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999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6276

DATE COMPLAINT FILED: April 20, 2010

DATE OF NOTIFICATION: April 27, 2010

LAST RESPONSE RECEIVED: June 16, 2010

DATE ACTIVATED: June 28, 2010

EXPIRATION OF SOL:

Earliest Dec. 23, 2014/Latest Feb. 5, 2015

COMPLAINANT:

Mark Brewer

Chair, Michigan Democratic Party

RESPONDENTS:

Ron Weiser

Michigan Republican State Committee and

Carl Meyers, in his official capacity as treasurer

Ken McKay

Michael Steele

Republican National Committee and Randall

Pullen, in his official capacity as treasurer

Albert Berriz

Paula Berriz

Gaylen Byker

Thomas Celani

Vicki Celani

Michael Ferrantino

Kellie Ferrantino

Michael Jandernoa

Susan Jandernoa

John Kennedy

Nancy Kennedy

Robert Lynas

Joyce Lynas

William Parfet

Robert Thompson

William Young

Vivienne Young

1 RELEVANT STATUTES
2 AND REGULATIONS:

2 U.S.C. § 437g(a)(1)
2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
2 U.S.C. § 441f
11 C.F.R. § 110.1(h)
11 C.F.R. § 110.6
11 C.F.R. § 111.4

9 INTERNAL REPORTS CHECKED:

Disclosure Reports

11 FEDERAL AGENCIES CHECKED:

None

13 I. INTRODUCTION

14 The complaint in this matter alleges that the Michigan Republican State Committee
15 ("Michigan Republican Party" or "MRP"), its Chairman, Ron Weiser, the Republican National
16 Committee ("RNC"), its Chairman, Michael Steele, former RNC Chief of Staff Ken McKay, and
17 17 individual donors (collectively "Respondents") knowingly and willfully evaded individual
18 contribution limits, which resulted in excessive contributions to the MRP in violation of the
19 Federal Election Campaign Act of 1971, as amended ("the Act"). According to the complaint,
20 the excessive contributions resulted when Michigan-based donors who made direct contributions
21 to the MRP subsequently made direct contributions collectively totaling \$465,000 to the RNC in
22 December 2009 that were earmarked for the MRP. The complaint alleges that the RNC, in turn,
23 transferred those earmarked funds to the MRP in January and February 2010.

24 As discussed in further detail below, the allegations are not supported by available
25 information, and are rebutted by specific sworn denials submitted by the Respondents.
26 Therefore, we recommend that the Commission find no reason to believe that the Respondents
27 violated the Act by making or accepting excessive contributions in violation of 2 U.S.C.
28 § 441a(a)(1) or 441a(f).

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Summary**

3
4 The complaint alleges that contributions made to the RNC by some of the MRP's donors
5 in late 2009 were made as part of a scheme to knowingly and willfully evade the contribution
6 limits of the Act. The complaint cites to a news article from *The Daily Caller* internet news site
7 ("*Daily Caller* article") and to the RNC's disclosure reports filed with the Commission in
8 support of the allegations.

9 The *Daily Caller* article describes a scheme in which the RNC and the MRP agreed that
10 if the state party could raise half a million dollars for the RNC "to increase the RNC's 2009
11 fundraising numbers," then the RNC would "give the money back" to the MRP in the next
12 calendar year.¹ The article quotes an unnamed "former RNC official" who explained that, "[i]t
13 was a known secret that a deal had been struck on the topic," that it would benefit the MRP by
14 "getting guaranteed money," and benefit the RNC by helping it reach fundraising goals, and
15 allow donors "to give more money to the Michigan state party than the federal limit of 10k."
16 The complaint alleges that Michael Steele, Chairman of the RNC, and Ken McKay, RNC Chief
17 of Staff, were "behind the deal with Michigan party chair Ron Weiser." Complaint at 2.

18 The complaint also cites to the RNC's disclosure reports filed with the Commission,
19 which show that seventeen Michigan donors contributed the maximum allowed to the RNC
20 totaling \$456,000, on December 23 and December 31, 2009. Complaint at 2. Disclosure reports
21 also showed that the RNC made approximately \$500,000 in disbursements to the MRP in
22

¹ See Alex Pappas, *Former RNC official: Steele struck a deal with Michigan GOP to increase fundraising numbers, possibly to circumvent federal fundraising limits*, April 7, 2010, <http://dailycaller.com/2010/04/07/former-rnc-official-steele-struck-a-deal-with-michigan-gop-to-increase-fundraising-numbers-possibly-to-circumvent-federal-funding-limits> (last visited September 10, 2010).

