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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

MAY 25 2001

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

RE: MUR 5128

DATE COMPLAINT FILED: 10/27/00

DATE OF NOTIFICATION: 11/01/00

DATE ACTIVATED: 2/21/01

EXPIRATION OF STATUTE OF

LIMITATIONS: 10/20/05

STAFF MEMBER: Matt Hardy

**COMPLAINANT:**

David Plouffe, Executive Director, Democratic Congressional Campaign Committee

**RESPONDENTS:**

National Republican Congressional Committee and Donna Anderson, as treasurer

Dick Zimmer

Zimmer 2000, Inc. and Maria Chappa, as treasurer

**RELEVANT STATUTES:**

2 U.S.C. § 431(8)(A)(i)

2 U.S.C. § 431(9)(A)(i)

2 U.S.C. § 434(b)(2)

2 U.S.C. § 434(b)(4)

2 U.S.C. § 434(b)(4)(H)(iv)

2 U.S.C. § 434(b)(6)(A)

2 U.S.C. § 434(b)(6)(B)(iv)

2 U.S.C. § 437g(a)(1)

2 U.S.C. § 441a(a)(2)(A)

2 U.S.C. § 441a(c)

2 U.S.C. § 441a(d)

2 U.S.C. § 441a(d)(3)(B)

2 U.S.C. § 441a(f)

11 C.F.R. § 102.9(b)(1)

11 C.F.R. § 104.3(a)(3)(iii)

11 C.F.R. § 100.7(a)(1)

11 C.F.R. § 110.7(a)(4)

11 C.F.R. § 110.7(b)(1)

First General Counsel's Report

11 C.F.R. § 110.7(b)(1)(i)  
11 C.F.R. § 110.7(b)(2)(ii)  
11 C.F.R. § 110.7(c)  
11 C.F.R. § 110.8(a)(1)  
11 C.F.R. § 110.9(c)  
11 C.F.R. § 110.11(c)

INTERNAL REPORTS CHECKED: Disclosure Reports  
Contributor Indices

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

This matter was generated by a complaint submitted by David Plouffe, Executive Director of the Democratic Congressional Campaign Committee ("DCCC"), alleging violations of the Federal Election Campaign Act of 1971, as amended ("Act"), by the National Republican Congressional Committee ("NRCC"), Congressional candidate Dick Zimmer, Zimmer 2000, Inc. ("Zimmer 2000") and Maria Chappa, as treasurer.<sup>1</sup> See 2 U.S.C. § 437g(a)(1). The complaint alleges that the Act and Commission regulations were violated on October 20, 2000 when the NRCC made a \$66,500 excessive contribution to Zimmer 2000, which was reported on a Zimmer 2000 48 Hour Notice as a "Contribution/ Loan." Respondents were notified of the complaint on November 1, 2000 and, by letter dated November 13, 2000, NRCC General Counsel Donald F. McGahn II submitted a response on behalf of the NRCC stating that the \$66,500 "constituted a coordinated expenditure permissible under federal law." Dick Zimmer and Zimmer 2000 submitted similar responses by letters dated November 10, 2000.

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<sup>1</sup> Dick Zimmer was a candidate in the 2000 general election in New Jersey's 12<sup>th</sup> Congressional District, losing the election with 49% of the vote.

21-04-405-1332

## II. FACTUAL AND LEGAL ANALYSIS

### A. Applicable Law

Contributions and party coordinated expenditures are treated as separate and distinct concepts under the Act.

A contribution is defined generally by the Act as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election.” 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.7(a)(1). Section 441a(a)(2)(A) of the Act limits the amount that a multi-candidate political committee, including a party committee, may contribute, per election, to a candidate for a federal office and the candidate’s authorized committee to \$5,000.

Party coordinated expenditures are creatures of section 441a(d) of the Act which states that “the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office” subject to the financial limitations contained in that section.<sup>2</sup> The Commission regulations at 11 C.F.R. § 110.7(b)(1) clarify section 441a(d) by specifying that these national and state committees may “each” make

