



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6691
Lampson for Congress, *et al.*)
)

**STATEMENT OF REASONS OF
VICE CHAIRMAN MATTHEW S. PETERSEN AND
COMMISSIONERS LEE E. GOODMAN AND CAROLINE C. HUNTER**

Lampson for Congress, the authorized committee of 2012 congressional candidate Nicholas Lampson, and the Texas Democratic Party (collectively, "Respondents") were alleged to have "illegally coordinated efforts" on mailings the Texas Democratic Party distributed in the fall of 2012 in support of Lampson's candidacy, resulting in inaccurate disclosure reports, incomplete disclaimers, and excessive contributions.¹ As explained below, we voted to dismiss the allegations because we could not justify further allocating Commission resources to this matter.²

I. Factual Background

According to the Complaint, and as reflected in Lampson for Congress's disclosure reports, Lampson for Congress made five transfers, totaling \$152,350, to the Texas Democratic Party from September 12, 2012, to October 12, 2012.³ During roughly the same time frame – from September 13, 2012 to October 17, 2012 – the Texas Democratic Party made \$166,148.54 in expenditures to Mack Crouse Group, LLC, for mailings supporting Lampson.⁴ The mailings were not attached to the Complaint, nor were they described with specificity therein, but the Complaint indicated that the mailings attacked Lampson's general election opponent and relied on the "same documentation" and "us[ed] the same false attack lines" that appeared in a Lampson press release issued on September 26, 2012, which is attached to the Complaint.⁵ The

¹ MUR 6691 (Lampson for Congress), Complaint at 1-3.

² MUR 6691 (Lampson for Congress), Certification (Jan. 13, 2015).

³ Complaint at 1-3. Lampson for Congress reported the purpose of the transfers as "voter file access," "unlimited transfer to party committee," and "direct mailing services."

⁴ *Id.* at 2-7.

⁵ *Id.* at 1; *see also id.* at 8 (attachment of September 26, 2012 press release).

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Texas Democratic Party's disclosure reports described the purpose of the expenditures on these mailings as either "exempt campaign materials: mail" or "campaign exempt materials: mail."⁶

The Complaint alleged that Lampson for Congress and the Texas Democratic Party impermissibly coordinated the mailings at issue and that the disclaimer on the mailings failed to disclose Lampson's role in their preparation.⁷ The Complaint predicated these allegations entirely on suppositions drawn from similarities in the timing of Lampson for Congress's transfers relative to the state party's disbursements for the mailings and the amounts transferred and ultimately spent on the mailings.⁸

In a joint response, Respondents contended that the mailings qualified for the "volunteer materials exemption,"⁹ which, when applicable, allows a party to disseminate campaign materials on behalf of its nominees, without limit, and in coordination with the candidate.¹⁰ Respondents argued that, because the mailings at issue were exempt, no impermissible contributions resulted and the mailing's disclaimers did not require an "authorization statement" from Lampson.¹¹ Respondents also asserted that Lampson's transfers were made in accordance with the unlimited transfer authority under 52 U.S.C. § 30114(a)(4) (formerly 2 U.S.C. § 439a(a)(4)), and that the transfers were "not related" to the Texas Democratic Party's mailings.¹²

⁶ *Id.* at 4-7.

⁷ *Id.* at 1-3.

⁸ *See id.* at 1 (asserting that, "[g]iven the large, unexplained transfers of money from Lampson's campaign to the [Texas Democratic Party], and the subsequent mail pieces by the party using the same false attack lines, the coordination is obvious").

⁹ Respondents submitted declarations stating that the dissemination of these materials included significant volunteer involvement. MUR 6691 (Lampson for Congress), Response at 4-5, 7-8. The first declaration attached to the Response was submitted by Joseph Vogas, the Field Coordinator for the Texas Democratic Party. *See id.* at 4-5. (Decl. of Joseph Vogas (Dec. 19, 2012)). Vogas stated that he "supervised the . . . production and distribution" of mailings on behalf of Lampson by volunteers of the Texas Democratic Party. *Id.* at 4, ¶¶ 1-2. He attested that the "mailings referenced in the complaint involved the use of volunteers to assist in its production" and attached a copy of the Texas Democratic Party's guidelines for the production of volunteer mail. *Id.* ¶¶ 1, 3.

The second declaration attached to the Response was submitted by Nancy Johnson, one of the Texas Democratic Party's volunteers. *See id.* at 7-8 (Decl. of Nancy Johnson (Dec. 19, 2012)). Johnson attested that: she participated in volunteer mailings undertaken on behalf of Lampson; volunteers were provided with the Texas Democratic Party's guidelines; and volunteers were involved in several aspects of the mailing including, but not limited to, relabeling and sorting mail bags, unloading mail flyers and placing the mail on a conveyor belt for auto addressing. *Id.* at 7, ¶¶ 1-3.

