

BEFORE THE FEDERAL ELECTION COMMISSION

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MAY 18 2004

EXECUTIVE SESSION

- In the Matter of:)
-)
- Kentucky State District Council of)
- Carpenters, Steve Barger, Don)
- Mitchell, and Tom Schulz,)
- Carpenters Legislative Improvement)
- Committee United Brotherhood of)
- Carpenters and Joiners and Monte)
- Byers, as treasurer)
- Daniel Forbis, Jerry Landers, and Mike)
- Fleitz)
- Alexander for Congress and Anne)
- Watkins, as treasurer)
- Baesler for Senate Committee and)
- Michael Foley, as treasurer)
- Baesler for Congress and Michael Foley,)
- as treasurer)
- Tom Barlow for Congress and Clyde)
- Elrod, as treasurer)
- Conway for Congress and Scott Karen, as)
- treasurer)
- Gore/Lieberman Inc. and Jose Villarreal,)
- as treasurer)
- Gorman for Congress and Edwin Olliges,)
- Jr., as treasurer)
- Eleanor Jordan for Congress and Christal)
- Williams, as treasurer)
- Lucas for Congress and Steve Cauthen, as)
- treasurer)
- Brian Roy for Congress and Tim Miller,)
- as treasurer)
- Scorsone for Congress and Laurence T.)
- Summers, as treasurer;)
- Lois 2002 U.S. Senate Committee and)
- Lois Weinberg, as treasurer)

MUR 5268

GENERAL COUNSEL'S REPORT #3

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1 **I. ACTIONS RECOMMENDED**

- 2 A. Find probable cause to believe that the Kentucky State District Council of
3 Carpenters ("KSDCC"), Steve Barger, Don Mitchell and Tom Schulz knowingly
4 and willfully violated the Act by making and consenting to prohibited in-kind
5 contributions to federal candidates and by using union resources to coerce and
6 facilitate monetary contributions to federal candidates;
- 7 B. Find probable cause to believe that KSDCC violated the Act by failing to report
8 the costs of membership communications containing express advocacy;
- 9 C. Approve the appropriate conciliation agreements;
- 10 D. Grant this Office contingent authority to file suit in federal district court;
- 11 E.
- 12 F. Admonish the committees that received prohibited or facilitated contributions
13 from KSDCC; and
- 14 G. Take no further action against the Carpenters Legislative Improvement
15 Committee and certain KSDCC employees, and close the file as it pertains to
16 them.

17 **II. INTRODUCTION**

18 Since at least the 1998 election cycle, the Kentucky State District Council of Carpenters
19 ("KSDCC") tried to curry favor with federal candidates by providing them with free labor for
20 their campaigns and bundled contributions for their committees. KSDCC designed and
21 implemented this plan at the behest of its Executive Secretary-Treasurer, Steve Barger, with
22 assistance from two other union officers, Don Mitchell and Tom Schulz.¹ These officers
23 threatened and intimidated field representatives to comply with their demands, which included
24 working many hours directly for candidates' campaigns and contributing predetermined amounts
25 of money to candidates' committees.

26 As detailed in the General Counsel's Brief, incorporated herein by reference, KSDCC's
27 deliberate actions violated many provisions of the Act. These violations include prohibited in-
28 kind contributions resulting from the KSDCC respondents directing salaried union field

¹ KSDCC and these three officers are referred to collectively herein as "the KSDCC respondents." See Attachment 1 (diagram of KSDCC's chain of command).

1 representatives to work directly for federal campaigns as part of their job responsibilities. *See*
2 2 U.S.C. § 441b(a). These violations also include prohibited monetary contributions resulting
3 from coercing individual contributions from union field representatives and improperly acting as
4 a conduit and facilitating the collection and delivery of those contributions. *See id.*; 11 C.F.R.
5 §§ 110.6(b)(2) and 114.2(f). Finally, these violations include KSDCC's failure to report the
6 costs of membership communications containing express advocacy in violation of 2 U.S.C.
7 § 431(9)(B)(iii).

8 The violations are supported by evidence obtained from a wide variety of sources.² This
9 Office contacted approximately twenty-five current and former field representatives (out of total
10 group believed to comprise approximately thirty to forty field representatives between 1998 and
11 2002) by telephone interview and/or face-to-face deposition. In addition, this Office reviewed
12 thousands of documents submitted by the KSDCC respondents, who at times submitted
13 contradictory, incomplete, and apparently false information to the Commission. *See, e.g.,*
14 General Counsel's Brief, at 15 n.17, 25 n.30, and 37 n.35.

