



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Tim Sifert, Treasurer
Conservative Leadership for Arizona
P.O. Box 67808
Phoenix, Arizona 85082

AUG 13 2019

RE: MURs 7337 and MUR 7344
Conservative Leadership for Arizona
and Tim Sifert in his official
capacity

Dear Mr. Sifert:

On March 7, 2018, the Federal Election Commission notified Conservative Leadership for America and you in your official capacity as treasurer ("Committee"), of a complaint, MUR 7337, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time. On March 14, 2018, the Commission notified the Committee of a complaint, MUR 7344, alleging certain violations of the Act and a copy of the complaint was forwarded to you.

Upon review of the allegations contained in the complaints, and information provided by the Committee, the Commission, on July 23, 2019, found that there is reason to believe the Committee violated 52 U.S.C. § 30125(e)(1)(A), a provision of the Act. The Commission also found no reason to believe that the Committee violated 52 U.S.C. § 30104(g), another provision of the Act, in MUR 7344. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. We ask that all responses to the enclosed Request for Written Answers and Production of Documents be submitted to the Office of the General Counsel within 30 days of your receipt of this notification. Any additional materials or statements you wish to submit should accompany the response to the Request for Written Answers and Production of Documents. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this request for Written Answers. If you intend to be represented by counsel,

MURs 7337 and 7344
Tim Sifert, Treasurer
Page 2

please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request in by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information we have enclosed a brief description of the Commission's

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

MURs 7337 and 7344
Tim Sifert, Treasurer
Page 3

procedures for handling possible violations of the Act. If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or drigsby@fec.gov.

On behalf of the Commission,

A handwritten signature in cursive script, reading "Ellen L. Weintraub".

Ellen L. Weintraub
Chair

cc: Tim Sifert, Treasurer
Conservative Leadership for Arizona
5320 N 81st Place
Scottsdale, Arizona 85250

Enclosures

Factual and Legal Analysis

Request for Written Answers and Production of Documents

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Conservative Leadership for Arizona and MURs 7337 and 7344
Tim Sifert in his official capacity
as treasurer

I. INTRODUCTION

Debbie Lesko, a former Arizona State Senator and a 2018 Congressional candidate, transferred \$50,000 from her state committee to Conservative Leadership for Arizona and Tim Sifert in his official capacity as treasurer (“CLA”), a newly-formed independent-expenditure-only political committee (“IEOPC”) that raised a total of \$50,050 and spent most of its funds in support of Lesko’s federal campaign. The Complaints in MURs 7327 and 7337 allege that the transactions by Lesko, Re-Elect Debbie Lesko for Senate (“State Committee”), and CLA violated the soft money prohibitions of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint in MUR 7344 alleges that CLA failed to timely file a 24- or 48-Hour report of independent expenditures in support of Lesko.

In response to the MUR 7344 Complaint, CLA asserts that it properly reported the independent expenditures.

As explained below, the Commission finds that there is reason to believe that CLA spent or received funds in connection with an election for federal office that were not subject to the limitations, prohibitions, and reporting requirements of the Act. Further, the Commission finds that there is no reason to believe that CLA failed to file a 24- or 48-Hour report.

¹ The Commission merged MUR 7327 into MUR 7337.

II. FACTUAL BACKGROUND

In December 2017, Debbie Lesko, then a State Senator in Arizona, became a candidate in the 2018 special election for the U.S. House seat from Arizona's Eighth District.² On January 10, 2018, CLA registered with the Commission as an IEOPC.³ Eight days later, Lesko's state committee, for which Lesko served as chair and treasurer, contributed \$50,000 to CLA, the only funds CLA reported receiving other than an unitemized \$50 contribution.⁴ According to CLA's reports, it disbursed \$21,000 for polling the very next day, and on January 29, 2018, within nine days of receiving the donation, it disseminated mailers supporting Lesko that cost \$20,193.50 and paid \$7,581 for road signs supporting Lesko.⁵ CLA disclosed its disbursement for the mailers on a 48-hour independent expenditure ("IE") report filed on January 31, 2018, which was the first reported IE in support of Lesko before the February 27, 2018, special primary

² See Debbie Lesko's Statement of Candidacy (Dec. 21, 2017). Lesko won the special primary election of the Republican Party for United States Congress on February 27, 2018 and the special general election for United States Congress on April 24, 2018. See https://azsos.gov/sites/default/files/2018_0307_official_canvass_special_primary_election.pdf and <https://azsos.gov/about-office/media-center/press-releases/826>. Lesko was re-elected to Congress in November 2018.

