

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )

4 )  
5 Democratic Party of Arkansas, and )  
6 Marcus Vaden, treasurer )

MURs 5239 & 5240

7 )  
8 )  
9  
10 **CONCILIATION AGREEMENT**

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12 This matter was initiated by the Federal Election Commission ("Commission"), pursuant  
13 to information ascertained in the normal course of carrying out its supervisory responsibilities.

14 The Commission found reason to believe that the Democratic Party of Arkansas, Marcus Vaden,  
15 as treasurer ("Respondents") violated 2 U.S.C. §§ 441a(f), 441b(a), 432(c) & (d), 434(b)(3)(A) &  
16 (b)(4)(H)(V); and 11 C.F.R. §§ 103.3(b)(1), (3), (4), (5), 104.10(b), 106.5(f)(1) & (g)(2),  
17 102.5(a)(1)(i).

18 NOW, THEREFORE, the Commission and the Respondents, having participated in  
19 informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree  
20 as follows:

21 I. The Commission has jurisdiction over the Respondents and the subject matter of this  
22 proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.  
23 § 437g(a)(4)(A)(i).

24 II. Respondents have had a reasonable opportunity to demonstrate that no action should  
25 be taken in this matter.

26 III. Respondents enter voluntarily into this agreement with the Commission.

27 IV. The pertinent facts in this matter are as follows:

28 1. The Democratic Party of Arkansas ("Committee") is a political committee within the  
29 meaning of 2 U.S.C. § 431(4).

30 2. Marcus Vaden is the treasurer of the Committee.

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3. The Federal Election Campaign Act of 1971 ("Act"), as amended, provides that no person shall make contributions to a political committee in any calendar year which, in the aggregate, exceeds \$5,000. 2 U.S.C. § 441a(a)(C). Political committees are prohibited from knowingly accepting any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f). Contributions which exceed the contribution limitations of the Act on their face, and contributions which do not exceed the Act's limitations on their face but which do exceed those limitations when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If any such contribution is deposited, the treasurer may transfer the excessive portions to a non-federal account within 60 days of receipt and give the contributor the option of seeking a refund.

4. On October 6, 1995 and November 30, 1995, the Committee deposited into its federal account contributions of \$20,000 and \$5,000 respectively from C.J. Giroir, Jr. The Committee transferred \$20,000 to its non-federal account on December 23, 1996 and \$5,000 on January 23, 1997. Two other contributions from Chester D. Phillips in the amounts of \$5,000 each were deposited on July 15, 1996 and October 3, 1996. Although the Committee received three excessive contributions totaling \$25,000, it did not transfer the excessive portions to a non-federal account within 60 days of receipt. 2 U.S.C. § 441a(f). Additionally, the Committee did not deposit the excessive contributions into a separate account, nor maintain sufficient funds to refund these contributions on a timely basis. 11 C.F.R. § 103.3(b)(3), (4), and (5).

5. It is unlawful for any national bank or corporation to make a contribution to a political committee and for any person knowingly to accept or receive such a contribution. 2 U.S.C. § 441b(a). If the contribution is not determined to be legal, the treasurer shall, within 30 days refund the contribution. 11 C.F.R. § 103.3(b)(1).

6. The Committee deposited a \$1,000 contribution from Georgia Pacific and a \$5,000 contribution from Southwestern Bell Co. into its federal account on February 14, 1996 even though both checks were made out to "Arkansas Democratic Party Non-Federal." Although both of these corporate contributions were directed to the Committee's non-federal account, they were deposited into the federal account and were not refunded or transferred within 30 days. 2 U.S.C. § 441b(a) and 11 C.F.R. § 103.3(b)(1). Furthermore, the Committee did not deposit the prohibited contributions into a separate account, nor maintain sufficient funds to refund these contributions on a timely basis. 11 C.F.R. § 103.3(b)(1) and (b)(4). The Committee transferred \$6,000 to its non-federal account on January 23, 1997.

