



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**RETURN RECEIPT REQUESTED**

**MAY 04 2006**

Marc E. Elias, Esq.  
Rebecca H. Gordon, Esq.  
Perkins Coie LLP  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

**RE: MURs 5564 and 5575  
Tony Knowles for U.S. Senate  
and Leslie Ridle, in her  
official capacity as treasurer**

Dear Mr. Elias and Ms. Gordon:

On October 19 and 27, 2004, the Federal Election Commission notified Tony Knowles for U.S. Senate ("the Committee") and Leslie Ridle, in her official capacity as treasurer, your clients, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to the Committee at that time.

Upon further review of the allegations contained in the complaints, and information provided by you, the Commission, on April 3, 2006, in MUR 5564, found reason to believe that the Committee and Leslie Ridle, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b) in connection with the allegations concerning the Alaska Democratic Party's 2004 field program. With respect to allegations concerning advertisements run by the Democratic Senatorial Campaign Committee, the Commission found no reason to believe that the Committee and Leslie Ridle, in her official capacity as treasurer, violated any provision of the Act or Commission regulations. On the same date, in MUR 5575, the Commission found reason to believe that the Committee and Leslie Ridle, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f). A combined Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of these matters. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must

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be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.


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

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

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

If you have any questions, please contact Thomas J. Andersen or Christine C. Gallagher, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner  
Chairman

cc: Tony Knowles

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Tony Knowles for U.S. Senate and MURs 5564, 5575  
Leslie Ridle, in her official capacity as treasurer

**I. BACKGROUND**

These matters were generated based on complaints filed with the Federal Election Commission by Wiley Brooks (MUR 5564) and Timothy A. McKeever (MUR 5575). *See* 2 U.S.C. § 437g(a)(1). Both matters involve allegations against Tony Knowles for U.S. Senate ("Knowles Committee") in connection with the U.S. Senate race in Alaska in 2004. The complaint in MUR 5564 alleges that substantial transfers by the Democratic Senatorial Campaign Committee ("DSCC") to the Alaska Democratic Party ("ADP") were used to support the candidacy of Tony Knowles and exceeded the coordinated expenditure limits set forth in the Federal Election Campaign Act of 1971, as amended ("the Act"), resulting in excessive in-kind contributions from ADP to the Knowles Committee. The complaint in MUR 5575 alleges that ADP made excessive contributions to the Knowles Committee by distributing mailers that promote Knowles or attack his opponent, and which do not fit within the "volunteer materials" exemption of the Act.

Based on the facts presented in the complaint, the responses, as well as other available information, there is reason to believe that the Knowles Committee violated the Act in MUR 5564 in connection with certain expenditures made by ADP in 2004. In MUR 5575, there is reason to believe that the Knowles Committee violated the Act in connection with the mailers at issue.

**II. FACTUAL & LEGAL ANALYSIS**

**A. MUR 5564**

**1. Facts**

ADP made significant disbursements in 2004 on what is described as a "field program," which included the opening of regional offices in several communities across Alaska, as well as the hiring of numerous "summer interns." In the months leading up to the 2004 general election, these paid staffers appear to have conducted various activities out of the regional offices, such as canvassing neighborhoods promoting Tony Knowles' 2004 campaign for U.S. Senate. ADP reported a portion of program expenses as "section 441a(d)" expenditures and also received monthly reimbursements from the Knowles Committee in connection with the program. The central issue appears to be whether such amounts sufficiently covered all of the program activities undertaken by ADP on behalf of Knowles; if not, then it appears that the Knowles Committee may have accepted in-kind contributions that were not properly reimbursed.

Complainant alleges in MUR 5564 that DSCC transferred \$1.7 million to ADP and that ADP used the money to support Knowles' candidacy, resulting in "illegal in-kind donations." Complaint at 1. Complainant acknowledges that DSCC and ADP could make coordinated expenditures on behalf of the Knowles Committee under 2 U.S.C. § 441a(d), but that such spending crossed the limits for national and state parties.<sup>1</sup> The transferred money was allegedly spent by ADP in coordination with the Knowles Committee to open the field offices and to pay canvassers who operated as Knowles campaign workers.

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<sup>1</sup> The combined limit was \$149,240 for 2004. See *2004 Coordinated Party Expenditure Limits*, The (FEC) Record, 15-16 (March 2004).

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1 The complaint attached an e-mail from the treasurer for the Knowles Committee allegedly  
2 sent to Knowles "supporters." *Id.* at 2. The e-mail, dated April 16, 2004, included the subject line  
3 "housing needed" along with the following text:

4 Hello friends,

5 . . . .

6 We wanted to let you all know that [ADP] is organizing a summer intern program  
7 here in Anchorage (and across the state). They are hiring interns to hit the streets  
8 and go door-to-door to spread Tony's message and talk to voters about why they  
9 should vote for him.