³ See CLA Statement of Organization (Jan. 10, 2018). Lesko's Federal Committee named as treasurer Ashley Ragan, who previously served as treasurer of a state-registered entity called Conservative Leadership for Arizona that operated as an independent-expenditure-only committee from 2014 to 2016. See Federal Committee Original Statement of Organization at 3 (Dec. 12, 2017); Conservative Leadership for Arizona (state-registered committee) 2014 Report (June 30, 2014), available at <https://apps.azsos.gov/apps/election/cfs/search/publicreports/2014/932DB29B-F57F-4553-AB77-7EB3B782DCFC.pdf>.

⁴ See State Committee 2018 3rd Report (1st Quarter) at 6 (Apr. 16, 2018); Lesko Resp., Lesko Decl. ¶ 3. CLA Amended 2018 Pre-Special Election Report at 3, 6, 7 (Feb. 19, 2018). CLA did not receive any further contributions during 2018; see *infra* n.6.

⁵ CLA disseminated the road signs on February 2, 2018. See CLA Amended 2018 Pre-Special Election Report at 8. Both the mailers and yard signs included the phrase "Debbie Lesko for Congress." See MUR 7344 Compl., Attach.

election.⁶ CLA had \$1,230.50 cash-on-hand after the special primary election and has been largely inactive since then.⁷

CLA's original 2018 Pre-Special Election Report disclosed the \$50,000 receipt from the State Committee as unitemized "Other Federal Receipts."⁸ After a reporter questioned CLA's treasurer concerning its description of this transaction, CLA amended its Pre-Special Election Report to disclose the \$50,000 receipt as a contribution from the State Committee.⁹

CLA's treasurer, Tim Sifert, responded that he "join[s] in the Lesko response" and denies that CLA communicated with Lesko or her campaign. He says nothing more about the State Committee's \$50,000 contribution or CLA's expenditures other than that he believed that reporting the contribution as "other federal receipts" was correct, and that he amended CLA's report after a reporter asked him about it.¹⁰

⁶ CLA 24/48 Hour Report of Independent Expenditures (Jan. 31, 2018). The next independent expenditure in support of Lesko was made on Feb. 6, 2018. *See* House Freedom Fund 24/48 Hour Report of Independent Expenditures (Feb. 6, 2018).

⁷ *See* CLA Amended 2018 Pre-Special Election Report at 2 (Feb. 19, 2018). On subsequent disclosure reports, CLA disclosed no additional receipts. CLA's 2018 April Quarterly and July Quarterly Reports only disclose disbursements of \$10 and \$30, for "other federal operating expenditures," respectively, and cash-on-hand of \$335 and \$305, respectively. *See* CLA 2018 April Quarterly Report at 4 (Apr. 15, 2018); CLA 2018 July Quarterly Report at 4 (July 3, 2018). CLA disclosed \$305 in other federal operating expenditures and a zero balance for its ending cash-on-hand on its 2018 October Quarterly Report. *See* CLA 2018 October Quarterly Report at 2, 3 (Oct. 14, 2018). On its 2019 April Quarterly Report and its 2018 Year-End Report, CLA disclosed no financial activity and cash-on-hand of zero. *See* CLA 2019 April Quarterly Report (Apr. 10, 2019) and CLA 2018 Year-End Report (Jan. 31, 2019).

⁸ CLA 2018 Pre-Special Election Report (Feb. 15, 2018) at 3 (Line 17 of detailed summary page).

⁹ CLA Amended 2018 Pre-Special Election Report (Feb. 19, 2018) at 3, 6 (Schedule A and Line 11 of detailed summary page); *see* State Committee 2018 3rd Report (1st Quarter) at 6 (Apr. 16, 2018); CLA Resp. in MUR 7327; CLA Resp. in MURs 7337 and 7344, Tim Sifert Decl. ¶ 13.

