

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

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FIRST GENERAL COUNSEL'S REPORT

MUR: 6691
DATE COMPLAINT FILED: Nov. 9, 2012
DATE OF NOTIFICATION: Nov. 16, 2012
LAST RESPONSE RECEIVED: Dec. 21, 2012
DATE ACTIVATED: Jan. 24, 2013

EXPIRATION OF SOL: Sep. 26, 2017 –
Oct. 17, 2017

COMPLAINANT:

Ben Hartman

RESPONDENTS:

Lampson for Congress and Lanell Wilson,
in his official capacity as treasurer
Texas Democratic Party and Gilberto Hinojosa,
in his official capacity as treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(8)(B)(ix), (9)(B)(viii)
2 U.S.C. § 434(b)
2 U.S.C. § 439a(a)(4)
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(d)
2 U.S.C. § 441a(f)
2 U.S.C. § 441d
11 C.F.R. § 100.87
11 C.F.R. § 100.147
11 C.F.R. § 104.3
11 C.F.R. § 109.32(b)
11 C.F.R. § 110.11(b), (e)
11 C.F.R. § 113.2(c)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Lampson for Congress (the "Lampson Committee"), the
authorized committee of congressional candidate Nicholas Lampson, and the Texas Democratic

1 Party "illegally coordinated efforts" on mailings resulting in inaccurate disclosure reports,
2 incomplete disclaimers, and excessive contributions. Compl. at 1-3 (Nov. 9, 2012).
3 Specifically, it is alleged that in the weeks leading up to the 2012 general election, the Lampson
4 Committee transferred \$152,350 to the Texas Democratic Party, which was used by the party to
5 fund mailings that attacked Lampson's opponent, Randy Weber, while attributing the attacks to
6 the party, rather than Lampson. *Id.*

7 In a joint response, Respondents do not deny coordinating. *See* Resp. at 1-3 (Dec. 21,
8 2012). They instead contend that the mailings at issue qualified for the "volunteer materials
9 exemption," which allows a party to disseminate campaign materials on behalf of its nominees,
10 without limit, and in coordination with the candidate if the requirements of the exemption are
11 met. *Id.* at 1-2; *see* 2 U.S.C. §§ 431(8)(B)(ix), (9)(B)(viii); 11 C.F.R. §§ 100.87, 100.147.
12 Considering that it was an exempt mailing, Respondents argue that no impermissible
13 contributions resulted and the mailing's disclaimers did not require an "authorization statement"
14 from Lampson. Resp. at 1-2.

15 The record supports a reasonable inference that the Texas Democratic Party coordinated
16 its expenditures with the Lampson Committee in an amount in excess of the contribution limits
17 of the Federal Election Campaign Act of 1971, as amended (the "Act"). The record further
18 shows that the volunteer materials exemption does not apply to the mailings because the
19 Lampson Committee likely designated that the Texas Democratic Party use the transferred funds
20 for the mailing to support Lampson. We therefore recommend that the Commission find reason
21 to believe that the Texas Democratic Party violated: (1) 2 U.S.C. § 441a(a) by making excessive
22 contributions; (2) 2 U.S.C. § 434(b) by improperly reporting its coordinated expenditures; and
23 (3) 2 U.S.C. § 441d by using an incomplete disclaimer on its mailings. We further recommend

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1 that the Commission find reason to believe that the Lampson Committee violated 2 U.S.C.
2 § 441a(f) by accepting excessive contributions.

3 **II. FACTUAL BACKGROUND**

4 The Texas Democratic Party is a state party committee that is registered and files
5 disclosure reports with the Commission. The Lampson Committee was Nicholas Lampson's
6 2012 principal campaign committee for his campaign for the U.S. House of Representatives for
7 Texas's 14th Congressional District. Lampson, the Democratic nominee, was defeated by State
8 Representative Randy Weber in the November 2012 general election.

