

APR 18 2008

FEDERAL ELECTION COMMISSION
999 E Streets, N.W.
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5954
DATE COMPLAINT FILED: November 20, 2007
DATE OF NOTIFICATION: November 28, 2007
LAST RESPONSE RECEIVED: January 18, 2008
DATE ACTIVATED: January 31, 2008

EXPIRATION OF SOL: August 27, 2012

COMPLAINANT: Dwight Peltz, Chairman of the Washington State Democrats

RESPONDENTS: Reichert Washington Victory Committee and
Keith Davis, in his official capacity as treasurer
Friends of Dave Reichert and Paul Kilgore,
in his official capacity as treasurer
Representative Dave Reichert
Washington State Republican Party and
Ed Mitchell, in his official capacity as treasurer
Lee Ann Farrell

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A) and (D)
2 U.S.C. § 441a(f)
2 U.S.C. § 441i(e)(1)
11 C.F.R. § 102.17
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 110.1(b) and (c)(5)

INTERNAL REPORTS CHECKED: Federal Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter arises from a complaint alleging that the Reichert Washington Victory Committee and Keith Davis, in his official capacity as treasurer ("RWVC"), the Friends of Dave

1 Reichert and Paul Kilgore, in his official capacity as treasurer ("FDR"), and the Washington
2 State Republican Party and Ed Mitchell, in his official capacity as treasurer ("WSRP"), violated
3 the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to comply with
4 the accounting and reporting requirements for conducting joint fundraising activities in
5 connection with an August 27, 2007 reception honoring Representative Dave Reichert. *See*
6 11 C.F.R. § 102.17. The complaint also asserts that Representative Dave Reichert violated
7 2 U.S.C. § 441i(e) by soliciting and raising contributions that were in excess of federal limits.
8 Finally, the complaint alleges that Friends of Dave Reichert accepted an excessive contribution
9 from respondent Lee Ann Farrell in connection with the August 27th event. *See* 2 U.S.C.
10 §§ 441a(a)(1)(A) and 441a(f).

11 After evaluating the available evidence, including three signed declarations submitted by
12 the respondents, we recommend that the Commission: dismiss with admonishment the allegation
13 that the Reichert Washington Victory Committee and Keith Davis, in his official capacity as
14 treasurer, violated 11 C.F.R. § 102.17(c); find no reason to believe that Friends of Dave Reichert
15 and Paul Kilgore, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R.
16 § 102.17(c); find no reason to believe that the Washington State Republican Party and Ed
17 Mitchell, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c); find no reason to
18 believe that Representative Dave Reichert violated 2 U.S.C. § 441i(e); and find no reason to
19 believe that Lee Ann Farrell violated 2 U.S.C. § 441a(a)(1)(A).

20 II. FACTUAL SUMMARY

21 The Reichert Washington Victory Committee is a joint fundraising committee formed
22 pursuant to 11 C.F.R. § 102.17 by Friends of Dave Reichert and the Washington State
23 Republican Party. *See* Statement of Organization, dated August 8, 2007. As such, the RWVC

1 established a separate depository account used solely for receiving federally permissible
2 contributions and distributing net proceeds to its participating committees, FDR and WSRP. *Id.*;
3 11 C.F.R. § 102.17(c)(3)(i). On August 27, 2007, the RWVC hosted a fundraising reception
4 honoring Reichert and featuring President George W. Bush. The invitation invited recipients to
5 purchase, by check made payable to the RWVC or by credit card, VIP reception tickets for
6 \$10,000 (given or raised) or "attendee" tickets for \$1,000.

7 The invitation also included a disclaimer outlining the allocation of funds raised in
8 connection with the event.¹ *See* Complaint, Exhibit A. In pertinent part, this disclaimer stated
9 that fundraising proceeds would be distributed to FDR "to the extent permitted by" the Act and
10 any remaining funds would be transferred to the WSRP's federal account. *Id.* According to the
11 disclaimer, funds constituting excessive or prohibited contributions under the Act would be
12 refunded. Invitees were also informed that, notwithstanding the allocation formula, they were
13 free to designate their contribution to either participant. *Id.* Further, the disclaimer stated that
14 the allocation formula was subject to change in the event contributions were received that
15 exceeded the amount a contributor could give to either participant under federal law. *Id.*

16 Invitation recipients made credit card contributions to the subject event through the
17 RWVC's website or by telephone. *See* Response, Declaration of Eric Yates, ¶¶ 2 and 4.
18 According to FDR's Finance Director Eric Yates, the respondents believed that credit card
19 contributions to the joint fundraising event could be electronically processed using FDR's
20 merchant number and then routed into the RWVC's account. *Id.* at ¶ 4. However, due to what

¹ All participants in joint fundraising events must enter into a written agreement that identifies the fundraising representative and sets out the formula for allocating proceeds. 11 C.F.R. § 102.17(c)(1). Although the written agreement need not be filed with the Commission, it must be retained by the fundraising representative for at least three years and made available to the Commission on request. *Id.* The participants are also to use the formula to allocate the expenses incurred in fundraising. 11 C.F.R. § 102.17(b)(3)(i).

