



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

Stefan Passantino, Esq.  
Dentons US LLP  
1900 K Street NW  
Washington, DC 20006

OCT 21 2016

RE: MUR 6823  
Mississippi Conservatives  
and Brian Perry in his official  
capacity as treasurer

Dear Mr. Passantino:

On October 18, 2016, the Federal Election Commission ("Commission") accepted the signed conciliation agreement that you submitted on behalf of your clients, Mississippi Conservatives and Brian Perry in his official capacity as treasurer ("Respondents"), in settlement of violations of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(d)(1)(iv)-(v). Accordingly, the file has been closed in this matter.

Documents related to this matter will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with the conciliation process will not become public without the written consent of Respondents and the Commission. See 52 U.S.C. § 30109(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Saurav Ghosh".

Saurav Ghosh  
Attorney

Enclosure  
Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 6823  
Mississippi Conservatives and )  
Brian Perry in his official capacity )  
as treasurer )

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FEDERAL ELECTION COMMISSION

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint by Tea Party Patriots and its Chair, Jenny Beth Martin. The Federal Election Commission ("Commission") found reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer (collectively, "MC" or "Committee") violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(d)(1)(iv)-(v).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. MC is an independent-expenditure-only political committee within the meaning of 52 U.S.C. § 30101(4); Advisory Op. 2010-11 (Commonsense Ten).
2. Brian Perry is MC's treasurer of record.

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3. Political committees such as MC must disclose the contributions they receive, including the identity of any person who makes over \$200 in contributions within a calendar year, together with the date and amount of any such contribution. 52 U.S.C. § 30104(b)(2), (3). A contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8); *see also* 11 C.F.R. § 100.52(a) (same).

4. “[T]he term *loan* includes a guarantee, endorsement, and any other form of security.” 11 C.F.R. § 100.52(b) (emphasis in original); *see also id.* § 100.52(d)(1) (provision of a security is an in-kind contribution). A “security” is “[c]ollateral given or pledged to guarantee the fulfillment of an obligation; esp., the assurance that a creditor will be repaid . . . any money or credit extended to a debtor.” BLACK’S LAW DICTIONARY, 1476-1477 (9th ed. 2009). Accordingly, a third party who pledges a collateral to ensure the repayment of a bank’s loan to a committee makes an in-kind contribution to that committee.

5. The Commission’s bank loan regulations provide that loans secured by “collateral owned by the candidate or committee receiving the loan” are not contributions, if they also meet other criteria. 11 C.F.R. § 100.82(e)(1)(i) (emphasis added). If the borrower does not own the collateral for the loan, other issues — such as contribution limits, prohibitions, and disclosure requirements — may be implicated. To illustrate this point, 11 C.F.R. § 100.82(e)(1)(ii) provides that loan “[a]mounts guaranteed by secondary sources of repayment,” that is, not secured by collateral that the loan recipient committee owns, “*such as* guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, 110.20, part 114 and part 115.” (emphasis added). *See also* 11 C.F.R. § 100.52(b)(3)

(endorsers and guarantors “shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement”).

6. Commission regulations governing loans require committees to disclose, *inter alia*, “the types and value of traditional collateral or other sources of repayment that secure the loan,” “whether that security interest is perfected,” and “[a]n explanation of the basis upon which the loan was made . . . if not made on the basis of either traditional collateral or the other sources of repayment described in 11 CFR 100.82(e)(1) and (2) and 100.142(e)(1) and (2).” 11 CFR 104.3(d)(1)(iv). Political committees are also required to submit an appropriate certification from the lending institution regarding the loan. 11 C.F.R. § 104.3(d)(1)(v).

7. MC sought a loan from Trustmark National Bank in the amount of \$250,150. In order for MC to receive this loan, Haley Barbour executed an agreement with Trustmark providing that his CD would serve as collateral for the loan and be used to pay the loan if MC defaulted. This pledge of security for the loan was an in-kind contribution from Haley Barbour to MC. As such, the Act required MC to disclose the identity of the contributor, the date of the contribution, and the amount of the contribution.

8. In its April Quarterly Report filed on April 15, 2014, MC revealed the existence of the Trustmark loan, but failed to disclose that the loan was secured by collateral, failed to identify the person who provided the CD as security for the loan, and failed to state accurately that Trustmark had a perfected security interest in the collateral.

9. MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan documents: the Promissory Note, the Board Resolution, and the Errors and Omissions Agreement. MC did not, however, attach the Assignment, the document indicating that it did not own the pledged CD.

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10. On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00, Trustmark did not have a secured interest in the collateral, and there were no secondarily liable parties. The Committee continued to leave blank the space provided on Schedule C-1 to explain how the loan's repayment was assured if the loan was not secured by collateral or future receipts. MC Amended April Quarterly Report at 26 (May 12, 2014). It also continued to represent that Trustmark had certified the accuracy of the information on the form and the loan's compliance with the Commission's regulations. *Id.*

11. MC filed its Second Amended April Quarterly Report on May 17, 2014, on which it checked "Yes" in response to the question on Schedule C-1 asking if the loan was collateralized by any one of various types of security, including a certificate of deposit. MC Second Amended April Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC wrote "Certificate of Deposit." *Id.* But MC neither disclosed that it did not own the CD that secured the loan, nor did MC provide the loan document that showed that another party owned the CD, much less identify the owner of the CD. MC stated in response to another question on the Schedule C-1 that Trustmark had a perfected security interest in the collateral, but it continued to state that no other party was secondarily liable for Trustmark's loan to MC. MC Second Amended April Quarterly Rpt. at 26 (May 17, 2014).

12. MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date.

13. Respondents contend that they did not intend to violate the Act or the Commission's regulations. They contend that they inadvertently failed to initially disclose that the Trustmark loan was secured with collateral. They further contend that they failed to disclose the identity of

the person who pledged the collateral used to secure the loan because they misinterpreted the relevant reporting requirements.

V. Mississippi Conservatives and Brian Perry in his official capacity as treasurer did not disclose the identity of a contributor in violation of 52 U.S.C. § 30104(b)(2), (3), and disclosed incorrect information in Schedule C-1 of its April 2014 Quarterly Report in violation of 11 C.F.R. § 104.3(d)(1)(iv)-(v).

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of nineteen thousand dollars (\$19,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondents will cease and desist from violating 52 U.S.C. § 30104(b)(2), (3) and 11 C.F.R. §§ 104.3(d)(1)(iv)-(v).

3. Respondents will amend all relevant disclosure reports to disclose the identity of the owner of the CD.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent(s) shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement(s) contained in this agreement and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

BY: Kathleen Guith  
Kathleen Guith  
Acting Associate General Counsel  
for Enforcement

10-20-16  
Date

FOR THE RESPONDENT(S):

Stefan C. Passantino  
Stefan C. Passantino  
Counsel to Respondents  
Dentons US

9/2/16  
Date

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