FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 8, 1995

Mr. N. Gunter Guy, Jr., Esq.
Brannon & Guy, P.C.
602 South Hull St.
Montgomery, AL 36104

RE: MUR 3774
Good Government Committee
and its treasurer

Dear Mr. Guy:

On May 20, 1993, the Federal Election Commission notified your clients, the Good Government Committee and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On March 6, 1995 your clients were notified that the Commission had received an amendment to the complaint alleging similar violations of the Act. A copy of the complaint and the amendment were forwarded to your clients on those dates.

On August 1, 1995, the Commission found that there is reason to believe that the Good Government Committee and its treasurer violated 2 U.S.C. §§ 433 and 434, provisions of the Act. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed the file as it pertains to your clients. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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. If you have any questions, please contact Dawn Odrowski or Elizabeth Stein, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Vice Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 3774

RESPONDENT: Good Government Committee

I. GENERATION OF MATTER

This matter was generated by a complaint received on May 14, 1993, from counsel for the Democratic Senatorial Campaign Committee. The complaint alleges that the National Republican Senatorial Committee ("NRSC") made payments of non-federal funds to four organizations to circumvent the coordinated party expenditure limits of the Act and influence the 1992 Georgia run-off election of United States Senator Paul Coverdell. One of the four organizations is the Good Government Committee ("GGC").

Complainant filed an amendment to the complaint on February 22, 1995, alleging that the NRSC and its then Chairman, Senator Phil Gramm, again circumvented the coordinated party expenditure limits of the Act by paying non-federal funds to the National Right to Life Committee ("NRLC") in order to influence the 1994 federal elections of Senator Rick Santorum in Pennsylvania and Senator Rod Grams in Minnesota after nearly exhausting allowable coordinated expenditures in the two states. Responses to the original complaint and the amendment were received from the GGC.

An examination of the complaint and the disclosure reports of the reporting entities reveals a repeated pattern of payments to various organizations by the NRSC's non-federal account in the days and weeks before U.S. Senate elections. In the case of

the 1992 and 1994 elections identified in the complaint, these payments were made when the NRSC had nearly exhausted its ability to make expenditures on behalf of its candidates.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

National party committees occupy a special place within the political arena and the Federal Election Campaign Act of 1971, as amended ("the Act"), acknowledges this unique position by providing special mechanisms to allow national party committees an enhanced role within the process. The Act specifically provides that a national party committee or the party's senatorial campaign committee, or both in combination, may make a contribution of $17,500 to each Senate candidate associated with the party in the year in which the candidate's election is held. 2 U.S.C. § 441a(h). A contribution is defined as "any gift, subscription, loan, advance or deposit of money or anything of value made by an person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). "Anything of value" includes all in-kind contributions, i.e., "the provision of any goods and services without charge. . ." 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

In addition to the $17,500 contribution limit, the Act also permits national and state party committees to make extensive coordinated expenditures on behalf of candidates for federal office in the general election according to the formula set out in 2 U.S.C. § 441a(d). Coordinated party expenditures are those

made by a national party committee on behalf of a specific candidate but not paid directly to the candidate or committee. The Act defines an "expenditure" as including any purchase, payment, distribution, loan, advance, deposit, or gift of money, or anything of value, made by any person for the purpose of influencing any election for federal office. No candidate or political committee shall knowingly make any expenditures in violation of the provisions of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

The coordinated expenditure provision enables political party committees to engage in activity that would otherwise result in a contribution to a candidate, and is the primary mechanism available to national and state party committees to support their candidates. See H.R. Rep. No. 94-1057, 94th Congress, 2d Session 59 (1976). The national and state political party committees may designate the party's senatorial campaign committees as their agent for purposes of making these expenditures. 11 C.F.R. § 110.7(a)(4), see also FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 28-29 (1981). The Act recognizes that parties are partisan organizations whose motivation is to further the goals of the party, and provides that a party, by definition, is incapable of making independent expenditures. See 11 C.F.R. § 110.7(b)(4); Advisory Opinion 1980-119; and FEC v. Colorado Republican Federal Campaign Committee, 1995 WL 372934 *1 (10th Cir. 1995) ("Colorado Republicans"). Hence, expenditures by a party committee or its designated agent on behalf of a candidate are

presumed to be coordinated with the candidate and count towards the coordinated expenditure limits established by 2 U.S.C. § 441a(d)(3), regardless of whether the expenditures are actually coordinated with the candidate's campaign.

