received from Tiberi's state committee was not in excess of \$1,000 and would not in and of itself have triggered a registration obligation by Tiberi's state committee.

The Pryce Project's response stated that "[a]fter careful review of the materials that accompanied Mr. Poe's complaint, I find no evidence of a violation or even an alleged violation of the . . . Act . . . on the part of" this respondent. Response at 1. The response further states that "because we could not verify who [sic] the Friends of Tiberi received its contributions from[,] the contribution was deposited into" the Pryce Project's nonfederal account.

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D. Analysis

1. Allegations of Intermediary Transfers

The Complainant's first allegation is that Tiberi's state committee "laundered" campaign funds through various intermediary committees, which then contributed those funds to Tiberi's federal committee. The Commission's regulation at 11 C.F.R. § 110.3(d) bans transfers from a candidate's campaign committee for a nonfederal election to the candidate's campaign committee for a federal election, due to concern over "the indirect use of impermissible funds in federal elections." Explanation and Justification, *Transfers of Funds From State to Federal Campaigns*, 58 Fed. Reg. 3474 (January 8, 1993).

In AO 1996-33, a candidate for federal office wanted to contribute surplus funds from his state campaign committee to the reelection campaigns of fellow members of the state legislature. The candidate was soliciting contributions to his federal campaign from the same state legislators to whom he wished to contribute surplus funds, in amounts roughly equivalent to the original contributions made by the candidate to the state legislators. The Commission concluded that

1 such an arrangement would amount to a transfer of funds from the candidate's state committee
2 through the state legislators' committees to the candidate's federal committee, and thus be
3 impermissible under 11 C.F.R. § 110.3(d). The Commission further concluded that the
4 arrangement might be impermissible under 2 U.S.C. § 441f if it was a reimbursement of the state
5 legislators for the funds the same state legislators gave to the candidate's federal committee. *See*
6 AO 1996-33 and MURs 4408 and 4409 (Kevin Quigley for Congress) (Commission found
7 reason to believe where it appeared that a federal candidate and his state committee used another
8 committee as a conduit to give money to the candidate's federal committee but took no further
9 action because the small amount of money in issue (\$2,000) did not justify the use of resources to
10 investigate the events).

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9 The Complainant also alleged that Tiberi's state committee and Tiberi's federal committee
10 violated the Act using Kasich 2000 as an intermediary committee. Kasich 2000, Representative
11 John Kasich's presidential exploratory committee, received a contribution from Tiberi's state
12 committee in the amount of \$1,000 on February 12, 1999. Five months later, Representative
13 Kasich dropped out of the presidential race. On December 22, 1999, Kasich 2000 made a \$1,000
14 contribution to Tiberi's federal committee for the primary election. On March 29, 2000, Kasich
15 2000 made a \$1,000 contribution to Tiberi's federal committee for the general election.

16 For several reasons, the contributions from Kasich 2000 to Tiberi's federal committee do
17 not appear to be contributions in the name of another. First, the initial contribution from Kasich
18 2000 to Tiberi's federal committee was over ten months later than the contribution from Tiberi's
19 state committee to Kasich 2000. Second, when Tiberi's state committee contributed \$1,000 to
20 Kasich 2000, Representative Kasich was raising funds for his presidential exploratory
21 committee; Kasich 2000 made its contributions to Tiberi's federal committee only after
22 Representative Kasich dropped out of the presidential race. Finally, Tiberi was the candidate for
23 the seat Kasich vacated when he decided not to seek reelection to Congress, and this may be why

1 ~~Kasich determined to support Tiberi with excess funds from his exploratory committee. Under~~
2 ~~these circumstances, this Office recommends that the Commission find no reason to believe that~~
3 ~~Kasich 2000 and William L. Curlis, as treasurer, violated the Act in connection with the~~
4 ~~complaint in MUR 4974.~~

5 Complainant also alleges that Tiberi's state and federal committees used Citizens for
6 Hottinger as an intermediary committee. Although Citizens for Hottinger made a \$1,000
7 contribution to Tiberi's federal committee, the contribution cited by the complaint that was made
8 by Tiberi's state committee was to "Neighbors For Hottinger," an entirely different entity.
9 Neighbors for Hottinger was supporting a different candidate named Hottinger than the one
10 supported by Citizens for Hottinger. Therefore, Citizens for Hottinger was not an intermediary
11 for the contribution cited in the complaint. Moreover, as the response of Citizens for Hottinger
12 pointed out, the timing of these contributions is contrary to Complainant's laundering theory,
13 since Citizens for Hottinger made its contribution to Tiberi's federal committee on June 22,
14 1999, although Tiberi's state committee made its contribution to Neighbors for Hottinger on
15 September 15, 1999. Accordingly, this Office recommends that the Commission find no reason
16 to believe that Citizens for Hottinger and Larry D. Wise, as treasurer, violated the Act in
17 connection with the complaint in MUR 4974.

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17 The federal political committees involved in this matter were permitted under the Act to
18 accept contributions from state candidate committees. *See* 11 C.F.R. § 102.5(b)(1)(ii). Since the
19 acceptance of \$1,000 contributions from Tiberi's state committee is the only allegation made
20 against these committees, this Office recommends that the Commission find no reason to believe
21 that the Promoting Republicans You Can Elect Project (Pryce Project) and Barbara W. Bonfiglio,

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1 as treasurer; The Freedom Project and Bruce Gates, as treasurer, and the Pioneer Political Action
2 Committee and Jack Hanson, as treasurer, violated the Act in connection with the complaint in
3 MUR 4974, and close the file with respect to them.

4 Although the complaint names Patrick Tiberi as a person who allegedly violated the Act,
5 there is no information in the complaint or otherwise currently available that shows that Mr.
6 Tiberi was personally involved in these transactions. Therefore, this Office recommends that the
7 Commission take no action at this time regarding Patrick Joseph Tiberi.

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10 IV. RECOMMENDATIONS

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17 3. Take no action at this time against Patrick Joseph Tiberi.

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8. Find no reason to believe that Kasich 2000 and William L. Curlis, as treasurer, violated the Act in connection with the complaint in MUR 4974 and close the file as to them.

9. Find no reason to believe that the Pioneer Political Action Committee and Jack Hanson, as treasurer, violated the Act in connection with the complaint in MUR 4974 and close the file as to them.

10. Find no reason to believe that Citizens for Hottinger and Larry D. Wise, as treasurer, violated the Act in connection with the complaint in MUR 4974 and close the file as to them.

11. Find no reason to believe that Promoting Republicans You Can Elect Project (Pryce Project) and Barbara W. Bonfiglio, as treasurer, violated the Act in connection with the complaint in MUR 4974 and close the file as to them.

12. Find no reason to believe that The Freedom Project and Bruce Gates, as treasurer, violated the Act in connection with the complaint in MUR 4974 and close the file as to them.

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16. Approve the appropriate letters.

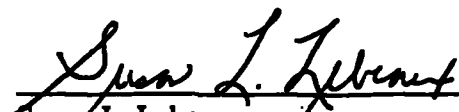
Lawrence H. Norton
General Counsel

10/25/02
Date

BY: Rhonda J. Vosdigh
Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

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Susan L. Lebeaux
Assistant General Counsel



Michael E. Scurry
Attorney

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