



National Republican Congressional Committee

John Linder, M.C.
Chairman

Ted Maness
Executive Director

July 7, 1998

F. Andrew Turley, Esq.
Supervisory Attorney, Central Enforcement Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4743

Dear Mr. Turley:

This letter, along with the attached Affidavit, is submitted on behalf of the National Republican Congressional Committee and Donna Singleton, as treasurer ("Respondents") in response to a complaint filed by Garry C. Kling, designated Matter Under Review ("MUR") 4743. For the reasons set forth herein, Respondents respectfully request that the Federal Election Commission find no reason to believe that Respondents violated the Federal Election Campaign Act of 1971, as amended ("Act"), and take no further action in this matter.

FACTUAL BACKGROUND

Congressman Bill Goodling is the United States Representative for the 19th District of Pennsylvania. He has served in this capacity for 12 terms since being sworn-in in 1975. Congressman Goodling currently serves as the Chairman of the Education and Workforce Committee in the House of Representatives and faces re-election this November.

From time to time over the years, Congressman Goodling has faced opposition, albeit always unsuccessful, in both primary and general elections. For example, Rep. Goodling was opposed in the most recent Republican primary election, held on May 19, 1998. Congressman Goodling won the Republican nomination handily, obtaining 68 percent of the total votes cast.

The purpose of the NRCC is to elect Republicans to Congress. Given Congressman Goodling's impressive electoral track record, the NRCC made a decision that coordinated funds spent in May would most successfully lead to Republican retention of the district in the November general election. *Brookover Affidavit*, ¶ 2. Accordingly, the NRCC made \$55,462.24 in coordinated expenditures on behalf of the Goodling for Congress Committee.

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Washington, D.C. 20003
(202) 479-7020
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THE COMPLAINT

The complaint in this matter offers two allegations: (1) the NRCC "may" have made a contribution to the Committee in excess of \$5,000, and (2) NRCC coordinated expenditures under 2 U.S.C. § 441a(d) were improper prior to the primary election. These allegations are based only on speculation and suspicions fueled by imprecise news reports. In addition to these legal objections, Mr. Kling also complains that party favoritism of tried-and-true candidates in contested primary elections is "divisive" and "a misapplication of the party's funds," constitutes an "egregious breach of duty" and sends "a very definite message to Republican contributors throughout the country."

LEGAL ANALYSIS

Mr. Kling's complaint has no merit and should be dismissed. The complaint is based upon erroneous facts regarding the extent of NRCC contributions to Mr. Goodling and the erroneous legal theory that any coordinated party expenditure made prior to a primary election is improper per se. Commission time and resources are better focused on actual violations of FECA.

(1) NRCC Contributions to Goodling for Congress Did Not Exceed \$5,000

With respect to NRCC contributions to the Goodling for Congress Committee, the Committee made \$5,000 in contributions prior to the May 19 primary election, consistent with 2 U.S.C. § 441(a)(2)(A). NRCC contributions were both direct -- \$4,000 contributed by check on May 5, 1998 -- and in-kind, including a "blast fax" provided on May 1, 1998, and satellite feeds provided for the campaign on September 10, 16, & 30, 1997, as well as January 27 and April 1, 1998. The NRCC reported all of these expenditures and did not make further contributions in connection with the primary election.

(2) NRCC Coordinated Expenditures Were Consistent with the Act and FEC Precedent

The NRCC has also made \$55,462.24 in coordinated expenditures in the nineteenth district of Pennsylvania so far this cycle. Mr. Kling argues that the coordinated expenditures made prior to May 19 were "premature" and therefore in violation of 2 U.S.C. § 441a(2). Such a reading of the law is contrary to the Act, inconsistent with a prior Advisory Opinion issued by the Commission, and disputed by clear positions consistently taken by the Office of General Counsel in closed Matters Under Review.

In Advisory Opinion 1984-15, the Commission interpreted section 441a(d) to mean that coordinated expenditures are appropriate at any time prior to the general election, including prior to a primary election. The Commission stated that "whether a specific nominee has been chosen, or a candidate assured of nomination at the time the expenditures are made, is immaterial." *Id.* The Commission further held that "**nothing in the Act, its legislative history, Commission regulations, or court decisions indicates that coordinated party expenditures must be restricted to the time period between nomination and the general election.**" *Id.* (emphasis added). And the

Commission observed that Congress specifically declined to limit coordinated expenditures to party "nominees" in the Act, stating that § 441a(d)

does not by its terms refer to candidates for Federal office as the party's nominees; it refers to such candidates only as those who are "affiliated with" the political party. By contrast, in other contexts where Congress was concerned with the status of Federal office candidates as regards political party activity, it was explicitly referred to as "nominees of" the political party.

