

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Madison Project Inc. Fund and) MURs 4568, 4633, 4634 and 4736
Timothy Teepell, as treasurer)

GENERAL COUNSEL'S REPORT

I. **ACTIONS RECOMMENDED** Make an additional reason-to-believe finding against The Madison Project Inc. Fund¹ and Timothy Teepell, as treasurer ("MPIF"); authorize this Office to enter into pre-probable cause conciliation ("PPCC") with MPIF regarding this new finding

II. **BACKGROUND**

MUR 4634 was generated by a complaint filed by Micheline Burger with the Federal Election Commission on May 5, 1997. MPIF was internally generated in MURs 4568, 4633 and 4736 on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. Because all four MURs relate to different activities of Triad Management Services, Inc. ("Triad"), the Commission decided that MURs 4568, 4633, 4634 and 4736 would be investigated together.

On June 2, 1998, the Commission found reason to believe that, during the 1996 election cycle, MPIF, among others, violated § 441f of the Federal Election Campaign Act of 1971, as amended, ("the Act") in connection with MURs 4568, 4633 and 4634.

¹ From its inception in 1994 to November 1995, MPIF was known as the Madison Project Fund. In November 1995, in response to an inquiry from the Commission relating to the name of its connected organization, MPIF adopted its current name.

On February 23 and July 20, 1999, the Commission found reason to believe that MPIF, among others, had violated § 441f of the Act in connection with MUR 4736.

The reason-to-believe findings previously made against MPIF were based on a pattern of contributions by which John and Ruth Stauffer, acting in consultation with Triad, made contributions to nine PACs, including MPIF. Shortly thereafter, each of the nine PACs made contributions in the same or similar amounts to the principal campaign committee of the Stauffers' son-in-law, Sam Brownback, during his 1996 campaign for the Republican nomination for a U.S. Senate seat from Kansas.

In June 1998, the Commission issued a subpoena and an order to answer written questions to MPIF. In July 1998, MPIF responded in writing to the Commission's subpoena and order, claiming that it had not knowingly participated in a scheme to make contributions in the name of another. *See MPIF Subpoena Response. (Attachment 1).*² MPIF also requested pre-probable cause conciliation ("PPCC") in connection with the Commission's reason-to-believe findings. In a July 1998 telephone conversation, this Office informed MPIF that, due to the need to complete discovery involving other respondents, it would not be able to recommend to the Commission that it enter into PPCC with MPIF at that time. In that same conversation, MPIF acquiesced to the deferral of its PPCC request until the investigation was complete.

² Attachment 1 includes MPIF's narrative response to the Commission's written questions and certain pertinent documents that were produced as Addendums 1a-1d to the Subpoena Response. Attachment 1 does not include two lengthier documents produced by MPIF, which this Office did not deem pertinent to this Report. These additional materials, which consist primarily of a candidate survey completed by the Brownback campaign and a related article by then-Congressman Brownback, are available for review in Central Enforcement Docket.

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In February 2000, MPIF staff members Doug Domenech and Timothy Teepell voluntarily met with this Office to discuss MPIF's 1996 activities and the prospects for PPCC. At the conclusion of the meeting, this Office again informed MPIF that it would need to complete its investigation before it could recommend MPIF's earlier request for PPCC to the Commission. MPIF again agreed to defer its PPC request.

This Office's investigation in these matters is now substantially complete. Based on the totality of the evidence gathered in its investigation, including the description of the contacts with Triad discussed in the MPIF Subpoena Response (Attachment 1), this Office does not intend to recommend that the Commission further pursue the §§ 441f and 434 findings previously made against MPIF. As set forth in General Counsel Briefs, dated March 23, 2001, sent to John and Ruth Stauffer and the Sam Brownback for US Senate Committee, this Office intends to recommend that the Commission view the transfers, including the one involving MPIF, as being excessive contributions from the Stauffers to the Brownback Committee under 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 110.1(h), rather than as contributions in the name of another under 2 U.S.C. § 441f. Under this theory, the conduit PACs, such as MPIF, would have no liability under the Act.³

³ This Office also intends to recommend that the Commission take no further action against other PACs whose involvement in these MURs was limited to serving as pass-throughs for the Stauffer contributions to the Brownback Committee. These recommendations will be made as part of the Probable Cause Report concerning the John and Ruth Stauffer contributions, which is being submitted to the Commission at the same time as this Report. *See also* General Counsel's Briefs sent to John and Ruth Stauffer and Sam Brownback for US Senate Committee, dated March 23, 2001.