10 . . . . We are asking the interns (either college students or high school  
11 upperclassmen) to commit to at least 6 weeks over the summer, for five hours a  
12 day either 5 or 7 days a week, with the 5 hours being in the afternoon during the  
13 week and during the day on the weekend. Depending on if they commit to 5 or 7  
14 days, we will pay them accordingly. So if you know any interested students,  
15 please send them our way. E-mail . . . oliver@alaskademocrats.org.

16 Second, although most of these interns will be from Alaska, we have had some  
17 interest from students from the Outside. Since we aren't paying them much and  
18 they won't be here for very long, we need places for them to live for 6-8 weeks.  
19 If anyone has a spare bed they can use to house one of these committed young  
20 Democrats' [sic] please also let Oliver know.<sup>2</sup>

21  
22 Complaint, Exhibit C.

23 The complaint also included an ADP flyer allegedly "being distributed on the campus of  
24 the University of Alaska Anchorage on September 2, 2004."<sup>3</sup> The flyer stated,

25 Go door to door to elect Tony Knowles! . . . [ADP] is looking for outgoing and  
26 friendly people who can talk to voters at their doors about the upcoming Senate  
27 election. To be eligible, you must be at least 16 years of age, a supporter of Tony  
28 Knowles and available to work at least 6 hours a week. You will be paid \$10 per  
29 hour. If you are interested, call Devon or Megan at 632-3214.<sup>4</sup>

<sup>2</sup> ADP reported biweekly "Payroll" disbursements to an Oliver Gottfried from March through November 2004.

<sup>3</sup> A press account referencing the flyer stated it "was posted on college campuses" by ADP. Sam Bishop, *Reports show differing party help to candidates*, FAIRBANKS (Alaska) DAILY NEWS-MINER (Oct. 9, 2004).

<sup>4</sup> ADP reported "Payroll" disbursements to a Deven Nelson from April through November 2004, and to a Megan Huth from July through November 2004. The complaint also included a document suggesting that Megan Huth sent a Knowles press release on September 28, 2004, using ADP's e-mail address. The release announces Knowles' debate schedule and states "Paid for by Tony Knowles For Senate." Complaint, Exhibit N.

1 Complaint, Exhibit F. Complainant asserts that "ADP is paying payroll of at least 104 different  
2 people [in 2004] including Jim Messina, who was reported in the press to be Mr. Knowles'  
3 campaign manager . . . ." <sup>5</sup> *Id.* at 1. Around the time of the November 2004 general election, ADP  
4 was reporting "payroll" disbursements to over 400 individuals, including Messina. As discussed  
5 *infra*, the Knowles Committee reported payments to Messina during the same period.

6 Complainant also submitted a copy of a web page from the Knowles Committee website  
7 containing a July 23, 2004 New York Times article. Complaint, Exhibit D. The article describes  
8 an encounter by "Campaign Worker" Max Hensley with a grizzly bear "[w]hile out rounding up  
9 potential supporters for the Senate candidate, Tony Knowles . . . ." <sup>6</sup> Complainant claims that  
10 Hensley's salary was being paid by ADP and that the Knowles Committee reported no payments to  
11 him. <sup>7</sup> Complainant alleges that ADP failed to report the salaries of Hensley and other field  
12 workers as in-kind contributions and that disclosure reports filed by the Knowles Committee do  
13 not reflect the receipt of such in-kind contributions.

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<sup>5</sup> A search of news databases uncovered articles identifying Messina as "manager" or "director" of the Knowles campaign. *See, e.g.,* Nicole Duran, *Knowles Taps Dorgan Chief For His Race*, ROLL CALL (June 8, 2004); *Don't Make a Messina of Things*, THE HOTLINE (American Political Network), Vol. 10, No. 9. (June 8, 2004); *Senate 2004 Alaska: Lisa, Lisa!*, THE HOTLINE (American Political Network), Vol. 10, No. 9 (Aug. 25, 2004).

<sup>6</sup> A July 23, 2004 article in The Hotline covering Hensley's bear encounter referred to him (Hensley) as a "Tony Knowles summer canvasser." *People When Animals Attack: Gives New Meaning to "Grin and Bear It"*, THE HOTLINE (American Political Network), Vol. 10, No. 9 (July 23, 2004).

<sup>7</sup> ADP reported Schedule B "Payroll" disbursements to Hensley of \$492, \$394 and \$334 on July 15, July 30, and August 13, 2004, respectively. It also reported Schedule F "Payroll" disbursements to Hensley of \$98.47 and \$83.60 on July 30 and August 13, 2004, respectively. Although the Knowles Committee does not appear to have reported any disbursements to Hensley, as discussed *infra*, it reported large monthly disbursements to ADP for such items as "Reimbursement for staff salaries."