1 the response describes as a "miscommunication," these credit card contributions were
2 electronically deposited directly into FDR's account instead of the joint fundraising committee's
3 account. Response at 2; Yates Declaration at ¶ 4. Apparently, FDR discovered after the event
4 that a coding error on the RWVC's webpage prevented credit card contributions from being
5 automatically transferred into the RWVC's account. Yates Declaration at ¶ 5. Further, because
6 the processing company had placed the funds into a "suspense" account, the respondents were
7 unable to manually release the funds into the joint fundraising account. According to Yates, the
8 bank informed the respondents that the funds could only be released into an account associated
9 with the merchant identification number, which meant that the joint fundraising proceeds had to
10 be released into FDR's account. *Id.* at ¶¶ 5 and 6. As a result, FDR deposited a total of \$93,600
11 of these credit card contributions into its account and reported them as direct contributions in its
12 2007 October Quarterly Report. See Attachment 1, Credit Card Contribution Chart. The 2007
13 October Quarterly Report reflects the receipt of these contributions from twelve (12) individuals
14 as well as the refund of \$44,600 in excessive contributions to these same individuals.² *Id.*

15 Respondent Lee Ann Farrell was one of the twelve individuals whose credit card
16 contribution was routed into FDR's account. According to the declaration submitted by Farrell,
17 she made a \$13,000 credit card donation to RWVC in response to an invitation to the August 27,
18 2007 event. Response, Declaration of Lee Ann Farrell at ¶ 2. Farrell states that at the time she
19 made her telephone contribution she understood "that the contribution was within the amount
20 legally permitted to be made in connection with the President's visit." *Id.* After all of Farrell's
21 contribution was unintentionally deposited into FDR's account, she was informed that her

² It appears that FDR began the process of arranging for a majority of these refunds prior to the actual release of funds into its account. FDR's 2007 October Quarterly Report indicates that seven (7) of the refunds were made prior to the date the contributions were reported as having been received by the committee.

1 contribution was in excess of the amount she was legally entitled to contribute to FDR and
2 within twenty-four hours issued her a refund in the amount of \$8,400.³ *Id.* at ¶ 3; *see* Attachment
3 1. Several weeks later, FDR issued an additional \$1,000 refund to Farrell from her August 2007
4 contribution after realizing that she had made a \$1,000 contribution to the campaign in March
5 2007. *Id.*

6 The complaint alleges that the RWVC, FDR and the WSRP failed to accurately account
7 for and report contributions raised in connection with the August 27, 2007 event honoring
8 respondent Reichert and featuring President George W. Bush in violation of 11 C.F.R. § 102.17.
9 According to the complaint, FDR admitted that some of the contributions raised at the event
10 were handled in violation of this regulation when it issued a statement that it had raised more
11 funds at the subject event than was reported by the RWVC, which was specifically established to
12 receive all contributions associated with the event. Complaint at 1; *see* 11 C.F.R. § 102.17(c).
13 In this press statement, which is attached to the complaint as Exhibit B, FDR states that the credit
14 card application used in processing contributions deposited money into the wrong account
15 resulting in electronic overpayments to FDR. *See* Response at Exhibit B (Press Release, Friends
16 of Dave Reichert, *Corrected Fundraising Numbers for Friends of Dave Reichert* (October 17,
17 2007)); *see also* Response at Exhibits C and D.

18 The respondents deny violating the Act in connection with the subject fundraising event
19 and assert that the RWVC accounted for all contributions it received and accurately reported all
20 receipts and expenses. *See* Response, Declaration of Keith Davis at ¶¶ 2 and 3. While
21 acknowledging that joint fundraising receipts were mistakenly deposited into FDR's account, the

³ The day after receiving this refund, Farrell contributed \$8,400 to RWVC, which committee in turn transferred that same amount of money to WSRP. *See* Attachment 1.

1 respondents contend that FDR appropriately reported all direct contributions it received in
2 connection with the joint fundraising solicitation, including the funds deposited as a result of the
3 processing error described *supra* at 3 and 4. Declaration of Yates at ¶¶ 6 and 8. According to
4 Finance Director Yates, because FDR "actually" received the credit card contributions, those
5 funds became reportable contributions by that committee as opposed to the RWVC. *Id.* at ¶ 6.
6 Further, the respondents assert that, although those contributions to FDR were excessive, the
7 committee arranged for refunds within the statutory period. *Id.* at ¶¶ 6 and 7.

