

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Michigan Republican State Committee) MURs 4932, 5287, and 5288
and Richard M. Gabrys, as Treasurer)
)

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CONCILIATION AGREEMENT

Matters Under Review ("MURs") 5287 and 5288 were initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. MUR 4932 was initiated by a signed, sworn, and notarized complaint pursuant to 2 U.S.C. § 437g(a)(1) by Mark Brewer, Chair of the Michigan Democratic State Central Committee. The Commission found reason to believe the Michigan Republican State Committee ("Committee") and Richard M. Gabrys, as treasurer (together "Respondents") violated 2 U.S.C. § 441b(a), and 11 C.F.R. §§ 102.5(a)(1)(i), 104.10(b), 106.5(a) and (g) in MUR 4932. The Commission found reason to believe that Respondents violated 2 U.S.C. §§ 441a(f), 441b(a), and 11 C.F.R. §§ 102.5(a)(1)(i), 104.10(b), 106.5(a) and (g) in MURs 5287 and 5288.¹

¹ All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder. Nothing in this Conciliation Agreement shall be interpreted to prevent the Respondents from engaging in activities and transactions not otherwise prohibited by BCRA or subsequent amendments to the Act. Without limiting the generality of the foregoing, Respondents reserve their right to assert at a future time that BCRA, which was enacted after the activity at issue in this matter, permits them to finance with non-federal funds conventions, meetings or conferences.

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

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

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

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

IV. Respondents contend that there was no knowing and willful violation of any federal statute or regulation by the Respondents in connection with the actions described herein. Respondents' contend that their cooperation in these matters demonstrates Respondent's willingness to comply with the Federal Election Campaign Act of 1971, as amended, (the "Act") as well as Respondents' intention to cooperate with the Commission.

V. The pertinent facts in this matter are as follows:

1. The Committee is a political committee within the meaning of 2 U.S.C. § 434(4) and registered with the Comptroller General of the United States as the Michigan Republican State Committee on April 17, 1972.

2. Richard M. Gabrys is the current treasurer of the Committee.

3. The Act defines a "contribution" as any gift, subscription, loan, advance, or deposit 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(8) and 11 C.F.R. § 100.7(a). "Anything of value" includes in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

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4. An "expenditure" is 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; as well as a written contract, promise, or agreement to make an expenditure. 2 U.S.C. § 431(9) and 11 C.F.R. § 100.8(a).

5. No person shall make contributions in the aggregate to any political committee in any calendar year which exceed \$5,000. 2 U.S.C. § 441a(a)(1)(C). The definition of "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11).

6. No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the limitations at 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

7. Corporations are prohibited from making contributions in connection with a Federal election. 2 U.S.C. § 441b(a), 11 C.F.R. § 114.2. No candidate, political committee or other person shall knowingly accept or receive a prohibited contribution. *Id.* A prohibited contribution includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services or anything of value. 2 U.S.C. § 441b(b)(2).

8. Party committees that make disbursements in connection with federal and non-federal elections must make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 C.F.R. § 102.5. 11 C.F.R. § 106.5(a)(1). If a political committee which finances political activity in connection with both federal and non-federal elections establishes a separate federal account, the account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including registration and reporting. 11 C.F.R. § 102.5(a)(1)(i). Only funds subject to the prohibitions and limitations of the Act shall be deposited in the federal account and all

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disbursements, contributions, expenditures and transfers in connection with a federal election shall be made from the federal account. *Id.* No transfers may be made to the federal account from any non-federal account except as provided at sections 106.5(g) and 106.6(e). *Id.* Administrative expenses shall be allocated pursuant to part 106 between the federal account and any non-federal account established by the committee. *Id.* Political committees that have established separate federal and non-federal accounts under 11 C.F.R. § 102.5(a)(1)(i) must allocate expenses between those accounts according to formulas set forth at 11 C.F.R. § 106.5. *Id.*

