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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5862

DATE COMPLAINT FILED: October 24, 2006

DATE OF NOTIFICATION: October 30, 2006

LAST RESPONSE RECEIVED: December 18, 2006

DATE ACTIVATED: April 5, 2007

STATUTE OF LIMITATIONS: June 7, 2011

COMPLAINANT:

Thomas Swan

RESPONDENTS:

Friends of Joe Lieberman and Lynn Fusco, in her
official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 432(h)(1)

2 U.S.C. § 432(h)(2)

2 U.S.C. § 434(b)

11 C.F.R. § 102.10

11 C.F.R. § 102.11

11 C.F.R. § 104.3(b)(3)(i)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint in this matter alleges that Friends of Joe Lieberman and Lynn Fusco, in her official capacity as treasurer, (the "Committee") failed to properly disclose and account for more than \$387,000 reported in the Committee's 2006 October Quarterly Report as "petty cash" expenditures, most of them for the purported purpose of paying stipends to volunteers in the two weeks preceding the primary election. A supplement to the complaint raises an additional allegation stemming from a press account in which two Committee consultants reportedly stated that they were paid only once for their services to the Committee, but the Committee reported two

1 payments to each; the two payments allegedly double counted by the Respondents collectively
2 totaled \$20,450.

3 In response to the complaint and the supplement, the Committee concedes that an
4 inadvertent error made by its payroll service caused duplicate entries of payments to the two
5 consultants that should have been reported as one disbursement for each. Although the Committee
6 stated that it would amend the appropriate report, it has not yet done so. With respect to the petty
7 cash allegations, the Committee maintains that it properly paid individuals from a petty cash fund
8 and maintained a petty cash journal that recorded the name, address, date, amount, and purpose for
9 each purchase or transaction, but did not provide the journal with its response. The Committee also
10 asserts that it was not obligated to itemize its petty cash expenditures, even if individuals received
11 payments that exceeded \$200 over the course of several days. Indicating that the payments may
12 have actually been disbursed through "middlemen," it further contends that Advisory Opinion
13 1983-25 suggests that committees need not sub-itemize payments made by vendors or temporary
14 agencies on the committee's behalf.

15 As discussed in more detail below, we conclude that the Committee may have improperly
16 dispensed and reported the \$387,561 disbursements in its 2006 October Quarterly Report, and
17 failed to keep the appropriate records for these disbursements. Therefore, we recommend that the
18 Commission find reason to believe that the Respondents violated 2 U.S.C. §§ 432(h) and 434(b) in
19 connection with the dispensing, reporting, and recordkeeping related to the disclosed "petty cash"
20 disbursements, and 2 U.S.C. § 434(b) in connection with the apparent double counting of payments
21 to two consultants in its 2006 October Quarterly Report.

II. FACTUAL SUMMARY

In its 2006 October Quarterly Report, the Committee disclosed 13 disbursements totaling \$387,561 that were made from July 25, 2006 through August 7, 2006, or within two weeks of Connecticut's August 8, 2006 Primary Election, in which Joe Lieberman was a candidate for reelection to the United States Senate. On Schedule B of the report, on the "Full Name" line of each of these disbursements, the term "petty cash" appears, and for ten of them, the reported "Purpose of Disbursement" line is "STIPEND VOLUNTEERS" OR "STIPEND VOLUNTEER PAYMENTS." The ten disbursements, so described, totaled \$384,061 and are set forth in the following table:

Date of Disbursement	Purpose of Disbursement	Amount
1) July 26, 2006	STIPEND VOLUNTEERS	\$34,000
2) July 26, 2006	STIPEND VOLUNTEERS	\$23,000
3) July 26, 2006	STIPEND VOLUNTEERS	\$5,000
4) July 27, 2006	STIPEND VOLUNTEERS	\$32,500
5) July 31, 2006	STIPEND VOLUNTEER PAYMENT	\$1,056
6) August 2, 2006	STIPEND VOLUNTEER PAYMENT	\$67,500
7) August 2, 2006	STIPEND VOLUNTEERS	\$6,000
8) August 4, 2006	STIPEND VOLUNTEERS	\$135,000
9) August 7, 2006	STIPEND VOLUNTEERS	\$75,000
10) August 7, 2006	STIPEND VOLUNTEERS	\$5,005
Total		\$384,061

The remaining three disbursements reported as "petty cash" totaled \$3,500. Their purposes were described variously as shown in the table below:

