



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

JAN 12 2007

Neil Reiff, Esq.
Sandler, Reiff & Young, PC
50 E Street, SE, Suite 300
Washington, DC 20003

RE: MUR 5714
Montana State Democratic Central Committee
and Brenda Schye, in her official capacity as
treasurer

Dear Mr. Reiff:

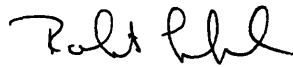
On March 14, 2006, the Federal Election Commission (the "Commission") notified your clients of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint, your clients' response, and publicly available information, the Commission on January 8, 2007, found reason to believe that the Montana State Democratic Central Committee and Brenda Schye, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(e)(2)(A) and 434(e)(4), provisions of the Act. In addition, the Commission found no reason to believe that your clients violated 2 U.S.C. § 434(e) and 11 C.F.R. § 300.33(c)(2). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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In the meantime, this matter 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 the matter to be made public. We look forward to your response.

Sincerely,



Robert D. Lenhard
Chairman

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Montana State Democratic Central
Committee and Brenda Schye in her
official capacity as treasurer

MUR: 5714

I. INTRODUCTION

This matter originated with a complaint filed with the Federal Election Commission ("the Commission") by Charles Denowh. See 2 U.S.C. § 437g(a)(1). Based on the complaint, response and other available information, there is reason to believe that the Montana State Democratic Central Committee and Brenda Schye, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(e)(2)(A) and 434(e)(4) by failing to properly report disbursements for federal election activity. However, there is no reason to believe that the Montana State Democratic Central Committee and Brenda Schye, in her official capacity as treasurer, violated 2 U.S.C. § 434(e) and 11 C.F.R. § 300.33(c)(2) by failing to properly report wages and salaries.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The Montana State Democratic Central Committee (the "MSDCC") is a state party committee of the Democratic Party. At the time of the activity at issue in this matter, Conrad Burns was a Senator and Republican candidate for the U.S. Senate from Montana in the 2006 election. Senator Burns first filed his Statement of Candidacy for the 2006 election on December 13, 2000 and designated Friends of Conrad Burns – 2006 as his principal campaign committee. As of December 31, 2000, Friends of Conrad Burns – 2006 had already received \$12,890 in

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contributions in connection with Burns' 2006 candidacy. Senator Burns subsequently filed two amended Statements of Candidacy – one on March 15, 2005 and another on May 26, 2005.

In 2005, the MSDCC made \$106,022.89 in disbursements for a television advertisement attacking Senator Conrad Burns for his relationship with lobbyist Jack Abramoff.¹ The thirty-second advertisement, entitled "Smell Test," links contributions from Abramoff to Burns to Burns' sponsorship of legislation benefiting an Abramoff client and suggests that Burns' actions did not benefit citizens of Montana:

Is Conrad Burns looking out for Montana? In Washington, he takes \$136,000 from notorious lobbyist Jack Abramoff – now under federal investigation. Then Burns fights for and passes legislation to give Abramoff's client – a wealthy Michigan Indian Tribe – \$3 million.

The advertisement concludes by quoting a newspaper article stating that the legislation sponsored by Burns "doesn't pass the smell test" and asking viewers to "Call Conrad Burns: tell him to start working for Montana."

The advertisement first aired on television stations in Montana on August 8, 2005. *See* Sarah Cooke, "Democrats run first ad attacking Burns," *Billings-Gazette*, Aug. 8, 2005. The MSDCC made the first disbursement for the advertisement, \$35,074.50 to Great American Media, on August 23, 2005. The MSDCC disbursed \$13,363.39 to Squier Knapp Dunn Communications on October 28, 2005 and made two additional disbursements to Great American Media, \$38,390 on November 22, 2005 and \$19,195 on November 29, 2005.