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<sup>2</sup> “This special provision creates, in part, an exception to the above contribution limits. That is, without special treatment, political parties ordinarily would be subject to the general limitation on contributions by a ‘multicandidate political committee.’” *FEC v. Colorado Republican Federal Campaign Committee*, 518 U.S. 604, 610-11 (1996) (Colorado I). The constitutionality of this provision is currently pending review by the Supreme Court in *FEC v. Colorado Republican Federal Campaign Committee*, 213 F.3<sup>rd</sup> 1221 (10<sup>th</sup> Cir. 2000), cert. granted, 69 U.S.L.W. 3257 (U.S. October 10, 2000) ( No. 00-191). (Colorado II). The ultimate decision in that case, however, is unlikely to affect this matter if the Commission accepts this Office’s recommendation to find reason to believe only with respect to the proper reporting of party coordinated expenditures.

such expenditures, but, pursuant to 11 C.F.R. § 110.7(c), the combined expenditures of all state committees may not exceed the single state committee limit.<sup>3</sup>

Both national and state party committees may designate agents for the purpose of making such coordinated expenditures. Regarding national party committees, 11 C.F.R. § 110.7(a)(4) states that “[t]he national committee of a political party may make expenditures authorized by this section through any designated agent, including state and subordinate party committees.” Regarding state party committees, the Supreme Court in *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981), held that a state party committee may use agency agreements, including agreements with national committees of a political party, for the purpose of making coordinated expenditures.

The dollar limit for such party coordinated expenditures in a general election campaign for the House in a state with more than one Representative, such as New Jersey, is set in the Act at \$10,000. 2 U.S.C. § 441a(d)(3)(B) and 11 C.F.R. § 110.7(b)(2)(ii). Pursuant to 2 U.S.C. § 441a(c) and 11 C.F.R. § 110.9(c), that limit is adjusted at the beginning of each calendar year based upon changes in the Consumer Price Index. According to calculations published by the Commission, the adjusted statutory limit for party coordinated expenditures for House campaigns in states with more than one Representative for the year 2000 was \$33,780. *Authority to Make Coordinated Party Expenditures on Behalf of House, Senate and Presidential Nominees*, Record, March, 2000, at 14. Since both the national party committee and state party committee(s) may each make (or may designate agents to make) expenditures up to the statutory

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<sup>3</sup> An expenditure is defined generally by the Act as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i) and 11 C.F.R. § 110.8(a)(1).

limit, the overall limit for such party coordinated expenditures in the year 2000 was twice \$33,780, or \$67,560.

When party coordinated expenditures, alone or in combination with direct contributions to a candidate made pursuant to section 441a(a)(2)(A), exceed the combined limitations of sections 441a(a)(2)(A) and 441a(d), violations of 2 U.S.C. § 441a(a)(2)(A) or 2 U.S.C. § 441a(d) by the party committee and of 2 U.S.C. § 441a(f) by the recipient candidate committee result.

Section 434 of the Act sets forth the reporting requirements for treasurers of political committees. Pursuant to § 434(b)(4)(H)(iv) of the Act, political committees, other than authorized committees, must report party coordinated expenditures made under § 441a(d). Moreover, political committees, other than authorized committees, must identify all persons who receive any party coordinated expenditures made pursuant to § 441a(d). 2 U.S.C. § 434(b)(6)(B)(iv). With respect to authorized committees and their treasurers, however, 11 C.F.R. § 104.3(a)(3)(iii) makes it clear that "...expenditures made under 11 CFR 110.7 (2 U.S.C. 441a(d)), by a party committee shall not be reported as contributions by the authorized committee on whose behalf they are made."<sup>4</sup> See *Campaign Guide for Political Party Committees at 16 (1996)* (Coordinated party expenditures are reported by the party committee only).

## **B. The Complaint**

The complaint in this matter is directed at New Jersey congressional candidate Dick Zimmer, his authorized committee, Zimmer 2000 and Maria Chappa, as treasurer, and the NRCC

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<sup>4</sup> Principal campaign committees such as Zimmer, 2000 are "authorized committees." See 2 U.S.C. § 431(5) and (6).

and Donna Anderson, as treasurer. The basic factual allegation in the complaint appears to rest solely on one entry in an attached "48 Hour Notice of Contributions/Loans Received" filed by Zimmer 2000 on October 20, 2000. That entry names the "National Republican Congressional Committee" as having made a "contribution/ loan" of \$66,500 to Zimmer 2000 on 10/20/00.

The Complainant alleges that "in the closing days of this campaign, the NRCC funnelled an illegal \$66,500 excessive contribution to Dick Zimmer." By so doing, the NRCC and Zimmer "brazenly exceeded" the \$5,000 limit of 2 U.S.C. § 441a(a)(2)(A) "by more than \$60,000."