Date of disbursement	Purpose of disbursement	Amount
1) July 25, 2006	GAS CARDS WATER	\$500
2) July 26, 2006	GAS/WATER	\$2,500
3) July 29, 2006	FOOD & BEVERAGE	\$500
Total		\$3,500

In addition, the Committee's 2006 October Quarterly Report disclosed two payments of \$8,250 each to Tom Reyes on August 4, 2006 and August 15, 2006, and two payments of \$12,200

each to Daryl Brooks on August 11, 2006 and August 15, 2006. Although conceding in its response that one of the payments to Reyes and one of the payments to Brooks were disclosed in error, the Committee has not amended this Report.

III. ANALYSIS

A. Disbursements Reported as "Petty Cash"

The Act provides that a political committee shall not make a disbursement in any form other than by check drawn on the committee's account at its designated campaign depository. 2 U.S.C. § 432(h)(1). However, as an exception to that requirement, the Act permits a political committee to maintain a petty cash fund for disbursements not in excess of \$100 to any person in connection with a single purchase or transaction. 2 U.S.C. § 432(h)(2). If such a cash fund is maintained, the treasurer must keep a written journal of all disbursements, which shall include the name and address of every person to whom any disbursement is made, and the date, amount, and purpose of such disbursement. See 2 U.S.C. § 432(c)(5). The Act also requires that political committees disclose the name and address of each person to whom it has made an expenditure in an aggregate amount or value in excess of \$200 within the calendar year to meet a committee or candidate operating expense, together with the date, amount and purpose of such operating expenditure, and keep records, including receipts, invoices, or cancelled checks, for each disbursement over \$200. 2 U.S.C § 434(b)(5)(A).

The complaint and complaint supplement (collectively "the complaint") allege that the Committee violated the Act in several ways. First, the complaint contends that the Committee used petty cash to make payments in excess of \$100 in violation of 2 U.S.C § 432(h). Second, it asserts that for disbursements in excess of \$200, the Committee failed to disclose the name and address of every person to whom any disbursement was made, as well as the date, amount, and purpose of

1 such disbursement. Third, it alleges that "there is no evidence that the Lieberman committee kept
2 and maintained a written journal of any kind regarding these disbursements." In support of its
3 allegations, the complaint references and attaches two news articles. The first news article reports
4 that Lieberman campaign spokeswoman Tammy Sun described the petty cash disbursements as
5 funds that were "paid to field coordinators who then distributed money to workers who were
6 canvassing." See Andrew Miga, *Lamont Questions Lieberman's Spending*, Associated Press via
7 Boston Globe, October 22, 2006. The second news article reports that two canvassers stated that
8 they each received \$60 a day out of a supposed petty cash fund. See Mary E. O'Leary, *Lamont files*
9 *an FEC complaint over Lieberman's expenditure of petty cash*, New Haven Register, November 2,
10 2006. Their total payments over a period of several days reportedly amounted to \$480 and \$360,
11 respectively. *Id.* One canvasser further reportedly stated that an estimated 30 other teenagers also
12 received "\$60 a day in cash over a few weeks." *Id.* The complaint alleges that although required
13 by the Act, none of these disbursements are itemized in any of the Lieberman Committee's reports.

14 In response, the Committee acknowledges that as part of its Get out the Vote ("GOTV")
15 effort, it "paid individuals a stipend from petty cash of \$60 per day for conducting GOTV," and
16 likewise confirms that it "paid field consultants and temp[orary employment] agencies to supply
17 additional workers during this period." Response at 1. However, the Committee does not
18 specifically state whether the disbursements reported as petty cash in its 2006 October Quarterly
19 Report were made to field consultants and temporary employment agencies who then distributed
20 the funds to the canvassers, as reportedly stated by the Committee's spokeswoman, and if so, in
21 what form and in what amounts the funds were transmitted by the Committee to such "middlemen."

22 Moreover, the Committee maintains that the roster of individuals who received \$60 per day
23 for canvassing work was "fluid" in that there was no set minimum or maximum length of service.

