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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

2007 MAY -2 A 11: 28

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 5783

DATE COMPLAINT FILED: August 2, 2006

DATE OF NOTIFICATION: August 9, 2006

LAST RESPONSE RECEIVED: N/A<sup>1</sup>

DATE ACTIVATED: December 18, 2006

EXPIRATION OF SOL: June 1, 2011

**COMPLAINANT:**

William R. Caroselli

**RESPONDENTS:**

Green Party of Luzerne County PA and Shane Novak,  
in his official capacity as treasurer  
Carl Romanelli for U.S. Senate and Shane Novak, in  
his official capacity as treasurer  
Carl J. Romanelli

**RELEVANT STATUTES:**

2 U.S.C. § 441a

2 U.S.C. § 441b

11 C.F.R. § 102.5

11 C.F.R. § 102.8(a)

11 C.F.R. § 106.6

11 C.F.R. § 110.6

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

William R. Caroselli alleges that the Green Party of Luzerne County, PA and Shane Novak, in his official capacity as treasurer ("GPL"), Carl Romanelli for U.S. Senate and Shane Novak, in his official capacity as treasurer ("the Romanelli Committee"), and Carl J. Romanelli violated the

<sup>1</sup> We received no responses to the complaint. We attempted to contact the Respondents via e-mail and telephone on January 9, 2007, to verify that they had received notification of the complaint, but we were unable to reach them.

1 Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the complaint  
2 asserts that GPL was created and operated as a way to funnel earmarked contributions to the  
3 Romanelli Committee by financing ballot access initiatives for Romanelli, and that GPL and the  
4 Romanelli Committee violated the Act by making and knowingly receiving excessive  
5 contributions.

6 As discussed in more detail below, we recommend that the Commission (1) find reason to  
7 believe that GPL violated 2 U.S.C. § 441a(a)(1) by making, and the Romanelli Committee violated  
8 2 U.S.C. § 441a(f) by knowingly receiving, excessive in-kind contributions, (2) find reason to  
9 believe that GPL violated 11 C.F.R. § 106.6(b)(1)(i) by improperly allocating administrative  
10 expenses attributable to one or more clearly identified federal candidates or, in the alternative,  
11 violated 11 C.F.R. §§ 102.5(a), 106.6(a), (c), and (e) by failing to use a minimum 50% allocation  
12 ratio and to pay allocable expenses from an allocation account or from the committee's federal  
13 account with reimbursement by the nonfederal account; and (3) take no action at this time as to  
14 allegations that GPL violated §§ 441a(a)(1) and 441a(a)(8) and §§ 11 C.F.R. 102.8(a),  
15 110.6(b)(2)(iii) and 110.6(c)(1) by receiving contributions in excess of \$2,100 earmarked for the  
16 Romanelli campaign, failing to report those contributions as earmarked for that campaign, and  
17 failing to forward them to the campaign within 10 days, or that the Romanelli Committee violated  
18 2 U.S.C. § 441a(f) by knowingly receiving excessive contributions.

19 **II. FACTUAL SUMMARY**

20 GPL is a nonconnected committee without multicandidate or party committee status.  
21 Although GPL attempted to register with the Commission as a subordinate committee of the Green  
22 Party, it is an affiliate of the Green Party of Pennsylvania ("GPPA"), which has not requested

1 qualification as a state party committee.<sup>2</sup> GPL registered with the Commission on May 25, 2006,  
2 and, between June 6 and June 20, 2006, received contributions totaling \$66,000 from 20 people  
3 who contributed in amounts ranging from \$1,000 to \$5,000.

4 This matter concerns how GPL raised, spent and reported these funds. GPL appears to  
5 have spent part, if not all, of the \$66,000 for ballot qualification efforts on behalf of Carl  
6 Romanelli, the Green Party candidate in the 2006 Pennsylvania U.S. Senate race.<sup>3</sup> Between June 8  
7 and 26, 2006, GPL made four payments to JSM, Inc., a for-profit petition contractor based in  
8 Florida, for ballot qualification efforts, and it reported these payments three different ways in three  
9 versions of its 2006 July Quarterly Report.

