BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Pennsylvania Democratic State Committee and Ann Bursis, in her official capacity as Treasurer; Lois Murphy for Congress and Katherine A. Rowe, in her official capacity as Treasurer

STATEMENT OF REASONS
CHAIRMAN ROBERT D. LENHARD
VICE CHAIRMAN DAVID M. MASON
COMMISSIONER ELLEN L. WEINTRAUB

I. INTRODUCTION

This matter concerns allegations that Pennsylvania Democratic State Committee and Ann Bursis, in her official capacity as treasurer ("PDSC"), and Lois Murphy for Congress and Katherine A. Rowe, in her official capacity as treasurer ("Murphy Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"). According to the complaints, the PDSC sent eleven mail pieces during the 2006 election cycle that either supported Lois Murphy's candidacy for United States Congress or criticized her opponent, Jim Gerlach. See Complaints and attached exhibits. The complaints allege that the PDSC improperly funded the mailings under the "volunteer activity for party committees" exemption because the mailers were
commercially produced and bore commercially printed labels and commercial postage stamps.

The complaints thus claim that they were not distributed in accordance with the volunteer exemption requirements of 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii) and corresponding regulations 11 C.F.R. §§ 100.87 and 100.147. Further, the complaints allege that because the mailers do not satisfy the volunteer exemption, the mailers amounted to a contribution to the Murphy Committee under 2 U.S.C. § 441a or a coordinated party expenditure under § 441a(d) and should have been allocated and reported as such. Although the complaints do not state how much was spent on the mailers, they further allege that the PDSC made an excessive contribution to the Murphy Committee.

In response, the PDSC contends that the mailers qualified for the “volunteer materials exemption” of 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii) and 11 C.F.R. §§ 100.87, 100.147, and that, therefore, they were not contributions or expenditures under 2 U.S.C. § 441a. In its reply, supplemented by the declaration of Mr. Rafner, the president of the direct mail provider who participated in the mailings, the PDSC attests to facts that would satisfy the requirements of the volunteer exemption regulations.

In addition, the complaints allege that the PDSC violated the disclaimer requirements of the Act, 2 U.S.C. § 441d and 11 C.F.R. § 110.11(b), by failing to include an “authorized by” statement in the eleven mailers. The PDSC contends that the disclaimer on each of the pieces complied with the disclaimer requirements for exempt mail contained in 11 C.F.R. § 110.11(e), which does not require an “authorized by” statement. As discussed below, the Commission finds that there is no reason to believe that the Respondents violated the Act in these matters.

1 The Pennsylvania Democratic Party filed a joint response on behalf of the PDSC and the Murphy Committee.
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 materials distributed "in connection with volunteer activities" from the definition of "contribution" and "expenditure" when such distribution is made by a state political party committee on behalf of a federal candidate of that party. See 2 U.S.C. § 431(8)(B)(ix) and (9)(B)(viii); 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.

The complaint contends that the PDSC mailers did not qualify for the volunteer materials exemption. To qualify for the exemption, a state or local committee must pay for campaign materials under certain conditions, which include: (a) the committee’s payment of campaign materials is not for costs for "general public communication or political advertising," which includes "direct mail"; (b) the portion of the payment allocable to a federal candidate must be paid with federal funds; (c) the committee’s payment must not be paid for from funds designated for a particular federal candidate by the donor; (d) campaign materials must be "distributed by volunteers and not by commercial or for-profit operations"; (e) the committee’s payment must be reported as disbursements; and (g) campaign materials must not be purchased either directly by a national committee or with funds donated by the national committee to the state committee. 11 C.F.R. §§ 100.87(a)-(e), (g) and 100.147(a)-(e), (g).\(^2\) For purposes of sections 100.87(a) and 100.147(a), "direct mail" is defined as "any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists." \(\)Id.\(^2\)

\(^2\) 11 C.F.R. §§ 100.87(f) and 100.147(f) concern payments by state candidates and their campaign committees and are not relevant to the issues of these matters because there is no state candidate involvement.
From the information provided in the Response and the declaration of the individual who participated in the mailings, it appears that the mailers satisfied the regulatory requirements necessary to qualify for the volunteer materials exemption. The Response, supplemented by the declaration, states that the information for the mailers was not obtained from commercial mailing lists. The complaint provides no information to the contrary. In addition, a review of the PDSC’s disclosure reports indicates that it used federal funds to pay for the mailers at issue.

Thus, it appears that the mailers satisfy sections 100.87(a), (b) and 100.147(a), (b).

