

AUG 30 2001

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

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

2001 AUG 30 A 11:44

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5178
DATE COMPLAINT FILED: 03/01/01
DATE OF NOTIFICATION: 03/07/01
DATE ACTIVATED: 07/26/01

EXPIRATION OF STATUTE OF
LIMITATIONS: 10/30/05¹

STAFF MEMBER: Michael E. Scurry

COMPLAINANT:

Gerald (Rusty) Hills, Chairman
Michigan Republican State Committee

RESPONDENTS:

Michigan Democratic State Central Committee and
Roger E. Winkelman, as treasurer
Democratic Congressional Campaign Committee
and Howard Wolfson, as treasurer
Byrum for Congress and Hilda Patricia Curran, as
treasurer

RELEVANT STATUTES:

2 U.S.C. § 432(i)
2 U.S.C. § 434(a)
2 U.S.C. § 434(b)(6)(B)(iv)
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(d)
2 U.S.C. § 441a(f)
11 C.F.R. § 102.9(d)
11 C.F.R. § 104.7(a)
11 C.F.R. § 110.7
11 C.F.R. § 110.7(a)(4)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ The statute of limitations ("SOL") date listed in CMS is September 1, 2005. However, since the earliest date of any violation alleged by Complainant is October 30, 2000, this Office intends to revise the SOL date in CMS to reflect an SOL date of 10/30/05.

I. GENERATION OF MATTER

This matter was initiated by a complaint filed on March 1, 2001, by Gerald (Rusty) Hills, Chairman of the Michigan Republican State Committee ("Complainant"). Complainant alleges that the Michigan Democratic State Central Committee and Roger E. Winkelman, as treasurer ("MDSCC"), and the Democratic Congressional Campaign Committee and its treasurer ("DCCC"),² made \$88,311 in excessive coordinated expenditures on behalf of Byrum for Congress and Hilda Patricia Curran, as treasurer ("Byrum Committee"), in violation of 2 U.S.C. § 441a(d) and 11 C.F.R. § 110.7.

The MDSCC, DCCC, and Byrum Committee (collectively "Respondents"), were notified of the complaint on March 7, 2001. Respondents MDSCC and DCCC responded separately, both through counsel, by letters dated March 21, 2001. The Byrum Committee responded by letter dated March 21, 2001.

Dianne Byrum sought election to the United States House of Representatives for the 8th District of Michigan in the 2000 general election, which occurred on November 7, 2000. Byrum lost the election by 111 votes.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that multicandidate political committees, such as state party committees, may contribute an aggregate

² The DCCC has two registered committees – DCCC-Expenditures (Committee ID: C00000935) and DCCC-Contributions (Committee ID: C00347864). This matter pertains to the former. The complaint lists the committee ID number of the DCCC-Expenditures in its caption, and the DCCC-Expenditures made the expenditures and filed the report at issue in this matter.

David Plouffe was treasurer of the DCCC at the time of the events described in the complaint. The complaint named the DCCC and David Plouffe, as treasurer, as respondents. Howard Wolfson became the treasurer of the DCCC on March 1, 2001. The Committee notified the Commission of the change in treasurer through an amended Statement of Organization received March 5, 2001.

21-04-105-2678

1 of \$5,000 per election to any Federal candidate. 2 U.S.C. § 441a(a)(2)(A). In addition to the
 2 \$5,000 direct contribution limit available to party committees per candidate per election, such
 3 committees may make coordinated expenditures in connection with the general election
 4 campaigns of their federal candidates subject to the limitations at 2 U.S.C. § 441a(d).³ Both
 5 national and state party committees may designate agents for the purpose of making such
 6 coordinated expenditures. Regarding national party committees, 11 C.F.R. § 110.7(a)(4) states
 7 that "[t]he national committee of a political party may make expenditures authorized by this
 8 section through any designated agent, including State and subordinate party committees."
 9 Regarding state party committees, the Supreme Court in *FEC v. Democratic Senatorial*
 10 *Campaign Committee*, 454 U.S. 27 (1981), held that a state party committee may use agency
 11 agreements, including agreements with national committees of a political party, for the purpose
 12 of making coordinated expenditures.