The MSDCC first disclosed the disbursements made in connection with the advertisement on its 2005 Year End Report filed on January 31, 2006. In that report, the MSDCC listed the

¹ The advertisement was produced by the Democratic Senatorial Campaign Committee, which transferred federal funds to the MSDCC to pay for the advertisement. *See* Response at 2-3

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disbursements on Schedule B, Line 21 rather than disclosing the disbursements as federal election activity on Schedule B, Line 30(b). On April 7, 2006, the MSDCC amended its 2005 Year End Report to list the \$106,022.89 for federal election activity in the detailed summary and reported the disbursements on Schedule B, Line 30(b). The purpose of the disbursements was listed as "FEA 100% Federal Media Buy" and the candidate was listed as "Friends of Conrad Burns." The MSDCC did not report any other disbursements for federal election activity in 2005.

B. Analysis

State, district and local committees of a political party are required to report receipts and disbursements for federal election activity if the aggregate amount of the receipts and disbursements exceeds \$5,000 in a calendar year. *See* 2 U.S.C. § 434(e)(2)(A); 11 C.F.R. § 300.36(b)(2). Committees required to report federal election activity must file monthly reports. *See* 2 U.S.C. § 434(e)(4); 11 C.F.R. § 300.36(c)(1).

The Act defines "federal election activity," in pertinent part, as:

[A] public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) . . .

2 U.S.C. § 431(20)(A)(iii); *see also* 11 C.F.R. § 100.24(b)(3). The term "public communication" includes "a communication by any means of any broadcast, cable or satellite communication . . . or any other form of general public political advertising." 2 U.S.C. § 431(22); 11 C.F.R. § 100.26.

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The MSDCC does not contest the fact that the advertisement is a public communication that promotes, supports, attacks or opposes Senator Burns. Instead, the MSDCC argues that it is not clear that the advertisement relates to a federal "candidate." *See* Response at 3-4. The MSDCC argues that it was not clear that Senator Burns was a candidate at the time of the advertisement since Burns had not filed any paperwork to appear on the ballot and had not "formally" started his reelection campaign.² *See id.* The MSDCC further suggests that the Commission should either read 2 U.S.C. § 431(20)(A)(iii) to require some temporal proximity to the election or clarify when an individual is considered a candidate for the purpose of determining whether a public communication constitutes federal election activity, otherwise incumbent members of congress would be considered candidates for the next election within days of their previous election. *See id* at 4.

An individual becomes a candidate for federal office, triggering the Act's registration and reporting requirements when his or her campaign exceeds \$5,000 in contributions or expenditures. *See* 2 U.S.C. § 431(2). Within 15 days of becoming a candidate, a candidate shall designate a principal campaign committee. *See* 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). Senator Burns' campaign received more than \$5,000 in contributions as of December 2000, qualifying him as a candidate under the Act and subjecting him to the Act's registration and reporting requirements. By the time the MSDCC started airing the advertisements, both FEC Disclosure Reports and subsequent press coverage revealed that Senator Burns had raised more

² The MSDCC indicates that it was unaware of the Statement of Candidacy filed by Senator Burns in 2005 at the time the advertisement started airing. *See* Response at 3, fn 1. The Response does not acknowledge that Senator Burns first filed a Statement of Candidacy for the 2006 election in 2000.

than \$3 million for his 2006 re-election campaign. *See* Second Quarterly Report filed July 14, 2005; "Burns' war chest passes \$3 million," *Billings-Gazette*, July 16, 2005.³

The MSDCC made its first disbursement for federal election activity on August 23, 2005. The disbursement to Great American Media was for \$35,074.50, far in excess of the \$5,000 required to trigger federal election activity reporting obligations. *See* 2 U.S.C. § 434(e)(2)(A); 11 C.F.R. § 300.36(b)(2). Thus, the MSDCC should have filed a monthly report for August 2005 by September 20, 2005, disclosing the disbursement for federal election activity. Instead, the MSDCC did not report the expenditures in connection with the advertisement until January 31, 2006 when it filed its 2005 Year End Report. On that report, the MSDCC did not disclose the fact that it made four disbursements totaling \$106,022.89 for federal election activity. The MSDCC did not categorize the disbursements as federal election activity until it filed an amended 2005 Year End Report on April 7, 2006, after it was notified of the complaint in this matter.

