



**Federal Election Commission  
Washington, DC 20463**

September 14, 2009

Benjamin L. Ginsberg, Esq.  
Patton Boggs LLP  
2550 M Street, NW  
Washington, DC 20037

Re: ADR 500 (MUR 6045)  
Wicker for Senate and Paul Breazeale, Treasurer  
Friends of Roger Wicker and John P. Nail, Treasurer

Dear Mr. Ginsberg:

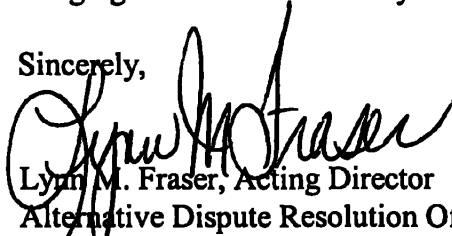
Enclosed is the signed copy of the agreement resolving the complaint filed on July 21, 2008 with the Federal Election Commission ("FEC/Commission") against Wicker for Senate and Paul Breazeale, Treasurer and Friends of Roger Wicker and John P. Nail, Treasurer ("Respondents"). The agreement for ADR 500 (MUR 6045) was approved by the Commission on September 10, 2009 – the effective date of the agreement.

Note the specific time frames for compliance in paragraphs 10 and 11 of the agreement. Please forward to this office, a statement confirming Respondent's compliance with the terms listed in the aforementioned agreement. The letter should note the dates on which Respondents satisfied each of the terms listed in paragraphs 10 and 11.

As you are aware, the settlement agreement will be made part of the record that is released to the public. The Commission will also place on the record copies of the complaint/referral, correspondence exchanged between your office and this office prior to our entry into settlement negotiations and reports prepared for the Commission by this office to assist in its consideration of this matter. The Commission is obliged by Federal statute to place on the public record documents in closed enforcement and alternative dispute resolution cases; accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

This agreement resolves the matter that was brought to the attention of the FEC by Timothy E. Phillips and Musgrove for U.S. Senate regarding an alleged violation of the federal election campaign laws. I appreciate your assistance in effectively resolving this matter and bringing the case to a mutually acceptable conclusion.

Sincerely,



Lynn M. Fraser, Acting Director  
Alternative Dispute Resolution Office  
202-694-1665

Enclosure: Agreement

cc: Chris Wedderburn, Finance and Accounting Office  
Room 819

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**Federal Election Commission  
Washington, DC 20463**

Case Number: ADR 500  
Source: MUR 6045  
Case Name: Wicker for Senate

### **NEGOTIATED SETTLEMENT**

This matter was initiated by a signed, sworn and notarized complaint filed by Musgrove for U.S. Senate (Complainant). Following review of the matter, and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended, (FECA) and resolve this matter, the Federal Election Commission (Commission) entered into negotiations with Benjamin L. Ginsberg, Esq. and Kathryn Biber Chen, Esq., representing Wicker for Senate and Paul Breazeale, in his official capacity as Treasurer (Senate Committee), and Friends of Roger Wicker and John P. Nail, in his official capacity as Treasurer (House Committee) (collectively Respondents). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and Respondents addressed the issues raised in this complaint. The parties agree to resolve the matter according to the following terms:

1. The Commission entered into this agreement as part of its responsibility for administering the FECA, and in an effort to promote compliance on the part of Respondents. The Commission's use of alternative dispute resolution procedures (ADR) is guided by "The Administrative Dispute Resolution Act of 1996," 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. Respondents voluntarily enter into this agreement with the Commission.
3. Complainant alleges that the Senate Committee accepted \$545,000 transferred from House Committee, but neither committee itemized the portions of the transfer that included contributions received and designated for the 2008 election cycle. The complaint further alleges that the failure to itemize contributions received and designated for the 2008 election cycle may have resulted in the receipt of excessive contributions, and both the lack of itemization and the receipt of excessive contributions are violations of the FECA.
4. Contributions to the principal campaign committee of a candidate is limited to an aggregate of \$2,300 from individuals and \$5,000 from multicandidate committees per election. 2 U.S.C. § 441a(a)(1) and (2), 11 C.F.R. 110.1 (2008). A committee is prohibited from knowingly accepting contributions that exceed the contribution limitations. 2 U.S.C. § 441a(f).

