



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Eric Ring, JD, LLM
2335 Darby Rd.
Havertown, PA 19083

JUL 29 2009

RE: MUR 6088
Haverford Township Democratic Committee

Dear Mr. Ring:

On October 14, 2008, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On July 14, 2009, the Commission found, on the basis of the information in the complaint, information provided by your client, and other available information, that there is no reason to believe Haverford Township Democratic Committee violated 2 U.S.C. §§ 441i(b) and 441d(a). Accordingly, the Commission closed its file 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). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Phillip Olaya, the attorney assigned to this matter, at (202) 694-1571.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler", with a long horizontal line extending to the right.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

29044251179

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6088

RESPONDENT: Haverford Township Democratic Committee

I. FACTUAL BACKGROUND

Respondent, Haverford Township Democratic Committee, is a local political party committee in Pennsylvania. The Committee does not have a federal account and is not registered with the Commission. In September 2008, the Committee ordered 20,000 newsletters, at the cost of \$1,480.60, that contained information about federal, state, and local Democratic Party candidates. See MUR 6088 Response (Attach. 1). Committee volunteers distributed the newsletters before the election in November. *Id.* at 2.

The newsletter urges voters to elect two federal and three nonfederal Democratic candidates and includes material on the candidates' positions, biographical information, previous legislative accomplishments, and features statements each candidate has made on a selected issue.¹ MUR 6088 Complaint (Attach. 1). The newsletter also provides voting information, including the voter registration deadline, absentee ballot information, and the date of the general election. *Id.* (Attach. 1). A disclaimer at the bottom of the newsletter reads, "Paid for by the Haverford Township Democratic Committee" and includes the link for the Committee's website (www.HaverfordDemocrats.com). *Id.* (Attach. 1).

¹ The candidate statements include: "Barack Obama on Economic Prosperity;" "Congressman Joe Sestak on Health Security;" "State Rep. Daylin Leach for State Senator on Education Equality;" "State Representative Greg Vitali on Environmental Responsibility;" and "Dan Siegel for 4th Ward Commissioner on Integrity." MUR 6088 Complaint (Attach. 1).

29044251181

1 The Committee website includes voter information, a calendar of events, and links to the
2 Democratic National Committee's website and the websites of specific Democratic Party
3 candidates. See <http://www.haverforddemocrats.com>. Respondent asserts that its website "does
4 not contain any political information on federal candidates." MUR 6088 Response at 2. At the
5 time Complainant filed the complaint with the Commission, this website did not include a
6 disclaimer. *Id.* at 2 (stating "[the] webpage does not include a statement that the web page was
7 paid for by the [Committee]. It is obvious that the Haverford Township Democratic Committee
8 pays for its own web page . . ."). A disclaimer has since been added to the website. See
9 <http://www.haverforddemocrats.com> (stating "Paid for by the Haverford Township Democratic
10 Party Committee") (last visited June 9, 2009).

11 Finally, the Committee's website includes a link to "Contribute." See *id.* The ensuing
12 webpage provides a physical address for contributions via check as well as an option to make
13 contributions online. The Complaint asserts that the online contribution page violates the Act
14 because it does not include disclaimers that the Committee is raising funds for federal candidates
15 nor information about applicable federal contribution limits. MUR 6088 Complaint.
16 Respondents assert that the website does not raise funds for any federal candidate. MUR 6088
17 Response at 2.

18 **II. ANALYSIS**

19 We conclude that Respondents have not violated the Act. Although the newsletter does
20 not qualify for the slate card exemption claimed by Respondents, it nevertheless can be paid for
21 with nonfederal funds under the volunteer materials exemption. The newsletter contains an
22 appropriate disclaimer. Further, because the Committee website and online contribution form
23 contain no information about, nor solicit contributions for, federal candidates, they do not require

1 a disclaimer. Finally, the Commission does not have jurisdiction over Pennsylvania state
2 election laws.

3 **A. Slate card exemption**

4 While Respondent asserts that the newsletter could be paid for with nonfederal funds
5 under the slate card exemption, we disagree. Under the Act, expenditures by state and local
6 political party committees of the costs incurred to prepare, display, mail, or otherwise distribute a
7 printed slate card, sample ballot, or "other printed listing(s)" of three or more candidates for any
8 public office who are to be elected in the relevant state are exempt from the definitions of
9 "contribution" or "expenditure." 2 U.S.C. § 431(9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147.