**DATE EVENT**

07/17/06 GPL filed its initial July Quarterly Report, reporting the \$66,000 on Schedule B as  
itemized disbursements to JSM for ballot qualification for Carl Romanelli for  
U.S. Senate in the amounts of \$24,000 on 06/08/06; \$10,000 on 06/14/06; \$20,000 on  
06/22/06; and \$12,000 on 06/26/06.

07/18/06 Carl Romanelli for U.S. Senate filed its initial July Quarterly Report showing in-kind  
contributions from GPL totaling \$66,000 in amounts and dates that correspond with  
the ballot qualification payments disclosed by GPL.

08/01/06 Complaint filed in MUR 5783.

<sup>2</sup> See Green Party of Pennsylvania, County Affiliates, at <http://www.gpoofpa.org/index.php?module=Affiliates> (last visited Apr. 14, 2007). But see Interview by Amy Goodman with Carl Romanelli, available at <http://www.democracynow.org/article.pl?aid=06/10/31/150227> (Oct. 31, 2006) (stating that the GPL is not part of the state Green Party).

<sup>3</sup> Pennsylvania law required Romanelli to obtain signatures from at least 67,070 registered voters to qualify for the general election ballot as a minor party candidate. See Gina Passarella, *PA Supreme Court Denies Romanelli's Bid to Get on Ballot*, LEGAL INTELLIGENCER, Oct. 4, 2006, at 3; see also 25 PA. STAT. ANN. § 2911 (2006). Although Romanelli collected approximately 99,000 signatures, the Pennsylvania Supreme Court ruled that the number of valid signatures fell 9,000 short of the total and removed his name from the November ballot. See *Green Party Candidate is Off November Senate Ballot*, ROLL CALL, Oct. 5, 2006.

**DATE      EVENT**

08/25/06      GPL filed a paper copy of an amended July Quarterly Report, reporting the \$66,000 on Schedule F as coordinated party expenditures on behalf of Romanelli and four House candidates, Dave Baker, Titus North, Greta Browne, and Derf Maitland, in the amount of \$13,200 each; GPL attached bank records to this report showing four checks from bank accounts at Bank of America and First Liberty Bank & Trust corresponding to the amounts and dates of the payments to JSM reported in its initial July Quarterly report.

Carl Romanelli for U.S. Senate filed an amended July Quarterly Report, reporting a \$13,200 contribution from GPL with the notation that this was for authorized federal petitioning in the form of a coordinated party expenditure and a \$13,200 disbursement to GPL for a petition drive and voter outreach.

08/27/06      GPL electronically filed its amended July Quarterly Report.

09/15/06      Request for Additional Information ("RFAI") sent stating that GPL must be authorized to make coordinated party expenditures by the state or national committee of its political party; the RFAI requested clarifying information about the designating committee and noted that GPL disclosed no payments for administrative expenses in its amended July Quarterly Report.

10/16/06      GPL filed another amended July Quarterly Report, reporting the \$66,000 on line 21 as allocable operating expenditures (\$4,620 federal and \$61,380 nonfederal) and on Schedule H4 as administrative expenses for ballot access:

Payee	Date	Amount	Federal	Nonfederal	Ratio
JSM, Inc.	08/30/06	\$13,200	\$660	\$12,540	5/95
JSM, Inc.	08/30/06	\$13,200	\$1,960	\$11,220	15/85
JSM, Inc.	08/30/06	\$13,200	\$660	\$12,540	5/95
JSM, Inc.	08/30/06	\$13,200	\$660	\$12,540	5/95
JSM, Inc.	08/30/06	\$13,200	\$660	\$12,540	5/95

02/21/07      GPL requested termination.<sup>4</sup>

- 1      Publicly available information suggests that the initial July Quarterly Reports filed by GPL
- 2      and Carl Romanelli for U.S. Senate may have been accurate. According to press reports,
- 3      Romanelli began soliciting funds from supporters of former Senator Rick Santorum, the
- 4      Republican Senate candidate, in June 2006 with the understanding that Romanelli's presence on the

<sup>4</sup>      RAD denied this request because GPL failed to file its 2006 Year-End Report and has negative cash on hand and, thus, does not meet the requirements for termination under 11 C.F.R. § 102.3.