15 Based upon the information set forth in the General Counsel's Brief, this Office
16 recommends that the Commission find probable cause to believe that the KSDCC respondents
17 knowingly and willfully violated the Act and the Commission's implementing regulations. This
18 Report also discusses anticipated conciliation with the KSDCC respondents and recommends
19 that the Commission grant contingent authority to file a federal court action against them in the

² The documentary evidence obtained during the investigation and cited in the General Counsel's Brief is available for the Commission's review in the Office of General Counsel.

In order to minimize any risk of retaliation, the General Counsel's Brief did not attribute certain statements to specific witnesses. This Office concluded, based upon statements made in the course of the investigation, that cooperative witnesses faced a serious risk of retaliation by KSDCC.

1 event conciliation fails.

2

3

4 Finally, this Report discusses the involvement of other parties and respondents in this matter and
5 recommends that the Commission take no action against them other than admonishment.

6 **III. RECENT DEVELOPMENTS REGARDING KSDCC**

7 This Office recently learned that on March 9, 2004, nine days after service of the General
8 Counsel's Brief upon the KSDCC respondents, KSDCC's national union, the United
9 Brotherhood of Carpenters and Joiners of America ("UBC"), revoked KSDCC's charter and
10 merged the KSDCC with the carpenter's union in Indiana, effective March 15, 2004. The new
11 name for this organization is reportedly the Indiana-Kentucky Regional Council of Carpenters.
12 As part of the merger, the UBC has reportedly forced Steve Barger to retire from his position at
13 the union, effective April 30, 2004, and eliminated the senior representative position held by Don
14 Mitchell. It is unknown at this time whether Tom Schulz's positions as Assistant Executive-
15 Secretary Treasurer and General Counsel survived the merger.³

16 In response to these recent developments, this Office requested detailed information from
17 counsel for the KSDCC respondents concerning the terms of the "merger," including a
18 description of the new governing structure and a copy of the new charter. To date, additional
19 information has not been provided and little else is known about the merger. If the Commission
20 approves this Office's probable cause recommendations, it is possible that the Commission will
21 need to proceed against one or more of the following entities for KSDCC's violations: KSDCC,

³ Although the impetus for the "merger" is not entirely clear, this Office has been advised that it may have been part of an "internal shakeup" at the union caused, at least in part, by union members who disliked the direction Mr. Barger was taking the union. As a further illustration of the atmosphere of intimidation cultivated by Mr. Barger, this Office has been advised that he publicly vowed revenge against all those who had a hand in his ouster.

1 the Indiana-Kentucky Regional Council of Carpenters, the UBC and/or any other related or
2 successor organization subject to liability for the violations. Based upon the information known
3 at this time, this Office therefore seeks authority to enter into conciliation with any and all of
4 these entities, as may be appropriate, if the Commission issues probable cause findings in this
5 matter.

6 **IV. VIOLATIONS BY THE KSDCC RESPONDENTS**

7 Presented with the detailed evidence in the General Counsel's Brief, the KSDCC
8 respondents replied largely with conclusory statements made without any explanation of the
9 factual bases upon which they relied and without any supporting documentation. *See* Response
10 Brief of the KSDCC respondents ("Respondents' Brief"). The specific arguments proffered by
11 the KSDCC respondents are examined in the following sections, which discuss the major
12 violations in this matter.

13 **A. KSDCC Made Prohibited In-Kind Contributions to Federal Candidates**

14 *1. Campaign Activities Were Not Limited To Membership Communications Nor*
15 *Conducted On Personal Time*

16 The KSDCC respondents do not dispute that they assigned field representatives to work
17 for candidates, including federal candidates, during the 1998, 2000 and 2002 election cycles.
18 Nor do they dispute that these campaign assignments took priority over field representatives'
19 non-political responsibilities and, at times, largely usurped their working hours, or that a
20 substantial portion of the hours spent on campaign activity was in connection with federal
21 campaigns. *See* Respondents' Brief, at 6-8. Instead, the KSDCC respondents argue that field
22 representatives worked on campaigns on their own time and limited their activities to

1 communications with union members. Rather than pointing to *any* evidence to support this
2 contention, however, Respondents' Brief simply posits that *if* the field representatives worked on
3 campaigns on their own time or *if* they limited their campaign activity to union members, no
4 violation would result. *See* Respondents' Brief, at 6.