However, with respect to the remaining requirements, two primary issues merit further discussion. First, the PDSC’s disclosure reports indicate that national party committees transferred or contributed approximately $992,000 to the PDSC, thus raising an issue as to whether the PDSC paid for campaign materials with funds from national party committees, which would place the mailers outside the purview of the volunteer materials exemption. See 11 C.F.R. §§ 100.87(g) and 100.147(g). Second, the complaint draws particular attention to 11 C.F.R. §§ 100.87(d) and 100.147(d), alleging that volunteer involvement in the mailers was insufficient because a commercial vendor was responsible for many aspects of the mailing.

A. Payment of Mailers with National Party Committee Funds

To qualify for the volunteer materials exemption, a state committee cannot pay for campaign materials with funds it received from a national party committee. See 11 C.F.R. §§ 100.87(g) and 100.147(g). The response does not mention whether national party funds were used to pay for the campaign materials, only that the Respondents fully complied with the requirements for the volunteer materials exemption. See Response. Although the PDSC does not directly mention specific disbursements in the response or declaration, disclosure reports filed with the Commission show 29 disbursements totaling $485,743.26, between July 5th and
September 22, 2006, to AMS Communications, Inc. for “direct mail house printing” and the U.S. Postal Service for “postage.” These expenditures are most likely for the eleven mailings at issue, since they coincide with the time period referred to in the complaints.

The PDSC’s disclosure reports show that it received approximately $922,000 from national party committees between January and September 2006 and that it spent approximately $485,000 on the mailers between July and September 2006. However, it appears that the PDSC had approximately $799,000 in non-national party funds that it could have spent on the mailers at issue. Therefore, it appears that the PDSC satisfied the requirements of §§ 100.87(g) and 100.147(g) in that it had sufficient federal funds from sources other than national party committees to pay for the mailers.

B. Distribution by Volunteers

The complaints contend that the mailers do not satisfy the exemption requirements of 11 C.F.R. §§ 100.87(d) and 100.147(d) because the “attached commercially produced mail pieces clearly bear commercially printed labels and postage stamps.” Complaint at 2. Respondents acknowledge that the address labels and postage bear commercially printed labels and postage stamps but assert that complainants “ignore the fact that volunteers can do much more than just stick labels and stamps on mail pieces.” Response at 1. They further contend that complainants have provided “no evidence to support their assertion that volunteers did not help produce and distribute the State Party mailings.” Id.

In addition, Respondents have submitted a sworn declaration from Mr. Rafner, the president of the direct mail provider who participated in the mailings undertaken on behalf of the Murphy Committee. Rafner Declaration at 1. Mr. Rafner states that at least five volunteers unpacked, bundled, sorted by address, bagged, tagged, plastic wrapped and loaded the mailers
onto trucks specifically hired for transport to the Postal Service’s Bulk Mail Center. \textit{Id.} at 1-2.

The Response states that a Postal Service employee was on site to weigh and confirm the count in order to expedite processing the mailers. It includes photographs of volunteers who appear to be sorting, bundling, tagging and bagging Murphy mailers. Respondents asserted, and Mr. Rafner concurred, that it was physically impossible for the volunteers to transport the mailers to the Post-Office in their own vehicles due to their sheer volume and weight (200-400 bags per mailing). Response at 3; Rafner Declaration at 2.

While delivery to the Postal Service by volunteers is a relevant factor in determining whether there is sufficient volunteer involvement, it is not dispositive. Given the substantial amount of volunteer involvement in distributing the mailers, including unpacking, bundling, sorting, bagging, tagging, wrapping and loading the mailers, as well as presenting them to a Postal Service employee on-site for weighing, etc., and in the absence of conflicting information, the exemption appears to apply in these matters. Because the disbursements at issue therefore do not qualify as contributions or expenditures under the Act, and since the mailers do not require an “authorized by” statement because they qualify for the exemption, see 11 C.F.R. § 110.11(e), there is no basis to open an investigation into these matters. Accordingly, the Commission finds no reason to believe that Pennsylvania Democratic State Committee and Ann Bursis, in her official capacity as treasurer, or Lois Murphy for Congress and Katherine A. Rowe, in her official capacity as treasurer, violated the Act or Commission regulations and closes the files in MURs 5824 and 5825.

12/31/07

Robert D. Lenhard
Chairman
12/1/08

David M. Mason
Vice-Chairman

12/1/08

Ellen L. Weintraub
Commissioner