



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 17 2011

Michael E. Toner, Esq.
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

**RE: MUR 5926
Republican Party of Minnesota and
David E. Sturrock, in his official
capacity as treasurer
Marina Taubenberger**

Dear Mr. Toner:

On August 15, 2011, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your clients, the Republican Party of Minnesota and David E. Sturrock, in his official capacity as treasurer, in settlement of violations of 2 U.S.C. §§ 434(b) and 441a(f), and 11 C.F.R. §§ 102.5(a) and 106.7(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations. Additionally, on May 27, 2011, the Commission found that there is no reason to believe that Marina Taubenberger violated 2 U.S.C. § 434(b). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the initial \$20,000 payment of the civil penalty is due within 30 days of the conciliation agreement's effective date. The Factual and Legal Analysis explaining the Commission's finding as to Marina Taubenberger is also enclosed.

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MUR 5926 (Republican Party of Minnesota)
Michael E. Toner, Esq.
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If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Kasey S. Morgenheim

Kasey S. Morgenheim
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

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OFFICE OF GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
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Republican Party of Minnesota and)
David E. Sturrock, in his official)
capacity as treasurer)
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MUR 5926

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Citizens for Responsibility and Ethics in Washington ("CREW"), Melanie Sloan, and Diane Gerth, and pursuant to information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that the Republican Party of Minnesota ("RPM" or "Committee") and David E. Sturrock, in his official capacity as treasurer, (collectively, "Respondents") violated 2 U.S.C. §§ 434(b) and 441a(f), and 11 C.F.R. §§ 102.5(a) and 106.7(f).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- 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. The pertinent facts and law in this matter are as follows:
 - 1. RPM is a political committee within the meaning of 2 U.S.C. § 431(4). RPM is a state committee of a political party within the meaning of 2 U.S.C. § 431(15).

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1 2. David E. Sturrock is the current treasurer of RPM. Mr. Sturrock was not the
2 treasurer when the conduct that gave rise to this matter occurred.

3 3. The Federal Election Campaign Act of 1971, as amended ("the Act"), requires
4 committees to disclose the nature and amount of outstanding debts and obligations in their
5 reports. *See* 2 U.S.C. § 434(b)(8).

6 4. Debts and obligations must be continuously reported until they are extinguished.
7 11 C.F.R. § 104.11(a). Debts of \$500 or less must be reported no later than 60 days after the
8 obligation is incurred, while debts of more than \$500 must be reported as of the date the
9 obligation is incurred. 11 C.F.R. § 104.11(b).

10 5. Section 104.11(b) of the Commission's regulations provides that regularly
11 recurring administrative expenses will be treated as debt when payment is due. If a committee
12 does not pay an employee for services rendered to the committee in accordance with an
13 employment contract or a formal or informal agreement to do so, the unpaid amount may be
14 treated as debt owed by the committee to the employee, or the employee can sign a written
15 agreement to convert his or her status to a volunteer. 11 C.F.R. § 100.74. If the unpaid amount
16 is treated as debt, the committee must continue to report the debt in accordance with 11 C.F.R.
17 §§ 104.3(d) and 104.11 until the debt is extinguished, until the Commission has completed a
18 review of a debt settlement plan pursuant to 11 C.F.R. § 116.7(f), or until the employee agrees to
19 become a volunteer, whichever occurs first. 11 C.F.R. § 116.6.

20 6. Between January 15, 2006 and May 31, 2006, or ten pay periods, RPM withheld
21 retirement contributions totaling \$7,623 from four employees. During this time period, RPM did
22 not make any payments to Ameriprise Financial Services ("AFS"), the vendor that maintained
23 RPM employees' retirement accounts.

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1 7. On June 6 and 16, 2006, RPM made two "catch up" payments to AFS totaling
2 \$12,243. Beginning June 30, 2006, all funds withheld by RPM were forwarded on a monthly
3 basis.

4 8. RPM failed to report \$7,623 in withheld employee retirement contributions as debt
5 without either a debt settlement plan or volunteer services agreement in violation of
6 2 U.S.C. § 434(b).

