



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAR 19 2004

James M. Cole, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

RE: MUR 5321
Mary Robert

Dear Mr. Cole:

On October 21, 2002, the Federal Election Commission notified your client, Mary Robert, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on March 4, 2004, found that there is reason to believe your client violated 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

In support of your client's claim that the \$800,000 monetary gift she made to Janet Robert in 2002 fit her pattern of gift giving in the several years preceding her daughter's 2002 candidacy, please provide a list of the gifts made to each of the children. For each gift provide the date, name of recipient, amount or value of the gift, form of the gift (monetary or other form, *e.g.*, stock), and the purpose for the gift. We also ask that your client provide all documents that reference the \$800,000 gifts.

Please submit the information requested above and any factual or legal materials that you believe are relevant to the Commission's consideration of this matter to the General Counsel's Office within 15 days of receipt of this letter. You may wish to submit supporting documentation evidencing the annual gifts. If you do not wish to provide supporting documentation at this time, please preserve such documents in case we require them in the future. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

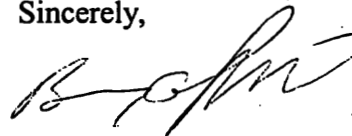
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosure
Factual and Legal Analysis

24-04-400-3105

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mary Robert

MUR 5321

This matter was generated by a complaint filed with the Federal Election Commission by Donald F. McGahn II, General Counsel of the National Republican Congressional Committee. See 2 U.S.C. § 437g(a)(1).

I. BACKGROUND

The complaint in this matter alleges that Janet Robert ("the Candidate"), a candidate for Minnesota's Sixth Congressional District in 2002, knowingly and willfully accepted contributions from her mother, Mary Robert ("the Candidate's mother"), in excess of the contribution limits permitted by the Federal Election Campaign Act of 1971, as amended ("the Act"), and that Janet Robert for Congress and Teresa Silha, as treasurer, ("Robert Committee") failed to report these contributions.¹ Specifically, the complaint alleges that the Candidate used money given to her by her mother to make loans totaling \$811,219 to the Robert Committee. The complaint notes that in newspaper articles the Candidate has acknowledged receiving cash from her mother, but has refused to disclose the amount of the gift, claiming that the information is "personal." While the complaint notes that the Candidate "is technically a millionaire," it argues that because the bulk of her wealth is in bonds and stocks with limited marketability, absent her mother's gift she would not have had the funds to finance her \$1.5

¹ The Federal Election Campaign Act of 1971, as amended ("the Act") governs the activity in this matter and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Report exclude the changes made by BCRA.

million ad campaign.² The Candidate's mother acknowledges she gave the Candidate a \$800,000 gift but contends that it constituted the Candidate's "personal funds" because it was one of ten gifts of the same amount she gave to each of her ten children, the \$800,000 gifts were made for personal and estate planning reasons, and such gifts were customarily given in years prior to the candidacy.

II. FACTUAL AND LEGAL ANALYSIS

No person may make contributions to any candidate and his or her authorized political committee with respect to any election for federal office that exceeds \$1,000, and no individual may make aggregate contributions to political candidates and committees in excess of \$25,000 in any calendar year.³ 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3). These contribution limits also apply to a candidate's family members.⁴ The Act prohibits any candidate or political committee from knowingly accepting any excessive contribution. 2 U.S.C. § 441a(f).

The circumstances surrounding the \$800,000 gift, including the timing, amount, and form of the gift strongly suggest the Candidate's mother made the gift to influence the Candidate's

² The amount for the Robert campaign media expenditures comes from the news reports submitted with the complaint, citing the source as the Federal Communications Commission, showing that the Robert campaign spent more than \$1,500,000 in advertising expenses consisting of a total of \$1,340,000 in television ads, plus 12 to 18% usually paid as commission to a media buyer.

³ A contribution is 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. 2 U.S.C. § 431(8)(A)(i).

⁴ In *Buckley v. Valeo*, 424 U.S. 1, 51 n.52 (1976) ("*Buckley*"), the Supreme Court stated that the legislative history of the Act provided, "[I]t is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than \$1,000 for each election involved. S. Rep. No. 93-1237, p. 58 (1974), U.S. Code Cong. & Admin. News 1974, p. 5627." The Court further stated, "Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors." *Id.* at 53 n.59. The contribution limitations referenced in *Buckley* are at the same levels as those in the Act at 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).

election. First, the Candidate's mother gave the candidate the \$800,000 gift on August 29, 2002, during the critical period leading up to the general election, and less than three weeks after she had reached her direct contribution limits to the candidate.⁵ The Candidate's mother does not disclose when she notified her children of the gift or on what date she intended to make the gifts, suggesting that the upcoming election may have been a factor in the timing of the gifts.⁶

The gift also coincided with the period when the Robert Committee had roughly \$180,000 in its coffers, but within three months had made substantial disbursements for media.⁷ Specifically, the Robert Committee made three media disbursements totaling \$1,566,000: \$900,000 on August 21, 2002; \$306,000 on September 18, 2002; and \$360,000 on September 24, 2002. To provide sufficient funds to cover these expenditures, the Candidate made four major loans totaling \$1,606,600 to her campaign. Specifically, on August 21, 2002, eight days before she received her mother's \$800,000 check, the Candidate made two loans totaling \$800,000 to her campaign: a \$750,000 bank loan secured with the Candidate's shares of stocks valued at \$1,142,457; and a \$50,000 loan from the Candidate's "personal funds." On August 24, 2002, the Candidate made a \$500,000 loan to her campaign also from "personal funds." Finally on September 18, 2002, the Candidate made a \$306,600 loan to her campaign again from "personal funds." Although the dates of two of the "personal loans" preceded the date of the \$800,000 gift, these loans could very well have been made as an advance, in anticipation of the \$800,000 gift.

