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BEFORE THE
FEDERAL ELECTION COMMISSION
OF THE
UNITED STATES OF AMERICA

2002 OCT 25 P 12: 46

MUR # 5328

In the Matter of:

Rep. Nancy Pelosi
PAC to the Future
Team Majority
Respondents

MUR:

2002 OCT 25 P 2: 36

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

COMPLAINT

NATIONAL LEGAL AND POLICY CENTER, a corporation organized and existing under the District of Columbia Non-profit Corporation Act and having its offices and principal place of business at 103 West Broad Street, Suite 620, Falls Church, VA 22046 [NLPC address will change to 107 Park Washington Court, Falls Church, VA. 22046 on November 1, 2002], files this Complaint with the Federal Election Commission in accordance with the provisions of 2 U.S.C. §437g(a)(1) in the belief that Respondents violated provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§431, *et seq.*

The primary purpose of the National Legal and Policy Center, a charitable and educational organization described in section 501(c)(3) of the Internal Revenue Code, is to foster and promote ethics in government. In furtherance of that purpose, National Legal and Policy Center educates the public about the "Code of Ethics for Government Service," as adopted by a Joint Resolution of Congress on July 11, 1958. It endeavors to ensure compliance by government officials with provisions of the Code and the laws of the United States. The apparent violations alleged herein represent a serious lack of compliance with the law by an elected official and her leadership political committees.

RESPONDENTS

REPRESENTATIVE NANCY PELOSI, 2457 Rayburn House Office Building, Washington, D.C. 20515, (hereinafter "Pelosi") is a Member of Congress representing the 8th Congressional District of California.

PAC TO THE FUTURE, PMB 3230, 268 Bush Street, San Francisco, CA 94104, is a political action committee affiliated with Pelosi. Leo McCarthy is the PAC's treasurer.

TEAM MAJORITY, 921 Front Street, San Francisco, CA 94111, is a political action committee affiliated with Pelosi. Leo McCarthy is the PAC's treasurer.

FACTS

The facts supporting this complaint are all to be found in materials openly available to the public. The principal documents providing background facts include an article by Ethan Wallison entitled "Pelosi's PAC Stirs Questions" in the October 24, 2002 issue of *Roll Call* as well as reports of PAC to the Future and Team Majority filed with the Federal Election Committee.

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None of the essential facts are in dispute.

Nancy Pelosi, a Member of Congress representing California's 8th Congressional District and Minority Whip of the U.S. House of Representatives, had established a leadership PAC called PAC to the Future in addition to her principal campaign committee, Nancy Pelosi for Congress. PAC to the Future operated for some years as a leadership PAC allowing Pelosi to make contributions to federal candidates.

The *Roll Call* article recounted the formation and purpose of Pelosi's second leadership PAC, Team Majority, as follows:

Pelosi's second PAC, Team majority, came on line Oct. 16, but has been collecting money and making contributions since April. As of Sept. 30, the committee had made \$1,000 contributions to five key House Democratic challengers: Martha Fuller Clark (N.H.), Lincoln Davis (Tenn.) Dutch Ruppensberger (Md.), Joe Turnham (Ala.) and Dan Wofford (Pa.) as well as one Senate challenger, Chellie Pingree (Maine).

"The main reason for the creation of the second PAC, frankly, was to give twice as much hard dollars" to candidates, McCarthy said in an interview this week.

When Mr. McCarthy, as treasurer of both of Pelosi's leadership PACs, candidly admitted that the "main reason" for the establishment of a second PAC was to "give twice as much (sic) hard dollars," he was admitting that the purpose of the second PAC was to evade the contribution limits of the FEC Act and regulations.

Affiliated PACs, such as Pelosi's two leadership PACs, share a joint contribution limit. The policy rationale for joint contribution limits for affiliated PACs is to prevent an individual or individuals from undermining the legal contribution limits by setting up closely affiliated PACs. The *Roll Call* article quoted former Federal Election Commission commissioner Trevor Potter on the Pelosi twin PAC arrangement as follows:

"They've got a real problem here," said Trevor Potter, a former commissioner at the Federal Election Commission, citing 'affiliation rules' that are intended to ensure that PACs observe the \$5,000 limit on gifts.

