

AUG 31 2006

FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5690

DATE COMPLAINT FILED: November 29, 2005

DATE OF NOTIFICATION: December 6, 2005

LAST RESPONSE RECEIVED: January 19, 2005

DATE ACTIVATED: May 24, 2006

EXPIRATION OF STATUTE OF LIMITATIONS:
December 15, 2009

COMPLAINANT:

Lois Murphy

RESPONDENTS:

Jim Gerlach for Congress Committee and Michael
DeHaven, in his official capacity as treasurer
Friends of John Perzel and Gordon R. Johnson, in
his official capacity as treasurer
Valley Forge Investment Corporation
Alan Randzin
Richard Ireland

RELEVANT STATUTES AND
REGULATIONS:

2 U.S.C. § 431(11)
2 U.S.C. § 432(c)(2)
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(1)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
11 C.F.R. § 102.17(c)(8)(i)(A)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 104.3
11 C.F.R. § 110.1(b)

INTERNAL REPORTS CHECKED:

Federal Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

In her ten-count complaint, complainant alleged that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer (the "Committee"), violated several reporting requirements of the Federal Election Campaign Act of 1971, as amended (the "Act"), by filing inaccurate disclosure reports in 2005. These alleged reporting violations included: not disclosing the names of original contributors upon receiving a disbursement from a joint fundraising committee, over-reporting and misreporting contributions, under-reporting cash-on-hand, and improperly reporting disbursements to the Internal Revenue Service ("IRS"). Complainant also alleged that the Committee failed to keep accurate records of small contributors. In addition, complainant alleged that the Friends of John Perzel and Gordon R. Johnson, in his official capacity as treasurer ("FJP"), made an excessive contribution to the Committee, and that Valley Forge Investment Corporation may have made a prohibited corporate contribution in 2004, incorrectly attributed to Richard Ireland. These allegations are all based upon the Committee's disclosure reports filed with the Commission, copies of which are attached to the complaint.

As set forth in more detail below, we recommend that the Commission find reason to believe the Committee failed to itemize information concerning contributors after receiving a disbursement from a joint fundraising committee, incorrectly reported the total election cycle-to-date contributions in several reports, and misreported contributions refunded as unitemized contributions, and enter into pre-probable cause conciliation. We also recommend that the Commission find reason to believe that the Committee incorrectly reported the total election cycle-to-date information of one individual and incorrectly reported cash on hand, send an admonishment letter, but take no further action. We further recommend that the Commission find no reason to believe the Committee failed to properly disclose disbursements it made to the

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Committee of this obligation in a cover memorandum enclosing the transferred funds and RAD also sent the Committee an RFAI concerning this obligation. Still, the Committee has never properly amended its 2004 Year-End Report to disclose this information. Accordingly, we recommend that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B).

B. Alleged Overreporting of Contributions

1. Facts

The Detailed Summary Page of the 2004 Post-General Election Report filed April 14, 2005 shows total contributions received from the period November 3 through November 22, 2004 in the amount of \$17,339. As November 3, 2004 began a new election cycle, this amount reflected the total amount of contributions received to date for the 2005-2006 election cycle. As alleged in the complaint, the Committee's fourth amended 2004 Year-End Report, filed on July 13, 2005, shows an additional \$7,800 in contributions received by the Committee between November 23 and December 31, 2004. Therefore, the election cycle-to-date contributions received column on the Summary Page of the fourth amended 2004 Year-End Report should have shown a total of \$25,139 (\$17,339 plus \$7,800). Instead, this Report lists the total contributions received for the cycle in the amount of \$2,180,307, or \$2,155,168 more than what should have been reported in this column. The amended 2005 April and July and original 2005 October Quarterly Reports all reflect this error. Separately calculating the contributions received in each of these periods, combined with the \$17,339 shown in the 2004 Post-General Election Report and the \$7,800 shown in the fourth amended 2004 Year-End Report, as of the period ending September 30, 2005, the Committee actually received \$1,153,683 in contributions for the election cycle. However, due to the continuing inclusion of the inflated amounts, the Committee reported receiving contributions in the amount of \$3,310,453, a difference of \$2,156,770.