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1 general election ballot would "siphon[] votes away from Democratic challenger Bob Casey, Jr."<sup>5</sup>  
2 After the Romanelli Committee disclosed \$66,000 in in-kind contributions from GPL, two news  
3 articles reported that Romanelli may have violated federal election law by accepting excessive  
4 contributions and quoted him as responding, "Do I have a team of lawyers at my disposal? No.  
5 We were just trying to honestly disclose where our help came from when, in fact, it was activity of  
6 the party and didn't need to be disclosed on the Senate side," and "Obviously we need to talk to a  
7 lawyer."<sup>6</sup> Although GPL and the Romanelli Committee filed amended July Quarterly Reports  
8 several weeks later showing coordinated party expenditures on behalf of Romanelli in the amount  
9 of \$13,200, Romanelli contradicted these reports in an interview following his removal from the  
10 general election ballot, explaining that he had used GPL as a "vessel" to receive funds for his ballot  
11 qualification efforts:

12 **CARL ROMANELLI:** Yes, well, the bottom line is that I needed  
13 money. I have been trying to fundraise for the Greens for five years,  
14 and Democrats and progressives just aren't giving us any. It was my  
15 intention to elevate the level of discourse on the issues in this  
16 senatorial race. And let's not give Rick Santorum credit. Let's not  
17 blame the Green Party. Carl Romanelli put this operation together,  
18 and I had the understanding with a handful of Republican friends of  
19 mine who helped me that we were both using each other. I needed  
20 money, because I had none, and I was well aware that they thought  
21 that my presence would help their candidate. I didn't ascribe to that  
22 point of view, but it was mutual, because for five years the Green  
23 Party of Pennsylvania has been lobbying our legislature for more fair  
24 ballot access and for campaign reforms. It's fallen on deaf ears.

25 **AMY GOODMAN:** Carl Romanelli, to be clear, the money went to  
26 the [Luzerne] County Green Party, which is not a part of the state  
27 Green Party?

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<sup>5</sup> Daryl Nerl, *Republican Bankroll Taints Green Party Hopefuls*, ALLENTOWN MORNING CALL, Oct. 20, 2006, at B9..

<sup>6</sup> Carrie Budoff, *Santorum Donors Give to Green Party*, PHILA. INQUIRER, Aug. 1, 2006, at B4; *Romanelli Cash Focus of Attention*, WILKES-BARRE TIMES LEADER, Aug. 2, 2006, at A3.

1           **CARL ROMANELLI:** Correct. That was another one of the  
2 complications. We needed this enormous amount of signatures, and  
3 the Pennsylvania Green Party was not even registered as a federal  
4 party PAC. Initially, I was going to try to raise as much money as I  
5 could and turn it over to the state party for the ballot access drive.  
6 But without having a vessel to take money for federal candidates, I  
7 took it upon myself to use our local, which performed the task  
8 normally performed by a state party. And also, all of the money that  
9 I collected from the Republican donors did go, as you pointed out, to  
10 the Luzerne County Green Party. This didn't go to my campaign.  
11 This was solely for ballot access and then later to try to pay for  
12 defense of our signatures.<sup>7</sup>

13           Based on publicly available information, the other scenarios reported by GPL in its  
14 amended July Quarterly Reports appear less likely. Although GPL's first amended report disclosed  
15 the \$66,000 as coordinated party expenditures on behalf of Romanelli and four House candidates,  
16 GPL is not a qualified local party committee, and it produced no information in response to the  
17 RFAI showing that either the national party committee or a qualified state committee had  
18 authorized it to make coordinated party expenditures.<sup>8</sup> In addition, while GPL reported the \$66,000  
19 in its final amended report as allocable administrative expenses for ballot access, the available  
20 information indicates that all of its ballot qualification efforts were on behalf of one or more  
21 specific federal candidates.