5 As more fully set forth in the General Counsel's Brief, the evidence shows that on behalf
6 of KSDCC's endorsed candidates, field representatives participated in a variety of campaign
7 activities that went beyond communications to union members, including the posting of
8 campaign signs and participation in precinct walks, campaign rallies, debates, press conferences,
9 phone banks, handbilling, and appearances in television advertisements. *See* General Counsel's
10 Brief, at 11-17. Field representatives also recruited volunteers for these various activities and
11 participated in formal committee meetings held by the campaigns. *See id.* Indeed, letters sent by
12 KSDCC's Executive Secretary-Treasurer, Steve Barger, to federal candidates in 2000, in which
13 he states that field representatives "will work directly in your campaign offices and will assist
14 you in any way possible to help you win the election," illustrate quite clearly that the scope of
15 candidate assignments extended far beyond membership communications.⁵ *See* Attachment 2.
16 Equally important, the evidence shows that field representatives participated in these activities

⁵ While field representatives did have some communications with union members in connection with their assigned campaigns, most of these communications concerned field representatives' efforts to recruit volunteers for specific campaign activities on behalf of their assigned candidates. *See id.* at 14. As more fully discussed in the General Counsel's Brief, the field representatives made these efforts while working directly for their assigned campaigns, which KSDCC integrated into their job responsibilities while under the threat – either actual or implied – of job loss or other adverse consequences if they did not participate. *See id.* at 17-24. Supplying campaigns with volunteers under these circumstances would appear to be very different from the exchange of information between a labor organization and its restricted class permitted by 2 U.S.C. § 431(9)(B)(iii) and 11 C.F.R. § 100.134.

1 during and after normal business hours as part of their job responsibilities – not on their own
2 personal time. *See id.* at 17-24.⁶

3 The information on campaign activities obtained from field representatives and cited in
4 the General Counsel's Brief is not limited to former employees, as the KSDCC respondents
5 claim. Of the approximately fourteen field representatives currently on staff, this Office
6 attempted to contact all of them

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10
11 described the various campaign activities he
12 participated in as a field representative at KSDCC. He explained that the largest portion of his
13 campaign activities had been the posting of campaign signs for candidates and the recruitment of
14 volunteers to attend campaign events. He further explained that KSDCC's political director,
15 Don Mitchell, wanted detailed information from him about these events, including how many
16 volunteers he was able to recruit. When asked whether he felt he had the choice of deciding
17 whether or not to participate in campaign events,

18 Yes, you had a choice, but you knew you were expected to attend these
19 things. If I didn't go, someone would want to know why.
20

21 * * *

⁶ One particularly egregious example of a candidate assignment usurping the working hours of a field representative is reflected in the timesheets and weekly activity reports of Steve Baird who worked many hours in the campaign headquarters of Brian Roy, a Congressional candidate for the First Congressional District of Kentucky in 2000. *See* Attachment 3. Mr Baird's written descriptions of his political activity in 2000 contain much more detail than those contained in the timesheets and weekly activity reports of the other field representatives who typically followed the KSDCC's instructions to make only general references to "membership education." After 2000, however, it appears that Mr. Baird more closely followed the union's instructions and provided much less detail in his reports regarding political activity.

1
2 If I didn't go, they would ask me why. Mitchell or someone would call
3 me and say, 'You didn't attend this. We needed some people there.' You
4 always had to have people there. They would always check all the time to
5 see if (trailed off) We needed to get people there.
6

7 described an atmosphere of intimidation surrounding the candidate
8 assignments. He explained that he felt that "a lot of guys did not want to speak out about [the
9 campaign activity] because they were afraid." When asked what they would be afraid of, he
10 responded:

11 They'd get fired. You know, you could lose your job. We . . . see, we're
12 union, but the reps really don't have anybody. If they want to get rid of
13 me, I have no one to speak for me. No one to talk to, to talk up for me. I
14 have to do my own talking, and if he [Barger] wants to get rid of me, they
15 get rid of you.
16

17 * * *

18
19 You just feel intimidated. You write reports all the time. And, if you
20 don't do it, you're gone. You felt you had to do good with [recruiting]
21 volunteers because they look at how many volunteer hours you have. If
22 the other guy had 200 hours and I had 5, it would show I wasn't doing
23 anything.
24

25 corroborated the sentiment expressed by other field
26 representatives interviewed by this Office. Further, the KSDCC respondents made no attempt to
27 address the documentary evidence cited in the General Counsel's Brief, including, but not
28 limited to, the timesheets and weekly activity reports showing field representatives working on

1 campaigns, which further support this Office's recommendations. *See generally*, Respondents'
2 Brief.⁷