The national party committee and the senatorial and congressional campaign committees may also conduct generic party activity without such activity resulting in either a contribution or counting towards a coordinated expenditure limit so long as no specific candidate is mentioned. 11 C.F.R. § 106.5(a)(2)(iv). Generic party activity includes voter identification drives, voter registration, get out the vote drives ("GOTV") and any other type of activity that encourages the general public to vote or support candidates of the particular party or associated with a particular issue, without mentioning a specific candidate. Id.

A party committee which finances political activity in connection with both federal and non-federal elections is required to either establish separate federal and non-federal accounts or conduct all activity in accordance with the limitations and prohibitions of the Act. 11 C.F.R. § 102.5(a)(1). All disbursements, contributions, expenditures and transfers in connection with any federal election must be made from the committee's federal account. 11 C.F.R. § 102.5(a)(1)(i).[1]

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1. Where a national party committee conducts activity which is in connection with both federal and non-federal elections, including generic party activity, all disbursements for the shared activity must still be from the federal account or from a separate allocation account established solely to pay allocable expenses.

The Commission has previously held that where an organization with federal and non-federal accounts appears to have violated 11 C.F.R. § 102.5 by disbursing funds from a non-federal account in connection with a federal election, the committee violated 2 U.S.C. § 441b(a) if the non-federal account contained corporate or labor organization funds at the time of the disbursement. See e.g., MURs 2998, 2160, 3670. If the disbursement is made for the purpose of influencing federal elections it also qualifies as a contribution and is subject to the Act's contribution limits. Multicandidate political committees, including a party's Senate campaign committee, may contribute up to $5,000 per year to non-candidate political committees. 2 U.S.C. § 441a(a)(2)(C).

The Act also prohibits corporations from making contributions or expenditures in connection with federal elections and prohibits any candidate or committee from knowingly accepting such prohibited contributions or expenditures. 2 U.S.C. § 441b.[2] In order for the prohibitions

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(Footnote 1 continued from previous page)
2 U.S.C. § 106.5(g). The non-federal account must transfer funds to the federal account or an allocation account solely to cover the non-federal share of an allocable cost. Id. A national party Senate committee must allocate to its federal account a minimum of 65% of its administrative and generic voter drive expenses. 11 C.F.R. § 106.5(c)(2).

2. A corporation may, however, establish a separate segregated fund to accept contributions and make expenditures in connection with federal elections. 2 U.S.C. § 441b(b)(2)(C). The corporation then acts as a "connected organization," an organization which is not a political committee but which directly or indirectly establishes, administers or financially supports a political committee. 2 U.S.C. § 431(7); 11 C.F.R. § 100.6(c).

of 2 U.S.C. § 441b to apply to corporate expenditures, however, the Supreme Court in FEC v. Massachusetts Citizens for Life ("MCFL") held that independent corporate expenditures must constitute "express advocacy." 479 U.S. at 248. Thus, a corporation may use its general treasury funds to make independent communications to the general public, including voter registration, GOTV material and phone banks, provided these activities do not expressly advocate the election or defeat of a clearly identified candidate. 11 C.F.R. § 114.4(b).[3] However, corporate expenditures for such activities made in cooperation, consultation or concert with a candidate, a candidate's authorized committee or their agents are considered contributions and are thus prohibited by 2 U.S.C. § 441b. See 2 U.S.C. § 441a(a)(7)(B) and proposed Commission revisions to 11 C.F.R. 114.4(d), supra, at footnote 3 (providing that corporate voter drives shall not be coordinated with a candidate, group of candidates or political party). Thus, political party committees cannot use corporations as vehicles

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3. The Commission has proposed revisions to its regulations governing corporate voter registration and GOTV drives to clarify that voter registration and GOTV drives aimed at the general public are permitted provided that they do not expressly advocate the election or defeat of a candidate or political party and are not coordinated with a candidate or political party. See proposed revisions to 11 C.F.R. § 114.4(d) contained in Notice of Proposed Rulemaking for Independent Expenditures; Corporate and Labor Organization Expenditures; Proposed Rule, 57 Fed Reg. 33548, 33566 (1992). These provisions were proposed in light of the Supreme Court's ruling in FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) and subsequent cases interpreting that decision. See especially, Faucher v. FEC, 928 F. 2d 468 (1st Cir.), cert. denied, 502 U.S. 820 (1991)(invalidating the Commission's voter guide regulations at 11 C.F.R. § 114.4(b)(5)).

to make expenditures, which if made by the party itself, would be impermissible under the Act.