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<sup>7</sup> Carl Romanelli Interview by Amy Goodman, DemocracyNow! (Oct. 31, 2006), available at <http://www.democracynow.org/article.pl?sid=06/10/31/150227>. Other publicly available information indicates that Romanelli was in the position to exercise this degree of influence over GPL. For example, the Green Party of Pennsylvania lists Romanelli as the contact person for its Luzerne County affiliate, see *supra* note 2, and Romanelli's campaign biography states that he has served as the Co-Chair of GPL since 2001. See Carl Romanelli for U.S. Senate, Biography, at <http://www.romanelli2006.com/node/3> (last visited Apr. 16, 2007). In addition, GPL and the Romanelli Committee registered with the Commission on the same date and used a common treasurer, Shane Novak, who identified the two committees as affiliated in GPL's amended Statement of Organization.

<sup>8</sup> Local party committees do not have independent authority to make coordinated party expenditures but may be assigned such authority by a qualified national or state party committee. See 2 U.S.C. § 441a(d)(3); 11 C.F.R. §§ 100.14, 109.33.

1 **III. LEGAL ANALYSIS**

2 It is unclear at this time which, if any, of the three July Quarterly Reports filed by GPL  
3 accurately reflect its \$66,000 in disbursements. As more fully discussed below, it appears that each  
4 of the three scenarios reported by GPL would have resulted in violations of the Act.<sup>9</sup> First, if GPL  
5 spent the entire \$66,000 on ballot qualification efforts coordinated with Romanelli and his  
6 campaign, as publicly available information suggests, GPL made, and the Romanelli Committee  
7 knowingly accepted, \$63,900 in excessive in-kind contributions from GPL. Second, if GPL spent  
8 the \$66,000 for ballot qualification efforts on behalf of Romanelli and four other Green Party  
9 candidates in equal shares of \$13,200 each, GPL may have made excessive in-kind contributions to  
10 as many as five candidate committees, depending on whether it coordinated with Romanelli alone  
11 or with Romanelli and the other candidates.<sup>10</sup> Finally, if GPL spent the entire \$66,000 on allocable

<sup>9</sup> There are a number of ways in which GPL could have made disbursements for ballot qualification efforts on behalf of Romanelli without violating the Act. For example, if GPL had acted independently of Romanelli and his authorized committee, it could have made the \$66,000 in disbursements as independent expenditures. See MUR 5533 (Nader), Statement of Reasons of Commissioners Toner, Mason, Smith and Weintraub (Commission dismissed as a matter of prosecutorial discretion allegations that a state committee made excessive contributions to Nader for President 2004 by collecting and submitting signatures on ballot access petitions because there was no evidence of coordination between the state committee and the Nader campaign and, as a result, the payments were independent expenditures). Alternatively, if GPL acted in coordination with Romanelli and his committee, it could have received written authorization from a qualified state or national party committee to make the \$66,000 in disbursements for ballot access as coordinated party expenditures, assuming such payments were in connection with Romanelli's general election campaign. See 2 U.S.C. § 441a(d)(1); 11 C.F.R. § 109.33(a); cf. AO 1984-11 (Serrette) (determining that payments to collect petition signatures to gain access to the general election ballot are expenditures and, therefore, are qualified campaign expenses, which are expenses made in connection with a candidate's campaign for nomination, under 11 C.F.R. § 9032.9) (cited in AO 2006-20 (Unity 08) (concluding that funds spent to obtain ballot access through petition drives are expenditures and count toward the \$1,000 statutory threshold for political committee status)). Finally, if GPL did not receive authorization to make coordinated party expenditures, it could, as a committee that did not qualify for multicandidate status, have made up to \$2,100 in disbursements for the Committee's ballot access petitions as in-kind contributions. See 2 U.S.C. § 441a(a)(1)(A).

<sup>10</sup> The four other federal candidates on whose behalf GPL claims to have made coordinated party expenditures in its first amended July Quarterly Report did not file Statements of Organization or register principal campaign committees with the Commission, and there are no disclosure reports other than those filed by GPL showing that any of these candidates received contributions or made expenditures in excess of \$5,000. See Green Party of Luzerne County, Committees Supported and Opposed, at [http://query.nictusa.com/cgi-bin/com\\_supopp/C00424820](http://query.nictusa.com/cgi-bin/com_supopp/C00424820) (last visited Apr. 23, 2007) (listing coordinated party expenditures of \$4,234 for Dave Baker, \$200 for Greta Brown, \$32,290 for Derf Maitland, and \$4,811 for Titus North between July 3 and September 11, 2006); see also 2 U.S.C. § 431(2). All four of

1 administrative expenses, rather than for ballot qualification efforts attributable to one or more  
2 clearly identified federal candidates, these expenses would have been subject to the 50% minimum  
3 allocation ratio set forth in 11 C.F.R. § 106.6, not the 5/95 or 15/85 federal-nonfederal ratios  
4 reported in its second amended July Quarterly Report.