"It sounds like a circumvention scheme to double the contribution limits. The law doesn't allow that," said Potter, who based his assessment on a verbal description of the PACs. "they're probably going to have to ask for that money back."

The intended purpose of the second Pelosi PAC as a circumvention scheme is borne out not just by Mr. McCarthy's statement but by the reports filed by the two PACs. Team Majority, the newer PAC, reported five contributions of \$5,000 each from donors who had already contributed the maximum to Pelosi's original leadership PAC, PAC to the Future.

The facts clearly show that the twin leadership PAC arrangement set up by Pelosi and McCarthy allowed twin abuses of the Federal Election Campaign Act and regulations. First, the PACs could - and did - allow donors who had provided the maximum contribution to the first Pelosi PAC to then contribute to the second Pelosi PAC. Second, as admitted by the PACs'

treasurer, McCarthy, the arrangement was established for the purpose of giving "twice as much (sic) hard dollars" to Pelosi-favored candidates.

APPARENT VIOLATIONS

The gravamen of this complaint is quite simple: Pelosi's establishment of two leadership PACS, PAC to the Future and Team Majority, had both the intent and the effect of circumventing the contribution limits of the Federal Election Campaign Act as well as Federal Election Commission regulations.

The Federal Election Campaign Act, at 2 U.S.C. § 441a(a), explicitly forbids any person from making a contribution "...to any other political committee in any calendar year which, in the aggregate, exceed \$5,000."

The statutory language found a 2 U.S.C. § 441a(a) (5) goes on to treat contributions made to affiliated PACs to be "...considered to have been made by a single committee..."

Pursuant to the federal law just cited, the Federal Election Commission enacted 11 C.F.R. 110.3 which states:

110.3 Contribution limitations for affiliated committees.

(1) For the purpose of the contribution limitations of CFR 110.1 and 110.2, all contributions made or received by more than one affiliated committee, regardless of whether they are political committees under 11 CFR 100.5, shall be considered made or received by one political committee.

Moreover, the facts in this case make it beyond dispute that the two PACs are closely affiliated so as to be covered by the statutory and regulatory restrictions. Both PACs are affiliated with Pelosi, both have the same treasurer, the main purpose of the second PAC was to give hard money beyond the contribution limits to certain candidates and to collect contributions from major donors beyond the contribution limits. The *Roll Call* article quotes FEC guidelines as stating that affiliation between two PACs "**results when they are established, financed, maintained or controlled by the same persons or organization.**"

No one associated with Pelosi's PACs is on record as disputing the affiliation relationship. To the contrary, the treasurer confirmed the affiliation.

The only defense offered by Mr. McCarthy, the PACs' treasurer, is that he claims the FEC somehow approved the improper PAC relationship in a phone call. He cannot even provide the name of the FEC official with whom he allegedly spoke or provide any evidence that such a call occurred. Indeed, anyone familiar with FEC practice or who reads the procedures found on the FEC web page knows that Advisory Opinions must be obtained in writing. Mr. McCarthy further acknowledges that he obtained no legal counsel on the issue despite the fact that Pelosi's PACs have collectively raised well in excess of a million dollars in recent years and a member of the House leadership clearly has access to attorneys for guidance.

Further, the affiliation rules are both clear and long-standing. Speaking of the potential evasion of contribution limits by a single person setting up multiple affiliated PACs, the *Roll Call* article quoted former FEC Commissioner Trevor Potter as follows:

Potter said lawmakers recognized this potential when they wrote the original campaign finance law and "specifically forbade it" in

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1974. "The affiliation rules are pretty clear," he said. "And those laws have been around for a long time."

Potter said he had never seen an instance where a lawmaker has started a second leadership PAC in order to raise and spend hard dollars.

The *Roll Call* article went on to quote Paul Sanford, a former FEC official and currently with the Center for Responsive Politics, as saying that PACs "would multiply like rabbits" if the affiliation rules were not enforced.