Because the MSDCC continued to make disbursements for federal election activity through the end of 2005, it should have continued to file monthly reports during that time. The MSDCC has never filed any monthly reports for 2005. The MSDCC has changed to a monthly filing schedule for 2006.

³ Under the Act, the definition of candidate does not require any temporal connection to a federal election. Nor does the definition of federal election activity require that the public communications that qualify as federal election activity occur in close proximity to a federal election. In contrast, 2 U.S.C. § 431(20)(A)(i) states that federal election activity includes voter registration activity that occurs within 120 days of a federal election. Furthermore, although Congress specifically excluded certain types of public communications, those that refer solely to State and local candidates, from the definition of federal election activity, it did not choose to exclude other types of public communications. In light of the plain language of the Act, it is clear that the MSDCC advertisement was a public communication that attacked a federal candidate, Conrad Burns, and therefore qualifies as federal election activity and is subject to the corresponding reporting obligations.

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Accordingly, the Commission found that there is reason to believe that the Montana State Democratic Central Committee and Brenda Schye, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(e)(2)(A) and 434(e)(4) by failing to properly report disbursements for federal election activity.

The Act also defines “federal election activity” to include “services provided during any month by an employee of a State, district or local committee of a political party who spends more than 25% of that individual’s compensated time during that month on activities in connection with a Federal election.” 2 U.S.C. § 431(20)(A)(iv); 11 C.F.R. § 100.24(b)(4). State, district and local party committees must use federal funds to pay salaries and wages for employees who spent more than 25% of their time per month on federal election activity. *See* 11 C.F.R. § 300.33(c)(2).

The complainant states that “it is my belief that it is impossible that Mr. Farrell has spent less than 25% of his time per month on Federal election activity.” Complaint at 2. Based on this “belief,” the complainant alleges that the MSDCC violated the Act by failing to properly report the salary for MSDCC’s executive director, Jim Farrell. After referencing an article in which Farrell states that his salary was paid from MSDCC’s non-federal account, complainant argues that Farrell should have been paid using only federal funds. While the MSDCC’s disbursements for federal election activity may have provided a basis for complainant to argue that the MSDCC executive director spent more than 25% of his time per month on federal election activity and therefore should have been paid using federal funds, complainant does not provide any support for this allegation other than referring generally to his knowledge of the duties of a state party executive director and his knowledge of the MSDCC’s activities in the Montana Senate race. *See id*

The MSDCC, however, submitted a detailed sworn declaration from the MSDCC Executive Director, Jim Farrell, in which Farrell avers that he did not spend in excess of 25% of any given month on activities in connection with a federal election or federal election activity. *See Response, Exhibit A at 2-3.* Farrell started as the Executive Director for the MSDCC on September 6, 2005. Farrell attests that he engaged in only limited activities in connection with a federal election in 2005 given the lack of declared Democratic candidates for the 2006 Senate race and that his activities in connection with federal elections consisted primarily of fielding press calls. *See id.*

Based on the available information, it appears that the only federal election activity the MSDCC engaged in during 2005 involved the Burns advertisement. The MSDCC's role in the advertisement appears to have been limited to paying for the advertisement from funds provided by the Democratic Senatorial Campaign Committee. This is consistent with the MSDCC's contention that its executive director spent less than 25% of his time on federal election activities in 2005.

Given the lack of evidence supporting this allegation and the specific and sworn information provided in the response, the Commission found that there is no reason to believe that the Montana State Democratic Central Committee and Brenda Schye, in her official capacity as treasurer, violated 2 U.S.C. § 434(e) and 11 C.F.R. § 300.33(c)(2) by failing to properly pay wages and salaries with federal funds.