13 In 2000, for states with more than one congressional representative, such as Michigan,
 14 party committees were permitted to spend a maximum of \$33,780 on behalf of each of their
 15 House nominees in coordinated expenditures. See *FEC Record*, March 2000 at 14. Since both
 16 the national and state party committee may each make (or designate agents to make)
 17 expenditures up to the statutory limit, the overall limit for such party coordinated expenditures in
 18 Michigan in 2000 was twice \$33,780, or \$67,560. When party coordinated expenditures, alone
 19 or in combination with direct contributions to a candidate made pursuant to section
 20 441a(a)(2)(A), exceed the combined limitations of sections 441a(a)(2)(A) and 441a(d), violations

³ On June 25, 2001, in *Federal Election Commission v. Colorado Republican Federal Campaign Committee* ("Colorado II"), 121 S.Ct. 2351, 2001 WL 703912 (June 25, 2001), the Supreme Court upheld the constitutionality of the coordinated party expenditure limits set forth at section 441a(d). The Commission approved a final rule setting forth standards for coordinated expenditures on November 30, 2000. 65 *Fed. Reg.* 76,138 (Dec. 6, 2000), codified at 11 C.F.R. § 100.23 (effective May 9, 2001, 65 *Fed. Reg.* 23,537). This rule expressly does not apply to coordinated expenditures by party committees. 65 *Fed. Reg.* 76,142 (Dec. 6, 2000).

21-011-405-2679

1 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.
2 § 441a(f) by the recipient candidate committee result.

3 The Act requires each treasurer of a political committee to file reports of receipts and
4 disbursements with the Commission. 2 U.S.C. § 434(a). Each report must disclose for the
5 reporting period and calendar year the total amount of receipts and disbursements by certain
6 identified categories. 2 U.S.C. § 434(b)(2) and (b)(4). Moreover, political committees, other
7 than authorized committees, must disclose the name and address of each person who receives
8 expenditures under section 441a(d), "as well as the name of, and office sought by, the candidate
9 on whose behalf the expenditure is made." 2 U.S.C. § 434(b)(6)(B)(iv). When a treasurer shows
10 that best efforts were used to obtain, maintain, and submit the information required by the Act,
11 any report or records will be considered in compliance with the Act. 2 U.S.C. § 432(i) and 11
12 C.F.R. §§ 104.7(a) and 102.9(d).

13 **B. The Complaint**

14 The complaint states that the 2000 coordinated expenditure limits for the DCCC and the
15 MDSCC on behalf of Byrum for Congress were \$33,780 each, resulting in a maximum amount
16 of \$67,560 in coordinated expenditures on behalf of Byrum for Congress. Complainant alleges
17 that the MDSCC's 2000 30-Day Post-General Report, on page one of Schedule F, reported "two
18 \$45,000 contributions totaling \$90,000 as coordinated contributions with Byrum for Congress."
19 Complainant further alleges the DCCC's October 2000 Monthly Report disclosed "on page 34 of
20 Schedule F, a contribution of \$14,350, and on page 37 of Schedule F, a contribution of \$51,521,
21 totaling \$65,871 as coordinated contributions with Byrum for Congress." According to
22 Complainant, these reports demonstrate that the MDSCC, DCCC, and the Byrum Committee

21-044-405-2688

1 coordinated a total of \$155,871 in expenditures, exceeding the coordinated expenditure limit by
2 \$88,311, in violation of 2 U.S.C. 441a(d) and 11 C.F.R. 110.7.

3 C. The Responses

4 1. The MDSCC

5 By letter dated March 21, 2001, the MDSCC, through counsel, submitted a response to
6 Complainant's allegations. The MDSCC alleges that "[t]he complaint has no merit because it is
7 based on an error in reporting, which was promptly corrected once discovered." The MDSCC
8 states that in its 2000 30-Day Post-General Election Report it "erroneously reported on Schedule
9 F two \$45,000 expenditures coordinated with Byrum for Congress. Both expenditures related to
10 Debbie Stabenow for Senate, not Byrum for Congress." The MDSCC attached a corrected
11 Schedule F to its response, stating that it was recently filed with the Commission. Because of
12 this, the MDSCC claims that it "did not violate the coordinated spending limitations of 2 U.S.C.
13 § 441a(d), given that the two expenditures complained of were not for Byrum for Congress, as
14 reflected in the amended report." The MDSCC then states that it "is not required to be
15 completely error-free in its reporting," citing 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(a), and that
16 "[o]nce the inadvertent reporting error was detected, it was promptly corrected."

