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

2001 MAR 14 P 12:54

FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

Audit Referral: 99-24  
Audit Referral Date: December 27, 1999  
Date Activated: July 27, 2000

Expiration of Statute of  
Limitations: June 5, 2002<sup>1</sup>  
Staff Member: Delbert K. Rigsby

**SOURCE:**

**AUDIT REFERRAL**

**RESPONDENTS:**

Newinski for Congress and Richard Riener, as treasurer  
4th Congressional District RPM<sup>2</sup> and Skip Wolverton,  
as treasurer  
39A House District RPM and Tony Roszak, as treasurer  
52B House District RPM and Gary Dahle, as treasurer  
53A House District RPM and Beverly Aplikowski,  
as treasurer  
53B House District RPM and Roger Adams, as treasurer  
54A House District RPM and Skip Wolverton, as treasurer  
55A House District RPM and John Bowers, as treasurer  
55B House District RPM and Todd Tessmer, as treasurer  
67B House District RPM and Rebecca Dandrea,  
as treasurer  
Taxpayers League Federal PAC and Darryl McKigney,  
as treasurer  
Justin Bratnober  
William Cooper  
Bruce Dayton  
Patrick Farley  
Sankey Johnson  
Fred Lanners  
Hugh Schilling  
Michael Wigley

<sup>1</sup> The statute of limitations date for the earliest apparent violation for accepting an excessive contribution is June 5, 2002. The statute of limitations date for the last apparent violation in this matter, which relates to the Committee's failure to report all debts and obligations on its 1998 Year End Report, is January 31, 2004.

<sup>2</sup> "RPM" is an acronym for Republican Party of Minnesota.

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**RELEVANT STATUTES  
AND REGULATIONS :**

2 U.S.C. § 434(a)(1)  
 2 U.S.C. § 434(a)(4)  
 2 U.S.C. § 434(b)(8)  
 2 U.S.C. § 441a(a)(1)(A)  
 2 U.S.C. § 441a(a)(2)(A)  
 2 U.S.C. § 441a(a)(5)  
 2 U.S.C. § 441a(f)  
 11 C.F.R. § 100.5(g)  
 11 C.F.R. § 102.2(b)(1)  
 11 C.F.R. § 104.11(a)  
 11 C.F.R. § 110.3(b)(3)

**INTERNAL REPORTS CHECKED:** Audit Documents  
 Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. GENERATION OF MATTER**

This matter was generated by an audit of Newinski for Congress (the "Committee") and Richard Riener, as treasurer, undertaken in accordance with 2 U.S.C. § 438(b). *See* Attachments 1 and 2. The audit covered the period between January 1, 1997 and December 31, 1998.

**II. FACTUAL AND LEGAL ANALYSIS**

The Audit staff found that the Committee accepted contributions from 36 individuals totaling \$33,075 in excess of the contribution limitation, 2 U.S.C. § 441a(f). Attachments 1 and 2. Thus, based on the audit referral and schedules of contributions, this Office recommends that the Commission find reason to believe that Newinski for Congress and Richard Riener, as treasurer, violated 2 U.S.C. § 441a(f). With respect to the individual respondents, the Office of General Counsel recommends that the Commission find reason to believe that Justin Bratnober, William Cooper, Bruce Dayton, Patrick Farley, Sankey Johnson, Hugh Schilling, and Michael

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Wigley made excessive contributions to the Committee in violation of 2 U.S.C. § 441a(a)(1)(A).<sup>3</sup>

This Office also recommends that the Commission take no further action with respect to those respondents because of the small size of their contributions (\$2,200 to \$4,000), all of which were refunded by the Committee, and send admonishment letters to the individual respondents emphasizing the importance of complying with the contribution limitations set forth in the Federal Election Campaign Act of 1971 (the "Act"), as amended.<sup>4</sup> Mr. Fred Lanners also made contributions totaling \$3,000 to the Committee, but this Office recommends that the Commission take no action with respect to Mr. Lanners because he is deceased.<sup>5</sup>

The Audit staff also found that the Committee accepted contributions from the 4th Congressional District RPM<sup>6</sup> and affiliated committees, including the 39A House District RPM, 52B House District RPM, 53A House District RPM, 53B House District RPM, 54A House District RPM, 55A House District RPM, 55B House District RPM and 67B House District RPM (collectively, "local party committees"), totaling \$5,710 in excess of the contribution limitation, 2 U.S.C. § 441a(f), and the 4th Congressional District RPM and the local party committees made contributions totaling \$5,710 in excess of the contribution limitation to the Committee. 2 U.S.C. § 441a(a)(2)(A). Attachment 1 at 3.