The Act also exempts from the definition of expenditure the costs of nonpartisan activity by corporations designed to encourage individuals to vote or register to vote. 2 U.S.C. § 431(9)(B)(ii). The legislative history of the 1979 amendments to the Act suggests that unlike corporations, party committees are *not* entitled to this exemption. In the 1979 amendments, Congress considered and apparently rejected extending 2 U.S.C. § 431(9)(B)(ii) to payments by party committees for voter drive activities. Instead, Congress passed a limited exemption for voter drives in support of a party's nominees for President and Vice President. See 2 U.S.C. § 431(8)(B)(xii) and (9)(B)(ix); S. Rep. No. 319, 96th Cong. 1st Sess. at 9 (1979) at 457 and S.1757, 96th Cong. 1st Sess., reprinted in Legislative History of Federal Election Campaign Act of 1979 (hereinafter "Legislative History") at 457 and S. 1757, 96th Cong. 1st Sess. §§ 101(b)(5) and (c)(4) (1979), reprinted in Legislative History at 503, 506. Hence, a party committee cannot take advantage of an exemption for voter drive activity apparently unavailable to it by giving funds to an entity which does qualify for the exemption.

An organization becomes a political committee pursuant to 2 U.S.C. § 431(4) if it receives contributions or makes expenditures aggregating in excess of $1,000 during a calendar year. Additionally, the Supreme Court has held that "[t]o fulfill the purpose of the Act [the designation of political

committee] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Buckley v. Valeo, 424 U.S. 1, 79 (1976); MCFL, 479 U.S. 238, 252 n.6 (1986). If an organization meets the "major purpose test" and reaches the requisite contribution/expenditure dollar threshold, it must register with the Commission as a political committee and file periodic reports of receipts and disbursements. 2 U.S.C. §§ 433 and 434.

B. Allegations & Responses

Complaint

On November 24, 1992, pursuant to Georgia state law, a run-off election was held for United States Senate after neither Democratic incumbent Wyche Fowler nor Republican challenger Paul Coverdell received fifty percent of the vote in the regularly scheduled November 3, 1992 general election. Between November 10 and November 18, 1992, after having exhausted their coordinated expenditure limitations, the NRSC made $122,000 in payments from their non-federal account to four tax-exempt groups named in the complaint. These payments included $7,000 given to the Good Government Committee on November 18, 1992.

The complaint alleges that the NRSC spent this non-federal money to influence the election of Republican Senate candidate Paul Coverdell in the Georgia run-off. Based on the timing of the payments and the fact that the groups are "closely tied to and have strongly supported the Republican party over time," the complaint alleges that NRSC knew that the money would be expended

on behalf of Coverdell. Since NRSC's nonfederal account contains corporate contributions, the complaint also alleges that by making the payments, the NRSC violated 2 U.S.C. § 441b by using corporate money in connection with a federal election and 2 U.S.C. § 441a by making excessive contributions to the various groups.

The GGC, an Alabama state political committee which is now terminated, acknowledges receiving the NRSC payments. In an unsworn statement, counsel simply states that the GGC "has not made any contributions to Republican candidate Paul Coverdell in any political race in which he was a contestant in the state of Georgia." Counsel does not address the circumstances, purposes or use of NRSC's donation, nor does counsel address whether GGC engaged in any independent expenditure activity in connection with the run-off election.

Amendment

On February 22, 1995, complainants filed an amendment stating that NRSC again violated the coordinated expenditure limitations of the Act by making $175,000 in payments from non-federal funds to the NRLC between October 31 and November 4, 1994. The basis for the amendment was a series of statements made to a Washington Post reporter at a February 10, 1995 luncheon by Senator Phil Gramm, the Chairman of the NRSC at the time of the 1992 and 1994 elections. According to a February 12, 1995 Post article, Senator Gramm stated that "I made a decision . . . to provide some money to help activate pro-life voters in some key states where they would be pivotal in the election." (emphasis added). Gramm went on to say that the NRSC to particularly

mention the Senate elections in Minnesota and Pennsylvania. Gramm later contacted the reporter and indicated that his original statement was incorrect and that the reason for the payments was that the NRLC's "message conformed to the Republican message."