1 A review of news databases indicates that other individuals on ADP's payroll were  
2 reportedly engaging in campaign activity on behalf of Knowles. For example, a July 2004 news  
3 account describes the daily activities of two "Knowles workers" paid by ADP:<sup>8</sup>

4 At the Knowles campaign, the workers are more conventionally used as door-to-  
5 door canvassers. "Shoe leather is essential for any campaign," Knowles  
6 spokesman Bob King said. . . .

7 The Knowles workers start their day at campaign headquarters, where they  
8 receive walking assignments for the day. Then they go out and spend the day  
9 canvassing at Anchorage doorsteps.

10 In South Anchorage, a middle-aged woman peers through her screen door at  
11 [Marissa] Coughlin, who delivers her endorsement of Knowles in a series of  
12 gulps, starts and factoids. . . .

13 "Are you a supporter of Governor Knowles?" asked Coughlin . . . .

14 . . . .

15 Down the block, Coughlin's canvassing partner, [Caitlin] Legacki, approached  
16 another door. A man appeared at the upstairs window, and Legacki identified  
17 herself as a Knowles campaign worker.

18 . . . .

19 Following a brief conversation with Legacki, [the man's wife] pledged to support  
20 Knowles in the election.<sup>9</sup>

21  
22 A graphic for the article states that Coughlin and three other ADP workers "go  
23 over walk routes as they canvass a neighborhood with Tony Knowles' campaign  
24 literature."<sup>10</sup> In another article, Legacki reportedly "stated that she [was] one of 31  
25 canvassers employed by [ADP] to go door-to-door promoting Knowles."<sup>11</sup>

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<sup>8</sup> ADP's disclosure reports show biweekly "Payroll" disbursements in the summer and fall of 2004 to persons identified in the article. Although the Knowles Committee does not appear to have reported any disbursements to these individuals, as discussed *infra*, it reported large monthly disbursements to ADP for such items as "Reimbursement for staff salaries."

<sup>9</sup> Kevin Boots, *Campaign Kids: Young Workers Build Signs, Knock on Doors for Murkowski, Knowles*, ANCHORAGE DAILY (July 16, 2004).

<sup>10</sup> *Id.*

<sup>11</sup> Liz Ruskin, *Candidates Battle Over 'Outside Activists'*, ANCHORAGE DAILY (June 23, 2004).

1 Complainant avers that the Knowles Committee website contains further information  
2 demonstrating coordination of expenditures between ADP and the Committee. The complaint  
3 included a copy of a Knowles campaign web page "from April of 2004" that states:

4 The Alaska Democratic Party opened regional offices in Anchorage, Fairbanks,  
5 Juneau, Wasilla, and Soldotna in the past few weeks and more field offices will  
6 soon open in Barrow, Bethel, Nome, Kotzebue, Kodiak, Valdez, Sitka and  
7 Ketchikan. Local supporters will be joined by experienced field staffers in  
8 conducting voter registration and outreach to build grassroots support for  
9 Knowles [sic] candidacy heading up to election-day.

10  
11 Complaint, Exhibit B (emphasis in original). An archived web page from the Knowles website  
12 from November 2004 lists sixteen operational ADP "Coordinated Campaign Field Offices,"  
13 including most of the office locations listed above as well as offices in Kenai, Eagle River, Homer  
14 and Seward.<sup>12</sup>

15 The Knowles Committee website refers to the ADP offices as "Knowles Offices" and  
16 includes links for each of the listed offices, advising the viewer, "To contact an office in your area,  
17 please click on one of these regional offices run by the Alaska Democratic Party."<sup>13</sup> The web  
18 pages for these offices contain contact information (e.g., individuals to contact at each office,  
19 office addresses and phone numbers) and various references to Knowles' candidacy; there are no  
20 references to other candidates. For example, the web page for the "Kenai Office" states, "We are  
21 here to talk to people on the Peninsula about Tony Knowles and his plan to put Alaska first in the  
22 U.S. Senate. Stop by our office anytime to learn more about Tony or to find out how you can help

<sup>12</sup> See <[http://web.archive.org/web/20050712114705/http://www.tonyknowles.com/rural\\_offices.html?PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc](http://web.archive.org/web/20050712114705/http://www.tonyknowles.com/rural_offices.html?PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc)>. The "Kenai Office" is located in Soldotna, Alaska; it may be the same office called the "Soldotna" office in Exhibit B of the Complaint. Also, the "Anchorage Office" listed in the website has a different address and phone number than office listed as ADP headquarters on ADP's website in 2004. See, e.g., <<http://web.archive.org/web/20040205201033/alaskademocrats.org/contact.html>>.