3 *2. The Making of Prohibited In-Kind Contributions Was Knowing and Willful*

4 The KSDCC respondents made no effort to present new evidence on the issue of whether
5 they knowingly and willfully made in-kind contributions to federal candidates, leaving the
6 evidence contained in the General Counsel's Brief unrebutted. For example, the KSDCC
7 respondents acknowledge that they knew that certain federal election activities of its employees
8 must be limited to communications with union members unless conducted on their own personal
9 time. *See* Respondents' Brief, at 3. Further, the KSDCC respondents do not dispute that they
10 knew that the union was prohibited by law from providing compensation to union employees for
11 the time they spent working on federal campaigns.⁸

12 They argue, however, that no union representative testified under oath that he knowingly
13 and willfully violated the law or directed employees to engage in political activities in violation
14 of the law. *See id.* at 1-2. While it is true that nobody testified under oath that he knowingly and

⁷ This is not to say that no witness spoke in favor of the union's position. Indeed, some current and former field representatives generally defended the positions taken by the KSDCC respondents in this matter; however, these witnesses, at times, made inconsistent statements or contradicted information provided by the respondents. For example,

at first denied that he was paid by the union to work on campaigns but then later stated that his weekly salary from the union gave him the "freedom" to work on campaign activities whereas union members who did not have this "freedom" were harder to find for volunteer work. *See* General Counsel's Brief, at 19-20; *see also* at 10. By way of further example,

denied that Mr. Mitchell ever solicited contributions from field representatives and stated that the field representatives reached a consensus on their own at union meetings before making individual contributions to federal candidates regarding which candidates to contribute to and in what amounts. *See* at 10-12. This representation contradicts the statements made by almost every (if not every) witness in this investigation, including Mr. Mitchell himself who testified at his deposition that he contacted field representatives, mostly by telephone, and gave them suggested amounts for the contributions and deadlines for forwarding the checks to the union's main office. *See* Deposition of Donald Ray Mitchell dated November 19-20, 2003, at 279-280, *see also* General Counsel's Brief, at 28-29.

⁸ With respect to certain field representatives having desks at campaign headquarters, the KSDCC respondents claim in their Brief that they did not know this activity was prohibited until it was suggested to them that it may not be appropriate or lawful for union employees to work from their own desks at campaign headquarters. *See* Respondents' Brief, at 5. Even if this claim is true, the KSDCC respondents nevertheless had knowledge that union employees are prohibited from working for federal candidates on union time.

1 willfully violated the law, the KSDCC respondents nonetheless: (1) were aware of the relevant
2 law, (2) were aware of the extent of each field representative's campaign activities, and (3)
3 assigned the field representatives to engage in those activities. *See* General Counsel's Brief, at
4 8-11.

5 Respondents' Brief also claims that "membership education" may mean different things
6 to different people, though it offers no argument that the term was used solely to document
7 activities directed at its restricted class. *See id.* at 4. Thus, the KSDCC respondents do not rebut
8 the evidence that the term "membership education" served as a codeword that evidences the
9 knowing and willful nature of the KSDCC respondents' conduct to conceal the extent of its
10 political activities. *See* General Counsel's Brief, at 36-37. Instead, the Respondents' Brief
11 dismissively states that the term "membership education" "should not be a concern to anyone
12 except KSDCC." Respondents' Brief, at 4.

13 **B. KSDCC Improperly Facilitated Individual Earmarked Contributions to**
14 **Federal Candidates**

15 *1. KSDCC Collected and Delivered Contribution Checks to Federal Candidates*

16 The KSDCC respondents do not dispute that KSDCC, primarily through Don Mitchell,
17 solicited individual earmarked contributions from field representatives during the 2000 and 2002
18 election cycles. The KSDCC respondents also do not dispute that the union collected and
19 forwarded these contributions to federal candidates. Nevertheless, they argue that:

20 The federal statutory law does not specifically prohibit such
21 activity. However, 11 C.F.R., section 110.6(b)(2)(ii) *appears to*
22 prohibit a labor organization from being a conduit. *If there is a*
23 *violation* it was because the Union relied on the advice of
24 counsel....

25 Respondents' Brief, at 2, 7 (emphasis added). In so doing, the KSDCC respondents appear
26 unwilling to acknowledge, even in the face of direct evidence, that KSDCC's facilitation of the
27

1 contributions and conduit activity violated federal law. *See* 11 C.F.R. §§ 110.6(b)(2) and
2 114.2(f). Further, they provide no details or explanation as to the mistaken advice of counsel
3 upon which they supposedly relied.