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On December 20, 2005, after the complaint was filed, RAD sent the Committee an RFAI regarding the amended 2004 Year-End Report (filed on September 13, 2005), the amended 2005 April Quarterly Report (filed September 23, 2005), and amended 2005 July Quarterly Report (filed September 23, 2005); a separate RFAI was sent regarding the 2005 October Quarterly Report. These RFAIs concerned, *inter alia*, the incorrect amounts listed for election cycle-to-date contributions.

In its response to the complaint, the Committee admits the reporting error, and claims it was due to Complete Campaigns' software causing the previous election cycle's total amount of contributions to be carried over into the new election cycle on the reports in question. On January 18, 2004, the Committee corrected the errors by amending the affected reports.

2. Analysis

The Act requires all candidate committees to disclose to the public, through reports filed with the Commission, the total amount of contributions received for each election cycle-to-date. 2 U.S.C. § 434(b)(2); *see* 11 C.F.R. § 104.3(a). The Committee admits failing properly to report this information, which it did not correct until after receipt of the complaint and RFAIs. Therefore, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b)(2) by incorrectly reporting the total contributions for the election cycle-to-date in its amended 2004 Year-End Report, and in its amended 2005 April and July and original 2005 October Quarterly Reports.

C. Alleged Failure to Accurately Disclose the Total Amount of Contributions and Maintain an Accurate Account of Small Contributions

1. Facts

The Committee's 2005 October Quarterly Report, filed on October 15, 2005, shows -\$8,911.21 in unitemized contributions on line 11(a)(ii) of the Detailed Summary Page of Receipts. As contributions from persons in amounts less than \$200 per election cycle are

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covered in the unitemized contribution category, the complaint claims that this error is evidence that the Committee also failed to maintain an accurate account of small contributions aggregating between \$50 and \$200 per donor per election cycle in violation of 2 U.S.C. § 432(c)(2). The complaint further alleges the error affected other calculations on the Detailed Summary Page and was compounded when the -\$8,911.21 was added to the amount of itemized contributions, \$221,550.54, to show an incorrect total amount of individual contributions of \$212,749.35. After the complaint was filed, on December 20, 2005, RAD sent an RFAI to the Committee concerning these errors.

2. Analysis

Each report filed by an authorized committee of a candidate for Federal office is required to disclose for the reporting period the total amount of contributions received from individuals whose contributions have an aggregate amount or value of \$200 or more within an election cycle. 2 U.S.C. § 434(b)(2)(A). In addition, the political committee is required to keep an account of the name and address of person who makes any contribution in excess of \$50, together with the date and amount of any such contribution. 2 U.S.C. § 432(c).

In its response to the complaint, the Committee admits to the violation of section 434(b)(2)(A), and states that lines 11(a)(i), 11(a)(ii) and 20(c) of the 2005 October Quarterly Report were incorrect due to misclassifying refunded contributions as received contributions. The Committee also admits that the total amount of contributions listed on line 11(e) was incorrect. Following the receipt of the complaint and an RFAI, the Committee corrected the errors in an amended report filed on January 18, 2006. Therefore, we recommend that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(2)(A).

The response did not address the alleged violation of section 432(c)(2) regarding the failure to maintain an accurate account of small contributions. However, that allegation is purely

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1 speculative, and the complaint offers no information or evidence to support it. *See* SOR for
2 MUR 4960 (Hillary Rodham Clinton)(stating speculative allegations are an insufficient basis for
3 proceeding). Therefore, we recommend that the Commission dismiss the allegation that the
4 Committee violated 2 U.S.C. § 432(c)(2) by failing to maintain an accurate account of small
5 contributions.

6 **D. Alleged Excessive Contribution from The Friends of John Perzel Committee**

7
8 1. **Facts**

9 The complaint alleges the FJP contributed \$4,000 to the Committee on July 19, 2005,
10 exceeding the \$2,100 contribution limit for a person by \$1,900. As a result, the complaint
11 alleges that the Committee violated 2 U.S.C. § 441a(a)(1)(A).

12 In its response, the Committee admits that it received the contribution, and claims that
13 due to an oversight, it did not request the FJP to designate a portion of the contribution for the
14 primary election and a portion for the general election. On January 5, 2006, following receipt of
15 the complaint, the Committee sent the FJP a refund check in the amount of the overage (\$1,900).
16 *See* Exhibit B to the Committee's Response.