<sup>13</sup> See <[http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office\\_locations.html?PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc](http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office_locations.html?PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc)>.



1 get Tony elected.”<sup>14</sup> A photograph of the office posted on the web page shows the outside window  
2 covered with “Knowles for Senate” posters; no other candidates are listed. ADP’s website from  
3 the same time period does not reference any of these regional party offices; it included information  
4 only for its Anchorage headquarters.<sup>15</sup>

5 It appears that all of the regional offices may have shut down shortly after the  
6 November 2004 election. ADP’s disclosure reports do not appear to show any rent, utilities or  
7 other costs related to these offices after 2004; in addition, it appears that, within one month  
8 following the election, the individuals listed as office contacts were no longer employed by ADP.<sup>16</sup>

9 The Knowles Committee admits that ADP solicited students and opened regional offices in  
10 2004 in an effort to elect Knowles, but claims ADP’s “field program” benefited the entire  
11 Democratic ticket and was not carried out exclusively for Knowles’ benefit. Knowles Committee  
12 Response at 2-3. The Knowles Committee states that three federal candidates appeared on the  
13 ballot as well as “a number of Democrats . . . in state and local elections. . . . ADP undertook its  
14 program to benefit all these candidates.” Knowles Committee Response at 2.

15 Early in the election cycle, ADP allocated 20% of field program expenses to the Knowles  
16 campaign. Knowles Committee Response at 3. Respondents assert that since the Committee paid  
17 “a share of . . . ADP’s expenses and of staff salaries, it was not inappropriate to refer to” ADP’s  
18 offices as “Knowles Offices,” or to an ADP staffer “as a Knowles worker.” Knowles Committee  
19 Response at 2. “Moreover, to attract momentum and constituent support, the Knowles campaign  
20 often emphasized in its press those [ADP] activities . . . that directly supported Gov. Knowles.”

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<sup>14</sup> See <[http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office\\_locations.html?office=Kenai&PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc](http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office_locations.html?office=Kenai&PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc)>.

<sup>15</sup> See <<http://web.archive.org/web/20041013003409/http://www.alaskademocrats.org>>.

<sup>16</sup> None of the regional offices are currently listed in Directory Assistance.

Knowles Committee Response at 2. The Committee notes that party committees "frequently use the most recognized candidates at the top of their tickets as a 'draw' for a host of purposes, including fundraising and recruitment of volunteers." *Id.*

## 2. Analysis

Pursuant to the party expenditure limits set forth at 2 U.S.C. § 441a(d), ADP's maximum general election coordinated expenditure limit on behalf of the U.S. Senate candidacy of Tony Knowles was \$74,620.<sup>17</sup> Based on its disclosure reports, ADP appears to have reached that limit on or around July 30, 2004. During the period from July 30 through September 30, 2004, ADP reported an additional \$59,541 in coordinated expenditures on behalf of Knowles. Pursuant to 11 C.F.R. § 109.33(a), ADP could have made additional coordinated expenditures as long as the Democratic National Committee ("DNC") properly assigned it some portion of DNC's own coordinated expenditure limit of \$74,620. However, since all the ADP filings at issue specifically indicate that ADP had not "been designated to make coordinated expenditures by a political party committee," and the responses do not state otherwise, it would appear that ADP exceeded its coordinated expenditure limit by \$59,541.

ADP reported \$1,713 in general election contributions to the Knowles Committee, \$3,287 short of its \$5,000 limit. *See* 2 U.S.C. § 441a(a)(2)(A). Accordingly, based solely on ADP's disclosure reports, it may have made \$56,254 (\$59,541 - \$3,287) in excessive in-kind contributions in the form of coordinated expenditures on behalf of the Knowles Committee in connection with the 2004 field program.

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<sup>17</sup> *See* 11 C.F.R. § 109.32(b); The (FEC) Record, 15-16 (March 2004).

1 The key issues concerning the allegations involving the field program are whether ADP's  
2 20% figure (or \$473,683.63) represents an accurate allocation of the Knowles Committee's share  
3 of costs, and whether the Knowles Committee accepted in-kind contributions that were not  
4 properly reimbursed.

5 The regulations provide that expenditures made on behalf of federal candidates shall be  
6 attributed "according to the benefit reasonably expected to be derived." 11 C.F.R. § 106.1(a)(1).  
7 For example, in the case of a phone bank, "the attribution shall be determined by the number of  
8 questions or statements devoted to each candidate as compared to the total number of questions or  
9 statements devoted to all candidates."<sup>18</sup> *Id.* Expenditures for rent, personnel, voter registration  
10 and get-out-the-vote drives "need not be attributed to individual candidates, unless these  
11 expenditures are made on behalf of a clearly identified candidate, and the expenditure can be  
12 directly attributed to that candidate." 11 C.F.R. § 106.1(c)(1).