The article also cited the possibility that Pelosi may run for the House Minority Leader position if the current Minority Leader vacates that position. Allowing Pelosi to use multiple maximum contributions to her twin PACs to aid her political operations would violate the FEC Act and make a mockery of the contribution limits.

CONCLUSION

All of the information on which this complaint is based is from the public record.

None of the essential facts are in dispute.

Pelosi's two leadership PACs are unquestionably affiliated. They have already violated the restrictions on contribution limits to affiliated PACs by contributions to the second PAC from donors who already gave the legal maximum to the first PAC.

And there's no doubt that the "main purpose" of establishing the second PAC was to give twice the hard money to favored candidates. The PACs' treasurer, Mr. McCarthy, confirmed that. The only problem is that giving twice the legal limit in hard dollars from two affiliated PACs explicitly violates the FEC Act. Indeed, the clear purpose of that provision was to prevent exactly what McCarthy and Pelosi have organized their PAC to do.

Without swift and sure action by the Federal Election Commission to stop these violations of federal election law, there might as well be no campaign contributions limits. Without strong enforcement, setting up second, third or even fourth affiliated PACs would become standard practice to evade the law. PACs would truly multiply like rabbits and contribution limits would be treated as a joke.

Given the compelling pattern of facts present in this case, the public is entitled to a full and prompt investigation.

NATIONAL LEGAL AND POLICY CENTER

By:


Kenneth F. Boehm, Chairman

Subscribed and sworn before me this 25th day of October 2002

State of Virginia

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NEWS

October 24, 2002

Pelosi's PAC Stirs Questions

By Ethan Wallison

Campaign finance experts and watchdogs are questioning the legality of twin leadership PACs that have enabled Minority Whip Nancy Pelosi (D-Calif.) to double up on hard-dollar contributions she has given and received this election cycle.

The experts suggest that the use of the two committees, PAC to the Future and Team Majority, amounts to a probable violation of laws intended to prevent lawmakers from multiplying their leadership political action committees in order to defy contribution limits. The treasurer for the two committees, former California Lt. Gov. Leo McCarthy (D), acknowledges that the PACs are identical in all but name.

"They've got a real problem here," said Trevor Potter, a former commissioner at the Federal Election Commission, citing "affiliation rules" that are intended to ensure that PACs observe the \$5,000 limits on gifts.

"It sounds like a circumvention scheme to double the contribution limits. The law doesn't allow that," said Potter, who based his assessment on a verbal description of the PACs. "They're over the limits for everyone they've given money to. They're probably going to have to ask for that money back."

The so-called affiliation rules deal with PACs that are not connected to political party committees. By law, if a PAC is judged to be "affiliated" with another committee, they would be required to share a joint contribution limit of \$5,000.

For instance, the PACs might raise \$2,500 each from one contributor or give \$2,500 apiece to a candidate.

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Pelosi's second PAC, Team Majority, came on line Oct. 16, but has been collecting money and making contributions since April. As of Sept. 30, the committee had made \$1,000 contributions to five key House Democratic challengers: Martha Fuller Clark (N.H.), Lincoln Davis (Tenn.), Dutch Ruppertsberger (Md.), Joe Turnham (Ala.) and Dan Wofford (Pa.), as well as one Senate challenger, Chellie Pingree (Maine).

"The main reason for the creation of the second PAC, frankly, was to give twice as much hard dollars" to candidates, McCarthy said in an interview this week.

McCarthy acknowledged that he did not seek legal advice before starting Team Majority. Rather, he said he checked with the FEC and said he was assured there was "no impediment of any kind" to creating a second PAC that would mimic the first.

The FEC, however, adamantly maintains that McCarthy could not have been given a green light from the commission without making a formal inquiry, in writing.

"No one [at the FEC] is empowered to provide anyone with an advisory opinion over the phone," said FEC spokesman Ian Stirton. "People here are specifically advised they are not to do that."

