



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4167

DATE FILMED 4-25-97 CAMERA NO. 1

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

PRE-MUR 303

June 13, 1994

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

THROUGH: Richard B. Bader *RB*
Associate General Counsel

FROM: Stephen E. Hershkowitz *SEH*
Assistant General Counsel

Alva E. Smith
Paralegal Specialist

SUBJECT: Failure of the Republican National Committee ("RNC"), National Republican Congressional Committee - Contributions ("NRCC"), and National Republican Senatorial Committee (NRSC") (collectively, the "Committees") to Comply with the "Best Efforts" Regulation When They Failed to Report Complete Contributor Identification Information in Their April 1994 Reports.

The District Court Litigation Team believes that the Committees have been and will continue to violate 2 U.S.C. 434(b)(3)(A) by failing to provide complete contributor identification information in their monthly reports and intentionally not follow the procedures in the current "best efforts" regulation, 11 C.F.R. § 104.7, to obtain the missing information.

I. STATUTORY SCHEME

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires that the treasurer of a political committee file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Under 2 U.S.C. § 434(b)(3)(A), each report must disclose the identification of each person making aggregate contributions to the reporting committee in excess of \$200 in the calendar year. Identification of an individual includes, inter alia, the occupation of the individual and the name of the individual's employer. 2 U.S.C. § 431(13).

Where the treasurer of the committee can show that he or she has made "best efforts" to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), the reports or records of the committee shall be considered in compliance with the Act.

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2 U.S.C. § 432(i). Since March 3, 1994 the treasurer is not deemed to have exercised best efforts to obtain the required information unless he or she has included a clear request for identifying information in the solicitation, and at least one stand alone request, either written request or oral documented in writing, to obtain the required information from the contributor without also soliciting a contribution. The clear request must be in the form specified in the regulation informing the contributor that reporting of the information is required by law. 11 C.F.R. § 104.7(b).

II. FAILURE TO COMPLETELY IDENTIFY CONTRIBUTORS

A summary review of one report filed by each of the Committees revealed the following:

Republican National Committee -- The RNC failed to disclose the occupation and/or name of employer for 272 of approximately 1664 or 16% of itemized contributions received from individuals on its April 20, 1994 Monthly Report with coverage dates of March 1, 1994 through March 31, 1994. RNC noted, by disclosing "information requested" on the report that requests for the omitted information were made to approximately 145 individuals. The contributions disclosed without the required information totaled \$62,107.

National Republican Congressional Committee - Contributions -- The NRCC failed to disclose the occupation and/or name of employer for 597 of approximately 1085 or 55% of itemized contributions received from individuals on its April 15, 1994 Quarterly Report with coverage dates of January 1, 1994 through March 31, 1994. NRCC noted, by disclosing "information requested" on the report that requests for the omitted information were made to approximately 471 individuals. The contributions disclosed without the required information totaled \$384,772.

National Republican Senatorial Committee -- The NRSC failed to disclose the occupation and/or name of employer for 1634 of approximately 3426 or 48% of itemized contributions received from individuals on its April 20, 1994 Monthly Report with coverage dates of March 1, 1994 through March 31, 1994. NRSC noted, by disclosing "information requested" on the report that requests for the omitted information were made to approximately 1479 individuals. The contributions disclosed without the required information totaled \$582,655.

III. FAILURE TO MAKE BEST EFFORTS TO OBTAIN THE CONTRIBUTOR IDENTIFICATION INFORMATION

During the normal course of carrying out the Commission's litigation in Republican National Committee, et al. v. FEC, Civil Action No. 94-1017, on May 11, 1994 counsel representing the Commission attended a meeting in the Court's chambers preceding a

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scheduled temporary restraining order ("TRO") hearing.¹ Counsel for the Committees stated that the plaintiffs are not complying with the Commission's "best efforts" regulation when they fail to obtain complete contributor information ("my clients if they were to comply and I will represent to you that they are not," Transcript at 3, admission repeated at 12). Apparently, they are not using the notice specified in the regulation in their solicitations, and they are not making stand alone requests for missing information.² Thus, the Committees have failed and apparently intend to continue to not provide the full identification of contributors of millions of dollars in contributions. Furthermore, when identifying information is missing, the Committees' reports include a statement that they have "requested" the missing information. This may give the wrong impression to the public that the the Committees are complying with the new "best efforts" regulation. Based on the Committees' stated belief that the "best efforts" provision, 2 U.S.C. § 432(i), "was intended to protect political committees from FEC demands that they do more than include a clear request for personal information in a solicitation," the Opposition to the Commission's Motion for Summary Judgment, June 6, 1994, at 2 (emphasis in original), this situation will likely continue until they have exhausted all of their litigation opportunities, including appeals.³

1. The transcript was made available to the public on May 26, 1994 by counsel for the Committees in their Court filings.

2. The Committees assert "that it would be unreasonable for the FEC to attempt to enforce its requirements in a way that would preclude them from using up pre-printed stationery." Committee's Opposition to the Commission's Motion for Summary Judgment, June 6, 1994, at 30 n.10. With respect to a stand alone request, the Committees claim that "such mailings are expensive." Id. at 34 n.13.

3. The Committee had originally asked the Commission for a stay and then the district court for a TRO and preliminary injunction of the enforcement of the new "best efforts" regulation pending the outcome of their complaint. They withdrew that motion during the meeting in chambers. Also at the meeting, The Honorable Joyce Green informed the Committees' counsel that they can comply with the best efforts rule and at the same time challenge it. Transcript at 12. As stated in Abbott Laboratories v. Gardner, 387 U.S. 136, 155-156 (1967), the mere filing of a lawsuit itself does not stay enforcement of a regulation. However, the plaintiffs have more recently stated that, "they will challenge" an FEC attempt to enforce its requirements in a way that would preclude them from using up pre-printed stationery if "the FEC attempts to press the timing point." Opposition to the Commission's Motion for Summary Judgment, June 6, 1994, at 30 n.10.

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

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

PRE-MUR 303

ACTIVATION DATE: July 15, 1994

STAFF MEMBER: Dominique Dillenseger

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Republican National Committee
and William J. McManus, as treasurer
National Republican Congressional Committee
and Donna Singleton, as treasurer
National Republican Senatorial Committee
and J. Stanley Huckaby, as treasurer

RELEVANT STATUTES/REGULATIONS: 2 U.S.C. § 431(11)
2 U.S.C. § 431(13)
2 U.S.C. § 432(i)
2 U.S.C. § 434(a)(1)
2 U.S.C. § 434(b)(3)(A)
11 C.F.R. § 104.7

INTERNAL REPORTS CHECKED: Litigation Referral
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Office of the General Counsel received a referral from the Litigation Section on June 13, 1994. Attachment 1. The referral is based upon information ascertained by our counsel in the normal course of litigation in Republican National Committee, et al. v. FEC, Civil Action No. 94-1017. The referral was forwarded to this Office pursuant to 2 U.S.C. § 437g(a)(2) and Directive No. 6, Section II (Internally Generated Matters Under Review).¹

1. Similarly, Pre-MUR 270 (Perot) also involved a referral under Directive No. 6.

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In RNC v. FEC, the Republican National Committee ("RNC"), the National Republican Congressional Committee ("NRCC"), and the National Republican Senatorial Committee ("NRSC") (collectively, the "Committees") filed suit against the Federal Election Commission (the "Commission") challenging the revised "best efforts" regulations, claiming they are contrary to law. The Committees had first asked the Commission to stay the effective date of the revised rules, pending court review. The Commission declined that request on May 5, 1994. The Committees then moved in the District Court for a temporary restraining order and preliminary injunction to prevent enforcement of the regulations, but later withdrew their motions. On July 22, 1994, The Honorable Joyce Green entered judgment in favor of the Commission on the parties' cross-motions for summary judgment. Attachment 2. In upholding the revised "best efforts" regulations, the District Court rejected the Committees' arguments that the new regulations were: (1) an "impermissible construction of the 'best efforts' provision"; (2) arbitrary and capricious; (3) contrary to the Act and a violation of the First Amendment; and (4) not narrowly tailored to meet a compelling government interest. Id. at 7-14. The Court held that the new "best efforts" rule "is narrowly tailored to serve a compelling governmental interest." Id. at 14. The Committees have filed an appeal.

According to the referral, it appears that the Committees "have been and will continue to violate 2 U.S.C. § 434(b)(3)(A) by failing to provide complete contributor identification in their

monthly² reports" to the Commission and by "intentionally not follow[ing] the procedures in the current 'best efforts' regulation, 11 C.F.R. § 104.7, to obtain the missing information." Attachment 1, p. 1. As evidence that the Committees are ignoring the new regulations, the Litigation referral points to: (1) representations made to the District Court by counsel for the Committees during the course of this litigation; (2) statements made by the Committees in their Opposition to the Commission's Motion for Summary Judgment; and (3) the Committees' reports which reflect incomplete occupation/employer information.

At a hearing held on May 11, 1994, counsel represented to the Court that the Committees were not complying with the new regulations. Specifically, counsel stated:

Our problem is simply that these new regulations impose immediate obligations on my clients if they were to comply and I will represent to you that they are not at this time, but for that they are facing continuing sanctions and they become -- they're continuing violations, so this is very serious situation and we'd simply like to get protection for my clients³ until the Court has an opportunity to consider this.

Counsel also acknowledged the continuing nature of the violations:

We are sending out solicitations. We're getting responses. The FEC rules require follow-ups immediately. They require us to say things in the solicitations. Each time we don't⁴ it's an additional violation, from their perspective.

Similarly, the Committees' Opposition to the Commission's Motion

2. The NRCC files its reports on a quarterly basis.

3. Transcript of Hearing Before the Honorable Joyce Hens Green, United States District Judge, May 11, 1994. Attachment 3, p. 3.

4. Id. at 12.

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for Summary Judgment, at 34 n.13, acknowledges that the Committees are not following the regulations because, inter alia, the stand alone request "mailings are expensive."

The Litigation staff also reviewed reports filed by the Committees after the new regulations were in effect and found that the omission rates for occupation/employer information through March 31, 1994, were: for the RNC, 16% of itemized contributions, totaling \$62,107; for the NRCC, 55% of itemized contributions, totaling \$384,772; and for the NRSC, 48% of itemized contributions, totaling \$582,655. Attachment 1, p. 2. The reports also show that when identifying information is missing, the Committees' reports merely listed "information requested." Consequently, the referral concludes that: (1) the Committees are not using the required notice in their solicitations and not making stand alone requests for missing information; (2) the "information requested" notice used by the Committees when identifying missing information gives a "wrong impression" to the public that the Committees are complying with the new "best efforts" regulations; and (3) the Committees have failed and apparently intend to continue to not provide the full identification of contributors and that the "situation will likely continue until they have exhausted all of their litigation opportunities, including appeals." Attachment 1, p. 3.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires that the treasurer of a political committee file periodic reports of receipts and disbursements. 2 U.S.C.

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§ 434(a)(1). Under 2 U.S.C. § 434(b)(3)(A), each report must disclose the identification of each person making aggregate contributions to the reporting committee in excess of \$200 in the calendar year. The term "person" includes individuals. 2 U.S.C. § 431(11). Identification of an individual includes the name, mailing address and occupation of the individual and the name of the individual's employer. 2 U.S.C. § 431(13).

Where the treasurer of the committee can show that he or she has made "best efforts" to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), any report or records of the committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i).

Prior to March 3, 1994, the treasurer was deemed to have exercised "best efforts" to obtain the information required by Section 431(13) if he or she had made at least one effort per solicitation, either by written request or by an oral request documented in writing, to obtain this information from the contributor. In addition, the request had to be clear and had to inform the contributor that reporting of the information is required by law. 11 C.F.R. § 104.7(b).

Under the revised best efforts regulations, which became effective March 3, 1994, the treasurer demonstrates "best efforts" by: (1) making a clear request for contributor information and including a specifically worded statement⁵ clearly and

5. The statement reads: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over \$200 in a calendar year."

conspicuously displayed on the response material included in the solicitation; (2) no later than 30 days after receipt of the contribution with incomplete information, making at least one stand alone, follow-up request, either by written request or by an oral request documented in writing, to obtain the required information from the contributor without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b).

The Act addresses violations of law that are knowing and willful. See 2 U.S.C. §§ 437g(a)(5)(C) and 437g(d). The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F. Supp. 985 (D. N.J. 1986).

III. DISCUSSION

Under the Reports Analysis Division's ("RAD's") procedures, reports that state "Information Requested" in place of the missing information do not meet best efforts unless the report includes a "clarifying cover letter" or a "statement" demonstrating that the treasurer has used best efforts. The procedures provide that statements "should describe the committee's procedures for requesting the information," and that committees "may also supply a copy of the solicitation and a statement that all solicitations request the required information."

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A review of the reports filed by each of the Committees for the period March 1 through June 30, 1994, indicates omission rates similar to the rates for the time period identified by the referral from Litigation. Specifically, the reports show the following omission rates for occupation/employer information:⁷

REPORT TYPE\YEAR	# TOTAL ENTRIES	#ENTRIES W/O INFO.	% OMISSION
<u>RNC</u>			
1994 April Monthly	1664	272	16%
1994 May Monthly	2874	291	10%
1994 June Monthly	4196	544	13%
<u>NRCC</u>			
1994 April Quarterly (March contributions)	655	329	51%
1994 July Quarterly	1908	800	40%
<u>NRSC</u>			
1994 April Monthly	3426	1634	48%
1994 May Monthly	4531	1966	44%
1994 June Monthly	5184	1955	38%

None of the Committees' disclosure documents provides information about their procedures for obtaining the required information pursuant to the new regulations. For contributions without occupation/employer information, each of the Committees inserts the phrase "information requested" in the identification

7. The committee reports were too voluminous to include as attachments.

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blocks of their Schedule A forms.

In addition, the RNC reports include a cover page with the following statement: "Concerning any donors shown on the next 450 pages whose occupation and place of business is not listed, the Republican National Committee has made at least one attempt in writing to obtain the information from the donor." Attachment 4, p. 3. The RNC lists the date of the request as the same date the contribution was received. The NRCC also reports the date of its request for missing information as the date the contribution was received, but it provides no information about its procedures for obtaining information. None of the amendments submitted by the RNC or the NRCC has included contributor information missing from these reports.

The NRSC's reports provide neither the date of any requests for missing information nor any information about its procedures for obtaining the information. As of September 6, 1994, however, the NRSC has started to submit amendments containing contributor information for the period March 1 through June 30, 1994.

Consequently, the Committees' reports fail to demonstrate that the Committees are complying with the revised best efforts rules to obtain missing contributor information. Although the RNC and NRCC report timely follow-up requests, neither has provided a statement describing its procedures for obtaining the information and neither committee has supplied the missing information. Although the NRSC has now started to supplement its missing information from this period, April through June, it has not demonstrated its "best efforts" by either providing the date of

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its follow-up requests or its procedures for requesting the information. Because of the delay in providing the information, it appears that the NRSC was either untimely in making its requests or in forwarding the missing information to the Commission.

Overall, the Committees' reports confirm the admissions⁸ made by counsel for the Committees that his clients are in violation of the Act by failing to provide complete contributor information in their reports and by not following the new regulations to obtain the missing information. Moreover, based upon the representations made in Court and their subsequent briefs, it is apparent that the Committees are knowingly and willfully not complying with the Act. The intentional nature of the violations is further underscored by the fact that the Committees withdrew their motions for a temporary restraining order and preliminary injunction -- which sought a stay of the enforcement of the new regulations -- after having been informed by the Court that the Committees can comply with the Act at the same time they are challenging the best efforts regulations. Attachment 3, p. 12. In summary, the Committees know the new regulations are in effect; they withdrew their immediate challenge to the enforcement of the regulations; and they have failed to provide complete contributor information in their reports, but they have deliberately chosen not to follow the new regulations to obtain the missing information. The

8. Statements made by a party's attorney are admissible against the party when the statements are within the scope of representation. William v. Union Carbide Corp. 790 F.2d 552 (6th Cir. 1986), cert. denied, 479 U.S. 992 (1986).

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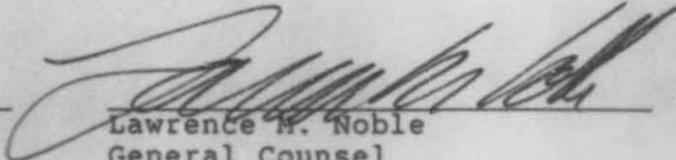
Committees have also chosen this course despite the Judge's admonishment and contrary to legal precedent which holds that the mere filing of a lawsuit does not stay enforcement of a regulation. Abbott Laboratories v. Gardner, 387 U.S. 136, 155-156 (1967).

Based upon the foregoing, this Office recommends that the Commission find reason to believe that the Republican National Committee and William J. McManus, as treasurer; the National Republican Congressional Committee and Donna Singleton, as treasurer; and the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer, knowingly and willfully violated 2 U.S.C. § 434(b)(3)(A).

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the Republican National Committee and William J. McManus, as treasurer, knowingly and willfully violated 2 U.S.C. § 434(b)(3)(A).
3. Find reason to believe that the National Republican Congressional Committee and Donna Singleton, as treasurer, knowingly and willfully violated 2 U.S.C. § 434(b)(3)(A).
4. Find reason to believe that the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer, knowingly and willfully violated 2 U.S.C. § 434(b)(3)(A).
5. Approve the appropriate letters and Factual and Legal Analyses.

11/14/94
Date


Lawrence M. Noble
General Counsel

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Attachments

1. Litigation Referral, dated June 13, 1994.
2. Republican National Committee, et al. v. Federal Election Commission, Civil Action No. 94-1017 (D.D.C.), Memorandum Opinion and Order dated July 22, 1994.
3. Transcript of Hearing Before the Honorable Joyce Hens Green, United States District Judge, May 11, 1994.
4. Disclosure Documents.
5. Factual and Legal Analysis - RNC.
6. Factual and Legal Analysis - NRCC.
7. Factual and Legal Analysis - NRSC.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS *[Signature]*
COMMISSION SECRETARY

DATE: NOVEMBER 15, 1994

SUBJECT: PRE-MUR 303 - FIRST GENERAL COUNSEL'S REPORT
DATED NOVEMBER 14, 1994.

The above-captioned document was circulated to the Commission on Monday, November 14, 1994 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	_____
Commissioner Thomas	_____

This matter will be placed on the meeting agenda for Tuesday, November 29, 1994.

Please notify us who will represent your Division before the Commission on this matter.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS *[Signature]*
COMMISSION SECRETARY

DATE: NOVEMBER 17, 1994

SUBJECT: PRE-MUR 303 - FIRST GENERAL COUNSEL'S REPORT
DATED NOVEMBER 19, 1994.

The above-captioned document was circulated to the Commission on Monday, November 14, 1994 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	_____
Commissioner Thomas	_____

This matter will be placed on the meeting agenda for Tuesday, November 29, 1994.

Please notify us who will represent your Division before the Commission on this matter.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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December 7, 1994

MEMORANDUM

SENSITIVE

DEC 13 1994

EXECUTIVE SESSION

TO: The Commission
FROM: Lawrence M. Noble
General Counsel
BY: Lois G. Lerner *(Signature)*
Associate General Counsel

SUBJECT: PRE-MUR 303 -- Supplemental Information

We received a request from one of the Commissioners for the omission rates for occupation/employer information for the reports recently filed by the RNC, NRCC, and NRSC. The most recently filed reports, the 1994 Pre-General Election, have not been reviewed by the Reports Analysis Division. In response to this request, the Office of the General Counsel reviewed these reports for the requested information. In addition, we have also provided below the omission rates for reports recently reviewed by RAD that are subsequent to the reports addressed in the 1st GC Report.

REPORT TYPE\YEAR	% OMISSION
RNC (Monthly Filer)	
1994 July Monthly	14%
1994 August Monthly	5-8%
1994 September Monthly	7-13%
1994 October Monthly	(not yet reviewed by RAD)
1994 Pre-General Election	13%
NRCC (Quarterly Filer)	
1994 October Quarterly	(not yet reviewed by RAD)
1994 Pre-General Election	38%
NRSC (Monthly Filer)	
1994 July Monthly	39%
1994 August Monthly	34%
1994 September Monthly	36%
1994 October Monthly	(not yet reviewed by RAD)
1994 Pre-General Election	44%

Staff Assigned: Dominique Dillenseger

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Republican National Committee and) Pre-MUR 303
William J. McManus, as treasurer;)
National Republican Congressional)
Committee and Donna Singleton, as)
treasurer;)
National Republican Senatorial)
Committee and J. Stanley Huckaby,)
as treasurer)

MUR 4167

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on January 10, 1995, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions with respect to Pre-MUR 303:

1. Open a MUR.
2. Find reason to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but take no further action at this time regarding this violation.
3. Find reason to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994.

(continued)

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4. Find reason to believe that the National Republican Congressional Committee and Donna Singleton, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but take no further action at this time.
5. Find reason to believe that the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but take no further action at this time.
6. Find reason to believe that the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994.
7. Approve appropriate letters and Factual and Legal Analyses.

Commissioners Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

1-12-95
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 19, 1995

Donna Singleton, Treasurer
National Republican Congressional
Committee Contributions
320 First Street, S.E.
Washington, DC 20003

RE: MUR 4167
National Republican Congressional
Committee; Donna Singleton, Treasurer

Dear Ms. Singleton:

On January 10, 1995, the Federal Election Commission ("the Commission") found reason to believe that the National Republican Congressional Committee and you, as treasurer ("the Committee") violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but determined to take no further action at this time. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 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 Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald
Chairman

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: National Republican Congressional Committee and Donna Singleton, as treasurer MUR: 4167

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

In Republican National Committee, et al. v. FEC, Civil Action No. 94-1017, the Republican National Committee ("RNC"), the National Republican Congressional Committee ("NRCC"), and the National Republican Senatorial Committee ("NRSC") (collectively, the "Committees") filed suit against the Commission challenging the revised "best efforts" regulations, claiming they are contrary to law. The Committees had first asked the Commission to stay the effective date of the revised rules, pending court review. The Commission declined that request on May 5, 1994. The Committees then moved in the District Court for a temporary restraining order and preliminary injunction to prevent enforcement of the regulations, but later withdrew their motions. On July 22, 1994, The Honorable Joyce Green entered judgment in favor of the Commission on the parties' cross-motions for summary judgment. In upholding the revised "best efforts" regulations, the District Court rejected the Committees' arguments that the new regulations were: (1) an "impermissible construction of

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the 'best efforts' provision"; (2) arbitrary and capricious; (3) contrary to the Act and a violation of the First Amendment; and (4) not narrowly tailored to meet a compelling government interest.¹ The Court held that the new "best efforts" rule "is narrowly tailored to serve a compelling governmental interest."² The Committees have filed an appeal.

At a hearing held on May 11, 1994, counsel represented to the Court that the Committees were not complying with the new regulations. Specifically, counsel stated:

Our problem is simply that these new regulations impose immediate obligations on my clients if they were to comply and I will represent to you that they are not at this time, but for that they are facing continuing sanctions and they become -- they're continuing violations, so this is very serious situation and we'd simply like to get protection for my clients³ until the Court has an opportunity to consider this.

Counsel also acknowledged the continuing nature of the violations:

We are sending out solicitations. We're getting responses. The FEC rules require follow-ups immediately. They require us to say things in the solicitations. Each time we don't⁴ it's an additional violation, from their perspective.

Similarly, the Committees' Opposition to the Commission's Motion for Summary Judgment, at 34 n.13, acknowledges that the Committees are not following the regulations because, inter alia, the stand

1. Republican National Committee, et al. v. Federal Election Commission, Civil Action No. 94-1017, Memorandum Opinion and Order at 7-14 (D.D.C. Jul. 22, 1994).

2. Id. at 14.

3. Transcript of Hearing Before the Honorable Joyce Hens Green, United States District Judge, May 11, 1994, at 3 ("Transcript").

4. Id. at 12.

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alone request "mailings are expensive."

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires that the treasurer of a political committee file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Under 2 U.S.C. § 434(b)(3)(A), each report must disclose the identification of each person making aggregate contributions to the reporting committee in excess of \$200 in the calendar year. The term "person" includes individuals. 2 U.S.C. § 431(11). Identification of an individual includes the name, mailing address and occupation of the individual and the name of the individual's employer. 2 U.S.C. § 431(13).

Where the treasurer of the committee can show that he or she has made "best efforts" to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), any report or records of the committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i).

Prior to March 3, 1994, the treasurer was deemed to have exercised "best efforts" to obtain the information required by Section 431(13) if he or she had made at least one effort per solicitation, either by written request or by an oral request documented in writing, to obtain this information from the contributor. In addition, the request had to be clear and had to inform the contributor that reporting of the information is required by law. 11 C.F.R. § 104.7(b).

Under the revised best efforts regulations, which became effective March 3, 1994, the treasurer demonstrates "best efforts" by: (1) making a clear request for contributor information and

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including a specifically worded statement⁵ clearly and conspicuously displayed on the response material included in the solicitation; (2) no later than 30 days after receipt of the contribution with incomplete information, making at least one stand alone, follow-up request, either by written request or by an oral request documented in writing, to obtain the required information from the contributor without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b).

A review of the reports filed by the NRCC for the period March 1 through June 30, 1994, shows the following omission rates for occupation/employer information:

REPORT TYPE\YEAR	# TOTAL ENTRIES	# ENTRIES W/O INFO.	% OMISSION
NRCC			
1994 April Quarterly (March contributions)	655	329	51%
1994 July Quarterly	1908	800	40%

None of the NRCC's disclosure documents provides information about its procedures for obtaining the required information pursuant to the new regulations. For contributions without occupation/employer information, the NRCC inserts the phrase "information requested" in the identification blocks of its Schedule A forms.

5. The statement reads: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over \$200 in a calendar year."

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The NRCC also reports the date of its request for missing information as the date the contribution was received, but it provides no information about its procedures for obtaining information. None of the amendments submitted by the the NRCC has included contributor information missing from these reports.

Consequently, the NRCC's reports fail to demonstrate that the NRCC is complying with the revised best efforts rules to obtain missing contributor information. Although the NRCC reports timely follow-up requests, it has neither provided a statement describing its procedures for obtaining the information nor supplied the missing information.

Overall, the NRCC's reports confirm the admissions⁶ made by counsel for the Committees that his clients are in violation of the Act by failing to provide complete contributor information in their reports and by not following the new regulations to obtain the missing information. In addition, we further note that the Committees withdrew their motions for a temporary restraining order and preliminary injunction -- which sought a stay of the enforcement of the new regulations -- after having been informed by the Court that the Committees can comply with the Act at the same time they are challenging the best efforts regulations.⁷ In summary, the NRCC knows the new regulations are in effect; it withdrew its immediate challenge to the enforcement of the

6. Statements made by a party's attorney are admissible against the party when the statements are within the scope of representation. William v. Union Carbide Corp. 790 F.2d 552 (6th Cir. 1986), cert. denied, 479 U.S. 992 (1986).

7. Transcript at 12.

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regulations; it has failed to provide complete contributor information in its reports; and it has not followed the new regulations to obtain the missing information. The NRCC has also chosen this course despite the Judge's admonishment and contrary to legal precedent which holds that the mere filing of a lawsuit does not stay enforcement of a regulation. Abbott Laboratories v. Gardner, 387 U.S. 136, 155-156 (1967).

Therefore, there is reason to believe that the National Republican Congressional Committee and Donna Singleton, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 19, 1995

J. Stanley Huckaby, Treasurer
National Republican Senatorial Committee
425 Second Street, N.E.
Washington, D.C. 20002

RE: MUR 4167
National Republican Senatorial
Committee; J. Stanley Huckaby,
Treasurer

Dear Mr. Huckaby:

On January 10, 1995, the Federal Election Commission ("the Commission") found that there is reason to believe that the National Republican Senatorial Committee and you, as treasurer ("the Committee") violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but determined to take no further action at this time regarding this violation. The Commission also found reason to believe that the Committee violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. 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.

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J. Stanley Huckaby, Treasurer
Page 2

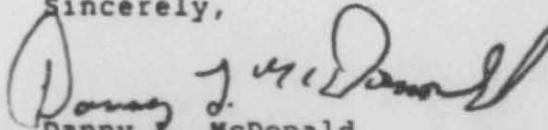
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Federal Election Campaign Act of 1971, as amended. If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,


Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer MUR: 4167

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

In Republican National Committee, et al. v. FEC, Civil Action No. 94-1017, the Republican National Committee ("RNC"), the National Republican Congressional Committee ("NRCC"), and the National Republican Senatorial Committee ("NRSC") (collectively, the "Committees") filed suit against the Commission challenging the revised "best efforts" regulations, claiming they are contrary to law. The Committees had first asked the Commission to stay the effective date of the revised rules, pending court review. The Commission declined that request on May 5, 1994. The Committees then moved in the District Court for a temporary restraining order and preliminary injunction to prevent enforcement of the regulations, but later withdrew their motions. On July 22, 1994, The Honorable Joyce Green entered judgment in favor of the Commission on the parties' cross-motions for summary judgment. In upholding the revised "best efforts" regulations, the District Court rejected the Committees' arguments that the new regulations were: (1) an "impermissible construction of

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the 'best efforts' provision"; (2) arbitrary and capricious; (3) contrary to the Act and a violation of the First Amendment; and (4) not narrowly tailored to meet a compelling government interest.¹ The Court held that the new "best efforts" rule "is narrowly tailored to serve a compelling governmental interest."² The Committees have filed an appeal.

At a hearing held on May 11, 1994, counsel represented to the Court that the Committees were not complying with the new regulations. Specifically, counsel stated:

Our problem is simply that these new regulations impose immediate obligations on my clients if they were to comply and I will represent to you that they are not at this time, but for that they are facing continuing sanctions and they become -- they're continuing violations, so this is very serious situation and we'd simply like to get protection for my clients until the Court has an opportunity to consider this.³

Counsel also acknowledged the continuing nature of the violations:

We are sending out solicitations. We're getting responses. The FEC rules require follow-ups immediately. They require us to say things in the solicitations. Each time we don't, it's an additional violation, from their perspective.⁴

Similarly, the Committees' Opposition to the Commission's Motion for Summary Judgment, at 34 n.13, acknowledges that the Committees are not following the regulations because, inter alia, the stand

1. Republican National Committee, et al. v. Federal Election Commission, Civil Action No. 94-1017, Memorandum Opinion and Order at 7-14 (D.D.C. Jul. 22, 1994).

2. Id. at 14.

3. Transcript of Hearing Before the Honorable Joyce Hens Green, United States District Judge, May 11, 1994, at 3 ("Transcript").

4. Id. at 12.

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alone request "mailings are expensive."

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires that the treasurer of a political committee file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Under 2 U.S.C. § 434(b)(3)(A), each report must disclose the identification of each person making aggregate contributions to the reporting committee in excess of \$200 in the calendar year. The term "person" includes individuals. 2 U.S.C. § 431(11). Identification of an individual includes the name, mailing address and occupation of the individual and the name of the individual's employer. 2 U.S.C. § 431(13).

Where the treasurer of the committee can show that he or she has made "best efforts" to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), any report or records of the committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i).

Prior to March 3, 1994, the treasurer was deemed to have exercised "best efforts" to obtain the information required by Section 431(13) if he or she had made at least one effort per solicitation, either by written request or by an oral request documented in writing, to obtain this information from the contributor. In addition, the request had to be clear and had to inform the contributor that reporting of the information is required by law. 11 C.F.R. § 104.7(b).

Under the revised best efforts regulations, which became effective March 3, 1994, the treasurer demonstrates "best efforts" by: (1) making a clear request for contributor information and

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including a specifically worded statement⁵ clearly and conspicuously displayed on the response material included in the solicitation; (2) no later than 30 days after receipt of the contribution with incomplete information, making at least one stand alone, follow-up request, either by written request or by an oral request documented in writing, to obtain the required information from the contributor without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b).

A review of the reports filed by the NRSC for the period March 1 through June 30, 1994, shows the following omission rates for occupation/employer information:

REPORT TYPE\YEAR	# TOTAL ENTRIES	#ENTRIES W/O INFO.	% OMISSION
NRSC			
1994 April Monthly	3426	1634	48%
1994 May Monthly	4531	1966	44%
1994 June Monthly	5184	1955	38%

None of the NRSC's disclosure documents provides information about its procedures for obtaining the required information pursuant to the new regulations. For contributions without occupation/employer information, the NRSC inserts the phrase "information requested" in the identification blocks of its Schedule A forms. The NRSC's reports do not provide the date of any requests for missing information. As of September 6, 1994, however, the NRSC has started to submit amendments containing

5. The statement reads: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over \$200 in a calendar year."

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contributor information for the period March 1 through June 30, 1994.

Consequently, the NRSC's reports fail to demonstrate that the NRSC is complying with the revised best efforts rules to obtain missing contributor information. Although the NRSC has now started to supplement its missing information from this period, April through June, it has not demonstrated its "best efforts" by either providing the date of its follow-up requests or its procedures for requesting the information. Because of the delay in providing the information, it appears that the NRSC was either untimely in making its requests or in forwarding the missing information to the Commission.

Overall, the NRSC's reports confirm the admissions⁶ made by counsel for the Committees that his clients are in violation of the Act by failing to provide complete contributor information in their reports and by not following the new regulations to obtain the missing information. In addition, we further note that the Committees withdrew their motions for a temporary restraining order and preliminary injunction -- which sought a stay of the enforcement of the new regulations -- after having been informed by the Court that the Committees can comply with the Act at the same time they are challenging the best efforts regulations.⁷ In summary, the NRSC knows the new regulations are in effect; it

6. Statements made by a party's attorney are admissible against the party when the statements are within the scope of representation. William v. Union Carbide Corp. 790 F.2d 552 (6th Cir. 1986), cert. denied, 479 U.S. 992 (1986).

7. Transcript at 12.

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withdrew its immediate challenge to the enforcement of the regulations; it has failed to provide complete contributor information in its reports; and it has not followed the new regulations to obtain the missing information. The NRSC has also chosen this course despite the Judge's admonishment and contrary to legal precedent which holds that the mere filing of a lawsuit does not stay enforcement of a regulation. Abbott Laboratories v. Gardner, 387 U.S. 136, 155-156 (1967).

Therefore, there is reason to believe that the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 19, 1995

William J. McManus, Treasurer
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 4167
Republican National Committee;
William J. McManus, Treasurer

Dear Mr. McManus:

On January 10, 1995, the Federal Election Commission ("the Commission") found that there is reason to believe that the Republican National Committee and you, as treasurer ("the Committee") violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but determined to take no further action at this time regarding this violation. The Commission also found reason to believe that the Committee violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. 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.

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William J. McManus, Treasurer
Page 2

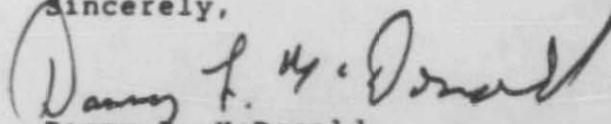
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Federal Election Campaign Act of 1971, as amended. If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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the 'best efforts' provision"; (2) arbitrary and capricious; (3) contrary to the Act and a violation of the First Amendment; and (4) not narrowly tailored to meet a compelling government interest.¹ The Court held that the new "best efforts" rule "is narrowly tailored to serve a compelling governmental interest."² The Committees have filed an appeal.

At a hearing held on May 11, 1994, counsel represented to the Court that the Committees were not complying with the new regulations. Specifically, counsel stated:

Our problem is simply that these new regulations impose immediate obligations on my clients if they were to comply and I will represent to you that they are not at this time, but for that they are facing continuing sanctions and they become -- they're continuing violations, so this is very serious situation and we'd simply like to get protection for my clients³ until the Court has an opportunity to consider this.

Counsel also acknowledged the continuing nature of the violations:

We are sending out solicitations. We're getting responses. The FEC rules require follow-ups immediately. They require us to say things in the solicitations. Each time we don't, it's an additional violation, from their perspective.⁴

Similarly, the Committees' Opposition to the Commission's Motion for Summary Judgment, at 34 n.13, acknowledges that the Committees are not following the regulations because, inter alia, the stand

1. Republican National Committee, et al. v. Federal Election Commission, Civil Action No. 94-1017, Memorandum Opinion and Order at 7-14 (D.D.C. Jul. 22, 1994).

2. Id. at 14.

3. Transcript of Hearing Before the Honorable Joyce Hens Green, United States District Judge, May 11, 1994, at 3 ("Transcript").

4. Id. at 12.

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alone request "mailings are expensive."

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires that the treasurer of a political committee file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Under 2 U.S.C. § 434(b)(3)(A), each report must disclose the identification of each person making aggregate contributions to the reporting committee in excess of \$200 in the calendar year. The term "person" includes individuals. 2 U.S.C. § 431(11). Identification of an individual includes the name, mailing address and occupation of the individual and the name of the individual's employer. 2 U.S.C. § 431(13).

Where the treasurer of the committee can show that he or she has made "best efforts" to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), any report or records of the committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i).

Prior to March 3, 1994, the treasurer was deemed to have exercised "best efforts" to obtain the information required by Section 431(13) if he or she had made at least one effort per solicitation, either by written request or by an oral request documented in writing, to obtain this information from the contributor. In addition, the request had to be clear and had to inform the contributor that reporting of the information is required by law. 11 C.F.R. § 104.7(b).

Under the revised best efforts regulations, which became effective March 3, 1994, the treasurer demonstrates "best efforts" by: (1) making a clear request for contributor information and

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including a specifically worded statement⁵ clearly and conspicuously displayed on the response material included in the solicitation; (2) no later than 30 days after receipt of the contribution with incomplete information, making at least one stand alone, follow-up request, either by written request or by an oral request documented in writing, to obtain the required information from the contributor without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b).

A review of the reports filed by the RNC for the period March 1 through June 30, 1994, shows the following omission rates for occupation/employer information:

REPORT TYPE\YEAR	# TOTAL ENTRIES	#ENTRIES W/O INFO.	% OMISSION
RNC			
1994 April Monthly	1664	272	16%
1994 May Monthly	2874	291	10%
1994 June Monthly	4196	544	13%

None of the RNC's disclosure documents provides information about its procedures for obtaining the required information pursuant to the new regulations. For contributions without occupation/employer information, the RNC inserts the phrase "information requested" in the identification blocks of its Schedule A forms.

5. The statement reads: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over \$200 in a calendar year."

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In addition, the RNC reports include a cover page with the following statement: "Concerning any donors shown on the next 450 pages whose occupation and place of business is not listed, the Republican National Committee has made at least one attempt in writing to obtain the information from the donor." The RNC lists the date of the request as the same date the contribution was received. None of the amendments submitted by the RNC has included contributor information missing from these reports.

Consequently, the RNC's reports fail to demonstrate that the RNC is complying with the revised best efforts rules to obtain missing contributor information. Although the RNC reports timely follow-up requests, it has neither provided a statement describing its procedures for obtaining the information nor supplied the missing information.

Overall, the RNC's reports confirm the admissions⁶ made by counsel for the Committees that his clients are in violation of the Act by failing to provide complete contributor information in their reports and by not following the new regulations to obtain the missing information. In addition, we further note that the Committees withdrew their motions for a temporary restraining order and preliminary injunction -- which sought a stay of the enforcement of the new regulations -- after having been informed by the Court that the Committees can comply with the Act at the

6. Statements made by a party's attorney are admissible against the party when the statements are within the scope of representation. William v. Union Carbide Corp. 790 F.2d 552 (6th Cir. 1986), cert. denied, 479 U.S. 992 (1986).

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same time they are challenging the best efforts regulations.⁷ In summary, the RNC knows the new regulations are in effect; it withdrew its immediate challenge to the enforcement of the regulations; it has failed to provide complete contributor information in its reports; and it has not followed the new regulations to obtain the missing information. The RNC has also chosen this course despite the Judge's admonishment and contrary to legal precedent which holds that the mere filing of a lawsuit does not stay enforcement of a regulation. Abbott Laboratories v. Gardner, 387 U.S. 136, 155-156 (1967).

Therefore, there is reason to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

7. Transcript at 12.

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Republican
National
Committee

Michael A. Hess
Chief Counsel

Thomas J. Josefiak
Deputy Chief Counsel

Allison Fahrenkopf Brigati
Associate Chief Counsel

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

FEB 9 1 52 PM '95

February 7, 1995

Ms. Dominique Dillenseger, Esq.
Office Of The General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20464

Re: MUR 4167

Dear Ms. Dillenseger:

The Republican National Committee respectfully requests a 20 day extension of time to respond to the Commission's "reason to believe" finding in the above captioned Matter Under Review.

Due to the unavailability of the outside counsel involved with the RNC's litigation relating to the "best efforts" regulations, we are unable to adequately respond to the Commission's MUR finding within the initial 15 day period. Therefore, we request an extension until Wednesday, March 1, 1995 in order for the RNC to submit a thorough response.

Respectfully submitted,

Michael A. Hess

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 10, 1995

Michael A. Hess, Esquire
Republican National Committee
Dwight D. Eisenhower Republican Ctr.
310 First Street Southeast
Washington, D.C. 20003

RE: MUR 4167
Republican National Committee;
William J. McManus, Treasurer

Dear Mr. Hess:

This is in response to your letter dated February 7, 1995, which we received on February 9, 1995, requesting a 20-day extension until March 1, 1995, to respond to our notification in the above-referenced matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on March 1, 1995. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Dominique Dillenseger
Attorney

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D. C. 20006
(202) 429-7000

February 13, 1995

JAN WITOLD BARAN
(202) 429-7330

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COMMISSION
MAIL ROOM

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(202) 429-7049
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VIA FACSIMILE & FIRST CLASS MAIL

Dominique Dillenseger, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4167 (National Republican
Senatorial Committee)

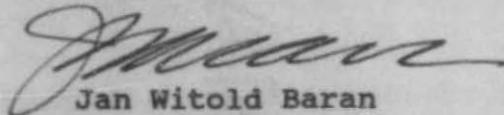
Dear Ms. Dillenseger:

Pursuant to our telephone conversation today, I hereby transmit the enclosed executed Statement of Designation of Counsel on behalf of our client, the National Republican Senatorial Committee (NRSC), in the above-captioned matter.

I respectfully request an extension of time of 20 days up to and including March 6, 1995. NRSC intends to file a response to Chairman McDonald's letter of January 19, 1995, which was delivered on January 31 by facsimile. The additional time is required in order to assemble relevant information and data.