All contributions made by political committees established or financed or maintained or controlled by the same persons or group of persons shall be considered to have been made by a

<sup>3</sup> Based on established Commission practice, this Office makes no recommendation concerning the remaining 28 individuals, each of whom contributed \$2,000 or less to the Committee.

<sup>4</sup> This Office also notes that if we were to pursue conciliation with these respondents, the going out-of-the-door civil penalty for any of these respondents would not exceed \$750.

<sup>5</sup> When the Committee refunded Mr. Lanners' excessive contribution, the check was made out to Fred Lanners' Estate.

<sup>6</sup> The 4th Congressional District RPM was previously known as Fourth District Republican Committee.

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single committee, and are characterized as affiliated committees. 2 U.S.C. § 441a(a)(5); *see also* 11 C.F.R. §§ 100.5(g), 102.2(b)(1), and 110.3. Any local committee of a political party is a political committee if: it receives contributions aggregating in excess of \$5,000 during a calendar year; it makes payments exempted from the definition of contribution under 11 C.F.R. §§ 100.7(b)(9), (15) and (17), and expenditure, under 11 C.F.R. 100.8(b)(10), (16) and (18), which payments aggregate in excess of \$5,000 during a calendar year; or it makes contributions aggregating in excess of \$1,000 during a calendar year or makes expenditures aggregating in excess of \$1,000 during a calendar year. 11 C.F.R. § 100.5(c); *see also* 2 U.S.C. § 431(4)(C).

The local party committees which made contributions to Newinski for Congress are not registered with the Commission. Moreover, no contributions by any of the local party committees to Newinski for Congress exceeded \$1,000 during a calendar year. This Office does not have any evidence that any of the local party committees received contributions in excess of \$5,000 during a calendar year or made payments exempted from the definition of contribution and expenditure set forth in 2 U.S.C. §§ 431(8) and (9) exceeding \$5,000 during a calendar year. Finally, this Office does not have any evidence that the local party committees made contributions or expenditures exceeding \$1,000 during a calendar year. Thus, it does not appear that the local party committees are political committees under the Act, which would require them to register as political committees with the Commission.<sup>7</sup> Therefore, it is unnecessary to determine whether the 4th Congressional District RPM and the local party committees are affiliated committees and, if affiliated, aggregate the contributions from the 4th Congressional

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<sup>7</sup> There is some evidence that the local party committees sought to avoid political committee designation. For instance, 54A House District RPM made a contribution of \$999 perhaps to avoid triggering the status.

District RPM and the local party committees pursuant to 2 U.S.C 441a(a)(5).<sup>8</sup>

Since the local party committees are not registered with the Commission, they are subject to a contribution limit of \$1,000 pursuant to 2 U.S.C. § 441a(a)(1)(A). The local party committees, with the exception of 53B House District RPM, did not exceed the contribution limitation of 2 U.S.C. § 441a(a)(1)(A).

Therefore, the Office of General Counsel recommends that the Commission find no reason to believe that 39A House District RPM and Tony Roszak, as treasurer; 52B House District RPM and Gary Dahle, as treasurer; 53A House District Committee RPM and Beverly Aplikowski, as treasurer; 54A House District RPM and Skip Wolverton, as treasurer; 55A House District RPM and John Bowers, as treasurer, 55B House District RPM and Todd Tessmer, as treasurer; and 67B House District RPM and Rebecca Dandrea, as treasurer, made excessive contributions to the Committee in violation of 2 U.S.C. §§ 441a(a)(1)(A) or 441a(a)(2)(A). The Office of General Counsel also recommends that the Commission find no reason to believe that Newinski for Congress accepted excessive contributions from 39A House District RPM and Tony Roszak, as treasurer; 52 B House District RPM and Gary Dahle, as treasurer; 53A House District RPM and Beverly Aplikowski, as treasurer; 54A House District RPM and Skip Wolverton, as treasurer; 55A House District RPM and John Bowers, as treasurer, 55B House

