

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
Michigan Republican State Committee )  
and Richard M. Gabrys, as Treasurer )

2003 JUN -9 P 2: 29  
MURs 4851, 4932, 5287, 5288

**SENSITIVE**

**GENERAL COUNSEL'S REPORT #3**

**I. ACTIONS RECOMMENDED**

- (1) Accept the attached conciliation agreement in MURs 4932, 5287 and 5288.
- (2) Take no further action in MUR 4851.
- (3) Take no action in MUR 4932 as to the Michigan Chamber of Commerce, Ameritech, Consumer Energy Company, Kmart Corporation, Blue Cross Blue Shield of Michigan, AT & T Corporation, and Jackson National Life Insurance Company.
- (4) Close the files in MURs 4851, 4932, 5287 and 5288 and approve the appropriate letters.

**II. BACKGROUND**

**A. MURs 4932, 5287 and 5288 – (Allocation MURs)**

On July 23, 2002, the Commission found reason to believe in MUR 4932 that the Michigan Republican State Committee ("Committee") and its treasurer (together "Respondents") violated 2 U.S.C. § 441b(a), and 11 C.F.R. §§ 102.5(a)(1)(i), 104.10(b), 106.5(a) and (g).<sup>1</sup> On the same date, the Commission found reason to believe in MURs 5287 and 5288 that the Respondents violated 2 U.S.C. §§ 441a(f), 441b(a), and 11 C.F.R. §§ 102.5(a)(1)(i), 104.10(b), and 106.5(a) and (g).<sup>2</sup> The Commission authorized this Office to enter into pre-probable cause

<sup>1</sup> MUR 4932 is a complaint-generated matter concerning the payment, allocation, and reporting of disbursements related to the Committee's 1999 Mackinac Leadership Conference, a biennial event held in non-election years to build interest in Republican campaigns. When the Commission found reason to believe in MUR 4932, the Committee's treasurer was Robert M. Campau. The Committee's current treasurer, according to its most recent filings, is Richard M. Gabrys.

<sup>2</sup> MURs 5287 and 5288 were generated by audits of the Committee for the 1995-96 and 1997-98 election cycles, respectively. The Commission also found reason to believe in MUR 5287 that the Committee violated 2 U.S.C. §§ 434(b)(4) and 441a(a)(2)(A), but took no further action with respect to those violations. When the Commission found reason to believe in MURs 5287 and 5288, the Committee's treasurer was Robert M. Campau. The Committee's current treasurer, according to its most recent filings, is Richard M. Gabrys.

23-04-406-1722

1 conciliation in MURs 4932, 5287 and 5288 ("Allocation MURs") and approved a global  
2 conciliation agreement covering all three Allocation MURs  
3  
4 The Commission took no action at that time against the Michigan Chamber of  
5 Commerce, Ameritech, Consumer Energy Company, Kmart Corporation, Blue Cross Blue Shield  
6 of Michigan, AT & T Corporation, and Jackson National Life Insurance Company (together  
7 "Corporate Respondents").<sup>4</sup>

8 B. MUR 4851

9 On March 18, 2003, the Commission found reason to believe in MUR 4851 that the  
10 Respondents violated 2 U.S.C. § 434(b)(4)(H)(iii) and 11 CFR § 104.4(a) by failing to report  
11 approximately \$40,000 in independent expenditures.<sup>5</sup>  
12

---

<sup>4</sup> The Corporate Respondents had made sponsorship contributions to the Committee's Administrative Account, which was a main source of funding for the 1999 Mackinac Leadership Conference. In the First General Counsel's Report in the Allocation MURs, this Office recommended that the Commission take no action at that time against the Corporate Respondents because the pending investigation in MUR 4932 might uncover evidence linking one or more of the Corporate Respondents' contributions to federal election activity or a federal candidate. Subsequently, in General Counsel's Report #2 in MUR 4932, this Office reported that it found no indication that any Corporate Respondent intended its sponsorship fees to be used for a federal purpose or linked its sponsorship contribution to a federal candidate. Consequently, this Office now recommends that the Commission take no action against the Corporate Respondents in MUR 4932.

<sup>5</sup> When the Commission found reason to believe in MUR 4851 on March 18, 2003, the Committee's treasurer was William H. Gnodtke. On March 25, 2003, Richard M. Gabrys became the Committee's Treasurer.

23.04.406.1723

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

**III. DISCUSSION**

**A: MURs 4932, 5287 and 5288**

Attached is a proposed conciliation agreement that we negotiated with the Respondents  
and submit for the Commission's approval.

23-04-406-1724

MEMORANDUM FOR THE DIRECTOR  
SUBJECT: [illegible]

1. [illegible]

2. [illegible]

PAGE 4 DELETED

23-04-406-1725

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

For the foregoing reasons, this Office recommends that the Commission accept the  
attached conciliation agreement in MURs 4932, 5287 and 5288.

**B. MUR 4851**

As explained above, the Commission found reason to believe in MUR 4851 that the Respondents violated the Act by failing to report independent expenditures

For the reasons set forth below, this Office recommends that the Commission take no further action in MUR 4851 and close the file.

As explained in the First General Counsel's Report in MUR 4851, the Committee claimed that the expenditures at issue qualified for the volunteer materials exemption, but had not yet provided any evidence to demonstrate how the volunteer material exemption applied to these expenditures. If, in fact, the volunteer materials exemption applied to the disbursements at issue in MUR 4851, there would be no violation because the disbursements were reported as "other federal election activity," which was the proper way to report disbursements that qualified for the volunteer materials exemption. Accordingly, this Office noted in footnote 10 of the First General Counsel's Report in MUR 4851 that "should the respondents later provide evidence to show that the volunteer exemption applies, this Office may recommend that the Commission take no further action in this MUR."