1 *Id.* at 2. As such, the Committee states "unquestionably there were individuals who received a
2 stipend of \$60/day, and worked in excess of four days." *Id.* However, the Committee maintains
3 that it was not obligated to itemize this type of petty cash disbursement. The Committee also
4 disputes the allegation that it failed to meet its recordkeeping obligations, noting that it maintained
5 a "petty cash journal and recorded the name, address, date, amount and purpose for each purchase
6 or transaction," which it claims is all that the Act and the Commission's regulations require for
7 petty cash disbursements. *Id.* In support, the Committee cites Advisory Opinion ("AO") 1983-25
8 (Mondale for President) for the proposition that committees are not required to sub-itemize
9 payments made by vendors that may subcontract work to others.

10 We believe that the Committee's response does not adequately describe the circumstances
11 under which the funds were dispensed. In any case, however, it appears that the Committee may
12 have violated the Act.

13 If the Committee distributed the funds directly to the canvassers in amounts of \$100 or less
14 for each day, then it would have been permitted to use petty cash to make the disbursements.
15 However, section 434(b)(5) requires the itemization of expenditures whenever a person receives
16 from the reporting committee an expenditure in an aggregate amount or value in excess of \$200
17 within the calendar year... to meet a candidate or committee operating expense." (Emphasis
18 added). The Committee was therefore obligated to itemize all expenditures to a person once they
19 aggregated in excess of \$200. It concedes "unquestionably there were individuals who received a
20 stipend of \$60/day and worked in excess of four days." Thus, if the Committee directly paid the
21 canvassers, the Committee should have itemized these payments, once they aggregated in excess of
22 \$200, and the apparent failure to do so constitutes a violation of 2 U.S.C. § 434(b). At this point,

1 we do not know how many canvassers received in excess of \$200 in the weeks before the August
2 2006 primary.

3 We believe it was unlikely, however, that the Committee directly paid the canvassers, given
4 the large amounts of the disbursements, and the indication that field consultants and temporary
5 agencies were involved in the process. If, for example, the largest of these disbursements—the
6 Committee's August 4, 2006 petty cash disbursement for "STIPEND Volunteers" in the amount of
7 \$135,000—represented the Committee's direct payment to canvassers, the following events had to
8 transpire on that date. First, the Committee would have had to withdraw \$135,000 in cash. From
9 there, the Committee would have had to pay 2,250 individuals \$60 each in cash for canvassing on
10 that date, and keep a journal record of each transaction. The logistics involved in such a scenario
11 would be daunting, and the Committee has indicated that it involved vendors in the process.
12 Moreover, not only is a scenario whereby the Committee paid the consultants or agencies who then
13 paid the canvassers consistent with the reported statements by the Committee's spokeswoman, it
14 also explains the Committee's reliance on AO 1983-25 in its response.¹ Thus, we believe it is more
15 likely that the Committee provided field consultants and temporary agencies with the funds needed
16 to pay the canvassers. If such disbursements exceeded \$100—and we suspect they did—they
17 should not have been made with cash, 2 U.S.C. § 432(h)(2), but should have been transmitted by

¹ The Commission advised in AO 1983-25 that a committee that itemize disbursements to vendors did not have to further sub-itemize payments made by the vendor to others on behalf of the committee. This proposition makes sense in these circumstances if the Committee had paid the consultants and agencies, and who then paid the canvassers. However, it would make no sense if the Committee directly paid the canvassers, since there would be no other payments to sub-itemize. If, as is suggested, the Committee transmitted large amounts of cash to "middlemen" who then paid the canvassers, this situation would be incompatible with the Act's petty cash provision, not only because it involves more than \$100 per transaction, but because it also involves more than one transaction: one from the Committee to the vendor to provide services of retaining and distributing funds to the canvasser(s), and one from the vendor to canvasser(s) to perform canvassing duties. See 2 U.S.C. § 432(h)(2) (petty cash disbursements involve a "single purchase or transaction"). The Committee's reliance on this advisory opinion also appears misplaced because if the payments were made to vendors, the Committee did not accurately disclose this in its 2006 October Quarterly Report.

1 check paid to the consultants or agencies, 2 U.S.C. § 432(h)(1), and itemized as payments made to
2 vendors. See 2 U.S.C. § 434(b)(5). Given the need to confirm that funds were given directly to
3 vendors, an investigation is necessary to determine exactly how the disbursements reported as petty
4 cash were distributed.²

5 Assuming that the reported petty cash disbursements actually were made to vendors, this
6 also raises questions concerning the Committee's reported payments to five different field
7 consultants during the same time-period. The Committee's 2006 October Quarterly Report shows
8 that between July 20, 2006 and August 4, 2006 it paid field consultants JEF Associates, James Gee,
9 Chris Lavery, Tomas Reyes, and Dan Robinett a total of approximately \$107,000 in fees.³ The
10 Committee also disclosed in that Report other expenditures totaling at least \$110,000 made during
11 the same timeframe that may have been tied to canvassing work.⁴ In an investigation, we would
12 attempt to discover if there is any overlap in the payments made to the field consultants and for
13 items possibly connected to canvassing with the amounts reported as petty cash disbursements.