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5. A candidate seeking more than one federal office in the same election cycle is permitted to make unlimited transfers of funds between two principal campaign committees pursuant to 2 U.S.C. § 441a(a)(5)(C) if the candidate is no longer actively seeking the nomination or election to one of those offices. 11 C.F.R. § 110.3(c)(5)(i).
  6. When making a transfer, the transferor committee's available funds shall be considered to consist of those funds most recently received that add up to the cash on hand on the date of the transfer. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the FECA to cover the amount transferred. 11 C.F.R. § 110.3(c)(5)(ii).
  7. Contributions transferred must be aggregated with any contributions made by the same donor to the committee receiving the transfer during the same election cycle. Amounts that would cause a contributor to exceed his or her per election contribution limit for the current election cycle must be excluded from the transfer. 11 C.F.R. § 110.3(c)(5)(ii).
  8. Respondents note the unusual circumstances of the 2007-2008 election cycle in Mississippi. Mr. Wicker was a candidate for reelection to the U.S. House of Representatives before being appointed to the U.S. Senate on December 31, 2007. He then became a candidate for the November 2008 U.S. Senate special election; no runoff election was necessary under Mississippi law, although candidates could raise funds for both the special and runoff elections.
  9. Respondents contend that based on the House Committee's reported \$550,934.80 cash balance on December 31, 2007, the House Committee had sufficient funds to make the \$545,000 in transfers to the Senate Committee. Respondents also contend that when faced with the question of how best to account for the transfer between the House Committee and the Senate Committee, a compliance specialist for the National Republican Senatorial Committee contacted the Commission's Audit Division for guidance. As described in his sworn affidavit, he understood the Audit Division's advice as approving application of "first in, first out" accounting principles to each election cycle separately, such that the transfer in question would not result in excessive contributions by any donor and would not require itemization. Respondents followed the Audit Division's advice as they and the compliance specialist understood it.
  10. Respondents further contend that this conversation led to the Committee handling the transfers in a manner that the Commission believes is different than what the Regulations require. Specifically, the "first in, first out" accounting principles should not have applied to each election cycle separately. Respondents, in an effort to resolve this matter, agree to either refund or redesignate to the 2012 primary or general elections each of the contributions identified as being excessive within ninety (90) days of the effective date of this agreement.
  11. Within fifteen (15) days after such 90-day period has concluded, Respondents shall provide to the Commission an accounting of all transferred contributions and make a good faith identification of any excessive contributions as defined in paragraphs 6 and

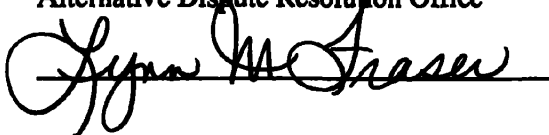
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7 of this agreement, including whether each contribution was refunded or redesignated. All redesignations and refunds will also be properly reported to the Commission in Respondent's quarterly filings.

- 12. Due to the mitigating circumstances pertaining to sworn representations stating that Respondents followed the advice of a Commission auditor when transferring funds from the House Committee to the Senate Committee, no civil penalty shall be assessed.
- 13. Respondents agree that all information provided to resolve this matter is true and accurate to the best of their knowledge and that they sign this agreement under penalty of perjury pursuant to 28 U.S.C. § 1746.
- 14. The parties agree that if Respondents fail to comply with the terms of this settlement, the Commission may undertake civil action in the U.S. District Court for the District of Columbia to secure compliance.
- 15. This agreement shall become effective on the date signed by all parties and approved by the Commission. Respondents shall comply with the terms of this agreement as set out in paragraph 10 above.
- 16. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 500 (MUR 6045), and resolves those issues identified in paragraph 3 above. No other statement, promise or agreement, either written or oral, made by either party, not included herein, shall be enforceable. The Commission reiterates the non-precedential nature of this agreement based on the unique facts of this matter.

**FOR THE COMMISSION:**

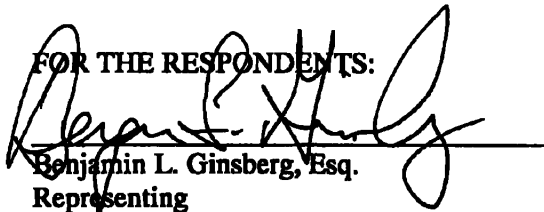
Lynn M. Fraser, Acting Director  
Alternative Dispute Resolution Office

  
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9-10-09  
Date Signed

**FOR THE RESPONDENTS:**

Benjamin L. Ginsberg, Esq.  
Representing

  
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August 24, 2009  
Date Signed

Wicker for Senate and Paul Breazeale, Treasurer, and  
Friends of Roger Wicker and John P. Nail, Treasurer