



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Utah Republican Party (Federal Account) and)	MUR 5598
Mike McCauley, in his official capacity as treasurer;)	
John Swallow for Congress, Inc. and Stanley R. deWaal,)	
in his official capacity as treasurer, et al.)	

STATEMENT OF REASONS
 Vice Chairman Petersen
 Commissioner Bauerly
 Commissioner Hunter
 Commissioner Weintraub

I. INTRODUCTION

This matter concerns allegations that the Utah Republican Party (Federal Account) and Mike McCauley, in his official capacity as treasurer ("URP"), and John Swallow for Congress, Inc. and Stanley R. deWaal, in his official capacity as treasurer ("Swallow Committee"), violated the Federal Election Campaign Act of 1971, as amended ("the Act"). According to the complaint, the URP sent 14 mail pieces during the 2004 election cycle that either supported John Swallow's candidacy for United States Congress or criticized his opponent, Congressman Jim Matheson. The complaint alleges the mail pieces do not qualify for the "volunteer materials exemption" set forth in 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii) and 11 C.F.R. §§ 100.87 and 100.147. The complaint further alleges that the mailers were coordinated with the Swallow Committee through a common vendor, Arena Communications, LLC ("Arena"). The complaint concludes that the URP made an excessive contribution to the Swallow Committee. In response, the URP claims their mailers were not excessive contributions because they qualified for the volunteer materials exemption.

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Based on the complaint, the responses, and other available information, on July 27, 2006 the Commission found reason to believe that the URP violated 2 U.S.C. §§ 441a(a)(2)(A), 434(b), and 441d.¹ Subsequently, the Office of the General Counsel conducted an investigation into whether the URP's mailers qualified for the volunteer materials exemption, and whether the URP's mailers were coordinated with the Swallow Committee through Arena.

On February 11, 2009, we rejected the Office of General Counsel's recommendations that we enter into pre-probable cause conciliation with the URP and find reason to believe that the Swallow Committee violated various provisions of the Act. We instead voted to dismiss this matter against all parties in an exercise of our prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).²

II. FACTUAL AND LEGAL ANALYSIS

The Act limits the amount that a state party committee may contribute to or spend on behalf of a federal candidate. *See* 2 U.S.C. §§ 441a(a)(2)(A), 441a(d). However, the Act exempts the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) paid for by State or local party committees and used "in connection with volunteer activities" on behalf of party nominees as long as the materials "are not used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising."³ Thus payments for campaign materials may be exempt

¹ Vice Chairman Lenhard, Commissioners Mason, Walther, and Weintraub voted affirmatively while Chairman Toner and Commissioner von Spakovsky dissented.

² The complaint also alleges that the National Republican Congressional Committee, the candidate John Swallow, and then-URP Chairman Joseph A. Cannon were involved in coordinating the mailers. The available information does not indicate that these respondents had any such involvement and the Office of General Counsel ultimately recommended finding no reason to believe that these parties had violated the Act.

³ 2 U.S.C. § 431(8)(B)(ix)(1). The Commission's regulations have added detail to the statute defining direct mail as "any mailing(s) made by a commercial vendor or any mailing(s) made from commercial lists." 11 C.F.R. §§ 100.87(a) and 100.147(a).

from the definition of “contribution” and “expenditure” when such payments are made by a state political party committee on behalf of a federal candidate of that party in connection with volunteer activities. *See* 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii) and 11 C.F.R. §§ 100.87 and 100.147. Under this exemption, campaign materials are not subject to contribution or expenditure limits, and thus a state committee may donate an unlimited amount of qualified materials to a federal candidate. To qualify for the volunteer materials exemption, a state or local party committee must satisfy seven requirements as set forth in Commission regulations. 11 C.F.R. §§ 100.87(a)-(g) and 100.147(a)-(g).

The URP claims that the mailers qualified for the exemption because volunteers processed, sorted and hand-stamped the mail pieces and physically delivered them to the post office for mailing. The Office of General Counsel investigated the URP’s claims and found that the URP’s volunteers were involved in stamping the bulk mail permit indicia on the mailers and helping load boxes of the mailers into a truck that took the mailers back to the mail vendor, Arena. Arena then printed addresses on the mailers, sorted them by postal carrier route, and delivered the completed mailers to the post office for mailing.

In past enforcement matters, the Commission concluded that State Party mailings qualified for the exemption based upon the volunteers’ involvement in the mailers. *See* MUR 3218 (Blackwell for Congress) (volunteers stamped and sorted the mail pieces into the requisite postal/zip code categories and transported them to the post office); *see also* MUR 4754 (Republican Campaign Committee of New Mexico) (volunteers stamped, sorted and bundled the mailers by zip code, and delivered them to the post office); MUR 4851 (Michigan Republican State Committee) (volunteers stamped and placed address labels on the mailers and took them to the post office); MUR 5837 (Missouri Democratic State Committee) (volunteers bundled,

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bagged, tagged, and loaded the mailers onto a USPS truck); and MURs 5824 and 5825 (Pennsylvania Democratic State Committee) (volunteers unpacked the mailers, and bundled, sorted, bagged, tagged, wrapped and loaded the mailers onto trucks specifically hired to transport the mailers to the Postal Service's Bulk Mail Center).

The Office of the General Counsel concluded that the URP's mailers did not qualify for the exemption. URP stated that it believed that its actions were consistent with the exemption, and given the complicated history of the application of the volunteer materials exemption, we voted to dismiss this matter in an exercise of our prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). We plan to issue more detailed guidance to clarify the volunteer materials exemption and the circumstances in which it applies.

4/9/2009
Date

Matthew S. Petersen
Matthew S. Petersen
Vice Chairman

4/9/2009
Date

Cynthia L. Bauerly
Cynthia L. Bauerly
Commissioner

4/9/2009
Date

Caroline C. Hunter
Caroline C. Hunter
Commissioner

4/9/2009
Date

Ellen L. Weintraub / JKL
Ellen L. Weintraub
Commissioner

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