



FEDERAL ELECTION COMMISSION  
WASHINGTON D C 20463

SEP 04 2003

Thomas A. Federer, Esquire  
Federer, Federer & Diehl, LLP  
201 S. Fifth Street  
St. Charles, MO 63301

RE: MURs 5112 and 5383

Dear Mr. Federer:

On October 17, 2000, the Federal Election Commission notified Federer for Congress Committee ("Committee") and Thomas M. Busken, as treasurer, and William J. Federer, your clients, of a complaint in MUR 5112 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, information provided by your clients and information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, on August 27, 2003, the Commission found that there is reason to believe the Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. § 434(b) and 441b(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information. On August 27, 2003, the Commission also found that there is no reason to believe that William J. Federer violated 2 U.S.C. § 439a and closed the file with regard to him.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of these matters. Please submit such materials to the General Counsel's Office within 1 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of these matters, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of these matters prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of these matters by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to

the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

These matters will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish these matters to be made public. If you have any questions, please contact Mary L. Taksar, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub  
Chair

**Enclosures**

Factual and Legal Analysis  
Conciliation Agreement

## FEDERAL ELECTION COMMISSION

### FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Federer for Congress Committee and MURs: 5112 and 5383  
Thomas M. Busken, as treasurer

These matters were generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2) and a complaint filed with the Federal Election Commission by Roy Temple, Executive Director of the Missouri State Democratic Committee. *See* 2 U.S.C. § 437g(a)(1). The complainant alleges that the Committee failed to provide an adequate purpose for disbursements and failed to report employees' salaries.

#### I. LAW<sup>1</sup>

##### A. Reporting Purpose of Disbursements and Salaries

The Act requires all political committees to file reports of their receipts and disbursements. 2 U.S.C. § 434(a)(1). Political committees other than authorized committees shall report the full name and address of each person to whom an expenditure of over \$200 is made within the calendar year, together with the date, amount and purpose of such reporting expenditure. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(b)(4)(i). "Purpose" means a brief statement or description of why the disbursement was made. 11 C.F.R. § 104.3(b)(4)(i)(A). Vague descriptions of disbursements, such as "advance," "outside services," and "miscellaneous" do not fulfill the Act's reporting requirements. *Id.* Salary payments are considered operating

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<sup>1</sup> The activity in this matter is governed by the Act and Commission regulations in effect during the 1999-2000 election cycle, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations exclude the changes made by BCRA.

expenditures and must be itemized and reported as any other type of committee operating expenditure. 11 C.F.R. §§ 104.3(b)(2)(i) and 104.3(b)(4)(i).

### **B. Prohibited Corporate Contributions**

The Act prohibits corporations and banks from making contributions in connection with a Federal election and defines “contribution” to include “any loan or advance . . . to any candidate, [or] campaign . . .” in connection with any Federal election. 2 U.S.C. §§ 441b(a) and 441b(b)(2). Bank loans made in the ordinary course of business are not prohibited. 2 U.S.C. § 441b(b)(2). Commission regulations provide that both incorporated vendors and unincorporated vendors, in their capacity as commercial vendors, may extend credit to a political committee, provided that the credit is extended in the entity’s ordinary course of business and that the terms are substantially similar to extensions of credit to nonpolitical debtors. 11 C.F.R. § 116.3(b). Otherwise, the extension of credit is a contribution. 11 C.F.R. § 100.7(a)(4). In determining whether a corporate or unincorporated entity extended credit in the ordinary course of business, the Commission will consider whether the entity followed its own procedures when granting credit, whether the committee repaid the loan promptly, and whether the terms of the loan were in accordance with established business practices. 11 C.F.R. § 116.3(c)(1), (2), and (3).

## **II. FACTS AND LEGAL ANALYSIS**

### **A. Alleged Failure to Report Employees’ Salaries and Failure to Provide an Adequate Purpose for Disbursements**

The complainant in MUR 5112 alleges that the Federer for Congress Committee and Thomas M. Busken, as treasurer (“Respondents” or “the Committee”) violated reporting provisions of the Act by concealing the identity of campaign staff who received salaries and

other disbursements from the Committee by “funneling” those payments through a marketing company, Hutchings Marketing, Inc. (“Hutchings”).<sup>2</sup> The complainant further alleges that the Committee failed to adequately report the purpose of certain payments to Hutchings. Some of the payments to the marketing company were described in reports filed with the Commission simply as “campaign services” and “services rendered.”

Respondents state that the Committee hired Hutchings to provide political and fundraising services, temporary staffing, and office equipment rental. The Respondents assert that hiring a company for these services does not violate the Act. With respect to the purposes of disbursements, Respondents contend that their descriptions were proper and that any insufficient descriptions were an oversight and unintentional. Respondents further submitted a sworn affidavit from Thomas Busken, the Committee’s treasurer and a licensed CPA. The treasurer states that he reviewed the Committee’s reports filed between July 1999 and July 2000 and found that ten of 38 Hutchings Marketing entries labeled “services rendered” were in fact for political consulting services, temporary staffing, and office equipment rental. The treasurer states that after the December 1999 reporting period, the disclosed purpose of disbursements was more detailed.