10 Materials subject to the slate card exemption, however, may only include basic candidate
11 and voting information such as allowing (1) information identifying candidates by name or by
12 means of a picture; (2) the office or position currently held by the candidates; (3) the elective
13 office being sought by the candidates; (4) party affiliation; and (5) voting information, such as
14 the time and place of an election and instructions on the method for voting a straight party ticket.
15 Advisory Opinion 2008-06 (Virginia Democratic Party). Publications that go beyond these
16 informational limitations and provide additional biographical information, descriptions of
17 candidates' positions on the issues, or statements of party philosophy, however, do not qualify
18 for the slate card exemption. See Advisory Opinions 1978-09 (Republican State Central
19 Committee of Iowa) and 1978-89 (Withers) (slate card exemption does not apply to campaign
20 material that contained excess biographical data, outlined candidates' positions, criticized
21 incumbent officials, and included statements of party philosophy).

22 The Committee's newsletter includes candidate statements that inform voters of the
23 candidates' prior legislative accomplishments on specific issues and their plans to pursue those

1 issues in the office they are seeking. In one candidate statement entitled, "Congressman Joe
2 Sestak on Health Security," the narrative reads, "Upon being elected to Congress in 2006, one of
3 the first priorities I set was to address healthcare reform." MUR 6088 Complaint (Attach. 1).
4 The narrative then continued by listing his accomplishments while serving on two Congressional
5 Committees that deal with health care. *Id.* (Attach. 1). Similar statements include: "Barack
6 Obama on Economic Prosperity;" "State Rep. Daylin Leach for State Senator on Education
7 Equality;" "State Representative Greg Vitali on Environmental Responsibility;" and "Dan Siegel
8 for 4th Ward Commissioner on Integrity." *Id.* (Attach. 1). Accordingly, the newsletter does not
9 qualify for the slate card exemption.

10 **B. Volunteer materials exemption**

11 Under the Act, a local committee's payment for campaign materials, including a
12 newsletter, "in connection with volunteer activities . . . is not a contribution." 2 U.S.C. §
13 431(9)(B)(viii) and 11 C.F.R. §§ 100.87 and 100.147. To qualify for the exemption, a state or
14 local committee must pay for the newsletters under the conditions that: (1) the committee's
15 payment for the campaign material is not for "general public communication or political
16 advertising," which includes direct mail; (2) the portion of the payment allocable to a federal
17 candidate "must be paid from contributions subject to the limitations and prohibitions of the
18 Act;" (3) the committee's payment must not be paid for from funds designated for a particular
19 federal candidate by the donor; (4) campaign materials must be "distributed by volunteers and
20 not by commercial or for-profit operations;" (5) the committee's payment must have been
21 disclosed as a disbursement; and (6) campaign materials must not be purchased either directly by
22 a national committee or with funds donated by the national committee to the state committee "for
23 the purchase of such materials." 11 C.F.R. §§ 100.87(a)-(e), (g) and 100.147(a)-(e), (g).

1 Based on the available information, the newsletter appears to satisfy the regulatory
2 requirements necessary to qualify for the volunteer materials exemption. First, the newsletter
3 was not a general public communication or political advertising distributed via broadcast,
4 newspaper, magazine, billboard, or direct mail. 11 C.F.R. §§ 100.87(a) and 100.147(a). Indeed,
5 the newsletter was distributed by local volunteers. MUR 6088 Response at 2. Second, a review
6 of the Committee's state campaign finance report indicates that the Committee had sufficient
7 federal eligible funds at the time of the disbursements for the newsletters at issue. Specifically,
8 the newsletters cost \$1,480.60 to produce while pre-election reports with the state's campaign
9 finance authority revealed the Committee had \$12,607.99 in total available funds at the time the
10 newsletters were produced and that its receipts consisted of funds received from individual
11 donors in amounts less than the federal limit of \$2,300. Third, Complainant and Respondent
12 provide no information, and there is no other available information that suggests that the
13 Committee used funds designated for a particular federal candidate. Finally, Respondent
14 maintains that because it does not raise funds on behalf of federal candidates, it is under no
15 obligation to report disbursements in accordance with the Act. *Id.*

16 Accordingly, the Commission finds no reason to believe that the Haverford Township
17 Democratic Party violated the Act by using nonfederal funds for newsletters that qualify as
18 exempt volunteer materials pursuant to 2 U.S.C. § 431(9)(B)(viii).