4 As more fully set forth in the General Counsel's Brief, KSDCC facilitated all aspects of
5 the contribution process: it asked its employees to contribute, told them whom to support,
6 recommended specific amounts, set deadlines by which to make the contributions, and, in
7 violation 2 U.S.C. § 441b and the Commission's regulations, collected and bundled the
8 contributions and forwarded them directly to federal candidates. *See* General Counsel's Brief, at
9 26-32, 40-42.

10 2. *The KSDCC Respondents Created a Coercive Atmosphere in Which Field*
11 *Representatives Felt They Had No Choice But To Contribute*

12 The KSDCC respondents maintain that the solicited contributions were voluntarily made.
13 *See* Respondents' Brief, at 7. While not disputing the uniform pattern of contributions by field
14 representatives to each of the candidates endorsed by KSDCC, *see* General Counsel's Brief, at
15 27-28, Respondents' Brief notes instances in 2000 and 2002 where Mr. Barger chose not to make
16 contributions to candidates. *See* Respondents' Brief, at 7. It is unclear how this information is at
17 all probative to the issue of coercion since Mr. Barger is not only the top union official of
18 KSDCC but also the individual allegedly responsible for creating the atmosphere of intimidation
19 and coercion over union employees. Other than Mr. Barger, the respondents identify only one
20 field representative, Ed Reliford, as having not made a contribution to a federal candidate when
21 solicited by the union during previous election cycles. Except for a single contribution, the
22 evidence shows that Mr. Reliford made every contribution when solicited. *See* General

1 Counsel's Brief, at 27-28. No information has been presented, however, indicating the reason
2 Mr. Reliford did not make the final contribution.

3 Despite the knowledge that individual contributions must be voluntary, the KSDCC
4 respondents created a coercive atmosphere in which field representatives felt that making the
5 requested contributions was expected as part of their job and that they had little choice but to
6 contribute. *See* General Counsel's Brief, at 30-32, 38-40. The union gave field representatives
7 deadlines for making the requested contributions, maintained checklists to keep track of which
8 field representatives contributed and which did not, and routinely made follow-up phone calls to
9 field representatives who did not contribute by the specified deadline. *See id.* These facts are
10 undisputed. Moreover, the record is replete with examples of field representatives who felt that
11 the contributions were expected, including some who felt that they could lose their jobs or face
12 other reprisals if they failed to contribute. *See id.*

13 **C. KSDCC Failed to Report the Costs of Membership Communications**

14 The KSDCC respondents do not dispute that, during the previous three election cycles,
15 KSDCC's bona fide membership communications to its restricted class contained express
16 advocacy for federal candidates. *See* Respondents' Brief, at 10. They also do not dispute that
17 KSDCC failed to produce evidence regarding the costs of these communications.

18 The Respondents' Brief states that "KSDCC did not submit documentation regarding
19 costs because *it did not find* that the costs exceeded the threshold amount." *See id.* (emphasis

1 added). KSDCC, however, did not to produce any exculpatory evidence to assist the
2 Commission, and the evidence indicates that the costs incurred by KSDCC to make express
3 advocacy communications to its 4,000 members before general elections likely exceeded the
4 \$2,000 threshold for reporting set forth in 2 U.S.C. § 431(9)(B)(iii) in any given year. *See*
5 General Counsel's Brief, at 32-33, 42-43. These communications included direct mailings,
6 phone banks, and automated telephone messages, which largely, if not exclusively, urged
7 members to support clearly identified federal candidates. *See id.*; *see also* Attachment 5
8 (example direct mailings and telephone scripts).

9 **D. Recommendations**

10 Based upon the foregoing, and the reasons set forth in the General Counsel's Brief, this
11 Office recommends that the Commission find probable cause to believe that the Kentucky State
12 District Council of Carpenters knowingly and willfully violated 2 U.S.C. § 441b(a) by directing
13 and providing compensation to union employees to assist the campaigns of federal candidates
14 without charge. This Office also recommends that the Commission find probable cause to
15 believe that the Kentucky State District Council of Carpenters knowingly and willfully violated
16 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii) by coercing contributions,
17 improperly facilitating contributions, and serving as a conduit for contributions. This Office
18 further recommends that the Commission find probable cause to believe that Steve Barger, Don
19 Mitchell, and Tom Schulz, as officers of KSDCC, knowingly and willfully violated 2 U.S.C. §
20 441b(a) and 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii) by causing and/or consenting to all of the
21 above violations. Finally, this Office recommends that the Commission find probable cause to
22 believe that the Kentucky State District Council of Carpenters violated 2 U.S.C. § 431(9)(B)(iii)
23 by failing to report the costs of membership communications containing express advocacy.