Your favorable consideration of this request is appreciated.

Sincerely,


Jan Witold Baran

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COMMISSION
OFFICE OF GENERAL
COUNSEL

STATEMENT OF DESIGNATION OF COUNSEL

FEB 16 9 26 AM '95

NUM 4167

NAME OF COUNSEL: JAN BARAN

ADDRESS: WILEY, REIN, & FIELDING

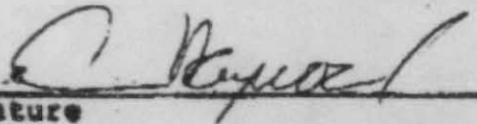
1776 K¹ST NW

WASHINGTON, DC 20006

TELEPHONE: 429 7330

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

1/31/95
Date


Signature

RESPONDENT'S NAME: ALLEN HAYWOOD ASS'T TREAS., NRSC

ADDRESS: 425 SECOND ST NE

WASHINGTON, DC 20002

HOME PHONE: _____

BUSINESS PHONE: 675-4300

97043795157



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 15, 1995

Jan Witold Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 4167
National Republican Senatorial
Committee; J. Stanley Huckaby,
Treasurer

Dear Mr. Baran:

This is in response to your letter dated February 13, 1995, which we received on February 14, 1995, requesting a 20-day extension until March 6, 1995, to respond to our notification in the above-referenced matter. You represent in your letter that you did not receive the notification of this matter, dated January 19, 1995, until January 31, 1995, and that you need additional time to gather relevant data. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on March 6, 1995. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Dominique Dillenseger
Attorney

97043795158



Republican
National
Committee

Michael A. Hess
Chief Counsel

Thomas J. Josefiak
Deputy Chief Counsel

Allison Fahrenkopf Brigati
Associate Chief Counsel

February 21, 1995

Mr. Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N. W.
Washington, D.C. 20464

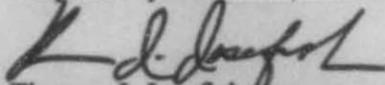
Re: MUR 4167

Dear Mr. Noble:

The Republican National Committee respectfully requests an additional 23 day extension of time to respond to the Commission's "reason to believe" finding in the above captioned Matter Under Review.

Due to illness and unavoidable travel by RNC Counsel staff, we will be unable to adequately respond to the Commission's MUR finding by the initial March 1st extension deadline. Therefore, the RNC requests an extension until Friday, March 24, 1995.

Respectfully submitted, *


Thomas J. Josefiak

FEB 21 4 04 PM '95

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

97043795159





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 22, 1995

Thomas J. Josefiak, Esquire
Republican National Committee
Dwight D. Eisenhower Republican Ctr.
310 First Street Southeast
Washington, D.C. 20003

RE: MUR 4167
Republican National Committee;
William J. McManus, Treasurer

Dear Mr. Josefiak:

This is in response to your letter dated February 21, 1995, requesting an additional 23-day extension until March 24, 1995, to respond to our notification in the above-referenced matter. You represent in your letter that you are unable to respond by the March 1st extension deadline because of illness and unavoidable travel by RNC Counsel staff. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on March 24, 1995. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

A handwritten signature in cursive script that reads "Dominique Dillenseger".

Dominique Dillenseger
Attorney

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Republican
National
Committee

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAR 24 5 30 PM '95

March 24, 1995

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20464

RE: MUR 4167

Dear Mr. Noble:

This responds to the Federal Election Commission's (FEC) "reason to believe" finding against the Republican National Committee (RNC) in the above captioned Matter Under Review (MUR). We show below that the RNC is in full compliance with the requirements enacted by Congress and that the position asserted by the FEC staff is clearly contrary to law and common sense.

On January 10, 1995 the FEC found "reason to believe" that the RNC violated the Federal Election Campaign Act of 1971, as amended (FECA)) relating to the RNC's disclosure of contributor information. Specifically, the Commission found "reason to believe" that the RNC violated 2 USC § 434(b)(3)(A) by failing to adhere to the FEC's recently adopted "best efforts" regulations found at 11 CFR 104.7(b).

The FECA requires committees to request and report the name, address, occupation and employer of individuals who contribute more than \$200 to a federal political committee in a calendar year. However, the law also recognizes that it is neither practical nor necessary to obtain every bit of information on every such contributor. According to the FECA, if a committee uses "best efforts" to obtain the information it will be considered in compliance, even if all of the details are not reported (2 USC § 432(i)).

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Clear congressional intent of the meaning of the "best efforts" standard can be found in the Report of the Committee on House Administration of the U.S. House of Representatives, accompanying the Federal Election Campaign Act Amendments of 1979. The Report stated: "If the committee made an effort to obtain the information in the initial solicitation and the contributor ignored the request, *the Commission should not require the committee to make the same request two, three or four times.*" (House Report No. 96-422, House Of Representatives, 96th Congress, 1st Session, p14.) The purpose of this language was to remove fears that the "best efforts" language could be construed to mean multiple efforts. Congress intended to reject any such understanding and make clear that such additional requests were not necessary in order to satisfy the statutory "best efforts" standard (See Exhibit 1, Josefiak Affidavit).

The Republican National Committee is in compliance with the statutory "best efforts" standard delineated in 2 USC § 432(i).

The RNC understands the importance of public disclosure of political committee receipts and expenditures as the cornerstone of campaign finance regulation under the FECA. The Committee is also keenly aware of its legal responsibility to report contributor information and to follow the FECA's "best efforts" standard. In the last cycle (1993/1994), the RNC was fortunate to have approximately 2.6 million contributors contributing an average of \$30. In order to reach that number of contributors, approximately 60 million solicitation requests were made, either by mail, telephone or in person. Each of those solicitations requested contributor information, no matter what level of giving was solicited. For telephonic and personal solicitations the appropriate follow-up letters were sent. This information was requested each time the individual was solicited, even when that information had previously been provided. (For a more expansive description of RNC solicitation practices and contributor information retrieval see Exhibit 2, Deposition of Albert E. Mitchler.)

It is the policy of the RNC to request the required contributor information in every solicitation, including every time the same person is solicited. The practical effect of this policy means that RNC contributors receive requests to provide the required contributor information several times per year, each time they are solicited. In 1994 an individual could have received at least twenty-four requests for contributor information. This request is addressed to all contributors, not merely those who have contributed more than \$200 per calendar year as the Commission's new regulations require. We have argued that this new requirement will result in less rather than more contributor disclosure. The request also makes clear to the contributor that the RNC is required by the Federal Election Campaign Act to report this information (Attached as Exhibit 3 is an example of an RNC solicitation contributor return card.) The RNC firmly believes that these procedures satisfy the FECA's "best efforts" standard as clarified by the House Report accompanying the FECA Amendments of 1979. Also, the level of RNC disclosure of contributor information serves as the best evidence of RNC compliance with the FECA's "best efforts" test.

Additionally, the RNC attempts to telephonically contact major donors who contribute an aggregate of \$5,000 or more in a calendar year in order to obtain the necessary contributor information. Although this action is not required by the "best efforts" standard the RNC

voluntarily conducts this telephonic inquiry. This should serve as additional evidence of the Committee's commitment to public disclosure subject to the obvious budget constraints.

For fourteen years the FEC acknowledged the Congressional intent of Section 432(i) of the Act by adopting and adhering to regulations which stipulated that the "best efforts" standard would be met if the committee made one effort per solicitation to obtain contributor information. The FEC's post-1980 regulations and practice were based upon the interpretation of the law, not on factual or policy judgments by the FEC.

In March of 1994 the FEC revised its "best efforts" regulations without any legal justification. These new rules require political committees to utilize a specifically worded statement seeking contributor information. The rules also mandate a *second* request for contributor information (to be sent separately from any other solicitation request) within 30 days after receipt of contributions with incomplete contributor information. The RNC testified in hearings before the Commission relating to the then proposed regulations that the FEC would be exceeding its statutory authority if it adopted the proposed modifications. The RNC also made it clear that the specified statement to be required would decrease the amount of information received, rather than increase contributor disclosure. The RNC's arguments were ignored and the FEC formally adopted the "best efforts" modifications to its regulations on March 3, 1994. The FEC's actions were not based upon any new information as to the meaning of statutory language or Congress' intent. Instead this reflected the FEC's policy decision to require more than Congress had authorized.

Because of the Republican National Committee's unwavering commitment to the freedoms of association and speech under the First Amendment and to insure that the FEC operates within its statutory parameters, the RNC together with the Republican National Senatorial Committee and the National Republican Congressional Committee filed suit against the Commission for exceeding its legal authority in promulgating the "best efforts" regulations. On July 22, 1994 the Federal District Court for the District of Columbia rejected the Committees' arguments, resulting in an Appeal to the Federal Court of Appeals for the District of Columbia which is still pending. It is in this context that the FEC has decided to pursue an enforcement action against the RNC.

It is important to state for the record that the RNC is not pursuing this litigation or resisting compliance with Commission regulations because it is attempting in any way to thwart public disclosure of contributors to the Republican National Committee. In fact, overall, the RNC has one of the best, if not the best, public disclosure record of any similar political committee filing with the FEC. Based upon the Commission's Factual And Legal Analysis accompanying the findings in MUR 4167 the record indicates that the RNC's contributor disclosure rate for the April, May and June Monthly Reports in 1994, averaged approximately 87 percent. (With regards to RNC "best efforts" disclosure of contributor information for these months, the Commission found reason to believe but decided to take no further action.) For the months of July, August and September of 1994 the FEC voted "reason to believe" and to pursue the matter, even though the rate of disclosure was higher than the previous quarter, an average of 88.9 percent representing 15,066 itemized entries. (In July the RNC's disclosure rate was approximately 89.4 percent, August - approximately 88.3 percent and September - approximately 89 percent.) In comparing the equivalent third quarter reporting period for the Democratic National Committee

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(DNC), the RNC has by far a better contributor reporting track record. In the third quarter of 1994 the DNC maintained a 82% itemized contributor disclosure rate representing 2768 itemized entries. Nevertheless, the Commission appears to be pursuing only the Republican National Committee, not its Democratic counterpart. The presumption must be made that the DNC is paying lip service to the FEC's new regulations, while not resulting in a better disclosure rate. Reasonable persons might wonder why the Commission is pursuing the RNC through the FEC enforcement process at this point. The RNC disclosure rate is high. Also, we are in the middle of litigating those very Commission "best efforts" regulations (oral arguments are scheduled in the U.S. Court Of Appeals on September 24,1995). It would not be irrational to conclude that this enforcement action was initiated simply because the RNC decided to legally challenge the FEC's "best efforts" regulations.

Perhaps the Commission's action would be more understandable, though still legally unauthorized, if the RNC disclosure rate were low. However, we respectfully submit that the Commission's decision to pursue this action against the RNC whose disclosure rate is very high, if not the highest, is not only unjustified but arbitrary and irresponsible, particularly while RNC litigation is pending challenging FEC authority to promulgate these "best efforts" regulations. The Commission argues that the Committees' withdrawal of motions for a stay of the regulation's enforcement somehow places the RNC in greater jeopardy and, as a result, the RNC should comply with the FEC's "best efforts" regulation during the litigation. However, the Commission fails to state the reason for the withdrawal of those motions. The motions were withdrawn because of the strong suggestion by the court that by doing so the case could be decided in a more timely fashion. This would save all parties involved considerable resources as well as allow the litigation to proceed expeditiously. That action should not be viewed as anything more. Certainly, not as evidence of a lack of RNC resolve to litigate the matter as the Commission seems to suggest. In the RNC's view the FEC regulations on "best efforts" are beyond its statutory authority to promulgate. The RNC has provided more complete contributor information than most, if not all, similar political committees that are considered in so-called compliance with the new regulations. As a result, the RNC maintains that it is in compliance with the FECA's "best efforts" standard.

At a time when the Commission is seeking additional congressional funding because it claims current funding levels are inadequate to fulfill its statutorily mandated mission, the use of FEC resources to pursue this enforcement matter under these circumstances seems at best misplaced, arbitrary and inequitable. It also appears to demonstrate the inability of the Agency to prioritize its cases even though the Commission has recently been conducting a public relations campaign to demonstrate the contrary. This case will be decided in the courts. It is not necessary to expend additional taxpayer dollars and force the RNC to spend its resources to conduct a simultaneous enforcement matter relating to the same issues that are being litigated.

The RNC is perplexed by the Commission's cavalier attitude toward the RNC's legal challenge to FEC authority in the Commission's suggestion that the RNC should be adhering to the Commission's "best efforts" regulations for the duration of the litigation. The RNC has specifically delineated the harm caused by these regulations in its brief submitted to the U.S. District Court for the District Of Columbia (see Exhibit 4). More importantly, however, is the

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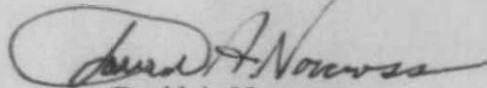
RNC's fundamental belief that the FEC has exceeded its statutory authority in promulgating these "best efforts" regulations. The RNC is not in the practice of filing suits against the Commission every time it disagrees with an FEC policy position, whether that be an advisory opinion or a regulation. However, when in the Committee's opinion a Commission policy affecting the RNC exceeds the Agency's statutory authority the RNC must draw the line and litigate the fundamental legal principal at stake. This is one of those instances. The RNC has the responsibility to not only protect its own interests but, also, those of state and local party committees as well as Republican candidates.

To summarize, the level of RNC disclosure of contributor information and its current policy of requesting contributor information from *all* contributors should serve as adequate evidence of RNC compliance with the FECA's "best efforts" standard during the period when the Committee is challenging the FEC's regulation in the courts.

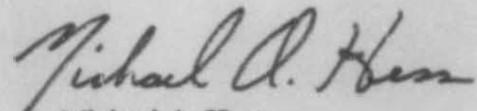
In conclusion, the RNC maintains that the FEC should never have initiated this particular enforcement proceeding against the Committee. We respectfully submit that the Commission should at this juncture take no further action against the Committee and dismiss this matter against the Republican National Committee. The Committee maintains that the FEC's rush to judgment in pursuing MUR 4167 was unnecessary, arbitrary and unfair given the litigation over the Agency's authority to promulgate these rules in the first place, and, in particular, with the RNC's high contributor disclosure rate.

The Republican National Committee fully intends to exhaust all avenues available through the courts to resolve this matter, not only in the current litigation but also in any action resulting from this Matter Under Review. As a result of this commitment and because of the Committee's intention to publicly discuss *all* the issues raised as a result of this enforcement action the Republican National Committee hereby waives confidentiality regarding MUR 4167 as provided for under 2 USC § 437g(a)(4)(B) and 2 USC § 437(g)(12)(A).

Respectfully submitted,



David A. Norcross
General Counsel



Michael A. Hess
Chief Counsel

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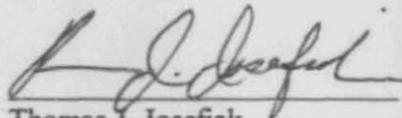
"If the committee made an effort to obtain the information in the initial solicitation and the contributor ignored the request, the Commission should not require the committee to make the same request two, three or four times."

This Committee Report was issued before the 1979 Amendments were adopted by the Congress. No Member of Congress to my knowledge questioned whether the Report accurately reflected the meaning of "best efforts" in Section 432(i).

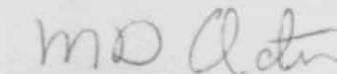
3. The staffs of the Federal Election Commission and the Committee On House Administration met on numerous occasions to discuss legislative intent in order to assist the Commission in conforming its regulations to the changes made to the Act. I participated in those discussions. The Commission modified its regulations to reflect the explanation of the meaning of the "best efforts" language added to Section 432(i) by the 1979 Amendments. That regulation stated: "the treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort either by a written request or by an oral request documented in writing to obtain such information from the contributor. (11 CFR 104.7(b)). This provision was based upon the FEC's understanding of what Congress had intended by the "best efforts" statutory language. This remained the Commission's official interpretation of the statutory "best efforts standard until March 3, 1994 when its revised regulations took effect.

4. In August of 1985 I was appointed by President Reagan to the Federal Election Commission. I served as a Commissioner through December 31, 1991. During my tenure it was my understanding that the outer limits of the meaning of the "best efforts" provision was as stated in the House Report. Although issues concerning the "best efforts" provision repeatedly arose during my tenure, I do not recall any action by the Federal Election Commission, as an Agency, that cast doubt on the understanding expressed in the House Report.

The above information is true and correct to the best of my knowledge and belief.


Thomas J. Josefiak

Sworn and subscribed to by the said Thomas J. Josefiak this 24th day of MARCH, 1995.


Notary Public, DISTRICT OF COLUMBIA

M. D. Acton
Notary Public, District of Columbia
My Commission Expires July 14, 1999

My Commission Expires: _____

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NATIONAL REPUBLICAN SENATORIAL COMMITTEE



Senator Phil Gramm
Chairman

May 20, 1994

Mr. Robert Byrne
112 Pickney Street #53
Boston, MA 02114

Dear Mr. Byrne,

The Senatorial Committee is facing a crisis situation.

We are approaching our June 30th Fiscal-Year-End and are still \$923,000 behind budget. As you'll see in the enclosed Budget Report, if we fail to eliminate this shortfall by June 30th, our chances of electing a Republican Senate Majority will be greatly impaired.

I know I've written to you about this before, but the situation hasn't improved. And if we're unable to correct the problem by Fiscal-Year-End, we'll be throwing away the best election opportunity we've had in over a decade.

With Democrat retirements leaving open seats in Ohio, Michigan, Arizona, Tennessee and Maine, our chances of electing a Republican Majority are better than ever before. And the NRSC has already recruited top-notch candidates who are working hard to win these seats for the GOP.

But these candidates must have the expertise and professional advice of the Senatorial Committee to help them with their campaigns. They know that the NRSC's candidate support programs make up the backbone of any successful Senate campaign.

Our polling services, get-out-the-vote drives, opposition research, television advertising and voter identification programs are critical to their success.

Our candidates must not lose these vital programs. Without these essential services our candidates don't stand a chance against the heavily-funded liberal Democrats.

But as of right now, our candidate support programs and campaign services are being drastically cut-back, and in some cases suspended altogether.

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That's why we must eliminate the \$923,000 shortfall and get our campaign plan back on track. Our candidates must have the resources to fight back against the Democrats.

That's why I'm calling on you today to request your additional support of \$75 or if you can afford it, \$115. We must eliminate this budget shortfall immediately so we can keep our candidates focused on the campaign.

Believe me, I've met each of our possible candidates, and they well deserve our full support. But with 34 Senate races needing our assistance, the Senatorial Committee is going to need more help than ever before from its committed members.

Your contribution of \$75 or even \$115 is vital to our ability to capitalize on this year's tremendous opportunity -- we can only blame ourselves if we let this election slip through our fingers.

So please, stand with and support the Senatorial Committee's vigorous effort to recapture Republican control of the Senate. Your support today will greatly increase our chances of electoral success this November.

Yours respectfully,



Senator Phil Gramm
Chairman

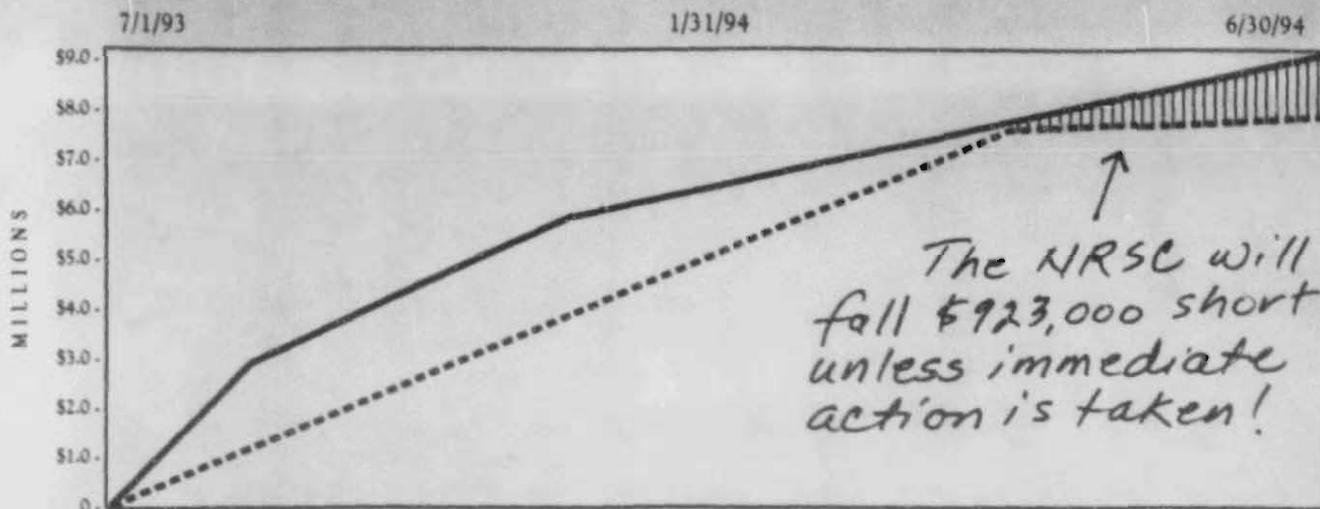
P.S. 1994 is the best election year the GOP has faced in over a decade, but without adequate support, our candidates are doomed to defeat. We must raise \$923,000 by June 30th to eliminate the budget shortfall undermining our campaign programs.

Please send your contribution of \$75 or \$115 to the Senatorial Committee by June 30th so we can get back on

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NATIONAL REPUBLICAN SENATORIAL COMMITTEE
1994 FISCAL YEAR END PROJECTIONS

000006



ACTUAL RECEIPTS

PROJECTED BUDGET

PROJECTED
SHORTFALL AS OF
5/1/94

REQUESTED BY: Senator Phil Gramm, Chairman

PREPARED FOR: Mr. Robert Byrne, Preferred Member

Summary: As you can see in the graph above, the NRSC is still \$923,000 short of its funding requirements. Without adequate funding the NRSC will be forced to make radical cuts to its campaign support programs -- risking the best election opportunity we've had in over a decade. To avoid cuts, we must receive \$75 from you by June 30.

Please detach along dotted line and return today.

NATIONAL REPUBLICAN SENATORIAL COMMITTEE
1994 FISCAL YEAR EMERGENCY REPLY

FROM: Mr. Robert Byrne
112 Pickney Street #53
Boston, MA 02114

TO: Senator Phil Gramm
Chairman
425 Second Street, N.E.
Washington, DC 20002

Dear Senator Gramm,

- () I have reviewed the NRSC Budget Report and am frightened by its implications.
- () To get the Senatorial Committee and our candidates the support they need, I'm sending my special contribution of:

() \$115

() \$75

() Other: _____

01293772

Please make check payable to National Republican Senatorial Committee.

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The Federal Election Commission requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Occupation: _____

Employer: _____

Employer's Address: _____

Home Phone (____) _____ Business Phone (____) _____

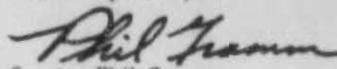
Paid for and authorized by the National Republican Senatorial Committee. Contributions to the National Republican Senatorial Committee are not deductible as charitable contributions for federal income tax purposes. Contributions which exceed the limits permitted by, or which may not be accepted under federal law will not be used for federal election purposes.

Not printed at government expense.

Instructions: write out emergency check for \$XX, \$XX, or \$XX and send it to the NRSC by June 30. Can't afford to fall behind this late in the year. Send in most generous contribution along with emergency reply document as soon as possible.

Your quick response is key to winning this crucial seat in November. Am counting on you as a dedicated member of the NRSC.

Yours respectfully,



Senator Phil Gramm
Chairman

PG/flb

P.S. Oklahoma open-seat election provides one more chance to fulfill the greatest opportunity for a GOP Senate Majority in years. But we must raise \$276,826 by June 30 to have a solid chance at winning this critical seat in November.

Please send an emergency contribution of \$hpc \$1.5hpc or \$2hpc to the NRSC by June 30 to defeat liberal Democrats and stop Bill Clinton's destructive left-wing policies.

The Federal Election Commission requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Occupation: _____

Employer: _____

Employer's Address: _____

Home Phone () _____ Business Phone () _____

Paid for and authorized by the National Republican Senatorial Committee. Contributions to the National Republican Senatorial Committee are not deductible as charitable contributions for federal income tax purposes. Contributions which exceed the limits permitted by, or which may not be accepted under federal law will not be used for federal election purposes.

Not printed at government expense.

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EXHIBIT 2
**TRANSCRIPT
OF PROCEEDINGS**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X
:
REPUBLICAN NATIONAL COMMITTEE, :
NATIONAL REPUBLICAN SENATORIAL :
COMMITTEE, and NATIONAL REPUBLICAN :
CONGRESSIONAL COMMITTEE, :
:
Plaintiffs/Petitioners, :
:
v. : Civil Action Number
:
FEDERAL ELECTION COMMISSION, : 94-1017 JAG
:
Defendant/Respondent. :
:
-----X

DEPOSITION OF ALBERT E. MITCHLER

Washington, D. C.

Friday, May 13, 1994

ACE - FEDERAL REPORTERS, INC.

Stenotype Reporters

1120 G Street, NW
Washington, D.C. 20005
(202) 347-3700

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800-336-6646

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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REPUBLICAN NATIONAL COMMITTEE, :
NATIONAL REPUBLICAN SENATORIAL :
COMMITTEE, and NATIONAL REPUBLICAN :
CONGRESSIONAL COMMITTEE, :

Plaintiffs/Petitioners, : Civil Action Number

v. : 94-1017 JAG

FEDERAL ELECTION COMMISSION, :
Defendant/Respondent. :

-----x

DEPOSITION OF ALBERT E. MITCHLER

Washington, D. C.

Friday, May 13, 1994

REPORTED BY:

DIANA S. KIEREIN

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

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1 Deposition of ALBERT E. MITCHLER, called for
 2 examination pursuant to notice of deposition, on Friday,
 3 May 13, 1994, in Washington, D. C. at the law offices of
 4 Wiley, Rein and Fielding, 1776 K Street, N.W., at 10:00
 5 a.m. before DIANA S. KIHEREIN, a Notary Public within and
 6 for the District of Columbia, when were present on behalf
 7 of the respective parties:

8
9 THOMAS W. KIRBY, ESQ.

10 JAN WITOLD BARAN, ESQ.

11 JASON P. CRONIC, ESQ.

12 Wiley, Rein & Fielding

13 1776 K Street, N.W.

14 Washington, D. C. 20006

15 On behalf of Plaintiffs/Petitioners.
16
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-- continued --

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APPEARANCES (CONTINUED):

DENITTA WARD, ESQ.

STEPHEN HERSHKOWITZ, ESQ.

Federal Election Commission

999 E Street, N.W.

Washington, D. C. 20463

On behalf of Defendant/Respondent.

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1 PROCEEDINGS

2 Whereupon,

3 ALBERT E. MITCHLER

4 was called as a witness and, having first been duly sworn,
5 was examined and testified as follows:

6 EXAMINATION

7 BY MS. WARD:

8 Q Good morning, Mr. Mitchler. Thank you for coming
9 on such short notice.

10 Could you state your name for the record?

11 A Albert E. Mitchler.

12 Q And address?

13 A My office address is 310 First Street, Southeast
14 Washington, D.C., 20002.

15 Q Have you ever been deposed before?

16 A Yes.

17 Q Okay. I'm going to ask you a series of
18 questions; and if at any time you don't understand a
19 question, tell me you don't understand and I will rephrase
20 it or try to clarify the question.

21 A Okay.

22 Q If you do not indicate that you don't understand,

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1 then I will infer you do understand the question. All
2 right?

3 A Sure.

4 Q You have the right to be accompanied, represented
5 and advised by counsel and this means that you may have an
6 attorney present and the attorney may advise you during the
7 deposition. Do you understand?

8 A Yes.

9 Q And for the record, are you represented here by
10 counsel?

11 A I am.

12 Q Is that in a personal capacity?

13 A I'm not sure if it's personal but it's official.

14 Q Okay, that's fine. Other than conferring with
15 your attorney, what if anything did you do to prepare for
16 this deposition?

17 A I thought about the process.

18 Q Did you review any documents?

19 A No.

20 Q Okay. Could you tell me where you're currently
21 employed?

22 A Republican National Committee.

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1 Q Okay, what position do you hold there?

2 A Finance director.

3 Q What are the duties of the finance director?

4 A Oversee the raising of all the funds for the
5 Republican National Committee from all sources.

6 Q Okay. And how long have you held that position?

7 A A little over one year.

8 Q Have you held any other positions with what we
9 will term the RNC?

10 A Not with the RNC.

11 Q What prior paid employment have you had with
12 other political committees in chronological order, please.

13 A In chronological order, the Republican Senatorial
14 Campaign Committee prior to the RNC, a little over four
15 years as finance director.

16 Q And what were those duties?

17 A Oversee all the fund-raising for the Republican
18 Senatorial Campaign Committee.

19 Q Is that the only other paid employment you've had
20 with a political committee?

21 A No. Prior to that for a little over two years, I
22 was also employed by the Republican Senatorial Campaign

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1 Committee in the capacity of finance director.

2 Q Okay.

3 A I've also worked for state party and county party
4 organizations.

5 Q In what state?

6 A Indiana.

7 Q And the county within Indiana?

8 A Marion.

9 Q Any other states or counties?

10 A No, as a paid employee?

11 Q Un-huh.

12 A As a consultant, yes.

13 Q Okay. Have you had any other prior paid
14 employment with other resident political campaigns?

15 A Yes, as a consultant and as a production person,
16 yes.

17 Q What kind of work did you do?

18 A It was general for direct mail, fund-raising
19 major donor events. Just about anything you can think of.

20 Q And in which campaign was that? If there was
21 more than one campaign --

22 A There was.

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1 Q Okay.

2 A I'm not sure I can remember them all.

3 Q Okay.

4 A But I can give you some --

5 Q Okay, please do.

6 A D'Amato, Senator Alphonse d'Amato, Senator Dick
7 Lugar, Dan Quayle, Bob Dole, Dan Coates.

8 There are probably several dozen more. I mean
9 I'd have to go back a little bit in the record. At least
10 several dozen more senators, maybe half dozen governors,
11 maybe a dozen or two congressmen, maybe a dozen state
12 parties.

13 Q Dating back to --

14 A 1971, '72.

15 Q Okay. And you said that you worked as a
16 consultant and then you used another term. I believe it
17 was coordinator or --

18 A Yeah, production, consultant. I mean, these
19 things are -- production manager, these things are
20 interchangeable.

21 Q And kind of work you did as a production manager
22 was --

1 A You actually made sure that things went out and
2 got done versus giving an opinion.

3 Q Okay. Now was that for fundraisers?

4 A Yes.

5 Q Was it for the day-to-day operation of the
6 staffing?

7 A You might give some advice on staffing, but no.
8 Generally you became the adjunct staff of the campaign.
9 They wanted to do something, you made sure that it got
10 done, from buying the paper to whatever it was, printing
11 personalization, computerization.

12 Q Okay. So you do have experience then dealing
13 with computer programmers in the direct mail function, is
14 that true?

15 A Yes.

16 Q What's your current relationship with the
17 National Republican Senatorial Committee which we will call
18 NRSC for the sake of brevity?

19 A My current relationship with them, they are a
20 sister committee that has a particular mission. In some
21 sense I might be a competitor.

22 Q Well, what do you mean by sister committee?

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1 A Well, there are three national committees
2 essentially. There's the Republican Congressional
3 Committee, the National Republican Senatorial Committee and
4 the Republican National Committee, and all of these have
5 specific missions and things that they do.

6 MR. KIRBY: For the sake of clarity, those are
7 the three petitioner plaintiffs in this lawsuit.

8 BY MS. WARD:

9 Q Okay, do the --

10 A Functions are not dissimilar.

11 Q Okay. Do the three committees have any
12 coordinated efforts besides this litigation?

13 A Not at the finance level. I will add that they
14 do have one coordinated effort that is a joint committee.

15 Q What's that called?

16 A It's called the Republican National Candidate
17 Trust.

18 Q And what is the mission of that committee?

19 A The mission of that committee is to find donors
20 and distribute them to the other committees and to raise
21 money and distribute it equally to the other committees.

22 Q So within that committee, is donor identification

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1 information shared?

2 A Yes.

3 Q Okay.

4 A That would be the only place where that would be
5 done.

6 Q Un-huh. Now regarding sharing the information,
7 if for example the Republican National Committee received
8 information regarding Mr. Jones who has given a
9 contribution, what then happens with that?

10 A What do you mean sharing of information?

11 Q Well, you said that they shared the contributor
12 identification --

13 A That particular committee shares the information
14 in one direction. It gives it to the other three
15 committees. It does not receive information.

16 Q How does it obtain its information?

17 A It obtains it by going about the normal process,
18 soliciting money and that information comes back with the
19 money and it puts it on a font.

20 Q Un-huh. Okay. Going back to background
21 information about you. Could you state your educational
22 background?

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1 A Yes. I went to Indiana University and Purdue
2 University and my major was in philosophy and theology. I
3 did not complete my degree.

4 Q Okay. So that was the undergraduate studies, in
5 Indiana?

6 A Yes, yes.

7 Q Do you have any course work in political science?

8 A I had one course in college, Political Science
9 101.

10 Q Do you have any training in campaign, formal
11 training in campaign managing?

12 A No. I'm not sure where this is going, but I have
13 either edited or helped write most of the manuals that
14 formally train people in campaign fund-raising management
15 in this area.

16 Q Okay. Do you have any training or course work in
17 computer science?

18 A No.

19 Q All right do you --

20 A Other than, I should say, the military where I
21 received considerable training in the use of computers.

22 Q And when were you in the military?

1 A I was in the military from 1963 to 1965.

2 Q And what were your duties?

3 A My duties at that time were to work for the Army
4 Security Agency.

5 Q And your rank?

6 A My rank was E-5.

7 Q Okay. On a day-to-day basis, what were the
8 computer duties that you were involved in?

9 A I'm not sure that I'm still not prohibited from
10 talking about that.

11 Q Okay. Do you have any training in database
12 management?

13 A Yes.

14 Q Database management?

15 A Yes.

16 Q Okay what would that be?

17 A Most of that is self taught from having to use it
18 over a good long period of time.

19 MR. KIRBY: Counselor, I assume that we have your
20 representation that you consider this information relevant.

21 MS. WARD: Yes, I do.

22 MR. KIRBY: All right.

97043795187

1 BY MS. WARD:

2 Q Do you have any courses or training in
3 accounting?

4 A No.

5 Q Okay. How about financial management?

6 A No.

7 Q Okay. Going to your document, is this a complete
8 and accurate copy of the declaration you executed for this
9 litigation?

10 And I'll just state that this is the document
11 that counsel provided this morning.

12 A Yep.

13 MS. WARD: I'd like to have this marked as
14 Exhibit 1.

15 (FEC Exhibit 1 identified.)

16 MR. KIRBY: Okay. Excuse me. Let the record
17 show that the FEC counsel has had a chance to examine the
18 original and confirm that the copy conforms to the
19 original.

20 BY MS. WARD:

21 Q Can you tell me the circumstances surrounding
22 your execution of this declaration?

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1 A Yes. Michael Hess was supposed to do this and he
2 could not do this so they asked me to.

3 Q Okay. Did you draft the declaration?

4 A No, I did not.

5 Q Okay. Did you make any revisions to the
6 declaration?

7 A No.

8 Q Okay. Did you review any documents to prepare
9 your declaration?

10 A No, I did not.

11 Q Does that mean you did not look at the
12 declaration Mr. Hess provided in this litigation?

13 A In actuality, Mr. Hess directed the declaration
14 based on conversations with me.

15 Q Okay. Other than discussions with counsel, did
16 you discuss the declaration with anyone else?

17 A No.

18 Q Okay. If you'd like to turn to paragraph 6 of
19 the declaration and that's what I'll be asking you about
20 the contents.

21 In paragraph six, you state that the RNC would
22 have to revise its solicitation literature and discard

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1 materials previously acceptable --

2 A That's correct.

3 Q -- in order to conform with this legislation?

4 A Yes.

5 Q Could you tell me what the current literature is?

6 A Well, gee if I had know that, I would have
7 brought probably several hundred different pieces of
8 literature that are in inventory now, but it certainly has
9 a different disclaimer on it.

10 Q Can you generally recall how the disclaimer
11 differs from --

12 A I don't do disclaimers, the attorneys do
13 disclaimers. I just know that they tell me I would have to
14 change it.

15 Q Okay. Can you tell me who has informed you that
16 you would have to change the disclaimer?

17 A Michael Hess.

18 Q Okay. So are you saying you do not know what
19 would need to be revised?

20 A I have read the new disclaimer. If you put it in
21 front of me, I can't quote it to you verbatim; but if you
22 put it in front of me, I know it is considerably different.

9704379519C

1 Q Can you tell me how much it would cost to revise
2 your disclaimer?

3 A My guess is, and this is an estimate, that in
4 inventory and floating through the system, not counting
5 plates that are hanging on shelves that would have to be
6 redone that are used on a constant basis, the cost away
7 value would probably be somewhere between, I don't know,
8 750,000 to \$1 million.

9 Q And what's your basis for that figure?

10 A Basis for that figure is basically the bills that
11 pass through the system and inventory, I guess going around
12 and looking.

13 Knowing that I have, sitting down in my hallway,
14 approximately \$80,000 worth of envelopes for
15 telecommunication, knowing that I have about \$60,000 worth
16 of major minor brochures before they were put in envelopes
17 and before stationery was provided, knowing that at
18 different vendors -- I have one vendor right now, I have 2
19 million pieces of inventory with cards attached and
20 envelopes that is worth a considerable amount of money. So
21 I am guessing at the figure. It ain't \$.10.

22 Q Why would envelopes for telecommunications, which

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1 is one of the categories of documents you referenced, why
2 would they have to be revised?

3 A Well, not the envelopes themselves, but the
4 stationery that companions with those envelopes. I'm just
5 looking at what I see sitting in a hallway, and I know for
6 every envelope I see sitting in a hallway, there is a piece
7 of paper someplace, and more than likely there are several
8 pieces of paper.

9 Q And when you say one vendor has 2 million cards
10 and letters attached, are those documents that have already
11 been produced or are those orders waiting to be filled?

12 A No, that's orders waiting to be filled. They are
13 printed, personalization is not done and they're sitting
14 there.

15 Q What do you mean personalization has not been
16 done?

17 A I haven't put, "Dear Al" on there. Enclosed is
18 your card. The FEC information is on the back, the
19 disclaimer has been printed on it.

20 Q So does the RNC do any of its own production or
21 publishing in house or is everything done by outside
22 contractors?

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1 A Much is done by outside contractors but small
2 labor intensive groups are done in-house, things that have
3 to be done every day, you then set up a management team to
4 do that particular group because it's too expensive to take
5 a small group.

6 If you have 423 letters a day, and you may know
7 that every day you're going to have roughly 423 letters,
8 believe it or not because the cost of doing a letter on a
9 daily basis can be huge you're inclined to do it in-house
10 and then when you assess that cost, you realize how
11 expensive it is in-house but it's still cheaper than doing
12 it out of house.

13 Q Okay. Can you tell me what percentage of
14 documents that you used the term inventory, that are
15 currently in inventory, were purchased by requisition prior
16 to October, 1993?

17 A Prior to October, 1993? Again, I'm guessing,
18 probably 40 to 50 percent.

19 Q Okay. On average, in a non-election year --

20 A Yes.

21 Q -- how often is solicitation materials revised?

22 A How often is it revised?

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1 Q Un-huh.

2 A Well, it depends on what you're doing. You're
3 always passing that stuff past your attorneys to look at
4 disclaimers, and I would say it's a fairly constant basis
5 when you're going to manufacture something new and that
6 happens all the time.

7 Q Okay.

8 A But if you told me you were going to revise my
9 disclaimer every month, you would send my cost off the
10 roof.

11 Q Un-huh. But is there a difference between the
12 number of revisions for solicitation material in an
13 election year versus a non-election year?

14 A Not really.

15 Q When you say the revisions are fairly constant --

16 A Sure.

17 Q -- can you give me an estimate about that?

18 A That would be several times a week or more if I'm
19 printing something, if I'm going back to print something.
20 But I may be printing something or looking for a revision
21 that I'm not going to use for six months or that I'm going
22 to start using in six months or a year.

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1 Q So are you saying that production is done six
2 months to a year ahead of time?

3 A In some cases that's certainly true. In other
4 cases, it's not true.

5 Q In what cases would it be true?

6 A Very difficult to say. Very difficult to say.
7 I'm doing over 600 projects a year. We can lay all 600 of
8 them out and pick and choose.

9 Q I don't think we have time for that this
10 morning.

11 A I'm willing to do it.

12 Q How often, you talked about the cards that are
13 sent out which you identified as having the disclaimer on
14 the back and information on the front. How often were they
15 revised?

16 A Well, because that's such a cost efficient
17 product, the last one I revised was, I'm going to say, or
18 one we're using now, maybe August or September when we had
19 to place the final order and go to print and it's a
20 proprietary number but it is in the millions and it is
21 still being used today. There is no week that goes by that
22 in the six digits we do not drop.

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1 Q Could you explain that, in the six digits we do
2 not drop?

3 A That means somewhere in the hundred thousand plus
4 range.

5 Q What occurs in the hundred thousand plus --

6 A We drop that many cards on a weekly basis.

7 MR. KIRBY: In the mail.

8 THE WITNESS: In the mail.

9 BY MS. WARD:

10 Q So let me see if I understand this. There's one
11 standard contributor information card --

12 A No. That is one product. You asked me about the
13 card that I mentioned. That is one product.

14 Q Uh-huh.

15 A There are 599, roughly, other products.

16 Q Right. Are you saying that this one product goes
17 out with most mailings or all mailings?

18 A No. It is a mailing, to be distinguished from,
19 might be 610, might be 546, I don't know. But it's
20 certainly a big number. It is one product out of hundreds
21 of products.

22 Q Is it one product that is sent out with all

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1 solicitations for contributions?

2 A No. You keep trying to make this product fit
3 every solicitation. It is a product of which there are
4 hundreds of products that go to various lists and various
5 people as a solicitation.

6 Q Moving on to the next, another sentence in
7 paragraph 6, you say that knew stationery would have to be
8 printed. Can you define the word stationery, what
9 stationery?

