BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of the Missouri Democratic State Committee and Rod Anderson, in his official capacity as treasurer	)))))	MUR 5611

GENERAL COUNSEL'S BRIEF

I. INTRODUCTION

This matter arose from a Federal Election Commission ("FEC") audit of the Missouri Democratic State Committee ("MDSC" or the "Committee") conducted pursuant to 2 U.S.C. § 438(b). Having approved the Final Audit Report on MDSC, the Commission found, on November 9, 2004, reason to believe that the Committee violated 2 U.S.C. § 434(b) by misstating its financial activity, disclosing only permissible contributions, and failing to report debt.[1] The Commission further found reason to believe that the MDSC violated 2 U.S.C. § 441b(a) by accepting corporate contributions. The General Counsel is prepared to recommend that the Commission find probable cause to believe the Committee violated 2 U.S.C. §§ 434(b) and 441b(a).

II. ANALYSIS

A. The MDSC Misstated Its Financial Activity

Political committees must report their financial activity, including their receipts, disbursements and cash-on-hand balances. 2 U.S.C. § 434(b)(1), (2) and (4). The Commission's audit of the MDSC for the 2000 election cycle found that the MDSC misstated its financial activity in several respects: it failed to report excessive and prohibited contributions it received

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[1] All of the facts recounted in this brief 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 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.

and failed to report its subsequent transfer of those contributions from its federal to its non-federal account; it reported $7,000 in contributions that it did not deposit; it reported $11,000 in disbursements that it did not pay out of its federal account; and it made miscellaneous errors (approximately $18,000) in its reports of receipts and miscellaneous errors (approximately $67,000) in its reports of disbursements. These errors totaled $531,047. Thus, there is probable cause to believe that the MDSC violated 2 U.S.C. § 434(b) by misreporting its opening and ending cash balances, receipts, and disbursements during calendar year 2000.

B. <u>The MDSC Failed to Report Excessive Contributions and Transfers from Its Federal to Non-Federal Account.</u>

The Federal Election Campaign Act of 1971, as amended (the "Act") requires political committees to report contributions. 2 U.S.C. § 434(b)(2). During the 2000 election cycle, the MDSC deposited into its federal account twenty-one contributions from individuals and four contributions from multicandidate political committees that exceeded the $5,000 contribution limitations of 2 U.S.C. §§ 441a(a)(1)(C) and (2)(C) by amounts ranging from $2,000 to $27,500. It retained in its federal account the permissible portion of the contributions from the individuals and committees, and transferred to its non-federal account a total of $176,125, which represented the excessive portion of those contributions.[2] However, the Committee reported as receipts only the permissible portion of those contributions, *i.e.*, $5,000 from each, and never reported its receipt of the excessive portion of the contributions; nor did the Committee disclose its transfer of the excessive portion of the contributions to its non-federal account. *See* 2 U.S.C. §§ 434(b)(2) and (5), 11 C.F.R. §§ 104.3(a) and 104.17(b). As a result, the MDSC's reports understated the Committee's receipts by $176,125.

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[2] The MDSC made all but one of the transfers in a timely fashion; the single untimely transfer was made prior to the start of the audit.

These problems surfaced during the audit, and the Commission's Final Audit Report recommended that the MDSC file amended reports that reflect the full amount of the contributions and the transfer of the excessive portion of the contributions to its non-federal account. Final Audit Report on Missouri Democratic State Committee, dated October 31, 2003 ("FAR"), at pp. 10-11. Commission auditors supplied the MDSC with the detailed information it would need to prepare the amendments. Nevertheless, the Committee has refused to file the amended reports. Thus, there is probable cause to believe that the MDSC violated 2 U.S.C. § 434(b) by failing to report the full amount of its receipts and its transfers to its non-federal account.

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C. <u>The MDSC Accepted Prohibited Contributions and Failed to Report Them.</u>

Political committees may not accept contributions from the treasury funds of corporations or labor unions. 2 U.S.C. § 441b(a). Contributions from limited liability companies ("LLCs") that choose to be treated as corporations under Internal Revenue Service ("IRS") tax rules are considered contributions from corporations. 11 C.F.R. § 110.1(g)(3). Contributions from LLCs that have a single member and have not opted for corporate tax treatment are considered contributions from the member. 11 C.F.R. § 110.1(g)(4). Contributions from LLCs that opt for partnership treatment under IRS rules are considered contributions by the partners in direct proportion to their share of the partnership profits. 11 C.F.R. §§ 110.1(g)(2) and 110.1(e). LLCs that contribute to political committees must affirm that they are eligible to contribute. 11 C.F.R. § 110.1(g)(5). Contributions from LLCs that have not affirmed their eligibility to make contributions are questionable contributions. 11 C.F.R. § 103.3(b)(1). Such contributions may be returned within ten days or deposited. *Id.* If a committee chooses to deposit a questionable contribution, the committee must confirm the legality of the contribution or refund it within thirty days. *Id.*

During the 2000 election cycle, the MDSC deposited into its federal account and reported a total of $159,500 from corporations, a labor union and limited liability companies ("LLCs"). It transferred, on a timely basis, $90,000 of the contributions; it retained $69,500 of the contributions in its federal account. Approximately two-thirds of the $69,500 of contributions retained consisted of contributions from LLCs and most of the remaining one-third of the contributions consisted of contributions from professional corporations. However, because the LLCs had not affirmed their eligibility to contribute, as required by 11 C.F.R. § 110.1(g), their contributions were questionable, and in the Final Audit Report, the Commission recommended that the MDSC refund the LLC contributions along with the corporate contributions that made up the $69,500 total. FAR at pp. 14-15. The Final Audit Report also recommended that the MDSC file amended reports to reflect its disposition of these contributions. *Id.* In response, the MDSC transferred $69,500 to its non-federal account; it refused, however, to file the amended reports. Thus, there is probable cause to believe that the MDSC accepted $69,500 in prohibited contributions in violation of 2 U.S.C. § 441b(a) and failed to report its transfer of them in violation of 2 U.S.C. § 434(b).

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Although the MDSC transferred the balance of prohibited contributions ($90,000) in a timely fashion,[3] it did not report the full amount of these contributions and did not report its transfer of these contributions to its non-federal account. The Final Audit Report recommended that the MDSC amend its reports to reflect its receipt and transfer of these contributions, FAR at 15, but the Committee refused to do so. Thus, there is probable cause to believe that the MDSC violated 2 U.S.C. § 434(b) also by failing to report its receipt and transfer of these contributions.

[3] The Commission did not find reason to believe with respect to the MDSC's acceptance of these contributions, and this Office is not recommending the Commission find probable cause to believe the Committee violated 2 U.S.C. § 441b with respect to them.

D. The MDSC Failed to Report Its Debt

A political committee must report the amount and nature of outstanding debt until those debts are extinguished. 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3 and 104.11. The Commission audit of the Committee revealed that during calendar year 2000, the MDSC had $620,575 of outstanding debt to thirteen vendors. This debt should have been reported in six of the reports the Committee filed during the year, but it was not. Thus, there is probable cause to believe that the MDSC violated 2 U.S.C. § 434(b) by failing to report the debt.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the Missouri Democratic State Committee and Rod Anderson, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by misstating its financial activity, failing to report its receipt of excessive and prohibited contributions and its transfer of the excessive portions of contributions and the prohibited contributions to its non-federal account, and failing to report debt.

2. Find probable cause to believe that the Missouri Democratic State Committee and Rod Anderson, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) by accepting prohibited corporate contributions.

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