1 **V. CONCILIATION AND CONTINGENT SUIT AUTHORITY**

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VII. DISCUSSION OF OTHER RESPONDENTS AND PARTIES

Although the facts and circumstances of this matter revolve primarily around the KSDCC respondents, there are other parties that require further discussion: first, the candidate committees who worked with and benefited from KSDCC; second, three individuals who, according to the initial referral from the Kentucky Attorney General's Office, were "proponents" of the alleged illegal activity; and third, CLIC, the separate segregated fund of the KSDCC's parent union. This Office's recommendations as to these parties are set forth below.

A. Committees Who Received Prohibited Contributions from KSDCC

1. In-Kind Contributions

As detailed in the Brief, KSDCC provided significant amounts of uncompensated personal services to federal candidate committees during the 1998, 2000 and 2002 election cycles. While the evidence proves that KSDCC knowingly and willfully made these prohibited in-kind contributions to federal candidates, the evidence is less clear as to whether the recipient committees knowingly accepted these in-kind contributions. *See* 2 U.S.C. § 441a(f). Given the close working relationship between field representatives and the campaigns—some field

1 representatives even had their own desks at campaign offices—there can be no dispute that the
2 campaigns knew that representatives from KSDCC were providing considerable assistance.

3 What is unknown, however, is whether the campaigns knew that KSDCC employees
4 were actually being paid for their work and/or whether they knew that the employees were
5 coerced into providing services. If the campaigns had such knowledge, then they likely violated
6 the Act by knowingly accepting prohibited contributions. By contrast, if the campaigns truly
7 believed that the field representatives were volunteers, then they likely did not violate the Act.

8 Despite the unanswered questions, further investigation would not be a prudent use of
9 Commission resources. First, of the ten campaigns that KSDCC directed its employees to assist,
10 six have terminated and one other has filed no disclosure reports in two years. Second, all of the
11 activity from the 1998 campaigns would be barred by the statute of limitations. Third, the value
12 of the services received by each committee is relatively modest: approximately \$11,000 per
13 committee in 2000 and \$4,000 in 2002. Overall, therefore, the circumstances may not justify
14 devoting additional resources to investigate the recipients of KSDCC's services.

15 2. *Facilitated Monetary Contributions*

16 Unlike the circumstances with the in-kind contributions, all committees knew or should
17 have known that the monetary contributions they received from field representatives were
18 facilitated by KSDCC and thus prohibited. *See* 2 U.S.C. § 441b; 11 C.F.R. § 103.3(b). As
19 detailed in the Brief, KSDCC went to great lengths to make sure that candidates knew that its
20 employees were contributing. *See* General Counsel's Brief, at 26-30. Most significantly,
21 KSDCC bundled all checks together and attached a cover letter on union stationery listing the
22 names of the contributors and the aggregate amount of their checks. *See* Attachment 4. When
23 recipient committees received these letters on union stationery, which were often hand-delivered

1 by union officers, they should have immediately been aware that the contributions were illegal
2 and thus refunded them or made their best efforts to determine the legality. *See* 11 C.F.R.
3 § 103.3(b)(1).

4 In situations such as this where the facts do not appear to be in dispute, this Office would
5 usually recommend that the Commission make reason to believe findings and enter into pre-
6 probable cause conciliation. Nonetheless, as with the in-kind contributions, the current
7 circumstances may not warrant further proceedings. Again, there are few active committees to
8 pursue and the amounts in violation were relatively modest.

Candidate Committees Who Received Prohibited Contributions From KSDCC

<u>Candidate</u>	<u>Cycle</u>	<u>Active?</u>	<u>In-Kind</u>	<u>Facilitated- Individual</u>	<u>Facilitated- CLIC</u>	<u>Total</u>
Tom Barlow	1998	No	\$0*	\$0*	\$0*	\$0
Chris Gorman	1998	No	\$0*	\$0*	\$0*	\$0
Ken Lucas	98-02	Yes	\$15,300	\$4,250	\$10,000	\$29,550
Scotty Baesler	98-00	No	\$11,000	\$2,450	\$10,000	\$23,450
Gore/Lieberman	2000	Yes	\$9,200	\$0	\$0	\$9,200
Brian Roy	2000	No	\$9,200	\$2,600	\$10,000	\$21,800
Eleanor Jordan	2000	No**	\$9,200	\$2,525	\$10,000	\$21,725
Klint Alexander	2002	No	\$4,300	\$3,250	\$0	\$7,550
Jack Conway	2002	Yes	\$4,300	\$3,250	\$5,000	\$12,550
Lois Combs Weinberg	2002	No	\$4,300	\$3,250	\$0	\$7,550

