

JUN 18 2002

SENSITIVE

FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5133R

DATE COMPLAINT FILED: Oct. 30, 2000

DATES OF NOTIFICATION: Nov. 6, 2000 and
Jan. 5, 2001

DATE ACTIVATED: August 23, 2001

EXPIRATION OF STATUTE OF
LIMITATIONS: September 22, 2005

COMPLAINANT: Anne Boyle, Chairperson of the Nebraska Democratic Party

RESPONDENTS: Don Stenberg
Stenberg for Senate 2000 Committee, and
Charles V. Sederstrom, Jr., as treasurer and
Christine Vanderford, as assistant treasurer

RELEVANT STATUTES: 2 U.S.C. § 441b
2 U.S.C. § 432(c)(5)
2 U.S.C. § 432(i)
2 U.S.C. § 434(a)(6)(A)
2 U.S.C. § 434(b)
2 U.S.C. § 441d
11 C.F.R. § 103.3
11 C.F.R. § 104
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was returned to the Office of the General Counsel after Respondents herein rejected the Alternative Dispute Resolution ("ADR") option.¹

¹ Other respondents generated by the same complaint opted to settle in ADR. See footnote 2.

1 This matter was initiated by a complaint received on October 30, 2000, and supplemented
2 by letters received on November 6 and 7, 2000 (collectively referred to herein as "the
3 complaint") by Anne Boyle, Chairperson of the Nebraska Democratic Party. Complainant
4 alleges that during the 2000 election campaign for the Senate, Don Stenberg ("the Candidate"),
5 his authorized Committee, Stenberg for Senate 2000 Committee ("the Committee"), its treasurer,
6 Charles V. Sederstrom, Jr., and its assistant treasurer, Christine Vanderford (collectively
7 "Respondents") variously accepted prohibited corporate contributions from Iowa Pipeline
8 Associates, Par Electrical Contractors, Pinnacle Bank of Omaha, NE, and Darland Construction
9 Company, committed disclaimer violations, failed to file required 48-hour notices, failed to
10 report required employer/occupation data for contributors, and failed to properly itemize
11 disbursements.

12 Respondents were notified of the complaint by letters dated November 6, 2000 and
13 January 5, 2001. By letters dated November 21, 2000 and January 17, 2001, the Committee's
14 treasurer submitted responses (collectively referred to herein as "the response") on behalf of the
15 Stenberg for Senate 2000 Committee and the assistant treasurer disputing the allegations
16 contained in the complaint. The Candidate did not respond.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. The Law**

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1 11 C.F.R. § 104.3(b)(3)(i)(A).

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5. Disclaimers

13 The Act requires that disclaimers be placed on communications made through any
14 broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any
15 other type of general public political advertising that expressly advocates the election or defeat of
16 a clearly identified candidate. 2 U.S.C. § 441d(a)(1). The disclaimer shall clearly state who paid
17 for the communication, and whether or not the candidate, his or her authorized political
18 committee, or agents authorized the communication. *Id.* "Direct mailing" is defined for
19 purposes of the Act as including any number of substantially similar pieces of mail but does not
20 include a mailing of one hundred pieces or less by any person. 11 C.F.R. § 110.11(a)(3).

21 The disclaimers required by the Act "shall be presented in a clear and conspicuous
22 manner, to give the reader, observer or listener adequate notice of the identity of the person or
) committee that paid for, and, where required, that authorized the communication." 11 C.F.R.

2. Required Employment Data for Contributors Contributing over \$200

When the treasurer of a political committee shows that "best efforts" have been used to obtain, maintain, and submit the information required by the Act, any reports, or records of such committee are considered in compliance with the Act. 2 U.S.C. §§ 432(i), 434(b) and 11 C.F.R. § 104.7(a). For each contribution received that exceeds \$200 and lacks required contributor information, a treasurer may establish "best efforts," by making at least one request for the information after the contribution is received. 11 C.F.R. § 104.7(b)(2). Such effort shall consist of a written request for the contributor's full name, mailing address, occupation and name of employer, and include an accurate statement of the federal law regarding collection and identification of contributor data, and be made no later than 30 days after receipt of the contribution. *Id.*

3. Reporting of Campaign Disbursements

The total amount of all campaign disbursements must be reported in a committee's periodic disclosure filings. 2 U.S.C. § 434(b)(4). Political committees shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made from the reporting committee's federal account(s), together with the date, amount, and purpose of such expenditure. 11 C.F.R. § 104.9. "Purpose" means a brief statement or description as to the reasons for the expenditure.

