



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP - 9 2011

VIA FAX (202-479-1115) and FIRST CLASS MAIL

Neil P. Reiff, Esq.
Sandler, Reiff, Young & Lamb, P.C.
1025 Vermont Ave., NW, Suite 300
Washington, D.C. 20005

RE: MUR 6464
South Carolina Democratic Party
and Dan D'Albento, in his official
capacity as treasurer

Dear Mr. Reiff:

On April 1, 2011, the Federal Election Commission notified your clients of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). On September 8, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe South Carolina Democratic Party and Dan D'Albento, in his official capacity as treasurer, violated 2 U.S.C. § 441i(b)(1) or 11 C.F.R. § 300.32(a)(2) by making disbursements for federal election activity from funds not subject to the limitations, prohibitions, and reporting requirements of the Act. Accordingly, on September 8, 2011, 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. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

11044303407

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Democratic Party of South Carolina
a/k/a South Carolina Democratic Party¹ and
Dan D'Alberto, in his official capacity
as treasurer

MUR: 6464

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Lanneau H. Siegling, Sr. See 2 U.S.C. § 437g(a)(1). Complainant alleges that the South Carolina Democratic Party ("SCDP" or "the Committee") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by using soft money to pay for federal election activities. See 2 U.S.C. § 441i(b). Specifically, Complainant alleges that SCDP used nonfederal funds to make \$628,323.47 in disbursements for October 2010 "Party Development" communications. The South Carolina Democratic Party provided information showing that the disbursements were solely for nonfederal elections, not for federal election activities. As discussed below, the Commission found no reason to believe that the South Carolina Democratic Party, and Dan D'Alberto, in his official capacity as treasurer, violated 2 U.S.C. § 441i(b) or 11 C.F.R. § 300.32(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The South Carolina Democratic Party is a state party committee registered with the Commission. SCDP files disclosure reports with the Commission and the South Carolina Ethics Commission.

¹ The Committee registered with the Commission under the name "Democratic Party of South Carolina," but it generally goes by "South Carolina Democratic Party" (e.g., on its website, communications, and invoices).

11044303408

Complainant reviewed SCDP's 2010 Year End disclosure report filed with the South Carolina Ethics Commission and asserts that eight disbursements totaling \$628,323.47, and described in the disclosure report as "Direct Mail—Party Development" or "Direct Mail—Issue Advocacy," appear to have been for federal election activities ("FEA"). *See* Complaint at 1-2.

Complainant did not provide corresponding SCDP communications or mailings to show that the disbursements were for FEA. However, in its response, SCDP provided copies of mailings and corresponding invoices for each disbursement. In a signed declaration, SCDP's Executive Director explained that the seven "Party Development" disbursements were for postage, production, or shipping for 19 direct mailings. The mailings advocated the candidacies of South Carolina Democratic gubernatorial and state representative candidates, or attacked their Republican opponents. The communications are summarized below:

Date of Disbursement	Description of Disbursement	Nonfederal Candidate(s) Supported by Communication	Amount
10/29/10	Direct Mail—Party Development	Mia Butler (State Representative)	\$16,609.36
10/27/10	Direct Mail—Party Development	Vincent Sheheen (Governor)	\$32,491.13 ²
10/22/10	Direct Mail—Issue Advocacy	Vincent Sheheen (Governor)	\$500,000.00
10/21/10	Direct Mail—Party Development	Tom Davis, Tom Dobbins, Mary Bernsdorff, Sheila Gallagher, Judy Gilstrap (State Representatives)	\$7,958.79
10/21/10	Direct Mail—Party Development	Vincent Sheheen (Governor)	\$32,960.00
10/21/10	Direct Mail—Party Development	Tom Dobbins, Paige Gurge, Mary Bernsdorff, Judy Gilstrap (State Representatives)	\$2,088.59
10/18/10	Direct Mail—Party Development	Vincent Sheheen (Governor)	\$33,611.37
10/12/10	Direct Mail—Party Development	Mia Butler (State Representative)	\$2,604.23
Total Amount			\$628,323.47

² The invoice for this disbursement states a charge of \$32,960.

11044303409

Each mailing either promoted a single Democratic state candidate, criticized a single Republican state candidate, or did both. Most of the ads urged voters to "elect" a single Democratic state candidate. All but two of the mailers mentioned the November 2nd general election date. Two of the mailings exhorted voters to "Vote Tuesday November 2nd," and a third exhorted voters, "On November 2nd, vote for [candidate]." However, none of the mailings specifically promoted the Democratic Party or a slate of Democratic candidates. The mailings included disclaimers stating that they were "Paid for by the South Carolina Democratic Party" or otherwise included SCDP's name and address. The "Issue Advocacy" disbursement (\$500,000) was for a television advertisement critical of the Republican gubernatorial nominee, Nikki Haley. The ad ended with the catchphrase – "After years of scandal and embarrassment, tell Nikki Haley we need to restore trust and integrity to Columbia." See Response, Exhibit F. This ad does not mention or show the November 2 election date or urge the viewer to vote. See <http://www.youtube.com/user/SC Dems?blend=1&ob=5#p/u/0/cNzr2n6xKR0>.

Complainant alleges that the amount of the disbursements, the "Party Development" description, and the timing of the disbursements, suggest that the disbursements were for FEA - either as generic campaign activity or voter registration activity.