7 9. RPM failed to disclose at least \$994,319 in outstanding debt to vendors during
8 2006 in violation of 2 U.S.C. § 434(b). Of this total, RPM has not disclosed \$552,867 in debts
9 owed to four of its vendors during calendar year 2006, and RPM disclosed \$441,452 in May
10 2008 when it filed amendments to its 2006 disclosure reports. The majority of this \$441,452 in
11 additional debts was disclosed on multiple amended 2006 reports because they were repaid after
12 several reporting periods. The total of \$441,452 is the total of the increases in debt on each
13 report. The amended reports disclosed a total of \$83,277.49 in unique debt that had not been
14 disclosed on the original reports.

15 10. RPM also failed to report unreimbursed staff expense reports as outstanding debt
16 in violation of 2 U.S.C. § 434(b).

17 11. The Act provides that no person shall make contributions to a state party
18 committee's federal account in any calendar year which in the aggregate exceed \$10,000, and
19 prohibits the state committee from knowingly accepting such contributions. 2 U.S.C. § 441a(a)
20 and (f).

21 12. Under Minnesota campaign finance law, there is no contribution limit for
22 permissible sources giving to political parties. See Minnesota Statute Chapter 10A, Section 27.

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1 13. Where a committee has established both a federal and a non-federal account, only
2 funds subject to the limitations and prohibitions of the Act shall be deposited into such separate
3 federal account. 11 C.F.R. § 102.5(a)(1)(i).

4 14. A state party committee may transfer funds from its non-federal account to its
5 federal account solely to meet allocable expenses, such as administrative costs that are not
6 directly attributable to a clearly identified federal candidate. 11 C.F.R. § 106.7(f). Under this
7 provision, the committee must pay the entire amount of an allocable expense from its federal
8 account and transfer funds from its non-federal account to the federal account solely to cover the
9 non-federal share of that allocable expense. 11 C.F.R. § 106.7(f)(1)(i).

10 15. RPM incurred \$2,736,692 in administrative expenses during the 2006 election
11 cycle. The federal share of these expenses totaled \$574,342 and the non-federal share totaled
12 \$2,162,350. During this same time period, RPM made 51 transfers from its non-federal account
13 totaling \$2,723,202.

14 16. RPM made \$560,852 in excessive transfers from its non-federal account to its
15 federal account for allocated administrative expenses in violation of 2 U.S.C. § 441a(f) and
16 11 C.F.R. §§ 102.5(a) and 106.7(f).

17 17. RPM contends that the errors and omissions in its 2006-2008 reports were not
18 intentional and in 2007-2008 RPM acted proactively to address the issues involved by retaining
19 an accounting firm to conduct a comprehensive audit of its financial records. In 2008 RPM
20 further acted proactively to address the issues involved by filing more than 50 amendments to its
21 reports. However, these amendments did not disclose all previously undisclosed debt. RPM has
22 taken affirmative steps to ensure that such errors and omissions do not occur again by retaining a

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1 compliance company to prepare its reports, as well as federal campaign finance counsel that
2 serves as counsel to a number of Republican state party committees.

3 V. Respondents committed the following violations:

4 1. Respondents violated 2 U.S.C. § 434(b) by failing to report debts and obligations.

5 2. Respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.7(f) by
6 making excessive transfers from the Committee's non-federal account to its federal account for
7 allocated administrative expenses.

8 VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of
9 One Hundred and Seventy Thousand Dollars (\$170,000) pursuant to 2 U.S.C.

10 § 437g(a)(5)(A). The civil penalty will be paid as follows:

11 1. A payment of Twenty Thousand Dollars (\$20,000) is due no more than thirty (30)
12 days from the date this Agreement becomes effective;

13 2. Thereafter, ten consecutive monthly installment payments of Fifteen Thousand
14 Dollars (\$15,000) each;

15 3. Each such installment shall be paid within thirty (30) days of the due date of the
16 previous installment.

