



Erie County Democratic Party

Amy F. Grubbe, Chairman
James L. Murray, Vice Chairman

P.O. Box 135 ★ Sandusky, Ohio 44871-0135

www.eriademocrats.org

Timothy J. Dunlap, Secretary
Linda Miller-Moore, Treasurer

July 29, 2011

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
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OFFICE OF GENERAL
COUNSEL

Dear Ladies and Gentlemen:

Enclosed you will find a copy of the Erie County (Ohio) Republican Party's sample ballot that the local party paid for and placed in the local newspaper, *Sandusky Register*. The political ad was initially printed on Friday, October 29, 2010 with all local/state/Federal candidates. I called the ECRP Chairman, Matthew Old, Friday afternoon from Washington D.C. to inquire about the ad. I asked if he had paid for the ad with Federal dollars – Matt said no. I advised him my call to him was a courtesy call to ask him to remove the ad – or at least edit out the Federal candidates. I advised Matt if he didn't remove the Federal candidates, then I would follow up with the appropriate agency regarding this matter.

Matt advised me he didn't have the *Sandusky Register's* phone number handy. I gave him the *Sandusky Register's* editor's personal cell phone number, suggested he make the call even though it was late Friday afternoon and the Saturday paper was in the process of being readied for print and distribution. I then left on a trip and returned home Monday.

Upon reviewing the papers from over the weekend, the ECRP sample ballot in Saturday's (10.30.10) and Sunday's (10.31.10) paper had the Federal candidates edited out with "VOTE GOP on Nov. 2" in the box – see enclosure. Sunday's sample ballot was printed in Section C/Page C7 – the third section of the paper. In Monday's (11.01.10) paper – the day before Election Day, the Federal candidates were back in the sample ballot ad...on Page A3 – the main section of the paper.

Debbie McDowell, Director of Erie County Board of Elections, handed me the copies of all the ads on Tuesday morning (Election Day, November 2) when I arrived at the office. She asked....Is this legal? I advised no based on my limited knowledge of FEC campaign finance rules and advised her I would bring this up prior to the Board Meeting later that evening when all Board Members were present. It couldn't be discussed during session since it wasn't on the agenda for the evening and we were there strictly for the election results. However, I would bring it up during general discussion when all Board Members were present.

Prior to the Board Meeting when everyone was present, I presented all ads to Board Chairman Chris Marinko – an attorney and Republican who sits on the ECRP Executive Committee – and asked what was up with the ads. Mr. Marinko advised there was 'obviously a difference of opinion on how the Ohio Democratic Party and Ohio Republican Party interpret the McCain-Feingold and Citizens Unite laws and take it up with Redfern.' Mr. Marinko's reference to

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'Redfern' was to Mr. Chris Redfern, Chairman of the Ohio Democratic Party. I said, really. I handed the ads back to Director Debbie McDowoll and asked her to put the matter on the formal agenda for the next regularly scheduled Erie County Board of Elections Board Meeting. End of discussion.

At the next Erie County Board of Elections Board Meeting, there was discussion relating to two ads in the *Sandusky Register*. One was this issue with ECRP/Federal candidates. Mr. Marinko, Board Chairman, stated he didn't think this issue was of concern of the Erie County Board of Elections. I advised I disagreed as the ad influenced voters, was printed in the local newspaper and included Federal candidates that was paid for by the local party with regular dollars, not Federal dollars amounting to the concernation I had with ECRP Chairman, Matt Old. Again, Mr. Marinko said he didn't think it was 'our issue.' I told him, bull. Mr. Marinko then reiterated there is a difference of opinion between ODP/ORP on whether local parties can include Federal candidates...again stating "take it up with Redfern". I didn't make a motion for the Erie County Board of Elections to follow up on this issue as I really didn't think this was an issue for the Ohio Secretary of State since this is dealing with Federal election law.