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January and February 2010. *Id.* According to disclosure reports, five of the individual donors had contributed the maximum to the MRP in 2009.

The *Daily Caller* article indicates that Weiser, through a spokeswoman, denied any sort of deal stating that, "Michigan donors have a long history of contributing to the RNC and the RNC has a long history of supporting Michigan GOP efforts." However, the article noted that an MRP representative stated that she was not aware of any specific December fundraising events to explain the large donations, indicating only that many large donors make contribution decisions at the end of the year. The article also notes that none of Michigan's senators are up for election in 2010, that the state's primaries are held later than other states, yet Michigan received the most money from the RNC of all the states in January and February 2010. In response, an MRP representative apparently explained to the *Daily Caller* that the Michigan GOP began its victory program "earlier than any other state in the country." Complaint Attachment (*Daily Caller* Article).

All of the respondents deny violations of the Act. The MRP, Ron Weiser, Ken McKay, and fourteen (14) of the individual contributors submitted a joint response to the complaint ("MRP Response") that included 17 sworn affidavits.² The response challenges the sufficiency of the complaint because it was based on information from a press article quoting an anonymous source and denies that there was any scheme to evade the \$10,000 annual limit to the MRP. MRP Response at 2, Weiser Affidavit at ¶ 3, and McKay Affidavit at ¶ 3. The response explains that Chairman Weiser solicited contributions for the RNC from nine of the named respondents

² The fourteen contributors included in the MRP Response are the following: 1) Gaylen Byker, 2) Thomas Celani, 3) Vicki Celani, 4) Michael Ferrantino, 5) Kellie Ferrantino, 6) Michael Jandernoa, 7) Susan Jandernoa, 8) John Kennedy, 9) Nancy Kennedy, 10) Robert Lynas, 11) Joyce Lynas, 12) William Parfet, 13) William Young, and 14) Vivienne Young.

1 and that Robert Schostak, the MRP's Finance Chairman, solicited one additional contribution.
2 The MRP Response acknowledges that certain Michigan-based donors made contributions to the
3 RNC and that the RNC transferred funds to the MRP in January and February 2010, but it asserts
4 that the complaint distorts the contribution and transfer history in an effort to demonstrate a link
5 between the contributions and transfers. MRP Response at 3-4. It points out that, in addition to
6 the \$456,000 in contributions identified in the complaint, nine other Michigan residents made
7 maximum contributions of \$30,400 each to the RNC, totaling \$273,600, from November 18
8 through December 23, 2009. *Id.* The response also states that the complainant ignored seven
9 transfers from the RNC to the MRP that were completed between June 2009 and May 2010,
10 totaling \$256,967.72. MRP Response at 5-6.

11 In response to the complainant's questioning of contributions made by donors who had
12 never previously contributed to the RNC and by others who had never previously contributed the
13 annual maximum, the MRP points out that 13 of the 17 named respondents had contributed to
14 the RNC in the past, and 11 had previously contributed the maximum annual amount. MRP
15 Response 3. The MRP also notes that only a small number of the 17 individual contributors
16 named in the complaint had contributed the maximum \$10,000 annual amount to the MRP in
17 2009.³ *Id.* at 2. The Committee argues that "it is simply not the case that a history of lawful
18 contributions, or a history of not making contributions, can properly be viewed as evidence of an
19 'illegal scheme' in an enforcement matter." *Id.* at 3.

20

³ While the MRP's disclosure reports indicate that only five of the 17 individual respondents had contributed the annual maximum to the MRP in 2009, they also show that another eight of the 17 respondents contributed \$9,000 to the MRP in 2009 and that most of those respondents also contributed the maximum to the MRP's Levin account. Four of the 17 respondents did not contribute to the MRP at all in 2009.

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1 Weiser's and McKay's affidavits each "unequivocally state" that there was never an
2 illegal scheme to evade the \$10,000 annual limit to the MRP. Weiser and McKay Aff. at ¶ 3.
3 They explain that they were "unaware of any conversations between the Individual Respondents
4 and the RNC prior to the time that the contributions in question were made" during which the
5 intended purpose of the contributions would have been discussed. Weiser and McKay Aff. at ¶
6 4. Weiser also denies that he ever "suggest[ed] that the RNC would re-direct their contributions
7 from the RNC to the MRP." Weiser Aff. at ¶ 5. In his affidavit, McKay describes a December
8 2009 discussion with Weiser during which they discussed fundraising for the RNC but he avers
9 that he "did not discuss or otherwise propose or consider any program in which Chairman
10 Weiser would raise funds for the RNC that would then be transferred dollar-for-dollar to the
11 MRP." McKay Aff. at ¶ 5.