1 § 110.11(a)(5). A disclaimer is not clear and conspicuous if the printing is difficult to read or if
2 the placement is easily overlooked. *Id.* The disclaimer need not appear on the front cover page
3 of the communication as long as it appears within the communication. 11 C.F.R.

4 § 110.11(a)(5)(i). Each communication that would require a disclaimer if distributed separately,
5 that is included in a package of materials, must contain the required disclaimer. 11 C.F.R.

6 § 110.11(a)(5)(ii).

7 **B. The Complaint**

8 The complaint alleged that during the 2000 general election campaign for the United
9 States Senate seat from Nebraska, the Candidate and Christine Vanderford, assistant treasurer,
10 accepted prohibited corporate contributions from the following: Iowa Pipeline Associates, Inc.,
11 \$1,500; Par Electrical Contractors, \$1,000; Pinnacle Bank of Omaha NE, \$1,000; and Darland
12 Construction Co., \$1,000. ²

13 The complaint also alleged that the Candidate violated the Act by failing to disclose the
14 identity of the source of his campaign mailings. According to the complaint, the Candidate
15 mailed postcards to voters in Nebraska urging them to vote for him for United States Senate, and
16 that this constituted express advocacy. The complaint alleged that the mailing lacked a
17 disclaimer notice stating that the Committee paid for the mailing. The complaint also alleged
18 that the Candidate was the beneficiary of an advertisement sponsored by the Nebraska

² In their separate negotiated ADR settlement agreements, each corporate respondent acknowledged that its contribution violated 2 U.S.C. § 441b. Each agreed to pay a civil penalty of \$300, except for Iowa Pipeline, which agreed to pay \$375. The Commission approved each of these agreements at the Executive Session held on September 26, 2001.

1 Republican State Central Committee that also expressly advocated his election without properly
2 disclosing the source of funding for the advertisement.³

3 The complaint further alleged that the Candidate and the assistant treasurer made
4 disbursements from the Committee's accounts to themselves and others without properly
5 itemizing them. According to the complaint, the purpose for several disbursements was not
6 disclosed on Schedule B. The complaint further alleged that the Candidate and assistant treasurer
7 failed to disclose the required employment data for over 200 contributions. Finally, the
8 complaint alleged that the Committee failed to submit within 48 hours any reports of
9 contributions received within 20 days but more than 48 hours prior to an election.

10 C. Response

11 Charles V. Sederstrom, Jr., the Committee's treasurer, responded to the complaint on
12 behalf of the Committee and the assistant treasurer.

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³ Just one day prior to the complaint in MUR 5133 being amended for the second time to add allegations about this advertisement among other new allegations, the same complainant filed a separate complaint devoted to this same advertisement. It was assigned MUR number 5148 and was considered by the Commission separately. See discussion *infra*.

1 The response further acknowledged that the Committee's 2000 October Quarterly Report
2 did not itemize the disbursements made to the Candidate and the assistant treasurer, and that the
3 Schedule B characterized them as "reimbursements." The Committee claimed the omissions
4 were due to a fault in its software, and that each disbursement was properly documented by the
5 Office Manager, but not properly reported. The response stated that the Committee amended its
6 2000 October Quarterly Report, which it enclosed with the response.

7 With respect to the allegations concerning missing employment data for individual
8 contributors, the response claimed that at the time it filed its 2000 October Quarterly Report, the
9 Committee was "in the process" of making its "best efforts" to obtain the required information by
10 mail and phone. According to the response, the Committee's amended 2000 October
11 Quarterly Report filled in the missing employment data for many of the itemized contributors in
12 the original report. The response claimed the Committee used its "best efforts" to obtain this
13 information.