Id. fn. 4 (citations omitted).

In MUR 2186, the Commission expressly recognized that a party committee can make coordinated expenditures prior to a contested primary election, even where there is no presumptive party nominee. In that case, the Commission argued that Colorado Republican Party television advertisements attacking Democratic Senator Tim Wirth constituted coordinated expenditures, even though the Republican primary election (contested by three candidates) was still weeks away. The Commission attacked the Colorado Republican Party's ads because they allegedly exceeded the Party's § 441a(d) limits, not because coordinated expenditures were improper before a contested primary election.

In MURs 2231 and 2233 (consolidated as MUR 2270), the General Counsel likewise argued that party coordinated expenditures could be made prior to a primary election. The General Counsel report noted that "the Commission has in the past recognized that the timing of an activity is not dispositive of the question of whether it qualifies as a section 441a(d) expenditure." *MUR 2270, First General Counsel's Report at 11.*

In the case at hand, the NRCC had received the state and national parties' agency to make coordinated expenditures in the nineteenth district, and the NRCC determined that § 441a(d) expenditures made in May would be most certain to guarantee Republican retention of the seat in November. *Brookover Affidavit at ¶2.* The NRCC acknowledges that, having spent \$55,462.24 of its \$64,550 coordinated limit (the RNC withheld the authority to spend \$550), it has \$9,087.76 remaining. *Id. at 4.* Nevertheless, the NRCC believes its use of coordinated expenditures increased the likelihood of victory in the general election.¹

The other "allegations" raised in the complaint – Mr. Kling's personal observations about the duties of a party committee – have no legal standing and are nothing more than political sour grapes. For example, the complaint states that "financial support by the party committee of one Republican candidate over another is divisive and represents a misapplication of the party's funds." *Complaint at 10.* Although indicative of the true motivations behind the complaint, such an allegation is not an issue for the Commission, and does not warrant the expenditure of the Commission's resources.

¹ Such a political calculation is hardly uncommon for national party committees. This year alone, for example, the Democratic Congressional Campaign Committee has already made at least \$62,200 in pre-primary coordinated expenditures on behalf of eight different candidates. In three instances, the DCCC made 1998 coordinated expenditures in districts where the filing period was still open (LA-6, AL-3, WI-1).

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Commission find no reason to believe that a violation occurred in MUR 4743, and take no further action in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce P. Mehlman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

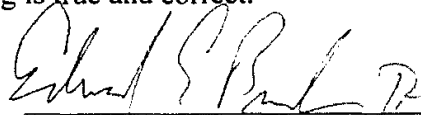
Bruce P. Mehlman
NRCC Counsel

99-04-391-3355
"163" "40" 196

AFFIDAVIT of EDWARD BROOKOVER

1. I serve as Political Director of the National Republican Congressional Committee during the 1998 election cycle. I work at 320 First Street, S.E., Washington, D.C. 20003. I submit this affidavit in response to MUR 4743, Garry C. Kling's complaint against the NRCC and Bill Goodling for Congress Committee.
2. In May, 1998, the NRCC decided that the best use of its §441a(d) coordinated expenditures in Pennsylvania's 19th district -- the use most reasonably calculated to lead to Republican retention of the seat in the November general election -- was to finance certain expenditures in May.
3. The NRCC received "agency letters" from both the Republican National Committee and Republican State Committee of Pennsylvania, authorizing the NRCC to make coordinated expenditures in the 19th district.
4. The NRCC subsequently made ~~\$51,399.45~~ ^{\$55,462.24} in coordinated expenditures on behalf of Representative Bill Goodling, the Republican nominee and winner in this district every year since 1974.
5. The NRCC recognizes that the Republican Party cannot make more than \$65,100 in coordinated expenditures in any district this election cycle, and that we have no intention of exceeding that limit.

I declare under penalty of perjury that the foregoing is true and correct.



Edward E. Brookover, II

District of Columbia

Signed and sworn to before me this 2nd day of July, 1998.



NOTARY PUBLIC

My commission expires: _____

M. D. Acton
Notary Public, District of Columbia
My Commission Expires July 14, 1999