9 According to the Complaint and as reflected in the Lampson Committee's reports, the
10 Lampson Committee made five transfers totaling \$152,350 to the Texas Democratic Party from
11 September 12 to October 12, 2012. *See* Compl. at 1-3. The Lampson Committee reported the
12 purposes of those transfers as "voter file access," "unlimited transfer to party committee," and
13 "direct mailing services." During roughly the same time frame — from September 13 to
14 October 17, 2012 — the Texas Democratic Party made \$166,148.54 in expenditures to Mack
15 Crouse Group, LLC for mailings supporting Lampson.¹ *See id.*

16 The Complaint alleges that the Lampson Committee and the Texas Democratic Party
17 impermissibly coordinated the mailings at issue and that the disclaimer on the mailings failed to
18 disclose Lampson's role in their preparation. Compl. at 1-3. In support of the allegation, the
19 Complaint cites to the timing of Lampson's transfers relative to the state party's disbursements
20 for the mailings and the similarity in the amounts transferred and ultimately spent on the
21 mailings. *Id.* The Complaint questions why the Lampson Committee would make such transfers
22 late in an election campaign unless Lampson knew the money would be used in support of his

¹ The Texas Democratic Party's reports describe the purpose of these expenditures as: "Exempt Campaign Materials: Mail."

campaign. *Id.* at 1. The Complaint also suggests that the manner in which the transfers were reported by the respondents was misleading and intended to disguise their true purpose. *Id.*

The following chart sets forth the relevant transactions:

Date	Amt	Committee (Report)	Recipient	Reported Purpose
9/12/2012	\$5,000.00	Lampson (Oct Q Op Expense)	Texas Democratic Party	Voter File Access
9/12/2012	\$50,000.00	Lampson (Oct Q Op Expense)	Texas Democratic Party	Voter File Access
9/13/2012	\$18,595.78	Texas Democratic Party (Oct Q Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
9/18/2012	\$350.00	Lampson (Oct Q Op Expense)	Texas Democratic Party	Voter File Access
9/19/2012	\$17,531.49	Texas Democratic Party (Oct Q Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
9/26/2012	\$17,754.43	Texas Democratic Party (Oct Q Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
10/1/2012	\$18,792.49	Texas Democratic Party (Pre-Gen Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
10/3/2012	\$64,000.00	Lampson (Pre-Gen Other Disburse)	Texas Democratic Party	Unlimited Transfer to Party C'ttee
10/9/2012	\$14,311.38	Texas Democratic Party (Pre-Gen Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
10/11/2012	\$17,971.39	Texas Democratic Party (Pre-Gen Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
10/12/2012	\$33,000.00	Lampson (Pre-Gen Op Expense)	Texas Democratic Party	Direct Mailing Services
10/12/2012	\$14,547.23	Texas Democratic Party (Pre-Gen Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
10/12/2012	\$13,428.75	Texas Democratic Party (Pre-Gen Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
10/17/2012	\$19,846.07	Texas Democratic Party (Pre-Gen Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail
10/17/2012	\$13,369.53	Texas Democratic Party (Pre-Gen Fed Elect Activity)	Crounse Group	Exempt Campaign Materials: Mail

The Complaint did not attach the mailings or describe them with specificity, and we were unable to find the mailings through publicly available sources. The Complaint did, however, indicate that the mailings attacked Lampson's general election opponent and that the mailings relied on the "same documentation" and "use[ed] the same false attack lines" that appeared in a Lampson press release issued on September 26, 2012, which is attached to the Complaint.

Compl. at 1, Attach.

1 In a joint Response, Respondents contend that the mailings at issue qualified for the
2 "volunteer materials exemption" of 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii) and 11 C.F.R.
3 §§ 100.87 and 100.147, and that therefore, they were not contributions or expenditures under
4 2 U.S.C. § 441a. Resp. at 1-3. In support of their claim to the exemption, the Respondents
5 submitted declarations stating that the dissemination of these materials included significant
6 volunteer involvement.² Resp. at 2, Attachs. The Response also states that the Texas
7 Democratic Party did not use any national party funds to pay for the dissemination of the
8 materials and thus these activities are exempt from the limitations at 2 U.S.C. § 441a(d).³ *Id.* at
9 2. Finally, the respondents assert that Lampson's transfers were made pursuant to the unlimited
10 transfer authority under 2 U.S.C. § 439a(a)(4) and are not related to the Texas Democratic
11 Party's mailings, although no sworn declarations were provided on this point. *Id.*