14 With respect to the alleged disclaimer violation, the response attached a copy of what it
15 states is the original postcard mailing. The attached postcard contains the following statement on
16 the lower front portion of the postcard: "Paid for by Stenberg for Senate 2000 Committee." The
17 response stated that this is how the mailing looked when it went to the copy center to be
18 duplicated in mass for distribution. The response claimed that to the best of the Committee's
19 knowledge, the postcard attached to the complaint may have been an exception caused by the
20 copy center accidentally cutting off the disclaimer at the bottom of this one card, and overlooked
21 by the campaign volunteers assembling and distributing the mailing. The response further set
22 forth that even without the disclaimer, the return address on the front of the postcard which
23 includes as the sender "Stenberg (Republican) Senate 2000," makes it obvious that the

1 Committee paid for the mailing. The Committee claimed there was never an intentional attempt
2 to mislead or hide who was responsible for the mailer.

3 The response is silent as to the complaint's allegation that the Candidate was the
4 beneficiary of an express advocacy advertisement by the Nebraska Republican State Central
5 Committee which allegedly failed to include the proper disclaimer.

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8 **D. Analysis**

9 Although the complaint does not specify the report(s) to which it is referring, it attaches
10 copies of three pages from the Committee's Schedule A. When compared to the disclosure
11 reports filed by the Committee with the Commission, it is apparent that two of the pages are from
12 the Committee's 12-Day Pre-General Report filed October 27, 2000, and the other page is from
13 the Committee's 2000 October Quarterly Report filed October 17, 2000. Therefore, it appears
14 that the complaint is referring to both the 12-Day Pre-General Report and the 2000 October
15 Quarterly Report, which are also the reports filed the closest in time to the date of the complaint.

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2. Disclaimers

At least one of the Committee's direct mailings expressly advocating the Candidate's election to the Senate, the one attached to the complaint, lacked the disclaimer required by 2 U.S.C. § 441d. The Committee's response stated that, to the best of its knowledge, the postcard attached to the complaint might have been a one-time occurrence.

The disclaimer contained on the postcard attached to the response meets the requirements of the regulations set forth in 11 C.F.R. § 110.11. The regulations require, however, that each communication contained in a package of materials, if distributed separately, must contain the required disclaimer. *See* 11 C.F.R. § 110.11(a)(5)(i). This Office does not know whether the Committee's mailing included more than 100 pieces to qualify as a "direct mailing" as defined in 11 C.F.R. § 110.11(a)(3), nor what the Committee expended with respect to the mailing.

Moreover, intent is not required to violate the Act's disclaimer requirements, and the

1 Commission has enforced Section 441d regardless of the "intent" or mistake of the committee or
2 its vendor. *See, e.g.*, MUR 4741 (Mary Bono Committee) (Commission found reason to believe
3 Committee violated 2 U.S.C. § 441d and entered into a conciliation agreement with respondents
4 who admitted that direct mail literature was sent to California voters without required disclaimer,
5 but indicated that the lack of disclaimer on this mailing was due to printer error; respondents also
6 distributed door hangers to California voters without disclaimers); MUR 3682 (Fox for Congress
7 Committee) (Commission found probable cause to believe Committee violated 2 U.S.C. § 441d
8 and entered into a conciliation agreement with respondents who submitted invoice and sworn
9 statement from printer indicating omission of disclaimer on 7,000 letters was printer's error, but
10 had the opportunity to review the mailing before it was distributed; respondents also placed
11 advertisement without required disclaimer in newspaper with 50,000 circulation). Therefore, this
12 Office recommends that the Commission find reason to believe that Stenberg for Senate 2000
13 Committee and Charles V. Sederstrom Jr., as treasurer, violated 2 U.S.C. § 441d. However, this
14 Office recommends that the Commission take no further action and send an admonishment letter.
15 According to the Committee, the mailing had a disclaimer when it went to the copy center to be
16 duplicated for distribution, and the information at hand only pertains to one postcard, not the
17 entire mailing. The Committee has stated that only this postcard may have lacked the disclaimer
18 as a result of the printer inadvertently cutting it off.⁶ Under these circumstances, additional
19 investigation or remedies do not appear to be warranted.

20 With respect to the complaint's allegation that the Candidate was the recipient of an
21 advertisement by the Nebraska Republican State Central Committee without the appropriate

⁶ The response stated that the disclaimer may have been cut off this one time by the copy center, and overlooked by the Committee's volunteers assembling and distributing the mailing. There is no available information indicating that more than one postcard lacked the disclaimer.