However, I did follow up with ODP Chairman Chris Redfern about the ECRP sample ballot. He suggested I inquire about this issue to the Ohio Elections Commission. I talked to Mr. Phil Richter, Director/Ohio Elections Commission. Mr. Richter said he was not aware of any statutory provision in Ohio that would prohibit county parties from including Federal candidates. **HOWEVER**, there may be something through the FEC. Thus, Mr. Richter suggested I follow up with the FEC.

Shortly after this conversation with Mr. Richter, I attended a meeting in Columbus at ODP where Mr. Don McTigue, an attorney who specializes in election law and is contracted with ODP, discussed Federal dollars, sample ballots, etc. Mr. McTigue made it clear that local counties cannot include Federal candidates unless Federal dollars are used. I have checked out the filing of campaign finance reports by ECRP – nothing appears for a Federal PAC as ECRP Chairman Matt Old stated during our initial conversation about this matter. In addition, there appeared to be nothing on the ECRP campaign finance reports clearly indicating Federal funds raised to support any activities for Federal candidates in any manner.

Upon reviewing the FEC Campaign Laws, specifically Chapter 7 – Other Candidate Support Activities; 2. Exempt Party Activities – Slate Cards and Sample Ballots (page 45):

A state or local party committee may prepare and distribute a slate card, sample ballot, palm card or other printed list naming candidates for any public office. The payments are not considered contributions or expenditures on behalf of any federal candidate listed, as long as the following conditions are met:

- The list names at least three candidates running for election to any public office.
- The list is not distributed through public political advertising (which includes broadcast media, newspapers, magazines and billboards). Direct mail, however, is an acceptable method of distributing a slate card or sample ballot.

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- The content is limited to the identification of each candidate.....
- **Costs allowable to federal candidates are paid with permissible funds 100.80; 100.140.**

It would appear the enclosed sample ballot is in direct violation of the second bullet point above highlighted in bold print.

In further review of FEC Campaign Finance Law, Chapter 8 – Federal Election Activity; 1. **Definition – What Federal Election Activity Is (page 49):**

Federal election activity (FEA) is a specifically defined term of art for activity by state, district or local party committees and organizations (whether registered with the Commission or not) that triggers special payment and reporting requirements. As a general rule, FEA must be paid for with federal funds. However, under certain circumstances Levin funds may be used to pay a portion of some types of FEA. No nonfederal funds may be used for FEA.

There are four types of FEA:

1. **Voter registration activity during the period 120 days before a regularly scheduled federal election including the election day itself;**
2. **Voter identification, get-out-the-vote and generic campaign activity conducted in connection with an election in which a candidate for federal office appears on the ballot;**
3. **A public communication that refers to a clearly identified candidate for federal office and that promotes, attacks, supports or opposes (PASOs) a candidate for that office. The communication need not expressly advocate the election or defeat of the federal candidate to qualify as FEA; and**
4. **Services provided during any given calendar month by an employee of a state, district or local party committee who spends more than 25 percent of his/her compensated time during that month on activities in connection with a federal election, including FEA mentioned above. 100.24(b).**

Further reading in next paragraph on page 49:

Exempt Party Activity That Is Also Federal Election Activity (FEA):

If an exempt party activity also meets one or more of the definitions of FEA described above, the activity must be paid for as FEA. Levin funds may not be used to fund any activity that refers to a clearly identified federal candidate. As a result, any exempt party activity that qualifies as FEA and refers to a clearly identified federal candidate must be funded entirely with federal funds. See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money Final Rule, 67 Fed. Reg. 49064, 49069, (July 29, 2002). See page 45 for a discussion of exempt party activities and see Section 3 below for a discussion of Levin funds.

Chapter 9 – Communications; 4. Reporting Requirements (page 51):

Party committees must report their federal election activity, including all expenditures of Levin funds. Reporting requirements are explained in Chapter 14.