² The first declaration was submitted by Joseph Vogas, the Field Coordinator for the Texas Democratic Party. See Resp., Attach (Joseph Vogas Decl. (Dec. 19, 2012)). Vogas states that he supervised the recruitment and production and distribution by volunteers of the Texas Democratic Party mailings on behalf of Lampson. Vogas Decl. ¶ 1. He also attests that the Texas Democratic Party used volunteers for the allegedly exempt mail and attached a copy of Texas Democratic Party's guidelines for the production of volunteer mail. Vogas Decl. ¶¶ 1, 3, Attach.

The second declaration was submitted by Nancy Johnson, one of the Texas Democratic Party volunteers. See Resp., Attach (Nancy Johnson Decl. (Dec. 19, 2012)). Johnson attests that she participated in volunteer mailings undertaken on behalf of Lampson; volunteers were provided with Texas Democratic Party guidelines, and volunteers were involved in several aspects of the mailing including, but not limited to, relabeling and sorting mail bags, unloading mail flyers and placing the mail on a conveyor belt for auto addressing. Johnson Decl. ¶¶ 1-3.

³ The Texas Democratic Party received a Request for Additional Information ("RFAI") for its 2012 October Monthly Report. The RFAI inquired about the Texas Democratic Party's disclosure of transfers-in from the national party committees and disbursements for "exempt campaign materials." The RFAI recited the requirements for "exempt" activity and indicated that the Texas Democratic Party should amend its report or provide clarifying information if the activity was not "exempt." The Texas Democratic Party filed a miscellaneous text response on January 2, 2013, stating, "No transfer down of funds were used to pay for exempt activities. In accordance with the law, the Committee only used its own funds to pay for exempt activities shown in our reports." In its 2012 Pre-General Report which also disclosed disbursements for exempt activity, the Texas Democratic Party included a Miscellaneous Text stating: "[t]he committee segregates all funds transferred-in from other party committees in a separate account. None of the transferred funds were designated or earmarked for any particular candidate or for any exempt activity, and none were used for allocable Federal Election Activity."

III. LEGAL ANALYSIS

A. **There is Reason to Believe That the Texas Democratic Party Made, and the Lampson Committee Received, Excessive Contributions in the Form of Coordinated Expenditures**

The Texas Democratic Party spent \$166,148.54 on its mailings supporting Lampson. As explained in Part III.A.1 below, these expenditures were coordinated with the Lampson Committee under 11 C.F.R. § 109.37. As explained in Part III.A.2., the Texas Democratic Party's coordinated expenditures do not qualify for the volunteer materials exemption from the Act's definitions of "expenditure" and "contribution" as Respondents claim. The Texas Democratic Party's coordinated expenditures were therefore made in excess of the Act's contribution limits, and the Lampson Committee accepted contributions in excess of those limits. See 2 U.S.C. §§ 441a(a)(2)(A); 441a(d)(3)(B). Accordingly, we recommend that the Commission find reason to believe that the Texas Democratic Party violated 2 U.S.C. § 441a(a), and that the Lampson Committee violated 2 U.S.C. § 441a(f).

1. **The Texas Democratic Party's Expenditures for the Mailing Were Coordinated with Lampson for Congress**

The Act limits contributions from a political party committee to one of its candidates to \$5,000 per election. 2 U.S.C. § 441a(a)(2)(A). In 2012, the Act also limited the amount of expenditures that a political party committee could make in coordination with one of its U.S. House candidates to \$45,600 per general election. 2 U.S.C. § 441a(d)(3)(B); 11 C.F.R. § 109.32(b)(2)(ii); 2012 Coordinated Party Expenditure Limits, The (FEC) Record, 9 (March 2012).⁴ When a party committee makes an expenditure for a communication that is coordinated

⁴ The limit of 2 U.S.C. § 441a(d)(3)(B) is applicable to House candidates, like Lampson, who are running in states that have more than one Representative in the U.S. House. In states with just one U.S. House Representative, the applicable limit was \$91,200 in 2012. See 2 U.S.C. § 441a(d)(3)(A); 2012 Coordinated Party Expenditure Limits, The (FEC) Record, 9 (March 2012).