10 A Stationery it's a printed piece of paper that you
11 may put a letter on or you may scribble a note on or you
12 can send it blank.

13 Q Why would compliance with this regulation require
14 new stationery?

15 A Because much stationery that we have now already
16 has the FEC information on it.

17 We know what that information request is going to
18 be. Rather than use the amount of money that it would take
19 to laser that information on each time, we would print
20 stationery, even though we have not decided what letter
21 will go on it.

22 That stationery may also have that printed on it,

97043795197

1 it may be blank, they may be companions that go together.
2 In other words, one's blank, one has the information on it.

3 Q Un-huh, okay. How often does the RNC have new
4 stationery printed?

5 A It runs through the system all the time, when you
6 run out.

7 Q Can you give me an estimate over the last year?

8 A Probably the different portions, they've ordered
9 probably in different portions, they've ordered stationery
10 maybe on average once a week or more.

11 Q Okay.

12 A But when you order stationery for a project,
13 you're estimating how much you're going to need for a
14 period of time.

15 Q And what's that period of time?

16 A It depends. Most people can't order exactly
17 right so somebody may over order, somebody may under order
18 but you're just looking for the best cost efficiency.

19 Q Uh-huh.

20 A If I use 50,000 pieces of stationery a year on a
21 particular project, I'm generally going to order that
22 50,000 because I can probably get a good cost break in

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1 ordering it.

2 Q And how long does 50,000 last?

3 A Some processes, it might last first four hours in
4 the morning and in others it might last an entire year. I
5 don't know.

6 Q Okay.

7 A You have to tell me which one you're talking
8 about.

9 MR. KIRBY: Again Counsel, all of this is
10 relevant to this lawsuit?

11 MS. WARD: It is.

12 MR. KIRBY: All right.

13 BY MS. WARD:

14 Q Can you tell me what triggers revision to the
15 stationery?

16 A Yeah. Sometimes it is informal. Hey, I'm
17 printing the stationery, look at the stuff on it, tell me
18 if this is all right.

19 Q Uh-huh.

20 A When you're doing a lot of this, there is not a
21 long drawn out formal procedure though there is a
22 procedure. And it is constant.

1 Q The revisions are constant?

2 A Yes.

3 Q Referring again to your declaration, in
4 paragraph 6 you state that new computer programs would have
5 to be developed?

6 A Yes.

7 Q What is the current computer program that is used
8 by RNC?

9 A You could actually get the details from our
10 vendor which is CMDI what he specifically calls that
11 program. I'm not a computer expert. I will tell you that
12 in order to make any change, you would have to develop a
13 new program. If you were doing 10 of something a year, you
14 would not need a computer program. When you're doing
15 10,000 of something a day, a very small difference may make
16 major changes. And so consequently we would have to
17 develop new space on the file, new computer programs to
18 implement this --

19 Q What does CMDI do?

20 A CMDI maintains our file.

21 Q So the contribution information would come into
22 them?

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1 A No. Contribution information, it eventually goes
2 to them, it goes to keypunchers.

3 Q Can you tell me how this process works when a
4 contribution comes into the RNC?

5 A Okay, contributions come into -- not the RNC, but
6 they go into a bank. They are picked up from post office
7 boxes in the Post Office on a daily basis. They go to the
8 bank.

9 The bank then counts them, sorts them, puts them
10 in their different project order, splits them open. It
11 then proceeds to go through them, batch the information,
12 put batch controls together, check each batch control,
13 deposit the money.

14 Q The checks go one direction, the batches go in
15 another direction. They then end up at the keypunchers'
16 office.

17 Q Now what is the batch information?

18 A The batch information, in essence this is
19 something we do for FEC purposes because we have to produce
20 a report which adds approximately \$.21 to each contribution
21 that we get at this point.

22 They are put in batches so that we can

97043795201

1 exclusively verify that the amount of money that we
2 deposited in the bank eventually ends up on the file.

3 And then batch control numbers are issued so that
4 if somehow at the end of a day or week or month, our bank
5 account balance is \$5 off, compared to the computer
6 information that's going to produce the PEC report,
7 somebody has to be able to go back and find that.

8 Q Okay. So the batch control is identifying a
9 number, some amount of money coming in?

10 A Yeah. It's a number of contributors or
11 contributions in this case. They go together.

12 Q At this point when the bank issues the batch or
13 makes the batch, is contributor identifying information
14 included in that?

15 A Well, not for the bank's purposes. The bank then
16 sends the original document or response document to the
17 computer house. However, much information has been
18 processed at the bank because they're the first hand that
19 touches it because you want to do some sorts before you
20 send it to keypunching, otherwise you're going to increase
21 costs at the keypunching operation.

22 For example you want to have all the same project

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1 together as best you can. You might even go so far as to
2 say all \$10 amounts should be together and all \$20 amounts
3 and all 25's up the line.

4 Q Do you know currently how they divided up,
5 monetarily, 200, 1,000?

6 A In some cases they're done that way. And in
7 other cases they are not, depending on how many are in a
8 batch.

9 Banks like to do that because, one, it's good for
10 accounting and, two, it's also good at the other end of the
11 spectrum when somebody's keypunching that on a file because
12 they get in a habitual process; and if they're doing \$10
13 amounts switching, they make it wrong. So they many times
14 like to go through all the 10's and then all the 25's.
15 It's not an easy process.

16 If we implemented this best effort, we would
17 probably have the bank go through the documents and
18 separate them into two piles which is basically those who
19 complied and those who did not comply.

20 That's not going to be a particularly expensive
21 process. It may only cost 2-1/2 cents a unit to separate
22 them because it will make sense in the other end.

97043795203

1 Q How did you come up with this 2-1/2 cent figure?

2 A I haven't asked the bank, but based on other
3 charges that they have for any processing they do, I picked
4 basically the lowest charge that they would have for doing
5 anything.

6 Now again that's not particularly expensive,
7 2-1/2 cents, could be as high as 3-1/2 cents. They may say
8 higher but we'll negotiate.

9 And that's not again, particularly expensive
10 until you multiply it out by maybe 1.3, 1.4, 1.5 million.

11 Q And what does 1.3 to 1.5 million come from?

12 A That's the number of documents that they're going
13 to have to go through on an annual basis. It says so in
14 here.

15 Q Okay. We'll get to that.

16 A Okay.

17 Q A contribution comes in and the bank does its
18 processing and batch work. What happens then? Where does
19 it go?

20 A It goes to the keypuncher.

21 Q Not the contribution, I assume?

22 A Not the contribution, the contribution document.

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1 The contribution actually gets deposited in the bank never
2 to be seen again. Money is never usually touched by human
3 hands in terms of the committee at this point.

4 The contribution information goes to a
5 keypuncher.

6 Q That keypuncher, I believe you mentioned, is a
7 computer services an out --

8 A It's a service bureau, yes.

9 Q Okay. And what is the process once it reaches
10 the bureau?

11 A They are looking up based on a sequence number if
12 it is a house file.

13 Q In house opposed to --

14 A No. House file are those people who have donated
15 before.

16 Q Okay.

17 A That person is looked up on the house file, by a
18 sequence number, if that sequence number exists on the
19 document. It usually will if it's a house file.

20 They will then very quickly update the donor
21 information to date, cage date and -- cage date was the
22 date that the contribution entered the cage at the bank and

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1 they made the deposit. That may be different from the date
2 that is actually punched on the file.

3 They will then update that file. If there is
4 additional information to update, they will do that at that
5 time. And they are not looking so much at street and
6 address information, though they will glance at that.

7 If they got the sequence number, that short
8 circuits having to re-key punch all that information.

9 Q And do they also track at this point employer and
10 occupation information?

11 A Yes, they will, if that needs to be changed or
12 added, they will add that.

13 Q And if it's a new contributor, I assume it
14 processes is little different?

15 A The process will then be search the files for
16 anyone that has ever been on it before to see if they are
17 making a duplicate file.

18 If they do not find a duplicate file or somebody
19 has been long lapsed in the process, they will create a new
20 file with an unique number. They will then add all of that
21 information.

22 The putting of the FEC information on the file is

97043795206

1 initially, costs as much as creating the file. It's done
2 based on number of strokes.

3 MR. KIRBY: Isn't that a factor two or, it
4 doubles the cost.

5 MR. HERSHKOWITZ: It doubles the cost or is the
6 same cost?

7 THE WITNESS: It doubles the cost.

8 MR. HERSHKOWITZ: Just, I didn't understand.

9 BY MS. WARD:

10 Q Can you tell me when the last time the computer
11 program that is used to process that information was
12 revised?

13 A That program is constantly being debugged and
14 revised. As we sit here they have probably found at least
15 one bug and they have probably made at least one revision.

16 Q Okay. Let the record reflect what we have been
17 sitting here for approximately 50 minutes.

18 A Yes. You will have somewhere around 10 bugs per
19 day and that's been pretty average for the past eight or
20 nine months.

21 Q What is a bug? What kind of bugs have you been
22 seeing?

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1 A Well, strange things occur. You put a street
2 down in a particular sequence, the street name has 11
3 digits, but then you put ST and then you have a period and
4 because of the unique place that that period hit, there's
5 some bug in the computer that will make it fly apart.

6 Q Sounds like a mainframe.

7 A No, it's not as a matter of fact. It's a PC
8 based system. And then you have to start seeing why they
9 did that.

10 Or you may put Ms. down and everybody who has
11 Ms. and a last name that starts with C for some reason, and
12 I'm being very simplistic here, we cannot get out any
13 information on them or the information may show that they
14 gave thousands of dollars.

15 Q And you're saying when in fact they didn't?

16 A Right.

17 Q Okay.

18 A And somebody died and because their name only
19 fits, including the address, it may not be the name, it may
20 be the address, it may be the particular state. It may be
21 because we expanded the state. It may be because that
22 particular person died and gave \$30.

97043795208

1 Q I'm getting the picture here. Well, can you tell
2 me, is the contractor who does this work paid on an hourly
3 basis or set rate for contract full term?

4 MR. KIRBY: Counsel, this really is information
5 you need for purposes of this case?

6 MS. WARD: I'll represent to you that it's
7 relevant.

8 THE WITNESS: The contractor is paid on both of
9 those bases. He is not going to sit there and make a deal
10 with me knowing that he may double his capacity of
11 keypunching which is the most labor intensive portion of
12 this if I'm successful and I drove him into bankruptcy, so
13 he's going to charge me based on some usage.

14 There are other portions that I am going to pay
15 for that are just because he is got a machine and it's
16 sitting there.

17 BY MS. WARD:

18 Q Uh-huh.

19 A So it's a combination of those. If you would
20 like to bring some accountants along and take a couple of
21 weeks, we can go through the contractual procedure of how
22 you pay for all these things and all the bills.

97043795209

1 Q Well, you've made a representation that the
2 computer program would have to be changed?

3 A That's correct.

4 Q And what I've heard so far is talk about a
5 keypunch?

6 A You asked me to go through this process starting
7 with the bank even though it had nothing to do with the
8 computer program even though I think I mentioned it then.

9 So I'm taking you through this. If you want to
10 talk about the computer program I'm glad to do it. I'm not
11 an expert in it.

12 I do know that there are going to be several
13 people for any major change who will have to sit there for
14 three, four, five, six months, depending on how massive it
15 is and the larger your database, the more massive it's
16 going to be.

17 If you have one name in your database it's not
18 real massive. You don't have to do anything. If you have
19 a million and half names or 2 million names in your
20 database, you have to think a long time before you make any
21 change.

22 And then it will take another six months to a

9704379521C

1 year to probably find out where all the bugs are in that.

2 Q Can you tell me briefly, I know you don't have a
3 technical background in computer programming, but how would
4 the current computer program that is used, need to be
5 changed in order to comply with this regulation?

6 A The first thing they have to do is make more
7 space on the file. Space does not exist on the file at
8 this point and this is not for keeping the information,
9 this is for keeping track of going to get the information.

10 Q So you're talking about additional RAM memory in
11 the computer?

12 A No, space on the file. I'd have to push
13 everything aside. And because I don't know which file I'm
14 going to have to keep this information on, I'm going to
15 have to create more space on every file unless somebody is
16 a wizard and can predict that 50, 60, 70 or 80,000 people
17 are going to meet this requirement.

18 And my computer company is going to say and it's
19 going to be very cheap, it's going to say well, we're only
20 charging you \$1.03, per record per year. We'll raise it to
21 \$1.06 or \$1.07 per record per year.

22 Q Is that the only change that will have to be

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1 made?

2 A No. Because he's not going to let me get away
3 with the other end of it which is keypunching because now I
4 have to have operators on a daily -- looking after I've had
5 the bank sort these things so I can at least cut some
6 costs -- are going to now be looking for, out of this stack
7 of paper, the one or 2,000 or 5,000 that may be out of
8 compliance where we would have to send a letter.

9 So that's going to take more time. And because
10 those are paid on a first row and per hourly basis, they're
11 going to have to look for things and make decisions.

12 (Recess.)

13 BY MS. WARD:

14 Q Let's move on to paragraph, another sentence in
15 paragraph 6 of your declaration. It says that staff would
16 be retained and either reallocated or increased to meet the
17 demands of a new best efforts regulation.

18 A Sure.

19 Q Why is that?

20 A Well, right now the processes over a long period
21 of time has been fairly well automated. You're asking us
22 in a huge volume to pull out the few a day, now a few a

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1 day, in a week we've estimated would be somewhere between
2 1,000 at the low end and 4,000 at the high end, to send a
3 separate letter to them.

4 We would have to assign staff to make sure that
5 that compliance took place which means that we either have
6 to take them out of present resources or create additional
7 resources.

8 My estimate of our needs is, we will probably
9 need two people and the cost of that with fringe could be
10 \$60,000 a year, withheld benefits, fringe, Social Security,
11 that does not count the office they have to sit in, the
12 file cabinets, the desks, the air conditioning, the
13 heating, the lights, the additional insurance.

14 Now if I take them out of their current
15 positions, then I'm reducing income and I happen to think
16 that this will reduce income no matter what, or I am taking
17 money out of the bottom line.

18 Now if the low end of approximately 50,000 pieces
19 a year is correct, before I've sent out a letter, that
20 personnel alone has added approximately 120 to the cost of
21 a letter.

22 At the high end, it could be 200,000 pieces a

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1 year. And these are estimates but they are high and low
2 estimates and my guess is somewhere in there fits the
3 answer.

4 Q Could you tell me where did these two numbers
5 come from, 50 to 200,000 people?

6 A They are estimates based on what we know from our
7 file at present.

8 Q Based on current noncompliance?

9 A To some extent. The FEC thinks noncompliance is
10 one person, one donation, never to be seen again. In
11 actuality it may be one person, many donations, always to
12 be seen again.

13 I may have by your numbers this year, only 8,000
14 records that are in noncompliance, pick a number. But --

15 MR. KIRBY: Just for the record, when we say
16 noncompliance, we're talking about no occupation or
17 employer.

18 THE WITNESS: Yes. We've got address, everything
19 else.

20 BY MS. WARD:

21 Q Okay.

22 A Those people may have produced, based on this

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1 regulation, 80,000, 100,000 letters that you're requiring
2 me to send to them.

3 Q Now, why is that?

4 A Well, I mean, I have thousands, tens of thousands
5 of people who give me multiple gifts and these are the
6 people, not the major donors that hit that threshold of
7 noncompliance. The moment they hit it, the next week they
8 have hit it again and two weeks later they've hit it again
9 and each one of these is going to require a letter in a
10 very tight schedule.

11 Q Okay. So you're saying small donors but that in
12 increments that aggregate up to \$200?

13 A That's right.

14 Q Okay.

15 A But they don't stop at \$200.

16 Q If you're lucky.

17 A I am.

18 Q I had that feeling.

19 A The new disclaimer that you're proposing is
20 actually going to reduce compliance. I don't know what
21 person thought this up but they thought it up specifically
22 to reduce compliance.

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1 Q Why do you say that?

2 A Because you're going to say \$1,200 aggregate in
3 there. Now aggregate to some people may be gravel in the
4 back driveway.

5 However, the average person who is filling out
6 a check because the vast majority of these people are not
7 \$200 donors but 10, 25, 50 donors are saying that's not me,
8 I don't have to fill this information out.

9 Whereas now, we have a process that requests that
10 information even if they fill out a \$50 check \$5 check.
11 And we get that in a very hefty compliance.

12 So that information is put on the file in a very
13 automated process that keeps that information on the file.
14 The moment I stamp this on everything that I'm sending out,
15 you're going to reduce compliance by some huge number. I
16 don't know what that huge number is but you probably ought
17 to fire whoever thought that up.

18 (Discussion off the record.)

19 BY MS. WARD:

20 Q You said again that it would reduce compliance.
21 Why do you say that it will --

22 A I'm right now telling people basically can you

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1 give me this information, and we're putting them through a
2 process and if they're a \$5 donor or \$10 donor or 50 or a
3 \$100 donor, they give us the information. We don't have to
4 think about the process. We put it on the file so that
5 whenever it hits, the magic number of \$200.01 it prints it
6 off on FEC report again, almost untouched by human hands.

7 Q And you saying that currently happens?

8 A Yes.

9 Q Okay.

10 A Every time I'm asking for a donation, be it in
11 prospecting or house file, telephone, I'm asking for that
12 information.

13 Q Employer, occupation --

14 A Yes.

15 Q I want --

16 A Now you've told me to put a new disclaimer on
17 which, if it wasn't so dumb, I mean it would be almost
18 funny, that says you don't have to give me this information
19 unless you're an aggregate total of \$200.

20 I just put the brakes on everybody giving me that
21 information. Now you're going to make me spend more money
22 for compliance and you've tied my hands to give me a tool

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1 that will guarantee that compliance will go down. And I
2 can't create bureaucracy that will do that in an ordinary
3 world.

4 Q Going back to what you said before, what is your
5 basis for your understanding that more than one gift from
6 one person requires more than one letter?

7 A Well, I think I read the rule and if a person
8 makes a donation that has the aggregate total over \$200,
9 then that triggers a letter to get the information if they
10 haven't given it to me.

11 And next week if they make another gift and it is
12 over, they're obviously now over \$200 but the gift triggers
13 the letter, not the request for information.

14 Q Okay. And if only one letter a year was
15 required, how much would that reduce your costs, well,
16 first, would that reduce your costs?

17 A It probably would reduce the mailing costs, but
18 it would not reduce all the back end costs.

19 I have to build a back end whether it is one or
20 10,000. Now that one can be very expensive. The 10,000 is
21 just some prorated portion.

22 I suspect if the FEC looked at what it cost

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1 itself to send one letter to people to campaigns to bring
2 them in compliance, it might think that it's just a stamp
3 and some paper but the reality is your accountants will
4 tell you it could be in the 20 and \$30 range.

5 MR. KIRBY: That was a hypothetical question.
6 I'm not sure all the terms of the hypo were clear. Are you
7 asking what if you required only one letter, at any time
8 during the year, or do you have to track and assign that
9 when they hit 200 and then send that one letter.

10 If you were tracking up the 200 and then sending
11 the letter. I think your answer made that assumption.

12 THE WITNESS: Yes.

13 MR. KIRBY: Okay.

14 THE WITNESS: And the fact it, the letter is not
15 the cost. The letter is no diminimus cost in this process.

16 BY MS. WARD:

17 Q Then the diminimus cost is --

18 A Is getting ready for the letter.

19 Q So it's the front end?

20 A Yeah.

21 Q Not the back end?

22 A I don't know what the number of letters will be.

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1 I have given you a range and the range is based on a
2 minimum number of letters to a maximum number of letters.

3 Q And that's the 50 to 200,000?

4 A Yes. But that does not mean that my bank costs,
5 my keypunching costs, my personnel costs will go down.

6 Q Okay. Getting down to the personnel cost, you
7 said the staff would have to be retrained. In what way
8 would they need additional training?

9 A Well staff is a wrong term here. I started out
10 by saying I have to retrain the bank staff and increase
11 costs. Then I have to retrain the computer operation.
12 Then I have to retrain the in-house staff to be aware that
13 anything that floats through their process, they need to
14 look this up.

15 Q Are there regular training sessions with the bank
16 staff currently?

17 A We go out there, we talk to them. We have a
18 constant dialogue on a daily basis. But there have been no
19 major changes of this type in a while.

20 Q So there are daily conversations but the formal
21 training has not occurred for --

22 A That is correct.

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1 Q -- for a period of a year, a month, a while?

2 A Oh, I don't know whether the bank has retrained
3 its people in regards to caging operations, formal training
4 where everybody sits down, no.

5 Q Okay. Continuing on paragraph 6 of your
6 declaration, you state that until new computer software is
7 developed, all follow up inquiries would have to be done
8 manually, until new computer software were developed?

9 MR. KIRBY: Actually he said until new computer
10 software were developed because this was a hype, this is
11 hypothetically assuming that their rules were valid and
12 will be implemented.

13 BY MS. WARD:

14 Q What is a manual follow up?

15 A Well it is kind of a needle in a haystack
16 procedure, somebody has to look through this stuff then
17 look them up and this is very expensive, on the computer,
18 the keypunchers do, and send the document, pull it out of
19 the stack, send the document over to the staff office which
20 we're now going to have to create with two people, so that
21 they can use a PC and a laser printer, type in the name and
22 address or if they get real lucky on a daily basis they

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1 will get a disk with this information, run those out and
2 that is no guarantee that we have found them all.

3 Q Because you're relying on -- what --

4 A I'm relying on somebody looking.

5 Q Currently is any follow up done if the
6 contributor does not follow the request for information?

7 A Well, contributor is going to be followed up with
8 additional requests for information and solicitation
9 multiple times during the year that probably averages
10 somewhere in the mid-20s.

11 Every correspondence we have with them will
12 contain a request for the information in a very tight
13 schedule that has been put together to maximize profit.

14 Q So currently if someone gives a donation of,
15 let's say \$500 and does not provide the contributor
16 identification information, employer and occupation, what
17 does RNC do?

18 A We thank them. We ask them for more money and we
19 request that they fill this information out.

20 Q Is that in the same -- is that in one mailing?

21 A I'm not sure --

22 Q In one mailing is there a please provide

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1 additional information, thank you so much, give me more
2 money?

3 A Yes, I would say that's in the basic thank you
4 process.

5 Q Is that in one mailing?

6 A What do you mean one mailing?

7 Q Is that in one letter that goes out?

8 A You're going to have to define that to me. It
9 sounded like one letter to me.

10 MR. HERSHKOWITZ: Is it all in one envelope?

11 THE WITNESS: Yes.

12 BY MS. WARD:

13 Q Okay. Does the RNC ever send a, what you would
14 call a stand alone thank you letter saying thank you for
15 your contribution?

16 A That occurrence from finance would be so rare as
17 to be able to think, well, in less than one hand in the
18 course of several years. It is not my business.

19 Q I realize it's not your business, but do you know
20 if it's done?

21 A Not by me.

22 Q Okay. Does the RNC currently ever telephone

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1 contributors and request contributor identification
2 information that has not been provided?

3 A In the process of asking for money. A telephone
4 request is really expensive. So you have to, I mean I'm in
5 a business of weigh this in a cost efficiency basis. There
6 has to be a bottom line. If you would like me to call 50
7 to \$2,200,000 people a year and request this information,
8 you're really getting expensive. To pick up a phone and
9 just look at it costs you three bucks.

10 If you actually dial somebody, the price went up.

11 Q Is that based on doing it in-house or doing it
12 through a vendor?

13 A That's based on doing it in-house.

14 Q Would you say that is cheaper than having a
15 vendor do it?

16 A Yes.

17 Q Okay. Continuing on in paragraph 6 of your
18 declaration.

19 A Okay.

20 Q You stated that new procedures would also have to
21 be developed and implemented for processing the responses
22 to the follow up inquiries?

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1 A That's correct.

2 Q Okay. Can you -- is there a -- well, can you
3 tell me what procedures would have to be changed in the
4 processing?

5 A You're not changing any procedures here. You're
6 creating whole new procedures all of which cost money
7 because I now have something new that is happening in my
8 world.

9 And as much as I like it to occur, nobody is
10 going to open those envelopes for free or even look out for
11 them. Where do I send them? Do I have to separate them
12 out.

13 I'm going to have to go get a separate Post
14 Office box. Somebody's going to have to pick that up.
15 Somebody's going to have to open them up. Somebody's then
16 going to have to hand apply that information to the file
17 separate from the very cost efficient automated process I
18 have now.

19 The bank, to pick up the envelope with no money
20 in it and to open it up is going to charge me somewhere
21 around 20 to 21, to \$.22. If dust falls out of it or a
22 piece of paper falls out of it, to send that letter back to

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1 me, they're going to charge me \$.15.

2 To put it on the file as a separate notation,
3 somebody's going to charge me 15 to \$.20 or more, is going
4 to have to look up the file, wait for it to come up and
5 then apply the information to it manually.

6 Q And can you tell me the basis for the figures
7 that you've just given?

8 A They're reality based. That's what I'm charged
9 now.

10 Q Okay. Does --

11 A You remember we have not talked about the cost of
12 mailing the letter or producing the letter yet. These are
13 all costs before one letter goes out the door.

14 Q What would the cost be for producing the letter?

15 A It depends. If I want to make some costs
16 cheaper, then I'm going to have to personalize the letter
17 so that I can have some glimmer of hope of finding that
18 computer record without having to run through hundreds and
19 hundreds of computer records in a search operation.

20 Then because this is a compliance driven
21 situation with minimum to maximum quantities we discussed,
22 1000 a week to maybe 4,000 a week, somewhere in there, I'm

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1 going to have to have these manually done on a daily basis
2 because there's not enough quantity to go to a proper
3 automated process.

4 That's one reason you're going to have personnel
5 in-house to try to do this. Sit down and try to fold 500
6 letters and stuff them in an envelope sometime and see how
7 long it takes you.

8 And that's assuming that I don't personalize the
9 front of the envelope and I use a window envelope, which
10 will cost me more than a regular envelope.

11 And I can't send it nonprofit because you'll want
12 some proof that it got there. So I have to send it first
13 class. Then I have to make a hard copy of it and put in a
14 file and notate what day I sent it and have some separate
15 computer system stand alone that would be able to tell me
16 when did I send it, a particular file, had did I get it
17 back.

18 And then you're going to have a 2 to 5 percent
19 screw up rate that is going to have to be redone. If I
20 sent it out, it would actually be slightly higher than
21 that. Then I have to take it to the Post Office.

22 Q Okay.

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1 A I haven't printed the stationery either or looked
2 at the plates.

3 Q Okay. Well, could you give an estimate,
4 relatively specific estimates about how much things would
5 cost on a specific basis?

6 A Sure.

7 Q How much would the rest of that cost?

8 A That, probably a single letter floating through
9 the system at your most cost efficient rate just to produce
10 a letter and put it in the mail at those rates would
11 probably be somewhere around a buck and a half at the
12 minimum rate. As that quantity drops closer to 1,000 a
13 week, that cost goes way up.

14 Q Okay. Does the RNC currently file amended or
15 supplemental FEC reports if it receives additional
16 information regarding contributors?

17 A I can't say that question with any exactness or,
18 our treasury would have to answer that. I can't tell you
19 that this would produce a constant flow of amended reports
20 which would require and I don't know what the requirement
21 would be, but I presume that it would require additional
22 accounting services, additional personnel in that process.

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1 But I don't know what that would be. That's a cost I have
2 not looked at other than there is a cost associated with
3 it.

4 Q Okay. All these costs that we have discussed --

5 A Yeah.

6 Q -- would these costs change in an election year.
7 This is a non-election year.

8 A Very difficult to answer. I am not sure that
9 they would other than the volume determines the cost. I
10 live in a world that does not look at elections in the same
11 sense that you do.

12 You think there's all kinds of action when you
13 get close to an election. I'm on vacation the month of
14 election. If I haven't done my job they're not going to do
15 much.

16 So I'm at a very frantic pace two years out when
17 the cycle starts doing the planning for two years and the
18 purchasing and putting together the systems and the
19 personnel.

20 I would say however, that in terms of putting
21 things out, the staff and everybody is going to be
22 frantic. Volume does increase during an election year.

1 Nobody wants to change anything. That's as much
2 psychological as factual. I sure don't want to look at
3 anything. I want to make sure that stuff goes out the
4 door.

5 Q Okay. What is your basis of knowledge regarding
6 how the NRSC solicits donations, processes them and
7 prepares reports?

8 A The NRSC?

9 Q The NRSC.

10 A National Republican Senatorial Campaign
11 Committee?

12 Q Uh-huh.

13 A Prior to going to the RNC I spent over four years
14 as the finance director. When those systems were being put
15 in place in the early to mid-'80s I was also the finance
16 director.

17 Q Okay. And what is your basis of knowledge
18 regarding how the NRCC does the same thing, solicit
19 donations, process them and prepare the report?

20 A Long time association and relationship. Knowing
21 their finance director and how their finance operation
22 works and who some of their vendors are. Essentially it's

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1 the same thing.

2 Q Okay. Could the cost of compliance with this
3 regulation be incurred once or somehow shared between the
4 three committees?

5 A No.

6 Q Okay. Currently is there any sharing of staff?

7 A No.

8 Q Okay. Any --

9 A Not at the finance level.

10 Q In regard to processing contributors for
11 information donation?

12 A No.

13 Q Are there currently any training programs?

14 A No.

15 Q Sharing of vendor or vendor costs?

16 A Not of vendor costs. We occasionally use the
17 same vendors out there.

18 Q You use the same vendors to process computer
19 information?

20 A In some cases.

21 Q In what cases are those?

22 A That would be the case of the NRSC and the RNC.

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1 Q And you both share the vendor, I think it was
2 CMDI?

3 A No. The NRSC and the RNC do not share the same
4 computer vendor.

5 Q I'm sorry then what vendor do you share?

6 A We share processing of information at the front
7 end, we share the same bank.

8 MR. KIRBY: By share you simply mean use the same
9 bank.

10 THE WITNESS: Yes. We do not share any
11 information. The bank does not disclose anything to me,
12 would not disclose it. I don't want to know anything about
13 what they're doing. That is more of an accident about
14 somebody having a service.

15 BY MS. WARD:

16 Q Okay. Moving on to paragraph 7 of your
17 declaration, you state that follow up inquiries would
18 inevitably convert hundreds of thousands of dollars from
19 the split would inevitably divert hundreds of thousands of
20 dollars from the political purpose for which they have been
21 earmarked during an election year?

22 A Yeah.

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1 Q How does the RNC earmark contributions?

2 A We have a budget that says we're going to give so
3 much into the political process. If you're trying to say
4 we're earmarking contributions for a specific campaign or
5 candidate, that was not what was meant here, and I don't
6 think the process of how we spend our money in the
7 political end of it has any relevance to this at all.

8 Q Well, what I am questioning is the earmarking.

9 MR. KIRBY: I didn't mean to cause confusion
10 drafting this. I'll explain to the witness.

11 There's a technical concept of earmarking under
12 FEC regulations that I think is has caused some confusion.
13 That's not what we had in mind.

14 The thought I think here was simply, when
15 somebody sends a contribution into a political party, their
16 desire is to help the candidate and a cause and not to fund
17 federal bureaucrats looking at data sheets.

18 THE WITNESS: I didn't have any problem with
19 that. I think you looked at this thinking that we are
20 earmarking money for candidates.

21 What we're saying here is that we have told
22 people and made a sacred oath with them that we're going to

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1 use as much of this money as possible to help the political
2 process and help, in our case, Republican candidates. And
3 we have an obligation to those donors to do that. And I
4 don't think the donors want us to spend any more money in
5 processing. We try to make this as efficient as possible.

6 BY MS. WARD:

7 Q Well, the earmarking, your term is not --

8 A No.

9 Q -- is not as to --

10 A We are marking. We have a budget.

11 Q This earmarking doesn't just occur in election
12 year, I mean from what you said as I understand it?

13 A I don't know. You check your records. There
14 were elections last year.

15 Q Right, right. Okay.

16 A They don't even occur in November. One occurred
17 this week, I think it was Tuesday. It's in all the
18 papers.

19 Q What is your basis of knowledge regarding how the
20 NRSC and RNC earmark their contributions?

21 A How are you using earmarking?

22 MR. KIRBY: I object to that.

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1 MS. WARD: The same way you've used it here now.

2 THE WITNESS: I am privy to the budgets of both
3 those organizations so I know that they are going to
4 require a certain amount of money to comply with their
5 budget and that's a very tight scenario.

6 I've told them exactly, almost down to the penny
7 what I think I'm going to spend this year and within that
8 is what it's going to be that's left over. And they have
9 created a budget based on that.

10 BY MS. WARD:

11 Q Okay. In your declaration, you state that the
12 three party committees would be required to send out
13 hundreds of thousands of follow up inquiries?

14 A Uh-huh.

15 Q What is the time frame for that hundreds of
16 thousands figure?

17 A That would be based on one year.

18 Q Okay. And what is your basis for coming up with
19 the number hundreds of thousands?

20 A Well, based on the file size of the two
21 committees, two of which I intimately know, and my own says
22 that I'm going to have to do between 50 at the very low end

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1 and 200,000 a year.

2 That's an estimate, I realize, but when you put
3 them together, it's hundreds of thousands.

4 Q Okay. Paragraph 9 of your declaration states
5 that the RNC receives 1.3 to 1.4 million contributions in a
6 year.

7 A Yes.

8 Q Okay. Of those contributions, how many are from
9 the donor giving an aggregate of over \$200?

10 A That's going to vary. Depending on how
11 aggressive you are and it's going to be a system that goes
12 on through the year. It could be as low as 30 or 40,000
13 because you're in a depressed situation after an election.

14 It could be as high as 80 or 90 or 100,000 as
15 you're going into a presidential election or a year like
16 this, which is going to be low donor driven it can be 70 or
17 80,000. I don't know that number until I get to the end of
18 the year and it is a grade on a report card that I get.

19 Q Uh-huh. Do you have an average that you can give
20 me?

21 A No.

22 Q Okay.

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1 A You got a year?
2 Q Let's pick 1990.
3 A 1990, 1990. I was at the Senatorial Committee
4 and that group of people, I think, was about 42,000.
5 Q 42,000 because it is given an aggregate?
6 A At the Senate Committee and, if I remember
7 correctly.
8 Q And what percentage of contribution was that, the
9 42,000 you just referenced?
10 A The percentage of the total contributions?
11 Q Uh-huh.
12 A I don't think you can, you know, that's dividing
13 apples and oranges. Because you can't take a percentage of
14 total contributions by contributors.
15 You mean how many contributions did that 42,000
16 make or divide that by the total number of contributions
17 that the Senate Committee got.
18 MR. HERSHKOWITZ: For what percentage of the
19 contributors in 1990 did the Senatorial Committee did not
20 provide contributor information, complete contributor
21 information.
22 THE WITNESS: I don't know that. I did not work

1 it. I can tell you 100 percent of these contributors were
2 asked for that information on a continuing basis.

3 BY MS. WARD:

4 Q Okay. Later in the declaration you stated that
5 32 percent do not include the employer and occupation data?

6 A That number fluctuates depending on the process
7 on a daily basis. That was an overall guesstimate based on
8 different surveys over a different period of time.

9 That can go up or down. No one actually looks at
10 that. We process the information.

11 Q And of the 32 percent, how many are contributions
12 aggregating under \$200?

13 A Under \$200.

14 Q By your lower donor?

15 A I don't know.

16 Q All right. How many donors giving over \$200
17 don't supply that information?

18 A Well, we do look at that at the end of the year
19 and we have approximately 90 percent compliance.

20 Q Okay. And that's for this last year or was that
21 an average?

22 A That's an average. I'd have to go back and

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1 look. It might be '89 percent. It could be '91 percent
2 but this career so far the compliance rate is 84 percent.

3 MR. KIRBY: Again just so we're clear about
4 compliance, you mean including name and address, occupation
5 and employer data?

6 THE WITNESS: That is correct. If it is name and
7 address, we're 100 percent in compliance.

8 BY MS. WARD:

9 Q Okay. In paragraph 7 of your declaration, you
10 state that each single follow up can cost as much as \$6.00?

11 A Yes.

12 Q What is the least a single follow up can cost?

13 A Well, again it depends on what you're doing. If
14 I was mailing 1.5 million of these things I could probably
15 get the cost down with the computer operation, you know,
16 maybe less than a buck. But that would be mass mail at one
17 point in time and it's not what this requires. This is not
18 mass mail. This is 100, 200, 300 pieces at a time.

19 Q Okay.

20 A That ain't mass mail. That's somebody sitting
21 there and stuffing an envelope.

22 Q Uh-huh. What is the, it's, if \$6.00 is the upper

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1 limit and \$1.00 is the lower limit, what's the average
2 projected cost of compliance with this new regulation?

3 A I don't think you can have a projected cost. At
4 the lower limit of our estimate of 50,000, you're probably
5 at six bucks each. Now could it be \$5.90 or \$6.20? Sure.

6 If it is about 200,000 pieces based on how this
7 has to be done, then it is about \$2.50 apiece, might be
8 more than that.

9 Q Okay. Is the \$6.00 figure and the \$1.00 figure
10 you've discussed based on RNC's calculations of the
11 projected test?

12 A RNC did not make those calculations. I made
13 those calculations.

14 Q Okay. Do you know what the NRSC's projected cost
15 is?

16 A No, I do not, but I presume that their
17 calculations would be as reliable as mine and they would be
18 approximately the same if somebody was making them by the
19 process.

20 Q And that presumption is based on what?

21 A The presumption is I thought about the process
22 and if anybody thought about the process which is more than

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1 putting a stamp on a bunch of paper and throwing it into
2 the mail, then those costs are going to fly.

3 Q And do you know the projected costs for the NRCC?

4 A Should be about the same.

5 Q Let's talk about the \$6.00 figure. Can you walk
6 me through each element that went into that \$6.00 cost?

7 A Sure. You could go back and review all of this
8 because before I got, let's assume that that \$6.00 figure
9 applies, as I said earlier, to the lowest possible number
10 that I gave you. Personnel was immediately \$1.20.

11 You then had to provide space like heat,
12 insurance, overhead, I'm assuming that that's going to cost
13 an additional 35 or \$.40. You then have to provide
14 equipment and rental.

15 Q I'm sorry, equipment and rental? Rental of what?

16 A Well, sometimes you don't buy a piece of
17 equipment because it's too expensive to buy it.

18 Q Well, what kind of equipment are we talking
19 about?

20 A You might be talking about a laser printer.
21 You're certainly going to have to buy some PCs. You might
22 be doing another 35 or 40 cents. Then I have to make space

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1 on the file. I'm actually getting out of order here.

2 I have to talk to the bank. In handling the
3 documents, the assumption is it's 2-1/2 cents apiece, not a
4 particularly big figure but that's going to come at the low
5 end of it to approximately 75 cents per.

6 Then you're going to have to make space on the
7 file and you have to make space for everybody and we're
8 going to take our costs from \$1.03 to, I don't know, three,
9 3-1/2 cents. We can use the \$.03 basis. That's going to
10 probably be somewhere around \$.95 per letter, \$.90, \$.95,
11 \$.90.

12 Q Is that for making space on the file?

13 A Yeah. That's assuming I'm only going to send
14 50,000 letters out, but I don't know which 50,000 and so I
15 have to create space for the 1.5 million records that are
16 there.

17 And though that may only be \$.03 a record, that
18 comes to \$.90 a letter. Then I got to go find the
19 information when it comes back. Just processing costs
20 you're going to assume opening an envelope for somebody,
21 the bank catching the thing, somebody looking it up on the
22 file at about a buck a letter at the 50,000 rate.

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1 Based, again you're not doing it all at one
2 time. You're doing it in bits and pieces every day. If
3 you send 50,000 letters one day, I can get you a good
4 deal. You want to send them out at 100 or 200 batches, not
5 a good deal.

6 Now that's just sitting here off the top of my
7 head. I don't know where we are in the process, but I'm
8 sure we're getting up there towards \$5, and I haven't put
9 the information back on the file yet or -- I'm sorry, I
10 haven't printed the stationery or the stamps yet.

11 Q Can you give me, what was the approximate cost
12 again?

13 A Well, this is sending the rascal through a
14 postage meter, driving it to a post office, making sure
15 that it got in, somebody folding the stuff, somebody
16 keeping records, sticking stuff in a file.

17 Do you want hard copy? Do you want us to reput
18 it on the file that we actually sent the record? We made
19 space to notate that we were going to keep the record and
20 produce a letter.

21 Now we have to put something back on the file
22 that says we actually sent it because you'll want proof

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1 that we sent it so we have to have the ability to bring a
2 hard copy back off that file.

3 Q Uh-huh.

4 A Unless you want us to kind of go against the
5 process which is code the file and then go match it up to a
6 subfile where we could produce a letter, we're probably
7 going to have to keep that letter on the file.

8 Discussion off the record.)

9 THE WITNESS: Somebody's going to come in and
10 say, okay, prove to me you did this. Show me the hard copy
11 of the letter. I haven't Xeroxed anything yet. I mean
12 that's \$.15 a pop not counting the person. Maybe I can get
13 it down to a dime, but I'm not counting the person standing
14 there doing it, labor intensive process.

15 BY MS. WARD:

16 Q Okay.

17 A And we certainly have not talked about what the
18 cost in additional addendums to the FEC report, the
19 accountants that have to look at those addendums and make
20 sure they're correct and then walking the damned addendum
21 over to the building and Xeroxing them.

22 MR. KIRBY: You meant darn back there, didn't

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1 you.

2 THE WITNESS: Yes, I'm sorry. I meant darn back
3 there.

4 BY MS. WARD:

5 Q One minute. Let me make sure I've covered
6 everything. I have no further questions. Your witness.

7 (Recess.)

8 EXAMINATION

9 BY MR. KIRBY:

10 Q I have just a few questions, Mr. Mitchler.
11 During this year, 1994, how many solicitation envelopes is
12 the RNC going to send out?

13 A I'm going to give you a range because that's
14 going to change at different times and it changes up or
15 down.

16 It's probably planned right now about 40
17 million. That could go up.

18 Q All right. Now, do you have any sense of similar
19 figures for the other two committees?

20 A The NRCC will probably be somewhat lower. The
21 NRSC, if it's lower, it's not much lower.

22 Q Okay. Now, with respect to the RNC, will each of

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1 those mailings ask for personal identifying information?