17 The FJP admits it mistakenly made an excessive contribution. According to its response,
18 the FJP made the contribution in response to an invitation for a fundraiser featuring Laura Bush.
19 It sent two representatives to the "Photo Op Reception" at \$2,000 per person. Because the
20 invitation said "PAC's [sic] may contribute \$5,000 for Primary and \$5,000 for General, we were
21 not aware [we] may have made an excessive contribution." FJP Response at 2 and attached
22 invitation. The FJP further explained that it "is and has been a Pennsylvania PAC for more than
23 20 years, and does not normally contribute to Federal candidates," and did not "intend to or
24 knowingly violate the Federal Election Laws." *Id.* at 1-2.

2. Analysis

The FJP is subject to the contribution limits of section 441a(a)(1)(A). *See* 2 U.S.C. § 431(11). If, as here, a contribution is not designated for a particular election, it will be considered to be for the next election for federal office after the contribution is made. 11 C.F.R. § 110.1(b)(2)(ii). In this case, the next election was the May 16, 2006 primary. The contribution limit per election for a person is \$2,100, so the FJP's contribution of \$4,000 exceeded the contribution limit by \$1,900. 2 U.S.C. § 441a(a)(1)(A).

Candidates and political committees may not accept an excessive contribution. 2 U.S.C. §§ 441a(a)(1)(A), 441a(f). If a candidate's committee receives an excessive contribution, the treasurer may either return the contribution or make a request for redesignation or reattribution. 11 C.F.R. § 103.3(b)(3); *see* 2 U.S.C. § 441a(a)(1)(A). If the treasurer does not receive permission from the donor to a redesignate or reattribute the contribution, the treasurer must refund the contribution within 60 days. 11 C.F.R. § 103.3(b)(3). The regulations provide, however, that the treasurer of the recipient authorized committee may alternatively treat all or part of an undesignated excessive contribution made before the primary as made with respect to the general election as long as the such redesignation would not cause the contribution to be excessive for either election. 11 C.F.R. § 110.1(b)(5)(ii)(B).

Under this alternative treatment, the FJP's contribution could have been redesignated as \$2,100 to the 2006 primary and \$1,900 to the 2006 general election, and would not have been excessive. Although the regulations also require that the treasurer notify the contributor of the redesignation and the opportunity to request a refund—which was not done here—the Committee has now refunded the excessive portion of the contribution. Under these circumstances, we recommend that the Commission dismiss the allegations that the FJP violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution and that the Committee violated 2 U.S.C.

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§ 441(f) by knowingly receiving it. We also recommend that the Commission close the file with respect to the FJP.

E. Alleged Failure to Report All Contributions by Individuals

1. Facts

The complaint alleges that the aggregated amounts of contributions for the election cycle for three persons listed in the 2005 April Quarterly Report are higher than had been reported for the period covered by the report, and that there was no record of previous contributions by these individuals. Thus, according to the complaint, the Committee failed to report previous contributions from each of these individuals.

In its response, the Committee states that the earlier contributions by two of the three individuals had been accurately disclosed in previous filings, and the amount for the third individual was higher due to a clerical error. The third individual made a contribution of \$500 on November 2, 2004, the day of the 2004 election, and it was incorrectly carried over into the aggregated amount for this election cycle instead of having been reported for the last election cycle. The Committee stated it would amend the appropriate report to reflect the correct amount.

2. Analysis

The Committee's disclosure reports support its position that previous contributions from two of the three individuals named in the complaint had been properly reported. The reports also show that the previous contribution of \$500 from the third person was made on election day in 2004 and incorrectly carried over into this election cycle. The Committee's 2005 Year-End Report, filed January 31, 2006, now shows a correct amount in the election cycle-to-date category for the third individual. Due to the low amount at issue for a single error and the Committee's corrective action, we recommend that the Commission find reason to believe the

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Committee violated 2 U.S.C. § 434(b)(2)(A), send an admonishment letter, but take no further action.