⁵ On August 10, 2002, the Candidate's mother had contributed \$2,000 to the Candidate - \$1,000 each for the primary and general elections.

⁶ In her response, the Candidate's mother states that after she had informed several of her children that she was going to make the gifts, the Candidate called her mother's bookkeeper to request the check. The Candidate's mother submitted copies of the checks with her response. The Candidate's check shows a date of August 29, 2002, and the other checks show a date of September 3, 2002.

⁷ The Robert Committee's 2002 Pre-Primary report indicates that as of July 1, 2002, the Robert Committee had \$179,517.07 cash-on-hand.

In addition to the loans, the Candidate made contributions totaling \$115,498 to her committee, for a combined total of \$1,722,098 in contributions/loans. If the \$800,000 gift from the Candidate's mother constitutes a contribution, it would represent 36% of the Robert Committee's total receipts. In short, it appears that the \$800,000 gift enabled the Candidate to infuse her committee with sufficient funds to cover campaign expenses.

Though the Candidate's net worth would seem sufficient to cover such costs, news reports of the Candidate's financial disclosure statement suggest that most of the candidate's assets were not liquid.⁸ Moreover, because the EIGA statement shows assets in a broad range rather than in specific amounts, it is not clear whether the Candidate would have had sufficient liquid assets to make the loans. News reports also state that the Candidate with her family own the Siegel-Robert Company, that the Company's stock has limited marketability because it is not publicly traded, and that the Candidate has stated that her main assets are her 361,000 shares in Siegel-Robert now worth about \$6,500,000. See Greg Gordon, *Boardroom action dogs candidate; Robert calls incident honest dispute*, Star Tribune (Minneapolis, MN), Aug. 1, 2002, at 1B. The reports further note that most of the Candidate's income has been derived from

⁸ The complaint references news reports that provide information on the Candidate's financial activities as to family-owned Siegel-Robert, Inc., and the Candidate's financial disclosure statement that she filed as required for House candidates under the Ethics in Government Act ("EIGA"), 2 U.S.C. § 101 *et seq.* See Greg Gordon, *Robert is flooding House race with money; Most of it is from her own pocket*, Star Tribune (Minneapolis, MN), Oct. 5, 2002, at A1; Greg Gordon, *Boardroom action dogs candidate; Robert calls incident honest dispute*, Star Tribune (Minneapolis, MN), Aug. 1, 2002, at 1B. The news reports reflect that, as of August 7, 2002, the Candidate reported the following assets on her financial disclosure statement:

Stock in family-owned Siegel-Robert, Inc. --\$5,000,000-\$25,000,000
Common stocks--\$11,000-\$165,000
Bank accounts--\$300,000-\$600,000
First American Prime Oblig Ed A--\$50,000-\$100,000
Mortgage (owed to Robert)--\$50,001-\$100,000
Bonds--\$30,000-\$100,000
Brokerage account--\$50,000-\$100,000
Total assets--\$5,491,000-\$26,165,000
Liquid Assets--\$391,000-\$1,150,000

Siegel-Robert stock dividends, and that the Candidate earned a net income of nearly \$700,000 in 1999. See Greg Gordon, *Robert is flooding House race with money; Most of it is from her own pocket*, Star Tribune (Minneapolis, MN), Oct. 5, 2002, at A1. Based on the amount of liquid assets available to the Candidate, reportedly in the \$391,000 to \$1,150,000 range, (see footnote 8), after she had already encumbered her stock (and the bulk of the stock had limited marketability), it appears that without the \$800,000 monetary gift, she may not have had enough assets to cover campaign costs. Moreover, the form of the gift, a monetary transfer, would have provided the candidate with the liquidity to make the \$1,722,098 in personal loans and contributions to her campaign.

A candidate for federal office may make unlimited expenditures and loans from personal funds. 11 C.F.R. § 110.10. The Commission's regulations define "personal funds" as, *inter alia*, gifts of a personal nature which had been customarily received prior to candidacy, and proceeds from lotteries and similar legal games of chance. 11 C.F.R. § 110.10(b)(2). While the Candidate's mother argues that the \$800,000 monetary gift fits the category of "gifts of a personal nature customarily received prior to candidacy," the Candidate's mother has not submitted sufficient information to support her contention.