17 2. The DCCC and the Byrum Committee

18 By letters dated March 21, 2001, the DCCC, through counsel, and the Byrum Committee
19 submitted separate responses to Complainant's allegations. Both responses, for all pertinent
20 purposes, are identical. In their responses, the DCCC and the Byrum Committee claim that the
21 complaint has no merit and should be dismissed. The DCCC states that its October 2000
22 monthly report discloses expenditures of \$14,350 and \$51,521, "totaling \$65,871 as coordinated
23 party expenditures for Byrum for Congress." The Byrum Committee response states its

1592504401
21-04-05 2681

1 “understanding” that the DCCC reported \$65,871 as coordinated party expenditures for Byrum
2 for Congress. Both responses state that this amount “did not exceed the \$67,560 and is thus
3 clearly within the legal limits.” Both responses note that, combining the two \$45,000
4 expenditures reported by the MDSCC with the DCCC’s \$65,871 expenditures, “Complainant
5 concludes that the MDSCC, DCCC, and Byrum for Congress coordinated a total of \$155,871 in
6 expenditures - thus exceeding the limit of \$67,560 by \$88,311.”

7 Both the DCCC and the Byrum Committee point out, however, that on March 2, 2000,
8 the MDSCC filed an amended report indicating that the two \$45,000 expenditures reported on
9 behalf of Dianne Byrum were misreported. The DCCC states that the MDSCC expenditures
10 “represented payments of advertising expenditures for the campaign of Debbie Stabenow for
11 United States Senate, and complied fully with the legal limits for coordinated expenditures for
12 Senate campaigns.” The Byrum Committee states that its understanding of the purpose of the
13 MDSCC expenditures was that same. According to both responses, the amended reports
14 accurately reflect the coordinated expenditures of behalf of both campaigns.

15 Both the DCCC and the Byrum Committee state that they were “not responsible for filing
16 the MDSCC’s post election report,” were “not aware of its contents,” and that the “amended
17 report should put to rest any alleged violation of coordinated expenditure limits with respect to
18 this MUR.” Each response contends, in closing, that the Commission should dismiss this matter
19 as it pertains to them.

20 **D. Analysis**

21 The DCCC’s Schedule F states, “This committee has been designated to make
22 coordinated expenditures by . . . the state democratic party.” Therefore, the MDSCC assigned its
23 coordinated expenditures on behalf of Byrum for Congress to the DCCC. The only coordinated

1 expenditures reported by the MDSCC during 2000 were the two \$45,000 coordinated
 2 expenditures on behalf of the campaign of Debbie Stabenow. The DCCC's \$65,871 coordinated
 3 expenditure on behalf of Byrum for Congress did not exceed the section 441a(d) limitation.
 4 Therefore, the MDSCC and DCCC did not make, and the Byrum Committee did not receive,
 5 excessive coordinated expenditures. Accordingly, this Office recommends that the Commission
 6 find no reason to believe that the Michigan Democratic State Central Committee and Roger E.
 7 Winkelman, as treasurer, and the Democratic Congressional Campaign Committee and Howard
 8 Wolfson, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441a(d),⁴ and no reason to believe
 9 that Byrum for Congress and Hilda Patricia Curran, as treasurer, violated 2 U.S.C. § 441a(f).

10 However, the MDSCC did misreport \$90,000 in coordinated expenditures to Byrum for
 11 Congress on its 2000 Post-General Report. The original report was received on December 8,
 12 2000. The MDSCC's amended report, disclosing that it was Debbie Stabenow's campaign for
 13 U.S. Senate on whose behalf the \$90,000 in coordinated expenditures were made, was filed with
 14 the Commission on March 2, 2001. Thus, almost three months elapsed before incorrect
 15 information on the public record was corrected.