2 A Absolutely, every one of them.

3 Q And that includes any thank you letters that you
4 send out?

5 A That is correct.

6 Q As I understand it, your thank you letters also
7 ask for contributions?

8 A That is correct.

9 Q Do you get contributions as a result of your
10 thank you letter?

11 A Yes, we do.

12 Q Do you have a ball park estimate of how many a
13 year you generate that way?

14 A We're going to do somewhere around 1.3 to \$1.4
15 million in the thank you letter process.

16 Q All right. Now, is there some, trying to think
17 how to phrase this. Is there some psychological theory
18 behind the way you draft the responses you send a
19 contributor to send back?

20 A We want to make the process as easy and as
21 nonthreatening as possible so we can; one, raise money, and
22 two, meet the burden of compliance.

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1 So we run them through the process of asking them
2 a number of questions of which the FEC information is the
3 last question. And this is by trial and error over almost
4 two decades, not quite two decades but almost two decades
5 of essentially, if someone picks up a pen and starts
6 answering the most important, in our mind, question first,
7 they're going to continue and not stop when they get down
8 to the bottom.

9 I think it would be an inhibiting factor if we
10 put that information first or if we separated that
11 information out or made it threatening.

12 Q In salesmen's terms, you're trying to get the
13 respondent to take the first step; is that fair?

14 A It's called selling on a minor point.

15 Q Okay.

16 A The insurance salesman does not come to you and
17 say, do you want the \$10,000 policy. That's too big a
18 decision to make. Everybody who has bought insurance
19 understands that he always says, do you want the \$5,000
20 policy or the \$10,000 policy. It's a smaller decision.
21 Well, what we do, we are doing the same thing we are making
22 you make easier and smaller decisions including the check.

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1 The FEC information is a point when people say,
2 no, I don't want to use that information. I will give you
3 an idea because you guys have probably never seen anybody
4 ever fill one out, but on a daily basis.

5 And I pulled this off a stack as I was walking by
6 yesterday. This is what people think of the information.
7 And we brought one, I brought one, picked it up, one you
8 could at least read in mixed company.

9 MR. KIRBY: Why don't we just mark this as RNC
10 Exhibit 1.

11 (Discussion off the record.)

12 (RNC Exhibit 1 identified.)

13 BY MR. KIRBY:

14 Q Mr. Mitchler, would you just read, here where
15 they're asked for occupation and what does the respondent
16 say?

17 A "None of your business."

18 Q And does it say anything else on that sheet?

19 A Yes. "Don't want your calls."

20 Q And down at the bottom?

21 A "I hope and pray that this will be the last of
22 the mail I receive from this organization."

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1 Q Now, do you know, did this person make a
2 contribution?

3 A No, I did not look. I presume they did because
4 this was on a house file document.

5 Q Okay. Do you have, based on your years of
6 experience, Mr. Mitchler, any assessment of how the new FEC
7 requirement of follow up letters and specified statements
8 will affect your relationship with your committee's
9 contributors if you have to implement that?

10 A Sure. We're going to have three things that take
11 place. One is the income is going to go down, costs are
12 going to go up and compliance is going to go down
13 essentially, in a very tight schedule, we're going to
14 insert more mail in the process.

15 And this is very well thought out, very precise
16 on how you build the schedule to solicit donors. You're
17 going to ask me to stop soliciting them and start badger
18 them for information.

19 My income is going to go down; and on top of
20 that, you're going to make me use a new disclaimer that's
21 going to make compliance go down and then you're going to
22 complain that maybe you ought to be doing more for

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1 compliance than getting money, and compliance going down is
2 not my fault, it's the FEC's fault.

3 Q And we're using compliance in the terms of at the
4 end of the year being able to provide name, address and
5 employer and occupation for donors for the RNC for the end
6 of year. What percentage of compliance does it presently
7 achieve?

8 A It's about 90 percent, which I might add the
9 Internal Revenue Service estimates that 10 to 12 percent of
10 the people in this country don't file, they can throw them
11 in jail. And our compliance is as good, if not better, and
12 the IRS.

13 MR. KIRBY: That's all I have.

14 BY MS. WARD: Thank you, very much.

15 (Whereupon, at 11:55 a.m., the deposition was
16 concluded.)

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ALBERT E. MITCHLER

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C O N T E N T S

WITNESS

EXAMINATION

Albert E. Mitchler

by Ms. Ward

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by Mr. Kirby

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E X H I B I T S

MITCHLER DEPOSITION NUMBER

IDENTIFIED

Exhibit 1 - Correspondence

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Exhibit 2 - Mitchler declaration

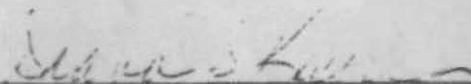
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, DIANA S. KIERSIN, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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Notary Public in and for the
District of Columbia

My Commission Expires JULY 31, 1995

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Paid for by the Republican National Committee. Funds received in response to this solicitation will be deposited in the RNC's federal account unless otherwise prohibited. Federal election law requires us to report the following information:

Occupation: NONE of your Business

Employer: _____

Please check if self-employed.

Telephone number(optional): Don't want your calls.

You may make your RNC contribution by credit card if you choose by completing the information below:

Type of Credit Card: Visa MasterCard American Express

Credit Card Number: _____

Expiration Date: _____

Name as it Appears on Card: _____

Signature: _____

Amount of Gift: \$ _____

I hope pray that
this will be the last
of the mail I receive
from this organization.

C.C.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN NATIONAL COMMITTEE
310 First Street, N.E.
Washington, D.C. 20003

NATIONAL REPUBLICAN SENATORIAL
COMMITTEE,
425 Second Street, N.E.
Washington, D.C. 20002

and

NATIONAL REPUBLICAN CONGRESSIONAL
COMMITTEE
320 First Street, S.E.
Washington, D.C. 20003

Plaintiffs/petitioners,

v.

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

Defendant/respondent.

No. 94-1017 JHG



DECLARATION OF ALBERT E. MITCHLER

ALBERT E. MITCHLER declares that:

1. I am the finance director for the Republican National Committee ("RNC"), an unincorporated association comprised of 165 members pursuant to Rule 19 of the Rules of the Republican Party. The RNC has its principal place of business at 310 First Street, N.E., Washington, D.C. 20003. I have held my position with the RNC for a year. For the four previous years, I was finance director for the National Republican Senatorial Committee ("NRSC"). Due to my duties,

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I am generally familiar with the fundraising activities of the National Republican Congressional Committee ("NRCC").

2. I make this Declaration in connection with the Verified Complaint and Motion for Interlocutory Relief filed contemporaneously with this Declaration by the RNC, the NRSC, and the NRCC.

3. The RNC, NRSC, and NRCC are the primary political committees of the Republican Party at the National level. They support Republican candidates for the offices of United States President, Senator, and Representative. Among other things, they solicit voluntary political contributions and provide financial support to Republican candidates.

4. The RNC, NRSC, and NRCC regularly and repeatedly solicit political contributions from their supporters. Each solicitation includes a clear and conspicuous request for the donor's personal and identifying information, including occupation and employer. Each committee also regularly files reports with the FEC disclosing such information to the extent that it is received.

5. On September 24, 1992, the FEC issued a Notice of Proposed Rulemaking seeking comments on proposed revisions to the Best Practices Regulations. 57 Fed. Reg. 44137. A public hearing was held on March 31, 1993. The RNC, as well as the NRSC and the NRCC, submitted written comments to the FEC. Mr. Michael A. Hess, chief counsel for the RNC, personally appeared before the Commission at the March 31, 1993 hearing.

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5. If the RNC is required to comply with the newly promulgated Best Efforts Regulations, the RNC would be required to alter the manner in which it solicits donations, processes donor information, and prepares reports for the FEC. The RNC would have to revise its solicitation literature and discard materials previously acceptable. New computer programs would have to be developed, new stationary would need to be printed, and staff would need to be retrained and either re-allocated and/or increased to meet the demands of the new requirements. Until new computer software were developed, follow-up inquiries would have to be done manually. New procedures would also have to be developed and implemented for processing responses to follow-up inquiries, record-keeping, and producing amended or supplementary FEC reports. These tasks are especially burdensome in an election year and would impose substantial injury.

7. Follow-up inquiries required by the new regulations, no matter what their cost, would inevitably divert hundreds of thousands of dollars from the political purpose for which they have been earmarked during an election year. The three party committees would be required to send out hundreds of thousands of follow-up inquiries under the newly revised Best Efforts Regulations. Each single follow-up can cost as much as six dollars.

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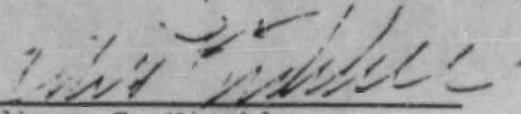
8. The NRSC and the NRCC would have to undertake efforts similar to those described above in order to comply with the new regulations.

9. The RNC receives approximately 1.3-1.4 million contributions in a year. About 32 percent of the contributors elect not to provide occupation and employer data, despite receiving repeated clear requests. Thus, the new FEC regulation would require the RNC to send out hundreds of thousands of follow-up requests. The NRSC and the NRCC have comparable donor lists, and would incur similar burdens.

10. Most contributors do not like being burdened with repeated mailings from a political committee. We try to space our communications to avoid impairing our relations with our supporters. To the extent the FEC requires us to send additional mailings to donors -- especially to make repeated requests for personal information -- our relationship with our supporters will be impaired and our fundraising efforts will suffer. The same will be true if our supporters learn that we have misled them, even if we were forced to do so by FEC regulations.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on the 13th day of May, 1994.


Albert E. Miechler

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*** RNC SUSTAINING MEMBER CONTRIBUTION REPLY ***

Response requested by March 9, 1995

TO: Haley Barbour FROM: Mr.
 RNC Chairman
 310 First St., SE

 M5HGNC Member

Dear Haley,

I realize that passing the balanced budget amendment is vital to our long term plans to reduce the size, scope and cost of government. And I want to make sure the Clinton Democrats are held accountable for delaying passage of Republican programs, distorting the impact of our proposals and demeaning our intentions. To help the RNC keep our Party and its agenda moving forward, I have enclosed a Sustaining Member contribution of:

// \$50 // Other \$ _____

Please make your check payable to the Republican National Committee

Contributions or gifts to the Republican National Committee are not deductible as charitable contributions for federal income tax purposes.

Paid for by the Republican National Committee. Funds received in response to this solicitation will be deposited in the RNC's federal account unless otherwise prohibited. Federal election law requires us to report the following information:

Occupation: _____
 Employer: _____
 // Please check if self-employed.
 Telephone number(optional): _____

CREDIT CARD INFORMATION:

You may make your contribution to the RNC by credit card if you choose by completing the information below:

Type of Credit Card:
 // Personal // Corporate Card
 // VISA // MasterCard // American Express
 Credit Card Number: _____
 Expiration Date: _____
 Name as it appears on Card: _____
 Signature: _____
 Amount of Contribution: \$ _____

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN NATIONAL COMMITTEE,
NATIONAL REPUBLICAN SENATORIAL
COMMITTEE,

and

NATIONAL REPUBLICAN CONGRESSIONAL
COMMITTEE

Plaintiffs/petitioners,

v.

FEDERAL ELECTION COMMISSION

Defendant/respondent.

No. 94-1017 (JHG)

PLAINTIFFS/PETITIONERS' MEMORANDUM
OF LAW IN SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 108, and the Court's Order of May 18, 1994, plaintiffs/petitioners, the Republican National Committee ("RNC"), the National Republican Senatorial Committee ("NRSC"), and the National Republican Congressional Committee ("NRCC") (collectively the "Committees"), submit this Memorandum of Law in Support of their Motion for Summary Judgment. Pursuant to Local Rule 108(h), a statement of material facts not in dispute is submitted herewith, as is a proposed form of judgment.

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I. REGULATIONS UNDER REVIEW

This action and motion challenge the FEC's recent revision of its so-called "Best Efforts Regulations" which govern the efforts a political committee must make to obtain and report certain personal and identifying information concerning donors who contribute an aggregate of over \$200 in a year. Although names and addresses are provided by virtually all such donors, the FEC wishes to increase reporting of employer and occupation data. To that end, the FEC has reinterpreted the statute and revised its Best Efforts Regulations in the following respects:

- It no longer will be enough for political committees to include a clear request for such information in its original solicitation. Instead, under the new regulations, within 30 days of receiving each donation in excess of a \$200 yearly aggregate, the committee will have to send out a separate follow-up request at its own expense to each donor who does not identify his employer and occupation.
- Committees no longer will be allowed to include additional solicitations or other materials in follow-up requests for employer and occupation data. Instead, under the new regulations, they will be forbidden to include anything except a request for the donor's personal data and thanks for the earlier donation.

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- Committees no longer will be allowed to formulate their own requests for personal data. Instead, they now will be required to use the "precise language" specified by the FEC.

II. BACKGROUND

A. Parties.

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Plaintiffs/petitioners are the primary political committees of the Republican Party at the national level. The Committees support Republican candidates for the offices of United States President, Senator, and Representative. Among other things, they solicit voluntary political contributions and provide financial support to Republican candidates. These activities lie at the core of the First Amendment. Buckley v. Valeo, 424 U.S. 1, 14 (1976).

Defendant Federal Election Commission ("FEC") is the agency charged with implementing the Federal Election Campaign Act, 2 U.S.C. § 431 et seq ("FECA"). The FEC recently promulgated revised regulations re interpreting the "best efforts" provision in § 432(i) of FECA's reporting requirements. 59 Fed. Reg. 10,057 (1994) (Exhibit 12). These revised "Best Efforts Regulations," codified at 11 C.F.R. § 104.7, are the subject of this action.

B. Legislative Background.

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The "best efforts" provision of § 432(i) of FECA accommodates the requirement of § 434(b) that political committees must report the name, address, occupation, and employer of each donor whose annual contributions aggregate more than \$200, with Congress' decision that FECA should not require donors to provide such personal and identifying information to political committees. Section 432(i) provides that a committee's reports are sufficient if "best efforts have been used to obtain, maintain, and submit" the information. Section 441g of FECA forbids committees to accept cash donations of over \$100. Since checks provide the donor's name, and almost always provide an address, the FEC's focus has been on occupation and employer data for donors whose names and addresses are known.

Section 432(i) was adopted by Congress in 1979 to replace other provisions of FECA that had served a similar purpose. It was part of an overall effort to simplify reporting requirements and reduce reporting burdens on political committees. See H.R. Rep. No. 422, 96th Cong., 1st Sess. 1 (1979); see also S. Rep. No. 319, 96 Cong., 1st Sess. 3, 10 (1979); 125 Cong. Rec. 37,197 (1979) (statements of Reps. Thompson and Frenzel); 125 Cong. Rec. 36,753-54 (1979) (statement of Sen. Pell).

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Because § 432(i) was added in the House of Representatives after the bill had passed the Senate, it was discussed only in H.R. Rep. No. 422, 96th Cong., 1st Sess. (1979). That Report explained (at 14) that, although § 432(i) retained the phrase "best efforts" to describe what the FEC could require, there were some obligations the "best efforts" standard did not permit the FEC to impose:

If the [political] committee made an effort to obtain the information in the initial solicitation and the contributor ignored the request, the Commission should not require the committee to make the same request two, three, or four times.

Thus, Congress made clear that (i) one request would suffice, and (ii) that request could be made in the solicitation.

C. The FEC's Contemporaneous Construction of "Best Efforts."

The 1979 amendments to FECA were signed by President Carter on January 8, 1980. On January 23, 1980, the FEC commenced a rulemaking to adopt implementing regulations. The Notice of Proposed Rulemaking initially proposed to interpret the "best efforts" standard to require "at least one written effort subsequent to the initial solicitation." 45 Fed. Reg. 5,546 (1979) (Exhibit 2). However, at a January 30, 1980, public meeting of the FEC regarding the proposed rules, the FEC's General Counsel reported that, on January 29, he and other FEC staff members had attended a meeting of

the joint staffs of the responsible House and Senate committees (with majority and minority staff present) and it was made "quite clear to anyone" that Congress felt "strongly" that the FEC was not authorized to require more than one clear request included in a solicitation. Transcript at 1-9 (Exhibit 4).¹

At the FEC's request, the FEC staff prepared an alternative proposal interpreting "best efforts" to require only a single clear request and permitting the request to piggyback on a solicitation. Agenda Document # 80-61 (Exhibit 5). The alternative proposals then were discussed at an FEC meeting on February 13, 1980. *Id.* At that meeting, the FEC's General Counsel again stressed to the Commissioners that Congress "felt very strongly" that requiring repeated requests was "something . . . the language in the report was meant to exclude." *Id.* at 149.

The FEC then voted to interpret "best efforts" to require only a single clear request. *Id.* at 151. That remained the FEC's regulation from 1980 to 1994. Thus, in

¹ The quotations are from Charles N. Steale, who then was the FEC General Counsel. The FEC maintains publicly available minutes and tape recordings of its public meetings. A copy of the recording of the January 30, 1980 meeting was provided by the FEC to the Committees' Counsel, and a transcription by counsel taken from the FEC's tape recording is Exhibit 4. The FEC's records are subject to judicial notice. *U.S. v. Wood*, 925 F.2d 1580, 1581 (7th Cir. 1991); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (4th Cir. 1986). Copies of the tape recordings will be supplied on request.

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1980 the FEC expressly rejected, on grounds of statutory construction, the very requirement for a separate follow-up inquiry that the new Best Efforts Regulations seek to impose.

The FEC discussion prior to the vote on the 1980 Best Efforts Regulations focused solely on Congressional intent, and the regulation providing that one clear request for the information would suffice was justified solely as a matter of statutory interpretation based on Congressional intent. Id. No other rationale was suggested in the FEC's statutorily required "Explanation and Justification" that accompanied its final 1980 regulation. See 45 Fed. Reg. 15,080 (1980) (Exhibit 1). Indeed, the FEC's explanatory statement specifically incorporated the language from the 1979 House Report quoted above. Id. at 15,086.

D. The FEC's Consistent Interpretation.

From 1980 to 1994, the FEC consistently interpreted § 432(i) to require only one clear request for personal and identifying information. For example, the FEC's 1985 "Campaign Guide For Political Party Committees," (Exhibit 6) advised (at 16) that:

"Best efforts" consists of a written record showing the committee made a clear request to obtain the information . . .

Similarly, the FEC's 1992 legislative proposal (Exhibit 7), in which the FEC asked Congress to amend FECA to require multiple clear requests, states (at 59) that:

[C]urrent Commission regulations interpret this [best efforts requirement] as a requirement to make one oral or written request for the information. Legislative history indicates that a single request for the information (which can be made in the original solicitation) may suffice. (Emphasis supplied.)

Many other examples could be supplied.

E. The FEC's Recent Rulemaking.

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In recent years, however, the FEC has come under media and political attack for not being sufficiently independent and aggressive. Fritz, Federal Campaign Donors' Limits Not Being Enforced, Los Angeles Times, Sep. 15, 1991; Liebert, Farce of the FEC, San Francisco Chronicle, May 3, 1990. Accordingly, in 1992 the FEC issued a Notice of Proposed Rulemaking seeking comments on proposed revisions to the Best Efforts Regulations. 57 Fed. Reg. 44,137 (1992) (Exhibit 8). The proposed new rule would require at least one follow-up inquiry at the political committee's expense for each contribution exceeding an annual aggregate of \$200, if employer or occupation data were not supplied, even if the original solicitation clearly had requested that information. Id.

During the comment period, the FEC repeatedly was reminded that its proposed new rules conflicted with its own contemporaneous and longstanding understanding of the legislative history that led to the 1980 regulation and the

FEC's attention was directed to its 1980 Explanation and Justification. For example, the comments of the NRSC and the NRCC, plaintiffs/petitioners here, stated that:

This proposed rule is directly contrary to Congress' definitions of best efforts . . . Congress expressly stated that if the solicitation did ask for the required information the Commission should not require a follow-up request . . . This is the approach that the Commission's current regulations take. See Explanation and Justification of 11 C.F.R. § 104.7, 45 Fed. Reg. 15,086 (1980).

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Since Commissioners Aikens and McGarry were present during the 1980 rulemaking, they had direct recollections upon which to draw. Indeed, in the meetings considering whether to stay the revised regulations, Commissioner Aikens commented that the revised regulations were contrary to Congress' intent, that she had supported the new rules on policy grounds, but that she welcomed judicial guidance on whether that was lawful. Transcript of September 13, 1992 FEC meeting at 18 (Exhibit 16); Transcript of May 5, 1994 FEC Public Meeting at 3 (Exhibit 13).²

² Although FECA's legislative veto provision has been declared unconstitutional, new FEC regulations still are sent to Congress for a period before being declared effective. Often the FEC allows a phase in period. See, e.g. AO. 1992-2 Fed. Elec. Campaign Fin. Guide (CCH) ¶ 6405 (March 6, 1992). When the FEC allowed no phase-in period of the Best Efforts regulations the Committees unsuccessfully sought a stay. By letter received May 23, 1994 (Exhibit 14), the FEC confirmed that the stay was denied on May 5, 1994.

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In October, 1993, the FEC announced that it intended to promulgate new Best Efforts Regulations that would require at least one follow-up inquiry within 30 days and would mandate specific language to be used in the request. 58 Fed. Reg. 57,725 (1993). (Exhibit 10) The FEC's Explanation and Justification for the revised Best Efforts Regulations did not mention that it had rejected such a proposal in 1980 as contrary to Congressional intent, nor did it reconcile its decision with the legislative history. While the FEC did quote the portion of the House Report explaining that the "best efforts" standard does not permit the FEC to require multiple inquiries, it then simply asserted, without explanation, that:

After careful consideration of the full legislative history, and in light of the subsequent level of incomplete disclosures since the 1980 best efforts rules were promulgated, the Commission concludes that Congress did not intend to preclude it from requiring that committees take additional measures when information sought in the solicitation is not forthcoming, such as a single request of a different type. Requiring committees to make a request which does not include any other subjects or solicitations, with an accompanying notice of the reporting requirement, will emphasize the importance and will be more in line with the true meaning of "best efforts." It will also clarify the committee's responsibility regarding

unsolicited contributions lacking the proper itemization information.³

Id.

F. The Revised Best Efforts Regulations.

On March 3, 1994, the FEC announced in the Federal Register that the new Best Efforts Regulations would take effect immediately, with no transition period to allow for using up preprinted stationery stocks and developing new procedures and computer software. 59 Fed. Reg. 10,057 (1994). These transition costs for the Committees alone could run into the millions of dollars. Mitchler Deposition at 17 (Exhibit 23). But even after any transition, the continuing burdens will be substantial.

Under the revised regulations, the Committees' present practice of sending multiple solicitations to each donor and including a clear request for employer and occupation data in each solicitation will not suffice. Instead, the Committees will have to evaluate every donation as it to determine whether the contributor has reached \$200 for the year and

³ The FEC also quoted a comment made from the bench during oral argument in a 1979 unreported case that the FEC had a "duty . . . to give considerably more detailed guidance by regulations, instructions, or otherwise, as to what was to be done to get this information." 58 Fed. Reg. 57,728 (Exhibit 10). Whatever the import of this comment -- which was made before the 1979 FECA amendments were enacted and before the 1980 Best Efforts Regulations were promulgated -- it does not suggest that the FEC should require more than one clear request.

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whether employer and occupation data is missing. If so, a follow-up request letter will have to be generated and sent, all within 30 days. Because this is a fairly short time frame and donations come in over time, the follow-up letters will have to be produced on a small batch basis, which increases costs. Mitchler Deposition at 39 (Exhibit 23).

As responses come in, they will have to be processed and any new information entered into the data base. Id. Again, this will have to be done on an expensive small batch basis. Id. at 65. Then, of course, amended or supplemental reports will have to be generated and filed.

Records will have to be kept to permit the Committees to verify that they met their obligations. Assuming that computerized records will suffice, this will require setting up additional memory space for each name, since the Committees cannot predict in advance which donors will require follow-up. Id. at 68. If hard copy confirmation were required, the costs would be much higher. Id. at 64.

A witness for the RNC testified that such a committee could incur total costs of up to six dollars per follow-up request. Testimony of Michael Hess at March 31, 1993 FEC Hearing (ARD 86 at 56, 63). This was confirmed in the deposition taken by the FEC, in which Mr. Mitchler explained that costs would vary by daily volume over a range of from \$1.50 to \$6 per follow-up letter. Mitchler Deposition at 23-70 (Exhibit 23). He testified that for Committees, who each

send out from 30 million to 40 million solicitations per year, the revised regulations threaten hundreds of thousands of dollars a year in additional costs. Id. at 71.

The FEC's Explanation and Justification conceded that costs were a concern, but it did not attempt to quantify the costs that would be imposed. 58 Fed. Reg. 57,725, 57,726 (1993) (Exhibit 10). It observed that many political committees are quite small, having fewer than 40 contributors who exceed \$200 per year, and speculated that they could satisfy the new regulations with "minimal additional efforts, or none." However, it did not question that most other committees would incur major expenses. Id.

The FEC's Explanation and Justification also expressed concern about cost in relation to effectiveness. Id. However, it did not explain why it believed that the regulations would be cost effective. The Committees' practice of sending repeated solicitations to donors, each containing a clear request for employer and occupation data, ultimately yield such data for about 90% of donors of over \$200. Mitchler Deposition at 76 (Exhibit 23). The FEC did not discuss how much, if at all, the revised Best Efforts Regulations were expected to improve that performance.⁴

⁴ In fact, the witness deposed by the FEC explained that there was good reason to believe that the FEC's approach would reduce the Committees' reporting level. Mitchler Deposition at 41 (Exhibit 23).

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Although mandatory request language was not in the proposed regulations, various formulations were discussed at the March 31, 1993 hearing. See ARD 86 at 119-122. At that time, witnesses cautioned the FEC that it should not mandate language that could mislead donors into believing that they were required to disclose personal or identifying information, or that the committee was required to obtain it (as opposed to being required to request it). Id. Nevertheless, the FEC's new Best Efforts Regulations mandate the following statement:

Federal law requires political committees to report the name, mailing address, occupation, and employer for each individual whose contributions aggregate in excess of \$200 per calendar year.

The FEC's Explanation and Justification of the new Best Efforts Regulations does not discuss whether the new mandatory statement is accurate or is likely to mislead donors. 58 Fed. Reg. 57,725, 57,726 (1993) (Exhibit 10).

III. ISSUES PRESENTED

1. Do traditional tools of statutory construction, including the express statement in the controlling committee report, the FEC's contemporaneous confirmation that the report accurately stated the intent of Congress, the FEC's consistent adherence to that view for 14 years, and the presumption against construing statutes to raise serious constitutional issues, establish that the "best efforts"

standard of § 432(i) of FECA does not permit the FEC to require separate follow-up requests for employer and occupation data?

2. Does the FEC's failure to acknowledge that its original regulations were based on its contemporaneous understanding of Congressional intent, its failure to explain why its original understanding was mistaken, and its justification of the new regulations solely on policy grounds render the new regulations arbitrary and capricious?

3. Is it arbitrary and capricious or contrary to the First Amendment for the FEC to require political committees to make a misleading half truth in communications with their supporters?

4. Does the First Amendment permit the FEC to require political committees to limit their follow-up requests to just two approved subjects and to specify the precise language to be used as to one of those subjects?

5. Are the increased burdens that the revised Best Efforts Regulations would impose on core First Amendment activity necessary to achieve a compelling governmental interest and are the regulations narrowly tailored to achieve those interests in the least restrictive manner, as the First Amendment requires?

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IV. WHAT IS NOT AT ISSUE

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A few words on what is not at issue in this case also are in order. First, the Committees do not dispute that a Committee may be required to make a clear request for identification of the donor's occupation and employer. The marginal burden of including such a request in a solicitation is less, since the solicitation is being sent anyway. However, the Committees do challenge the requirement that they make a separate additional inquiry, at their own expense, after the donor has elected not to comply with the initial clear request. Because the new regulations forbid follow-up requests to piggyback on existing solicitations and responses thus must be separately processed, the costs under the new rule are substantial. Also, the Committees are challenging the requirement that their request be phrased in a misleading manner.

Second, the Committees are not seeking to withhold the names and addresses of donors. Section 441g of FECA forbids committees from accepting cash donations of over \$100. Donations by check, of course, include the donor's name and address. The Committees have reported this name and address information to the FEC for years and are not proposing to change. In this rulemaking the FEC perceived no problem with submission of that data. Because names and addresses are provided, third parties have the basic information needed to

identify donors, and the FEC has the information needed to police contribution limits.

Third, this case simply does not raise the issue of whether it would be sound policy for Congress to decide to modify the "best efforts" standard in some constitutional way. Instead, in this case the Committees challenge the FEC's attempt by administrative fiat to impose requirements that Congress expressly did not authorize and that burden core First Amendment activity. Congress has the FEC's legislative proposal before it and, if it wishes, may act on it.

V. ARGUMENT

The material facts are not disputed, and they establish that the revised Best Efforts Regulations are arbitrary, capricious, an abuse of discretion, and contrary to law. See 5 U.S.C. § 706(A)(2). Accordingly, the Committees are entitled to summary judgment as a matter of law. See Rule 56, Fed. R. Civ. P.

A. SINCE THE REVISED BEST EFFORTS REGULATIONS BURDEN CORE FIRST AMENDMENT ACTIVITY, THEY MUST SATISFY THE MOST SEARCHING AND SKEPTICAL JUDICIAL REVIEW.

The regulations at issue here do not concern ordinary economic activity. To the contrary, when political parties solicit voluntary political contributions, they are engaging in core First Amendment speech, and when they use pooled

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contributions to support their candidates, they are exercising core First Amendment rights of association. See Buckley, 424 U.S. at 39; see also, e.g., Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 657 (1990); Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 214 (1986). Moreover, "[t]he two rights [of speech and association] overlap and blend; to limit the right of association places an impermissible restraint on the right of expression," and vice versa. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 300 (1981) (striking ordinance limiting contributions to committees which favor or oppose ballot measures as an impermissible restraint on freedom of association).⁵

Because of these additional burdens on core First Amendment activity, the Best Efforts Regulations must survive a far more searching judicial inquiry than would be true of ordinary economic regulation. Riley v. National Fed'n of the Blind, 487 U.S. 781, 788-90 (1988). The Constitutional considerations have a dual significance for this case. First, those considerations strengthen the statutory grounds for setting aside the revised regulations. Second, the

⁵ "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents," Sweezy v. New Hampshire ex rel. Wyman, 354 U.S. 234, 250 (1957), for the party "is but the medium through which its individual members seek to make more effective the expression of their own views." NAACP v. Alabama ex. rel. Patterson, 357 U.S. 449, 459 (1958).

constitutional flaws are so severe that, if they were reached by this Court, they would provide an independent basis for setting the new regulations aside.

B. THE FEC'S NEW INTERPRETATION OF THE BEST EFFORTS PROVISION OF FECA IS CONTRARY TO LAW.

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The first reason for setting aside the FEC's new Best Efforts Regulations is that they misinterpret FECA and, hence, are "contrary to law" and void under 5 U.S.C. § 706(A)(2). While Congress may not have spelled out everything that "best efforts" does mean, it was crystal clear about what the provision did not authorize. Congress forbade the FEC to require a political committee to make more than one clear request or to prevent the committee from being able to "piggyback" on a solicitation -- thus incurring little if any marginal cost. See Supra at 5. The FEC's contemporaneous 1980 rulemaking conducted literally days after President Carter signed § 432(i) into law, acknowledged and followed that Congressional intent. It has been the consistent agency view for 14 years, and it is the law until Congress changes it.

While agency's have some leeway in statutory interpretation, the "judiciary is the final authority on issues of statutory construction." Chevron USA, Inc. v. NRDC, 467 U.S. 837, 843 n.9 (1984). The statutory term "best efforts," standing alone, may be imprecise. However, Chevron

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is clear that, before deferring to the FEC, this Court is to use all of the "traditional tools of statutory construction." 467 U.S. at 843 n.9; Northwest Airlines, Inc. v. U.S. Dept. of Transp., 15 F.3d 1112, 1118 (D.C. Cir. 1994). If a court, using those tools, finds a clear answer to a question of statutory interpretation, there simply is no room for deference to a different agency view. Id. at 842-43, n.9. If Congressional intent is not clear, even when traditional interpretive methods are employed, an implementing agency's views merit deference, but only to the extent they are reasonable in light of the guidance that is available. Chevron, 467 U.S. at 842-45. In the present case, traditional tools of statutory construction clearly show that the revised Best Efforts Regulations seek to impose the precise burdens that Congress intended to forbid and establish that the FEC's new view is unreasonable.

The first and most obvious "tool" of statutory construction is legislative history. See Chevron, 467 U.S. at 846-55, 862-65 (examining legislative history in reviewing agency regulation), citing United States v. Shimer, 367 U.S. 374 (1961). In particular, committee reports are persuasive. See, e.g., United States v. International Union, 352 U.S. 567, 585 (1957); Sierra Club v. EPA, 719 F.2d 436, 448 (D.C. Cir. 1983), cert. denied sub nom. Alabama Power Co. v. Sierra Club, 468 U.S. 1204 (1984). Because § 432(i) arose as an amendment in the House of Representatives to a bill already

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passed by the Senate, it was addressed only in H.R. Rep. No. 422. That Report spoke directly to the precise issue raised by the present Best Efforts Regulations, stating that "the Commission should not require the committee to make the same request two, three, or four times." Id. at 14.

A second important "tool" of legislative construction is the implementing agency's contemporaneous interpretation at the time the underlying statute first was adopted. Good Samaritan Hosp. v. Shalala, 113 S. Ct. 2151, 2159 (1993); Middle South Energy, Inc. v. FERC, 747 F.2d 763, 769 (D.C. Cir. 1984), cert. dismissed, 473 U.S. 930 (1985); New Mexico Env'tl. Imp. Div. v. Thomas, 789 F.2d 825, 831-32 (10th Cir. 1986). The contemporaneous construction is important since the implementing agency presumably is best positioned to understand exactly what the enacting Congress intended. In the present case, however, one need not rely on the presumption of agency knowledge. Instead, as discussed above, during the 1980 rulemaking the FEC's General Counsel consulted directly with Congress and reported in public meetings that there was a clear and strong Congressional intent for the FEC to adhere to the Report and not to require more than one request or to require that the request not be part of the solicitation. See Transcript 1-9 (Exhibit 4). Thus, the FEC in 1980 had precisely the type of knowledge that makes contemporaneous agency interpretations compelling

evidence of statutory intent. See 45 Fed. Reg. 15,080 (1980) (Exhibit 1).

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A third "tool" of legislative construction is the existence of a long-standing and consistent administrative interpretation. See, e.g., Middle South Energy, 747 F.2d at 769; Thomas, 789 F.2d at 831-32. In the present case, from 1980 until 1994 the FEC consistently adhered to the view that one clear request satisfied the best efforts requirement. Until the present rulemaking initiative, there was no indication that the FEC ever asserted that more than one clear request was required by the "best efforts" standard. Indeed, in the first FEC public meeting on the proposed revisions to the Best Efforts Regulations, then Chairman Aikens observed that requiring a "second request" was "not the intent of Congress, from the legislative history, I think it is very clear that they did not want their campaigns to have to go back time and time again to get this information." Transcript at 18 (Exhibit 16). As recently as the May 5, 1994 FEC meeting concerning the Committees' motion for a stay, Commissioner Aikens confirmed that she never has changed that view, but merely believes that the 1979 Congressional intent is not sound public policy. Transcript at 3 (Exhibit 13).

A fourth "tool" of construction is the presumption that Congress does not intend for its statutes to raise serious constitutional questions. Edward J. DeBartolo Corp. v.

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Florida Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 575-77 (1988). This presumption, in itself, is sufficiently potent to require an agency to adopt a reasonable position that minimizes constitutional concerns, even if the statutory text and legislative history appear to permit more constitutionally intrusive constructions. Id.; (citing NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979)).⁶

We show below that the constitutional concerns raised by the revised regulations are not merely serious, but would suffice, in themselves, to require invalidation. However, the Court may not need to reach that point, since this tool of construction, together with the others discussed above, compel the conclusion that the FEC has misinterpreted § 432(i).

* * *

FECA anticipated that there could be changes in the law that the FEC considers desirable, but that the FEC lacks the authority to implement. Thus, § 438(a)(9) of FECA requires the FEC to submit an annual report to Congress that identifies proposed legislative changes. In 1992, the FEC proposed new legislation to alter the "best effort" standard by mandating multiple requests, but Congress has not acted.

⁶ Alternatively, this principle may come into play under the second prong of Chevron to exclude from the range of permissible agency choices those that raise serious constitutional concerns.

(Exhibit 7). Until it does, the FEC's attempt to alter the FECA by administrative fiat is contrary to law and void under § 706(2)(A) of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

C. **THE FEC'S FAILURE TO EXPLAIN WHY ITS 1980 INTERPRETATION OF CONGRESSIONAL INTENT WAS WRONG, OR TO EXPLAIN WHY IT'S NEW RULES ARE CONSISTENT WITH THE FEC'S ORIGINAL VIEWS, RENDERS THE NEW RULES ARBITRARY AND CAPRICIOUS.**

In addition to invalidating regulations that are contrary to law, the APA also requires the invalidation of agency actions that are arbitrary or capricious. 5 U.S.C. § 706(2)(A). Among other things, an agency has acted arbitrarily if it has changed its position without providing a reasoned explanation. See, e.g., United Mine Workers v. Dole, 870 F.2d 662 (D.C. Cir. 1989); Black Citizens for a Fair Media v. FCC, 719 F.2d 407 (D.C. Cir. 1983), cert. denied, 467 U.S. 1255 (1984).

As discussed above, the original Best Efforts Regulations were based on the FEC's understanding of Congressional intent as shown by the legislative history of the 1979 amendments. Indeed, the explanation of the 1980 regulations expressly adopted the 1979 House Report, which stated that one request made in a solicitation is enough. See 45 Fed. Reg. 15,086 (1980) (Exhibit 1). The FEC's Explanation and Justification of the new regulations discusses why, as a factual matter, it thinks multiple

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inquiries would be better public policy. See 58 Fed. Reg. 57,725 (1993) (Exhibit 10). However, the FEC does not explain why its prior understanding of Congress' intent was mistaken. Nor does it explain why its new rules are consistent with Congressional intent.⁷ Thus, even if the revised Best Efforts Regulations were not contrary to law, they would fail as an inadequately explained reversal of the FEC's long-standing interpretation of § 432(i). See 5 U.S.C. § 706(2)(A).

D. THE MANDATORY SOLICITATION STATEMENT THAT FECA REQUIRES COMMITTEES TO REPORT OCCUPATIONAL AND EMPLOYER INFORMATION IS CONTRARY TO FECA AND VIOLATES THE FIRST AMENDMENT.

Statutes that compel speech necessarily alter the content of speech and must be evaluated under the strongest test for content-based regulation of speech. Riley, 487 U.S. at 797-801 (noting the constitutional equivalence of compelled speech and compelled silence). Through government-mandated speech, the revised Best Efforts Regulations force political committees to mislead contributors with what is, at best, a half-truth. Under the regulations, each written solicitation for contributions must include the statement:

⁷ Indeed, during the discussion whether to stay the new regulations pending judicial review, Commissioner Aikens acknowledged that she had supported the regulations on policy grounds even though she believed they were contrary to what Congress had intended. Transcript at 3 (Exhibit 13).

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Federal Law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

11 C.F.R. § 104.7(b)(1).

In fact, political committees are "required to report" employer and occupation information only if it is obtained. In FECA Congress decided not to require the donor to disclose that information. By flatly stating that contributor information must be reported, however, this mandatory statement falsely implies that donors must disclose their occupation and employer if they wish to contribute.

Because the FEC's proposed rules did not include such a mandatory statement, the specific language adopted by the FEC was not addressed in the comments. See 57 Fed. Reg. 44,137 (1992) (Exhibit 8). However, when the FEC suggested such a mandatory statement during the March 31 hearing, witnesses commented that the FEC should avoid misleading donors. See Transcript at 119-122 (Exhibit 11).

The FEC's explanatory statement does not explain why the required statement required is accurate or necessary. See 58 Fed. Reg. 57,725 (1993) (Exhibit 10). In this regard, the FEC has acted arbitrarily and capriciously, in violation of § 706(2)(A) of the APA.

More fundamentally, however, it is unconstitutional for the FEC to attempt to dictate what a political committee says to its supporters. See Riley, 487 U.S. at 795-98 (striking

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down compelled disclosure by charitable solicitors). It is doubly improper to compel a committee to make misleading statements with which it does not agree. See, e.g., Wooley v. Maynard, 430 U.S. 705 (1977) (citizen cannot be compelled to display state motto on license plate); West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (striking down compulsory flag salute laws). There is no legitimate governmental interest in compelling such deception. Nor can the government legitimately taint the trust of political supporters in a political committee in this way. By thus violating the First Amendment, the FEC has acted contrary to law, and its new regulations are void under § 706(2)(A) of the APA.

E. THE FEC'S CONTENT-BASED RESTRICTION ON THE SUBJECTS THAT A POLITICAL COMMITTEE CAN ADDRESS DURING FOLLOW-UP REQUESTS IS CONTRARY TO FECA AND TO THE FIRST AMENDMENT.

In addition to specifying what political committees must say, both in original and in follow-up requests for employer and occupation data, the revised Best Efforts Rules also specify what cannot be said in follow-up inquiries. Although follow-up inquiries are at the committee's own expense, the committee's speech is strictly limited to two subjects: (i) a request for personal data, and (ii) expressing thanks for the original contribution. Any other content is precluded.

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As already discussed, these limitations are contrary to Congress' clear intent that committees be allowed to piggyback requests on solicitations. See supra at H.R. Rep. No. 422, 96th Cong., 1st Sess. (1979) at 14. Beyond that, they directly limit speech, and they do so on the basis of content. Assuming that such limitations ever can be sustained, it can only be on the basis of clear proof that they are strictly necessary to achieve a compelling governmental interest, Buckley, 424 U.S. at 25. Moreover, the FEC must show that they are narrowly tailored to achieving that interest in the least burdensome way. Riley, 487 U.S. at 781, quoting NAACP v. Button, 371 U.S. 415, 438 (1968) ("Precision of regulation must be the touchstone").