*The statute of limitations has expired for these apparent violations
**Eleanor Jordan's principal campaign committee has not filed any reports in nearly two years

9 Based on the totality of the circumstances, this Office believes that admonishment letters
10 would be the most appropriate course of action for the committees who received in-kind or
11 facilitated contributions from KSDCC. These letters would inform the committees that the
12 Commission discovered information that indicates that they may have accepted prohibited

1 contributions and admonish them to be more vigilant if they undertake future campaigns. These
2 letters may also be sent to all committees, regardless of whether they have terminated.
3 Therefore, this Office recommends that the Commission admonish the following persons and
4 close the file as it pertains to them:

5 Alexander for Congress and Anne Watkins, as treasurer; Baesler for Senate Committee
6 and Michael Foley, as treasurer; Baesler for Congress and Michael Foley, as treasurer;
7 Tom Barlow for Congress and Clyde Elrod, as treasurer; Conway for Congress and Scott
8 Karen, as treasurer; Gore/Lieberman Inc. and Jose Villarreal, as treasurer; Gorman for
9 Congress and Edwin Olliges, Jr., as treasurer; Eleanor Jordan for Congress and Christal
10 Williams, as treasurer; Lucas for Congress and Steve Cauthen, as treasurer; Brian Roy for
11 Congress and Tim Miller, as treasurer; Scorsone for Congress and Laurence T. Summers,
12 as treasurer; and Lois 2002 U.S. Senate Committee and Lois Weinberg, as treasurer.

13 **B. Other KSDCC Employees**

14 On May 9, 2002, the Commission decided to "take no action at this time" against three
15 individuals employed by or associated with KSDCC – Jerry Landers, Dan Forbis and Mike Fleitz
16 – who were identified in the referral from the Kentucky Attorney General's Office as having
17 been "proponents" of KSDCC's alleged illegal activity. At that time, the Commission had little
18 information, if any, concerning the extent of these individuals' participation in KSDCC's
19 campaign activities.

20 During the investigation, this Office learned that Mr. Landers, who has been a member of
21 his local union since the 1960s and employed by KSDCC in various positions over the years, has
22 been the Director of Organizing of KSDCC since approximately 2001. As the Director of
23 Organizing, he has been responsible for supervising the field representatives in all of their non-

1 political responsibilities. Mr. Forbis, who has been a member of his local union since the 1970s
2 and employed by KSDCC in various positions over the years, is one of KSDCC's senior field
3 representatives. As a senior field representative, Mr. Forbis has provided guidance and
4 mentoring to the other field representatives in his area in addition to carrying out the daily
5 responsibilities of a field representative. Mr. Fleitz, who has been a member of his local union
6 since the 1970s, is the Coordinator of the apprenticeship program and in charge of training new
7 carpenters. While Mr. Fleitz's employer is a joint apprenticeship committee composed of labor
8 and management representatives, he regularly reports his activities to KSDCC.

9 Based upon documents submitted by KSDCC and information obtained during interviews
10 and depositions, it appears that all three individuals participated in KSDCC's campaign activities
11 during times relevant herein, though Mr. Fleitz less so than Mr. Landers and Mr. Forbis. Mr.
12 Fleitz's level of participation appears to be similar to that of KSDCC's field representatives.

13 Mr. Landers and Mr. Forbis, on the other
14 hand, provided instructions and follow-up to field representatives from time to time regarding
15 their campaign activities and monetary contributions. The primary responsibility for providing
16 instructions and follow-up to the field representatives, however, fell upon Mr. Mitchell (under
17 the authority of Mr. Barger) who at times delegated this responsibility or sought assistance from
18 Mr. Landers and Mr. Forbis. Because there is little information indicating that Landers, Forbis,
19 and Fleitz played substantial roles in directing the union's campaign activities, this Office
20 recommends that the Commission take no action and close the file as to them.