16 In its response, the MDSCC states that it "is not required to be completely error-free in its
 17 reporting," citing 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7, the "best efforts" provisions.⁵ "Best

⁴ The DCCC reported both coordinated and independent expenditures on behalf of the Byrum Committee in its 2000 30-Day Post-General Report, as it did for numerous other candidates. Prior to the activation of this matter, the Reports Analysis Division ("RAD") sent a Request for Additional Information ("RFAI") to the DCCC on July 18, 2001, which stated that the coordination involved in "coordinated expenditures for a candidate may preclude your committee from making an independent expenditure in support of the same candidate." The RFAI requested that the DCCC either reclassify the numerous transactions as in-kind contributions or provide additional clarifying information concerning the independent expenditures. After the DCCC failed to respond, RAD sent a second RFAI, dated August 9, 2001, which stated that an adequate response must be received by August 29, 2001. As the issues raised in the RFAs were not addressed in the complaint and are still in the RAD process, and since RAD has provided the DCCC with the opportunity to clarify its report, we do not address any issue raised in the RFAs in this First General Counsel's Report.

⁵ 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 for the political committee, any report or any records of such

21-04-405-2593

efforts," however, relates to those instances where a treasurer is obliged to provide information which must be secured from persons wholly outside the committee's control, and is inapplicable to the situation presented in this matter. See MUR 2599 (Dyson for Congress Committee); see also H.R. Rep. No. 422, 96th Cong., 1st Sess., at 14 (1979) reprinted in *FEC Legislative History of Federal Campaign Act Amendments of 1979* at 198 (1983) ("best efforts" focuses on contributor information that is "voluntarily supplied by persons who are not under the control of the committee"). Here, the MDSCC failed to properly report "the name of, and office sought by, the candidate on whose behalf the [coordinated] expenditure is made," information that was within the control of the committee. Therefore, this Office recommends that the Commission find reason to believe that the Michigan Democratic State Central Committee and Roger E. Winkelman, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv). However, because it appears that these Respondents made an inadvertent error, and amended the incorrect report before receiving notification of the complaint from the Commission, this Office recommends that the Commission take no further action, send an admonishment letter, and close the file.

III. RECOMMENDATIONS

1. Find reason to believe that the Michigan Democratic State Central Committee and Roger E. Winkelman, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv), but take no further action, and send an admonishment letter.
2. Find no reason to believe that the Michigan Democratic State Central Committee and Roger E. Winkelman, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441a(d).
3. Find no reason to believe that the Democratic Congressional Campaign Committee and Howard Wolfson, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441a(d).
4. Find no reason to believe that Byrum for Congress and Hilda Patricia Curran, as treasurer, violated 2 U.S.C. § 441a(f).

21-04-405-2684

1 5. Approve the appropriate letters.

2
3 6. Close the file.

4
5
6
7 Lois G. Lerner
8 Acting General Counsel

9
10
11 8/30/01
12 Date

13 BY:

Abigail A. Shaine
Abigail A. Shaine
Acting Associate General Counsel

21-011-405-2685

Acumy



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Red*
DATE: August 30, 2001
SUBJECT: MUR 5178 – First General Counsel's Report

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

Open Session _____

Closed Session _____

CIRCULATIONS

DISTRIBUTION

SENSITIVE	<input checked="" type="checkbox"/>	COMPLIANCE	<input checked="" type="checkbox"/>
NON-SENSITIVE	<input type="checkbox"/>		
72 Hour TALLY VOTE	<input checked="" type="checkbox"/>	Open/Closed Letters	<input type="checkbox"/>
24 Hour TALLY VOTE	<input type="checkbox"/>	MUR	<input type="checkbox"/>
24 Hour NO OBJECTION	<input type="checkbox"/>	DSP	<input type="checkbox"/>
INFORMATION	<input type="checkbox"/>	STATUS SHEETS	<input type="checkbox"/>
		Enforcement	<input type="checkbox"/>
		Litigation	<input type="checkbox"/>
		PFESP	<input type="checkbox"/>
96 Hour TALLY VOTE	<input type="checkbox"/>	RATING SHEETS	<input type="checkbox"/>
		AUDIT MATTERS	<input type="checkbox"/>
		LITIGATION	<input type="checkbox"/>
		ADVISORY OPINIONS	<input type="checkbox"/>
		REGULATIONS	<input type="checkbox"/>
		OTHER	<input type="checkbox"/>

21.04.405.2686