8 The complaint also alleges that Reichert raised funds outside the statutory limits and that
9 FDR accepted excessive contributions from respondent Lee Ann Farrell in violation of the Act.
10 See 2 U.S.C. §§ 441i(e) and 441a(f). Complaint at 1 and 2. The response does not address the
11 allegation that Reichert violated 2 U.S.C. § 441i(e) in connection with the contributions raised
12 through the subject event, but denies that FDR accepted excessive contributions from Farrell.
13 Response at 1. The respondents state that the \$13,000 Farrell gave in response to the joint
14 fundraising solicitation was well within the Act's contribution limits because she was entitled to
15 contribute a total of \$4,600 (\$2,300 per election) to FDR and \$10,000 to a state party committee.
16 See 2 U.S.C. § 441a(a)(1)(A) and (D); 11 C.F.R. § 110.1(b) and (c)(5). Further, the respondents
17 note that pursuant to the event invitation's disclaimer, the only amounts due to be allowed to
18 FDR were within the available contribution limits. *Id.* Finally, the respondents assert that even
19 if Farrell's contribution in response to the subject event solicitation is considered an excessive
20 contribution to FDR due to its processing error, the excessive portion of the contribution was
21 returned to her within the sixty days permitted for refunding excess contributions. Response at
22 2; see 11 C.F.R. § 103.3(b)(3).

III. LEGAL ANALYSIS

A. Alleged Violations of the Joint Fundraising Regulations

1. The Reichert Washington Victory Committee

Commission regulations stipulate that joint fundraising representatives, such as the RWVC, are responsible for collecting contributions, paying costs, distributing the proceeds of the joint endeavors, and for satisfying the recordkeeping and reporting responsibilities of political committees. 11 C.F.R. § 102.17(b)(1). The fundraising representative is also required to establish a separate account into which all joint fundraising receipts are to be deposited within 10 days of receipt and from which all disbursements are to be made. 11 C.F.R. § 102.17(c)(3)(i) and (ii).

As the fundraising representative for FDR and the WSRP, the RWVC was responsible for depositing all contributions raised in connection with the August 27, 2007 fundraising event into a separate account established for that purpose. 11 C.F.R. § 102.17(c)(3)(i) and (ii). The response admits that, as a result of a miscommunication relating to processing the funds electronically, some credit card contributions made in response to the joint fundraising invitation were not deposited into the RWVC's account as intended, but were instead deposited into FDR's account. Response at 2. Thus, it appears that the RWVC violated 11 C.F.R. § 102.17(c) by failing to accurately deposit \$92,600 in joint fundraising proceeds into its joint fundraising account. However, because the RWVC's violation was inadvertent and was promptly corrected, we do not believe pursuing this matter would be an efficient use of Commission resources. Therefore, we recommend that Commission dismiss the allegation that the Reichert Washington Victory Committee and Keith Davis, in his official capacity as treasurer, violated 11 C.F.R.

§ 102.17(c) and send an admonishment letter as to its failure to appropriately deposit joint fundraising proceeds into its joint fundraising account.

2. Friends of Dave Reichert and the Washington State Republican Party

The complaint alleges that FDR and the WSRP also violated the Act by failing to comply with the rules for conducting joint fundraising activities in connection with the August 27, 2007 event. As discussed above, it is the joint fundraising representative, as opposed to the participating committees, who is accountable under Commission regulations for the collection and deposit of joint fundraising proceeds. 11 C.F.R. § 102.17(c). Thus, FDR and the WSRP, as participating committees, are not legally responsible for the failure to appropriately deposit \$93,600 in joint fundraising proceeds into the RWVC's account. Therefore, we recommend that the Commission find no reason to believe that Friends of Dave Reichert and Paul Kilgore, in his official capacity as treasurer, and the Washington State Republican Party and Ed Mitchell, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c) in connection with this matter.

B. Representative Dave Reichert Did Not Violate 2 U.S.C. § 441i(e)

The complaint alleges that respondent Reichert violated 2 U.S.C. § 441i(e) by raising contributions from respondent Lee Ann Farrell and others that exceeded the Act's contribution limitations.⁴ Federal officeholders and candidates are prohibited from soliciting, receiving, directing, transferring or spending funds in connection with either federal or non-federal elections, unless the funds comply with federal contribution limits and source restrictions. 2 U.S.C. § 441i(e)(1)(A) and (B); 11 C.F.R. §§ 300.61 and 300.62. Specifically, federal officeholders and candidates, such as Reichert, may not raise funds in connection with federal elections that exceed the applicable limits and prohibitions.

⁴ The complaint does not specifically identify or discuss the other eleven (11) contributors whose credit card contributions to the RWVC were also deposited into FDR's account.