7. Among the items that the treasurer of a political committee must keep are records of disbursements, such as receipts, canceled checks, and statements of purpose. 2 U.S.C. § 432(c); 11 C.F.R. §§ 102.9(a) and (b). These must be kept for three years after the report to which such records and accounts relate is filed. 11 C.F.R. § 102.9(c); *see also* 2 U.S.C. § 432(d). In the performance of recordkeeping duties, a treasurer shall use his or her "best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts." 11 C.F.R. § 102.9(d). If there is a showing of best efforts, records of a committee are considered in compliance with the Federal Election Campaign Act of 1971, as amended ("the Act"). Unless a treasurer makes at least one written effort to obtain a duplicate copy of a receipt, invoice, or canceled check, he or she "will not be deemed to have exercised best efforts to obtain, maintain and submit the records." 11 C.F.R. § 102.9(d).

8. The Committee did not satisfy the minimum recordkeeping requirements for a material percentage of the items tested. Furthermore, the Committee did not respond to requests to obtain and submit the missing disbursement information and implement procedures to ensure

1 compliance with the Act. The treasurer did not exercise best efforts to obtain, maintain, and  
2 submit the appropriate records.

3 9. Political committees are required to disclose the identity of each person who  
4 contributes in excess of \$200 within the calendar year. 2 U.S.C. § 434(b)(3)(A). Specifically,  
5 committees shall report to the Commission the name, mailing address, occupation, and employer  
6 of the contributor. 2 U.S.C. § 431(13)(A). Also, the treasurer of a political committee is  
7 required to exercise his or her best efforts to obtain, maintain, and submit the required  
8 information, by making at least one attempt after the receipt of the contribution to obtain the  
9 missing information. 11 C.F.R. § 104.7(b)(2).

10 10. A review of contributions the Committee received during 1995 and 1996 revealed an  
11 omission rate of 74% for which contributors' occupations and names of employers ("OCNOE")  
12 were incomplete. See 2 U.S.C. § 431(13)(A), 11 C.F.R. § 104.7(b)(2). The Committee did not  
13 maintain the appropriate information and there was no systematized method of obtaining missing  
14 contributor information for all contributions. The Committee did not provide any  
15 documentation, such as copies of letters, to show that it had exercised best efforts to obtain  
16 occupation and name of employer information. Furthermore, the Committee failed to contact all  
17 contributors with missing information, provide evidence of the contacts and any responses, and  
18 submit the required disclosure reports. The Committee did not show that it used best efforts to  
19 obtain, maintain, and submit the required information.

20 11. A review of contributions the Committee received during 1997 and 1998 revealed an  
21 omission rate of 46% for which OCNOE information was incomplete. See 2 U.S.C.  
22 § 431(13)(A), 11 C.F.R. § 104.7(b)(2). The Committee did not provide recipient identifications  
23 for solicitations requesting additional OCNOE information. The Committee did not show that it  
24 used best efforts to obtain, maintain, and submit the required information. On June 28, 2001, the

Committee filed amended Schedules A to provide additional OCNOE information. The amendments improved the Committee's omission rate to 28%.

12. In the area of shared federal and non-federal expenditures, party committees are required to calculate separate allocation ratios for each fundraising program or event in addition to its ratio for administrative expenses and generic voter drives. 11 C.F.R. §§ 104.10(b)(2), 106.5(f)(1) and (2). Committees must allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. 11 C.F.R. § 106.5(f)(1). Committee treasurers are also required to keep all records supporting reports required to be filed for three years after the report is filed. 2 U.S.C. § 432(d). Furthermore, committees must report each disbursement from its federal account in payment for a joint federal and non-federal expense or activity. 11 C.F.R. § 104.10(b)(4); 2 U.S.C. § 434(b)(4)(H)(V).

13. The Committee used its ratio for administrative expenses and did not calculate separate allocation ratios for eight fundraising events on Schedule H-2. It did not attempt to allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. 11 C.F.R. § 106.5(f)(1). Furthermore, the Committee did not keep adequate records to enable the proper ratio calculation for each fundraising event. 2 U.S.C. § 432(d); 11 C.F.R. § 104.10(b)(5). The Committee's failure to calculate separate federal/non-federal allocation ratios for its fundraising events led to disclosures of erroneous shared activity disbursements. 11 C.F.R. § 104.10(b)(4); 2 U.S.C. § 434(b)(4)(H)(V). These shared expenses, itemized on Schedules H-4, were calculated solely from the administrative expenses ratio derived on Schedule H-1 and did not include ratios that should have been calculated and reported on Schedule H-2. The Committee erroneously categorized all of its Schedule H-4 expenditures during the audit period as "Administration."