¹⁰ Response at 1-2; *see* 52 U.S.C. §§ 30101(8)(B)(ix), (9)(B)(viii) (formerly 2 U.S.C. §§ 431(8)(B)(ix), (9)(B)(viii)); 11 C.F.R. §§ 100.87, 100.147.

¹¹ Response at 1-2.

¹² *Id.* at 2 n.1.

II. Legal Background

The Act limits contributions from a political party committee to one of its candidates to \$5,000 per election.¹³ It also limits the amount of expenditures a political party committee can make in coordination with one of its candidates for the U.S. House of Representatives; this limit was \$45,600 per general election in 2012. When a party committee makes an expenditure for a communication that is coordinated with a candidate, the party must report the expenditure as either an in-kind contribution (subject to the \$5,000 limit) or a coordinated party expenditure (subject to the \$45,600 limit).¹⁴ The Act, however, imposes no limit on transfers of funds from a candidate's authorized federal campaign committee to a state, district, or local political party.¹⁵

There also is no limit under the Act on a state party's disbursements that qualify for the "volunteer materials exemption."¹⁶ For the exemption to apply, the following criteria must be satisfied: (a) the campaign material must not be for "general public communication or political advertising," including direct mail;¹⁷ (b) the portion of the payment allocable to a federal candidate must be paid with federal funds; (c) the committee's payment is not made from contributions designated by the donor to be spent on behalf of a particular federal candidate; (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 a disbursement; and (f) campaign materials must not be purchased either directly by a national committee or with funds donated by the national committee to the state committee.¹⁸

Payments qualifying for the volunteer materials exemption are not "contributions" or "expenditures" and thus are not subject to the Act's contribution and expenditure limits.¹⁹ Accordingly, there are no constraints on the degree to which such communications can be coordinated with the beneficiary candidate's committee, and such exempt materials "do not need

¹³ 52 U.S.C. § 30116(a)(2)(A) (formerly 2 U.S.C. § 441a(a)(2)(A)).

¹⁴ 11 C.F.R. § 109.37(b).

¹⁵ 52 U.S.C. § 30114(a)(4) (formerly 2 U.S.C. § 439a(a)(4)).

¹⁶ See 11 C.F.R. §§ 100.87, 100.147.

¹⁷ For purposes of 11 C.F.R. §§ 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.* §§ 100.87(a), 100.147(a).

¹⁸ *Id.* §§ 100.87(a)-(e), (g), 100.147(a)-(e), (g). In MUR 5575 (Alaska Democratic Party), the Commission examined the use of national committee funds for volunteer exempt activity, 11 C.F.R. § 100.87(g), and clarified that "the volunteer materials exemption is nullified only if a national party committee purchases such materials, or donates funds specifically 'for the purchase of such materials.'" MUR 5575 (Alaska Democratic Party), Statement of Reasons, Vice Chairman Petersen and Commissioners Bauerly, Hunter & McGahn at 4. The Commission concluded that the Commission's investigation in the matter did not establish "that the funds were transferred specifically to fund the activity." *Id.*

¹⁹ See 52 U.S.C. §§ 30101(8)(B)(ix), (9)(B)(viii) (formerly 2 U.S.C. §§ 431(8)(B)(ix), (9)(B)(viii)); 11 C.F.R. §§ 100.87, 100.147.

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to state whether the communication is authorized by a candidate, or any authorized committee or agent of any candidate.”²⁰

III. Analysis

We concluded that the Texas Democratic Party’s mailings in support of Lampson’s campaign qualified for the volunteer materials exemption and, as a result, that the Complaint’s allegations of coordination and failure to include a candidate authorization in the mailers were irrelevant. The only issue was whether the regulation’s requirement that the state party’s payment “not [be] made from contributions designated by the donor to be spent on behalf of a particular candidate . . . for Federal office” foreclosed application of the exemption.²¹ We determined it did not.

Indeed, as noted above, Lampson for Congress expressly denied in the Response that the funds it transferred to the Texas Democratic Party were designated to be used toward the mailings.²² The Texas Democratic Party, moreover, repeatedly affirmed to the Commission that “no transfer funds were used to pay for exempt activities.”²³ No specific facts alleged in the Complaint contradicted these assertions. Thus, the applicability of the volunteer materials exemption to the Texas Democratic Party’s mailers appeared clear.

Nevertheless, we also considered in the alternative whether the volunteer materials exemption would have applied had Lampson for Congress in fact designated the funds. We concluded it would have. Commission regulations address funds impermissibly designated for volunteer mail disbursements as “contributions.”²⁴ The Act refers to candidate funds given to a party as “transfers,” not as “contributions.”²⁵ “Transfers” and “contributions” are regulated differently. For example, “contributions” to state parties and authorized committees are strictly limited, whereas “transfers” are not subject to amount limitations. Given the absence of a limit on the amount a candidate can transfer to the candidate’s party, there is no statutory contribution limit that can be circumvented in the case of a candidate’s transfer to the party for that candidate’s own benefit.²⁶ Thus, although the regulations are not explicit on this question, their

²⁰ 11 C.F.R. § 110.11(e).