1 with a candidate, the party must report the expenditure as either an in-kind contribution (subject
2 to the \$5,000 limit) or a coordinated party expenditure (subject to the \$45,600 limit). *See*
3 11 C.F.R. § 109.37(b).

4 Under Commission regulations, there is a three-pronged test to determine whether a party
5 communication is coordinated. 11 C.F.R. § 109.37(a). A party communication is coordinated
6 with a candidate or its authorized committee if: (1) it is paid for by a political party committee
7 or its agent; (2) it satisfies at least one of the five "content" standards described in 11 C.F.R.
8 § 109.21(c); and (3) satisfies at least one of the six "conduct" standards described in 11 C.F.R.
9 § 109.21(d). 11 C.F.R. § 109.37(a).

10 a. The Payment Prong

11 In this matter, the first prong of the coordinated party communication test is satisfied
12 because the Texas Democratic Party paid for the mailings at issue. *See* 11 C.F.R. § 109.37(a)(1).

13 b. The Content Prong

14 The available information suggests that the second prong, the content standard, is also
15 satisfied. That prong is satisfied if the communication at issue meets one of several criteria
16 described in 11 C.F.R. § 109.21(c)(1)-(5). Under 11 C.F.R. § 109.21(c)(4), a communication
17 qualifies if it is a "public communication" that refers to a clearly identified House candidate and
18 is publicly disseminated in the candidate's jurisdiction 90 days or fewer before the relevant
19 election. "[P]ublic communication" includes communications made by means of a "mass
20 mailing." 11 C.F.R. § 100.26.

21 Here, although we do not have a copy of the actual mail piece, the Complaint alleges that
22 the mailer "attack[s] Randy Weber," Lampson's opponent. Compl. at 1. The Complaint also
23 claims that the mailer contains the same "documentation" and uses the "same false attack lines"

1 as a September 26, 2012 Lampson press release that is attached to the Complaint. Compl. at 1,
2 Attach. The Response does not dispute these contentions. *See generally* Resp. The press
3 release clearly identifies Lampson's opponent, Randy Weber, and accuses him of airing a false
4 television advertisement. Compl., Attach.

5 Moreover, the Texas Democratic Party's disclosure reports reflect that in September and
6 October 2012, the Texas Democratic Party made disbursements totaling over \$166,000 for
7 mailers supporting Lampson. The payments were reported as "federal election activity." Thus,
8 the type, cost, and timing of the mailings indicate that the mailings were likely a "mass mailing"
9 that referred to a clearly identified federal candidate and were distributed within 90 days of the
10 general election in the relevant jurisdiction.

11 Respondents make no effort to claim that the mailer does not satisfy the content prong.
12 Accordingly, based on the available information, 11 C.F.R. § 109.21(c)(4) is satisfied here.

13 c. The Conduct Prong

14 The available information also suggests that the conduct prong is satisfied. The
15 Complaint argues that "[g]iven the large, unexplained transfers of money from Lampson's
16 campaign to the [Texas Democratic Party], and the subsequent mail pieces by the party using the
17 same false attack lines [as the September 26 press release], the coordination is obvious." Compl.
18 at 1.