¹⁰ CLA Resp. in MUR 7327; CLA Resp. in MURs 7337 and 7344, Sifert Decl. ¶¶ 4, 12, 13. Sifert's declaration does not shed light on why the federally-registered CLA and state-registered CLA have the same name.

Finally, as to CLA's \$21,000 expenditure for polling the day after it received \$50,000 from the State Committee, the MUR 7327 Complaint attached a news article reporting that a Lesko spokesperson said that the campaign had not seen CLA's polling.¹¹ Sifert does not mention the polling in his response on behalf of CLA.

III. LEGAL ANALYSIS

A. CLA's Receipt and Spending of the Funds Violated the Soft Money Prohibition

The Complaints in MURs 7327 and 7337 allege that the \$50,000 transfer from Lesko's State Committee to CLA and CLA's expenditures in support of Lesko's federal committee violated the Act's soft money prohibitions.¹² The Act prohibits federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained or controlled by ("EFMC'd") or acting on behalf of one or more candidates or individuals holding federal office from "solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing] funds in connection with an election for federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act."¹³ Thus, the nature of the funds and the funds being subject to the Act's reporting requirements are separate requirements,¹⁴ and the failure to comply with any one aspect is sufficient to comprise a violation.¹⁵ A soft money

¹¹ MUR 7327 Compl. Exh. 2, *Lesko Funds Her Own Independent Expenditure*, THE ARIZONA CAPITOL TIMES, (Feb. 20, 2018).

¹² MUR 7327 Compl. at 1, 2; MUR 7337 Compl. at 1, 2, 6.

¹³ 52 U.S.C. § 30125(e)(1)(A). This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002, was designed to "plug the soft-money loophole." See *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

¹⁴ See 52 U.S.C. § 30125(e).

¹⁵ For purposes of statutory interpretation, "one of the most basic interpretive canons" is that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or

violation may also result from a direct or indirect transfer of funds from a state committee to a federal committee.¹⁶

The Commission has determined that the state campaign committee of a federal candidate is, as a matter of law, established, financed, maintained or controlled by the federal candidate and is acting on the candidate's behalf.¹⁷ Accordingly, Lesko EFMC'd the State Committee.

To determine whether Lesko also directly or indirectly EFMC'd CLA, the Commission considers a non-exhaustive list of ten factors set forth in 11 C.F.R. § 300.2(c)(2), as well as any other relevant factors, in the context of the overall relationship between the candidate and the entity.¹⁸ Some of these factors include whether the candidate "provides funds or goods in a significant amount or on an ongoing basis to the entity," "causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity," whether the candidate "has authority or ability to direct or participate in the governance of the entity," "had an active or significant role in the formation of the entity," or whether the candidate "has common or overlapping officers or employees with the entity that indicates a formal ongoing relationship."¹⁹

The key factor in this matter is whether Lesko provided funds in a "significant amount or an ongoing basis" to CLA. The Commission has approached the question of what constitutes "a

insignificant." *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)); see also *Hibbs v. Winn*, 542 U.S. 88, 101 (2004).

¹⁶ 11 C.F.R. § 110.3(d).

¹⁷ See Advisory Op. 2009-26 (Coulson) at 5; Advisory Op. 2007-26 (Schock) at 4.

¹⁸ See 11 C.F.R. § 300.2(c)(2).

¹⁹ 11 C.F.R. § 300.2(c)(2)(ii), (v), (vii), (viii), (ix).

1 significant amount” on a case-by-case basis in view of all the relevant circumstances.²⁰ The
2 Commission has explained that amounts that are so large or comprise a substantial percentage of
3 the organization’s receipts would be considered as “financing” a committee under 11 C.F.R.
4 § 300.2.²¹ In Advisory Opinion 2006-04 (Tancredo), the Commission determined that a donation
5 of 50 percent of an organization’s total receipts would be a “significant amount.”²²

6 Lesko authorized the State Committee’s \$50,000 wire transfer to CLA, and that
7 contribution comprised 99% of CLA’s total receipts.²³ Thus, under the above authorities, the
8 current record provides reason to believe that Lesko EFMC’d CLA because its funding of CLA
9 was far beyond the 50% the Commission found to constitute “financing” in Advisory Opinion
10 2006-04.²⁴

11 Thus, there is reason to believe Lesko EFMC’d CLA, and the \$50,000 transfer was
12 prohibited. CLA did not report the donations that comprised the transfer to the Commission. In
13 Advisory Opinion 2011-21 (Constitutional Conservatives Fund), the Commission determined

²⁰ See 11 C.F.R. § 300.2(c)(2); Advisory Op. 2006-04 (Tancredo) at 3.