George Hutchings was notified of the complaint as the registered agent of Hutchings Marketing, Inc., and in his sworn and notarized response states that from the middle of September 1999 through November 2000 the firm provided consulting and fundraising services

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<sup>2</sup> The complainant based his allegations on the following press reports from the *St. Louis Post-Dispatch*: Jo Mannies, “Manager of campaign for Gephardt rival contacts Democrats seeking job,” *St. Louis Post-Dispatch*, June 29, 2000 at B4; Jo Mannies, “Democrats allege Federer took contributions above limit, failed to report some donations,” *St. Louis Post-Dispatch*, June 30, 2000 at B5; Jo Mannies, “Some Republicans wonder what Federer did with all his money,” *St. Louis Post-Dispatch*, July 23, 2000; Deirdre Shesgreen, “Funding of candidate for Congress stirs debate,” *St. Louis Post-Dispatch*, Aug. 3, 2000 at A10; and Carolyn Tuft and Jo Mannies, “Critics question Federer’s link to firm,” *St. Louis Post-Dispatch*, Sept. 21, 2000 at A8.

to the campaign, along with staffing and rental of office equipment. The response states that the campaign was invoiced in a timely manner, usually monthly, and that invoices were payable upon receipt.

The available information shows that the Committee failed to disclose an adequate purpose of each expenditure in an aggregate amount or value in excess of \$200. 2 U.S.C. § 434(b)(5) and 11 C.F.R. §§ 104.3(b)(4) and 104.3(b)(4)(i). The Committee was required to report the correct purpose for its disbursements to Hutchings and its other vendors. If the disbursements to Hutchings were for individuals to whom salaries were paid by Hutchings and the staffers were employed by Hutchings and not the Committee, the Committee was required to report the amount of the expenditure made to Hutchings as payment for temporary staffing. Further, the Committee was required to report disbursements to Hutchings and its other vendors with the specificity required by the Act and Commission regulations and not use general mixed descriptions such as "consulting" or "services."

The Committee's 1999 Year End Report discloses 20 disbursements on Schedule B for Line 17 (Operating Expenditures), including 10 disbursements to Hutchings, totaling \$76,968.97 disclosing their purpose as "services rendered." The Reports Analysis Division addressed this issue with the Committee in a Request for Additional Information ("RFAI") that was sent to the Committee on November 28, 2000. In response, the Committee changed the entries to include multiple purposes for individual disbursements, but sometimes kept using inadequate purpose terms, such as "consulting."

The issue next arose on the Committee's 2000 July Quarterly Report. Of 16 payments to Hutchings, 8 disbursements totaling \$41,739.12 had inadequate purposes, such as "consultant fees" or "services & supplies." The 2000 12 Day Pre-Primary Report itemized one

disbursement to Hutchings for “consulting, manager, temp” for \$14,160.68. The 2000 October Quarterly Report itemized 3 disbursements to Hutchings totaling \$46,743.44 for “consulting, computers, equipment, temp. staffing.” The 2000 12 Day Pre-General Report itemized one disbursement to Hutchings for \$27,548 for “consulting, computer equipment, temp. staffing.” The 2000 30 Day Post-General Report disclosed two payments to Hutchings totaling \$20,510 for “consulting, equipment, temp staffing, marketing.” Finally, the 2000 Year End Report discloses 4 disbursements to Hutchings totaling \$5,619 for “consulting/staffing” and “consulting/equip/securi[ty].”

As described above, the Committee failed to provide an adequate purpose for disbursements to Hutchings and other vendors totaling, at a minimum, \$233,289.21. 11 C.F.R. § 104.3(b)(4)(i)(A). The partially adequate responses to the RFAI’s represents a mitigating circumstance. Therefore, there is reason to believe that the Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. § 434(b).

#### **B. Alleged Corporate Contribution to the Committee**

Based on information available to the Commission, the Committee may have been the recipient of a short-term loan – since repaid – from a corporation in order to assist in covering printing costs of a book. Paul Matteucci, Mr. Federer’s former campaign manager, admitted that his company, AM & PM, Inc., advanced \$11,491 on behalf of the Committee to the printing company for 3,000 copies of *America’s God and Country*, and the campaign later reimbursed AM & PM, Inc., a Missouri corporation. The book was purportedly distributed at campaign fundraisers, usually to individuals making contributions of at least \$50, and occasionally to individuals who did not make contributions.

According to the information, Mr. Federer stated that at the time that AM & PM, Inc., paid for the books, the campaign did not have the funds available to have additional copies printed for the campaign. Mr. Matteucci provided an invoice from Dickinson Press indicating an "Add on to Job #18747" for 3,000 copies of the book and an invoice from AM & PM, Inc., to the Committee. The Committee later reimbursed AM & PM, Inc.

Because corporate contributions are prohibited and AM & PM, Inc.'s purchase of \$11,491 worth of books for the Committee represented a transfer of something of value, AM & PM, Inc. made and the Committee accepted a prohibited contribution. According to the information available, the Committee did not have the funds available at the time to purchase the books for use in the campaign, and AM & PM, Inc., made the purchase and the books were, in fact, used in the campaign. Therefore, there is reason to believe that Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. § 441b(a) by receiving a corporate contribution.