19 The conduct prong can be satisfied by several types of interaction between a party
20 committee and its candidate relating to the communication at issue. *See* 11 C.F.R.
21 § 109.21(d)(1)-(6). Relevant here, the conduct prong is met where (1) a "communication is
22 created, produced, or distributed at the request or suggestion of a candidate, authorized
23 committee, or political party committee," *see id.* § 109(d)(1)(i); (2) a "candidate, authorized

1 committee, or political party committee is materially involved in decisions regarding,” among
2 other things, the content, audience, means, mode, timing, frequency, size, or prominence of the
3 communication, *see id.* § 109.21(d)(2)(i)-(vi); or (3) the “communication is created, produced,
4 or distributed after one or more substantial discussions about the communication between the
5 person paying for the communication . . . and . . . the candidate’s authorized committee . . . or a
6 political party committee,” *see id.* § 109.21(d)(3).

7 The available information here supports reason to believe that one or more of these
8 content standards has been satisfied by the mailers. First, the mailers contain, at least in part, the
9 same substance as the September 26 Lampson press release, which was issued
10 contemporaneously with the mailers. Compl. at 1-3, Attach. Second, the Complaint and the
11 relevant reports demonstrate that the Lampson Committee transferred campaign funds to the
12 Texas Democratic Party contemporaneously with the Texas Democratic Party’s expenditures on
13 the mailers. Compl. at 1-3. Third, the Lampson Committee transfers totaled \$152,350 — an
14 amount that approximates the \$166,148.54 the Texas Democratic Party spent on the mailers.
15 These three factors, taken together, raise a reasonable inference that the Lampson Committee and
16 the Texas Democratic Party engaged in conduct under 11 C.F.R. § 109.21(d)(1), (2), or (3) with
17 regard to the mailers.

18 Further supporting reason to believe, the Lampson Committee and Texas Democratic
19 Committee’s Response make *no* effort to rebut the Complaint’s allegations of coordination. The
20 Response acknowledges that the Complaint alleges a violation of the limit on coordinated
21 expenditures at 2 U.S.C. § 441a(d). Resp. at 1. Nevertheless, the Response fails to dispute the
22 coordination allegations, and only argues that the expenditures qualify for an exemption from the
23 Act’s definitions of “contribution” and “expenditure.” *Id.* at 1-3.

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1 Accordingly, the funds the Texas Democratic Party spent on the mailings qualify as
2 coordinated party communications under 11 C.F.R. § 109.37.

3 2. The Texas Democratic Party's Coordinated Expenditures Do Not Qualify
4 For the "Volunteer Materials" Exemption
5

6 Respondents argue that the Texas Democratic Party's expenditures qualify for the Act's
7 volunteer materials exemption. Resp. at 1-2. Those provisions exempt from the definitions of
8 "contribution" and "expenditure" payments by a state committee of a political party for the costs
9 of campaign materials used in connection with volunteer activities on behalf of the party's
10 nominee. See 2 U.S.C. §§ 431(8)(B)(ix), (9)(B)(viii); 11 C.F.R. §§ 100.87, 100.147. Payments
11 qualifying for the volunteer materials exemption are therefore not subject to the Act's limits on a
12 state party committee's contributions or expenditures, and there is no limit on the degree to
13 which such communications can be coordinated with the beneficiary candidate's committee. *Id.*

14 To qualify for the volunteer materials exemption, the following conditions must be met:

15 (a) the campaign material must not be for "general public communication or political
16 advertising," including direct mail;⁵ (b) the portion of the payment allocable to a federal
17 candidate must be paid with federal funds; (c) the committee's payment is not made from
18 contributions designated by the donor to be spent on behalf of a particular federal candidate; (d)
19 campaign materials must be "distributed by volunteers and not by commercial or for-profit
20 operations"; (e) the committee's payment must be reported as a disbursement; and (f) campaign
21 materials must not be purchased either directly by a national committee or with funds donated by

⁵ For purposes of sections 100.87(a) and 100.147(a), "direct mail" is defined as "any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists." *Id.*

1 the national committee to the state committee.⁶ 11 C.F.R. §§ 100.87(a)-(e), (g) and 100.147(a)-
2 (e), (g).