No showing of compelling need has been or can be made here. While the legislative history contains some general statements that disclosure of personal data is desirable, Congress found that the need was not sufficiently compelling to justify requiring donors to provide it. Moreover, in the 1979 House Report, Congress expressly stated that solicitations should be allowed to accompany requests for personal data. Finally, the existing system already produces full disclosure of the names and addresses of donors of over \$200 per year.

Nor can the regulation be shown to be carefully tailored. As the Committees' FEC reports show, their existing practice, in which every donor receives multiple

solicitations and each solicitation requests employer and occupation data, already results in disclosure of occupation and employer data for about 90% of the donors of over \$200 in each year. Mitchler Deposition at 76 (Exhibit 23). The FEC, whose concern was focused on groups with much lower reporting levels, did not purport to find that restricting the content of follow-up solicitations would significantly increase the existing 90% success rate.

Thus, the FEC's attempt to limit the content of follow-up communications to committee donors violates the First Amendment and, hence, is invalid as contrary to law. See 5 U.S.C. § 702(A)(2).

F. IF THE BEST EFFORTS REGULATIONS AS A WHOLE WERE PERMITTED BY FECA, THEY WOULD BE CONTRARY TO THE FIRST AMENDMENT AND VOID.

Because the revised Best Efforts Regulations are contrary to § 432(i) of FECA, the Court need not reach the issue of whether they are contrary to the First Amendment. If the constitutional issue were reached, however, the regulations would fall on that ground as well.

Taken as a whole, the revised Best Efforts Regulations clearly impose a significant burden on political solicitations and, hence, on core First Amendment rights.

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See supra at 25-26; Buckley, 424 U.S. at 17.⁸ The burden is not one that Congress has found necessary. To the contrary, as discussed above (at 25-26), Congress made the decision not to require donors to disclose employer and occupation data. Moreover, during the 1980 rulemaking the FEC found and acquiesced in a clear Congressional intent that committees be allowed to limit their "best efforts" to a single request made in a solicitation. Thus, the FEC is attempting to impose burdens that Congress found unnecessary. Even if the FEC could do that as a statutory matter -- and it cannot -- the constitutional barrier is insurmountable.⁹

Nor, for the reasons discussed above, can the revised Best Efforts Regulations be thought narrowly tailored. The FEC record showed that committees varied widely in their level of reporting employer and occupation data. (ARD 19) While the FEC did not acknowledge the fact, the Committees achieve a 90% level via a policy of multiple solicitations, each including a request for occupation and employer data. The FEC did not explain why committees that achieved such a reporting level should be subjected to any additional requirements, much less the requirements actually imposed. Instead, the FEC simply imposed the same obligations on the

⁸ As Buckley makes clear, a regulation that reduces the amount of money otherwise available for political speech restricts speech itself. 424 U.S. at 18-19.

⁹ The burden is on the FEC to justify the restrictions it has imposed. Buckley, 424 U.S. at 25.

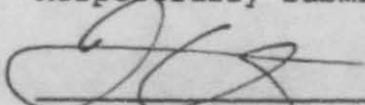
Committees as on other political committees whose different practices lead to much lower reporting levels. In the First Amendment context, imposing such a one-size-fits all standard simply is not permitted. Riley, 487 U.S. at 789.¹⁰

In short, if Congress had authorized the revised Best Efforts Regulations -- and it did not -- they would be unconstitutional, both because they are not necessary to serve a compelling interest and because they are not narrowly tailored to any interest at all.

VI. CONCLUSION

For the foregoing reasons, the plaintiffs/petitioners' Motion for Summary Judgment should be granted and the new Best Efforts Regulations should be set aside.

Respectfully submitted,



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¹⁰ It might be that a properly tailored rule, if one were needed, would require Congressional action. The Committees take no position in this paper as to what action, if any, Congress should take.

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National Committee,
National Republican
Senatorial Committee, and
National Republican
Congressional Committee

May 25, 1994

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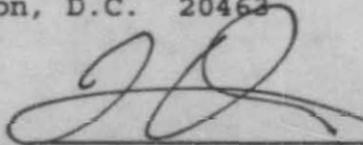
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CERTIFICATE OF SERVICE

I certify that copies of the following have been served by first class mail, postage prepaid, at the address stated below: "Plaintiffs/Petitioners Motion for Summary Judgment," Plaintiffs/Petitioners' Memorandum of Law in Support of Their Motion for Summary Judgment," "Plaintiffs' Statement of Material Facts Not in Dispute," "Final Judgment," and "Appendix To Plaintiffs/Petitioners' Memorandum Of Law In Support Of Their Motion For Summary Judgment."

Lawrence M. Noble, Esq.,
General Counsel,
Federal Election Commission
999 E Street, N.W.
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COMMISSION
OFFICE OF GENERAL
COUNSEL

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Dominique Dillenseger

Re: MUR 4167 (National Republican Senatorial Committee)

Dear Mr. Noble:

This Response, including the attached affidavits, is submitted on behalf of the National Republican Senatorial Committee ("NRSC") and J. Stanley Huckaby, as Treasurer ("Respondent"), in reply to the internally generated proceeding designated Matter Under Review ("MUR") 4167. While the Federal Election Commission ("FEC" or "Commission") has not requested any additional information from the NRSC at this time, Respondent is submitting the following factual and legal materials which it believes are relevant to the Commission's consideration of this matter. In addition, Respondent hereby waives confidentiality regarding MUR 4167 as provided for under 2 U.S.C. § 437g(a)(12)(A) and 11 C.F.R. § 111.21.

It is Respondent's position that the Commission erroneously found reason to believe that the NRSC violated the Federal Election Campaign Act of 1971, as amended ("Act"), the finding is arbitrary

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and punitive, and the Commission should dismiss this matter. Moreover, the NRSC is dismayed that the Commission is pursuing this matter at this time when the Commission is well aware that the validity of the new "Best Efforts" regulation, at the heart of this matter, is pending before the United States Court of Appeals for the District of Columbia Circuit. Given these circumstances, the NRSC will not be asking for pre-probable cause conciliation. Instead, for the reasons set forth herein, the Commission should dismiss this matter.

THE FEC'S FACTUAL AND LEGAL ANALYSIS

The Factual and Legal Analysis approved by the Commission in this Matter addresses the NRSC's compliance with the Commission's new "Best Efforts" regulations through the NRSC's June 30, 1994 Monthly Report. The Analysis states that three elements are necessary for a treasurer to be deemed to have complied with the new "Best Efforts" regulations found at 11 C.F.R. § 104.7. They are:

(1) making a clear request for contributor information and including a specifically worded statement clearly and conspicuously displayed on the response material included in the solicitation; (2) no later than 30 days after receipt of the contribution with incomplete information, making at least one stand alone, follow-up request, either by written request or by an oral request documented in writing, to obtain the required information from the contributor without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports,

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Factual and Legal Analysis at 3-4. Further, the Analysis identifies the NRSC's omission rates as 48%, 44%, and 38% for the April, May, and June, 1994 Monthly reports, respectively, as calculated by the Commission, finding that the NRSC failed to provide "complete contributor information" in its reports. The Factual and Legal Analysis does not address any reports filed after July 20, 1994. However, Chairman McDonald's letter dated January 19, 1995, states that the Commission has determined to take no further action with respect to any activity prior to July 22, 1994. Thus, the Factual and Legal Analysis is largely inapt.

Moreover, to the extent that the Factual and Legal Analysis criticizes the NRSC, it does so with respect to factors that are not required by or even mentioned by the new "Best Efforts" regulations. Specifically, the Analysis notes that:

None of the NRSC's disclosure documents provides information about its procedures for obtaining the required information pursuant to the new regulations. For contributions without occupation/employer information, the NRSC inserts the phrase "information requested" in the identification blocks of its Schedule A forms. The NRSC's reports do not provide the date of any requests for missing information.

Factual and Legal Analysis at 5, and complains that on these grounds the NRSC has not proved its compliance with the new "Best Efforts" regulations. This is a dubious basis upon which to make a reason to believe finding. It is not based on any requirement of

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the statute or regulations and is equally applicable to nearly every reporting committee although the NRSC is being singled out. Furthermore, as shown below, the NRSC is following the new "Best Efforts" regulations notwithstanding significant expense and pending judicial review of the rules.

FACTS

As was prominently pointed out in the Factual and Legal Analysis, the NRSC was one of three parties that challenged the validity of the Commission's new "Best Efforts" regulations in the United States District Court for the District of Columbia. On July, 22, 1994, the District Court determined that the regulations were valid. Republican National Committee, et al. v. FEC, Civil Action No. 94-1017 (D.D.C. July 22, 1994). That decision is now pending on appeal to the United States Court of Appeals for the District of Columbia Circuit and is scheduled for Oral Argument on September 14, 1995.¹

As a preliminary matter, we note that the Commission generated numbers regarding the total number of entries which identify occupation/employer, as well as the Commission generated numbers regarding the number of entries without that information are at

¹ In September, 1994, counsel for the Plaintiffs/Appellants sought an agreement from the General Counsel's Office to place the appeal in a "stand-by pool" in order to expedite the case. However, the General Counsel's Office refused to stipulate to such expedited action.

odds with the NRSC's own numbers and greatly overstate the NRSC's "omission" rate. Instead of omission rates of 48%, 44%, and 38% for the NRSC's 1994 April, May, and June Monthly Reports as reported in the Factual and Legal Analysis, the NRSC's data processing vendor has provided the following information:

REPORT TYPE\YEAR	# TOTAL ENTRIES	# ENTRIES W/O INFORMATION	% OMISSION
1994 April Monthly	3,625	1,121	30.9%
1994 May Monthly	4,525	1,424	31.4%
1994 June Monthly	5,236	1,612	30.7%

Affidavit of Maureen Goodyear Before the Federal Election

Commission (hereinafter "Goodyear Aff.") at ¶ 3 (Exhibit A).

Thus, any assumptions regarding the NRSC's compliance with the new "Best Efforts" regulations which may have been based on the Commission numbers were completely misguided.

More to the heart of the matter, however, the NRSC is in compliance with the FEC regulations. Prior to the District Court's July 22, 1994 holding "the NRSC had already started to include the new 'Best Efforts' language that '[f]ederal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over \$200 in a calendar year'" in its solicitation letters. Affidavit of Allen Haywood in Matter Under Review 4167 before the Federal Election Commission (hereinafter "Haywood Aff.") ¶ 7 (Exhibit B). Thus, the omission rates, no matter whose figures the Commission

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relies on, occurred even though the NRSC had been requesting the information as required by the new "Best Efforts" regulation since May, 1994. See Haywood Aff. at ¶ 7. This is precisely the result the NRSC and co-plaintiffs predicted in Court and during the rulemaking.

Subsequent to the District Court's decision the NRSC implemented new procedures consistent with the Commission's new "Best Efforts" regulations. Specifically, the NRSC's former comptroller and assistant Treasurer, Allen Haywood "spoke with the NRSC's data processing vendor regarding the requirements of the new "Best Efforts" regulations and instructed the vendor to comply with these regulations." Haywood Aff. at ¶ 3. Specifically, the data processing vendor was instructed that "[a]mendments must be filed with respect to all NRSC contributors subsequent to March 1, 1994 for whom the NRSC did not have complete information but for whom such information had been or would be subsequently obtained." Id. ¶ 4. These amendments are filed on a monthly basis. Id. ¶ 5. While the Factual and Legal Analysis does not identify the NRSC's "omission" rate subsequent to the June, 1994 Monthly report, the NRSC's data processing vendor has determined that the omission rates remain between 24.3% and 31.4% with an average omission rate of 28.8%. See Goodyear Aff. at ¶ 4. Indeed, while the NRSC has been filing amended reports for each report filed since March,

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Lawrence M. Noble, Esq.
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1994, it has received additional information for only 765 contributors out of a total of 91,286 contributors, or an additional .8% for reporting purposes. Id. ¶ 5. Here again, these results are consistent with the NRSC's expectations as addressed in its pleadings in Republican National Committee, et al. v. FEC, Civil Action No. 94-1017 (D.D.C. July 22, 1994) and deposition of Albert Mitchler.

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In addition, the data processing vendor was instructed to mail letters within 30 days of receipt "to each contributor for whom complete contributor information had not been received, even if the individual's total contributions did not aggregate more than \$200." Haywood Aff. at ¶ 6. These letters are being and have been sent by the vendor in accordance with these instructions. Id.²

Thus, "the NRSC is complying with the new 'Best Efforts' regulations despite considerable burdens and costs to the committee and without appreciably greater disclosure of contributor information." Id. ¶ 9.

DISCUSSION

This Factual and Legal Analysis proves what the Commission previously has denied in the district court: in order to comply

² Note that the NRSC's new comptroller learned on March 3, 1995 that the vendor had not consistently followed Mr. Haywood's and the NRSC's instructions. That problem has been rectified and the letters are being sent. Goodyear Aff. at ¶ 6.

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with section 434(b)(3)(A) of the Act which requires the identification of contributors, a reporting committee either must report 100% of its contributor information, or the committee must follow the new "Best Efforts" regulation. See Factual and Legal Analysis at 3, 4, 5, 6. Thus, the Commission is completely ignoring section 432(1) of the Act which represents a Congressional mandate that a committee shall be considered in compliance with the Act whether or not a committee's reports identify 100% of the required contributor information provided the treasurer has made "best efforts" to obtain, maintain, and submit the information.

Specifically, the Commission represented to the District Court that:

Neither the Act nor the Commission's regulation affirmatively requires political committees either to utilize the notice or make the single follow-up request for information that the Commission has found to be the minimum action that will show "best efforts." If a political committee has an alternative method that will effectively obtain the necessary information, it is free to use that method. The "best efforts" regulation is only a "safe harbor" defense for committees that fail to obtain and report the contributor identifying information

Defendant Federal Election Commission's Memorandum Of Points And Authorities In Support Of Its Motion To Dismiss Or, In The Alternative, For Summary Judgment at 33. However, the Factual and Legal Analysis underscores the Commission's actual practice -- that

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the regulation must be followed in order to have exercised "best efforts" and not to violate the Act.

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The Factual and Legal Analysis approved by the Commission does not acknowledge that the regulation is simply a "safe harbor." Rather, it states affirmatively that "[u]nder the revised best efforts regulation . . . the treasurer demonstrates best efforts by" following the requirements of the regulation. Factual and Legal Analysis at 3 (emphasis added). Moreover, the Analysis specifically states that the NRSC does not provide "information about its procedures for obtaining the required information pursuant to the new regulations," and that "the NRSC's reports fail to demonstrate that the NRSC is complying with the revised best efforts rules." Id. at 4, 5 (emphasis added). Thus, the Commission has concluded that the NRSC violated the Act solely because the NRSC "has not followed the new regulations to obtain the missing information." Not only is this inconsistent with the statute, it is inconsistent with the Commission's representation to the Court that a committee was not required to comply with the regulation in order not to violate the Act.

Assuming that it is necessary to "comply" with the new "Best Efforts" regulation in order not to be found in violation of the Act, the Factual and Legal Analysis identifies three requirements to be met in order for a treasurer to be deemed in compliance with

the Commission's new "Best Efforts" regulations. The NRSC meets each of these requirements.

First, the NRSC makes a clear request for contributor information and includes the specifically worded statement required by the regulation in a clear and conspicuous manner on the response material included in the solicitation as stated in 11 C.F.R.

§ 104.7(b)(1). Haywood Aff. at ¶ 7.

Second, the NRSC makes at least one stand-alone, follow-up request, in writing, no later than 30 days after receipt of the contribution with incomplete information, to request the required information from the contributor without also soliciting a contribution as stated in 11 C.F.R. § 104.7(b)(2). Id. ¶ 6. Goodyear Aff. at ¶ 6.

Third, as acknowledged in the Factual and Legal Analysis itself, the NRSC files amendments to each of its reports reporting previously missing information as stated in 11 C.F.R.

§ 104.7(b)(4)(i). Haywood Aff. at ¶ 5.

Furthermore, this proceeding appears to be gratuitous and reeks of retribution. The Factual and Legal Analysis does not state any evidence that the NRSC was not complying with the law subsequent to July 22, 1994.³ Rather, it states that the NRSC has

³ Obviously, any "admissions" made by NRSC counsel during the pendency of the litigation addressed solely that time and
(continued...)

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Lawrence M. Noble, Esq.
March 27, 1995
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not provided the Commission any information about the NRSC's procedures for obtaining the required information nor do the reports provide the date of the requests for the missing information.⁴ Of course, there is no requirement in the statute or the regulation that such information be provided and the Factual and Legal Analysis cites to none. Second, the Commission has never requested such information from the NRSC, either formally or informally. Id. ¶ 8. Third, if this is the standard by which such findings are made one can presume that reason to believe findings have been made against every reporting committee. Obviously they have not been. Finally, if the Commission wished to confirm whether the NRSC was complying with the new "Best Efforts" regulations subsequent to July 22, 1994 the Commission only had to ask.

Ironically, by opening this action the Commission now has received further proof that the regulation was ill-conceived and is inconsistent with the statute. The NRSC is doing everything the Commission said it must do and it is not getting more contributor information. In fact, in following the regulation the NRSC is

³(...continued)
cannot possibly be taken as admissions to any time period subsequent to the District Court's decision.

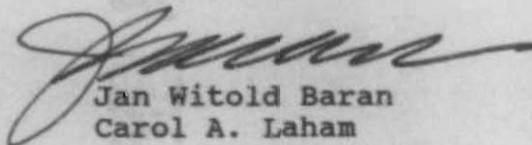
⁴ The filing of amendments was prima facie evidence that the NRSC was following the new rules.

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getting substantially less contributor information than other committees such as the RNC which is not "complying" with the regulation. NRSC, however, is diverting resources away from Senate election campaigns solely because the Commission has mandated that it do so for no legitimate, productive reason. To the contrary, for the reasons stated before the FEC in rulemaking, in Court, and now, this regulation is inconsistent with the Act, inconsistent with the Commission's previous regulation and interpretation of the statute which was itself based on the Commission's contemporaneous understanding of the Congressional intent in passing the "Best Efforts" provision, and is illogical.

The Commission should dismiss this action.

Sincerely,



Jan Witold Baran
Carol A. Laham

Counsel for the National Republican
Senatorial Committee and J. Stanley
Huckaby, as Treasurer

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A

BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington)
District of Columbia) MUR 4167

AFFIDAVIT OF MAUREEN GOODYEAR

Maureen Goodyear, first being duly sworn, deposes and says:

1. I am Maureen Goodyear. I currently serve as comptroller and assistant treasurer of the National Republican Senatorial Committee (NRSC), an authorized national committee of the National Republican Party.

2. I am familiar with the Factual and Legal Analysis generated by the Federal Election Commission ("FEC" or "Commission") in connection with Matter Under Review ("MUR") 4167. That document identifies that NRSC's "omission" rates for the NRSC's 1994 April, May, and June Monthly reports as 48%, 44%, and 38% respectively. Factual and Legal Analysis at 4.

3. To confirm these numbers I asked the NRSC's data processing vendor, Public Interest Data ("PID"), to provide the number of itemized contributor entries in each of the reports identified as well as to identify the number of entries with incomplete occupation/employer information. PID provided the following information:

REPORT TYPE\YEAR	# TOTAL ENTRIES	# ENTRIES W/O INFORMATION	% OMISSION
1994 April Monthly	3,625	1,121	30.9%
1994 May Monthly	4,525	1,424	31.4%
1994 June Monthly	5,236	1,612	30.7%

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4. I further asked PID to provide the NRSC's "omission" rate for each subsequent month in 1994. PID provided the following information:

MONTH	# TOTAL ENTRIES	# ENTRIES W/O INFORMATION	% OMISSION
June (July Report)	6,466	1,923	29.7%
July (August Report)	7,917	1,923	24.3%
August (Sept. Report)	13,548	3,401	25.1%
September (Oct. Report)	14,128	4,241	30.0%
October	15,367	4,844	29.5%
November	12,264	3,633	29.8%
December	8,210	2,242	27.3%

Based on these numbers I have determined that the NRSC's average omission rate for March through December, 1994 was originally 28.8%.

5. Finally, I asked PID to provide information regarding the number of contributors who provided supplemental information which was subsequently reported to the Commission. PID provided the following information.

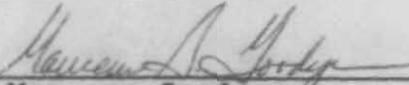
MONTH (REPORT) TYPE\YEAR	# TOTAL ENTRIES	ADDITIONAL INFORMATION	NEW % OMISSION	% CHANGE
March (April Report)	3,625	13	30.5%	.4%
April (May Report)	4,525	19	31%	.4%
May (June Report)	5,236	25	30.3%	.4%
June (July Report)	6,466	32	29.2%	.5%
July (August Report)	7,917	65	23.4%	.9%
August (Sept. Report)	13,548	257	23.2%	2.1%
September (Oct. Report)	14,128	94	29.3%	.7%
October	15,367	124	28.8%	.7%
November	12,264	76	29.2%	.6%
December	8,210	60	26.5%	.8%
TOTAL	91,286	765	28.0%	.8%

6. In requesting this information from PID I learned on March 3, 1995 for the first time that contrary to the instructions provided PID by my predecessor, Allen Haywood, in his August 11, 1994,

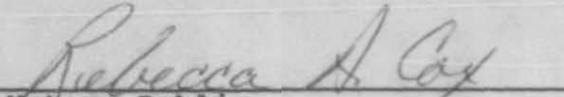
letter to PID, and contrary to Mr. Haywood's understanding as stated in his Affidavit of February 28, 1995, PID did not consistently send follow-up letters to contributors who failed to provide complete contributor information to the NRSC. This problem has now been rectified and follow-up letters are being sent within thirty days of receipt to each contributor who has not provided contributor information.

7. These figures demonstrate that despite the NRSC's compliance with the new "Best Efforts" regulations the NRSC has been able to increase disclosure only .8%. This minimal increase in disclosure has come at great costs to the committee.

The above is true and correct to the best of my knowledge, information and belief.


Maureen Goodyear

Signed and sworn to before me
this 22nd day of March, 1995


Notary Public

My Commission Expires: 2/28/98

Rebecca A. Cox
Notary Public, District of Columbia
My Commission Expires Feb. 28, 1998

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B

BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington)
)
District of Columbia) MUR 4167

AFFIDAVIT OF ALLEN HAYWOOD

Allen Haywood, first being duly sworn, deposes and says:

1. I am Allen Haywood. I served as comptroller of the National Republican Senatorial Committee (NRSC), an authorized national committee of the National Republican Party, from May 1, 1994 through February 28, 1995. As comptroller I was responsible for ensuring the NRSC's compliance with the Federal Election Commission's new "Best Efforts" regulations which went into effect on March 3, 1994.

2. I am familiar with the Factual and Legal Analysis generated by the Federal Election Commission ("FEC" or "Commission") in connection with Matter Under Review ("MUR") 4167. That document states the Commission adopted new "Best Efforts" regulations that became effective on March 3, 1994, and that pursuant to these regulations a treasurer may demonstrate "best efforts" by:

- (1) making a clear request for contributor information and including a specifically worded statement clearly and conspicuously displayed on the response material included in the solicitation;
- (2) no later than 30 days after receipt of the contribution with incomplete information, making at least one stand alone, follow-up request, either by written request or by an oral request documented in writing, to obtain the required information from the contributor without also soliciting a contribution; and
- (3) reporting previously missing information in amendments to the reports.

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Factual and Legal Analysis at 3-4. The Factual and Legal Analysis suggests that the NRSC is not in compliance with these regulations. However, the Commission's letter to J. Stanley Huckaby, Treasurer of the NRSC, states that the Commission has determined to take no further action with respect to any alleged violations prior to July 22, 1994. Thus, this affidavit addresses the NRSC's compliance with the new "Best Efforts" regulations after July 22, 1994.

3. As a result of the District Court's July 22, 1994 opinion in Republican National Committee, et al. V. FEC, Civil Action No. 94-1017, I spoke with the NRSC's data processing vendor regarding the requirements of the new "Best Efforts" regulations and instructed the vendor to comply with these regulations.

4. On August 11, 1994 I sent a letter to Ron Burns, a principal of the NRSC's Data Processing vendor, Public Interest Data (known as "PID") instructing him that Amendments must be filed with respect to all NRSC contributors subsequent to March 1, 1994 for whom the NRSC did not have complete information but for whom such information had been or would be subsequently obtained. I personally told the vendor that the amendments were to be filed along with each report filed by the Committee, i.e. "calendar months through September 30, then the Pre-General report (October 1-19), the Post-General report (October 20-November 28), and the Year-end report (November 29-December

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31)," and the August 11 letter described the manner by which these amendments were to be filed. A true copy of that letter is attached as Exhibit 1 to this affidavit.

5. As the Factual and Legal Analysis acknowledges, as of September, 1994, "the NRSC has started to submit amendments containing contributor information for the period March 1 through June 30, 1994." Factual and Legal Analysis at 4-5. The NRSC has continued to file amendments which coincide with each reporting period for which new information has been obtained since the new "Best Efforts" regulations went into effect as required by the regulations.

6. I also informed the data processing vendor that letters were to be mailed to each contributor for whom complete contributor information had not been received, even if the individual's total contributions did not aggregate more than \$200. See Exhibit 1. The vendor was specifically informed that the letters were to be mailed within thirty days of the deposit date for contributions, which is also the date of receipt of the contributions, in compliance with the new "Best Efforts" regulations. In fact, these letters are sent in compliance with the new regulations. A sample copy of these letters is attached as Exhibit 2 to this affidavit.

7. With respect to the NRSC's solicitation letters, the NRSC had already started to include the new "Best Efforts" language that "[f]ederal law requires political committees to report the name, mailing address,

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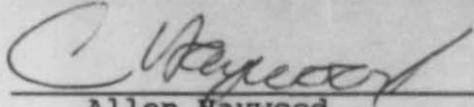
occupation and name of employer for each individual whose contributions aggregate over \$200 in a calendar year" prior to the July 22, 1994, court decision. Each NRSC direct mail solicitation complies with this new requirement. Sample solicitation letters dating to May, 1994 are attached as Exhibit 3 to this affidavit.

8. Finally, while the Commission's Factual and Legal Analysis states (at 4) that "[n]one of the NRSC's disclosure documents provides information about its procedures for obtaining the required information pursuant to the new regulations" I am unaware of any requirement in the regulations for such information nor of any FEC request for such information. The Factual and Legal Analysis also states (at 4) that the "NRSC's reports do not provide the date of any requests for missing information." Again, I am not aware of any requirement in the regulations that such information be provided. Furthermore, the NRSC has not received from the FEC any formal or informal requests for such information.

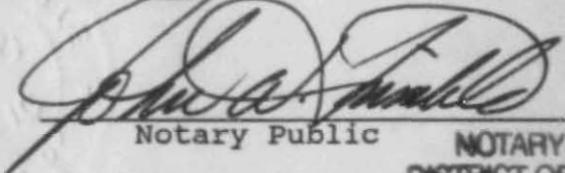
9. In sum, contrary to the assumption of the Factual and Legal Analysis, the NRSC is complying with the new "Best Efforts" regulations despite considerable burdens and costs to the committee and without appreciably greater disclosure of contributor information.

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The above is true and correct to the best of my knowledge, information and belief.


Allen Haywood

Signed and sworn to before me
this 20th day of February, 1995


Notary Public NOTARY PUBLIC
DISTRICT OF COLUMBIA
My Commission Expires:

MY COMMISSION EXPIRES JANUARY 31, 1996

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August 11, 1994

Ron Burns
P.I.D.
5113 Lanesburg Pike
Suite 300
Falls Church, VA 22041

Dear Ron,

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Attached is a sample memo schedule A for the "best efforts" occupation/employer information amendments which we are now required to file. These memo schedules should list the name and address of each contributor, along with any employer and occupation information which is now in the file. In addition, the date and amount of each contribution this year should be listed. The header at the top of the page should read "Memo Schedule Itemized Receipts," with a sub-header below the paragraph beginning "Any information copied..." which should read "Report covering period from -/-/94 thru -/-/94. The memo schedules should be grouped by deposit dates which correspond to regular reporting periods. This will be calendar months through September 30, then the Pre-General report (October 1-19), the Post-General report (October 20-November 28), and the Year-end report (November 29-December 31). Contributors with multiple contributions should be listed based on the date of the most recent contribution, so that a contributor who gave in April, May, and June would be reported in a memo schedule headed "Report Covering Period 6/1/94-6/30/94," which would show the date and amount of the June contributions and also the date and amounts of the two prior contributions. The memo schedules prepared for each report should be based on letters received during the current reporting period. Separate memo schedules will be required for each date range which corresponds to a previous reporting period, based on the date of the most recent contribution for each contributor. For example, all letters received in August will be reported on memo schedules filed on September 20, with separate memo schedules for contributors with most recent deposit dates March 1-31, April 1-30, and May 1-31.

Letters can be mailed once each month, as we discussed yesterday. However, all letters must be mailed within 30 days of the deposit date for contributions. This means that we would need to select contributors from the first week of the new month as well, even if aggregate totals for these had not yet been fully updated.

The letters must contain the statement "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year" in "a clear and conspicuous manner."

Call me if you have any questions.

Sincerely,

Allen Haywood

cc: Derby Watkins

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INNER CIRCLE

Senator Bob Dole
Republican Leader

August 1, 1994

Senator Phil Gramm
Chairman

Dr. Cornelius Nicoll
33 N. Fullerton Avenue
Montclair, NJ 07042

Dear Dr. Nicoll,

On behalf of our Chairman, Senator Phil Gramm, I want to thank you for your generous contribution to the Republican Senatorial Inner Circle. The commitment you have made will have a direct impact on the success of our Candidates in November.

The regulations of the Federal Election Commission require that we obtain the attached information regarding employment. Please complete the attached form and return it to us as soon as possible in the enclosed envelope.

We appreciate your assistance in helping the Inner Circle comply with all federal requirements. Please do not hesitate to contact us if you have any questions.

Thank you again for your support.

Sincerely,

Allen

Allen Haywood
Comptroller

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**National Republican
Senatorial Committee**

Senator Alfonse M. D'Amato
Chairman

January 17, 1995

Mr. Francisco Perez
P.O. Box 361007
San Juan, PR 00936-1007

Dear Mr. Perez,

On February 10 -- just three weeks from today -- I am to present the 1995 National Republican Senatorial Committee Membership Report to the new Republican MAJORITY Leadership.

This report will detail members who renewed their 1995 memberships, as well as those who lapsed. And given your long-standing support of the Senatorial Committee, I can't imagine you want your name to appear on the LAPSED member list.

That's why I hope you'll renew your membership today by sending your \$35 renewal check, along with the top portion of the enclosed Membership Statement, to the NRSC.

(You should have already received your 1995 Membership Card. If not, please let me know and I'll send another right away.)

I need to hear from you as soon as possible because the Republican Leadership and I need to know exactly how many members we can count on during the next 22 months. And I can tell you right now, we need your help.

The success of the 1996 elections depends on IMMEDIATE support from every NRSC member. If we fail to keep the momentum going that we established in 1994, retaking the White House and holding on to the Senate will be impossible.

The good news is that of the 15 Democrat Senate seats up for election next year, many are held by well-known and vulnerable leftists like Paul Wellstone of Minnesota, John Kerry of Massachusetts and Joe Biden of Delaware.

The bad news is that we have 18 Republican seats that we have to defend -- for the first time in years we have more seats to defend than the Democrats. AND THAT WON'T BE EASY!

97043795332

- 2 -

Given the tremendous opportunity -- and risks -- that 1996 presents, the Republican Leadership has ruled that we contact every Republican that has consistently stood beside us and make sure they continue to stay with us throughout the coming months.

That's why I'm urging you to write a check to the NRSC as soon as possible -- before the February 10 deadline, so that when I meet with the Republican Leaders your name doesn't appear on the LAPSED list.

PLEASE SEND IT TODAY.

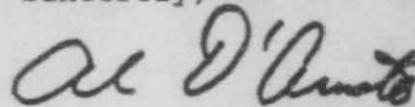
Remember, the stunning success of Ronald Reagan's first six years in office was a direct result of having a Republican Senate Majority. And when we retake the White House in 1996, it's vital that we also hold on to the Senate.

That's why I'm asking you to send your membership renewal contribution of \$35 to the NRSC today. (If our letters crossed in the mail and you've already renewed for 1995, please use this opportunity to send an additional special contribution.)

Mr. Perez, as soon as I receive your membership renewal I'll change your name to ACTIVE on the Membership Statement, but I must hear back from you by February 10.

I anxiously await your reply.

Sincerely,



Senator Al D'Amato
Chairman

P.S. Many NRSC members have failed to renew this year (some members forget that it's even harder to stay in power than it is to capture it), and we urgently need to get our membership on board.

Please rush your \$35 membership contribution to the NRSC today so that when I make my report to the Republican Leadership your name is listed as ACTIVE.

If you've already renewed your membership, please use this Membership Statement and envelope to maximize your support with an additional contribution today. Thank you.

97043795333



Account Number 01252553 95A78

Please note any change to your name or address

Mr. Francisco Perez
P.O. Box 361007
San Juan, PR 00936-1007

1/17/95
2/10/95
\$35

DETACH HERE



Please enclose your full \$35 membership payment and mail to the NRSC to arrive by February 10.

Keep this portion for your records

Dear Mr. Perez,

When I meet with Senator Dole and the Republican Majority Leadership, I'd like them to know that you renewed your NRSC Membership, and that you're committed to winning back the White House and holding on to our Republican Majority. Please rush your \$35 renewal check to the NRSC today, along with the attached Membership Statement in the enclosed postage-paid envelope. Thank you.

Check Number _____
Payment Amount \$ _____ Date _____

PLEASE MAKE YOUR CHECK PAYABLE TO:
National Republican Senatorial Committee
425 Second Street, N.E. • Washington, D.C. 20002

THIS IS NOT A BILL.

97043795334

CREDIT CARD PAYMENT OPTION: (Circle one: Visa, MasterCard or American Express)

Name and Number (as they appear on card)

Total Amount Charged

Expiration Date

Check if credit card is corporate

Signature

The Federal Election Commission requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Occupation: _____

Employer: _____

Employer's Address: _____

Home Phone: (____) _____ Business Phone: (____) _____

Paid for and authorized by the National Republican Senatorial Committee. Contributions to the National Republican Senatorial Committee are not deductible as charitable contributions for federal income tax purposes. Contributions which exceed the limits permitted by, or which may not be accepted under federal law will not be used for federal election purposes.

Not printed at government expense.

97043795335



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1995

VIA FACSIMILE

Jan Witold Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 4167
National Republican Senatorial
Committee; J. Stanley Huckaby,
Treasurer

Dear Mr. Baran:

As we discussed by telephone on June 2, 1995, there is an important discrepancy in the NRSC's response to the Commission's reason to believe finding, which needs to be clarified in order for this Office to complete its review of this case. Specifically, the former comptroller of the NRSC avers in his affidavit that "the NRSC had already started to include the new 'Best Efforts' language that '[f]ederal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over \$200 in a calendar year' prior to the July 22, 1994, court decision." (Affidavit of Allen Haywood at ¶ 7.) Further, Mr. Haywood avers that the "[follow-up] letters are sent in compliance with the new regulations" (*Id.* at ¶ 6), and he provides a copy of the letter of instruction sent to the vendor which states that: "The letters must contain the statement 'Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year' in 'a clear and conspicuous manner.'" (*Id.* at Exhibit 1.) Contrary to Mr. Haywood's affidavit, the sample solicitation and follow-up letter submitted by the NRSC in its response do not reflect the precise wording cited by Mr. Haywood and specifically required by 11 C.F.R. § 104.7(b)(1).

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

97043795336

Jan Witold Baran, Esquire
Page 2

As set forth in the regulations, in order for a committee to avail itself of the "best efforts" provision, the statement in the solicitation and follow-up letter must say: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year." (Emphasis added.) The statement in the NRSC's sample solicitation begins with "The Federal Commission requires" rather than "Federal law requires" (Haywood Affidavit at Exhibit 3.) Similarly, the NRSC's sample follow-up letter states: "The regulations of the Federal Election Commission require that we obtain the attached information regarding employment." (Id. at Exhibit 2). Neither of these statements is in compliance with the requirements of 11 C.F.R. §§ 104.7(b)(1)-(2).

Please advise this Office whether the NRSC is currently using the precise statement required by Section 104.7(b)(1) in its solicitations and follow-up letters and, if so, please submit copies of such solicitations and follow-up letters. If the NRSC is not currently using the precise statement required by Section 104.7(b)(1), please state whether the NRSC will immediately begin to comply with Section 104.7(b)(1) in order to avail itself of the "best efforts" provision and employ the required language in its solicitations and follow-up letters. Your response is due by the close of business on June 16, 1995. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Dominique Dillenseger
Attorney

97043795337

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

WILEY, REIN & FIELDING

1738 K STREET, N. W.

WASHINGTON, D. C. 20006

(202) 429-7000

June 16, 1995

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049

Dominique Dillenseger
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

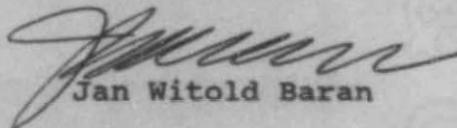
Re: MUR 4167

Dear Ms. Dillenseger:

I am in receipt of your letter of June 8, 1995 requesting additional information with respect to Matter Under Review 4167 from the National Republican Senatorial Committee ("NRSC") and J. Stanley Huckaby, as Treasurer.

Specifically, you have asked for documentary confirmation that the NRSC currently uses the precise language required by 11 C.F.R. § 104.7(b)(1), or, in the alternative, confirmation that the NRSC will immediately comply with that section in the event it does not presently do so. Enclosed please find an Affidavit from Maureen Goodyear, current comptroller of the NRSC, which confirms that the NRSC does use the precise language found in section 104.7(b)(1) of the Commission Regulations and providing recent solicitation and follow-up letters issued by the NRSC.

Sincerely,


Jan Witold Baran

97043795338

BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington)
District of Columbia)

MUR 4167

AFFIDAVIT OF MAUREEN GOODYEAR

Maureen Goodyear, first being duly sworn, deposes and says:

1. I am Maureen Goodyear. I currently serve as comptroller and assistant treasurer of the National Republican Senatorial Committee (NRSC), an authorized national committee of the National Republican Party. I have been the comptroller since March 1, 1995.

2. I am familiar with the June 8, 1995 letter issued by the Federal Election Commission Office of the General Counsel in connection with Matter Under Review 4167. That letter asks whether the NRSC is currently using the precise language required by 11 C.F.R. § 104.7(b)(1) and, if so, requests the NRSC to provide copies of solicitations and follow-up letters which use the precise language found in section 104.7(b)(1). The NRSC is currently using the language found in section 104.7(b)(1). As proof of that fact, I have attached to this affidavit copies of recent NRSC solicitations and follow-up letters.

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The above is true and correct to the best of my knowledge,
information and belief.

Maureen S. Goodyear
Maureen Goodyear

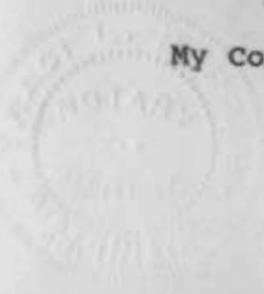
Signed and sworn to before me
this 16th day of June, 1995

Traci L. Pappas
Notary Public

My Commission Expires:

My Commission Expires October 31, 1999

9704379534C



REPUBLICAN



SENATORIAL

INNER CIRCLE

Director 800 Line
Mystery Leader

May 15, 1995

Senator Alfonse M. D'Amato
Chairman

Mr. J. A. Farnsworth, Jr.
6057 East University Dr.
Mesa, AZ 85205

Dear Mr. Farnsworth,

On behalf of our Chairman, Senator Al D'Amato, I want to thank you for your generous contribution to the Republican Senatorial Inner Circle. The commitment you have made will help us build on our Senate Majority and capture the White House in 1996.

The regulations of the Federal Election Commission require that we obtain the attached information regarding employment. Please complete the attached form and return it to us as soon as possible in the enclosed envelope.

We appreciate your assistance in helping the Inner Circle comply with all federal requirements. Please do not hesitate to contact us if you have any questions.

Thank you again for your support.

Sincerely,

Maureen Goodyear
Comptroller

97043795341

EMPLOYER OCCUPATION FORM

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year:

Mr. J. A. Farnsworth, Jr.

00530303

ADDRESS: _____

CITY: _____

STATE/ZIP: _____

OCCUPATION: _____

EMPLOYER: _____

Please check if self employed.

97043795342

REPUBLICAN



SENATORIAL

INNER CIRCLE

Senator Bill Thiel
Maureen Lewis

May 15, 1995

Senator Alfonse M. D'Amato
Chairman

Mr. Edward A. Lozick
358 Bishop Road
Highland Heights, OH 44143

Dear Mr. Lozick,

On behalf of our Chairman, Senator Al D'Amato, I want to thank you for your generous contribution to the Republican Senatorial Inner Circle. The commitment you have made will help us build on our Senate Majority and capture the White House in 1996.

The regulations of the Federal Election Commission require that we obtain the attached information regarding employment. Please complete the attached form and return it to us as soon as possible in the enclosed envelope.

We appreciate your assistance in helping the Inner Circle comply with all federal requirements. Please do not hesitate to contact us if you have any questions.

Thank you again for your support.

Sincerely,

Maureen Goodyear
Maureen Goodyear
Comptroller

97043795343

EMPLOYER OCCUPATION FORM

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year:

Mr. Edward A. Lozick

005-45346

ADDRESS: _____

CITY: _____

STATE/ZIP: _____

OCCUPATION: _____

EMPLOYER: _____

Please check if self employed.

97043795344



NATIONAL REPUBLICAN SENATORIAL COMMITTEE
SPECIAL ISSUES SURVEY

Section I. General Background Questions

In order to help us form a profile of your interests and outlook, please answer each of the questions below, then provide your answers to the issue questions on the reverse side. All information provided will remain completely confidential. Feel free to leave blank any questions you do not care to answer. Thank you.

1. My age bracket is:

() 21-30 () 31-40 () 41-50 () 51-60 () 61-70 () 71-80 () 81+

2. I have considered myself a Republican for this many years:

() 1-10 () 11-25 () 26-50 () 51+ () Never

3. In the 1992 Presidential race, I voted for:

() George Bush () Bill Clinton () Ross Perot
() I did not vote () Other _____

4. Many say the Republican Party finally won control of Congress in 1994 because of broad support for the Republican "Contract With America." Others say voters were simply showing displeasure with Bill Clinton and the Democrats. Which of the following do you believe to be most correct?