9. Committees that have established separate federal and non-federal accounts under 11 C.F.R. § 102.5(a)(1)(i) must pay the expenses of joint federal and non-federal activities as follows: (1) pay the entire amount of an allocable expense from its federal account and transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense; or (2) establish a separate allocation account into which funds from its federal and non-federal accounts will be deposited solely for the purpose of paying allocable expenses. 11 C.F.R. § 106.5(g)(1). Once a Committee has established a separate allocation account for this purpose, all allocable expenses must be paid from this account for as long as the account is maintained. *Id.*

10. Committees that make disbursements in connection with federal and non-federal elections are required to allocate expenses in the following categories: (1) administrative expenses; (2) the direct costs of fundraising programs and events; (3) state and local party activities exempt from the definition of contributions and expenditures at 11 C.F.R. § 100.7(b) and 100.8(b); and (4) generic voter drive expenses. 11 C.F.R. § 106.5(a)(2)(i-iv).

Administrative expenses include rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate. 11 C.F.R. § 106.5(a)(2)(i).

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11. State party committees that have established separate federal and non-federal accounts are required to allocate administrative expenses and the cost of generic voter drives according to the ballot composition ratio. 11 C.F.R. § 106.5(d). Exempt activities shall be allocated according to the proportion of time or space devoted in a communication. 11 C.F.R. § 106.5(e). Direct fundraising costs shall be allocated according to the funds received method. 11 C.F.R. § 106.5(f).

12. A political committee that has established separate federal and non-federal accounts under 11 C.F.R. § 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising, exempt activities, and generic voter drives according to 11 C.F.R. §§ 106.5 or 106.6, as appropriate, and shall report those allocations according to 11 C.F.R. § 104.10(b)(1)-(5). 11 C.F.R. § 104.10(b). Specifically, for allocable administrative expenses and costs of generic voter drives, the committee shall report the allocation ratio and the manner in which it was derived on the first report for the calendar year, and on subsequent reports itemizing allocable disbursements shall include the category of activity and the total amount spent by the federal and non-federal accounts that year, to date, for each category. 11 C.F.R. § 104.10(b)(1). The committee shall also report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying allocable expenses. 11 C.F.R. § 104.10(b)(3). In addition, the committee shall report each disbursement from its federal account or its separate allocation account in payment for a joint federal and non-federal expense or activity. 11 C.F.R. § 104.10(b)(4).

13. In the 1995-96 election cycle, the Committee made allocable shared disbursements from three non-federal accounts, the Michigan Republican State Committee Corporate Administrative Account ("Administrative Account"), the Michigan Republican State Committee

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State Account ("State Account"), and the Republican National Convention Account ("Convention Account,") but did not allocate these disbursements as required and paid the federal portion from its non-federal accounts. The Committee's federal account did not reimburse its non-federal accounts a total of \$154,778 for the federal portion of these allocable disbursements. The non-federal accounts contained impermissible funds including excessive contributions from individuals and corporate contributions; thus, the federal portion of the allocable disbursements were paid from impermissible funds. See 2 U.S.C. §§ 441a(f), 441b(a); 11 C.F.R. § 114.2. Two of the non-federal accounts, the Administrative Account and the Convention Account, contained mainly corporate contributions.

14. The Committee paid \$394,443 from its Administrative Account for administrative expenses which should have been allocated between its federal and non-federal accounts, and the federal portion of these disbursements was \$147,917. Similar allocable disbursements from the Administrative Account occurred in the 1993-94 election cycle. These allocable administrative expenses included \$252,020 for general operating expenses and costs related to the Republican National Convention and \$142,423 for expenses related to the annual state convention, various state committee and RNC meetings, the 1995 Mackinac Leadership Conference, and other conferences held during 1995 and 1996 which were related to both federal and non-federal campaigns. The Commission's auditors calculated that the federal share of these allocable expenses was \$147,917 based on the ballot composition ratio. The federal share is calculated as $[\$394,443 \times 37.5\%]$. The allocation percentage is based on the ratio of federal offices to total federal and non-federal offices on the ballot in the 1996 election. See 11 C.F.R. § 106.5(d). Although the Committee's federal account should have reimbursed the Administrative Account

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for this amount, the Committee reimbursed only \$21,402 and asserted that the remaining disbursements were not allocable.