3 Based on the Response and available information, there is reason to believe that the
4 Texas Democratic Party mailings would not qualify for the "volunteer materials" exemption
5 under 11 C.F.R. §§ 100.87(c), 100.147(c).⁷ Under the exemption, a payment may "not [be]
6 made from contributions designated by the donor to be spent on behalf of a particular candidate
7 or candidates for Federal office"; there has been no such designation if "the party committee
8 disbursing the funds makes the final decision regarding which candidate(s) shall receive the
9 benefit of such disbursement." *Id.*

10 According to the legislative history of the volunteer materials exemption,

11 [t]he basic test for determining whether a contribution has been designated
12 is whether the contributor retains control over the funds. Since the
13 purpose of this exemption is to promote party activity, the party, not the
14 contributor, must make the final decision as to which candidate or
15 candidates will receive the benefits.

16
17 H.R. Rep. No. 422, 96th Cong. 1st Sess 9 (1979), reported in FEC Legislative History of Federal
18 Campaign Act Amendments of 1979 at 193 (GPO 1983).

19 Here, there is reason to believe that the Texas Democratic Party's expenditures for the
20 mailers were likely made from the funds that the Lampson Committee transferred⁸ to the Texas

⁶ In MUR 5575 (Alaska Democratic Party), the Commission examined the use of national committee funds for volunteer exempt activity, 11 C.F.R. § 100.87(g), and clarified that "the volunteer materials exemption is nullified only if a national party committee purchases such materials, or donates funds specifically *for the purchase of such materials.*" Statement of Reasons, Vice Chairman Petersen and Comm'rs. Bauerly, Hunter & McGahn at 4, MUR 5575 (Alaska Democratic Party). The Commission concluded that the MUR investigation did not establish "that the funds were transferred specifically to fund the activity." *Id.*

⁷ The mailings appear to meet the other requirements for the exemption in that they were paid for with federal funds, were not purchased by or with funds from the national committee, volunteers were substantially involved in the mailings, and no commercial vendors or commercial lists were used.

⁸ The Lampson Committee transfers to the Texas Democratic Party qualify as "contributions" under 11 C.F.R. §§ 100.87(c) and 100.147(c). The term "contributions" as used in those provisions does not exclude

1 Democratic Party and likely designated to be spent on behalf of Lampson. First, though
2 Respondents assert that the transfers are not related to the mailings, the amount and timing of the
3 Lampson Committee's transfers to the state party coincide with the disbursements for the
4 mailings. As shown in the chart *supra* Part II, in September and October 2012, the Lampson
5 Committee made transfers to the Texas Democratic Party totaling \$152,350 and the party
6 disbursed \$166,148.54 to the Mack Crounse Group, LLC for the mailings. In some instances,
7 the Lampson Committee's transfer and the subsequent Texas Democratic Party disbursement to
8 the mail vendor took place on the same day (e.g., on October 12, 2012, Lampson transferred
9 \$33,000 and the Texas Democratic Party made payments to the Crounse Group of \$14,547.23
10 and \$13,248.75).

11 Second, the Lampson Committee reported the purpose of the \$33,000 transfer on October
12 12 as "direct mailing services," and it is not clear what mail it was funding if not the mailings at
13 issue in this matter. While the transferred amounts do not match up completely, we believe the
14 similarities merit further inquiry.

15 Third, there are reasons to question whether the reported purposes of the transactions
16 were misleading or inaccurate. The Lampson Committee's reported purpose for three of its five