12 The sworn affidavits provided by the individual contributors are virtually identical to
13 each other.⁴ The donors indicate that their contributions to the RNC were voluntary, that their
14 contributions were "not earmarked in any way and [were] made with no conditions or
15 contingencies; there were absolutely no strings attached to [the] contribution," that they did not
16 retain control over their contributions once they made them, were "never told with any
17 specificity how the Republican National Committee would use my contribution," and that prior
18 to making their contributions they never spoke with anyone from the RNC about their
19 contributions. See Affidavits Attached to MRP Response. Some of the donors indicated that
20 they had been solicited by Weiser and/or Schostak, but their affidavits did not provide any
21 details of those discussions.

⁴ The affidavit of Thomas Celani differs slightly from the others in that it explains that because his business activities prevented him from donating in Michigan elections, he made his contribution to the RNC with the condition that "no funds would come back to Michigan." Celani Aff. at ¶ 4.

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1 Separate responses submitted by the remaining three individual contributors, Albert and
2 Paula Berriz and Robert Thompson, also state that their contributions were voluntary, made
3 without conditions, that they did not know how the RNC would use their contributions, and that
4 other than Weiser's solicitation, they had no discussions about the contributions with anyone
5 else. See Berriz Affidavits and Thompson Response and Affidavit. Thompson's response also
6 challenges the sufficiency of the complaint. Thompson Response at 1-2; see fn. 5 *infra*.

7 The response submitted on behalf of the RNC and Chairman Michael Steele included
8 sworn affidavits from Steele, Lindsey Drath, Director of the RNC's major donor program, and
9 Allyson Schmeiser, Deputy Director of the major donor program. In their response, Steele and
10 the RNC request dismissal of the complaint for the failure to state a violation and failure to
11 provide specific facts as evidence of the alleged scheme, and on the grounds that the independent
12 transactions at issue (i.e., the individual contributions to the RNC and the RNC's transfers to the
13 MRP) were permissible on their face. See RNC Response at 1-2. These respondents also argue
14 that there is no evidence in support of a violation under an earmarking theory or as a contribution
15 in the name of another. *Id.* at 2-3. The RNC response challenges the complainant's implication
16 that contributions from first-time donors are suspicious, noting that the RNC had 364,890 first-
17 time contributors in 2009. The RNC Response also notes that the complaint ignores 1,397 total
18 contributions from Michigan and 51,396 contributions from across the country made to the RNC
19 during the time period that is the focus of the complaint. RNC Response at 3.

20 In his affidavit, Steele denies knowledge of an illegal scheme to evade the \$10,000
21 annual individual limit to the federal account of the MRP, that any RNC employees discussed
22 the purpose of a contribution with any contributors named in the complaint, or that any MRP

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1 representative ever told contributors that their contributions would be redirected to the MRP.
2 Steele Aff. at ¶¶ 3-6. Steele also specifically states that he never had any discussions with any of
3 the contributors named in the complaint regarding the purpose of their contributions. *Id.* at ¶ 2.
4 However, he does not indicate whether RNC and MRP representatives ever discussed how the
5 contributions at issue would be used.

6 Drath's and Schmeiser's affidavits were substantially similar. They explain that in their
7 positions with the RNC they reviewed and processed contribution checks from the RNC's major
8 donors and as a result, they reviewed the contributions at issue. Drath and Schmeiser Affidavits
9 at ¶¶ 1-4. They each indicate that none of the contribution checks at issue was earmarked or
10 designated for any purpose, including for the MRP. Drath and Schmeiser Aff. at ¶ 5. They also
11 state that they never spoke to any of the contributors named in the complaint prior to their
12 contributions, never discussed the purpose for which the contributions would be used and had no
13 knowledge regarding the contributors' expectations or of any discussions between the
14 contributors and MRP representatives. Drath and Schmeiser Aff. at ¶¶ 6-7.

15 B. Analysis

16 Under the Act, an individual is permitted to contribute \$10,000 per calendar year to a
17 state political party and \$30,400 to a national political party committee. *See*
18 2 U.S.C. § 441a(a)(1)(B) and (D); *see also Price Index Increases for Contribution and*
19 *Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 74 Fed. Reg. 7435, 7437
20 (February 17, 2009). In addition, the Act permits unlimited transfers between a national party
21 committee and a state political party committee. 2 U.S.C. § 441a(a)(4). Notwithstanding the
22 fact that the individuals' direct contributions to the MRP and the RNC complied with the limits
23 of 2 U.S.C. § 441a(a)(1)(B) and (D) on their face, the complaint alleges that the RNC

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1 subsequently transferred the funds it received from the 17 contributors to the MRP pursuant to a
2 prior arrangement, resulting in excessive contributions to the MRP by those individuals.⁵
3 Complainants appear to argue that the contributions made by the individual contributors to the
4 RNC were earmarked to go back to the MRP, and should therefore, be aggregated with their
5 direct contributions to the MRP. However, this argument is not supported by the relevant
6 provisions of the Act or their corresponding regulations.