1 14. Committees are required to itemize in their reports the allocable activities for which  
2 the transferred funds (from a committee's non-federal to its federal account) are intended to pay  
3 and such funds may not be transferred more than 10 days before or more than 60 days after the  
4 payments for which they are designated are made. Otherwise, such transfers are presumed to be  
5 loans or contributions from the non-federal account in violation of the Act. 11 C.F.R.  
6 §§ 106.5(g)(2), 102.5(a)(1)(i); 2 U.S.C. § 441a(f).

7 15. The Committee failed to report ten transfers and disclosed 91 transfers from its non-  
8 federal account totaling \$1,332,426 which could not be traced to any expenditures because of the  
9 lack of proper documentation. The amounts transferred and the category of allocable expenses  
10 associated with each transfer could not be verified as correct. Even by using the administrative  
11 ratio that it mistakenly applied to all shared expenditures, the Committee over-funded its federal  
12 account by \$11,046. The Committee also failed to file amended Schedules H-2 and H-4, and  
13 failed to provide documentation to determine the correct expense classifications. The Committee  
14 transferred \$11,046 to its non-federal account on March 22, 2000.

15 V.1. Respondents accepted and retained excessive contributions in the amount of  
16 \$25,000 from two individuals in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 103.3 (b)(3), (4),  
17 and (5).

18 2. Respondents accepted and retained prohibited contributions in the amount of \$6,000  
19 from two corporations in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 103.3(b)(1) and (b)(4).

20 3. Respondents failed to obtain and preserve all disbursement records required by the  
21 Federal Election Campaign Act in violation of 2 U.S.C. § 432(c).

22 4. Respondents failed to collect and report contributors' occupations and names of  
23 employers, in violation of 2 U.S.C. § 434(b)(3)(A).

1           5. Respondents failed to maintain adequate records, properly allocate expenditures, and  
2   report accurate disbursement information in violation of 2 U.S.C. §§ 432(d), 434(b)(4)(H)(V)  
3   and 11 C.F.R. §§ 104.10(b), 106.5(f)(1).

4           6. Respondents accepted excessive contributions by over-funding the Committee's  
5   federal account and failed to itemize allocable activities in violation of 2 U.S.C. § 441a(f) and  
6   11 C.F.R. §§ 106.5(g)(2), 102.5(a)(1)(i).

7           VI.1. Respondents will pay a civil penalty to the Federal Election Commission in the  
8   amount of \$30,000, pursuant to 2 U.S.C. § 437g(a)(5)(A).

9           2. Respondents will take the following steps:

10          A. Implement accounting procedures that are designed to identify and detect reporting  
11   errors and substantive irregularities such as excessive and prohibited contributions.

12          B. Conduct an accounting review by an outside accounting firm which brings all records  
13   up-to-date and in compliance with the law, and which includes advice for continued compliance.

14   Within three months of the effective date of this agreement, Respondents shall submit to the  
15   Commission a copy of a contract evidencing the employment of an outside accounting firm.

16          C. Require the new treasurer and appropriate other personnel responsible for complying  
17   with the Act and the Commission's regulations to attend a Commission-sponsored training  
18   program during 2002-03. Respondents shall submit evidence of registration and attendance at  
19   such event.

20          D. Prepare an internal training manual to assist appropriate personnel in understanding  
21   laws and regulations concerning federal elections. Within five months of the effective date of  
22   this agreement, Respondents shall submit to the Commission a copy of their internal training  
23   manual.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.

§ 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY:

  
Gregory R. Baker  
Acting Associate General Counsel  
for PFESP

Date

5/13/02

FOR THE RESPONDENTS:

  
Neil P. Reiff  
Attorney-at-Law

Date

4/24/02