Under the Act, a payment by a state committee of a political party for campaign materials used in connection with volunteer activities on behalf of any nominee of such party is not an expenditure or a contribution if: (1) the preparation and/or distribution of such materials is conducted on behalf of the party's nominees for the general election; (2) the materials are distributed by volunteers, not through public advertising, such as direct mail; (3) the party committee does not use materials purchased by the national party committee or money transferred from the national party committee specifically to purchase materials; (4) the party

23-04-406-1727

1 committee does not use funds designated for a particular candidate; and (5) a payment from a  
2 candidate to help pay for the materials does not exceed his or her share of the expenses.

3 See 11 C.F.R. §§ 100.7(b)(15), 100.8(b)(16).

4 In response to the Commission's reason to believe finding in MUR 4851, the  
5 Respondents have submitted the Affidavit of Greg McNeilly ("McNeilly Affidavit") to  
6 demonstrate that the volunteer materials exemption applies to the disbursements at issue in  
7 MUR 4851. Attachment 2. Mr. McNeilly states that he was employed as the Committee's  
8 Political Director during the 1998 election cycle and, as such, "was directly responsible for the  
9 operation and supervision of the [Committee's] volunteer mass mailing centers during the 1998  
10 general election." McNeilly Affidavit at ¶4. Mr. McNeilly further testifies that he is familiar  
11 with the two mailings at issue in MUR 4851 and that:

- 12 (1) the mailings were conducted on behalf of Leslie Touma, the Committee's  
13 congressional nominee in the 1998 general election;  
14 (2) the Committee did not use materials purchased by any national party committee or  
15 money transferred from a national party committee specifically to purchase or distribute  
16 the mailings;  
17 (3) the Committee did not use funds designated for a particular candidate with respect to  
18 the mailings;  
19 (4) the Committee received no payment from Ms. Touma or any other candidate to help  
20 pay for the mailings;  
21 (5) the mailings were not distributed through public advertising, were not sent by  
22 commercial vendor and were not made from commercial lists; and  
23 (6) the mailings were funded entirely from the Committee's federal account.

24 See McNeilly Affidavit at ¶5. Moreover, Mr. McNeilly testifies that "volunteers affixed the  
25 postal indicia on each piece of mail, placed address labels on them, and took them to the post  
26 office for distribution." *Id.*

27 Based upon Mr. McNeilly's testimony, the expenditures for the mailers at issue in MUR  
28 4851 qualify for the volunteer materials exemption. First, the mailers were distributed on behalf

23-04-406-1728

1 of the Republican nominee from Michigan's 12<sup>th</sup> congressional district (*i.e.*, Ms. Touma).  
2 Second, the mailers were financed in accordance with the volunteer materials exemption, in that  
3 they were paid for entirely with federal funds that were not designated for any particular  
4 candidate. Moreover, the mailers were distributed by volunteers, in that volunteers "affixed the  
5 postal indicia on each piece of mail, placed address labels on them, and took them to the post  
6 office for distribution." This is the type of volunteer activity that the Commission has previously  
7 concluded is sufficient to trigger the volunteer material exemption.<sup>8</sup>

8 Mr. McNeilly's credibility is supported by the fact that the Committee appears to have  
9 consistently treated these expenditures as being covered by the volunteer materials exemption.  
10 The Committee reported these disbursements in 1998 as "other federal operating expenditures,"  
11 which is the proper way to report expenditures that are subject to the volunteer material  
12 exemption. Although the Committee, until now, did not submit evidence to demonstrate that the  
13 volunteer materials exemption applies, it has consistently claimed that the exemption applies  
14 since it filed its response to the complaint in December 1998. Moreover, the expenditures for the  
15 mailers were relatively small (approximately \$40,000). If greater amounts were at issue and if  
16 we were unable to secure an overall satisfactory global settlement in the Allocation MURs,  
17 further discovery might be justified to verify Mr. McNeilly's testimony. However, under these  
18 circumstances, further discovery in MUR 4851 would not be an efficient use of Commission  
19 resources.

---

<sup>8</sup> See, e.g., MUR 2377 (Republican Party of Texas)(volunteer materials exemption applies where volunteers unpackaged, labeled, sorted, bundled, and delivered the mailers to the post office); MUR 4471 (Montana State Democratic Central Committee)(volunteer materials exemption applies where volunteers affixed labels onto the brochures, sorted, bundled and delivered the brochures to the post office); *c.f.* MUR 2994 (Wyoming State Democratic Central Committee)(no volunteer materials exemption where the only volunteer involvement with mailers was reviewing the mailing lists and inserting the county for each address).

6271-904-40-32  
23-04-406-1729




For the foregoing reasons, this Office recommends that the Commission take no further action and close the file in MUR 4851.

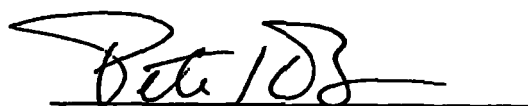
**IV. RECOMMENDATIONS**


1. Accept the attached Conciliation Agreement in MURs 4932, 5287, and 5288;
2. Take no action in MUR 4932 as to the Michigan Chamber of Commerce, Ameritech, Consumer Energy Company, Kmart Corporation, Blue Cross Blue Shield of Michigan, AT & T Corporation, and Jackson National Life Insurance Company;
3. Take no further action in MUR 4851 against the Michigan Republican State Committee and Richard M. Gabrys, as Treasurer;
4. Close the files in MURs 4851, 4932, 5287 and 5288; and
5. Approve the appropriate letters.

6/7/03  
Date

  
Lawrence H. Norton  
General Counsel

  
Gregory R. Baker  
Acting Associate General Counsel

  
Peter G. Blumberg  
Acting Assistant General Counsel

  
Daniel E. Pollner  
Attorney