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<sup>8</sup> In regard to aggregating contributions from affiliated committees, the Commission has interpreted 2 U.S.C. § 441a(a)(5) to apply only to political committees defined under 2 U.S.C § 431(4). *See Advisory Opinion 1999-4* responding to an advisory opinion request by the Republican Party of Minnesota and the Senate District 43 Committee. In *Advisory Opinion 1999-4*, the Commission, quoting *Advisory Opinion 1978-9* which addressed the issue of aggregating contributions from a county committee established, financed, maintained or controlled by a state committee, stated that the local party committee must be a political committee in order to be subject to aggregation of contributions. The Commission also noted in *Advisory Opinion 1999-4* that 11 C.F.R. § 110.3(b)(3), which concerns contribution limitations by affiliated committees, uses the term "political committee" when discussing whether such entity is established, financed, maintained or controlled by a state party committee.

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District RPM and Todd Tessmer, as treasurer; and 67B House District RPM and Rebecca Dandrea, as treasurer, in violation of 2 U.S.C. § 441a(f).

One local party committee, 53B House District RPM, made a contribution of \$500 on January 25, 1997 and a contribution of \$1,000 on July 27, 1998 to Newinski for Congress. This local party committee is not registered with the Commission, and is subject to the contribution limitation of \$1,000 set forth in 2 U.S.C. § 441a(a)(1)(A). Therefore, 53B House District RPM and Roger Adams as treasurer, made an excessive contribution of \$500 to Newinski for Congress in violation of 2 U.S.C. § 441a(a)(1)(A).<sup>9</sup> Because the excessive contribution is a small amount and Newinski for Congress refunded the excessive contribution to 53B House District RPM, the Office of General Counsel recommends that the Commission find reason to believe that 53B House District RPM and Roger Adams, as treasurer, made an excessive contribution to Newinski for Congress in violation of 2 U.S.C. § 441a(a)(1)(A), but take no further action against 53B House District RPM and Roger Adams, as treasurer. The Office of General Counsel also recommends that the Commission find reason to believe that Newinski for Congress accepted an excessive contribution from 53B House District RPM and Roger Adams, as treasurer, in violation of 2 U.S.C. § 441a(f).

Moreover, the 4th Congressional District RPM made a total contribution of \$6,554 to Newinski for Congress, which is \$1,554 in excess of the contribution limitation of 2 U.S.C. § 441a(a)(2)(A). Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the 4th Congressional District RPM made excessive contributions to Newinski for Congress in violation of 2 U.S.C. § 441a(a)(2)(A). The Office of General Counsel

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<sup>9</sup> Their contributions, which exceed \$1,000, do not trigger political committee status because the contributions were made in different years.

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also recommends that the Commission find reason to believe that Newinski for Congress accepted excessive contributions from the 4th Congressional District RPM in violation of 2 U.S.C. § 441a(f). The 4th Congressional District RPM is required to file disclosure reports with the Commission.<sup>10</sup> 2 U.S.C. § 434(b). For calendar year 1998, the 4th Congressional District RPM did not file the July Quarterly Report, Pre-Election Report, October Quarterly Report, and Post-General Election Report. Thus, the Office of General Counsel recommends that the Commission find reason to believe that the 4th Congressional District RPM and Skip Wolverton, as treasurer, failed to file disclosure reports with the Commission in violation of 2 U.S.C. § 434(a)(4). *Id.*

Furthermore, the Audit staff found that the Committee failed to report debts and obligations as required by 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(a). Attachment 1 at 5, 6. Thus, the Office of General Counsel recommends that the Commission find reason to believe that Newinski for Congress and Richard Riener, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(a) by failing to report debts and obligations.

Finally, the Audit Report indicated that the Taxpayers League was not registered with the Commission and thus, had violated the contribution limitations set forth in 2 U.S.C.