5 Based on each of these scenarios, we recommend that the Commission find reason to  
6 believe that GPL, the Romanelli Committee, and Romanelli violated the Act. In addition, although  
7 the complaint alleges that contributions to GPL were, in fact, earmarked contributions to the  
8 Romanelli Committee, the available information is not sufficient to warrant an investigation at this  
9 time into whether the contributors formally designated or instructed GPL to use the funds for ballot  
10 qualification efforts on behalf of Romanelli, and we therefore recommend that the Commission  
11 take no action at this time with respect to these allegations.

12 **A. EXCESSIVE CONTRIBUTIONS**

13 In its initial July Quarterly Report, GPL disclosed the \$66,000 in disbursements to JSM as  
14 expenditures for ballot qualification on behalf of Romanelli. GPL, however, was not a  
15 multicandidate or qualified party committee and was subject to a \$2,100 contribution limit during  
16 the 2006 cycle. See 2 U.S.C. § 441a(a)(1)(A). Because publicly available information indicates  
17 that GPL coordinated its ballot qualification activities with Romanelli and his campaign—indeed,  
18 Romanelli appears to have solicited and accepted the contributions to GPL specifically for this  
19 purpose—these disbursements were not independent expenditures. See MUR 5533 (Nader), *supra*  
20 n. 9. In addition, as discussed below, GPL was not authorized to make coordinated party

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these candidates, however, were on the ballot in the General Election. See 2006 General Election, available at <http://www.electionreturns.state.pa.us> (last visited Apr. 23, 2007).



1 expenditures by a qualified national party or state committee. As a result, GPL appears to have  
2 made in-kind contributions totaling \$63,900 to the Romanelli Committee.

3 Alternatively, in its first amended July Quarterly Report, GPL reported the \$66,000 as  
4 coordinated party expenditures on behalf of Romanelli and four other Green Party candidates in  
5 equal shares of \$13,200 each. Had GPL been the subordinate of a qualified party committee or  
6 been authorized to make coordinated party expenditures on behalf of a national or qualified state  
7 party committee, it could have made coordinated party expenditures on behalf of Romanelli and the  
8 four House candidates. *See* 2 U.S.C. § 441a(d).<sup>11</sup> GPL, however, appears to be a subordinate  
9 committee of the GPPA, which has not requested qualification as a state party committee from the  
10 Commission. *See* 11 C.F.R. § 100.14; AO 2007-2 (Arizona Libertarian Party). Moreover, after  
11 receiving an RFAI requesting clarifying information about the designating committee,  
12 GPL produced no information showing that either the national party committee or a qualified state  
13 committee had authorized it to make coordinated party expenditures. As a result, GPL may have  
14 made excessive in-kind contributions of \$11,100 each to as many as five candidate committees  
15 depending on whether it coordinated its ballot qualification efforts with Romanelli alone or with  
16 Romanelli and the other candidates. *See* 2 U.S.C. § 441a(a)(7)(B).

17 Accordingly, we recommend that the Commission find reason to believe that GPL violated  
18 2 U.S.C. § 441a(a)(1) by making, and the Romanelli Committee violated 2 U.S.C. § 441a(f) by  
19 knowingly receiving, excessive in-kind contributions. In addition, although the complainant does  
20 not directly allege that Romanelli violated the Act in his personal capacity, many provisions,  
21 including § 441a(f), place a personal responsibility on the candidate. For violations of these

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<sup>11</sup> *See also* 2006 Coordinated Party Expenditure Limits, FEC RECORD, Mar. 2006, at 5-6 available at <http://www.fec.gov/pdf/record/2006/mar06.pdf> (coordinated party expenditure limits were \$761,500 for Pennsylvania Senate candidates and \$39,600 for House candidates).

provisions, the standard for candidate liability has been the personal involvement of the candidate in the activities from which the violation resulted.<sup>12</sup> In this matter, because Romanelli appears to have solicited and accepted contributions to GPL that were used for ballot qualification efforts on his behalf, *see supra* pp. 5-6, we recommend that the Commission find reason to believe that Romanelli violated 2 U.S.C. § 441a(f) by knowingly receiving excessive contributions.