15. The State Account paid several businesses a total of \$10,951 on June 5, 1995 for reimbursements for telephone usage for GOTV activities during 1994. Because the Committee did not provide documentation, such as a telephone script, indicating whether the GOTV activity was federal, non-federal or both, the auditors considered these disbursements to be for allocable shared activity related to both federal and non-federal candidates. During a previous election cycle, the Committee operated a similar GOTV phone bank, and reimbursed the businesses from both its federal and non-federal accounts. The federal portion of these disbursements is \$2,431 ($\$10,951 \times 22.2\%$). Since the disbursements related to the 1993-1994 election cycle, the 22.2% administrative allocation ratio for that cycle applies.

16. The Convention Account disbursed \$78,538 related to activities during the Republican National Convention in 1996, including consultant fees, room deposits, travel reimbursements, entertainment, reception expenses, printing costs, radio rentals, teleprompter, supplies, and bus transportation. These disbursements were related to general party building activity and events held in conjunction with the party's national nominating convention that selected federal candidates, but there is no evidence that any of these disbursements were related solely to federal or non-federal elections; thus, the disbursements were party administrative expenses that should have been allocated between the Committee's federal and non-federal accounts. The federal share of these disbursements, calculated based on the ballot composition ratio for administrative activity, was \$29,452 ($\$78,538 \times 37.5\%$).

17. In the 1997-98 election cycle, the Committee made \$979,598 in allocable disbursements from two non-federal accounts, the Administrative Account (\$331,433) and the

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State Account (\$648,165), and did not allocate them as required. *See* 11 C.F.R. § 106.5.

Moreover, the Committee paid the federal portion of these disbursements from its non-federal accounts and did not reimburse its non-federal account for \$55,711 of the federal portion of these shared expenses. The Committee's federal account has reimbursed \$3,484 to the Administrative Account, leaving \$39,603 that must be reimbursed, and \$72,408 to the State Account, leaving \$16,108 that must be reimbursed. These allocable disbursements were similar to the allocable disbursements in the 1995/96 election cycle, and the federal portion of these disbursements was paid with impermissible funds. *See* 2 U.S.C. §§ 441a(f), 441b(a).

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18. The Committee made disbursements from its Administrative Account to pay administrative disbursements related to events that were related to both federal and non-federal campaigns totaling \$237,359, including expenses for the 1997 Mackinac Leadership Conference, the annual state conventions, several activities with the RNC and various Committee meetings. These expenses included mileage reimbursements, banquet and lodging expenses, badge holders, printing costs, and sound and lighting costs. These expenses were allocable because they were administrative expenses; moreover, they benefited the party as a whole and thus, had federal and non-federal components. *See* 11 C.F.R. § 106.5. Therefore, these disbursements should have been allocated between the Committee's federal and non-federal accounts using the ballot composition ratio applicable to administrative and generic voter drive costs. The allocation percentage for administrative expenses for the 1997-98 election cycle was 13%, representing the ratio of the number of federal offices to the total of federal and non-federal offices on the 1998 Michigan general election ballot. The Committee also paid approximately \$94,074 from the Administrative Account for other allocable administrative costs including audit, legal, consulting and staff social expenses and miscellaneous disbursements such as holiday cards and gifts.

19. The Committee disbursed a total of \$648,165 from its State Account for allocable expenses including consulting fees, state convention lighting costs, GOTV phone calls and absentee voter slate pieces, and the federal share of those expenses was \$88,516. The Committee made a partial reimbursement to the State Account of \$72,408, leaving \$16,108 that still must be reimbursed.