Noting that the allegations are based purely on the description of the mailing disbursements (and implicitly not on the content of the communications), SCDP asserts that "Party Development" is a term of art in South Carolina for describing the nonfederal disbursements. Response at 1. SCDP emphasizes that each disbursement was for communications referencing solely nonfederal candidates and asserts that none of the communications involved any FEA. *Id.* at 1-2.

11044303410

B. Legal Analysis

State party committees are generally prohibited from using nonfederal funds to pay for FEA. See 2 U.S.C. § 441i(b)(1); 11 C.F.R. § 300.32(a)(2). FEA includes (i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled federal election is held and ends on the date of the election; and (ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for federal office appears on the ballot (regardless of whether a candidate for state or local office also appears on the ballot). 2 U.S.C. § 431(2A)(A); 11 C.F.R. § 100.24(b). The relevant FEA time period for voter registration activities was from July 5, 2010, to November 2, 2010; it was from March 30, 2010, to November 2, 2010, for generic campaign activity and get-out-the-vote activity. See http://www.fec.gov/pages/bcra/rulemakings/charts_fea_dates_2010.shtml.

Complainant surmises that the description, timing, and amounts of the SCDP disbursements indicate that they were either voter registration activity or generic campaign activity that would qualify as FEA. All of the alleged activity appears to have occurred in October 2010, within 30 days of the November 2, 2010, general election, and is within the relevant time period for the respective FEA categories. Although Complainant did not allege that any of the listed activities were get-out-the-vote activity, this possibility also is addressed below.³

³ In September 2010, the Commission revised its FEA regulations, including its definitions of "voter registration" and "get-out-the-vote" activities. See Final Rules: Definition of Federal Election Activity, 75 Fed. Reg. 55257 (Sept. 10, 2010). The new regulations, however, did not become effective until December 1, 2010, after the disbursements at issue.

11044303411

1. Voter Registration Activity

During the 2010 election cycle, voter registration activity consisted of contacting individuals by telephone, in person, or by any other individualized means to assist them in registering to vote. See 11 C.F.R. § 100.24(a)(2). Voter registration activity included printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms. *Id.*

Neither the mailings nor the TV ad appears to constitute voter registration activity under the Commission's 2010 election cycle regulations. The communications do not qualify as an "individualized means to assist [voters] in registering to vote," and the Complainant has not provided information showing that any of the disbursements were used to assist voters in registering to vote. The mailings urge voters to vote for specific nonfederal candidates on election day rather than assisting them to register to vote. Even the two communications that included the exhortation "Vote Tuesday November 2nd" do not amount to assisting voters to register to vote. See Explanation and Justification, 71 Fed. Reg. 8926, 8928-8929 (February 22, 2006) (mere exhortation or encouragement to register or to vote does not constitute voter registration activity). The TV ad focused on the Republican gubernatorial candidate and did not even include the word "vote."

2. Generic Campaign Activity

Generic campaign activity means a campaign activity or a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified federal or nonfederal candidate. See 2 U.S.C. § 431(21); 11 C.F.R. § 100.25. Although the communications qualify as public communications under the Act and Commission regulations,

11044303412

see 2 U.S.C. § 431(22) and 11 C.F.R. § 100.26,⁴ it does not appear that any of the disbursements or communications involved generic campaign activity. All of the communications promote or oppose clearly identified non-federal candidates and do not specifically promote or oppose a political party.

3. Get-Out-The-Vote Activity

During the 2010 election cycle, get-out-the-vote activity ("GOTV") involved contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting. 11 C.F.R. § 100.24(a)(3); 71 Fed. Reg. 8926, 8928 (February 22, 2006). GOTV includes providing to individual voters information such as the date of the election, the times when polling places are open, and the location of particular polling places, and offering transport or actually transporting voters to the polls. 11 C.F.R. § 100.24(a)(3)(i) and (ii). The SCDP communications do not appear to "assist [voters] in engaging in the act of voting." Although many of the mailings include the date of the November 2, 2010, general election, under the existing Commission regulations, mere inclusion of the election date in a communication, without further information regarding the hours or location of polling places, does not amount to assisting a voter and is insufficient to make a communication GOTV activity. See Advisory Opinion 2006-19 (Los Angeles County Democratic Party) at 4.⁵

⁴ The TV ad appeared on broadcast television, and the invoices for the mailings indicate that they constitute mass mailings (over 500 pieces of each mailing were distributed within a 30-day period). See 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. Thus, the TV ad and the mailers are public communications.

⁵ Although Advisory Opinion 2006-19 was superseded when the Commission adopted the new regulations that became effective on December 1, 2010, the reasoning cited above was still in effect during the activity at issue. See Final Rule: Definition of Federal Election Activity, 75 Fed. Reg. 59257, 59266 (Sept. 14, 2010). Further, under the new regulations, which do not apply here, the inclusion of the exhortation to vote (e.g., "Vote Tuesday November 2nd") would be exempt from the definition of GOTV because the exhortation was brief and incidental to the communications. See 11 C.F.R. § 100.24(a)(3)(ii).

11044303413

4. Conclusion

The SCDP communications support specific nonfederal candidates and do not appear to constitute FEA under the Act or Commission's regulations. Therefore, there is no reason to believe that the South Carolina Democratic Party and Dan D'Alberto, in his official capacity as treasurer, violated 2 U.S.C. § 441i(b)(1) or 11 C.F.R. § 300.32(a)(2).

11044303414