Chapter 13 – Allocating Certain Federal and Nonfederal Expenses (pages 95 and 96):

Also note that the following expenses are not allocable between the federal and nonfederal accounts and must be paid with all federal funds:

- Public communications that (PASO a clearly identified federal candidate, regardless of whether or not they mention a state candidate. (Type III FEA) 300.33 (c). (found on page 95, first bullet point in column one)

Calculation: Under this allocation ratio, the minimum percentage of federal funds depends upon which federal offices appear on the ballot during the relevant even-number election year (and in the preceding year):

- If a Senate candidate, but not a Presidential candidate, appears on the ballot, then at least 21 percent of the expenses must be allocated to the federal account. (found on page 96, second column, mid section, third bullet point)

Based on the discussion I had with Erie County Republican Party Chairman Matt Old concerning these political ads that were printed/distributed through public political advertising via the local newspaper, the *Sandusky Register*, it would appear clear violations have occurred on funding/payment of these ads since no separate FEC account and/or clear allocation of Federal funds were specified in any campaign finance reports submitted by the Erie County Republican Party.

I am requesting the Office of General Counsel of the Federal Election Commission please review this matter at its earliest convenience – 2012 will be here soon enough and I would like to alleviate any lingering questions concerning this matter. If a finding of non-compliance is determined, I would be amenable to this matter being resolved through pre-probable cause conciliation negotiations – such as a written conciliation agreement.

If the Office of General Counsel should need further information, please do not hesitate to contact me – my contact information is printed below for your convenience. Thank You in advance for your time and consideration on this matter. I look forward to your response.

Respectfully submitted,


Andy F. Grubbs, Chairman
Erie County Democratic Party

Home Address:

Huron, OH 44839

Home Phone:

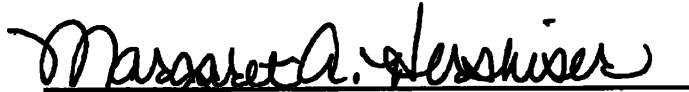
E-mail Address:

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STATE OF OHIO, COUNTY OF ERIE: ss

Before me, a Notary Public in and for said County and State, personally appeared the above-named Amy F. Grubbe, who acknowledged the signing of the foregoing document as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio, this 29th day of July, 2011.



Notary Public



MARGARET A. HERSHISER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 12/12

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OHIO IT'S TIME TO LEAD
OHIO FOR A NEW DAY

CUT OUT AD AND TAKE TO THE POLLS

| | | |
|--|---|---|
| John Kasich for Governor | Mary Taylor for Lt. Governor | Vote GOP on Nov. 2 |
| Mike Dowling for Attorney General | Dave Yost for Auditor of State | |
| Jon Husted for Secretary of State | Josh Mandel for Treasurer of State | Vote GOP on Nov. 2 |
| Maureen O'Connor for Supreme Court Chief Justice | Judith Ann Lanzinger for Supreme Court Justice | |
| Jeff Krabill for State Representative District 80 | Mike Piasrsky for County Commissioner | |
| Rick Jeffrey for County Auditor | Steve A. Yarbrough for Court of Appeals | Roger Binette for Court of Common Pleas |

Fold for by the Erie County Republican Party;
Lisa M. Cressman, Treasurer 2208 Starwood Drive, Sandusky, OH 44870 (419) 827-8857

SAT
10-30-10

SUN
10-31-10

OHIO IT'S TIME TO LEAD
OHIO FOR A NEW DAY

CUT OUT AD AND TAKE TO THE POLLS

| | | |
|---|--|---|
| John Kasich for Governor | Mary Taylor for Lt. Governor | Rob Portman for U.S. Senate |
| Mike Dowling for Attorney General | Dave Yost for Auditor of State | Jon Husted for Secretary of State |
| Josh Mandel for Treasurer of State | Maureen O'Connor for Supreme Court Chief Justice | Judith Ann Lanzinger for Supreme Court Justice |
| Rich Isitt for Representative to Congress District 9 | Jeff Krabill for State Representative District 80 | Mike Piasrsky for County Commissioner |
| Rick Jeffrey for County Auditor | Steve A. Yarbrough for Court of Appeals | Roger Binette for Court of Common Pleas |

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Fri
10.29.10

A3
11.01.10
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