²¹ *Id.* § 100.87(c).

²² Response at 2 n.1.

²³ Miscellaneous Text (FEC Form 99) (Jan. 2, 2013); *see also* 2012 Pre-General Report (“None of the transferred funds were designated or earmarked for any particular candidate or for any exempt activity, and none were used for allocable Federal Election Activity.”); 2012 30-Day Post General Election Report (same); Response at 2 (stating that the transfers from Lampson for Congress “are not related to these mailings”).

²⁴ *See* 11 C.F.R. §§ 100.87(c) (providing that state party’s payment of the costs of campaign materials will not qualify for exemption when “[s]uch payment is . . . made from *contributions* designated by the donor to be spent on behalf of a particular candidate . . . for Federal office” (emphasis added)).

²⁵ *See* 52 U.S.C. § 30114(a)(4) (formerly 2 U.S.C. § 439a(a)(4)).

²⁶ Under Commission regulations, moreover, a communication must meet three criteria to qualify as a coordinated communication: (1) it must be paid for by someone other than the candidate; (2) it must satisfy at least

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purpose and structure strongly indicate that a candidate's provision of funds to a party to be used to support that candidate is not a "contribution" for purposes of the volunteer materials exemption.²⁷

Additionally, Commission regulations permit parties to accept unlimited funds from state candidates for volunteer materials, provided they do not exceed that candidate's proportional share of a volunteer mailing.²⁸ It would be incongruous if state candidates were allowed to transfer money without federal limit to state parties to pay for the portion of volunteer materials supporting their candidacies but federal candidates were not afforded the same privilege.

Furthermore, we recognized that, as a matter of policy, no risk of actual or apparent corruption arises when a candidate transfers funds to a state party that then spends those funds to support the candidate's campaign -- particularly when the flow of funds is completely disclosed. The money allegedly used to benefit Lampson for Congress originated with Lampson for Congress, an authorized federal campaign committee, and consisted of fully disclosed, federally permissible funds. The transfers from Lampson for Congress to the Texas Democratic Party and the ultimate disbursement from the Texas Democratic Party for volunteer mail activity were disclosed. Accordingly, the public record clearly shows that Lampson for Congress transferred funds to the Texas Democratic Party during a period in which the Texas Democratic Party reported disbursing funds for volunteer mail supporting Lampson.

one of the content standards; and (3) it must satisfy at least one of the conduct standards. 11 C.F.R. § 109.37(a); *see also id.* § 109.21(c) (describing five content standards); *id.* § 109.21(d) (describing six conduct standards). On the face of reports filed with the Commission, the expenditures at issue in this matter appear to have been paid for by the Texas Democratic Party. If, however, they were paid for by funds that truly belonged to Lampson for Congress, the payment prong would no longer be satisfied and there would be no coordinated communication. Therefore, even if Lampson for Congress were the source of the funds that paid for the mailers, there could not have been an impermissible coordinated communication.

²⁷ Although the Commission has referred to or analyzed transferred funds as "contributions" at least twice, those matters are factually distinct and not dispositive here. In Advisory Opinion 1981-01 (Bay Area Committee for Reelection of the President), the Commission advised local party committees that transfers to a state party committee should be reported as "expenditures" by the transferor committee and "contributions" by the transferee committee, and that a contribution or expenditure of over \$1,000 could raise questions of political committee status. And in MUR 5520 (Republican Party of Louisiana), the Commission found no reason to believe that transfers from a candidate's authorized committee to a state party were earmarked contributions to another candidate's authorized committee, reasoning that "the timing and amounts of the relevant transactions do not provide a sufficient basis to investigate whether the Respondents violated the Act's earmarking provisions." MUR 5520 (Republican Party of Louisiana), First General Counsel's Report at 2. Neither of these matters involved the situation at issue here, where a campaign is accused of designating funds that it transferred be used for its benefit.

²⁸ *See* 11 C.F.R. § 100.87(f) ("Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not contributions, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.").

IV. Conclusion

In light of the foregoing factual, legal, and policy considerations and in recognition of the Commission's enforcement priorities and resources, we voted to exercise the Commission's prosecutorial discretion and dismiss this matter.²⁹



MATTHEW S. PETERSEN
Vice-Chairman

4/8/2015

Date



CAROLINE C. HUNTER
Commissioner

4/8/2015

Date



LEE E. GOODMAN
Commissioner

4/8/2015

Date

²⁹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

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