²¹ See Advisory Op. 2004-29 (Akin) at n.4; Advisory Op. 2004-25 (Corzine) at 4.

²² AO 2006-04 (Tancredo) at 4. The Commission further determined in the context of the overall relationship between the committee and the entity that even a donation of 25 percent of the entity’s total receipts would result in the committee “financing” the entity under 11 C.F.R. § 300.2. *Id.* at 4.

²³ As noted, CLA only received another \$50 in contributions, and CLA spent most of its funds within 10 days of receipt of the \$50,000 contribution. See *supra* at 4 and nn.3, 6.

²⁴ As mentioned above, CLA spent the majority of the \$50,000 on Lesko’s election within nine days of receiving the money.

1 that funds received by a committee EFMC'd by a federal candidate were subject to the
2 limitations, prohibitions, and reporting requirements of the Act.²⁵

3 In addition, in MURs 6563/6733 (Schock), the fact that the underlying funds satisfied the
4 source prohibitions and amount limitations did not avoid the violation. The Commission pursued
5 Schock, a federal candidate and officeholder, for soliciting a \$25,000 contribution from a
6 multicandidate committee to an IEOPC and a \$25,000 contribution from a local party committee
7 to the IEOPC. The underlying funds contributed by the multicandidate committee and the local
8 party committee were of federally permissible amounts, but the Commission nevertheless
9 applied section 30125(e)'s prohibition on soliciting amounts in excess of the \$5,000 contribution
10 limit, and considered Schock's solicitation of the two \$25,000 contributions to violate section
11 30125(e).²⁶ Just as a federal candidate may not solicit nonfederal funds to an IEOPC, a federal
12 candidate may not direct or transfer non-federal funds to an IEOPC.

13 In sum, Lesko EFMC'd CLA which spent and received funds that had not been reported to
14 the Commission.²⁷ Section 30125(e) prohibits CLA's receipt of those funds, and CLA's

²⁵ See AO 2011-21 (Constitutional Conservatives Fund) at 4. See 2 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61. The committee at issue in AO 2011-21 was a leadership PAC. Even assuming that the funds comprising the \$50,000 contribution did not violate the Act's source prohibitions and amount limitations, CLA had not reported those funds to the Commission, thus, the contribution was not permissible. See 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

²⁶ Factual and Legal Analysis in MURs 6563/6733 (Aaron Schock). The Commission found reason to believe that Schock violated 52 U.S.C. § 30125(e) and conciliated with him. See *Certifications*, MUR 6563/6733 (Schock)(Nov. 23, 2015)(Reason to Believe), (Oct. 6, 2016)(Accepting Conciliation Agreement). See also *Advisory Op. 2011-12* (Majority PAC) (federal candidates and officeholders may solicit contributions of up to \$5,000 on behalf of IEOPCs).

²⁷ Respondents have not disclosed an itemization of the funds comprising the \$50,000 contribution from the State Committee to CLA.

disbursements of the funds in connection with a federal election.²⁸ Accordingly, the Commission finds that there is reason to believe that CLA violated 52 U.S.C. § 30125(e)(1)(A).

B. 24-Hour and 48-Hour Reporting

The Complaint in MUR 7344 alleges that CLA placed between 400 and 600 road signs that cost between \$20,000 and \$25,000, but failed to file a 24- or 48-Hour IE Report for the road signs.