F. Alleged Failure to Accurately Report Cash on Hand in the 2004 Year-End and 2005 April and July Quarterly Reports

1. Facts

According to the complaint, the Committee's disclosure of its cash on hand in its original 2004 Year-End Report filed on January 26, 2005, and four amended reports filed on February 7, 2005, April 14, 2005, July 13, 2005, and September 13, 2005, increased with each subsequent report and ultimately varied from the original report by \$23,690. Further, the complaint notes, that as compared with the original 2005 April Quarterly Report, filed on April 14, 2005, the amended 2005 April Quarterly Reports filed on July 13, 2005 and September 23, 2005 show higher amounts of cash on hand, with the final difference from the original report totaling \$12,123. Likewise, the complaint alleges that the 2005 July Quarterly Report, filed on July 14, 2005, and the amended 2005 July Quarterly Report, filed on September 23, 2005, show a difference in cash on hand totaling \$17,772.95.² As a result, the complaint alleges, the Committee failed to accurately disclose the cash on hand amount on numerous reports, in violation of 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3(a)(1) and (c). In its response, the Committee states it filed amended reports as errors in previous reports were discovered "in an attempt to avoid misleading the public." Committee Response at 2.

2. Analysis

Political committees are required to disclose the amount of cash on hand at the beginning of each reporting period. 2 U.S.C. § 434(b)(1); 11 C.F.R. § 104.3(a)(1). The Committee admits

² The complaint also alleges that the cash on hand amount in the 2005 October Quarterly Report is incorrect due to the misreporting of refunded contributions as unitemized contributions discussed *supra*. However, that misreporting did not affect the amount of the reported cash on hand.

1 "errors were discovered subsequent to the filing of the 2004 Year-End and 2005 April and July
2 Quarterly reports" and amendments were filed to correct these errors. Committee Response at 2.
3 However, the amounts at issue in these reports would not meet the threshold for a RAD referral
4 to the Enforcement Division, and all of the amended reports were filed before the complaint.
5 Therefore, we recommend that the Commission find reason to believe the Committee violated
6 2 U.S.C. § 434(b)(1) by incorrectly reporting cash on hand and send an admonishment letter, but
7 take no further action.

8 **G. Allegations Regarding Reporting of Tax-Related Disbursements**

9 **1. Facts**

10 The complaint alleges that the Committee improperly stated the purposes of a series of
11 disbursements to the IRS, "resulting in confusing and inaccurate reports." Complaint at 9. The
12 purposes of eight disbursements, four disclosed in the 2005 July Quarterly Report and four
13 disclosed in the 2005 October Quarterly Report, are described variously as "United States
14 Treasury – Internal Revenue" for "Fundraiser Consultant Commission," "Fundraiser Consultant
15 Monthly" and "Fundraiser Consultant Retainer." The complaint contends that since the IRS is
16 not in the business of being a fundraising consultant, the purposes of the disbursements are
17 inaccurate. The Committee's response states that the purposes accurately reflect the IRS's
18 instructions to the campaign to pay a portion of a consultant's fees to them, with which the
19 Committee complied.

20 The complaint further alleges that the Committee failed to report disbursements for
21 employee withholding taxes to the IRS and the Commonwealth of Pennsylvania in violation of
22 the Act. The basis for this allegation is that reports filed with the Commission in 2005 list
23 several individuals as receiving disbursements for "campaign staff salary," but there are no other
24 disbursements or reports of debts for state or federal taxes for these individuals.

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1 The Committee responded that the campaign is complying with the applicable laws, but
2 "[i]n the future, descriptions of the services provided by individuals will be disclosed on
3 campaign reports in a less ambiguous manner." Committee Response at 3. The response by
4 former treasurer Randzin is more specific; he states that these individuals, including himself,
5 served as independent contractors rather than employees, and he enclosed the relevant copies of
6 Form 1099s for 2004 fees. Randzin Response at 3 and attached Exhibits 19 and 20.³

7 2. Analysis

8 The name and address of each person who receives a disbursement from a committee, and
9 the purpose of the disbursement, must be reported. 2 U.S.C. § 434(b)(6)(A); 11 C.F.R.
10 § 104.3(b)(3)(ix). While the Committee could have been clearer in stating the purpose of the
11 disbursements, which were remitted to the IRS per its instructions regarding a particular
12 fundraiser consultant, there does not appear to be any deliberate concealment or obfuscation.
13 Regarding the failure to report disbursements for taxes withheld from salaries, based upon the
14 former treasurer's response and the corroborating documentation, these appear to have been
15 payments to individual contractors, responsible for reporting and paying their own taxes, rather
16 than to employees. Therefore, we recommend that the Commission find no reason to believe the
17 Committee violated 2 U.S.C. § 434(b)(6)(A) by failing to accurately report the purposes of
18 disbursements to the IRS or taxes withheld from the contractors.