1 disclaimer, a review of the closed MUR files shows that this same advertisement was the subject
2 of closed MUR 5148 generated by the same complainant who generated this matter. In MUR
3 5148, complainant alleged, in a letter to the Commission dated October 31, 2000 and received on
4 November 6, 2001, that the Nebraska Republican State Central Committee aired an
5 advertisement featuring George W. Bush, and advocating the election of Don Stenberg, but
6 without the proper disclaimer. The complainant also alleged that the advertisement failed to
7 disclose the full name of its sponsor, thereby not indicating whether the expenditure was
8 independent or coordinated. The next day, by letter to the Commission dated November 1, 2001
9 and received on November 7, 2001, the complainant amended her complaint in MUR 5133 for
10 the second time, to include a missing disclaimer allegation involving the same advertisement. In
11 MUR 5148, Nebraska Republican State Central Committee and the Stenberg for Senate 2000
12 Committee ("MUR 5148 Respondents") filed a joint response by letter dated December 18, 2000
13 stating that the advertisement was a coordinated party expenditure and that the media firm,
14 unaware of the disclaimer requirements, shipped the advertisement to various stations without
15 final approval. The MUR 5148 Respondents further stated that they were alerted to the error just
16 hours after the advertisement had run and the error was corrected immediately thereafter.

17 In its General Counsel's Report dated March 1, 2001, this Office recommended that the
18 Commission dismiss MUR 5148 as a low-rated case under this Office's
19 Enforcement Priority System ("EPS"). On April 2, 2001, the Commission voted unanimously to
20 find reason to believe that the MUR 5148 Respondents violated 2 U.S.C. § 441d, but to take no
21 further action, and send admonishment letters.⁷ Therefore, this Office recommends that the

⁷ Admonishment letters dated April 16, 2001 were sent to the Nebraska Republican State Central Committee and the Stenberg for Senate 2000 Committee, and the file was closed.

1 Commission take no action in MUR 5191 against the Stenberg for Senate 2000 Committee and
2 Charles V. Sederstrom Jr., as treasurer, with respect to the advertisement by the Nebraska
3 Republican State Central Committee, because the Commission previously addressed this
4 transaction (an omitted disclaimer in the same advertisement) in MUR 5148, and closed the file.

5 **3. Absence of Employer/Occupation Data**

6 Reporting violations are alleged in connection with the absence of employer data for over
7 200 contributors. Before this matter was activated, the Reports and Analysis Division ("RAD")
8 sent a Request for Additional Information ("RFAI") dated December 19, 2000 to the Committee.
9 Attachment 1. The RFAI notified the Committee that it may have violated 11 C.F.R.
10 § 104.3(a)(4)(i) and 11 C.F.R. §100.12 by failing to provide employer/occupation data for
11 contributors making contributions exceeding \$200 in connection with the Committee's 12-Day
12 Pre-General Report. The RFAI required the Committee to submit a written response or to file an
13 amended report correcting these errors. By letter dated January 29, 2001, and received by the
14 Commission on January 31, 2001, the Committee, in response to the RFAI, sent a copy of its
15 amended 12-Day Pre-General Report as well as a copy of its amended 2000 October Quarterly
16 Report.⁸ See Attachments 2 and 3. The original 12-Day Pre-General Report lacked required
17 employer/occupation data for 77 contributors. The amended 12-Day Pre-General Report, filed
18 on December 11, 2000, filled in the missing employer/occupation data, except for 15
19 contributors. The original 2000 October Quarterly Report lacked required employer/occupation
20 data for 226 contributors. The amended October Quarterly Report, filed on November 27, 2000,
21 filled in the missing employment data, except for 25 contributors. RAD did not refer the

⁸ The Committee amended its 12-Day Pre-General Report on November 23, 2000, December 11, 2000 and January 31, 2001. The Committee amended its 2000 October Quarterly Report on November 27, 2000 and January 31, 2001.

Committee to this Office following its submission.⁹

Although the Committee did not provide records showing phone calls made or mailings sent out in response to either the complaint or the RFAI in order to demonstrate that it used "best efforts" to contact the contributors in writing to elicit that information, *see* 11 C.F.R. § 104.7(b), the Committee may have believed that by filing amended reports in response to the RFAI, it had satisfied the Commissions concerns and disclosed most of the information. Moreover, the amended reports support the Committee's claim in the response that at the time it filed its 2000 October Quarterly Report, it was in the process of making "best efforts" to obtain the required information. Under these circumstances, this Office recommends that the Commission find reason to believe that the Stenberg for Senate 2000 Committee and Charles V. Sederstrom Jr., as treasurer, violated 2 U.S.C. § 434(b) with respect to the absence of contributor employer data, but take no further action, and send an admonishment letter.