## B. IMPROPER ALLOCATION

In its second amended July Quarterly Report, GPL reported the \$66,000 on Schedule H4 as allocable administrative expenses for ballot access, using a 5/95 or 15/85 federal-nonfederal ratio for each \$13,200 disbursement. Allocation of administrative expenses, however, is limited to disbursements that are not attributable to a clearly identified candidate. *See* 11 C.F.R.

§ 106.6(b)(1)(i). As discussed above, statements by Romanelli and GPL's prior disclosure reports suggest that the disbursements were, in fact, for ballot access efforts on behalf of one or more clearly identified candidates. If so, these expenditures were not allocable, and GPL should have used only federal funds to pay for them.<sup>13</sup>

Even if the disbursements were allocable as administrative expenses, GPL should have allocated using a federal share of at least 50%, not the 5% and 15% federal share disclosed in its second amended July Quarterly Report. *See* 11 C.F.R. §§ 106.6(a), (c). Furthermore, even if GPL had used the correct ratios, it is not clear how GPL could have, three months after the date of the disbursements, retroactively complied with the requirement that allocable expenditures be paid for

<sup>12</sup> *See, e.g.*, MUR 5014 (Jeff Flake) (Commission found reason to believe that the candidate violated §§ 441b(a), 441a(f), and 441f by negotiating an employment contract that appeared to benefit his committee); MUR 4340 (Tweezerman) (Commission found reason to believe that the candidate violated § 441b by accepting prohibited corporate contributions from his own corporation); MUR 4018 (Roberts) (Commission found reason to believe that the candidate violated § 441a(f) by accepting an excessive loan as a contribution).

<sup>13</sup> Based on its disclosure reports, GPL accepted contributions only from individuals and in amounts not exceeding \$5,000. *See* 2 U.S.C. § 441a(a)(1)(C). As a result, it does not appear to have used prohibited or excessive contributions as the result of its improper allocation.

1 from an allocation account or from the committee's federal account and reimbursed by the  
2 nonfederal account. *See* 11 C.F.R. §§ 102.5 and 106.6(e). Given these facts, it is unclear that the  
3 information contained in GPL's second amended July Quarterly Report accurately reflects its  
4 activity in that reporting period.

5 Accordingly, we recommend that the Commission find reason to believe that GPL violated  
6 11 C.F.R. § 106.6(b)(1)(i) by improperly allocating administrative expenses attributable to one or  
7 more clearly identified federal candidates or, in the alternative, violated 11 C.F.R. §§ 102.5(a),  
8 106.6(a), (c), and (e).

9 **C. EARMARKING**

10 The complaint alleges that GPL's sole purpose was to funnel contributions from the twenty  
11 people who contributed in June 2006 to Romanelli's campaign and that, as a result, the  
12 contributions made by GPL were actually earmarked contributions to the Romanelli Committee.  
13 According to the complaint, this scheme enabled 12 of the 20 contributors to make contributions in  
14 excess of the \$2,100 they could have given directly to the Romanelli Committee. *See* GPL, 2006  
15 July Quarterly Report (July 17, 2006, Aug. 27, 2006, and Oct. 16, 2006) (disclosing ten  
16 contributions in the amount of \$5,000 and two contributions in the amount of \$4,000).