CLA responds that the road signs cost well under \$10,000, so a 48-Hour Report was not required, and a 24-Hour Report was not required because the signs were disseminated outside the time window for such reports.²⁹

A person (including a political committee) that makes or contracts to make independent expenditures³⁰ aggregating \$10,000 or more within a calendar year with respect to a given election any time prior to the 20th day before the election, must file a report, known as a 48-Hour Report, disclosing those expenditures within 48 hours of the communication's public distribution or dissemination.³¹ A person (including a political committee) that makes or contracts to make

²⁸ See 11 C.F.R. § 300.60, 300.61 (entities EFMC'd by a federal candidate shall not solicit, receive, direct, transfer, spend, or disburse non-federal funds in connection with an election for Federal office).

²⁹ CLA Resp. in MURs 7337 and 7344 at 1.

³⁰ An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified Federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent. 52 U.S.C. § 30101(17).

³¹ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2). A person must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000 with respect to a given election. *Id.*

1 independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours,
2 before the date of an election must file a 24-Hour Report disclosing those expenditures.³²

3 According to CLA's reports, it spent \$7,581 on the road signs, and it paid for them on
4 January 29, 2018. Thus, the expenditure was less than the \$10,000 threshold for 48-Hour
5 Reports and outside of the 20-day window for 24-Hour Reports. Accordingly, the Commission
6 finds that there is no reason to believe that CLA violated 52 U.S.C. § 30104(g).

³² 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c). A person must file additional reports within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional \$1,000 with respect to a given election. *Id.*

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MURs 7337 and 7344

**WRITTEN ANSWERS AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

TO: Conservative Leadership for Arizona
and Tim Sifert in his official capacity as
treasurer
P.O. Box 67808
Phoenix, Arizona 85082

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, 1050 First Street, N.E., Washington, D.C. 20463, on or before the same deadline.

1. Provide any letters, email messages, text messages, or any other documentation of communication concerning Conservative Leadership for Arizona ("CLA") and referring or relating to:
 - a. Debbie Lesko.
 - b. Ashley Ragan.
 - c. Jon Seaton.
 - d. Brian Murray.
 - e. Chad Heywood.
 - f. Re-Elect Debbie Lesko for Senate ("State Committee") or any officer, employee, consultant, representative, or agent of the State Committee.
 - g. Debbie Lesko for Congress ("Federal Committee") or any officer, employee, consultant, representative, or agent of the Federal Committee.

MURs 7337 and 7344

Requests for Written Answers and Production of Documents

Page 2 of 3

2. Provide all documentation regarding the State Committee's contribution of \$50,000 to CLA on January 18, 2018, including but not limited to a copy of the payment instrument (if by check, front and back) and any accompanying documentation.
3. Provide all documentation regarding the polling for which CLA disclosed paying American Viewpoint \$21,000.00 on January 19, 2018, including but not limited to:
 - a. Letters, email messages, text messages, or any other documentation of communication.
 - b. The contract or agreement with American Viewpoint.
 - c. Invoices from American Viewpoint.
 - d. A copy of CLA's payment instrument (if by check, front and back).
 - e. The polling questions and any assessment of the results by American Viewpoint.
 - f. Copies of all documents containing or relating to polling information collected.
4. State whether CLA, or any representative of CLA, provided any information to the Federal Committee, or any representative of the Federal Committee, regarding the polling or its results. If so, provide copies of all documents that reflect, refer to, or relate to any such communication.
5. Provide all documentation regarding the road signs for which CLA disclosed paying Looks Good Printing and Sign Services \$7,581.00 on January 29, 2018, including but not limited to letters, email messages and text messages and any other documentation of communication.
6. Provide all documentation regarding the voter contact mail for which CLA disclosed paying Post Road Communications \$20,193.50 on January 31, 2018, including but not limited to letters, email messages and text messages and any other documentation of communication.
7. Provide all documentation regarding the establishment and organization of CLA. In addition, please state:
 - a. The names and mailing addresses of persons who established CLA.

MURs 7337 and 7344

Requests for Written Answers and Production of Documents

Page 3 of 3

- b. The names and mailing addresses of any officers and staff of CLA from the date it was established to the present date.
- c. The names and mailing addresses of the individuals who appointed Tim Sifert as treasurer of CLA.
- d. Whether Tim Sifert served as a treasurer of a state-registered political committee before serving as treasurer of CLA. If so, state the names and mailing addresses of those state committees.