21 **C. Carpenters Legislative Improvement Committee**

22 On May 9, 2002, the Commission found reason to believe that the Carpenters Legislative
23 Improvement Committee ("CLIC"), the separate segregated fund of KSDCC's national union,

1 the United Brotherhood of Carpenters and Joiners of America, and Monte Byers, as treasurer,
2 violated 2 U.S.C. §§ 441b and 441f by accepting contributions made with union funds and
3 contributions made in the name of another. The basis for this finding, in part, was information
4 that certain officers and field representatives of KSDCC received contribution refunds from
5 CLIC on April 30, 2001, shortly after KSDCC's alleged activities were reported to the Kentucky
6 Office of Attorney General.

7 In its response to the Commission's reason to believe findings, CLIC stated that the
8 "refunds" made by CLIC on April 30, 2001 were not contribution refunds at all. Rather, CLIC
9 explained that a list of credit union remittances from KSDCC employees totaling \$7,652 was
10 mistakenly sent to CLIC with a check in the amount of \$932.06 representing KSDCC
11 employees' contributions to CLIC. CLIC submitted the remittance list with its response
12 reflecting \$7,652 in credit union remittances from KSDCC employees. Believing the remittance
13 list belonged with the contribution check, CLIC explained that it forwarded the remittance list
14 and check to a company which prepared its disclosure reports to the Commission. The company
15 failed to observe the discrepancy between the amount of credit union remittances noted on the
16 list and the amount noted on the contribution check and, instead, reported the \$7,652 in
17 remittances as federal receipts. Once this error was discovered, CLIC reported \$7,652 in refunds
18 in its next report.

19 During the course of the investigation, this Office discovered no other evidence
20 indicating that CLIC may have violated the Act. Therefore, based upon the information
21 presented, this Office recommends that the Commission take no further action against the
22 Carpenters Legislative Improvement Committee and Monte Byers, as treasurer, and close the file
23 as to these respondents.

VIII. RECOMMENDATIONS

1. Find probable cause to believe that Kentucky State District Council of Carpenters, Steve Barger, Don Mitchell and Tom Schulz knowingly and willfully violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii);
2. Find probable cause to believe that Kentucky State District Council of Carpenters violated 2 U.S.C. § 431(9)(B)(iii);
3. Enter into conciliation with KSDCC and/or any other related or successor organization subject to liability for the violations;
4. Approve the appropriate conciliation agreements for KSDCC, Steve Barger, Don Mitchell, and Thomas Schulz;
5. Grant the Office of General Counsel contingent authority to file a civil suit in federal district court against Steve Barger, Don Mitchell, Tom Schulz, and the Kentucky State District Council of Carpenters and/or any other related or successor organization subject to liability for the violations;
- 6.
7. Admonish the following committees for apparently accepting prohibited in-kind and/or facilitated contributions from KSDCC and close the file as it pertains to them: Alexander for Congress and Anne Watkins, as treasurer; Baesler for Senate Committee and Michael Foley, as treasurer; Baesler for Congress and Michael Foley, as treasurer; Tom Barlow for Congress and Clyde Elrod, as treasurer; Conway for Congress and Scott Karen, as treasurer; Gore/Lieberman Inc. and Jose Villarreal, as treasurer; Gorman for Congress and Edwin Olliges, Jr., as treasurer; Eleanor Jordan for Congress and Christal Williams, as treasurer; Lucas for Congress and Steve Cauthen, as treasurer; Brian Roy for Congress and Tim Miller, as treasurer; Scorsone for Congress and Laurence T. Summers, as treasurer; and Lois 2002 U.S. Senate Committee and Lois Weinberg, as treasurer;
8. Take no further action against Jerry Landers, Dan Forbis and Mike Fleitz and close the file as it pertains to them;
9. Take no further action against Carpenters Legislative Improvement Committee United Brotherhood of Carpenters and Monte Byers, as treasurer, and close the file as it pertains to them; and
10. Approve the appropriate letters.

2025-04-09 14:05:22

5/12/04
Date

Lawrence H. Norton
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General Counsel

Rhonda J. Vosdingh
Rhonda J. Vosdingh
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Mark D. Shonkwiler
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Ann Marie Terzäken
Ann Marie Terzäken
Assistant General Counsel

Brant S. Levine
Brant S. Levine
Attorney

Other Staff Assigned:

James Pawlik, Investigator

Attachments:

1. Diagram of KSDCC's chain of command
2. Letters from Steve Barger to federal candidates in which Mr. Barger informs the candidates that union members will work directly in their campaign offices
3. Weekly activity reports from field representative Steve Baird
4. Letters from KSDCC to federal candidates that accompanied bundled contributions; internal checklists maintained by KSDCC to track contributions from union employees
5. KSDCC membership communication materials
6. Proposed conciliation agreement for KSDCC

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