1 Based on the solicitation at issue as well as the available evidence, it does not appear that
2 Reichert violated 2 U.S.C. § 441i(e). The evidence indicates that the invitation to this event was
3 expressly limited to soliciting federally permissible funds for FDR with the remainder going to
4 WSRP's federal account (which could accept up to \$10,000 in any calendar year). 2 U.S.C.
5 § 441a(a)(1)(D) and 11 C.F.R. § 110.1(c)(5). In pertinent part, the disclaimer affixed to the
6 bottom of the invitation states,

7 [j]oint fundraising proceeds will be allocated as follows: Funds will be
8 distributed to Friends of Dave Reichert to the extent permitted by the
9 Federal Election Campaign Act of 1971, as amended ("the Act")
10 (maximum of \$2,300 per individual per election and a maximum of \$5k
11 per federal multi-candidate political action committee per election). In
12 the event funds remain that would constitute an excessive contribution
13 to the campaign, such funds shall go to the WSRP federal account. In
14 the event funds remain that would constitute an excessive or prohibited
15 contribution under the Act, such funds shall be refunded.
16

17 Complaint at Exhibit A.

18 Accordingly, because the solicitation for the subject event was expressly and entirely
19 limited to amounts that complied with the Act, this Office recommends that the Commission find
20 no reason to believe that Representative Dave Reichert violated 2 U.S.C. § 441i(e).

21 **C. Lee Ann Farrell Did Not Make, and Friends of Reichert Did Not Accept, an**
22 **Excessive Contribution in Connection with the August 27, 2007 Event**
23

24 The complaint alleges that FDR accepted an excessive contribution from respondent
25 Farrell in connection with the August 27, 2007 event. *See* 2 U.S.C. §§ 441a(a)(1)(A) and
26 441a(f). The Act limits individual contributions to a candidate's authorized committee to \$2,300
27 per election. 2 U.S.C. § 441a(a)(1)(A); *see also* 11 C.F.R. § 110.1(b). Contributions that on
28 their face exceed the Act's contribution limits may be either deposited into a campaign
29 depository or returned to the contributor. If any such contribution is deposited the treasurer may

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1 request redesignation or reattribution of the contribution by the contributor. If a redesignation or
2 reattribution is not obtained, the treasurer is required to refund the contribution to the contributor
3 within sixty (60) days of receipt. 11 C.F.R. § 103.3(b)(3).

4 The available evidence in this matter does not support a finding that Farrell made and
5 FDR accepted an excessive contribution. Farrell was entitled to make a total of \$4,600 in
6 contributions to FDR for the primary and general elections and a \$10,000 annual contribution to
7 the WRSP. 2 U.S.C. § 441a(a)(1)(A) and (D); 11 C.F.R. § 110.1(b) and (c)(5). As described
8 *supra* at 4 and 5, Farrell received an invitation to the subject fundraising event and responded by
9 making a \$13,000 credit card contribution. Farrell Declaration at ¶ 2. Due to the previously
10 described miscommunication, the entire amount of her contribution to the joint fundraising
11 committee was deposited into FDR's account. It appears that FDR immediately informed Farrell
12 what had occurred and within twenty-four hours refunded \$8,400 out of the \$13,000 she
13 contributed to the joint fundraising committee. *Id.* at ¶ 3. FDR also refunded an additional
14 \$1,000 on October 16, 2007 once it realized Farrell had made a \$1,000 contribution to the
15 campaign in March of 2007. *Id.* It appears FDR retained \$4,600 out of Farrell's \$13,000
16 contribution with her approval, which was the maximum amount that Farrell could contribute to
17 the candidate committee.

18 Therefore, while FDR initially received an excessive contribution from Farrell in the
19 amount of \$13,000, it remedied the matter by refunding the excessive portion of the contribution
20 in a timely manner. 11 C.F.R. § 103.3(b)(3). As for Farrell, she would not appear to be liable
21 for the RWVC's apparent mishandling of this contribution. Accordingly, we recommend that
22 the Commission find no reason to believe that Lee Ann Farrell violated 2 U.S.C. § 441a(a)(1)(A)

and no reason to believe that Friends of Dave Reichert and Paul Kilgore, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f).

IV. RECOMMENDATIONS

1. Dismiss the allegation that the Reichert Washington Victory Committee and Keith Davis, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c) and send an admonishment letter;
2. Find no reason to believe that Friends of Dave Reichert and Paul Kilgore, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.17(c);
3. Find no reason to believe that Washington State Republican Party and Ed Mitchell, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c);
4. Find no reason to believe that Representative Dave Reichert violated 2 U.S.C. § 441i(e);
5. Find no reason to believe that Lee Ann Farrell violated 2 U.S.C. § 441a(a)(1)(A);
6. Approve the attached Factual and Legal Analyses;
7. Approve the appropriate letters, and;
8. Close the file.

Date

4/18/08

Thomasenia P. Duncan
General Counsel

BY: Mark D. Shenkweiler
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