19 **C. Disclaimer**

20 The Act requires a disclaimer "when any person makes a disbursement for the purpose of
21 financing communications expressly advocating the election or defeat of a clearly identified
22 candidate . . ." 2 U.S.C. § 441d(a). *See also* 11 C.F.R. § 110.11(a)(2) (requiring a disclaimer for
23 "All public communications . . . by any person that expressly advocate the election or defeat of a

1 clearly identified candidate.”); 11 C.F.R. § 110.11(a)(3) (requiring a disclaimer for “All public
2 communications . . . by any person that solicit any contribution.”). A public communication
3 includes any broadcast, cable, or satellite communication, telephone bank, mass mailing, or
4 general public political advertising. 11 C.F.R. § 100.26.

5 The disclaimer must be presented in a “clear and conspicuous manner” in order to give
6 the reader, observer, or listener “adequate notice of the identity of the person or political
7 committee that paid for and, where required, that authorized the communication.” 11 C.F.R. §
8 110.11(c)(1). A disclaimer, if paid for and authorized by a candidate or an authorized committee
9 of a candidate, must clearly state that the communication has been paid for by the authorized
10 political committee. 11 C.F.R. § 110.11(b)(1).

11 1. Newsletter disclaimer

12 Commission regulations provide that for exempt activities under 11 C.F.R. §§ 100.140
13 (slate cards and sample ballots), 100.147 (volunteer activity for party committees), 100.148
14 (volunteer activity for candidate), or 100.149 (voter registration and get-out-the-vote activities
15 for presidential candidates), “the disclaimer does not need to state whether the communication is
16 authorized by a candidate, or any authorized committee or agent of any candidate.” 11 C.F.R. §
17 110.11(e).

18 Because the Committee’s newsletter qualifies as exempt volunteer activity under 11
19 C.F.R. §§ 100.87 and 100.147, *see supra* Part II.B, it need only meet the disclaimer requirements
20 under 11 C.F.R. § 110.11(e) (stating “the disclaimer does not need to state whether the
21 communication is authorized by a candidate, or any authorized committee or agent of any
22 candidate.”). Respondent therefore maintains that the statement, “Paid for by the Haverford

1 Township Democratic Committee," meets the disclaimer requirements under the Act. MUR
2 6088 Response at 1.

3 As Respondent notes, the disclaimer is at the bottom of the first page of the newsletter
4 and states, "Paid for by the Haverford Township Democratic Committee" in at least 12-point
5 font, which meets the Act's disclaimer requirements. Accordingly, the Commission finds no
6 reason to believe that the Haverford Township Democratic Party violated 2 U.S.C. § 441d(a).

7 2. Website disclaimer

8 The Commission's definition of "public communication," which requires a disclaimer,
9 includes "paid Internet advertising placed on another person's website, but does not encompass
10 any other form of Internet communication." 71 Fed Reg. 18,589 (Apr. 12, 2006).

11 The Commission specifically concluded that the definition of "public communication"
12 should not be expanded to encompass state, district, and local party committee websites. *Id.* at
13 18,597. In the rulemaking, the Commission noted that "State, district, and local party committee
14 websites are not predominantly focused on Federal elections" and that content changed
15 frequently so that "a hyperlink to a Federal candidate from the home page of a State party
16 committee Web site one day" might be removed the next. *Id.* The rule excluding state, district,
17 and local committee websites, therefore, avoided the "difficult, if not impossible" task of
18 identifying and severing the costs of the federal portion of a state committee website. *Id.*

19 Because Respondent's website and online contribution form do not constitute public
20 communications, they are not "predominantly focused on Federal elections." 71 Fed. Reg. at
21 18,597. Accordingly, the Commission finds no reason to believe that the Haverford Township
22 Democratic Party website violated the Act's disclosure requirements. 71 Fed. Reg. at 18,589.