17 4. In the event that any installment payment is not received by the Commission by the
18 fifth day after which it becomes due, the Commission may, at its discretion, accelerate the
19 remaining payments and cause the entire amount to become due upon ten days written notice to
20 the Respondents. Failure by the Commission to accelerate the payments with regard to any
21 overdue installment shall not be construed as a waiver of its right to do so with regard to future
22 overdue installments.

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- 1 VII. 1. Respondents will cease and desist from violating 2 U.S.C. §§ 434(b) and 441a(f) and
2 11 C.F.R. §§ 102.5(a) and 106.7(f).
- 3 2. Respondents will take the following steps:
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- 5 A. Require RPM personnel responsible for preparing RPM's reports and complying
6 with the Act and Commission regulations to attend a Commission-sponsored training program
7 during 2011-2012. Respondents shall submit to the Commission evidence of registration and
8 attendance at such event.
- 9 B. Prepare an internal training manual, prepared by experienced federal campaign
10 finance counsel, to assist appropriate personnel in understanding the reporting requirements of
11 the Act and Commission regulations. Within five months of the effective date of this
12 Agreement, Respondents shall submit to the Commission a copy of their internal training
13 manual.
- 14 C. Retain experienced federal campaign finance counsel to review RPM reports
15 before they are filed with the Commission.
- 16 VIII. Respondents will amend the relevant 2006 disclosure reports to accurately reflect debts and
17 obligations referenced at paragraphs IV.8 and IV.9 within 60 days.
- 18 IX. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1)
19 concerning the matters at issue herein or on its own motion, may review compliance with
20 this agreement. If the Commission believes that this agreement or any requirement thereof
21 has been violated, it may institute a civil action for relief in the United States District Court
22 for the District of Columbia.
- 23 X. This agreement shall become effective as of the date that all parties hereto have executed
24 same and the Commission has approved the entire agreement.

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- 1 XI. Respondents shall have no more than 30 days from the date this agreement becomes
2 effective, unless otherwise specified, to comply with and implement the requirements
3 contained in this agreement and to so notify the Commission.
- 4 XII. This Conciliation Agreement constitutes the entire agreement between the parties on the
5 matters raised herein, and no other statement, promise, or agreement, either written or oral,
6 made by either party or by agents of either party, that is not contained in this written
7 agreement shall be enforceable.

8 FOR THE COMMISSION:

9 Christopher Hughey
10 Acting General Counsel

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12 BY: Kathleen M. Guith
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14 Kathleen M. Guith
15 Acting Associate General Counsel for Enforcement
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8/16/11
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18 FOR THE RESPONDENTS:

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Michael E. Toner
Michael E. Toner
Counsel
Republican Party of Minnesota

7/28/11
Date

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

In the matter of)
) MUR 5926
Marina Taubenberger)

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission (“the Commission”) by Citizens for Responsibility and Ethics in Washington, Melanie Sloan, and Diane Gerth. See 2 U.S.C. § 437g(a)(1).

II. ANALYSIS

Because Marina Taubenberger was the Republican Party of Minnesota’s treasurer during the 2006 election cycle at the time of the events described in the complaint, the complaint in this matter named her as a respondent and specifically alleged that she violated 2 U.S.C. § 434(b) by failing to disclose certain debts and obligations. However, at the time the complaint was filed, Ms. Taubenberger was no longer the treasurer for the Committee. In accordance with the Commission’s policy on treasurers, only the current treasurer of a political committee will be named in his or her official capacity, unless information indicates that a treasurer has knowingly and willfully violated a provision of the Act or regulations, or has recklessly failed to fulfill duties specifically imposed on treasurers by the Act, or has intentionally deprived himself or herself of the operative facts giving rise to the violation. See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (January 3, 2005). In that case, a past or present treasurer may be named in his or her personal capacity. The evidence in this matter does not indicate Ms. Taubenberger should be held liable in her personal capacity. Accordingly, there is no reason to believe that Marina Taubenberger violated 2 U.S.C. § 434(b).