**C. The Responses**

The NRCC, Dick Zimmer, and Zimmer 2000 each responded to the complaint by unsworn letter.

NRCC General Counsel McGahn refers to the complaint as "completely unfounded," "filed on the eve of a very close election," and "patently false." He describes the \$66,500 as a "coordinated expenditure permissible under federal law." Citing 11 C.F.R. § 110.7(b)(1), he explains:

The NRCC was designated as the agent of the Republican National Committee and the New Jersey State Party for making coordinated expenditures. The NRCC will disclose on its 30-Day Post-General Election Report an expenditure made to Jamestown Associates for \$66,500 in support of candidate Dick Zimmer. The funds were not given to the Zimmer campaign. Furthermore, the amount expended was less than the coordinated spending limit set by the Commission.

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Dick Zimmer and Zimmer 2000 responded in separate but identical letters. They state that the NRCC did not give the \$66,500 to the Zimmer campaign "by check or by any other means." They also cite 11 C.F.R. § 110.7(b)(1) and state that "[t]his was a coordinated expenditure by the NRCC, the agent of the national party and the state party." Explaining why the committee listed this expenditure on its 48 hour notice, they state, "So as to ensure full public disclosure, we filed a 48-hour notice. This was done due to past issues regarding 48-hour notices and in an abundance of caution. But being overly cautious does not convert this to a contribution."

#### **D. Analysis**

It appears that the \$66,500 involved here was a party coordinated expenditure permissible under 2 U.S.C. § 441a(d) and properly reported by the NRCC. By reporting this party coordinated expenditure as a contribution, however, Zimmer 2000 and Maria Chappa, as treasurer, violated 2 U.S.C. § 434(b). *See* 11 C.F.R. § 104.3(a)(3)(iii).

The \$66,500 here was treated as a party coordinated expenditure by the NRCC and, after the initial erroneous reporting, by Zimmer 2000, as well. Though the October 20, 2000 Zimmer 2000 "48 Hour Notice of Contributions/ Loans Received" does list the \$66,500 as a "contribution/ loan,"<sup>6</sup> the NRCC's 30 Day Post-General Election Report lists it on page 5 of its Schedule F as a party coordinated expenditure under 2 U.S.C. § 441a(d). That entry identifies "Jamestown Associates" as the payee; "Dick Zimmer, House of Representatives, NJ-12, 2000" as

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<sup>6</sup> On January 24, 2001, the Reports Analysis Division sent a request for additional information to Maria Chappa, the treasurer of Zimmer 2000, requesting that she explain why this entry was made on the 48 Hour Notice but no comparable entry appears on Schedule A of the Committee's 30 Day Post-General Report. A second letter was sent on February 15, 2001. On March 23, 2001, Ms. Chappa sent a letter by facsimile to the Reports Analysis Division (Attachment 1) in which she stated that the 48 Hour Notice involving the "contribution from the NRCC made payable to 'Jamestown Associates' in the amount of \$66,000 was filed in error." We understand that the Reports Analysis Division does not intend to make a referral to this Office concerning this issue.

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First General Counsel's Report

the candidate supported; "Media Placement" as the purpose of the expenditure; "10-19-00" as the date of the expenditure and "\$66,500" as both the "Aggregate Gen. Election Expenditure" and the amount of this particular expenditure. This latter listing is consistent with the responses filed not only by the NRCC but also by Mr. Zimmer and Zimmer 2000. The NRCC appears to have satisfied the reporting requirements of the Act with this filing.<sup>7</sup>

The \$66,500 expenditure was within the legally permissible limits of 2 U.S.C. § 441a(d)(3)(B) and 11 C.F.R. § 110.7(b)(2)(ii), as well. As the apparent "designated agent" of both the Republican National Committee and the New Jersey Republican State Committee, the NRCC was permitted to make expenditures up to two times the legally mandated limit, or \$67,560. The \$66,500 expenditure here was \$1,060 below that limit. Furthermore, the separate \$5,000 limit for NRCC direct contributions to Zimmer 2000 under 2 U.S.C. § 441a(a)(2)(A) was not exceeded. In Schedule B of its 30 Day Post-General Election Report, the NRCC lists a 10-23-00 contribution of \$4,949.00 to Zimmer for Congress.<sup>8</sup> This, along with a prior \$51 contribution during the primary, makes the aggregate contribution exactly \$5,000.<sup>9</sup>

Based on the above, it appears that the NRCC did not exceed either the contribution limit of 2 U.S.C. § 441a(a)(2)(A) or the party coordinated expenditure limit of 2 U.S.C. § 441a(d)(3)(B) and 11 C.F.R. § 110.7(b)(2)(ii). As such, this Office recommends that the Commission find no

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<sup>7</sup> The NRCC did, however, fail to answer the following question on its Schedule F: "Has your Committee been designated to make coordinated expenditures by any political committee," or to name the designating committees.