() GOP won because it ran the best candidates and campaigns.
() GOP won mainly because of the "Contract With America."
() GOP won partially because of the "Contract with America."
() GOP won because voters are angry with Bill Clinton.
() GOP won because voters are angry with Democrats in Congress.
() Other _____

5. Based on what you have seen, read and heard so far, how would you rate the performance of the new Republican-controlled Congress so far:

() Strongly Approve
() Somewhat Approve
() Somewhat Disapprove
() Strongly Disapprove

Please turn page over to continue questions.....

NRSC Contributor Information

This communication has been paid for and authorized by the National Republican Senatorial Committee. Contributions to the National Republican Senatorial Committee are not deductible as charitable contributions for federal income tax purposes. Contributions which exceed the limits permitted by, or which may not be accepted under federal law will not be used for federal election purposes.

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Occupation _____

Employer _____

Employer's Address _____

Home Phone _____ Business Phone _____



97043795345



NATIONAL REPUBLICAN SENATORIAL COMMITTEE
SPECIAL ISSUES SURVEY

Section II. Tax and Budget Reform Questions

1. Many Republicans feel we need to scrap our income tax laws and replace them with a simple flat tax, such as 17%. Do you support this position?

- () Strongly support
() Somewhat support
() Oppose
() Other _____

2. Many Republicans feel growth in entitlement programs is the primary cause for the federal budget deficit. Do you support this position?

- () Strongly support
() Somewhat support
() Oppose
() Other _____

3. Many Republicans say they want to see the federal budget put into balance before Congress authorizes any tax reductions. Do you support this position?

- () Strongly support
() Somewhat support
() Oppose
() Other _____

4. Many Republicans say we should eliminate taxes on savings accounts to encourage families and individuals to save more and borrow less. Do you support this position?

- () Strongly support
() Somewhat support
() Oppose
() Other _____

5. Many Americans say we should reduce or eliminate the capital gains tax to encourage long-range investment, job growth and more personal savings. Do you support this position?

- () Strongly support
() Somewhat support
() Oppose
() Other _____

NRSC SPECIAL ISSUES SURVEY CONTRIBUTION

- Enclosed is my contribution for the National Republican Senatorial Committee in the amount of:
 \$33 \$50 \$100 \$ ____ Other
- Please make sure my contribution is used only for Republican Senate candidates who share my views on the issues above.
- You may tabulate my answers with other surveys and distribute the total results to our GOP Senators and our 1996 Republican Senate candidates. I wish to receive a copy of this survey report.

Survey Reply #: 95E42
01581522

Ms. Rebecca B. Nelson
4517 Emerson, Apt. 3
Dallas, TX 75205-1019



Please make your check payable to National Republican Senatorial Committee.

For NRSC Office Use Only

Date Received

- () Donation Enclosed
() Special Comments Attached

97043795346



NATIONAL REPUBLICAN SENATORIAL COMMITTEE
425 SECOND STREET, N.E. • WASHINGTON, D.C. 20002

John D. Heubusch
Executive Director

Would you describe yourself as one who believes liberal spending policies threaten America with bankruptcy?

Do you feel our confusing system of income tax laws, loopholes and subsidies should be scrapped?

Do you favor entitlement reforms to protect retirees, and make Social Security and Medicare stronger?

If so, please answer my special personal survey now.

Dear Ms. Nelson,

This is surely not the first campaign issues survey you have been asked to answer. It probably won't be the last, either.

But it could be the most unusual - and important.

For it deals frankly with several topics you and I rarely see mentioned in many campaign questionnaires.

So let me tell you why I am sending this unusual survey to you, and why your prompt answers are so needed now.

First, I feel certain by your long record of support for the NRSC that you agree with me when I say our Party must retain and expand the majority we won in the Senate in 1994.

Only by making a strong, well-funded Republican campaign in 1996 can we hope to overcome the liberal agenda of the Clinton Administration ... and defeat the Democrat Senators who have sabotaged our GOP drive for a balanced budget, tax reform and reductions in the federal government.

To protect our slim four-seat GOP Majority in the U.S. Senate, we must defend all 18 Republican-held seats up for election in 1996.

At the same time, we must help new GOP challengers win in the 15 states where Democrat Senators are now in power.

As Executive Director of the National Republican Senatorial Committee, it is my job to help recruit and elect Republican Senators who are united in their commitment to balanced budgets, less government, lower taxes and private enterprise.

But there are other important issues - such as tax simplification, entitlement reform and budget cuts - on which Republicans across the nation may have widely different opinions or positions.

Some Republicans say they wish these issues would "just go away." Others are unbending in their deeply-held beliefs.

Nevertheless, it is clear these issues will play a critical role in electing the next Senate and President in 1996.

That is why I am seeking your help right now, Ms. Nelson.

Will you please answer my questionnaire, then mail your answers back to me in the special envelope I've enclosed?

When you do, will you also send a special earmarked check for at least \$33 to the National Republican Senatorial Committee - and invest in the kind of Senate candidates who share your views?

After forty years in power, the Democrats left us saddled with a haunting legacy of misery and despair.

97043795347

They ruled with a single-minded belief that only a centrally-controlled, free-spending big government in Washington could solve our nation's problems. But here's the sad irony:

They made worse the very problems they said they would fix.

Consequently, the U.S. government is now America's biggest slumlord ... an impediment to investment and job growth ... a bureaucratic obstacle to better education ... and a primary cause for shrinking family incomes, a collapsing social order and a terrifying national debt approaching \$5 trillion.

It will take years to clean up the wreckage left by decades of one-party Democrat control of our government.

But to build a new consensus for change in America, we must work toward a consensus for change within our own Party first.

Only by building a strong, broad, responsible Republican consensus in the House and the Senate can we hope to tackle these problems and solve them at last.

Will you take a first step to build that consensus right now by answering my questionnaire - then mail it back to me at once?

Will you back up that first step with a second - and give \$33 to the National Republican Senatorial Committee?

The liberal Democrats retained one-party power in Washington for forty years by swapping federal hand-outs and sweetheart legislation for \$10,000 campaign contributions from liberal PACs, union bosses and single-issue pressure groups.

However, we finally managed to defeat them in 1994 when more than a million Americans like you stepped forward with membership donations of \$25, \$50, \$100 and \$250 for the NRSC.

Your spirited support enabled the NRSC to furnish our 35 Republican Senate candidates an average of \$327,000 each in donations and campaign services -- and win back majority control.

But to keep that Republican control in the Senate, and expand it in 1996, we must do more -- and I must depend on you again.

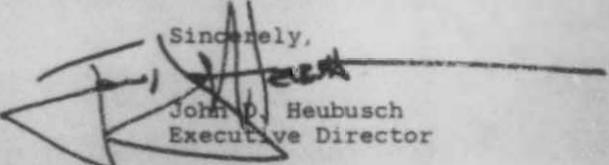
That is why I urge you to send in \$33 when you return your completed survey - just \$1 for every 1996 Senate race.

Your answers on the enclosed questionnaire are absolutely critical if you want to elect a Republican-controlled Senate that reflects and fights for your beliefs.

And your donation of \$33 - or \$50 or \$100 - is needed now to assure we have the funds on hand to elect like-minded Republicans who will act on your will.

Help me forge that GOP victory. Please mail your completed questionnaire and check to the NRSC right now.

Sincerely,


John D. Heubusch
Executive Director

P.S. By the way, you can trust me to keep your answers completely confidential. With your permission, however, I will tally your answers with those I receive from others, then distribute a complete report to all Republican Senators and to all GOP Senate candidates.

I hope I can also tell them that you have again supported the NRSC and our 1996 campaign with a donation of at least \$33. Please help us win and expand our GOP Senate Majority by answering now.

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Second, your answers will help our Republican Senators counter the attacks our budget will face, not only from the Democrats but from their liberal media allies.

Already, the T.V. networks and big-city newspapers have used slanted polls and biased research to "prove" that the American people don't support our plan to balance the budget.

Clearly, we cannot allow these claims to go unanswered if we hope to get our Republican Budget through Congress and, if necessary, override President Clinton's veto.

When the American people elected our Republican Senate and House majorities last year, they gave us two years to get our country back on the road toward long-term economic security.

This budget battle is the watershed political event that will prove to the American people that we, as a Party, deserve their continued trust and support. By winning this battle, we can prove that we can get the job done, and gain an early lead toward an across-the-board Republican victory next year.

But if we lose this fight, the Democrats will point to this defeat again and again in their 1996 campaign to win back Congress and keep Bill Clinton in office for four more years.

In short, this is a battle we cannot afford to lose. And your Survey responses to our NRSC 1996 Federal Budget Survey will give us the tools to win.

At the same time, however, it is also imperative that you enclose the most generous contribution you can when you return your completed Survey document.

As I write, it's only a matter of weeks before virtually every one of our 1996 Senate campaigns will be in full swing.

Yet, as of now, we are already \$362,700 short of our budget target. This is money that is vital to our efforts to preserve our Republican Senate Majority and keep America on a course toward a balanced budget by the year 2002.

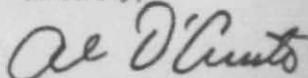
Unless I can count on you today, I will face the choice of canceling the NRSC's role in this budget fight, or falling further behind in our campaign plans.

If it's at all possible, I hope you will give one of the amounts I have suggested on the MEMBER VALIDATION REPLY at the end of your Survey. If that's not possible, then I simply ask that you be as generous as you can.

And in considering your contribution, I ask that you remember this one simple fact: That every eye in America is focused on our Republican Senate right now, to see if we can keep the promises we made to the American people last fall.

I know we can do it. But we desperately need your help, through your thoughtful Survey answers and your immediate, generous contribution. Thank you very much for your fast reply.

Sincerely,


Senator Al D'Amato
Chairman

P.S. Senate Majority Leader Bob Dole has asked me to include a place on your Survey for your personal comments. He wants to speak for you -- and his voice is your voice. So please, if there's anything you wish to add, use the space provided on your Survey document, and I will forward your comments directly to Senator Dole. Thank you again!

9704379535C



1996 FEDERAL BUDGET SURVEY

FOR EXCLUSIVE USE OF ADDRESSEE ONLY. ANY OTHER USE VOIDS THIS DOCUMENT.

Please mark your answer to each question in the space provided. Additional comments are welcome. Please return your completed Survey to the NRSC by July 5, 1995. Total results will be reported in detail to all 54 Republican Senators on July 19, 1995. Your individual answers will remain confidential.

SECTION I:

1996 BUDGET REDUCTIONS

The following federal spending reductions have been recommended by Senate Republicans to balance the federal budget within the next seven years. Please indicate whether you agree or disagree with each of these proposals.

- 1) Return U.S. contribution to United Nations Peacekeeping Fund to 1991 levels, saving \$1.2 billion over five years
 AGREE DISAGREE NO OPINION
- 2) Shift welfare spending to the states to provide greater accountability and give local officials more control over how this money is spent
 AGREE DISAGREE NO OPINION
- 3) Cut funding for the National Endowment for the Arts and National Endowment for the Humanities to 50% of current level
 AGREE DISAGREE NO OPINION
- 4) Eliminate the Department of Commerce and incorporate key Commerce programs into other agencies, saving \$1 billion each year
 AGREE DISAGREE NO OPINION
- 5) Gradually eliminate subsidies for Amtrak and other mass transit programs which have not proven cost-effective
 AGREE DISAGREE NO OPINION
- 6) Conform Congressional retirement benefits to those found in the private sector
 AGREE DISAGREE NO OPINION
- 7) Freeze Congressional salaries until the budget is balanced in the year 2002
 AGREE DISAGREE NO OPINION
- 8) Repeal the Davis-Bacon Act, to reduce labor costs on federal construction projects
 AGREE DISAGREE NO OPINION
- 9) Sell government petroleum reserves, resulting in a one-time cost benefit of \$1.5 billion
 AGREE DISAGREE NO OPINION
- 10) Reduce by 25% the allowable spending for the Executive Office of the President
 AGREE DISAGREE NO OPINION
- 11) Transfer Medicaid funds to the state level in the form of block grants and slow the annual growth in Medicaid spending from 10% to 5%
 AGREE DISAGREE NO OPINION
- 12) Reduce funding for the Legal Services Corporation (an independent agency which has been criticized for advancing a liberal legal agenda at taxpayer expense)
 AGREE DISAGREE NO OPINION
- 13) Limit welfare benefits to immigrants who are not citizens of the United States
 AGREE DISAGREE NO OPINION
- 14) Cut Congressional committee and support staffs, saving \$1.4 billion over the next five years
 AGREE DISAGREE NO OPINION
- 15) Eliminate the cold-war era Arms Control and Disarmament Agency
 AGREE DISAGREE NO OPINION

97043795351

NATIONAL BUDGET POLICY

- 16) In general, do you believe that the size and power of the federal government is:
- too large
 too small
 about right
 undecided
- 17) In general, what is your view on federal income tax rates:
- Taxes are too high and should be cut now.
 Taxes are too high, but cuts should wait until the federal deficit is brought under control.
 Taxes are about right.
 Taxes are too low.
 Undecided
- 18) Do you believe that maintaining our national defenses should remain a top priority for Republicans as we debate the 1996 federal budget?
- YES NO UNDECIDED
- 19) Do you believe that federal bureaucrats should be given more money to fight crime from Washington, D.C., or would you rather see this money spent at the local level to get violent criminals and drug dealers off your streets?
- Spending should be at the federal level
 Spending should be at the state and local levels
 No opinion
- 20) Do you believe that the "foreign aid" tax money that the United States government sends overseas is generally well-spent?
- YES NO UNDECIDED
- 21) Do you believe that illegal immigrants should be entitled to welfare benefits, food stamps, free medical care and other tax-funded government subsidies?
- YES NO UNDECIDED
- 22) Do you believe that "social safety net" programs such as welfare and Aid to Families with Dependent Children (AFDC) should be used to help families during emergencies only, and that able-bodied welfare recipients should be required to work?
- YES NO UNDECIDED

NATIONAL REPUBLICAN SENATORIAL COMMITTEE

1996 FEDERAL BUDGET SURVEY

MEMBER VALIDATION REPLY

To: Senator Al D'Amato, Chairman From: Mr. Stanley J. Gelin
 206 Allandale Road
 Chestnut Hill, MA 02167-3235

Dear Senator D'Amato:

- I have completed my Survey and hereby authorize you to include my answers in the tabulated results, to be distributed to every Republican member of the U.S. Senate.

I also understand the critical importance of my immediate contribution in winning this budget fight and in winning a Republican victory in the 1996 election. Therefore I am enclosing the most generous contribution I can in the amount of:

\$75 \$115 \$150 Other \$ _____

01373110 95F23

SIGNATURE (REQUIRED FOR VALIDATION OF YOUR SURVEY ANSWERS)

Important: Please use this space for any personal comments that you would like us to forward to Senate Majority Leader Bob Dole: _____

To make your contribution by credit card, please complete the following information:

Type of credit card: VISA MasterCard American Express Personal Corporate

NAME (AS IT APPEARS ON CARD)

CARD NUMBER

AMOUNT OF GIFT

EXPIRATION DATE

SIGNATURE

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Occupation: _____

Employer: _____

Paid for and authorized by the National Republican Senatorial Committee. Contributions to the National Republican Senatorial Committee are not deductible as charitable contributions for federal income tax purposes. Contributions which exceed the limits permitted by, or which may not be accepted under federal law will not be used for federal election purposes. Not printed at government expense.



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *VAC*
 DATE: July 21, 1995
 SUBJECT: MUR 4167-General Counsel's Report

The attached is submitted as an Agenda document
 for the Commission Meeting of _____
 Open Session _____
 Closed Session _____

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CIRCULATIONS		DISTRIBUTION	
72 Hour Tally Vote	(XX)	Compliance	(XX)
Sensitive	(XX)	Audit Matters	()
Non-Sensitive	()	Litigation	()
24 Hour Tally Vote	()	Closed Letters	()
Sensitive	()	MUR	()
Non-Sensitive	()	DSP	()
24 Hour No Objection	()	Status Sheets	()
Sensitive	()	Advisory Opinions	()
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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of)
)
Republican National Committee and)
William J. McManus, as treasurer;)
National Republican Senatorial)
Committee and J. Stanley Huckaby,)
as treasurer;)
National Republican Congressional)
Committee and Donna Singleton, as)
treasurer)

JUL 21 1 23 PM '95

MUR 4167

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On January 10, 1995, the Federal Election Commission ("the Commission") found reason to believe that the Republican National Committee and William J. McManus, as treasurer ("RNC"), the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer ("NRSC"), and the National Republican Congressional Committee and Donna Singleton, as treasurer ("NRCC") violated 2 U.S.C. 434(b)(3)(A) prior to July 22, 1994,¹ but determined to take no further action at this time regarding the violation. The Commission also found reason to believe that the RNC and NRSC violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994.

In response, the RNC and NRSC have requested that the Commission take no further action and dismiss the matter. The

1. On July 22, 1994, in Republican National Committee, et al. v. FEC, Civil Action No. 94-1017, the District Court for the District of Columbia upheld the revised "best efforts" regulations, rejecting the committees' arguments that the new regulations were: (1) an "impermissible construction of the 'best efforts' provision"; (2) arbitrary and capricious; (3) contrary to the Act and a violation of the First Amendment; and (4) not narrowly tailored to meet a compelling government interest. The Court held that the new "best efforts" rule "is narrowly tailored to serve a compelling governmental interest."

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NRCC did not submit any additional response. Each committee is discussed separately below.

II. ANALYSIS

Republican National Committee

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In its response and in support of its request for dismissal of the action, the RNC sets forth the same legal arguments raised by the committees during rulemaking and in their suit against the Commission challenging the validity of the revised "best efforts" regulations.² Attachment 1. These arguments have already been considered and rejected by the Commission and the District Court³ and need not be readdressed. The RNC also argues that it is complying -- not with the revised regulations -- but with the "statutory 'best efforts' standard" under 2 U.S.C. § 432(i) because of: (1) the RNC's current policy to request contributor information in every solicitation, regardless of the amount of contribution solicited and regardless of whether the information has previously been provided; and (2) the high level of RNC disclosure of contribution information (87% - 89%). Id. at 2.

2. These arguments include, inter alia, that: (1) the revised "best efforts" regulations are contrary to Congressional intent; (2) the Commission exceeded its authority in promulgating these regulations; and, (3) the regulations are costly, burdensome, and result in less rather than more disclosure. Attachment 1. The RNC also contends that the Commission's pursuit of the enforcement action while the same issue is being litigated is, among other things, unnecessary and unfair. Attachment 1.

3. The committees have appealed the District Court's decision upholding the validity of the revised "best efforts" regulations to the United States Court of Appeals for the District of Columbia Circuit. Oral argument is scheduled for September 14, 1995.

Without question, the RNC's current practice of sending multiple solicitations to obtain contributor information does not comply with the requirements of 11 C.F.R. § 104.7(b). In promulgating the revised "best efforts" regulations, the Commission specifically rejected the previous "one effort per solicitation" approach and required the treasurer to take additional measures in order to demonstrate "best efforts," namely: (1) making a clear request for contributor information and including a specifically worded statement in the solicitations;⁴ (2) making at least one follow-up, stand-alone request for missing information (which must also include the specifically worded statement) within thirty days of receipt of a contribution with incomplete contributor identification without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b).

The RNC's practice does not comply with any of the "best efforts" measures of the regulations: (1) its sample solicitation does not contain the full text of the required statement, see Attachment 1, p. 102; (2) it uses additional solicitations rather than stand-alone, follow-up requests to obtain missing contributor information; and (3) it has not filed any amendments to report previously missing contributor information. Finally, although the

4. The statement in the solicitation must say: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year." 11 C.F.R. § 104.7(b)(1).

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RNC has high disclosure rates relative to other committees, these rates -- unless they reflect 100% compliance -- do not exempt the RNC from having to show that it made "best efforts" under 11 C.F.R. § 104.7(b) in order to have its incomplete reports deemed in compliance with the Act and to avoid a violation.

In light of the RNC's failure to provide complete contributor information and the fact that it has not changed its procedures to comply with the revised "best efforts" regulations, this Office recommends that the Commission reject the RNC's request to take no further action. Further, because the RNC's incomplete reports cannot be deemed in compliance with the Act pursuant to 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(b), the Committee has indicated that it does not intend to change its practice to comply with the new regulation, and the Committee has not requested pre-probable cause conciliation, this Office intends to move on to the next stage of the enforcement process.

National Republican Senatorial Committee

In its response, the NRSC, inter alia, makes the same arguments as the RNC concerning the validity and effectiveness of the revised "best efforts" regulations,⁵ the costs and burdens

5. The NRSC, like the RNC, argues that complying with the revised "best efforts" regulations is not resulting in getting more contributor information and points out that the NRSC "in following the regulations is getting substantially less contributor information that other committees such as the RNC which is not 'complying' with the regulation." Attachment 2, pp. 11-12. The NRSC also disputes the omission rates calculated by the Commission for the NRSC's 1994 April, May, and June monthly reports. The NRSC contends that its rates for these months were respectively, 30.9%, 31.4%, and 30.7%, rather than the 48%, 44%, and 38% reported in the Factual and Legal Analysis. Id. at 4-5.

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imposed on committees by the regulations, and the Commission's pursuit of this enforcement action while the matter is pending on appeal. Attachment 2. As with the RNC, these arguments need not be readdressed. The NRSC also contends that the revised "best efforts" regulation is merely a "safe harbor" and that it is not necessary to follow the regulation in order to demonstrate "best efforts." Id. at 8-9.

The NRSC quotes from a statement made by the Commission to the District Court which the NRSC contends supports its view that it is not necessary to comply with the regulations to show best efforts. The statement reads:

Neither the Act nor the Commission's regulation affirmatively requires political committees either to utilize the notice or make the single follow-up request for information that the Commission has found to be the minimum action that will show "best efforts." If a political committee has an alternative method that will effectively obtain the necessary information, it is free to use that method. The "best efforts" regulation is only a "safe harbor" defense for committees that fail to obtain and report the contributor identifying information

It appears that the NRSC has misconstrued this statement. The statement correctly points out that it is not necessary to show best efforts, if there is an "alternative method that will effectively obtain the necessary information." In other words, if complete contributor information is provided, "best efforts" is not an issue and the safe harbor provision does not come into play. On the other hand, committees that fail to report complete

6. Defendant Federal Election Commission's Memorandum Of Points And Authorities In Support of Its Motion To Dismiss Or, In The Alternative, For Summary Judgment at 33.

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contributor information must show that they have made "best efforts" under 11 C.F.R. § 104.7(b) in order to have their incomplete reports deemed in compliance with the Act and to avoid a violation.

Despite the NRSC's position on this matter, the NRSC has stated that following the July 22, 1994, District Court decision, it has taken steps to comply fully with the regulations. See Affidavit of Allen Haywood, Attachment 2, pp. 16-20.

Specifically, the NRSC's response to the reason to believe finding stated that it now: (1) makes a clear request for contributor information and includes the specifically worded statement required by the regulations; (2) makes written stand-alone, follow-up requests for missing information within 30 days of receipt of the contributions with incomplete contributor identification without also soliciting a contribution; and (3) files monthly amendments reporting previously missing information. Id.

There was an important discrepancy, however, in the NRSC's response between the former comptroller's affidavit and the sample solicitation and follow-up request it submitted. Specifically, Mr. Haywood averred in his affidavit that "the NRSC had already started to include the new 'Best Efforts' language that '[f]ederal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over \$200 in a calendar year' prior to the July 22, 1994, court decision." Affidavit of Allen Haywood at ¶ 7. Further, Mr. Haywood averred that the "[follow-up] letters

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are sent in compliance with the new regulations," Id. at ¶ 6, and he provided a copy of the letter of instruction sent to the vendor which states that: "The letters must contain the statement 'Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year' in 'a clear and conspicuous manner.'" Id. at Exhibit 1. Contrary to Mr. Haywood's affidavit, the sample solicitation and follow-up letter submitted by the NRSC in its response did not reflect the precise wording cited by Mr. Haywood and specifically required by 11 C.F.R. § 104.7(b)(1).

As set forth in the regulations, in order for a committee to avail itself of the "best efforts" provision, the statement in the solicitation and follow-up request must say: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year." (Emphasis added.) The statement in the NRSC's sample solicitation begins with "The Federal Commission requires" rather than "Federal law requires" Haywood Affidavit at Exhibit 3. Similarly, the NRSC's sample follow-up letter states: "The regulations of the Federal Election Commission require that we obtain the attached information regarding employment." Id. at Exhibit 2. Neither of these statements is in compliance with the requirements of 11 C.F.R. §§ 104.7(b)(1)-(2).

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In light of the discrepancy in the NRSC's response, we sought clarification from this Respondent before making our recommendations to the Commission. Attachment 3. In response, the NRSC submitted recent copies of its solicitations and follow-up requests⁷ which now reflect the exact wording required by the regulations. See Affidavit of Maureen Goodyear, Attachment 4, pp. 2-15. In addition, the NRSC's follow-up letters are stand-alone requests for contributor information and it has been filing amendments supplementing previously missing information.⁸

In light of the NRSC's current compliance with the revised "best efforts" regulations, this Office recommends that the Commission take no further action, send an admonishment letter, and close the file as to the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer.

National Republican Congressional Committee

The NRCC did not submit any response to the Commission's finding of reason to believe it violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, and its determination to take no further action at this time regarding the violation.⁹ Because there is

7. Although the NRSC's sample follow-up letter still contains language which does not strictly conform to the specifically worded statement -- it states "[t]he regulations of the Federal Election Commission require that we obtain the attached information regarding employment" -- the request is in compliance because the letter includes an "Employer Occupation Form" that contains the precise wording required by 11 C.F.R. § 104.7(b)(1). See Affidavit of Maureen Goodyear, Attachment 4, pp. 4-7.

8. The NRSC started filing such amendments in September 1994.

9. The Commission did not find reason to believe the NRCC violated this section of the Act after July 22, 1994.

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nothing in the record to suggest the Commission should change this determination, this Office recommends that the Commission take no further action, send an admonishment letter, and close the file as to the National Republican Congressional Committee and Donna Singleton, as treasurer.

III. RECOMMENDATIONS

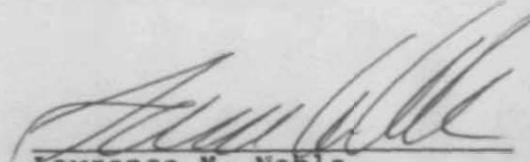
1. Reject the request to take no further action from the Republican National Committee and William McManus, as treasurer.

2. Take no further action against the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer, and close the file as to these respondents.

3. Take no further action against the National Republican Congressional Committee and Donna Singleton, as treasurer, and close the file as to these respondents.

4. Approve the appropriate letters.

7/21/95
Date


Lawrence M. Noble
General Counsel

Attachments

1. Response of RNC
2. Response of NRSC
3. OGC Letter, dtd June 8, 1995
4. NRSC Letter/Affidavit of Maureen Goodyear, dtd June 16, 1995.

Staff assigned: Dominique Dillenseger

97043795362



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: Marjorie W. Emmons/Bonnie J. Ross
Commission Secretary

DATE: July 26, 1995

SUBJECT: MUR 4167 - General Counsel's Report
dated July 21, 1995.

The above-captioned document was circulated to the Commission on Monday, July 24, 1995 at 4:00 p.m.

Objections(s) have been received from the Commissioner(s) as indicated by the names(s) checked below:

- Commissioner Aikens _____
- Commissioner Elliott XXX
- Commissioner McDonald _____
- Commissioner McGarry _____
- Commissioner Potter _____
- Commissioner Thomas _____

This matter will be placed on the meeting agenda for Tuesday, August 1, 1995.

Please notify us who will represent your Division before the Commission on this matter.

97043795363



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: JULY 27, 1995

SUBJECT: MUR 4167 - GENERAL COUNSEL'S REPORT
DATED JULY 21, 1995.

97043795364

The above-captioned document was circulated to the Commission on Monday, July 24, 1995 at 4:00.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Potter	<u> </u>
Commissioner Thomas	<u> </u>

This matter will be placed on the meeting agenda for Tuesday, August 1, 1995.

Please notify us who will represent your Division before the Commission on this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4167
Republican National Committee and)
William J. McManus, as treasurer;)
National Republican Senatorial)
Committee and J. Stanley Huckaby,)
as treasurer;)
National Republican Congressional)
Committee and Donna Singleton,)
as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 1, 1995, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 4167:

1. Reject the request to take no further action from the Republican National Committee and William McManus, as treasurer.
2. Take no further action against the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer, and close the file as to these respondents.
3. Take no further action against the National Republican Congressional Committee and Donna Singleton, as treasurer, and close the file as to these respondents.

(continued)

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4. Approve appropriate letters.

Commissioners McDonald, McGarry, Potter, and Thomas
voted affirmatively for the decision; Commissioners
Aikens and Elliott dissented.

Attest:

8-3-95
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 11, 1995

Donna Singleton, Treasurer
National Republican Congressional
Committee Contributions
320 First Street, S.E.
Washington, DC 20003

RE: MUR 4167
National Republican Congressional
Committee; Donna Singleton, Treasurer

Dear Ms. Singleton:

On January 19, 1995, you were notified that the Federal Election Commission found reason to believe that the National Republican Congressional Committee and you, as treasurer ("Committee") violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but determined to take no further action at that time concerning the violation.

After considering the circumstances of the matter, the Commission determined on August 1, 1995, to take no further action against the Committee, and closed the file as it pertains to the Committee. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

The Commission reminds you that it is a violation of 2 U.S.C. § 434(b)(3)(A) for a political committee to fail to report the name, mailing address and occupation/employer of each person who makes an aggregate contribution in excess of \$200 in a calendar year. Further, a committee that fails to report complete contributor information must show that it has made "best efforts" as defined under 11 C.F.R. § 104.7(b), in order to have its incomplete report deemed in compliance with the Act and to avoid a violation. In order to avail itself of the "best efforts" provision, the Committee should take immediate steps to insure that it complies with the requirements of 11 C.F.R. § 104.7(b). If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Dominique Dillenseger
Attorney

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 11, 1995

Jan Witold Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 4167
National Republican Senatorial
Committee; J. Stanley Huckaby,
Treasurer

Dear Mr. Baran:

On January 19, 1995, your clients, the National Republican Senatorial Committee and J. Stanley Huckaby, as treasurer ("Committee") were notified that the Federal Election Commission found reason to believe that they violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but determined to take no further action at that time concerning the violation. The Commission also found reason to believe the Committee violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994. On March 27, 1995, and June 16, 1995, you submitted responses to the Commission's reason to believe findings.

After considering your responses and the circumstances of the matter, the Commission determined on August 1, 1995, to take no further action against the Committee and closed the file as it pertains to your clients. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

The Commission reminds the Committee that it is a violation of 2 U.S.C. § 434(b)(3)(A) for a political committee to fail to report the name, mailing address and occupation/employer of each person who makes an aggregate contribution in excess of \$200 in a calendar year. Further, a committee that fails to report complete contributor information must show that it has made "best efforts" as defined under 11 C.F.R. § 104.7(b), in order to have its incomplete report deemed in compliance with the Act and to avoid a

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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Jan Witold Baran, Esquire
Page 2

violation. In order to avail itself of the "best efforts" provision, the Committee should insure that it continues to comply with the requirements of 11 C.F.R. § 104.7(b). If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger

Dominique Dillenseger
Attorney

97043795369



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *Yes*
 DATE: August 17, 1995
 SUBJECT: MUR 4167-Memo to the Commission

The attached is submitted as an Agenda document
 for the Commission Meeting of _____
 Open Session _____
 Closed Session _____

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CIRCULATIONS

72 Hour Tally Vote ()
 Sensitive ()
 Non-Sensitive ()
 24 Hour Tally Vote ()
 Sensitive ()
 Non-Sensitive ()
 24 Hour No Objection ()
 Sensitive ()
 Non-Sensitive ()
 Information (xx)
 Sensitive (xx)
 Non-Sensitive ()
 Other ()

DISTRIBUTION

Compliance (xx)
 Audit Matters ()
 Litigation ()
 Closed Letters ()
 MUR ()
 DSP ()
 Status Sheets ()
 Advisory Opinions ()
 Other (See Distribution below)



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Aug 17 12 15 PM '95

August 17, 1995

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner *HL*
Associate General Counsel

SENSITIVE

SUBJECT: MUR 4167 - Letter to the Republican National Committee

At the Executive Session of August 1, 1995, the Commission asked this Office to include a brief explanation of the basis for rejecting the RNC's request for no further action in the letter transmitting the Probable Cause Brief. Attached is a copy of this transmittal letter to the RNC.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *VO*
 DATE: August 22, 1995
 SUBJECT: MUR 4167-General Counsel's Brief

The attached is submitted as an Agenda document
 for the Commission Meeting of _____
 Open Session _____
 Closed Session _____

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CIRCULATIONS

72 Hour Tally Vote ()
 Sensitive ()
 Non-Sensitive ()
 24 Hour Tally Vote ()
 Sensitive ()
 Non-Sensitive ()
 24 Hour No Objection ()
 Sensitive ()
 Non-Sensitive ()
 Information (x)
 Sensitive (x)
 Non-Sensitive ()
 Other ()

DISTRIBUTION

Compliance (x)
 Audit Matters ()
 Litigation ()
 Closed Letters ()
 MUR ()
 DSP ()
 Status Sheets ()
 Advisory Opinions ()
 Other (See Distribution below)



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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AUG 22 3 46 PM '95

August 22, 1995

SENSITIVE

Thomas J. Josefiak, Esquire
Republican National Committee
Dwight D. Eisenhower Republican Ctr.
310 First Street Southeast
Washington, D.C. 20003

RE: MUR 4167
Republican National Committee;
William J. McManus, Treasurer

Dear Mr. Josefiak:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on January 10, 1995, the Federal Election Commission ("Commission") found reason to believe that the Republican National Committee and William J. McManus, as treasurer ("RNC"), violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but took no further action at that time regarding its finding. The Commission also found reason to believe the RNC violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994. The Commission instituted an investigation in this matter.

On August 1, 1995, the Commission reviewed and rejected your request to take no further action in this matter. It is a violation of 2 U.S.C. § 434(b)(3)(A) for a political committee to fail to report the name, mailing address and occupation/employer of each person who makes an aggregate contribution in excess of \$200 in a calendar year. Further, a committee that fails to report complete contributor information must show that it has made "best efforts" as defined under 11 C.F.R. § 104.7(b), in order to have its incomplete reports deemed in compliance with the Act and to avoid a violation. As you know, the revised regulations at 11 C.F.R. § 104.7(b) changed the requirements for demonstrating "best efforts" as of March 3, 1994, and the new regulations were upheld by the U.S. District Court for the District of Columbia in Republican National Committee, et al. v. Federal Election Commission, C.A. No. 94-1017 on July 22, 1994.

Although the RNC has high rates of disclosure of contributor information, the RNC must demonstrate that it has made "best efforts" under the revised 11 C.F.R. § 104.7(b) in order to have its incomplete reports deemed in compliance with the Act and to avoid a violation. Since March 3, 1994, the RNC's incomplete

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Thomas J. Josefiak, Esquire
Page 2

reports cannot be deemed in compliance with the Act pursuant to 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(b). Accordingly, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that the RNC is in violation of 2 U.S.C. § 434(b)(3)(A).

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

LM Noble (H2)

Lawrence M. Noble
General Counsel

Enclosure
Brief

97043795374

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4167
Republican National Committee and)
William J. McManus, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). On January 10, 1995, the Commission found reason to believe that the Republican National Committee and William J. McManus, as treasurer, ("the Respondents") violated 2 U.S.C. § 434(b)(3)(A) prior to July 22, 1994, but took no further action at that time regarding the violation. The Commission also found reason to believe the Respondents violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994.

Respondents submitted a response to the reason to believe notification requesting that the Commission take no further action. On August 1, 1995, the Commission rejected the request to take no further action.

This brief sets forth the General Counsel's position on the factual and legal issues in this matter and the recommendation that there is probable cause to believe a violation has occurred. See 11 C.F.R. § 111.16(a).

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires that the treasurer of a political committee file periodic reports of receipts and disbursements. 2 U.S.C.

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§ 434(a)(1). Under 2 U.S.C. § 434(b)(3)(A), each report must disclose the identification of each person making aggregate contributions to the reporting committee in excess of \$200 in the calendar year. The term "person" includes individuals. 2 U.S.C. § 431(11). Identification of an individual includes the name, mailing address and occupation of the individual and the name of the individual's employer. 2 U.S.C. § 431(13).

Where the treasurer of the committee can show that he or she has made "best efforts" to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), any report or records of the committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i).

Prior to March 3, 1994, the treasurer was deemed to have exercised "best efforts" to obtain the information required by Section 431(13) if he or she had made at least one effort per solicitation, either by written request or by an oral request documented in writing, to obtain this information from the contributor. In addition, the request had to be clear and had to inform the contributor that reporting of the information is required by law. 11 C.F.R. § 104.7(b).

Under the revised best efforts regulations, which became effective March 3, 1994, the treasurer demonstrates "best efforts" by: (1) making a clear request for contributor information and including a specifically worded statement¹ that is clearly and

1. The statement in the solicitation must say: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year." 11 C.F.R. § 104.7(b)(1).

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conspicuously displayed in the solicitations and in any response material; (2) making at least one follow-up, stand-alone request for missing information (which must also include the specifically worded statement) within thirty days of receipt of a contribution with incomplete contributor identification without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b).

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In Republican National Committee, et al. v. FEC, Civil Action No. 94-1017, the Republican National Committee ("RNC"), among other committees, filed suit against the Commission challenging the revised "best efforts" regulations, claiming they are contrary to law. The committees had first asked the Commission to stay the effective date of the revised rules, pending court review. The Commission denied that request on May 5, 1994. The committees then moved in the District Court for a temporary restraining order and preliminary injunction to prevent enforcement of the regulations, but later withdrew their motions. On July 22, 1994, The Honorable Joyce Green entered judgment in favor of the Commission on the parties' cross-motions for summary judgment. In upholding the revised "best efforts" regulations, the District Court held that the new "best efforts" rule "is narrowly tailored to serve a compelling governmental interest."²

2. Republican National Committee, et al. v. Federal Election Commission, Civil Action No. 94-1017, Memorandum Opinion and Order at 14 (D.D.C. Jul. 22, 1994).

At a hearing held on May 11, 1994, counsel represented to the Court that the committees, including the RNC, were not complying with the new regulations. Specifically, counsel stated:

Our problem is simply that these new regulations impose immediate obligations on my clients if they were to comply and I will represent to you that they are not at this time, but for that they are facing continuing sanctions and they become -- they're continuing violations, so this is very serious situation and we'd simply like to get protection for my clients until³ the Court has an opportunity to consider this.

Counsel also acknowledged the continuing nature of the violations:

We are sending out solicitations. We're getting responses. The FEC rules require follow-ups immediately. They require us to say things in the solicitations. Each time we don't⁴ it's an additional violation, from their perspective.

Similarly, the committees' Opposition to the Commission's Motion for Summary Judgment, at 34 n.13, acknowledges that the committees, including the RNC, are not following the regulations because, inter alia, the stand alone request "mailings are expensive."

A review of the reports filed by the RNC for the period March 1 through June 30, 1994,⁵ shows the following omission rates

3. Transcript of Hearing Before the Honorable Joyce Hens Green, United States District Judge, May 11, 1994, at 3 ("Transcript").

4. Id. at 12.

5. The RNC's omission rates for reports filed since the 1994 June monthly have remained within the same range (10%-13%).

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for occupation/employer information:

REPORT TYPE\YEAR	# TOTAL ENTRIES	#ENTRIES W/O INFO.	% OMISSION
RNC			
1994 April Monthly	1664	272	16%
1994 May Monthly	2874	291	10%
1994 June Monthly	4196	544	13%

For contributions without occupation/employer information, the RNC inserts the phrase "information requested" in the identification blocks of its Schedule A forms. In addition, the RNC reports include a cover page with the following statement: "Concerning any donors shown on the next 450 pages whose occupation and place of business is not listed, the Republican National Committee has made at least one attempt in writing to obtain the information from the donor." The RNC lists the date of the request as the same date the contribution was received. None of the amendments submitted by the RNC has included contributor information missing from these reports.

In its response to the Commission's reason to believe notification, the RNC argued, inter alia, that it is complying -- not with the revised regulations -- but with the "statutory 'best efforts' standard" under 2 U.S.C. § 432(i) because of: (1) the RNC's current policy to request contributor information in every solicitation, regardless of the amount of contribution solicited and regardless of whether the information has previously been provided; and (2) the high level of RNC disclosure of contributor information (87% - 89%).

Without question, the RNC's current practice of sending multiple solicitations to obtain contributor information does not

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comply with the requirements of 11 C.F.R. § 104.7(b). In fact, the RNC's practice does not comply with any of the "best efforts" measures of the regulations: (1) its solicitations do not contain the full text of the required statement; (2) it uses additional solicitations rather than stand-alone, follow-up requests to obtain missing contributor information; and (3) it has not filed any amendments to report previously missing contributor information. Although the RNC has high disclosure rates, these rates -- unless they reflect 100% compliance -- do not exempt the RNC from having to show that it made "best efforts" under 11 C.F.R. § 104.7(b) in order to have its incomplete reports deemed in compliance with the Act and to avoid a violation. Finally, contrary to the RNC's arguments, in promulgating the revised "best efforts" regulations, the Commission specifically rejected the previous "one effort per solicitation" approach and required the treasurer to take additional measures in order to demonstrate "best efforts."

In summary, the RNC has failed to provide complete contributor information and has not changed its procedures to comply with the revised "best efforts" regulations. Accordingly, because the RNC's incomplete reports cannot be deemed in compliance with the Act pursuant to 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(b), this Office recommends that the Commission find there is probable cause to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

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III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

Date 8/22/56

Lawrence M. Noble (3/2)
Lawrence M. Noble
General Counsel

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Republican
National
Committee

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 30 9 32 AM '95

Michael A. Hess
Chief Counsel

Thomas J. Josefiak
Deputy Chief Counsel

Allison Fahrenkopf Brigati
Associate Chief Counsel

August 24, 1995

Lawrence M. Noble, General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20003

RE: MUR 4167
Republican National Committee;
William J. McManus, Treasurer

Dear Mr. Noble:

This letter requests an extension of time for the Republican National Committee (RNC) to respond to the Office of the General Counsel's probable cause recommendation in the above captioned matter under review.