13 The available information suggests that more than 20% of ADP's field program  
14 disbursements may have constituted expenditures that were directly attributable to Knowles and  
15 should have been allocated accordingly. First, perhaps most tellingly, it would seem unlikely that  
16 Jim Messina, who appears to have served as Knowles' campaign manager, would have been  
17 spending more of his time working for ADP than the Knowles Committee; yet during much of the  
18 relevant time the majority of his salary was being paid for by ADP.<sup>19</sup>

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<sup>18</sup> If a phone bank communication referring to a federal candidate included "another reference that generically refers to other candidates of the Federal candidate's party without clearly identifying them," then fifty percent of the disbursement is attributed to the candidate, provided that certain other conditions are met. 11 C.F.R. § 106.8.

<sup>19</sup> ADP reported \$20,162 in "Payroll" disbursements to Messina as follows: \$2,356 on 7/15/04, \$2,356 on 7/30/04, \$2,356 on 8/13/04, \$2,356 on 8/31/04, \$2,356 on 9/15/04, \$2,356 on 9/30/04, \$2,367 on 10/15/04, \$2,373 on 11/3/04 and \$1,286 on 11/09/04. The Knowles Committee reported \$32,042 in "Salary" disbursements to Messina as follows: \$2,337 on 6/16/04, \$2,200 on 7/2/04, \$2,200 on 7/16/04, \$2,200 on 7/30/04, \$2,200 on 8/13/04, \$2,200 on 8/27/04, \$2,200 on 9/10/04, \$2,200 on 9/24/04, \$2,201 on 10/8/04, \$2,215 on 10/22/04, \$7,674 on 11/05/04 and \$2,215 on 11/5/04.

(Footnote continues on following page)

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1       Second, ADP's field offices appear to be party offices in name only, having been set up  
2 primarily to serve Knowles, as indicated by the fact that the contact information for several offices  
3 across the state appeared only on Knowles' website. Based on a review of archived web pages, no  
4 references to regional ADP offices appeared on ADP's website during 2004, even though ADP  
5 appears to have been paying for 80% of the rent and utilities. All nineteen individuals listed on  
6 Knowles' website as contacts for the regional offices were on ADP's payroll, yet the information  
7 below these names referenced only the Knowles campaign and included no references to the party  
8 or to other candidates (e.g., "stop by our office anytime to learn more about Tony or to find out  
9 how you can help get Tony elected").<sup>20</sup> Given these circumstances, it would appear that the  
10 regional offices were set up mainly to support Knowles' candidacy, and that ADP should have  
11 attributed their costs (rent, utilities, etc.) accordingly.

12       Third, regarding what is likely the largest share of program costs -- staff salaries -- it  
13 appears that the field workers on ADP's payroll were functioning primarily as Knowles campaign  
14 workers. As described *supra*, the treasurer of the Knowles Committee appears to have informed

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An article in Roll Call provided further detail regarding Messina's role:

Jim Messina has taken a leave of absence from his position as chief of staff to Sen. Byron Dorgan (D-N.D.) to serve as Knowles' Senate campaign director.

Messina joins longtime Knowles aide [and treasurer] Leslie Ridle in overseeing the Democrat's effort to unseat Sen. Lisa Murkowski (R).

In an acknowledgement to how tight the race is expected to be -- and the pivotal role it could play in determining which party controls the Senate -- Dorgan was willing to let his chief head out to the Last Frontier, said an informed source.

....

"This is going to be an extraordinarily close race and we are very excited to have Jim here helping out," added Matt McKenna, spokesman for Knowles.

....

As campaign director, Messina will "lend his expertise to every facet of this campaign," McKenna said.

Nicole Duran, *Knowles Taps Dorgan Chief For His Race*, ROLL CALL (June 8, 2004).

<sup>20</sup> See <[http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office\\_locations.html?office=Kenai&PHPSESSID=-ce8bd9bbb0382967f6a7425af04094bc](http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office_locations.html?office=Kenai&PHPSESSID=-ce8bd9bbb0382967f6a7425af04094bc)>.

1 supporters that ADP workers would be going door-to-door "to spread Tony's message" and asked  
2 them to provide housing for the workers. Also, the recruitment flyer apparently created by ADP  
3 reiterated the Committee treasurer's message about workers going "door to door to elect Tony  
4 Knowles!" Although there is no information regarding the content of Knowles campaign literature  
5 that may have been distributed by ADP workers or scripts that may have been used for phone bank  
6 communications or door-to-door canvassing, news accounts suggest that the Knowles Committee  
7 was the main beneficiary of the workers' activities.