4. Disbursement Reporting

The same RFAI dated December 19, 2001 notified the Committee that it had not properly itemized disbursements and set forth the purpose of each disbursement in its 12-Day Pre-General Report, as required by 11 C.F.R. § 104.3(b)(4). *See* Attachment 1. In response to the RFAI, the Committee, by letter dated January 29, 2001, and received by the Commission on January 31, 2001, sent a copy of its amended 12-Day Pre-General Report and a copy of its amended 2000 October Quarterly Report. *See* Attachments 2 and 3. The original 12-Day Pre-General Report failed to identify the purpose of 13 disbursements. The amended 12-Day Pre-General Report,

⁹ The Committee's amendments to the 12-Pre General Report and 2000 October Quarterly Report were filed before RAD mailed out its RFAI. Copies of the amendments previously filed were mailed to RAD in response to the RFAI. The amended reports provided RAD with the information requested, and met RAD's threshold requirements for compliance. Consequently, RAD did not refer the matter to this Office for enforcement.

1 filed on December 11, 2000, provided the purpose for each of the disbursements listed. The
2 original 2000 October Quarterly Report failed to identify the purpose of 25 disbursements to the
3 Candidate, the assistant treasurer and others. The amended 2000 October Quarterly Report, filed
4 on November 27, 2000, identified the purpose of 24 out of the 25 previously unidentified
5 disbursements. The one disbursement that remained unidentified was for \$14.36. See 11 C.F.R.
6 §§ 104.9 and 104.3(b)(3)(i)(A). RAD did not refer the Committee to this Office , and it appears
7 that the amended reports are in substantial compliance with the Act.

8 According to the Committee's response, the omissions were initially caused by faulty
9 software, and the Office Manager had kept proper documentation of each disbursement. Under
10 these circumstances, this Office recommends that the Commission find reason to believe that the
11 Stenberg for Senate 2000 Committee and Charles V. Sederstrom Jr., as treasurer, violated
12 2 U.S.C. § 432(c)(5) with respect to the failure to specify the purpose of disbursements, but take
13 no further action, and send an admonishment letter.

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1 Federal Election Commission
2 Constitution of the United States
3 June 25, 1990

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20 **6. Other Respondents**

21 With respect to the other respondents in this matter, this Office recommends that the
22 Commission take no action at this time against the Candidate, Don Stenberg and the assistant
23 treasurer, Christine Vanderford. Although this Office does not usually recommend reason to
24 believe findings against the Candidate or the assistant treasurer without evidence of their
25 personal involvement in the violations, the complainant in this matter made specific allegations
26 that these individuals violated the Act, including accepting corporate contributions. See 2 U.S.C.
27 § 441b (prohibiting "any candidate, political committee, or other person" from knowingly

accepting or receiving corporate contributions).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

- 1.
2. Find reason to believe that Stenberg for Senate 2000 Committee and Charles V. Sederstrom Jr., as treasurer, violated 2 U.S.C. § 441d, but take no further action, and send an admonishment letter.
3. Take no action in MUR 5133R against the Stenberg for Senate 2000 Committee and Charles V. Sederstrom, Jr., as treasurer, in connection with the advertisement by the Nebraska Republican State Central Committee because this transaction was previously considered by the Commission in MUR 5148.
4. Find reason to believe that Stenberg for Senate 2000 Committee and Charles V. Sederstrom, Jr., as treasurer, violated 2 U.S.C. § 434(b) with respect to the absence of employer data, but take no further action, and send an admonishment letter.
5. Find reason to believe that Stenberg for Senate 2000 Committee and Charles V. Sederstrom Jr., as treasurer, violated 2 U.S.C. § 432(c)(5) with respect to the failure to specify the purpose of disbursements, but take no further action, and send an admonishment letter.
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7. Take no action at this time against Don Stenberg.
8. Take no action at this time against Christine Vanderford.
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11. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

10/17/02
Date

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