The RNC requests an extension until September 20, 1995, since Thomas J. Josefiak, the Acting Chief Counsel, is out of the office until September 5, 1995.

Thank you for your consideration of this request.

Sincerely,

Allison Fahrenkopf Brigati

Allison Fahrenkopf Brigati

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 30, 1995

VIA FACSIMILE

Allison Fahrenkopf Brigati, Esquire
Republican National Committee
Dwight D. Eisenhower Republican Ctr.
310 First Street Southeast
Washington, D.C. 20003

RE: MUR 4167
Republican National Committee;
William J. McManus, Treasurer

Dear Ms. Brigati:

This is in response to your letter dated August 24, 1995, which we received on August 30, 1995, requesting an extension of 12 days until September 20, 1995, to respond to the General Counsel's Brief. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on September 20, 1995. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger

Dominique Dillenseger
Attorney

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RECEIVED
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OFFICE OF GENERAL
COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)

) MUR 4167

Republican National Committee and)

William J. McManus, as treasurer)

**RESPONSE BY THE REPUBLICAN NATIONAL COMMITTEE
TO THE BRIEF OF THE GENERAL COUNSEL**

The General Counsel of the Federal Election Commission ("FEC") submitted a brief ("the General Counsel's Brief"), dated August 22, 1995, recommending the Commission find probable cause to believe the Republican National Committee ("RNC") and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(a) by failing to follow the FEC's "best efforts" regulations found at 11 C.F.R. § 104.7(b).

The RNC believes it is in full compliance with the statutory requirements of "best efforts" found at 2 U.S.C. § 432(i). The FEC should, therefore, find "no probable cause to believe" that the RNC violated the Federal Election Campaign Act of 1971, as amended (FECA).

The RNC firmly believes that FEC regulations on "best efforts" found at 11 C.F.R. § 104.7(b) are contrary to law. As a result, the RNC is challenging the FEC's regulatory authority in litigation currently before the U.S. Court of Appeals for the District of Columbia. The case was argued before the Court on September 24, 1995. Based upon that proceeding and because of the uncertainty of the outcome, the FEC should, at a minimum, postpone any further action on this case pending a decision by the Court.

STATEMENT OF FACTS

On January 10, 1995 the FEC found "reason to believe" that the RNC violated the FECA relating to the RNC's disclosure of contributor information. Specifically, the Commission found "reason to believe" that the RNC violated 2 USC § 434(b)(3)(A) by failing to adhere to the FEC's recently adopted "best efforts" regulations found at 11 CFR § 104.7(b).

The FECA requires committees to request and report the name, address, occupation and employer of individuals who contribute more than \$200 to a federal political committee in a calendar year (2 U.S.C. § 434(b)(3)(A)).

The law also recognizes that it is neither practical nor necessary to obtain every bit of information on every such contributor. According to the FECA, if a committee uses "best efforts" to obtain the information it will be considered in compliance, even if all of the details are not reported (2 USC § 432(i)).

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Clear congressional intent of the meaning of the "best efforts" standard can be found in the Report of the Committee on House Administration of the U.S. House of Representatives, accompanying the Federal Election Campaign Act Amendments of 1979. The Report stated: "If the committee made an effort to obtain the information in the initial solicitation and the contributor ignored the request, *the Commission should not require the committee to make the same request two, three or four times.*" (House Report No. 96-422, House Of Representatives, 96th Congress, 1st Session, p14.) The purpose of this language was to remove fears that the "best efforts" language could be construed to mean multiple efforts. Congress intended to reject any such understanding and make clear that such additional requests were not necessary in order to satisfy the statutory "best efforts" standard. See Exhibit 1, Josefiak Affidavit filed with RNC "reason to believe" response, dated March 24, 1995, copy attached hereto and made a part hereof.

For fourteen years the FEC acknowledged the Congressional intent of Section 432(i) of the FECA by adopting and adhering to regulations which stipulated that the "best efforts" standard would be met if the committee made one effort per solicitation to obtain contributor information. The FEC's post-1980 regulations and practice were based upon the interpretation of the law, not on factual or policy judgments by the FEC.

In March of 1994 the FEC revised its "best efforts" regulations without any legal justification. These new rules require political committees to utilize a specifically worded statement seeking contributor information. The rules also mandate a *second* request for contributor information (to be sent separately from any other solicitation request) within 30 days after receipt of contributions with incomplete contributor information. The RNC testified in hearings before the Commission relating to the then proposed regulations that the FEC would be exceeding its statutory authority if it adopted the proposed modifications. The RNC also made it clear that the specified statement to be required would decrease the amount of information received, rather than increase contributor disclosure. The RNC's arguments were ignored and the FEC formally adopted the "best efforts" modifications to its regulations on March 3, 1994. The FEC's actions were not based upon any new information as to the meaning of statutory language or Congress' intent. Instead, this reflected the FEC's policy decision to require more than Congress had authorized.

Because of the Republican National Committee's unwavering commitment to the freedoms of association and speech under the First Amendment and to insure that the FEC operates within its statutory parameters, the RNC together with the Republican National Senatorial Committee and the National Republican Congressional Committee filed suit in the Federal District Court for the District of Columbia against the Commission for exceeding its legal authority in promulgating its "best efforts" regulations.

On July 22, 1994 the Federal District Court for the District of Columbia rejected the Committees' arguments, resulting in an appeal to the Federal Court of Appeals for the District of Columbia.

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As a result of the Federal District Court decision the FEC initiated an internally generated enforcement action against the RNC finding "reason to believe" that the RNC violated 2 U.S.C. § 434(b)(3)(A) on January 10, 1995.

On September 24, 1995 the appeal was argued before the U.S. District Court for the District Of Columbia, where it is still pending.

I. The Republican National Committee is in compliance with the statutory "best efforts" standard delineated in 2 USC § 432(i).

The RNC understands the importance of public disclosure of political committee receipts and expenditures as the cornerstone of campaign finance regulation under the FECA. The Committee is also keenly aware of its legal responsibility to report contributor information and to follow the FECA's "best efforts" standard. In the last cycle (1993/1994), the RNC was fortunate to have approximately 2.6 million contributors contributing an average of \$30. In order to reach that number of contributors, approximately 60 million solicitation requests were made, either by mail, telephone or in person. Each of those solicitations requested contributor information, no matter what level of giving was solicited. For telephonic and personal solicitations the appropriate follow-up letters were sent. This information was requested each time the individual was solicited, even when that information had previously been provided (for a more expansive description of RNC solicitation practices and contributor information retrieval, see Exhibit 2, Deposition of Albert E. Mitchler attached to the RNC "reason to believe" response, dated March 24, 1995.).

It is the policy of the RNC to request the required contributor information in every solicitation, including every time the same person is solicited. The practical effect of this policy means that RNC contributors receive requests to provide the required contributor information several times per year, each time they are solicited. In 1994 an individual could have received at least twenty-four requests for contributor information. This request is addressed to all contributors, not merely those who have contributed more than \$200 per calendar year as the Commission's new regulations require. We have argued that this new requirement will result in less rather than more contributor disclosure. The request also makes clear to the contributor that the RNC is required by the FECA to report this information. See Exhibit 2, attached hereto and made a part hereof, as an example of an RNC solicitation contributor return card. The RNC firmly believes that these procedures satisfy the FECA's "best efforts" standard as clarified by the House Report accompanying the FECA Amendments of 1979. Also, the level of RNC disclosure of contributor information serves as the best evidence of RNC compliance with the FECA's "best efforts" test.

Additionally, the RNC attempts to telephonically contact major donors who contribute an aggregate of \$5,000 or more in a calendar year in order to obtain the necessary contributor information. Although this action is not required by the "best efforts" standard, the RNC voluntarily conducts this telephonic inquiry. This should serve as additional evidence of the Committee's commitment to public disclosure subject to the obvious budget constraints.

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II. In the alternative, further enforcement proceedings against the RNC should be held in abeyance pending completion of RNC litigation against the FEC.

It is important to state for the record that the RNC is not pursuing this litigation or resisting compliance with Commission regulations because it is attempting in any way to thwart public disclosure of contributors to the Republican National Committee. In fact, overall, the RNC has one of the best, if not the best, public disclosure record of any similar political committee filing with the FEC. Based upon the Commission's Factual And Legal Analysis accompanying the findings in MUR 4167 the record indicates that the RNC's contributor disclosure rate for the April, May and June Monthly Reports in 1994, averaged approximately 87 percent. (With regards to RNC "best efforts" disclosure of contributor information for these months, the Commission found reason to believe but decided to take no further action.) For the months of July, August and September of 1994 the FEC voted "reason to believe" and to pursue the matter, even though the rate of disclosure was higher than the previous quarter, an average of 88.9 percent representing 15,066 itemized entries. (In July the RNC's disclosure rate was approximately 89.4 percent, August -- approximately 88.3 percent and September -- approximately 89 percent.) In comparing the equivalent third quarter reporting period for the Democratic National Committee (DNC), the RNC has by far a better contributor reporting track record. In the third quarter of 1994 the DNC maintained a 82% itemized contributor disclosure rate representing 2768 itemized entries. Nevertheless, the Commission appears to be pursuing only the Republican National Committee, not its Democratic counterpart. The presumption must be made that the DNC is paying lip service to the FEC's new regulations, while not resulting in a better disclosure rate. Reasonable persons might wonder why the Commission is pursuing an action against the RNC through the FEC enforcement process at this point. The RNC disclosure rate is high. Also, we are in the middle of litigating those very Commission "best efforts" regulations (we are currently waiting for the Court of Appeals decision). It would not be irrational to conclude that this enforcement action was initiated simply because the RNC decided to legally challenge the FEC's "best efforts" regulations. Neither would it be unreasonable for the FEC to delay further enforcement proceedings until the litigation were over.

Perhaps the Commission's action would be more understandable, though still legally unauthorized, if the RNC disclosure rate were low. However, we respectfully submit that the Commission's decision to pursue this action against the RNC whose disclosure rate is very high, if not the highest, is not only unjustified but arbitrary and irresponsible, particularly while RNC litigation is pending challenging FEC authority to promulgate these "best efforts" regulations. The Commission argues that the Committees' withdrawal of motions for a stay of the regulation's enforcement somehow places the RNC in greater jeopardy and, as a result, the RNC should comply with the FEC's "best efforts" regulation during the litigation. However, the Commission fails to state the reason for the withdrawal of those motions. The motions were withdrawn because of the strong suggestion by the court that by doing so the case could be decided in a more timely fashion. This would save all parties involved considerable resources as well as allow the litigation to proceed expeditiously. That action should not be viewed as anything more. Certainly, not as evidence of a lack of RNC resolve to litigate the matter as the Commission seems to suggest. In the RNC's view the FEC regulations on "best efforts" are beyond its statutory authority to promulgate. The RNC has provided more complete contributor

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information than most, if not all, similar political committees that are considered in so-called compliance with the new regulations. In fact the General Counsel's "probable cause" brief acknowledges the RNC's high disclosure rate. As a result, the RNC maintains that it is in compliance with the FECA's "best efforts" standard.

At a time when the Commission is seeking additional congressional funding because it claims current funding levels are inadequate to fulfill its statutorily mandated mission, the use of FEC resources to pursue this enforcement matter under these circumstances seems at best misplaced, arbitrary and inequitable. It also appears to demonstrate the inability of the FEC to prioritize its cases even though the Commission has recently been conducting a public relations campaign to demonstrate the contrary. This case will be decided in the courts. It is not necessary for the FEC to expend additional taxpayer dollars and force the RNC to spend its resources to conduct a simultaneous enforcement matter relating to the same issues that are being litigated.

The RNC is perplexed by the Commission's cavalier attitude toward the RNC's legal challenge to FEC authority in the Commission's suggestion that the RNC should be adhering to the Commission's "best efforts" regulations for the duration of the litigation. The RNC has specifically delineated the harm caused by these regulations in the litigation (see brief submitted by the RNC to the U.S. District Court for the District of Columbia, Exhibit 4 of the RNC "reason to believe" response, dated March 24, 1995). More importantly, however, is the RNC's fundamental belief that the FEC has exceeded its statutory authority in promulgating these "best efforts" regulations. It has, therefore, no intention of conciliating the matter until the "best effort" litigation is resolved.

The RNC is not in the practice of filing suits against the Commission every time it disagrees with an FEC policy position, whether that be an advisory opinion or a regulation. However, when in the Committee's opinion a Commission policy affecting the RNC exceeds the Agency's statutory authority the RNC must draw the line and litigate the fundamental legal principal at stake. This is one of those instances. The RNC has the responsibility to not only protect its own interests but, also, those of state and local party committees as well as Republican candidates.

To summarize, the level of RNC disclosure of contributor information and its current policy of requesting contributor information from *all* contributors should serve as adequate evidence of RNC compliance with the FECA's "best efforts" standard, at least while the litigation is pending.

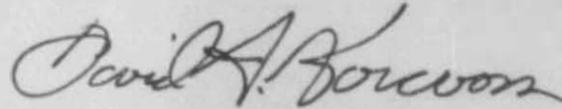
CONCLUSION

Based upon the discussion above the RNC maintains that it has satisfied the FECA "best efforts" standard found at 2 U.S.C. § 432(i) and, therefore, has not violated the reporting requirements

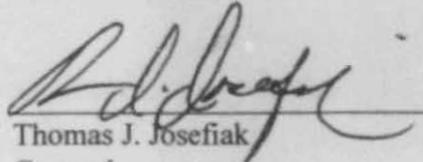
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found at 2 U.S.C. § 434(b)(3)(A). As a result the FEC should find no probable cause to believe that the RNC violated the FECA. In the alternative, because of the uncertainty of the litigation and because of the high disclosure rate of contributor information by the RNC, the FEC should suspend its enforcement proceedings in MUR 4167 until the litigation is resolved.

Respectfully submitted,



David A. Norcross
General Counsel



Thomas J. Josefiak
Counsel

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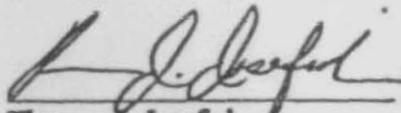
"If the committee made an effort to obtain the information in the initial solicitation and the contributor ignored the request, the Commission should not require the committee to make the same request two, three or four times."

This Committee Report was issued before the 1979 Amendments were adopted by the Congress. No Member of Congress to my knowledge questioned whether the Report accurately reflected the meaning of "best efforts" in Section 432(i).

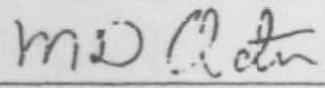
3. The staffs of the Federal Election Commission and the Committee On House Administration met on numerous occasions to discuss legislative intent in order to assist the Commission in conforming its regulations to the changes made to the Act. I participated in those discussions. The Commission modified its regulations to reflect the explanation of the meaning of the "best efforts" language added to Section 432(i) by the 1979 Amendments. That regulation stated: "the treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort either by a written request or by an oral request documented in writing to obtain such information from the contributor. (11 CFR 104.7(b)). This provision was based upon the FEC's understanding of what Congress had intended by the "best efforts" statutory language. This remained the Commission's official interpretation of the statutory "best efforts standard until March 3, 1994 when its revised regulations took effect.

4. In August of 1985 I was appointed by President Reagan to the Federal Election Commission. I served as a Commissioner through December 31, 1991. During my tenure it was my understanding that the outer limits of the meaning of the "best efforts" provision was as stated in the House Report. Although issues concerning the "best efforts" provision repeatedly arose during my tenure, I do not recall any action by the Federal Election Commission, as an Agency, that cast doubt on the understanding expressed in the House Report.

The above information is true and correct to the best of my knowledge and belief.


Thomas J. Josefiak

Sworn and subscribed to by the said Thomas J. Josefiak this 24th day of MARCH, 1995.


Notary Public, DISTRICT OF COLUMBIA

U. S. Notary
Notary Public, District of Columbia
My Commission Expires July 14, 1999

My Commission Expires: _____

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*** RNC SUSTAINING MEMBER CONTRIBUTION REPLY ***

Response requested by March 9, 1995

TO: Haley Barbour FROM: Mr.
 RNC Chairman
 310 First St., SE
 MSHGCN Member

Dear Haley,

I realize that passing the balanced budget amendment is vital to our long term plans to reduce the size, scope and cost of government. And I want to make sure the Clinton Democrats are held accountable for delaying passage of Republican programs, distorting the impact of our proposals and demeaning our intentions. To help the RNC keep our Party and its agenda moving forward, I have enclosed a Sustaining Member contribution of:

// \$50 // Other \$ _____

Please make your check payable to the Republican National Committee

Contributions or gifts to the Republican National Committee are not deductible as charitable contributions for federal income tax purposes.

Paid for by the Republican National Committee. Funds received in response to this solicitation will be deposited in the RNC's federal account unless otherwise prohibited. Federal election law requires us to report the following information:

Occupation: _____
 Employer: _____
 // Please check if self-employed.
 Telephone number(optional): _____

CREDIT CARD INFORMATION:

You may make your contribution to the RNC by credit card if you choose by completing the information below:

Type of Credit Card:
 // Personal // Corporate Card
 // VISA // MasterCard // American Express
 Credit Card Number: _____
 Expiration Date: _____
 Name as it appears on Card: _____
 Signature: _____
 Amount of Contribution: \$ _____

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4167
Republican National Committee and)
William J. McManus, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 5, 1995, do hereby certify that the Commission decided by a vote of 5-0 to direct the Office of General Counsel to return the November 2, 1995 report on this matter after the decision by the United States Court of Appeals for the District of Columbia Circuit in Republican National Committee, et al. v. FEC, No. 94-5248.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

12-6-95
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *[Signature]*

DATE: November 3, 1995

SUBJECT: MUR 4167-General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

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CIRCULATIONS

DISTRIBUTION

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Sensitive [x]
Non-Sensitive []

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Closed Letters []
MUR []
DSP []

24 Hour No Objection []
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Non-Sensitive []

Advisory Opinions []

Other []

Other (See Distribution below)



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: NOVEMBER 8, 1995

SUBJECT: MUR 4167 - GENERAL COUNSEL'S REPORT
DATED NOVEMBER 2, 1995.

The above-captioned document was circulated to the Commission on Friday, November 3, 1995 at 12:00.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

- Commissioner Aikens XXX
- Commissioner Elliott _____
- Commissioner McDonald _____
- Commissioner McGarry _____
- Commissioner Potter _____
- Commissioner Thomas _____

This matter will be placed on the meeting agenda for Tuesday, November 14, 1995.

Please notify us who will represent your Division before the Commission on this matter.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: NOVEMBER 8, 1995

SUBJECT: MUR 4167 - GENERAL COUNSEL'S REPORT
DATED NOVEMBER 2, 1995.

The above-captioned document was circulated to the Commission on Friday, November 3, 1995 at 12:00.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Potter	<u> </u>
Commissioner Thomas	<u> </u>

This matter will be placed on the meeting agenda for Tuesday, November 14, 1995.

Please notify us who will represent your Division before the Commission on this matter.

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

Nov 3 11 10 AM '95

In the Matter of)
)
Republican National Committee and)
William J. McManus, as treasurer;)

SENSITIVE

MUR 4167

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On January 10, 1995, the Federal Election Commission ("the Commission") found reason to believe that the Republican National Committee and William J. McManus, as treasurer ("RNC") violated 2 U.S.C. 434(b)(3)(A) prior to July 22, 1994, but took no further action at that time regarding the violation. The Commission also found reason to believe that the RNC violated 2 U.S.C. § 434(b)(3)(A) following July 22, 1994. The General Counsel's probable cause brief was forwarded to the RNC on August 22, 1995, and the RNC submitted a reply by letter on September 20, 1995. Attachment 1.

II. ANALYSIS

An analysis of the RNC's liability in this matter is contained in the General Counsel's Brief signed on August 22, 1995. The factual and legal analysis set forth in the General Counsel's Brief is incorporated as if fully set forth herein.

The RNC, in its reply letter, requests that the Commission find no probable cause to believe. The RNC, however, does not raise any new legal arguments in support of its request and its current response is identical to the response it provided earlier to the Commission's finding of reason to believe. The RNC continues to maintain that the Commission's revised "best efforts"

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regulations at 11 C.F.R. § 104.7(b) are contrary to law, and to contend that it is complying, not with the revised regulations, but with the "statutory 'best efforts' standard" under 2 U.S.C. § 432(i) as a result of its high disclosure rates and practice of sending multiple solicitations to obtain contributor information. The RNC also requests, in the alternative, that the Commission suspend the enforcement process until related litigation is resolved "because of the uncertainty of the litigation and because of the high disclosure rate of contributor information by the RNC."¹ Id. at 6. Because the Commission has already considered and rejected these arguments, they need not be readdressed. See General Counsel's Report dated July 21, 1995.

In order to have its incomplete reports deemed in compliance with the Act, and to avoid a violation, the RNC must demonstrate that it has made "best efforts" under 11 C.F.R. § 104.7(b) to provide the required information. The RNC has failed to provide complete contributor information and has not complied with the requirements for demonstrating "best efforts". Because the RNC's incomplete reports cannot be deemed in compliance with the Act pursuant to 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(b), this Office recommends that the Commission find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

1. On July 22, 1994, in Republican National Committee, et al. v. FEC, Civil Action No. 94-1017, the District Court for the District of Columbia upheld the validity of the Commission's revised "best efforts" regulations. The plaintiff committees appealed the District Court's decision to the United States Court of Appeals for the District of Columbia Circuit. The appeal was argued on September 14, 1995. A decision is still pending.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

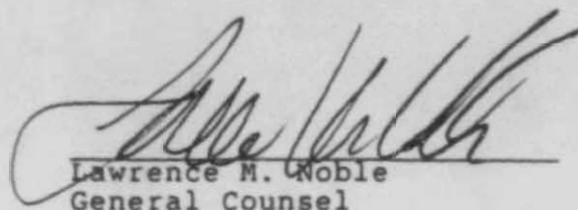
1. Find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

2. Approve the attached conciliation agreement and appropriate letter.

Date

11/2/98

Lawrence M. Noble
General Counsel



Attachments

1. Response of RNC
2. Conciliation Agreement

Staff assigned: Dominique Dillenseger

97043795399



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *WCS*
DATE: May 8, 1996
SUBJECT: MUR 4167-General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of _____
Open Session _____
Closed Session _____

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CIRCULATIONS		DISTRIBUTION	
72 Hour Tally Vote	()	Compliance	(xx)
Sensitive	()	Audit Matters	()
Non-Sensitive	()	Litigation	()
24 Hour Tally Vote	()	Closed Letters	()
Sensitive	()	MUR	()
Non-Sensitive	()	DSP	()
24 Hour No Objection	()	Status Sheets	()
Sensitive	()	Advisory Opinions	()
Non-Sensitive	()		
Information	(xx)	Other (See Distribution below)	
Sensitive	(xx)		
Non-Sensitive	()		
Other	()		

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of)
) MUR 4167
Republican National Committee and)
William J. McManus, as treasurer)

MAY 8 3 34 PM '96

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

In the General Counsel's Report dated November 2, 1995, this Office recommended that the Commission find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer ("RNC") violated 2 U.S.C. § 434(b)(3)(A). On December 5, 1995, the Commission directed this Office to hold the General Counsel's Report pending the decision by the United States Court of Appeals for the District of Columbia Circuit regarding the RNC's challenge to the revised "best efforts" regulations. Republican National Committee, et al. v. FEC, No. 94-5248.¹

On February 20, 1996, the United States Court of Appeals for the District of Columbia Circuit upheld the portion of the "best efforts" regulation requiring a stand alone, follow-up request but invalidated the language in the mandatory statement.² The Court, however, stated

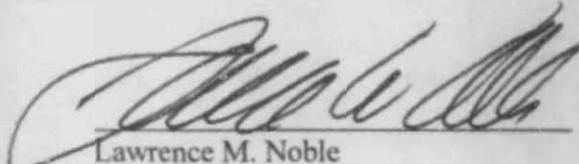
¹ The Republican National Committee, among other committees, filed suit against the Federal Election Commission challenging the revised "best efforts" regulations. On July 22, 1994, the District Court for the District of Columbia upheld the validity of the Commission's revised "best efforts" regulations. Republican National Committee, et al. v. FEC, Civil Action No. 94-1017. The committees appealed the District Court's decision to the United States Court of Appeals for the District of Columbia Circuit. Republican National Committee, et al. v. Federal Election Commission, No. 94-5248

² The mandatory statement reads: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year." 11 C.F.R. §§ 104.7(b)(1)-(2).

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that the impermissible portion of the regulation was severable. In response, the RNC, on April 5, 1996, filed a petition for rehearing and a suggestion for rehearing en banc. In response to the Court's order to respond, the Commission, on April 30, 1996, filed a brief opposing the petition for rehearing. Accordingly, this Office plans to hold the General Counsel's Report pending the D.C. Circuit's decision on the petition for rehearing.

5/8/98
Date


Lawrence M. Noble
General Counsel

Staff assigned: Dominique Dillenseger

97043795402



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *VCS*
 DATE: July 22, 1996
 SUBJECT: MUR 4167-General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of July 30, 1996

Open Session _____
 Closed Session X

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CIRCULATION

72 Hour Tally Vote
 Sensitive
 Non-Sensitive
 24 Hour Tally Vote
 Sensitive
 Non-Sensitive
 24 Hour No Objection
 Sensitive
 Non-Sensitive
 Information
 Sensitive
 Non-Sensitive

Other
Sensitive-Circulate on Blue paper

DISTRIBUTION

Compliance
 Audit Matters
 Litigation
 Closed Letters
 MUR
 DSP
 Status Sheets
 Advisory Opinions

Other (See Distribution below)

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of)
) MUR 4167
Republican National Committee and)
William J. McManus, as treasurer)

JUL 22 1 34 PM '96

SENSITIVE

JUL 30 1996

GENERAL COUNSEL'S REPORT

EXECUTIVE SESSION

I. BACKGROUND

On January 10, 1995, the Federal Election Commission ("the Commission") found reason to believe that the Republican National Committee and William J. McManus, as treasurer ("RNC") violated 2 U.S.C. 434(b)(3)(A) by failing to provide complete contributor information and to demonstrate "best efforts" under 11 C.F.R. § 104.7(b).¹ In response, the RNC requested the Commission take no further action. The Commission rejected that request. The General Counsel's probable cause brief was forwarded to the RNC on August 22, 1995, and the RNC submitted a reply by letter on September 20, 1995. Attachment 1.

Based on the response provided by the RNC, this Office recommended, in the General Counsel's Report dated November 2, 1995, that the Commission find probable cause to believe that the RNC violated 2 U.S.C. § 434(b)(3)(A). On December 5, 1995, the Commission directed this Office to hold the General Counsel's Report pending the decision by the United States Court of Appeals for the District of Columbia Circuit regarding the RNC's challenge to the revised "best efforts" regulations. Republican National Committee, et al. v. FEC, No. 94-5248.²

¹ Under 11 C.F.R. § 104.7(b), the treasurer demonstrates "best efforts" by: (1) making a clear request for contributor information and including a specifically worded statement that is clearly and conspicuously displayed in the solicitations and in any response material; (2) making at least one follow-up, stand-alone request for missing information (which must also include the specifically worded statement) within thirty days of receipt of a contribution with incomplete contributor identification without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b).

² The Republican National Committee, among other committees, filed suit against the Federal Election Commission challenging the revised "best efforts" regulations. On July 22, 1994, the District Court for the District of Columbia upheld the validity of the Commission's

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On February 20, 1996, the D.C. Circuit issued a decision in which it upheld most of the Commission's "best efforts" regulation. Republican National Committee v. FEC, 76 F.3d 400 (D.C. Cir. 1996). Specifically, the court upheld the requirement for the stand-alone follow-up request -- the most important element in the best efforts regulation. In upholding this requirement, the court rejected the Committee's interpretation of the legislative history of the best efforts provision, reasoning that the phrase "best efforts" did not preclude the Commission "from requiring committees to make more than one request for information." Id. at 405. The court also found that the Commission's interpretation of the follow-up requirement "reflects a reasonable reading of the statute," and that the requirement is not "arbitrary and capricious" and that it does not violate the First Amendment. Id. at 407-410. Although the court invalidated the portion of the regulation requiring a mandatory statement,³ the court stated that the impermissible portion was severable from the rest of the regulation. Id. at 410.

On April 5, 1996, the RNC filed a petition for rehearing and a suggestion for rehearing In Banc. In response to the Court's order to respond, the Commission, on April 30, 1996, filed a brief opposing the petition for rehearing. On June 11, 1996, the Court denied the RNC's petition for rehearing and suggestion for rehearing In Banc. The deadline for filing a petition for a writ of

revised "best efforts" regulations. Republican National Committee, et al. v. FEC, Civil Action No. 94-1017. The plaintiff committees appealed the District Court's decision to the United States Court of Appeals for the District of Columbia Circuit. Republican National Committee, et al. v. Federal Election Commission, No. 94-5248.

³ The mandatory statement reads: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year." 11 C.F.R. §§ 104.7(b)(1)-(2).

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certiorari with the United States Supreme Court is September 9, 1996. This Office's recommendation regarding certiorari is being forwarded to the Commission under separate cover.

In light of the Circuit Court of Appeals' decision, this Office is submitting a revised General Counsel's Report and revised conciliation agreement.

II. ANALYSIS

An analysis of the RNC's liability in this matter is contained in the General Counsel's Brief signed on August 22, 1995. Although the brief discusses the RNC's failure, *inter alia*, to use the mandatory statement, this Office does not think it is necessary to rebrief this matter given that the brief also addresses the RNC's failure to meet the other prongs of the "best efforts" regulations. Accordingly, the factual and legal analysis set forth in the General Counsel's Brief, except for the requirement for the mandatory statement, is incorporated as if fully set forth herein.

The RNC, in its reply letter, requests that the Commission find no probable cause to believe. The RNC, however, does not raise any new legal arguments in support of its request and its current response is identical to the response it provided earlier to the Commission's finding of reason to believe. The RNC continues to maintain that the Commission's revised "best efforts" regulations at 11 C.F.R. § 104.7(b) are contrary to law, and to contend that it is complying, not with the revised regulations, but with the "statutory 'best efforts' standard" under 2 U.S.C. § 432(i) as a result of its high disclosure rates and practice of sending multiple solicitations to obtain contributor information. Because the Commission has already considered and rejected these arguments, they need not be readdressed. See General Counsel's Report dated July 21, 1995.

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The RNC also requested, in the alternative, that the Commission suspend the enforcement process until related litigation is resolved "because of the uncertainty of the litigation and because of the high disclosure rate of contributor information by the RNC." Attachment 1, p. 6. Given the Circuit Court of Appeals' holding that it was severing the impermissible part of the regulation and leaving the rest in place, the portion of the regulation requiring stand alone follow-up requests and the filing of amendments to report previously missing information is still fully enforceable.

In order to have its incomplete reports deemed in compliance with the Act, and to avoid a violation, the RNC must demonstrate that it has made "best efforts" under 11 C.F.R. § 104.7(b) to provide the required information. The RNC has failed to provide complete contributor information and, by not sending stand alone, follow-up requests for missing contributor information and not filing amended reports supplying previously missing contributor information, has not demonstrated "best efforts". Because the RNC's incomplete reports cannot be deemed in compliance with the Act pursuant to 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(b), this Office recommends that the Commission find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

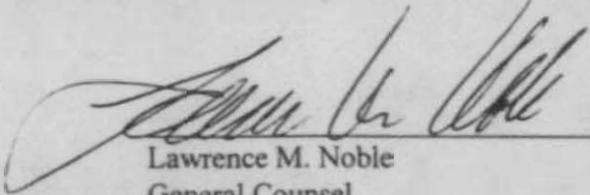
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IV. RECOMMENDATIONS

1. Find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

2. Approve the attached conciliation agreement and appropriate letter.

7/22/96
Date



Lawrence M. Noble
General Counsel

Attachments:

- 1. Response of RNC
- 2. Conciliation Agreement

Staff assigned: Dominique Dillenseger

97043795408

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4167
Republican National Committee and)
William J. McManus, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 6, 1996, do hereby certify that the Commission decided by a vote of 5-0 to defer action on the recommendations in the General Counsel's July 22, 1996 report on MUR 4167 until after the September 9, 1996 deadline for the filing of a petition for a writ of certiorari with the United States Supreme Court.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

8-7-96

Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: *MUR* Marjorie W. Emmons/Bonnie J. Ross 
Secretary of the Commission

DATE: September 20, 1996

SUBJECT: MUR 4167 - General Counsel's Report
dated September 19, 1996.

The above-captioned matter was received in the Commission Secretariat at 1:32 p.m. on Thursday, September 19, 1996 and circulated to the Commission on a 24-hour no objection basis at 4:00 p.m. on Thursday, September 19, 1996.

There were no objections for the General Counsel to continue to hold the General Counsel's Report pending the Supreme Court's decision on the petition for a writ of certiorari.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *VCS*
DATE: September 19, 1996
SUBJECT: MUR 4167-General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

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CIRCULATIONS

72 Hour Tally Vote
Sensitive
Non-Sensitive

24 Hour Tally Vote
Sensitive
Non-Sensitive

24 Hour No Objection
Sensitive
Non-Sensitive

Information
Sensitive
Non-Sensitive

Other

DISTRIBUTION

Compliance

Audit Matters

Litigation

Closed Letters

MUR

DSP

Status Sheets

Advisory Opinions

Other (See Distribution below)

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
COMMISSION
SECRETARIAT

In the Matter of)
Republican National Committee and)
William J. McManus, as treasurer)

MUR 91679 | 32 PK '96

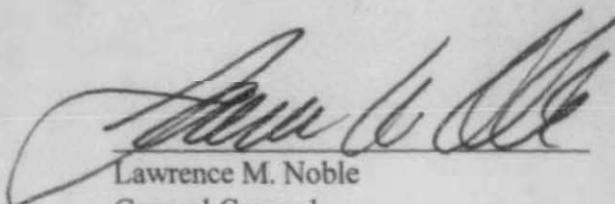
SENSITIVE

GENERAL COUNSEL'S REPORT

In the General Counsel's Report dated July 22, 1996, this Office recommended that the Commission find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer violated 2 U.S.C. § 434(b)(3)(A). On August 6, 1996, the Commission decided to defer action on the recommendation until after the September 9, 1996, deadline for the filing of a petition for a writ of certiorari with the United States Supreme Court to review the decision in Republican National Committee v. FEC, 76 F.3d 400 (D.C. Cir. 1996). This Office has just learned that Respondents have filed a petition for a writ of certiorari. Absent objection, this Office plans to continue to hold the General Counsel's Report pending the Supreme Court's decision on the petition for a writ of certiorari.

97043795412

Date 9/14/96


Lawrence M. Noble
General Counsel

Staff assigned: Dominique Dillenseger



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *K*
DATE: January 21, 1997
SUBJECT: MUR 4167-General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

72 Hour Tally Vote
Sensitive
Non-Sensitive

24 Hour Tally Vote
Sensitive
Non-Sensitive

24 Hour No Objection
Sensitive
Non-Sensitive

Information
Sensitive
Non-Sensitive

Other

DISTRIBUTION

Compliance
Audit Matters

Litigation
Closed Letters
MUR
DSP

Status Sheets

Advisory Opinions

Other (See Distribution below)

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

JUN 21 10 04 AM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4167
Republican National Committee and)
William J. McManus, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On January 10, 1995, the Federal Election Commission ("the Commission") found reason to believe that the Republican National Committee and William J. McManus, as treasurer ("RNC") violated 2 U.S.C. § 434(b)(3)(A) by failing to provide complete contributor information and to demonstrate "best efforts" under 11 C.F.R. § 104.7(b).¹ In response, the RNC requested the Commission take no further action. The Commission rejected that request. The General Counsel's probable cause brief was forwarded to the RNC on August 22, 1995, and the RNC submitted a reply by letter on September 20, 1995. Attachment 1.

Based on the response provided by the RNC, this Office recommended, in the General Counsel's Report dated November 2, 1995, that the Commission find probable cause to believe that the RNC violated 2 U.S.C. § 434(b)(3)(A). On December 5, 1995, the Commission directed this Office to hold the General Counsel's Report pending the decision by the United States Court of Appeals for the District of Columbia Circuit regarding the RNC's challenge to the revised "best efforts" regulations. Republican National Committee, et al. v. FEC, No. 94-5248.²

¹ Under 11 C.F.R. § 104.7(b), the treasurer demonstrates "best efforts" by: (1) making a clear request for contributor information and including a specifically worded statement that is clearly and conspicuously displayed in the solicitations and in any response material; (2) making at least one follow-up, stand-alone request for missing information (which must also include the specifically worded statement) within thirty days of receipt of a contribution with incomplete contributor identification without also soliciting a contribution; and (3) reporting previously missing information in amendments to the reports.

² The Republican National Committee, among other committees, filed suit against the Federal Election Commission challenging the revised "best efforts" regulations. On July 22, 1994, the District Court for the District of Columbia upheld the validity of the Commission's

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On February 20, 1996, the D.C. Circuit issued a decision in which it upheld most of the Commission's "best efforts" regulation. Republican National Committee v. FEC, 76 F.3d 400 (D.C. Cir. 1996). Specifically, the court upheld the requirement for the stand-alone follow-up request -- the most important element in the best efforts regulation. In upholding this requirement, the court rejected the Committee's interpretation of the legislative history of the best efforts provision, reasoning that the phrase "best efforts" did not preclude the Commission "from requiring committees to make more than one request for information." *Id.* at 405. The court also found that the Commission's interpretation of the follow-up requirement "reflects a reasonable reading of the statute," and that the requirement is not "arbitrary and capricious" and that it does not violate the First Amendment. *Id.* at 407-410.

Although the court invalidated the portion of the regulation requiring a mandatory statement³ to be included in solicitations and follow-up requests, finding the statement "inaccurate and misleading," the court stated that the impermissible portion was severable from the rest of the regulation. *Id.* at 410. In addition, the court's decision did not preclude the Commission from requiring that an accurate statement of the law be included in the solicitations and follow-up requests.⁴

revised "best efforts" regulations. Republican National Committee, et al. v. FEC, Civil Action No. 94-1017. The plaintiff committees appealed the District Court's decision to the United States Court of Appeals for the District of Columbia Circuit. Republican National Committee, et al. v. Federal Election Commission, No. 94-5248.

³ The mandatory statement read: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year." 11 C.F.R. §§ 104.7(b)(1)-(2).

⁴ In light of the court's decision, the Commission published a Notice of Proposed Rulemaking to revise the "best efforts" regulations at 11 C.F.R. § 104.7(b)(1) and (3). 61 Fed. Reg. 68688. The Commission extended the comment period until January 31, 1997.

On April 5, 1996, the RNC filed a petition for rehearing and a suggestion for rehearing In Banc. In response to the Court's order to respond, the Commission, on April 30, 1996, filed a brief opposing the petition for rehearing. On June 11, 1996, the Court denied the RNC's petition for rehearing and suggestion for rehearing In Banc. On July 22, 1996, this Office submitted a General Counsel's Report recommending that the Commission find probable cause to believe that the RNC violated 2 U.S.C. § 434(b)(3)(A). On August 6, 1996, the Commission decided to defer action on the recommendation until after the September 9, 1996, deadline for the filing of a petition for a writ of certiorari with the United States Supreme Court to review the decision in Republican National Committee v. FEC, 76 F.3d 400 (D.C. Cir. 1996).

On September 9, 1996, the RNC filed a petition for a writ of certiorari with the United States Supreme Court. In the General Counsel's Report dated September 19, 1996, which was circulated on a 24-hour no objection basis, this Office notified the Commission that it would continue to hold the General Counsel's Report pending the Supreme Court's decision. On January 6, 1997, the Supreme Court denied the petition for certiorari.

In light of the Court of Appeals' decision and the Supreme Court's action, this Office is submitting a revised General Counsel's Report and revised conciliation agreement.

II. ANALYSIS

An analysis of the RNC's liability in this matter is contained in the General Counsel's Brief signed on August 22, 1995. Although the brief discusses the RNC's failure, inter alia, to use the mandatory statement, this Office does not think it is necessary to rebrief this matter given that the brief also addresses the RNC's failure to meet the other prongs of the "best efforts" regulations. Accordingly, the factual and legal analysis set forth in the General Counsel's Brief,

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except for the requirement for the mandatory statement, is incorporated as if fully set forth herein.

The RNC, in its reply letter of September 20, 1995, requested that the Commission find no probable cause to believe. The RNC, however, did not raise any new legal arguments in support of its request and its current response is identical to the response it provided earlier to the Commission's finding of reason to believe. The RNC continues to maintain that the Commission's revised "best efforts" regulations at 11 C.F.R. § 104.7(b) are contrary to law, and to contend that it is complying, not with the revised regulations, but with the "statutory 'best efforts' standard" under 2 U.S.C. § 432(i) as a result of its high disclosure rates and practice of sending multiple solicitations to obtain contributor information. Because the Commission has already considered and rejected these arguments, they need not be readdressed. See General Counsel's Report dated July 21, 1995.

The RNC had also requested, in the alternative, that the Commission suspend the enforcement process until related litigation is resolved "because of the uncertainty of the litigation and because of the high disclosure rate of contributor information by the RNC." Attachment 1, p. 6. This is no longer an issue now that the litigation has concluded. Given the Court of Appeals' holding that it was severing the impermissible part of the regulation and leaving the rest in place, the portion of the regulation requiring stand alone follow-up requests and the filing of amendments to report previously missing information is fully enforceable.