17 The Act provides that all contributions made by a person, either directly or indirectly, on  
18 behalf of a particular candidate, including contributions that are in any way earmarked or otherwise  
19 directed through an intermediary or conduit to such candidate, shall be treated as contributions  
20 from such person to such candidate. *See* 2 U.S.C. § 441a(a)(8). An earmarked contribution is one  
21 that contains a direct or indirect designation, instruction, or encumbrance by the contributor to a  
22 conduit or intermediary that results in all or any part of the funds being contributed to or expended  
23 on behalf of a clearly identified candidate. *See* 11 C.F.R. § 110.6(b)(1). While earmarking is

1 permissible if it does not result in excessive or prohibited contributions, a pass-through committee  
2 must file a conduit report for the earmarked contribution, and forward them to the campaign no  
3 later than 10 days after receipt. See 2 U.S.C. § 441a(a)(8); 11 C.F.R. §§ 102.8(a), 110.6(b)(2)(iii)  
4 and 110.6(c)(1). Even if reported and forwarded correctly, the contributor and the recipient  
5 committee will have violated 2 U.S.C. §§ 441a(a)(1) and 441a(f), respectively, if the earmarked  
6 contributions exceed the applicable contribution limits.

7 In recent enforcement matters, the Commission has concluded that funds have been  
8 earmarked only where there is clear documented evidence of acts by donors that resulted in their  
9 funds being used by the recipient committee for expenditures on behalf of a particular campaign.  
10 For example, in MURs 4831 and 5274 (Nixon), the Commission found reason to believe that funds  
11 donated to the Missouri Democratic State Committee were earmarked for the U.S. Senate campaign  
12 of Jeremiah Nixon where contributors' checks had memo lines that stated "Nixon," "Nixon-Win,"  
13 "J. Nixon Fund," and "Jay Nixon Campaign Contribution," but not where the contributions resulted  
14 from party solicitations suggesting support for Nixon or merely coinciding with support provided to  
15 his campaign. Similarly, in MUR 5520 (Republican Party of Louisiana), the Commission  
16 concluded that a newspaper article asserting that the party acknowledged having a "wink and a  
17 nod" arrangement with donors, with no other designation or instruction by the donor, was  
18 insufficient to find reason to believe earmarking had occurred.<sup>14</sup>

<sup>14</sup> Indeed, the Commission has routinely rejected allegations of earmarking where the circumstances are purely circumstantial, and there is no clear designation or instruction given by the donor. See, e.g., MUR 5732 (Matt Brown for U.S. Senate) (finding no earmarking where checks to state party committees lacked cover letters or accompanying instructions and contained no designations, instructions, or encumbrances to use the funds on behalf of Matt Brown for U.S. Senate, even though media reports suggested that the state party committees had struck a deal to use the contributions for Brown and the contributors donated funds to the state committees several weeks after making contributions to the candidate); MUR 5445 (Davis) (finding no earmarking occurred where a donor who had maximized contributions to Davis made contributions to six non-candidate committees, each of which then made donations to Davis within nine days, because there was no designation or instruction); MUR 5125 (Perry) (finding no earmarking because the complaint contained only bare allegations of earmarking, but showed no designation,

1 Here, the earmarking allegation is based on the fact that, at the time of the complaint, GPL  
2 reported that it had received \$66,000 in contributions and made \$66,000 in disbursements on behalf  
3 of Romanelli. See Compl. at 2-3. In addition, news reports suggest that contributors to GPL  
4 understood that their contributions would be used to gain ballot access for Romanelli, *see supra* pp.  
5 5-6, although it is unclear whether this understanding was sufficient to constitute a designation,  
6 instruction, or encumbrance on how the funds were to be used or was more akin to a "wink and a  
7 nod" arrangement. Thus, at this time, the available information is insufficient to establish that the  
8 contributions to GPL were earmarked for Romanelli. An investigation into how GPL spent and  
9 reported the \$66,000, however, is likely to reveal additional information relevant to whether the  
10 contributions received by GPL were earmarked for the Romanelli campaign, and we do not advise  
11 foreclosing the possibility of future findings.<sup>15</sup> As a result, we recommend that the Commission  
12 take no action at this time as to allegations that GPL violated 2 U.S.C. §§ 441a(a)(1) and 441a(a)(8)  
13 and §§ 11 C.F.R. 102.8(a), 110.6(b)(2)(iii) and 110.6(c)(1) by receiving contributions in excess of  
14 \$2,100 earmarked for the Romanelli campaign, failing to report those contributions as earmarked  
15 for that campaign, and failing to forward them to the campaign within 10 days, or that the  
16 Romanelli Committee violated 2 U.S.C. § 441a(f) by knowingly receiving excessive  
17 contributions.<sup>16</sup>

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instruction or encumbrance); MUR 4643 (Democratic Party of New Mexico) (finding no earmarking based only on correlation in timing and amounts of contributions, without other evidence of instruction, designation or encumbrance).