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<sup>10</sup> The 4th Congressional District RPM filed a Statement of Organization with the Commission on November 29, 1996. On June 20, 1997, the Reports Analysis Division sent the 4th Congressional District RPM a notice for failure to file reports through December 31, 1996. Subsequently, on December 19, 1997, the Reports Analysis Division sent the 4th Congressional District RPM a letter stating that the Commission intended to administratively terminate the reporting obligations of the committee, and if the committee did not submit a written objection within 30 days, the action would then become effective. The 4th Congressional District RPM did not object to the administrative termination. The letter also stated that any receipt or disbursement of funds by the committee for the purpose of influencing a federal election or supporting a federal candidate would void the administrative termination, and the committee would be required to begin filing reports with the Commission. See Attachment 4. When the 4th Congressional District RPM made a contribution to Newinski for Congress on May 2, 1998, the administrative termination was voided, and the 4th Congressional District RPM was therefore required to file reports with the Commission. On June 23, 2000, the 4th Congressional District RPM filed another Statement of Organization with the Commission.

§ 441a(a)(1)(A). The Taxpayers League Federal PAC<sup>11</sup> was registered with the Commission as a multicandidate political committee when it contributed \$2,050, and is subject to the contribution limitations set forth in 2 U.S.C. § 441a(a)(2)(A) instead of 2 U.S.C. § 441a(a)(1)(A).<sup>12</sup> Thus, the Office of General Counsel recommends that the Commission find no reason to believe that Taxpayers League Federal PAC and Darryl McKigney, as treasurer, made an excessive contribution to the Committee in violation of 2 U.S.C. § 441a(a)(1)(A) or § 441a(a)(2)(A). The Office of General Counsel also recommends that the Commission find no reason to believe that the Committee and Richard Riener, as treasurer, accepted an excessive contribution from Taxpayers League Federal PAC in violation of 2 U.S.C. § 441a(f).

### III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

This Office recommends that the Commission enter into conciliation with the Committee prior to a finding of probable cause to believe. *See* Attachment 5 at 1-4.

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<sup>11</sup> The Audit Report referred to this Committee as Taxpayers League PAC, but it is listed as Taxpayers League Federal PAC on the Commission's disclosure reports.

<sup>12</sup> The Audit Report on Newinski for Congress noted that the Taxpayers League PAC had not attained multicandidate status, and its contributions of \$2,050 exceeded the contribution limit by \$1,050. Attachment 1 at 3, 4. Because the Office of General Counsel concludes that the Taxpayers League Federal PAC was a multicandidate committee, the applicable contribution limit was \$5,000. 2 U.S.C. § 441a(a)(2)(A).

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**IV. RECOMMENDATIONS**


1. Open a MUR;
2. Find reason to believe that Newinski for Congress and Richard Riener, as treasurer, accepted excessive contributions in violation of 2 U.S.C. § 441a(f);
3. Find reason to believe that Newinski for Congress and Richard Riener, as treasurer, failed to report debts and obligations in violation of 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(a);
4. Find no reason to believe that 39A House District RPM and Tony Roszak, as treasurer; 52B House District RPM and Gary Dahle, as treasurer; 53A House District RPM and Beverly Aplikowski, as treasurer; 54A House District RPM and Skip Wolverton, as treasurer; 55A House District RPM and John Bowers, as treasurer; 55B House District RPM and Todd Tessmer, as treasurer; and 67B House District RPM and Rebecca Dandrea, as treasurer, made excessive contributions to Newinski for Congress in violation of 2 U.S.C. § 441a(a)(1)(A) or 2 U.S.C. § 441a(a)(2)(A), and close the file as it pertains to these respondents;
5. Find no reason to believe that Newinski for Congress and Richard Riener, as treasurer, accepted excessive contributions from 39A House District RPM and Tony Roszak, as treasurer; 52B House District RPM and Gary Dahle, as treasurer; 53A House District RPM and Beverly Aplikowski, as treasurer; 54A House District RPM and Skip Wolverton, as treasurer; 55A House District RPM and John Bowers, as treasurer; 55B House District RPM and Todd Tessmer, as treasurer; and 67B House District RPM and Rebecca Dandrea, as treasurer, in violation of 2 U.S.C. § 441a(f);
6. Find reason to believe that 53B House District RPM and Roger Adams, as treasurer, made an excessive contribution to Newinski for Congress in violation of 2 U.S.C. § 441a(a)(1)(A), but take no further action against 53B House District RPM and Roger Adams, as treasurer, and close the file as it pertains to 53B House District RPM;
7. Find reason to believe that Newinski for Congress and Richard Riener, as treasurer, accepted excessive contributions from 53B House District RPM and Roger Adams, as treasurer, in violation of 2 U.S.C. § 441a(f).
8. Find reason to believe that the 4th Congressional District RPM and Skip Wolverton, as treasurer, made excessive contributions to Newinski for Congress in violation of 2 U.S.C. § 441a(a)(2)(A);
9. Find reason to believe that Newinski for Congress accepted excessive contributions from the 4th Congressional District RPM and Skip Wolverton, as treasurer, in violation of 2 U.S.C. § 441a(f).