McCarthy was equally adamant that he had received an unambiguous go-ahead from the FEC. "If it's a problem, we'll act on it," he said, insisting that the Pelosi operation wants to be "totally in compliance" with the campaign finance laws.

But he added, "At this juncture, I'm counting on the FEC staff with whom I spoke and who gave me guidance on this."

McCarthy was unable to recall the FEC official with whom he spoke about opening Team Majority. But McCarthy said he informed the official that he was already the treasurer of PAC to the Future.

"That FEC staffer was the one who told me that many PACs have the same treasurer or share the same address," McCarthy said.

Pelosi did not respond to a request for comment made with her press secretary.

A top Democratic campaign finance expert, who spoke on condition of anonymity, suggested the rules on affiliation are far murkier than they might look at first blush.

The expert noted, for instance, that donor networks often give to a range of different PACs, knowing that the contributions will wind up

in the hands of the same candidates. Nevertheless, the various committees are not considered to be "affiliated" in the eyes of the FEC.

"To me, [giving to a second Pelosi PAC] is not that much different than giving money to Nancy Pelosi's campaign committee, knowing full well she doesn't have a real race, or giving money to the [Democratic Congressional Campaign Committee], knowing they'll give it to the same candidates," the Democratic expert said.

According to the FEC's guidelines, affiliation between two PACs "results when they are established, financed, maintained or controlled by the same persons or organization."

The rules also lay out various circumstances where one committee might be judged to be affiliated with another. Among these criteria is that one committee has an "active or significant role" in creating the other, or that the two PACs have "common or overlapping officers or employees."

Most campaign finance experts point out that without the affiliation rules, political committees could theoretically clone themselves endlessly in an effort to rake in additional hard dollars from donors, or to make greater contributions to candidates. Even the Democratic expert was unable to suggest a mechanism that would prevent such a proliferation in the absence of strong enforcement of the affiliation rules.

Potter said lawmakers recognized this potential when they wrote the original campaign finance law and "specifically forbade it" in 1974. "The affiliation rules are pretty clear," he said. "And those laws have been around for a long time."

Potter said he has never seen an instance where a lawmaker has started a second leadership PAC in order to raise and spend hard dollars.

It is nevertheless common for Members to maintain soft money committees alongside the PACs they use to collect regulated hard dollars. However, a ban on soft money will go into effect the day after the Nov. 5 elections.

Paul Sanford of the Center for Responsive Politics said PACs "would multiply like rabbits" if the affiliation rules weren't enforced. (McCarthy indicated that Pelosi's organization would limit itself to just the two PACs.)

Sanford, a former FEC official, said the commission has not been particularly aggressive in enforcing the affiliation rules, in part because it lacks the resources that would be needed to focus on

the issue. But he also suggested the commission might find it hard to overlook a leadership PAC that is essentially a duplicate of another committee.

He cited the common treasurer of the two PACs. "That's a biggie," Sanford said. "I would hope that [dynamic] would be enough to get the FEC's attention."

In fact, Team Majority has already been on the commission's radar. After originally naming it "Team Pelosi," organizers of the committee were admonished by the FEC, which reminded them that PACs could not bear the name of a federal candidate.

Relying in large measure on San Francisco's substantial liberal donor base, Pelosi has long been among the Democratic Party's top fundraisers, even as she has declined to raise soft money and, to some extent, PAC dollars.

Pelosi, who is expected to run for party leader if and when Minority Leader Richard Gephardt (Mo.) vacates the post, has also long been a leading advocate among Democrats for campaign finance reform.

Pelosi's efforts to restrict avenues of fundraising have provided the sharpest point of contrast between the California lawmaker and her likely opponent in a contest for leader, Caucus Chairman Martin Frost (Texas), whose enthusiasm for reform has been lukewarm at best.

Of the contributions Team Majority reported to the FEC in the last quarter, five of them - for \$5,000 each - came from donors who had already contributed the maximum to PAC to the Future. Those donors included close Pelosi allies William Hambrecht and his wife, Sally, as well as George Zimmer, the CEO of The Men's Wearhouse.

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