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Notwithstanding these conclusions regarding the original reason-to-believe findings, it appears from the investigation that MPIF may have violated § 441b(b)(4)(A)(i) of the Act by improperly soliciting contributions, through Triad, from individuals outside of its restricted membership class. As set forth below, this Office recommends that the Commission find reason-to-believe that MPIF violated § 441b(b)(4)(A)(i) and enter into PPCC with MPIF regarding this new reason to believe finding.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended (the “Act”), prohibits corporations from making “a contribution or an expenditure in connection with any election for federal office.” 2 U.S.C. § 441b(a). It is not unlawful, however, for a corporation to use its general treasury funds to establish, administer, and solicit contributions to a separate segregated fund to be utilized for political purposes. 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. § 114.5(b).

An incorporated membership organization may also establish and administer a separate segregated fund (“SSF”). 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. § 114.5(b). An incorporated membership organization may solicit contributions to its SSF from its noncorporate members, its executive and administrative personnel, and the families of both these groups at any time. 11 C.F.R. § 114.7(a).

Both an incorporated membership organization and its SSF are prohibited from soliciting funds outside this restricted class. 2 U.S.C. § 441b(b)(4)(A)(i); 11 C.F.R.

§ 114.5(g)(1). The SSF may, however, accept an unsolicited contribution, that is otherwise lawful, from outside its restricted class. 11 C.F.R. § 114.5(i). However, if the SSF informs anyone outside the restricted class that unsolicited contributions can be accepted, this amounts to a solicitation. AO 1983-38; *See also* FEC Campaign Guide for Corporations and Labor Organizations at p. 14.

If an SSF or connected organization accidentally or inadvertently solicits a person not eligible for solicitation, no violation will result if the SSF or connected organization:

- (1) makes its best efforts to comply with the restrictions on who may be solicited; and
- (2) corrects the method of solicitation immediately. 11 C.F.R. § 114.5(h).

B. Facts

In 1994, The Madison Project, Inc., a membership organization, established MPIF as its SSF. According to its website, The Madison Project, Inc. “help[s] conservative, pro-life Republicans win election to high office by: Building a grassroots network of contributors; Generating early contributions to candidates; Building effective campaigns; and Helping to mobilize conservative voters throughout the country on Election Day.” *See* <http://madisonproject.org> (as of 3/21/01). MPIF typically bundles small earmarked contributions from The Madison Project, Inc. members to political candidates who reflect the organization’s views. MPIF also occasionally makes direct contributions to such candidates.

In July 1995, MPIF staff member Doug Domenech met Triad Director Carolyn Malneick at a meeting of conservative PAC representatives seeking to share information about congressional races around the country. *See* Attachment 1 at pp. 1-2 and 9. Triad is a political consulting firm, which purports to provide advice regarding political

contributions to wealthy conservative donors. Shortly after their initial meeting, Ms. Malenick asked Mr. Domenech "to write a quick description of the Madison Project, which she could send to donors who maybe [sic] interested in supporting the Madison Project financially." *Id.* at 2.

On August 15, 1995, Mr. Domenech sent Ms. Malenick a letter which described both The Madison Project, Inc. and MPIF. *See* Attachment 1, p. 10. Mr. Domenech's letter appears to solicit contributions to both the membership organization and the SSF. With regard to MPIF, the letter states:

In an interview with this Office, Mr. Domenech indicated that he and Ms. Malenick had at least one telephone conversation about a short description of MPIF that would be provided to potential donors. Mr. Domenech then sent Ms. Malenick an undated FAX memorandum which made changes to an earlier draft. *See* Attachment 1, p. 11). The new description stated:

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Triad incorporated the revised MPIF description provided by Mr. Domenech into a "Political Action Committee (PAC)" memorandum, which described thirteen PACs that purportedly agree with "TRIAD's targeting approach for the 1996 elections." (Attachment 2). During 1995-1996, Triad distributed this PAC Memorandum to individuals which Triad viewed as potential donors. Triad would then forward contribution checks from the individual donors to specific PACs.