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10. Find reason to believe that the 4th Congressional District RPM and Skip Wolverton, as treasurer, failed to file disclosure reports in violation of 2 U.S.C § 434(a)(4);
11. Enter into conciliation with Newinski for Congress and Richard Riener, as treasurer, prior to a finding of probable cause to believe;
12. Enter into conciliation with the 4th Congressional District RPM and Skip Wolverton, as treasurer, prior to a finding of probable cause to believe;
13. Find no reason to believe that Taxpayers League Federal PAC and Darryl McKigney, as treasurer, made an excessive contribution to Newinski for Congress in violation of 2 U.S.C. § 441a(a)(1)(A) or 2 U.S.C. § 441a(a)(2)(A), and close the file as it pertains to Taxpayers League Federal PAC and Darryl McKigney;
14. Find no reason to believe that Newinski for Congress and Richard Riener, as treasurer, accepted an excessive contribution from Taxpayers League Federal PAC in violation of 2 U.S.C. § 441a(f);
15. Find reason to believe that Justin Bratnober, William Cooper, Bruce Dayton, Patrick Farley, Sankey Johnson, Hugh Schilling, and Michael Wigley made excessive contributions to Newinski for Congress in violation of 2 U.S.C. § 441a(a)(1)(A), but take no further action, send admonishment letters, and close the file as it pertains to Justin Bratnober, William Cooper, Bruce Dayton, Patrick Farley, Sankey Johnson, Hugh Schilling, and Michael Wigley;
16. Take no action with respect to Fred Lanners;
17. Approve the attached Factual and Legal Analyses;
18. Approve the attached Proposed Conciliation Agreements; and
19. Approve the appropriate letters.

Lois G. Lerner  
Acting General Counsel

3/14/01  
Date

  
BY: Gregory R. Baker  
Acting Associate General Counsel

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**Attachments**

1. Audit Referral Materials
2. Audit Schedules
3. Factual and Legal Analyses (10)
4. Commission Letter to 4th Congressional District RPM dated December 19, 1997
5. Proposed Conciliation Agreements (2)

21.04.405.1172



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary  
FROM: Office of General Counsel  
DATE: March 14, 2001  
SUBJECT: Audit Referral 99-24-First General Counsel's Report

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

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

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

CIRCULATIONS

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NON-SENSITIVE

COMPLIANCE

72 Hour TALLY VOTE

Open/Closed Letters

24 Hour TALLY VOTE

MUR

DSP

24 Hour NO OBJECTION

STATUS SHEETS

Enforcement

INFORMATION

Litigation

PFESP

96 Hour TALLY VOTE

RATING SHEETS

AUDIT MATTERS

LITIGATION

ADVISORY OPINIONS

REGULATIONS

OTHER


21.04.405.4173



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Lois Lerner  
Acting General Counsel

FROM: Mary W. Dove/Lisa R. Davis  
Office of the Commission Secretary 

DATE: March 19, 2001

SUBJECT: Audit Referral #99-24 - First General Counsel's Report  
dated March 14, 2001.

The above-captioned document was circulated to the Commission  
on Wednesday, March 14, 2001.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for

Tuesday, March 27, 2001

Please notify us who will represent your Division before the Commission on this  
matter.

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4271 504 40 12