20. In 1999-2000, the Committee paid allocable administrative disbursements related to the 1999 Mackinac Leadership Conference (the "1999 Mackinac Conference") from its non-federal accounts totaling \$174,571 including \$140,571 from its Administrative Account and \$34,000 from its State Account. These disbursements included payments from the Administrative Account for lodging, travel and expense reimbursements, sound and staging equipment, banners, postage and shipping, mailings, printing of invitations and booklets, etc., office supplies, insurance, advertising, banquet, leased trucks, ferry, and entertainment. In addition, the total includes a \$34,000 payment to the Grand Hotel, the site of the 1999 Mackinac Conference, from the State Account. These expenses were similar to the allocable party administrative expenses identified by the audits of MRSC for the 1995-96 and 1997-98 election cycles related to previous Mackinac Conferences.

21. The Committee paid the \$174,571 in disbursements related to the 1999 Mackinac Conference entirely with non-federal funds and did not properly allocate or report these disbursements. The federal portion of these disbursements, based on the Committee's 38% federal ballot composition ratio for 1999-2000, was \$66,337. This amount has not been reimbursed to the Administrative Account and State Account.

22. The allocable administrative expenses related to the 1999 Mackinac Conference were paid from non-federal accounts that contained corporate funds. Most of the disbursements were

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paid from the Administrative Account, which contained \$115,000 from 11 corporate sponsors of the 1999 Mackinac Conference as well as numerous other corporate contributions and contributions from individuals and other entities. The State Account was also a non-federal account that contained prohibited funds.

VI. 1. In the 1995-96 election cycle, Respondents failed to allocate shared disbursements in the amount of \$483,932 by improperly making these disbursements from three non-federal accounts, rather than properly allocating and reporting them, and paid the federal portion of these allocable disbursements from non-federal accounts that contained impermissible funds in violation of 2 U.S.C. §§ 441a(f), 441b(a), 11 C.F.R. §§ 102.5(a), 106.5(a) and (g) and 104.10(b).

2. In the 1997-98 election cycle, Respondents failed to allocate shared disbursements in the amount of \$979,598 by improperly making these disbursements from two non-federal accounts, rather than properly allocating and reporting them, and paid the federal portion of these allocable disbursements from non-federal accounts that contained impermissible funds in violation of 2 U.S.C. §§ 441a(f), 441b(a); and 11 C.F.R. §§ 102.5(a), 106.5(a) and (g) and 104.10(b).

3. Respondents failed to allocate shared disbursements related to the 1999 Mackinac Conference in the amount of \$174,571 by improperly making these disbursements from two non-federal accounts, rather than properly allocating and reporting them, and paid the federal portion of these allocable disbursements from non-federal accounts that contained impermissible funds in violation of 2 U.S.C. § 441b(a); and 11 C.F.R. §§ 102.5(a), 106.5(a) and (g) and 104.10(b).

4. Respondents will cease and desist from violating 2 U.S.C. §§ 441a(f), 441b(a), 11 C.F.R. §§ 102.5(a), 106.5(a) and (g) and 104.10(b).

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VII. Respondents will, within 30 days after this agreement becomes effective, pay a civil penalty to the Federal Election Commission in the amount of \$45,000 pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII. Respondents will reimburse the Committee's non-federal accounts in the amount of \$276,826 within 14 months after the date that this agreement becomes effective and shall provide the Commission's Office of the General Counsel with documentary evidence (i.e., bank records) demonstrating that said reimbursement has been made. In the event that Respondents fail to reimburse the entire \$276,826 to the Committee's non-federal accounts within 14 months after this agreement becomes effective, it shall be considered a material violation of this agreement. The amounts to be refunded pursuant to this paragraph include \$154,778 for the 1995/96 cycle, \$55,711 for the 1997/98 cycle, and \$66,337 for the 1999 Mackinac Conference.

IX. 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 initiate a civil action for relief in the United States District Court for the District of Columbia.

X. This agreement shall become effective as of the date that all parties thereto have executed it and the Commission has approved the entire agreement.

XI. Except as otherwise expressly provided in this agreement, 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.

XII. 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


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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

6/20/03
Date

FOR THE RESPONDENTS:



Eric E. Doster
Counsel for Respondents

June 3, 2003
Date

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