MPIF reports receiving three checks totaling \$10,000 through Triad after it provided Ms. Malenick with the descriptive information set forth above. The first contribution was a \$5000 check, dated December 29, 1995, from James and Cecilia Leininger that Triad forwarded with a cover letter dated January 3, 1996. *See Attachment 1, page 12*). The second and third checks were two \$2500 contributions, dated July 16, 1996, from John and Ruth Stauffer that MPIF reported receiving in the same envelope with a Triad cover letter (a copy of which could not be located) on or about July 29, 1996. *Id.* at 3 and 13.

In their responses to the Commission's subpoenas and in deposition testimony, John and Ruth Stauffer acknowledged that they received the Triad PAC Memorandum containing the description of the MPIF prior to making their contribution. In an interview with a Commission investigator, Mr. Leininger acknowledged receiving information from Triad regarding PACs prior to making his contribution to MPIF. Based on its contacts

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with both MPIF representatives and the donors themselves, this Office has confirmed that neither James and Cecilia Leininger, nor John and Ruth Stauffer, were members of The Madison Project, Inc, or otherwise part of MPIF's restricted class, at the time their contributions were solicited.

C. Analysis

The facts set forth above indicate that MPIF, acting through Triad, improperly solicited individuals outside its restricted class for contributions. Based on MPIF's response to the Commission's subpoena, and the documents provided with that response, it appears that MPIF authorized Triad to solicit individuals who were outside its restricted class for contributions to MPIF. This authorization is evidenced by the August 15, 1995 letter from Mr. Domenech to Ms. Malenick (Attachment 1, page 10) and the later undated Fax Memorandum from Mr. Domenech to Ms. Malenick which revised the description of MPIF that Triad later distributed to potential donors (Attachment 1, page 11). The solicitations of actual donors is evidenced by the Triad PAC Memorandum which included the description of MPIF previously provided by Mr. Domenech. (Attachment 2).

It does not appear that it would be appropriate to treat MPIF's solicitation of contributions through Triad as an accidental or inadvertent solicitation under 11 C.F.R. § 114.5(h). Although Triad appears to have made the initial suggestion that it solicit contributions for MPIF, this suggestion was followed by several conversations between MPIF and Triad, as well as by at least two pieces of correspondence. Thus, upon learning that Triad was interested in soliciting funds on its behalf, MPIF did more than simply acquiesce. MPIF affirmatively facilitated and implicitly authorized Triad's efforts to

solicit contributions on its behalf. Further, given the timing of the first and second set of checks, Triad appears to have solicited the contributions over at least a seven month period (December 1995 through at least July 1996).

The safe harbor that § 114.5(h) provides for accidental or inadvertent solicitations requires that the corporation or SSF use its best efforts to avoid soliciting outside its restricted class and to take timely corrective action after discovering that such an improper solicitation has been made. In this case, MPIF did neither. First, it took action on several different dates to encourage and facilitate the solicitation of contributions by Triad. Second, after receiving the Leininger check through Triad in January 1996, it apparently took no action to stop Triad from continuing to solicit on its behalf. Given the receipt of the Stauffer checks through Triad in late July 1996, it appears that such solicitations were ongoing for at least seven months.

For the reasons set forth above, this Office recommends that the Commission find reason to believe that The Madison Project, Inc. Fund and Timothy Teepell, as treasurer, violated 2 U.S.C. § 441b. This Office also recommends that the Commission authorize it to enter into pre-probable cause conciliation with MPIF regarding these findings.

III PROPOSED CONCILIATION AGREEMENT

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IV. RECOMMENDATIONS

1. Find reason to believe that The Madison Project, Inc. Fund and Timothy Teepell, as treasurer, violated 2 U.S.C. § 441b(b)(4)(A)(i).
- 2.
3. Approve the attached Factual and Legal Analysis.
- 4.
5. Approve the appropriate letter.

Date 5/9/01

Lois G. Lerner
Acting General Counsel

Attachments:

- 1.
- 2.
- 3.
- 4.

Staff Assigned: Mark Shonkwiler