<sup>8</sup> The actual name of Zimmer's authorized committee is "Zimmer 2000, Inc." and it appears to be the campaign's only authorized committee. The contribution listed here is listed in the Zimmer 2000, Inc. "48 Hour Notice of Contributions/Loans Received" filed October 25, 2000.

<sup>9</sup> On Schedule B of its October, 2000 Quarterly Report, the New Jersey Republican State Committee lists a "9/21/2000" contribution of "\$5,000" to "Zimmer 2000 Inc.," which is also within the permissible limits of 2 U.S.C. § 441a(a)(2)(A).



reason to believe that the National Republican Congressional Committee, and Donna Anderson, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) or 2 U.S.C. § 441a(d)(3)(B) or that Dick Zimmer or Zimmer 2000, Inc., and Maria Chappa, as treasurer, violated 2 U.S.C. § 441a(f). Zimmer 2000, however, did improperly report the party coordinated expenditure. *See* 11 C.F.R. § 104.3(a)(3)(iii). As such, this Office recommends that the Commission find reason to believe that Zimmer 2000, Inc. and Maria Chappa, as treasurer, violated 2 U.S.C. § 434(b). However, because it appears likely that these Respondents made a good faith error, this Office recommends that the Commission take no further action, send an admonishment letter, and close the file.

If the Commission adopts these recommendations, this Office plans to advise Zimmer 2000 to address the above-described reporting error by amending its October 20, 2000 48 Hour Notice to remove the \$66,500 entry as a "contribution/ loan."

### **III. RECOMMENDATIONS**

1. Find reason to believe that Zimmer 2000, Inc. and Maria Chappa, as treasurer, violated 2 U.S.C. § 434(b), but take no further action, and send an admonishment letter.
2. Find no reason to believe that the National Republican Congressional Committee and Donna Anderson, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) or 441a(d)(3)(B).
3. Find no reason to believe that Dick Zimmer, or Zimmer 2000, Inc. and Maria Chappa, as treasurer, violated 2 U.S.C. § 441a(f).

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First General Counsel's Report

4. Approve the appropriate letters.
5. Close the file.

Lois G. Lerner  
Acting General Counsel

May 25, 2001  
Date

BY: Abigail Shaine *AS*  
Abigail A. Shaine  
Acting Associate General Counsel

Attachment:

1. March 23, 2001 Letter from Maria Chappa to Reports Analysis Division

21.04.405.1340

Mar 23 01 02:10p

MR. A. H. CHAPPA

201 558-1949

P. 1

**ZIMMER**  
**2000**

Mar 26 8 03 AM '01

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FEDERAL ELECTION  
COMMISSION  
REPORTS ANALYSIS  
DIVISION

March 23, 2001

VIA FACSIMILE (202) 219-3496

Matthew Kern  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Matt:

Per our conversation, a 48 Notice for a contribution from the NRCC made payable to "Jamestown Associates" in the amount of \$66,000 was filed in error. Please disregard this notice.

If you have any questions, or need additional information, I can be reached at (201) 558-1915.

Thank you.

Sincerely,



Maria Chappa  
Treasurer

ATTACHMENT 1  
Page 1 of 1



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** Office of the Commission Secretary

**FROM:** Office of General Counsel **RCS**

**DATE:** May 25, 2001

**SUBJECT:** MUR 5128- First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

**CIRCULATIONS**

**SENSITIVE** ☒  
**NON-SENSITIVE** ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

**DISTRIBUTION**

**COMPLIANCE** ☒

Open/Closed Letters ☐  
MUR ☐  
DSP ☐

**STATUS SHEETS** ☐  
Enforcement ☐  
Litigation ☐  
PFESP ☐

**RATING SHEETS** ☐

**AUDIT MATTERS** ☐

**LITIGATION** ☐

**ADVISORY OPINIONS** ☐

**REGULATIONS** ☐

**OTHER** ☐

21-01-405-1332