² The Commission has previously investigated whether large cash disbursements distributed through middlemen on a committee's behalf complied with the Act's reporting and recordkeeping provisions. In MUR 4648 (New York Republican Federal Campaign Committee ("NYGOP")), the Commission found probable cause to believe that the NYGOP, which had initially disclosed disbursements as "election day expenses," had violated the Act where the disbursements went by check to certain individuals, who then cashed those checks for ultimate distribution to unknown persons on behalf of the Committee. Ultimately, the matter conciliated with the NYGOP paying a civil penalty of \$128,000.

³ In its 2006 October Quarterly Report, the Committee disclosed making four disbursements to JEF Associates totaling \$84,000 between July 20, 2006 and August 7, 2006. As for the remaining consultants, on August 4, 2006, the Committee made one disbursement each to James Gee (\$7,000), Chris Lavery (\$4,500), Tommy Reyes (\$8,250) and Dan Robinett (\$3,000).

⁴ As disclosed in the Committee's 2006 October Quarterly Report, this total amount includes expenditures for rental car transportation (46,078.85), pre-paid gas cards (\$43,200.00), lodging (\$13,069.00), temporary personnel (\$6,472.00), and food/beverage (2,053.44). These expenditures were made between July 18, 2006 and August 6, 2006.

1 Based on the foregoing, we recommend that the Commission find reason to believe that
2 Friends of Joe Lieberman and Lynn Fusco, in her official capacity as treasurer, violated 2 U.S.C.
3 §§ 432(h)(1) and (2) and 434(b) in connection with the petty cash disbursements of \$387,561
4 disclosed in the Committee's 2006 October Quarterly Report.

5 **B. Misreporting of Payments to Consultants**

6 The Act requires that political committees disclose the total of all disbursements,
7 including expenditures made to meet candidate or committee operating expenses. 2 U.S.C.
8 § 434(b)(4)(A). Further, authorized political committees such as the Committee must accurately
9 disclose the total sum of all operating expenditures that are made for both the reporting period and
10 the election cycle. 2 U.S.C. § 434(b)(7).

11 As noted above, the complaint alleges that the Committee may have misreported payments
12 to two consultants, Tom Reyes and Daryl Brooks, in its 2006 October Quarterly Report. According
13 to that Report, the Committee paid Reyes two checks in the amount of \$8,250, one on August 4,
14 2006 and one on August 15, 2006. The Report also discloses a \$12,000 payment to Brooks on
15 August 11, 2006 and another check for the same amount to Brooks on August 15, 2006. Both men
16 have reportedly stated that they each only received one payment from the Committee. *See Mary E.*
17 *O'Leary, Lamont files an FEC complaint over Lieberman's expenditure of petty cash, New Haven*
18 *Register, November 2, 2006.*

19 In response, the Committee concedes that an inadvertent error by the Committee's payroll
20 service resulted in its disclosure report double counting one payment made to each consultant, and
21 stated that it would amend its report to correct this error. Response at 3. However, to date the
22 Committee has failed to do so; the Committee's amended 2006 Quarterly Report, which was filed
23 on February 20, 2007—after its December 18, 2006 response to the complaint—does not correct

1 the prior misreporting. Therefore, these errors provide an additional basis for our recommendation
2 that the Commission find reason to believe that Friends of Joe Lieberman and Lynn Fusco, in her
3 official capacity as treasurer, violated 2 U.S.C. § 434(b).

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12 **III. RECOMMENDATIONS**


- 13 1. Find reason to believe that the Friends of Joe Lieberman and Lynn Fusco, in her
14 official capacity as treasurer, violated 2 U.S.C. §§ 432(h)(1) and (2) and 434(b);
15 2. _____
16 3. Approve the attached Factual and Legal Analysis; and
17


4. Approve the appropriate letter.

Thomasenia P. Duncan
General Counsel

07/02/07
Date

BY: 
Ann Marie Terzaken
Acting Associate General Counsel for
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