8 In reviewing the available information (e.g., ADP recruiting flyers, photos of ADP offices,  
9 statements reportedly made by ADP workers), there appear to be no references to any other  
10 candidates, whether federal or non-federal.<sup>21</sup> There is little information indicating that the program  
11 was aimed at benefiting any candidate other than Knowles. Accordingly, it would appear that the  
12 20% attribution figure used by ADP in connection with its field program expenses was  
13 disproportionate to the benefit received by Knowles. *See* 11 C.F.R. § 106.1(a)(1).

14 If the expenditures exceeding ADP's combined section 441a(d) and 441a(a)(2)(A) limits  
15 were made "in cooperation, consultation, or concert, with, or at the request or suggestion of" the  
16 Knowles Committee or its agents, an excessive in-kind contribution would result. *See* 2 U.S.C.  
17 § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a) and (b). For those activities that might be deemed  
18 communications (e.g., ADP's telephone calls, *see* 11 C.F.R. § 100.28), the Commission has

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<sup>21</sup> Also, in contrast with the substantial party coordinated expenditures on behalf of Knowles as reported by ADP and DSCC, it does not appear that any such expenditures were made on behalf of ADP's Democratic nominee for the U.S. House of Representatives, Thomas Higgins (ADP reported no independent expenditures in 2004).

1 promulgated separate regulations addressing "party coordinated communications." See 11 C.F.R.  
2 § 109.37.<sup>22</sup>

3 Although it is not clear at this time which ADP field program disbursements should be  
4 considered party coordinated communications under 11 C.F.R. § 109.37, and which disbursements  
5 for activities that are not public communications should be treated as coordinated expenditures  
6 under 11 C.F.R. § 109.20, the available information suggests that some degree of cooperation or  
7 consultation may have occurred. There remain questions as to the role and involvement of  
8 Knowles' campaign manager, who appears to have been receiving most of his salary from ADP  
9 while the field program was fully operational in the summer and fall of 2004. In addition, the  
10 content of the e-mail sent by the treasurer of the Knowles Committee, *see supra* at 3, suggests that  
11 she may have coordinated some aspects of ADP's field program, such as mobilizing potential  
12 workers. For example, the treasurer states that "we are asking" interns to work for ADP over the  
13 summer, and that if the recipients "know any interested students, please send them our way."  
14 Another ADP worker – listed as a contact on an ADP flyer recruiting "supporters of  
15 Tony Knowles" to work on the field program – appears to have used her <alaskademocrats.org>  
16 e-mail account to send out a Knowles campaign press release. *See supra* fn. 4. Finally, there is no  
17 information concerning how ADP may have attempted to ensure the independence of  
18 unreimbursed expenditures benefiting the Knowles campaign.

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<sup>22</sup> A party communication is coordinated with a candidate, an authorized committee or agent thereof if it meets a three-part test: (1) the communication is paid for by a political party committee or its agent; (2) the communication satisfies at least one of the "content" standards described in Section 109.37(a)(2); and (3) the communication satisfies at least one of the six "conduct" standards described in Section 109.21(d). In *Shays v. FEC*, 414 F.3d 76, 102 (D.C. Cir. July 15, 2005) (pet. for rehearing *en banc* denied Oct. 21, 2005), the appeals court affirmed a district court decision that invalidated the content standard of the coordinated communications regulation. The regulation remains in force pending the promulgation of a new regulation. *Shays v. FEC*, 340 F. Supp. 2d 39, 41 (D.D.C. 2004).

1 Questions remain concerning ADP's field program and the nature and extent of the  
2 Knowles Committee's involvement. The available information indicates that the  
3 Committee received possible excessive in-kind contributions from ADP and failed to report  
4 them.

5 Therefore, there is reason to believe that Tony Knowles for U.S. Senate and Leslie  
6 Ridle, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b) in  
7 connection with the allegations concerning ADP's 2004 field program.

8 **B. MUR 5575**

9 **1. Facts**

10 Complainant alleges in MUR 5575 that ADP made "illegal coordinated  
11 communications" to benefit the Knowles campaign in the form of "mailers being sent by  
12 the ADP to thousands of residents in Alaska." Complaint at 1. Complainant alleges that  
13 ADP had "already" exceeded its limits for party coordinated expenditures by spending over  
14 \$1.5 million by opening "joint offices" and "hiring staff to go door to door to help elect"  
15 Knowles. *Id.*

16 Complainant submitted copies of three mailers allegedly paid for by ADP. One  
17 mailer consists of two pages and includes critical remarks about Lisa Murkowski's  
18 congressional votes on health care benefits for veterans and reservists, stating in large type,  
19 "Lisa Murkowski Has Turned Her Back On Those Who Served." Complaint Att. at 1-2.  
20 The first page of the second mailer states, "Tony Knowles – A Strong, Independent And  
21 Effective Leader, Creating Jobs For Alaska Families." *Id.* at 3. The next three pages  
22 include favorable comments and news accounts regarding Knowles' efforts to create or  
23 save jobs in Alaska. *Id.* at 5-6. The final mailer states on the first page, "On The Issue Of

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1 Health Care For Alaskans, There Are Real Differences Between Tony Knowles And Lisa  
2 Murkowski." *Id.* at 7. The next three pages comment favorably on Knowles' positions on  
3 drugs and health care while negatively portraying Murkowski's positions. *Id.* at 8-10. The  
4 mailer includes three photographs of Knowles as well as a quote attributed to him.