19 H. Alleged Prohibited Corporate Contribution

20 1. Facts

21 The complaint alleges that the Committee reported receiving a contribution of \$2,000 on
22 July 15, 2005 that was originally made by another entity but was attributed to Richard Ireland,

³ Randzin only included those Form 1099s that had already been prepared for filing with the IRS as of the date he filed the response.

1 whose employer is listed as Valley Forge Investment Corporation, on the Committee's 2005
2 October Quarterly Report filed on October 15, 2005. According to the complaint, the source of
3 the original contribution is not reported, but if it came from Ireland's employer, then the
4 Committee accepted a prohibited contribution from a corporation in violation of 2 U.S.C. § 441b.
5 In its response, the Committee denies this is a corporate contribution, and states that it was a
6 properly reported contribution from Warner Road Associates, a Pennsylvania partnership of
7 which Ireland is a partner. With its response, the Committee provided Richard Ireland's letter
8 instructing the Committee to credit the contribution from Warner Road Associates to himself.

9 2. Analysis

10 This allegation is purely speculative and the complainant provides no supporting
11 evidence. Moreover, from the information provided by the Committee, it appears that it properly
12 reported Ireland's contribution.⁴ Therefore, we recommend that the Commission find no reason
13 to believe Valley Forge Investment Corporation or Richard Ireland made, or the Committee
14 accepted, a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a), and close the file
15 with respect to Valley Forge Investment Corporation and Mr. Ireland.

16 **III. CONCILIATION AND CIVIL PENALTY**

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⁴ The 2005 October Quarterly Report's Schedule A contains a "memo item" of a partnership itemization. 11 C.F.R. § 110.1(e) requires contributions from partnerships to be credited to partners, and the contribution thus appears properly credited to Ireland, per his instructions.

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IV. RECOMMENDATIONS

1. Find reason to believe the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize on a Memorandum Schedule A information concerning contributors after receiving a disbursement from a joint fundraising committee.
2. Find reason to believe that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(2) by incorrectly reporting the total contributions for the election cycle-to-date in the amended 2004 Year-End Report, and in the amended 2005 April and July and original 2005 October Quarterly Reports.
3. Find reason to believe that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(2)(A) by misreporting contributions refunded as unitemized contributions received in the 2005 October Quarterly Report.
- 4.
5. Find reason to believe that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(2)(A) by failing to correctly report contributions received from persons other than a political committee in the 2005 October Quarterly Report, send an admonishment letter, but take no further action.
6. Find reason to believe that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(2)(A) by incorrectly reporting the total election cycle-to-date contributions for an individual, send an admonishment letter, but take no further action.
7. Find reason to believe that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(1) by incorrectly reporting cash on hand, send an admonishment letter, but take no further action.
8. Dismiss the allegation that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 432(c)(2) by failing to maintain an accurate account of small contributions.
9. Dismiss the allegation that the Friends of John Perzel and Gordon R. Johnson, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution, and close the file with respect to the Friends of John Perzel and Gordon R. Johnson, in his official capacity as treasurer.

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10. Dismiss the allegation that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 441(f) by knowingly receiving an excessive contribution.
11. Find no reason to believe that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(6)(A) by failing to accurately report disbursements to the Internal Revenue Service or taxes withheld from the contractors.
12. Find no reason to believe that Valley Forge Investment Corporation made a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a), and close the file with respect to Valley Forge Investment Corporation.
13. Find no reason to believe that Richard Ireland made a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a), and close the file with respect to Richard Ireland.
14. Find no reason to believe that the Jim Gerlach for Congress Committee and Michael DeHaven, in his official capacity as treasurer, accepted a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a).
15. Find no reason to believe that Alan Randzin violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations.
16. Approve the attached Factual and Legal Analysis.

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17. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

August 30, 2006
Date

Susan L. Lebeaux
Susan L. Lebeaux
Assistant General Counsel

J. Cameron Thurber
J. Cameron Thurber
Attorney

Attachments:

- 1.
2. Factual and Legal Analysis

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