<sup>15</sup> Cf. MURs 5403, 5427, 5440 and 5466 (*America Coming Together et al.*), General Counsel's Report #4, dated Dec. 7, 2004, at 16-17 (recommending that the Commission take no action at that time as to Kerry for President because an investigation into allegations that a 527 organization made coordinated expenditures utilizing information obtained from a former employee of the Kerry campaign could uncover information indicating that Kerry for President engaged in coordination and supporting appropriate recommendations at a later date).

<sup>16</sup> If an investigation reveals that Romanelli solicited or directed earmarked contributions in excess of \$2,100 to his campaign through GPL, or that he directly or indirectly established, financed, maintained or controlled GPL, Romanelli and/or GPL may have violated 2 U.S.C. § 441a(e) by soliciting, receiving, directing, transferring or spending funds that do not comply with the contribution limits of the Act in connection with his candidacy for federal office.

**IV. PROPOSED INVESTIGATION**

Given the conflicting reports filed by GPL, we recommend that the Commission open an investigation \_\_\_\_\_ to determine how the disbursements were actually made and, thus, how they should have been reported.<sup>17</sup> We anticipate that the investigation will focus on ascertaining the purpose of the \$66,000 in disbursements made by GPL, determining Romanelli's role in soliciting contributions to GPL, and understanding the relationship between GPL, GPPA and Romanelli.

**V. RECOMMENDATIONS**

1. Find reason to believe that the Green Party of Luzerne County, PA and Shane Novak, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(1) by making excessive in-kind contributions.
2. Find reason to believe that Carl Romanelli for U.S. Senate and Shane Novak, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) by knowingly receiving excessive in-kind contributions.
3. Find reason to believe that Carl J. Romanelli violated 2 U.S.C. § 441a(f) by knowingly receiving excessive contributions.
4. Find reason to believe that the Green Party of Luzerne County, PA and Shane Novak, in his official capacity as treasurer, violated 11 C.F.R. § 106.6(b)(1)(i) by improperly allocating administrative expenses attributable to one or more clearly identified federal candidates or, in the alternative, violated 11 C.F.R. §§ 102.5(a), 106.6(a), (c), and (e).
5. Take no action at this time as to allegations that the Green Party of Luzerne County, PA and Shane Novak, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(1) and 441a(a)(8) and §§ 11 C.F.R. 102.8(a), 110.6(b)(2)(iii) and 110.6(c)(1) by receiving excessive contributions earmarked for the Romanelli

<sup>17</sup> Although we recommend that the Commission open an investigation in this matter, it is unclear whether we will be able to obtain a meaningful civil penalty from GPL or the Romanelli Committee. GPL currently reports negative \$463 cash on hand and, although it raised \$158,789 during the 2006 cycle, only \$4,390 of this amount appears to have been from contributors associated with or sympathetic to Green Party causes. Similarly, aside from the in-kind contributions it received from GPL, the Romanelli Committee raised \$2,544 and spent \$2,512.80 during the 2006 cycle, and its most recent report discloses \$19 cash on hand. Nonetheless, we believe that a focused investigation is warranted to determine what happened and, at the very least, correct the public record in this matter and require GPL and the Romanelli Committee to amend their reports.

campaign, failing to report those contributions as earmarked for that campaign, and failing to forward them to the campaign within 10 days.

6. Take no action at this time as to allegations that Carl Romanelli for U.S. Senate and Shane Novak, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) by knowingly receiving excessive contributions.

7. Approve the attached Factual and Legal Analyses.

9. Approve the appropriate letters.

Thomasenia P. Duncan  
Acting General Counsel

5/3/07  
Date

BY:   
Ann Marie Terzaken  
Acting Associate General Counsel for  
Enforcement

  
Julie McConnell  
Acting Assistant General Counsel

Previously Assigned: Zachary Mahshie