"transfers" from an authorized committee to a national, State, or local party committee pursuant to 2 U.S.C. § 439a(a)(4). According to the legislative history of the definition of the term "contribution," the term "transfer" is "limited to funds flowing between or among affiliated committees, committees authorized by the same candidate, or political party committees regardless of whether such committees are affiliated." H.R. Rep. No. 422, 96th Cong. 1st Sess 9 (1979), reported in FEC Legislative History of Federal Campaign Act Amendments of 1979 at 193 (GPO 1983). See also FEC Form 3x, Detailed Summary Page of Receipts (Compare Line 11(c) "Contributions from Other Political Committees" to Line 12 "Transfers from Affiliated/Other Party Committees"); Federal Election Campaign Guides for Congressional Candidates and Committees and for Political Party Committees (describing requirements for exempt party activity: "The party committee does not use funds designated by a donor for a particular candidate."); MUR 5520 (Tauzin for Congress, *et al.*) (allegations that a campaign committee's transfer of funds to a State party for the benefit of a federal candidate analyzed as a possible earmarked contribution); Advisory Op. 1981-01 (Bay Area Committee) (stating that none of the exceptions to the definition of "contribution" or "expenditure" includes the "transfer of excess campaign funds" under 2 U.S.C. § 439a and that a transfer by a committee to another committee "for use in a Federal election would constitute an 'expenditure' made by the transferor committee and a 'contribution' received by the transferee committee.").

1 transfers do not match the purpose reported by the Texas Democratic Party's receipts schedule.
2 For instance, on September 12, 2012, the Lampson Committee paid \$55,000 to the Texas
3 Democratic Party for "voter file access," which appears to be payments for access to the party's
4 voter files. These payments were reported, however, on the Texas Democratic Party's disclosure
5 reports as "transfers" without specifying any purpose.⁹ By contrast, in other transactions
6 between the Lampson Committee and the Texas Democratic Party, both parties reported the
7 same purpose for the transactions. For example, the Lampson Committee reported the purpose
8 of a \$350 transfer on September 18, 2012, it made to the party as "voter file access," and the
9 party reported the same. Conversely, the Texas Democratic Party reported the purpose of a
10 \$2,600 in-kind contribution it made to the Lampson Committee as "voter file access," and the
11 Lampson Committee reported the same.

12 Fourth, the Complaint alleges that the anti-Weber mailers used "the same documentation"
13 that appeared in a Lampson press release issued during the same time frame. Compl. at 1.

14 Fifth, the Complaint alleges that it is questionable for a candidate "to give away huge
15 sums of money in the last months before an election." Compl. at 1.

16 The Response does not specifically rebut these allegations. Instead, it simply states in a
17 footnote that Lampson's transfers "are not related to these [Texas Democratic Party] mailings,"
18 and does not provide any sworn declarations supporting this sweeping statement — in contrast to
19 the declarations Respondents produced concerning the use of volunteers.

20 The above factors give rise to an inference that the transfers to the Texas Democratic
21 Party were designated to be used for mailings in support of Lampson, and as a result, that
22 Respondents do not qualify for the volunteer materials exemption. *See* 11 C.F.R. §§ 100.87(c),

⁹ Additionally, the Complaint alleged that paying \$55,000 for voter file access was an excessive amount, and the respondents did not rebut that allegation.

1 100.147(c). Accordingly, if an investigation determines that the funds had been designated for
2 Lampson, the mailings would not qualify for the volunteer materials exemption. As such, the
3 related expenses are not exempt from the definitions of "contribution" and "expenditure." See
4 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii); 11 C.F.R. §§ 100.87 and 100.147. And, therefore,
5 they are also subject to the Act's limits on a state party committee's contributions to or
6 coordinated expenditures made on behalf of a candidate's committee, and the appropriate non-
7 exempt disclaimers and reporting. *Id.*

8 3. The Texas Democratic Party Exceeded Its Contribution and Coordinated
9 Expenditure Limits and the Lampson Committee Accepted Excessive
10 Contributions
11

12 The Texas Democratic Party spent \$166,148.54 on coordinated party communications in
13 support of Lampson's general election campaign. Those expenditures do not qualify for the
14 volunteer materials exemption and thus they are treated as contributions for purposes of the Act's
15 contribution limits. See 2 U.S.C. § 441a(a)(7)(B)(i).

16 The Texas Democratic Party had already made \$4,560 in direct contributions to the
17 Lampson Committee. That amount combined with the Texas Democratic Party's \$166,148.54 in
18 coordinated expenditures amounts to \$170,708.54. Under the limits of 2 U.S.C.
19 §§ 441a(a)(2)(A) (\$5,000 on contributions) and 441(a)(d) (\$45,600 on coordinated
20 expenditures), the Texas Democratic Party was limited to making a combined \$50,600 in
21 contributions to and coordinated expenditures in support of Lampson. Its spending exceeded that
22 limit by \$120,108.54.