5 Complainant asserts that no portion of the mailings was done by volunteers; they  
6 were "not hand addressed, the postage was not affixed by hand and the material was not  
7 placed in an envelope by volunteers." Complaint at 1. All the mailers attached to the  
8 complaint state that they were paid for by ADP and contain a Nonprofit Organization  
9 mailing permit. Complainant alleges that the mailers are also in violation of the Act's  
10 disclaimer requirements, since they do not state whether they were authorized by any  
11 candidate or candidate's authorized committee.

12 The Knowles Committee contends that volunteers did not stuff envelopes "because  
13 there were no envelopes to stuff; the materials were merely folded, not placed in envelopes.  
14 Volunteers did not place postage, because [ADP's] bulk mail permit was used." Knowles  
15 Committee Response at 2. Respondent alleges that it and ADP "did all they could to  
16 ensure that volunteers would distribute the materials, including requesting that the  
17 participation of volunteers be documented with photographs." *Id.*

## 18 **2. Analysis**

19 The Act defines "contribution" and "expenditure" so as to exclude payments by a state  
20 committee of a political party for the costs of campaign materials. See 2 U.S.C. § 431(8)(B)(ix)  
21 and (9)(B)(viii). Payments qualifying for this volunteer exemption are therefore not subject to the  
22 Act's limits on a state party committee's contributions or expenditures. To qualify for this

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1 exemption, the payments must be "used by such committee in connection with volunteer activities  
2 on behalf of nominees of such party." *Id.*

3 The regulations implementing the volunteer exemption establish that the exemption does  
4 not apply to "direct mail," defined as "any mailing(s) by a commercial vendor or any mailing(s)  
5 made from commercial lists." 11 C.F.R. §§ 100.87(a) and 100.147(a). Materials must be  
6 "distributed by volunteers and not by commercial or for-profit operations." 11 C.F.R.  
7 §§ 100.87(d) and 100.147(d). In matters involving mailings where a state party committee has  
8 claimed that such disbursements did not constitute contributions or expenditures under the Act, the  
9 focus has been on whether a volunteer effort, rather than a commercial mailing house or other  
10 vendor, was responsible for preparing the mailings and delivering them to the post office.

11 For example, in MUR 4851 (Michigan Republican State Committee), a state party  
12 committee presented evidence that volunteers affixed postal indicia (i.e., postage mark with permit  
13 number) on each piece of mail, placed address labels on them, and took them to the post office for  
14 distribution. Likewise, in MUR 4471 (Montana State Democratic Central Committee), a  
15 commercial vendor printed and folded brochures that were sorted, bundled and delivered to the  
16 post office by volunteers. *See* Statement of Reasons, MUR 4471, Nov. 19, 1998, at 5. Finally, in  
17 MUR 3218 (Blackwell for Congress), volunteers opened the cartons for printed direct mail  
18 materials and "stamped on each piece, individually, the return address and the bulk mail permit  
19 indicia" and "sorted the pieces into the requisite postal/zip code categories and transported the  
20 Mailings to the Postal Service, where they were mailed." *See* Statement of Reasons, MUR 3218,  
21 May 23, 1991, at 3. *See also* MUR 2377 (Republican Party of Texas) (volunteer materials  
22 exemption applies where volunteers unpackaged, labeled, sorted, bundled, and delivered the  
23 mailers to the post office).