In order to have its incomplete reports deemed in compliance with the Act, and to avoid a violation, the RNC must demonstrate that it has made "best efforts" under 11 C.F.R. § 104.7(b) to provide the required information. The RNC has failed to provide complete contributor

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information and, by not sending stand alone, follow-up requests for missing contributor information and not filing amended reports supplying previously missing contributor information, has not demonstrated "best efforts". Because the RNC's incomplete reports cannot be deemed in compliance with the Act pursuant to 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(b), this Office recommends that the Commission find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

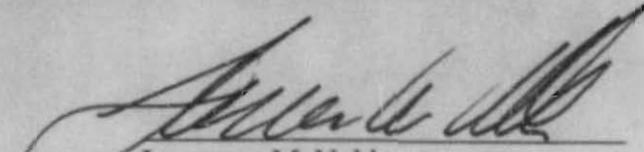
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IV. RECOMMENDATIONS

1. Find probable cause to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

2. Approve the attached conciliation agreement and appropriate letter.

Date 1/17/97


Lawrence M. Noble
General Counsel

Attachments:

- 1. Response of RNC
- 2. Conciliation Agreement

Staff assigned: Dominique Dillenseger

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: JANUARY 24, 1997

SUBJECT: MUR 4167 - General Counsel's Report

The above-captioned document was circulated to the Commission
on Tuesday, January 21, 1997.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	—
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	—

This matter will be placed on the meeting agenda for
Tuesday, February 04, 1997.

Please notify us who will represent your Division before the Commission on this
matter.

9704379542C

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4167
Republican National Committee.)

AMENDED CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission executive session on February 4, 1997, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 4167:

1. Find probable cause to believe that the Republican National Committee violated 2 U.S.C. § 434(b)(3)(A), and omit the name of the treasurer in the finding.
2. Approve the conciliation agreement, as set forth in the General Counsel's Report dated January 17, 1997,
and the appropriate letter.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

February 6, 1997
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

97043795421

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4167
Republican National Committee.)

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission executive session on February 4, 1997, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 4167:

1. Find probable cause to believe that the Republican National Committee violated 2 U.S.C. § 434(b)(3)(A).
2. Approve the conciliation agreement, as set forth in the General Counsel's Report dated January 17, 1997, and appropriate letter.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

February 4, 1997
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

97043795422



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 6, 1997

Thomas J. Josefiak, Esquire
Republican National Committee
Dwight D. Eisenhower Republican Center
310 First Street, SE
Washington, DC 20003

RE: MUR 4167
Republican National Committee

Dear Mr. Josefiak:

On February 4, 1997, the Federal Election Commission found that there is probable cause to believe the Republican National Committee, your client, violated 2 U.S.C. § 434 (b)(3)(A), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with your client's failure to provide complete contributor information and to demonstrate "best efforts" under 11 C.F.R. § 104.7(b).

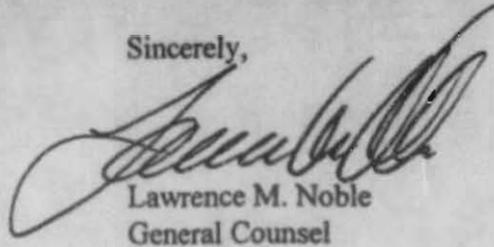
The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make the check for the civil penalty payable to the Federal Election Commission.

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If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

97043795424



Republican
National
Committee

Thomas J. Josefiak
Counsel

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
FEB 13 12 23 PM '97

February 7, 1997

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C.

Re: MUR 4167

Dear Mr. Noble:

This letter serves as a supplemental response to the Federal Election Commission's ("FEC") "reason to believe" finding against the Republican National Committee ("RNC") in the above captioned Matter Under Review ("MUR").

On January 10, 1995, the FEC found "reason to believe" that the RNC violated the Federal Election Campaign Act of 1971, as amended ("FECA"), relating to the RNC's disclosure of contributor information. Specifically, the FEC found "reason to believe" that the RNC violated 2 U.S.C. § 434(b)(3)(A) by failing to adhere to the FEC's "best efforts" regulations found at 11 C.F.R. § 104.7(b).

As a result of the Court's holding in *Republican National Committee v. Federal Election Commission*, 76 F.3d 400 (D.C. Cir. 1996), cert. denied, 136 L. Ed. 2d 607 (1997), the RNC has adjusted its procedures to bring them in compliance with the "best efforts" regulations that were upheld by the Court. Accordingly, the RNC will request the appropriate contributor information in a separate mailing to contributors who contribute more than \$200 in a calendar year. In addition, the RNC will amend the affected reports accordingly.

In light of this adjustment and the RNC's high rate of reporting contributor information, the RNC respectfully requests that the FEC "take no further action" and close the file on MUR 4167.

Sincerely,

Thomas J. Josefiak
Counsel

97043795425



Republican
National
Committee

Thomas J. Josefiak
Counsel

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAR 5 10 59 AM '97

March 5
~~February 24, 1997~~

John W. McGarry
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C.

Re: MUR 4167

Dear Chairman McGarry:

This letter serves as a response to the Federal Election Commission's ("FEC") "probable cause to believe" finding against the Republican National Committee ("RNC") in the above captioned Matter Under Review ("MUR").

On February 4, 1997, the FEC found "probable cause to believe" that the RNC violated the Federal Election Campaign Act of 1971, as amended ("FECA"), relating to the RNC's disclosure of contributor information. Specifically, the FEC found "probable cause to believe" that the RNC violated 2 U.S.C. § 434(b)(3)(A) by failing to adhere to the FEC's "best efforts" regulations found at 11 C.F.R. § 104.7(b). Unfortunately, the RNC notice of the FEC's action followed the mailing of the RNC's request that the Commission take no further action against the RNC and close the file prior to any finding of probable cause. Even though the Commission has made its probable cause finding, the RNC, nevertheless, respectfully requests the FEC to take no further action and close the file regarding this matter in light of the RNC's current compliance with FEC regulations and its high contributor information disclosure rate.

As a result of the Court's holding in *Republican National Committee v. Federal Election Commission*, 76 F.3d 400 (D.C. Cir. 1996), cert. denied, 136 L. Ed. 2d 607 (1997), the RNC has adjusted its procedures to bring them into compliance with the "best efforts" regulations that were upheld by the Court. Specifically, the RNC has begun sending out separate written follow-up requests for contributor information and will amend the appropriate reports accordingly if additional information is received. (See attached copy of RNC contributor request.) In fact, the RNC is exceeding FEC requirements by paying the postage on the pre-addressed envelope required with the written follow-up request for contributor information.

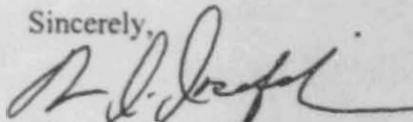
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In addition, the RNC continues to achieve a high rate of compliance with respect to reporting contributor information before making the separate request. For example, the compliance rate for the January Monthly Report that was filed Thursday, February 20, 1997, was 93%.

To reiterate, in light of its "best efforts" adjustment and the RNC's high rate of reporting contributor information, the RNC respectfully requests that the FEC take no further action against the RNC and close the file on MUR 4167.

Thank you for your prompt attention to this matter.

Sincerely,



Thomas J. Josefiak
Counsel

attachment

97043795427

Date

Name
Address
Address

Dear Salutation:

Thank you for your recent contribution to the Republican National Committee (RNC). Your generous support is being used to help us elect Republicans to offices at the federal, state and local levels.

As you may be aware, federal election law requires us to report the name, address, occupation and employer of our contributors who have aggregated over \$200 in a calendar year. For this reason, we would greatly appreciate your cooperation in completing the form below. Once you have provided the necessary information, please refold this letter and return it to us, using the enclosed postage-paid envelope, at your earliest convenience. Or, if you prefer, please call our membership office at 1-800-445-5768 to give us the information.

I apologize for the inconvenience this matter is causing you, but I am sure you can understand the RNC's desire to comply fully with the law. Again, many thanks for your most generous support of our great party.

Sincerely,

Alec Poitevint
Treasurer

Name
Address
Address
DB#
Occupation _____
Employer _____

[] Please check if self-employed

97043795428

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAR 5 12 30 PM '97



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

March 5, 1997

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble *L*
General Counsel

SUBJECT: Shorter Voting Deadline for Report in MUR 4167

Pursuant to Directive 52, the Office of the General Counsel is circulating the attached report on a 24 hour tally vote basis to provide counsel for Respondent with an expeditious response to his request for no further action and so allow quick resolution of this matter.

Attachment

Staff Assigned: D. Dillenseger

97043795429



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *JAS*
DATE: March 5, 1997
SUBJECT: Memo to the Commission -MUR 4167

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

72 Hour Tally Vote
Sensitive
Non-Sensitive

24 Hour Tally Vote
Sensitive
Non-Sensitive

24 Hour No Objection
Sensitive
Non-Sensitive

Information
Sensitive
Non-Sensitive

Other

DISTRIBUTION

Compliance

Audit Matters

Litigation

Closed Letters
MUR
DSP

Status Sheets

Advisory Opinions

Other (See Distribution below)

9704379543C

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Republican National Committee) MUR 4167
)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

By letter dated February 6, 1997, counsel for the Republican National Committee (Respondent) was notified of the Commission's February 4, 1997 probable cause finding and proposed conciliation agreement. Crossing in the mail was counsel's letter dated February 7, 1997, and received February 13th styled as a "supplemental response" to reason to believe. Attachment 1. Upon receipt of the Commission's probable cause notification, counsel contacted this Office and expressed the desire to settle the matter. At a meeting today with the General Counsel and staff of this Office, counsel put forward the steps the RNC has now taken to fully comply with the "best efforts" rules and agreed to a fast track negotiation to resolve the matter. Counsel first requested, however, that his letter dated March 5th (handed to us at the meeting) be presented to the Commission. Attachment 2.

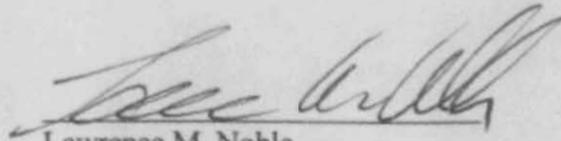
Counsel's March 5, 1997 submission confirms that upon final conclusion of the litigation (i.e. the Supreme Court's denial of certiorari), Respondent has begun to fully comply with the Commission's "best efforts" regulation. Pointing to the Committee's low omission rates, counsel asks the Commission to take no further action. Counsel's basic point has been fully discussed and previously considered by the Commission. Therefore, this Office recommends the Commission reject the request for no further action. If the Commission does so, this Office will quickly notify counsel and attempt to reach a negotiated settlement as soon as possible.

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II. RECOMMENDATIONS

1. Reject the Republican National Committee's request by letter dated March 5, 1997 for the Commission to take no further action.
2. Approve the appropriate letter.

3/5/97
Date


Lawrence M. Noble
General Counsel

Attachments

1. Respondent's letter dated February 7, 1997
2. Respondent's letter dated March 5, 1997

Staff Assigned: Dominique Dillenseger

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Republican National Committee.) MUR 4167

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 6, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4167:

1. Reject the Republican National Committee's request by letter dated March 5, 1997 for the Commission to take no further action.
2. Approve the appropriate letter, as recommended in the General Counsel's Report dated March 5, 1997.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

3-7-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Wed., March 5, 1997 12:30 p.m.
Circulated to the Commission: Wed., March 5, 1997 4:00 p.m.
Deadline for vote: Thurs., March 6, 1997 4:00 p.m.

bjr

97043795433



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 7, 1997

BY FACSIMILE AND FIRST CLASS MAIL

Thomas J. Josefiak, Esquire
Republican National Committee
Dwight D. Eisenhower Republican Center
310 First Street, SE
Washington, DC 20003

RE: MUR 4167
Republican National Committee

Dear Mr. Josefiak:

This letter is to confirm the Federal Election Commission's receipt of your letter dated March 5, 1997, submitted on behalf of the Republican National Committee. On March 6, 1997, the Commission reviewed and rejected your request to take no further action against the RNC. At our meeting on March 5th you expressed a willingness to try to reach a quick negotiated settlement in this matter. Because more than 30 days have passed since the probable cause finding was made and the period for post-probable stage conciliation is limited, please notify us as soon as you receive this letter whether you plan to submit a counterproposal and to arrange a time to discuss this matter further. Should you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Attorney

97043795434



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *rd*
DATE: March 28, 1997
SUBJECT: MUR 4167 - General Counsel's Rpt.

The attached is submitted as an Agenda document
for the Commission Meeting of _____
Open Session _____
Closed Session _____

CIRCULATIONS		DISTRIBUTION	
72 Hour Tally Vote	x(XXX)k	Compliance	(XXX)
Sensitive	(XXX)	Audit Matters	()
Non-Sensitive	()	Litigation	()
24 Hour Tally Vote	()	Closed Letters	()
Sensitive	()	MUR	()
Non-Sensitive	()	DSP	()
24 Hour No Objection	()	Status Sheets	()
Sensitive	()	Advisory Opinions	()
Non-Sensitive	()	Other (See Distribution below)	
Information	()		
Sensitive	()		
Non-Sensitive	()		
Other	()		

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

MAR 28 1 34 PM '97

In the Matter of)
)
Republican National Committee)

MUR 4167

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On March 6, 1997, the Commission rejected the Republican National Committee's ("Respondent") request for no further action. This Office notified Respondent of the Commission's decision on March 7, 1997, and asked for a response.

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II. DISCUSSION

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this Office recommends that the Commission
approve the attached, signed conciliation agreement and close the file in this matter.

III. RECOMMENDATIONS

1. Approve the attached conciliation agreement with the Republican National Committee.

2. Close the file.

3. Approve the appropriate letters.

3/27/97
Date

Lawrence M. Noble (LH2)
Lawrence M. Noble
General Counsel

Attachment
Conciliation Agreement

Staff Assigned: Dominique Dillenseger

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Republican National Committee.) MUR 4167
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 2, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4167:

1. Approve the conciliation agreement with the Republican National Committee, as recommended in the General Counsel's Report dated March 27, 1997.
2. Close the file.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated March 27, 1997.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

4-3-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., March 28, 1997 1:34 p.m.
Circulated to the Commission: Fri., March 28, 1997 2:00 p.m.
Deadline for vote: Wed., April 02, 1997 4:00 p.m.

lrd

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Republican National Committee.) MUR 4167
)

CORRECTED CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 2, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4167:

1. Approve the conciliation agreement with the Republican National Committee, as recommended in the General Counsel's Report dated March 27, 1997.
2. Close the file.
3. Approve the appropriate letters, as recommended in the General Counsel's Report dated March 27, 1997.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

H-4-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., March 28, 1997 1:34 p.m.
Circulated to the Commission: Fri., March 28, 1997 2:00 p.m.
Deadline for vote: Wed., April 02, 1997 4:00 p.m.

lrd

9704379544C



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 8, 1997

Thomas J. Josefiak, Esquire
Republican National Committee
Dwight D. Eisenhower Republican Center
310 First Street, SE
Washington, DC 20003

RE: MUR 4167
Republican National Committee

Dear Mr. Josefiak:

On April 2, 1997, the Federal Election Commission approved the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 434(b)(3)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Dominique Dillenseger
Attorney

Enclosure
Conciliation Agreement

97043795441

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAR 20 4 20 PM '91

In the Matter of)
) MUR 4167
Republican National Committee)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that the Republican National Committee ("Respondent") violated 2 U.S.C. § 434(b)(3)(A).

NOW, THEREFORE, the Commission and the Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

II. The Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. The Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Republican National Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

2. The Federal Election Campaign Act of 1971, as amended (the "Act"), requires political committees to file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Under 2 U.S.C. § 434(b)(3)(A), each report must disclose the identification of each person making aggregate contributions to the reporting committee in excess of \$200 in the calendar

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year. The term "person" includes individuals. 2 U.S.C. § 431(11). Identification of an individual includes the name, mailing address and occupation of the individual and the name of the individual's employer. 2 U.S.C. § 431(13).

3. Where a committee can show that it has made "best efforts" to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), any report or records of the committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i).

4. Prior to March 3, 1994, a committee was deemed to have exercised "best efforts" to obtain the information required by Section 431(13) if it had made at least one effort per solicitation, either by written request or by an oral request documented in writing, to obtain this information from the contributor. In addition, the request had to be clear and had to inform the contributor that reporting of the information is required by law. 11 C.F.R. § 104.7(b).

5. As of March 3, 1994, a committee demonstrates "best efforts" by, inter alia, making at least one follow-up, stand-alone request for missing information within thirty days of receipt of a contribution with incomplete contributor identification without also soliciting a contribution and reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b).

6. In Republican National Committee, et al. v. FEC, Civil Action No. 94-1017 (D.D.C. 1994), the Respondent, among other committees, filed suit against the Commission challenging the revised "best efforts" regulations, claiming they are contrary to law. In Republican National Committee, et al. v. Federal Election Commission, Civil Action No. 94-5248, the United States Court of Appeals for the District of Columbia Circuit upheld the requirement for a follow-up, stand-alone request to obtain missing contributor information and vacated the requirement for the mandatory language specified in the regulation. The Respondent

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filed a petition for a writ of certiorari with the United States Supreme Court on September 9, 1996. On January 6, 1997, the Supreme Court denied the petition for certiorari.

7. At a District Court hearing held on May 11, 1994, counsel represented to the Court that the committees, including the RNC, were not complying with the new regulations. Specifically, counsel stated:

Our problem is simply that these new regulations impose immediate obligations on my clients if they were to comply and I will represent to you that they are not at this time, but for that they are facing continuing sanctions and they become -- they're continuing violations, so this is very serious situation and we'd simply like to get protection for my clients until the Court has an opportunity to consider this.¹

Counsel further acknowledged the continuing nature of the violations at the May 11, 1994, hearing by stating that the committees send out solicitations and receive responses and that the committees are in violation whenever they fail to send follow-up requests for contributor information.²

8. A review of the reports filed by the RNC for the period March 1 through June 30, 1994, shows the following omission rates for occupation/employer information:

REPORT TYPE\YEAR	# TOTAL ENTRIES	#ENTRIES W/O INFO.	% OMISSION
1994 April Monthly	1664	272	16%
1994 May Monthly	2874	291	10%
1994 June Monthly	4196	544	13%

9. The Respondent's omission rates for reports filed since the 1994 June monthly have remained within the same range (10%-13%). Respondent contends that its omission rate

¹ Transcript of Hearing Before the Honorable Joyce Hens Green, United States District Judge, May 11, 1994, at 3 ("Transcript").

² *Id.* at 12.

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for its January 1997 Monthly Report prior to the filing of any amendments under the revised Commission regulations was 7%. Respondent further contends that after complying with revised 11 C.F.R. § 104.7(b), the January amendment filed with the February Monthly Report reflects an omission rate of 4%, a 96% disclosure rate.

10. For contributions reported prior to January 1, 1997, during the period of March 3, 1994, through December 31, 1996, without occupation/employer information, the Respondent inserted the phrase "information requested" in the identification blocks of its Schedule A forms. In addition, the Respondent's reports included a cover page with the following statement: "Concerning any donors shown on the next pages whose occupation and place of business is not listed, the Republican National Committee has made at least one attempt in writing to obtain the information from the donor." The RNC listed the date of the request as the same date the contribution was received. None of the amendments submitted by the RNC during that time period included contributor information missing from these reports.

11. The Respondent's past practice was to request contributor information in every solicitation, regardless of the amount of contribution solicited and regardless of whether the information had previously been provided.

12. The Respondent's past practice of sending multiple solicitations to obtain contributor information did not comply with the revised requirements of 11 C.F.R. § 104.7(b): (1) Repondent used additional solicitations rather than stand-alone, follow-up requests to obtain missing contributor information; and (2) Respondent did not file any amendments to report previously missing contributor information.

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13. The Respondent's current practice for contributions received since January 1, 1997, is to request contributor information in every solicitation. The Respondent also sends one follow-up stand-alone letter, without soliciting additional contributions, requesting missing contributor information from those individuals who have contributed more than \$200 in calendar year 1997 and have not provided the complete information. Also, the Respondent now reports any missing contributor information received by amending the appropriate monthly report when it files its next scheduled monthly report, as required by 11 C.F.R. § 104.7(b). By following these procedures, the Respondent now exercises "best efforts" under revised 11 C.F.R. § 104.7(b) and now complies with the Act pursuant to 2 U.S.C. § 434(b)(3)(A).

14. In order to have its incomplete reports deemed in compliance with the Act and to avoid a violation, the Respondent must demonstrate that it has made "best efforts" under revised 11 C.F.R. § 104.7(b).

15. During the period March 3, 1994, through December 31, 1996, the Respondent failed to provide complete contributor information and did not comply with the requirements for demonstrating "best efforts" under revised 11 C.F.R. § 104.7(b).

V. For the period of March 3, 1994, through December 31, 1996, the Respondent's incomplete reports were not in compliance with the Act pursuant to 2 U.S.C. § 432(i) and revised 11 C.F.R. § 104.7(b), and the Respondent therefore was in violation of 2 U.S.C. § 434(b)(3)(A).

VI. The Respondent will pay a civil penalty to the Federal Election Commission in the amount of twenty thousand dollars (\$20,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance

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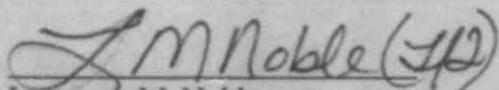
with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. The Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

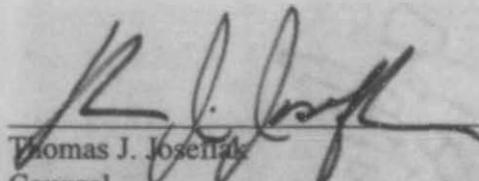
X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

4/7/97
Date

FOR THE RESPONDENT:


Thomas J. Joseph
Counsel

3/30/97
Date

97043795447



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 8, 1997

Donna Singleton, Treasurer
National Republican Congressional
Committee
320 First Street, SE
Washington, D.C. 20003

RE: MUR 4167
NRCC

Dear Ms. Singleton:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Dominique Dillenseger
Attorney

97043795448



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 8, 1997

Stan Huckaby, Treasurer
National Republican Senatorial
Committee
425 Second Street, NE
Washington, D.C. 20002

RE: MUR 4167
NRSC

Dear Mr. Huckaby:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Dominique Dillenseger
Attorney

97043795449



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4167

DATE FILMED 4-25-97 CAMERA NO. 1

CAMERAMAN JMW

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 4/8/97

Microfilm

Press

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THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED NUR 4167



Republican
National
Committee

Thomas J. Josefiak
Counsel

May 5, 1997

Dominique Dillenseger, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

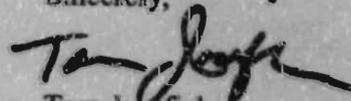
RE: MUR 4167

Dear Ms. Dillenseger:

Attached is the payment from the Republican National Committee (RNC) pursuant to paragraph VI of the signed conciliation agreement in the above captioned Matter Under Review. The RNC will be submitting a statement for the public record on MUR 4167 under separate cover.

If you have any additional questions, please contact me at (202) 863-8638.

Sincerely,


Tom Josefiak

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REPUBLICAN NATIONAL STATE ELECTIONS COMMITTEE
CORPORATE OPERATING
310 FIRST STREET, SE.
WASHINGTON, DC 20003

SIGNET BANK
ACH PAY 001000778
Falls Church, VA

8872

May 5 19 97

68-408/500
1494

PAY Pay Exactly ****20,000 Dollars and 00/100***

DOLLARS \$ **20,000.00*****

TO
THE
ORDER
OF

Federal Election Commission
999 E Street, NW
Washington, DC 20463



⑈008872⑈ ⑆056004089⑆ ⑈65⑈7307267⑈

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

May 6, 1997

MAY 8 10 25 AM '97

FEDERAL ELECTION COMMISSION

TWO WAY MEMORANDUM

TO: OGC Docket
FROM: Leslie D. Brown *ldb*
Disbursing Technician
SUBJECT: Account Determination for Funds Received

We recently received a check from **Republican National State Elections Committee**, check number **8872**, dated **May 5, 1997**, for the amount of **\$20,000.00**.

A copy of the check and any correspondence is being forwarded. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

=====

TO: Rosa E. Swinton Leslie D. Brown
Accounting Technician Disbursing Technician

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$20,000.00 the MUR/Case number is 4167 and in the name of Republican National State Elections Committee. Place this deposit in the account indicated below:

- Budget Clearing Account (OGC), 95F3875.16
- Civil Penalties Account, 95-1099.160
- Other: _____

Francie Hampton

Signature

5-8-97

Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 5/19/97

 Microfilm

 Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4167

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Republican
National
Committee

Thomas J. Josefiak
Counsel

May 5, 1997

Dominique Dillenseger, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

CLOSED

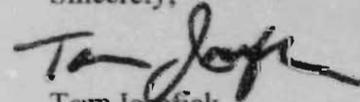
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Sincerely,


Tom Josefiak

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REPUBLICAN NATIONAL STATE ELECTIONS COMMITTEE
CORPORATE OPERATING
310 FIRST STREET, SE
WASHINGTON, DC 20003

SIGNET BANK
ACH R&T 851000775
Falls Church, VA

8872

May 5 19 97

68-408/560
1494

PAY Pay Exactly ****20,000 Dollars and 00/100***

DOLLARS \$**20,000.00***

TO
THE
ORDER
OF

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Alfred Gates


⑈008872⑈ ⑆056004089⑆ ⑈65⑈7307267⑈

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 6, 1997

MAY 8 10 25 AM '97

FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK

TWO WAY MEMORANDUM

TO: OGC Docket
FROM: Leslie D. Brown *ldb*
Disbursing Technician
SUBJECT: Account Determination for Funds Received

CLOSED

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A copy of the check and any correspondence is being forwarded. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

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- Other: _____

Frankie Hampton
Signature

5-8-97
Date

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Republican National Committee

Thomas J. Josefiak
Counsel

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAY 19 3 02 PM '97

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FEDERAL ELECTION
COMMISSION MAIL ROOM

MAY 15 4 49 PM '97

RECEIVED
579-97

May 16, 1997

CLOSED

CLOSED

Mr. John Warren McGarry, Chairman
Ms. Joan D. Aikens, Vice Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

MAY 19 3 08 PM '97

OFFICE
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: MUR 4167

Dear Chairman McGarry and Vice Chairman Aikens:

The Republican National Committee ("RNC") respectfully requests that the Federal Election Commission ("FEC" or "Commission") publish the following comments in the public record regarding Matter Under Review 4167 ("MUR 4167").

Introduction

On February 4, 1997, the FEC found "probable cause" that the RNC violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), regarding the RNC's disclosure of contributor information. Specifically, in MUR 4167 the Commission found "probable cause" that the RNC violated 2 U.S.C. § 434(b)(3)(A) by failing to adhere to the FEC's understanding of the "best efforts" regulations found at 11 C.F.R. § 104.7(b). To avoid protracted and costly administrative proceedings, on May 5, 1997, the RNC entered into a conciliation agreement resolving MUR 4167 and paid a \$20,000 civil penalty. There was no finding or evidence that the RNC knowingly and willfully violated the regulations.

The RNC strongly believes that the Commission's interpretation and enforcement of the "best efforts" regulations is of vital importance to all political committees. The RNC also strongly believes that the FEC's prosecution of MUR 4167 -- despite clear proof that the RNC has a superlative contributor disclosure record and acted in good faith in designing and implementing its "best efforts" procedures -- is deeply troubling and of potential concern to all political committees. Therefore, the RNC wishes to inform the regulated community of the important legal and factual issues that are implicated by the FEC's handling of MUR 4167.

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Factual Background

FECA requires political committees to request and report the names, addresses, occupations and employers of all individuals who contribute more than \$200 to a political committee in a calendar year. 2 U.S.C. § 434(b)(3)(A); 2 U.S.C. § 431(13). However, the law recognizes that it is neither feasible nor necessary to require committees to obtain all of the foregoing information from every such contributor. Accordingly, under FECA, if a committee uses "best efforts" to obtain contributor information it will be considered in compliance, even if it is unable to obtain and report all of the required information. 2 U.S.C. § 432(i).

For fourteen years the FEC, consistent with Congress' clear intent, promulgated regulations indicating that the statutory "best efforts" standard is met if committees make one effort per solicitation to obtain contributor information. However, in March, 1994, the Commission abruptly -- and without any legal justification -- revised its "best efforts" regulations. The new regulations require political committees, when a first request for contributor information fails to elicit all of the required information, to make a second written or oral request for the information within 30 days after the contribution is received. See 11 C.F.R. § 104.7(b)(1) & (2). If a written follow-up request is used, the revised regulations mandate that the following statement be included:

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year."

11 C.F.R. § 104.7(b)(1). The revised regulations prohibit committees from using any other language to describe their "best efforts" obligations in a follow-up request for contributor information. The regulations also prohibit committees from including any other statement in the follow-up request, except language thanking the contributor for the contribution. 11 C.F.R. § 104.7(b)(2).

Before the new rules were adopted, the RNC provided testimony in hearings before the Commission demonstrating that the proposed regulations exceeded the FEC's authority and were contrary to law. The RNC also indicated that because donors would be inundated with multiple requests for contributor information, the new rules likely would decrease, not increase, the amount of contributor information that committees would be able to obtain and disclose. Despite this testimony, the Commission adopted the revised regulations.

Because it strongly believed that the revised "best efforts" regulations exceeded the FEC's statutory authority, and threatened the fundamental constitutional rights of all political committees, the RNC filed suit seeking to have the rules enjoined. In Republican National Committee v. Federal Election Comm'n, 76 F.3d 400 (D.C. Cir. 1996), cert. denied, 136 L. Ed. 2d 607 (1997), the court invalidated the FEC's mandatory statement requirement, holding that the requirement was unreasonable and contrary to

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FECA. The court noted that the Commission's required statement "is inaccurate and misleading. [FECA] does not require political committees to report the [contributor] information for 'each' donor. It only requires committees to use their best efforts to gather the information . . ." Id. at 406 (emphasis in original). In ruling for the RNC, the court stressed that "[w]e simply do not believe that Congress authorized the Commission to forbid political committees from accurately stating the law." Id. Separately, the D.C. Circuit upheld the FEC's follow-up request requirement for contributor information. Id. The court concluded, "nothing in the statute or its legislative history limits the Commission to requiring a single request [for contributor information], or precludes the Commission from requiring a follow-up [request]." Id.

The RNC sought Supreme Court review of the D.C. Circuit's ruling sustaining the FEC's follow-up request requirement. After the Supreme Court denied certiorari in January, 1997, the RNC informed the Commission that it was adjusting its "best efforts" procedures to comply with the circuit court's ruling. The RNC made clear that it would henceforth send a second written request for contributor information to those contributors who fail to respond to a first request. In addition, although not required by the "best efforts" regulations, the RNC began including postage pre-paid self-addressed stamped envelopes in its follow-up requests for contributor information. Finally, the RNC informed the FEC that if it obtained any additional contributor information, it would amend its disclosure reports accordingly.

MUR 4167 arose out of the RNC's refusal to modify its contributor-disclosure policies until the federal courts had had an opportunity to rule on the legality of the revised "best efforts" regulations. The FEC contended in MUR 4167 that the RNC should have changed its disclosure policies in 1994 when the district court upheld the Commission's interpretation of the regulations, and that the RNC's failure to modify its policies at that time violated FECA. Despite overwhelming evidence that the RNC had acted in good-faith in this area in the past, and would continue to do so in the future, the FEC insisted on prosecuting MUR 4167 until the RNC agreed to enter a conciliation agreement and pay a civil penalty. The RNC believes that the Commission's course of action was unnecessary, unjustified and counterproductive.

Discussion

I. The RNC Has Historically Taken Its Disclosure Obligations Very Seriously.

The RNC supports and encourages the Commission's efforts to ensure the fullest possible disclosure of federal campaign activity. It recognizes that disclosure is at the heart of FECA. To this end, the RNC has consistently used "best efforts" to obtain, maintain and report contributor information to the FEC and to the public. As a result of its strong commitment, the RNC has one of the best disclosure records of any political committee.

A. Even Before The Revised "Best Efforts" Regulations Were Upheld, The RNC Took Active Steps To Obtain And Disclose The Maximum Amount of Contributor Information.

It has long been the RNC's policy to request the required contributor information in every solicitation, including every time the same person is solicited. The practical effect of this policy is that RNC contributors receive multiple requests for contributor information every year. For example, during the 1993-94 election cycle, the RNC received approximately 2.6 million contributions, which averaged \$38 a piece. In order to reach that number of contributors, approximately 60 million solicitation requests were made, either by mail, telephone or in person. Each of these solicitations included requests for contributor information, no matter what level of giving was solicited. In 1994 alone, an individual contributor to the RNC could have received 24 separate requests for contributor information. Even more dramatically, during the 1995-96 election cycle, the RNC received approximately 3 million contributions from approximately 1.3 million donors, who gave an average of \$52 a piece. In order to raise this money, the RNC made approximately 133 million solicitations. Again, the RNC included requests for contributor information in each of these solicitations.

The RNC has historically gone beyond what the "best efforts" regulations require in its efforts to obtain contributor information. For example, although the regulations only require information from individuals who contribute more than \$200 per calendar year, the RNC requests contributor information from all of its contributors, regardless of the amount they contribute. Moreover, the RNC has attempted to telephonically contact major donors who contribute an aggregate of \$5,000 or more in a calendar year in order to obtain the necessary information. And, as noted above, the RNC includes postage pre-paid return envelopes to make it easier for donors to send in contributor information. Although none of these steps is mandated by the Commission's regulations, the RNC, despite the costs involved, has voluntarily chosen to take additional steps to ensure that it obtains and reports the most contributor information possible. These voluntary steps are clear evidence of the RNC's good faith in this area.

B. The RNC Has Maintained An Outstanding Disclosure Record.

As a result of its aggressive, proactive disclosure efforts, the RNC has one of the best, if not the best, reporting records of any similar political committee filing with the FEC.

A review of the reports filed by the RNC for the period of March 1 through June 30, 1994, shows the following compliance rates for occupation/employer information: 84% for 1994 April Monthly; 90% for 1994 May Monthly; and 87% for 1994 June Monthly. The RNC's compliance rates for reports filed since the 1994 June Monthly have remained within the 87-90% range. For the July, August and September Monthly Reports in 1994, the RNC's contributor disclosure rate averaged 88.9%. During 1995 and 1996, there was little change in these reporting rates. The RNC compiled this outstanding reporting

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record by relying on its established contributor-disclosure procedures and on dedicated personnel, which were in place before the FEC imposed the additional requirements contained in the revised "best efforts" regulations.

The RNC continues to maintain an outstanding disclosure rate. The RNC's compliance rate for its 1997 January Monthly was 93%, the January amendment filed with the 1997 February Monthly reflects a 96% compliance rate, and the March 1997 Monthly, including amendments filed in May, 1997, indicates a 97% compliance rate. Even for unitemized contributions, the RNC has contributor information for 84% of the donors. Again, in the RNC's view, this reporting record is attributable to the RNC's long-standing disclosure policies, not to following the revised "best efforts" regulations.

II. There Was No Legal Or Factual Basis For the Commission's "Probable Cause" Finding Against The RNC.

FECA and its legislative history do not support the Commission's finding of "probable cause" against the RNC in MUR 4167. The Act merely requires that "the treasurer of a political committee [show] that best efforts have been used to obtain, maintain and submit the information required by [the] Act . . ." 2 U.S.C. § 432(i). Sen. Packwood, the sponsor of the amendment which established the "best efforts" standard, stressed on the floor of the Senate that "[t]his is the anti-nit-picking amendment." 122 Cong. Rec. 7922-23 (1976). While Sen. Packwood stated that a committee and its treasurer may not claim that "I did not know because I did not ask," he reasoned that if a treasurer has tried in good faith to comply with the law, "the FEC shall take that into account." *Id.*

Furthermore, the Report of the House of Representatives for the 1979 FECA Amendments states that the test for "best efforts" is what efforts did the committee take to obtain contributor information, and did the solicitation contain a clear request for the contributor's occupation and principal place of business. *See* H.R. Rep. No. 422, 96th Cong., 1st Sess. 14 (1979). The House Report also states that "[i]f the committee made an effort to obtain the information in the initial solicitation and the contributor ignored the request, the Commission should not require the committee to make the same request two, three or four times." *Id.* The purpose of this language was to remove fears that the "best efforts" standard could be construed to require multiple efforts to obtain contributor information. Congress rejected any such understanding and made clear that additional requests were not necessary.

Based upon a plain reading of FECA and its legislative history, there is no basis for the Commission's "probable cause" finding that the RNC violated the "best efforts" standard. Following Supreme Court precedent, the D.C. Circuit deferred to the FEC's interpretation of the statutory "best efforts" standard, which unfortunately ignored the clear legislative history recited above. In order to avoid a similar result in the future, Congress will need to detail its intentions regarding "best efforts" directly in the Act.

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III. In Light Of The RNC's Demonstrated Good Faith In Disclosing Contributor Information, The FEC's Continued Prosecution Of MUR 4167 Is Deeply Disturbing.

As noted above, the RNC strongly supports and encourages the Commission's efforts to ensure the greatest possible disclosure of federal campaign activity. More importantly, the RNC has historically gone beyond what the Commission's regulations require in an effort to provide the most complete contributor information possible. The RNC's outstanding disclosure rates are testimony to these efforts. Moreover, after the D.C. Circuit upheld the FEC's follow-up request requirement, and the Supreme Court denied the RNC's petition for certiorari, the RNC promptly pledged to update its "best efforts" policies to conform with the ruling. Despite this overwhelming evidence of good faith and due diligence, the FEC insisted on prosecuting MUR 4167 to conclusion.

In MUR 4167, the FEC argued that the RNC should have changed its disclosure policies as soon as the district court upheld the revised "best efforts" regulations. This contention overlooks the fact that the RNC has the fundamental right to seek appellate review of the Commission's regulations. It also ignores the fact that many of the issues in the "best efforts" litigation were of a constitutional dimension. Given that the D.C. Circuit invalidated portions of the revised regulations, the RNC's legal challenge was clearly bona fide and made in good faith. The FEC essentially asked the RNC to choose between pursuing its constitutional and statutory challenge to the revised regulations in federal court, or face an administrative enforcement action and absorb a possible civil penalty. The RNC does not believe the Commission acted appropriately in this regard.

Ironically, while the FEC pursued the RNC in this matter despite an exceptional disclosure record, it dropped several other enforcement actions where there appeared to be substantial evidence of election law violations. For example, in July, 1996, the Commission reported that an audit of the Carol Moseley-Braun for Senate Campaign uncovered evidence of serious election-law violations. See 22 FEC Record No. 7 (Jul. 1996) at 1, 4. The FEC audit uncovered evidence that the Moseley-Braun Campaign committed 12 separate election-law violations, including misstating its financial activity by hundreds of thousands of dollars, accepting illegal campaign contributions, depositing anonymous cash contributions, failing to itemize in-kind contributions, failing to adequately disclose a large number of disbursements, and failing to itemize credit card payments. *Id.* Despite this evidence of non-compliance, the Commission recently announced that it has closed its enforcement action against the Moseley-Braun Campaign. See Lynn Sweet, "Feds Drop Moseley-Braun Campaign Probe; No 'Significant Problems' in '92 Spending," Chicago Sun-Times, Apr. 7, 1997 at A1 (noting that the FEC "exercised its prosecutorial discretion to take no further action").

The FEC has recently dropped other significant enforcement actions. See Tony Batt, "FEC Slaps the Wrists of Nevada Democrats," Las Vegas Review Journal, May 7, 1997 (reporting no action taken against the Nevada Democratic Party, despite finding evidence that the party exceeded its coordinated spending limits, improperly spent more than

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\$70,000 on congressional races with money designated for other uses, failed to provide adequate documentation for more than \$20,000 in expenditures, and understated its receipts and disbursements and overstated its cash on hand). See also "FEC Releases 11 Compliance Cases," May 6, 1997 FEC Press Release at 2 (noting no further action taken against the Tsongas Presidential Campaign, despite finding "reason to believe" that the campaign took excessive contributions and received excessive reimbursements from the media); 22 FEC Record No. 7 (Jul. 1996) at 2 (reporting no further action taken against Rep. Barbara Rose-Collins and the Rose-Collins Campaign, despite finding "reason to believe" that the campaign received \$75,000 in excess contributions in the form of guaranteed loans and failed to report the loans accurately); MUR 3638/3578 (taking no action against the National Security Political Action Committee, despite finding "probable cause" that the committee made illegal contributions involving corporate and excessive contributions totaling over \$1.2 million and failed to use "best efforts" in disclosing contributor information). It appears that many of these enforcement actions were dropped due to the FEC's failure to investigate and prosecute them in a timely fashion. If the Commission had concentrated its efforts and resources on these important actions and had not been preoccupied with matters such as MUR 4167, it might have been able to take appropriate action on these cases.

The Commission's course of action against the RNC is all the more curious given the Democratic National Committee's ("DNC") weak performance in disclosing accurate and complete contributor information, which has consistently lagged behind the RNC's disclosure rate. It should be noted that the RNC files monthly reports with the Commission, while the DNC only files quarterly reports. Despite only filing on a quarterly basis, the DNC does not have a good disclosure rate. The Center for Responsive Politics recently reported that the DNC fully identified only 65% of its donors during the 1996 election cycle. See John E. Yang and Charles R. Babcock, "DNC Vows to Improve Reporting," Washington Post, May 10, 1997 at A8. In addition, according to the DNC's 1996 October 15 Quarterly Report, the DNC accepted at least \$226,450 in contributions from 27 individuals and four corporations and reported the mailing address of those individuals and corporations as 430 South Capitol Street, S.E., Washington, D.C. 20003, which is the DNC's address. There is no evidence that these individuals and corporations are employees, consultants or contractors of the DNC who are working or residing at that address. To the RNC's knowledge, the Commission has not pursued an enforcement action against the DNC regarding these apparent egregious violations.

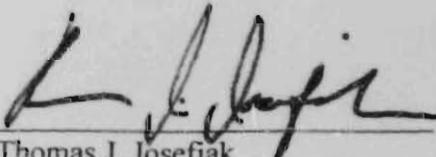
The RNC understands that the DNC has followed the FEC's interpretation of the "best efforts" regulations. The DNC's poor disclosure rate casts doubt on the efficacy of the FEC's requirements. At the very least, the DNC's performance shows that the Commission's prescribed "best efforts" procedures do not ensure a high disclosure rate and casts doubt on whether the FEC's regulations properly implement the statutory "best efforts" standard.

Conclusion

FECA's contributor-disclosure requirements are some of the most onerous requirements for political committees to satisfy. Given the practical difficulties of obtaining complete information on millions of donors, the RNC is very proud of its long, outstanding track record in disclosing contributor information. The RNC hopes that the Commission in the future will refrain from taking punitive action against committees, like the RNC, who act in good faith and have superlative disclosure records.

Respectfully submitted,

THE REPUBLICAN NATIONAL
COMMITTEE

By: 
Thomas J. Josefiak
Counsel

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