7 1. Earmarked Contributions and Aggregation

8 If individual donors earmark their contributions or make contributions with the
9 knowledge that they would be used to benefit a particular candidate, their contributions may be
10 excessive to the extent that they had already contributed the maximum to that candidate.⁶
11 Pursuant to the Act, an earmarked contribution (i.e., one with a designation, instruction, or
12 encumbrance, whether direct or indirect, express or implied, oral or written, which results in all
13 or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly

⁵ Some of the Respondents also question the sufficiency of the complaint, arguing that the complaint is speculative, based on an anonymous source rather than on personal knowledge, and fails to contain a clear recitation of the facts giving rise to a violation. See MRP Response at 1-2, RNC Response at 1-2 and Thompson Response at 1-2. However, the complaint filed in this matter complied with the Commission's statutory and regulatory requirements for legal sufficiency. 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4(b). The complaint was signed, sworn, identifies the complainant and the sources of his information in support of the allegations (i.e., a press report and Commission disclosure reports), and provides a recitation of facts that may give rise to a violation of the Act. The fact that the complaint relies partly on a press article quoting an anonymous source does not in and of itself render the complaint insufficient on its face. See, e.g., MUR 6023 (McCain/Loeffler Group). The Commission has the opportunity to weigh the information reported in the press article against other available information when it considers the recommendations in the First General Counsel's Report.

⁶ Commission regulations permit an individual to contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee, which has supported, or anticipates supporting, the same candidate in the same election without aggregation, as long as (1) the political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee; (2) the contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and (3) the contributor does not retain control over the funds. See 11 C.F.R. § 110.1(h)(1)-(3). See MURs 6221 (Transfund PAC), 5168 (John Sharning's Friends), 5732 (Mitt Romney for U.S. Senate), and 5819 (Keystone Federal PAC) (although donors might reasonably infer that their contributions would be used to benefit a particular candidate, such information was insufficient for finding reason to believe that 11 C.F.R. § 110.1(h) had been violated). See also MUR 5881 (Citizens Club for Growth) (rejecting claim that contributors had actual knowledge based on text of solicitations).

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1 identified candidate or a candidate's authorized committee), 11 C.F.R. § 110.6(b), counts against
2 the contributor's contribution limit for the recipient candidate. See 2 U.S.C. § 441a(a)(8),
3 11 C.F.R. § 110.6(a).⁷

4 However, unlike contributions earmarked to benefit particular candidates, the Act does
5 not mandate aggregation of an individual's direct contributions to *unauthorized* committees with
6 contributions earmarked to the same committees. See *Explanation and Justifications for*
7 *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations*
8 *and Earmarked Contributions*, 54 Fed. Reg. 34098, 34105 (August 17, 1989). In adopting a
9 revised earmarking regulation, the Commission explicitly chose not to extend the regulation to
10 "include contributions earmarked to other types of political committees" and concluded that
11 earmarked contributions to an unauthorized committee would not count against the original
12 contributors' limits for the committee. 54 Fed. Reg. at 34105. The RNC and MRP are not
13 authorized committees because they have not been authorized in writing by a candidate to solicit
14 or receive contributions or make contributions on behalf of such candidate. See 2 U.S.C.
15 § 431(6), 11 C.F.R. § 100.5(f)(2). Because the respondent committees are not authorized
16 committees, section 441a(a)(8) and its corresponding regulations do not apply. Therefore, even
17 if the contributions to the RNC were earmarked for the MRP, the amounts would not be
18

⁷ In the past, the Commission has determined that contributions were earmarked where there was clear documentary evidence demonstrating a designation or instruction by the donor, but has rejected earmarking based on circumstantial evidence where they lacked a clear designation or instruction. See MURs 4831/ 5274 (Nixon) (finding contributions were earmarked where checks contained express designations on memo lines). Without a clear designation, the Commission may examine whether a contributor had "actual knowledge" of the committee's plans to use his or her contribution to contribute to or expend funds on behalf of the candidate in order to determine whether the contribution counts against the limit for the recipient candidate. See 11 C.F.R. § 110.1(h)(1)-(3).