The Candidate's mother argues that she made equal, unconditional \$800,000 gifts to each of her ten children, that the gifts are consistent with her pattern of giving in previous years, and that she made the gifts for personal and estate planning reasons. She also argues that it would have made no sense for her to spend all this money just so she could make an \$800,000

contribution to the Candidate's campaign and that the amount she spent on the gifts is much larger than any potential FEC civil penalty.⁹

In support of her contention that the \$800,000 monetary gifts fit the pattern of giving in previous years, the Candidate's mother asserts that, beginning in the 1960s, she and her late husband, Bruce Robert, made numerous gifts of Siegel-Robert, Inc. stock and/or money to their children.¹⁰ She further asserts that over the years, she has continued to make gifts to her children and that "the value of these gifts has ranged from approximately \$3,000 per year to hundreds of thousands of dollars per year for each child." She explains that the children generally received equal amounts, but that in some years the children received different amounts in an attempt "to equalize" the number of gifts and shares of stock received by the younger and older children. The Candidate's mother, however, has not provided specific information about her past gifts to her children.

In support of her contention that she made the \$800,000 gifts for personal and estate planning reasons, the Candidate's mother asserts that by June 30, 2002, she had given or sold most of Siegel-Robert, Inc. stock to her children, held "liquid assets valued in excess of \$40,000,000," and received an annual income from her assets and marital trusts that exceeded

She asserts that she decided to give each of her ten children \$800,000 after considering her "age, nature and amount of assets, the applicable gift and estate tax rules, and her personal desire that her children receive substantial portions of her estate while she was still

⁹ The Candidate's mother explains that the \$800,000 equal gifts to the Candidate's nine siblings cost her an extra \$7,200,000 and that adding the \$4,000,000 in gift tax resulted in a total cost for the gifts of approximately \$12,000,000.

¹⁰ Mary Robert, the Candidate's mother, is the 84-year-old widow of Bruce Robert, who died in 1996. Bruce Robert was the founder of Siegel-Robert, Inc., a privately held corporation.

alive.”¹¹

The Commission has focused on objective factors in determining whether a gift fits into the category of “gifts of a personal nature customarily received prior to candidacy.” For example, in Advisory Opinion 1988-7, the Commission responded to an inquiry from an “undeclared candidate” for a House seat in 1988 regarding his contribution of monetary gifts from his parents as personal funds to his campaign. The requester had received a gift of \$20,000 in each of the three years prior to his candidacy and believed his parents would give him another gift of \$20,000 during 1988. The requester asked whether he could contribute the expected \$20,000 as “personal funds” even though he had not received the gift prior to filing a Statement of Candidacy with the FEC. The Commission looked at the date the gifts began, the consistency in the amount, and the form of the gifts over a number of years in making its interpretation. The Commission found that the \$20,000 cash gifts he received in the three years prior to his candidacy indicated a “repetitious custom of monetary gifts” of a personal nature, rather than gifts made in anticipation of or related to any campaign for federal office. The Commission thus concluded that another \$20,000 cash gift under similar circumstances during 1988 would similarly be considered personal funds.

Unlike the requester in AO 1988-7, the Candidate’s mother has not provided information showing that she customarily made gifts similar to the \$800,000 monetary gift prior to her daughter’s candidacy. Instead, she has provided only general representations regarding previous gifts and has not yet provided specific information about the amount, form, timing, or recipients of previous gifts she made to the Candidate and her siblings.

¹¹ The Candidate’s mother notes that there will be an estate tax benefit on the money she gifted her children if she lives for another three years. See 26 U.S.C. § 2035(b) (donor’s gross estate need not include the amount of any gift tax paid by donees of any net gift made more than three years before donor’s death).

The personal and estate planning reasons and the ten equal \$800,000 monetary gifts may be relevant, but do not by themselves qualify her gift to the candidate as "personal funds" under the regulations. Commission regulations define specific transfers to candidates as "personal funds," including four related to estate planning: bequests to the candidate; income from trusts established prior to candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; and gifts of a personal nature customarily received prior to candidacy. 11 C.F.R. § 110.10(b)(2). Each of these circumstances eliminates any link between the transfers and the candidacy. The Commission's regulations thereby strike a balance between barring any transfers of funds from family members exceeding the contribution limits and permitting a narrowly defined group of circumstances which, by objective means, demonstrates that the transfers were unconnected to the candidacy. The regulation thus eliminates the relevance of subjective intent in favor of objective factors, such as timing and form. If family members could justify gifts made after candidacy solely on the basis of personal or estate planning considerations, they could effectively circumvent the statute and the regulation. Likewise, if making equal gifts to each child was sufficient to establish a gift as "personal funds," parents with sufficient means could provide their children with substantial gifts under the guise of estate planning, even if the purpose of the gift to the candidate child was to influence a federal election. Nevertheless, the personal and estate planning reasons and the equal gifts would bolster the conclusion that the \$800,000 gift became the candidate's personal funds if the evidence also shows that the gift was consistent with a pattern of giving over previous years.

Based on the above, it appears that Mary Robert made \$800,000 in excessive contributions to Janet Robert for Congress and made \$777,000 in excess of the \$25,000

aggregate contribution limit for 2002. Therefore, there is reason to believe that Mary Robert violated 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3).

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