23 We therefore recommend that the Commission find reason to believe that the Texas
24 Democratic Party violated 2 U.S.C. § 441a(a). We also recommend that the Commission find
25 reason to believe that the Lampson Committee violated 2 U.S.C. § 441a(f). We further

1 recommend that the Commission authorize an investigation into whether the Texas Democratic
2 Party qualifies for the volunteer materials exemption. Such an investigation would be limited to
3 the question of whether Nicholas Lampson, Lampson for Congress, or the agents of either,
4 designated that its transfers be used for campaign mailings in support of Lampson.

5 **B. There is Reason to Believe That the Texas Democratic Party Failed to**
6 **Properly Report Its In-Kind Contributions to Lampson for Congress**
7

8 The Texas Democratic Party was required to report its contributions. *See* 2 U.S.C.
9 § 434(b)(4). The Texas Democratic Party, however, reported the expenditures for the
10 coordinated mailings as disbursements for exempt campaign materials instead of as contributions
11 to the Lampson Committee. Accordingly, we further recommend that the Commission find
12 reason to believe that the Texas Democratic Party violated 2 U.S.C. § 434(b) by failing to report
13 its contributions to the Lampson Committee.

14 **C. There is Reason to Believe That the Texas Democratic Party Failed to**
15 **Include a Proper Disclaimer on the Mailer in Violation of 2 U.S.C. § 441d**
16

17 Under the Act, any public communication made by a political committee must display a
18 disclaimer. 2 U.S.C. § 441d; 11 C.F.R. § 110.11. Had the mailings qualified for the volunteer
19 materials exemption, the Texas Democratic Party would have been required to include in the
20 disclaimer that it paid for the communication, but it would not have been required to state
21 whether the communication was authorized by the Lampson Committee. *See* 11 C.F.R. §
22 110.11(e). But, because we conclude that the mailings do not qualify for the exemption and
23 because the mailings qualify as a mass mailing (based on the cost, timing, and how they were
24 disclosed on the Texas Democratic Party disclosure reports), the mailer's disclaimer was
25 required to state that it was authorized by the Lampson Committee. *See* 11 C.F.R. § 110.11(b),
26 (d). The Complaint states that the mailings indicated that they were "paid for and approved

solely by the" Texas Democratic Party. Compl. at 2. The Response does not rebut this allegation. Therefore, we recommend that the Commission find reason to believe that the Texas Democratic Party violated 2 U.S.C. § 441d by failing to use a proper disclaimer on the mailings.

IV. INVESTIGATION

Because there is reason to investigate whether the mailings qualify for the volunteer materials exemption, we recommend that the Commission authorize a focused investigation limited to the question of whether Nicholas Lampson, Lampson for Congress, or the agents of either, designated that its transfers be used for campaign mailings in support of Lampson.

V. RECOMMENDATIONS

1. Find reason to believe that the Texas Democratic Party and Gilberto Hinojosa in his official capacity as treasurer violated 2 U.S.C. § 441a(a).
2. Find reason to believe that the Texas Democratic Party and Gilberto Hinojosa in his official capacity as treasurer violated 2 U.S.C. § 434(b).
3. Find reason to believe that the Texas Democratic Party and Gilberto Hinojosa in his official capacity as treasurer violated 2 U.S.C. § 441d.
4. Find reason to believe that Lampson for Congress and Lanell Wilson in his official capacity as treasurer violated 2 U.S.C. § 441a(f).
5. Authorize an investigation into whether Lampson for Congress's transfers to the Texas Democratic Party were designated to be used for campaign mailings in support of Lampson.
6. Approve the attached Factual and Legal Analysis.
7. Authorize the use of compulsory process in this matter.

8. Approve the appropriate letters.

Anthony Herman
General Counsel

Date

May 24, 2013

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