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1 aggregated to the contributions the same individuals made directly to the MRP. As a result, none
2 of the 17 individuals made excessive contributions to the MRP.

3 **2. Transmittal and Reporting Requirements**

4 Conduits forwarding earmarked contributions to unauthorized committees must "comply
5 with the time limits for forwarding the contributions as prescribed by 11 C.F.R. § 102.8," and the
6 unauthorized committee receiving the earmarked contributions is "required to report the amount
7 received as a contribution from the original contributors pursuant to 11 C.F.R. § 104.3(a)(4)."
8 54 Fed. Reg. at 34105 (citing Advisory Opinions 1983-18 and 1981-57). Therefore, if the
9 contributions at issue had been earmarked, the RNC would have been required to comply with
10 the time limits for forwarding contributions and reporting the amount received as contributions
11 from the original contributors.

12 Respondents have sufficiently rebutted the allegation that the contributions at issue were
13 earmarked. All of the individual respondents, in sworn affidavits, deny that they earmarked their
14 contributions to the MRP or that they had any knowledge how the RNC planned to use the
15 contributions. *See supra* at 6-7. Further, two RNC representatives who examined every major
16 donor's check have averred that no such designations were included on the checks or
17 accompanying documentation. *Id.* at 8; 11 C.F.R. § 110.6(b). There is no information to
18 contradict the Respondents' specific denials that they had any knowledge that their contributions
19

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would be used for the MRP. 11 C.F.R. § 110.1(h).⁸ Accordingly, the requirements for forwarding earmarked contributions and reporting the contributions are not applicable.

11 C.F.R. §§ 102.8 and 104.3(a)(4).

3. Conclusion

We recommend that the Commission find no reason to believe that Ron Weiser; the Michigan Republican State Committee and Carl Meyers, in his official capacity as treasurer; Ken McKay; Michael Steele; and the Republican National Committee and Randall Pullen, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f); and find no reason to believe that Albert Berriz; Paula Berriz; Gaylen Byker; Thomas Celani; Vicki Celani; Michael Ferrantino; Kellie Ferrantino; Michael Jandernoa; Susan Jandernoa; John Kennedy; Nancy Kennedy; Robert Lynas; Joyce Lynas; William Parfet; Robert Thompson; William Young; and Vivienne Young violated 2 U.S.C. § 441a(a)(1).

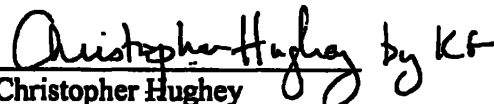
⁸ As with the alleged violation of the Act based on an earmarking theory, there is also no information to demonstrate the requisite knowledge necessary for a violation of 2 U.S.C. § 441f. The RNC's and MRP's denials of a scheme to evade contribution limits lower the possibility that they "knowingly" assisted in making contributions in the name of another, as required for a 441f violation. 11 C.F.R. § 110.4(b)(1)(iii). The RNC notes that a finding as to section 441f "would require evidence that the contributors knew their contributions to the RNC would be sent to the MRP" because the Commission's regulation requires that a person "knowingly permit his or her name to be used to effect that contribution" in the name of another. See RNC Response at 3; 11 C.F.R. § 110.4(b)(1)(ii). However, because of their sworn denials there is no information to support the allegations that the individual donors in this matter actively participated in such a scheme to evade contribution limits by allowing the RNC to make contributions on their behalf.

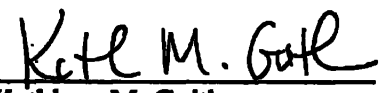
III. RECOMMENDATIONS

1. Find no reason to believe that Ron Weiser; the Michigan Republican State Committee and Carl Meyers, in his official capacity as treasurer; Ken McKay; Michael Steele; and the Republican National Committee and Randall Pullen, in his official capacity as treasurer violated 2 U.S.C. § 441a(f).
2. Find no reason to believe that Albert Berriz; Paula Berriz; Gaylen Byker; Thomas Celani; Vicki Celani; Michael Ferrantino; Kellie Ferrantino; Michael Jandernoa; Susan Jandernoa; John Kennedy; Nancy Kennedy; Robert Lynas; Joyce Lynas; William Parfet; Robert Thompson; William Young; and Vivienne Young violated 2 U.S.C. § 441a(a)(1).
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letters.
5. Close the file.

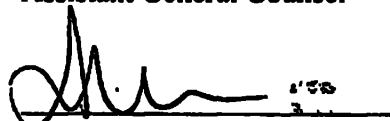
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