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1           However, the Commission has concluded in other state party matters that volunteers were  
2 not sufficiently involved in direct mail activities. For example, in MUR 2994 (Wyoming State  
3 Democratic Central Committee), the conciliation agreement stated that the mailings at issue failed  
4 to qualify for the volunteer exemption, noting that the mailings were produced by the vendor and  
5 "sent directly from the production house" to the post office; the only volunteer involvement with  
6 the mailers was reviewing the mailing lists and inserting the county for each address. See  
7 Conciliation Agreement, MUR 2994, dated Jan. 14, 1991. Also, in MUR 2559 (Oregon  
8 Republican Party), the conciliation agreement stated that, "[a]lthough volunteers stamped the  
9 postal indicia on one particular mailing, these particular brochures were sent back to the vendor for  
10 mailing. . . . The other . . . mailings were also mailed by the vendor." See Conciliation Agreement,  
11 MUR 2559, dated March 1, 1991. Finally, in MUR 4754 (Republican Campaign Committee of  
12 New Mexico), additional information was needed to assess whether the state party committee  
13 satisfied the conditions for the volunteer materials exemption. In that case, the state party  
14 committee merely submitted copies of volunteer sign-in sheets to support its claim that volunteers  
15 "unloaded the mail at party headquarters . . . stamped the party's non-profit indicia" on the mailers,  
16 "bundle[d] the mail . . . and took the mail to the U.S. Post Office, where the volunteers unloaded  
17 the mail." MUR 4754 First General Counsel's Report at 10-11. There was insufficient  
18 information to determine that the exemption applied because "the party's response [did] not state  
19 one way or the other whether sorting was performed by the volunteers, or the vendor." *Id.* at 11.  
20 After the state party committee provided answers to interrogatories and documents indicating that  
21 volunteers bundled and sorted the brochures by zip code, that the committee had sufficient funds  
22 from non-national committee sources to pay for the mailers, and that the mailing list was not  
23 purchased from a commercial vendor, the Commission took no further action and closed the file.

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1 In this matter, it appears that ADP volunteers operated directly out of the mail facilities of  
2 North Mail, Inc. While the available information suggests that volunteers printed addresses on the  
3 mailers and sorted and bundled them, it is not clear who actually delivered them to the post office.  
4 Respondent does not address this issue, and there is no information pertaining to actual delivery.

5 In addition to requiring substantial volunteer involvement, the regulations provide that  
6 materials purchased with funds donated by a national party committee do not qualify for the  
7 volunteer exemption. See 11 C.F.R. §§ 100.87(g) and 100.147(g). Although Respondent  
8 identifies North Mail, Inc. as the printing vendor for the mailers at issue, it does not state, and it is  
9 unclear from ADP's disclosure reports, how much was spent on the mailers and when such  
10 disbursements were made.<sup>23</sup> Since over three-quarters of ADP's federal receipts in 2004 were in  
11 the form of transfers from national party committees, it is appropriate to inquire whether ADP had  
12 sufficient funds from non-national party sources to pay for the mailers.

13 The questions addressed above need to be resolved to determine whether the mailings at  
14 issue are covered by the volunteer material exemption. If the mailers are not covered, then they  
15 could be considered excessive coordinated expenditures on behalf of the Knowles Committee if  
16 they constituted party coordinated communications. Although there is no information available  
17 indicating how many of each mailer was sent out, it appears they constituted a "mass mailing"  
18 under 11 C.F.R. § 100.27, and therefore a public communication under 11 C.F.R. § 100.26.

<sup>23</sup> ADP's 2004 Year-End Report did not disclose any disbursements to North Mail, Inc. during the reporting period covering October 2004, when it claims it operated its exempt mail program. ADP disclosed the following disbursements to North Mail, Inc. prior to October 2004: \$143.32 and \$1,031.64 for mailing and printing on June 23, 2004; \$690.07 for mailing on March 15, 2004, and \$398.23 for mailing on August 4, 2004. However, ADP reported various disbursements in 2005 that may be connected to the mailers at issue, e.g., a \$3,788 payment to North Mail on June 1, 2005 for "printing and postage during Oct. 04." Also, ADP reported significant disbursements to other vendors for "mailing" that may be related to its exempt expenditure program, e.g., \$200,000 and \$56,595 to "AMS Communications, Inc." on October 21 and 28, 2004, respectively.

1 Accordingly, the party coordinated communication criteria at 11 C.F.R. § 109.37 must be applied  
2 to the mailers to determine their treatment under the Act.

3 The mailers were paid for by a party committee, refer to clearly identified federal  
4 candidates, and appear to have been mailed to Alaska residents within 120 days of the general  
5 election. See 11 C.F.R. § 109.37(a)(1) and (2)(iii). Regarding the applicable conduct standards at  
6 section 109.21(d), the mailings were sent out shortly after ADP reported coordinated expenditures  
7 on behalf of Knowles; the mailers included photographs of Knowles and one contained a lengthy  
8 quote attributed to him; the Knowles Committee does not deny the complaint's allegations that the  
9 mailings were coordinated; and ADP may have been coordinating other expenditures with the  
10 Knowles Committee during the same time frame, as discussed in the analysis of ADP's field  
11 program, *supra*. Last, ADP had already exhausted its coordinated expenditure limit and as a result  
12 exceeded its remaining general election contribution limit.

13 Therefore, there is reason to believe that Tony Knowles for U.S. Senate and Leslie Ridle, in  
14 her official capacity as treasurer, violated 2 U.S.C. § 441a(f).

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