In its response to the amendment, GGC's counsel advises the group was dissolved on January 14, 1994 and denies "the allegations of the complaint and the amended complaint as it relates to any wrongdoing on behalf of GGC."

C. Analysis

As discussed below, a variety of factors including the timing of the payments to the four organizations named in the complaint, NRSC's near exhaustion of coordinated expenditures limits at the time the payments were made and the close nature of the 1992 general election run-off for U.S. Senate in Georgia, support an inference that there may have been a violation of the Act given the information presently available.

On November 24, 1992, three weeks after the November 3, 1992 general election, a Senate run-off election was held in Georgia between Republican Paul Coverdell and Democrat Wyche Fowler. Prior to the general and run-off elections, the NRSC had made direct contributions of $17,500 and coordinated expenditures of $535,607 on behalf of Paul Coverdell, the maximum allowed for an election. On November 6, 1992, the NRSC sought an advisory opinion from the Commission to determine whether the NRSC could permissibly make additional coordinated expenditures for the run-off. On November 19, 1992 the Commission advised the NRSC that it had split 3-3 on a draft opinion holding that no

additional coordinated expenditures were available. The next day, the NRSC reported making an additional $535,000 in coordinated expenditures for Coverdell in the run-off. See General Counsel's Report dated March 23, 1993 in MUR 3708 at 8, n. 5 and 6.

On November 18, 1992, while awaiting the Commission's decision regarding the permissibility of additional coordinated expenditures, the NRSC made a payment of $7,000 to the GGC. At the time the NRSC made the payments, news reports in early November 1992 quote Coverdell aides as saying the campaign was low on cash in what was expected to be a very close run-off.

Disclosure reports filed with the Commission by NRSC's non-federal account reflect that the non-federal account made about fifteen donations to groups such as GGC since January 1, 1991. All but two these fifteen donations to non-profit groups were made to the four organizations named in this matter between four days and two months preceding U.S. Senate elections.

GGC admits receiving the payment from the NRSC but does not explain the circumstances surrounding why the payment was made or what it was used for. The GGC says only that it was given the $7,000 contribution on November 18, 1992 "to be used in a manner consistent with our charter for promoting good government," and denies making contributions to Coverdell. GGC's state reports support its statement that it made no direct contribution to Coverdell in 1992. The purposes of its $11,680 in reported expenditures during the relevant period are categorized generally as administrative, food and fundraising (two of the fundraising expenditures appear to be contributions to local candidates). Any

more precise purpose of these expenditures, however, cannot be ascertained from GGC's state reports.

Based on the circumstances described above, it appears that the NRSC, after exhausting its own ability to support its candidates, may have given GGC funds to engage in activity supporting a specific federal candidate without using funds subject to the Act. See 2 U.S.C. §§ 441a(d), 441a(f), 441b(a) and 11 C.F.R. § 102.5(a)(1). By virtue of its close relationship with its candidates, political party committees are considered incapable of making independent expenditures. 11 C.F.R. § 110.7(b)(4). Therefore, all expenditures made by the NRSC in connection with the general election of an identified candidate are treated as coordinated expenditures. FEC v. Colorado Republicans, 1995 WL 372934 (10th Cir. 1995). Had the NRSC conducted GOTV activity aimed at specific federal candidates, expenditures for those activities would be treated as coordinated expenditures subject to the applicable Section 441a(d) limit. Instead, it appears from the timing of the payments and the close nature of the Georgia run-off race that the NRSC may have provided funds to GGC to conduct activity that the NRSC could not have undertaken itself without exceeding the Act's limits.

If the NRSC made such a payment to GGC in violation of 2 U.S.C. §§ 441a(f) and 441b, the spending of NRSC's funds necessarily has implications for GGC. If GGC accepted payments from the NRSC which constituted coordinated expenditures on behalf of a specific candidate, and used them in connection with the Georgia election, GGC would have coordinated its activities with the candidate, through NRSC, and benefited both the NRSC and the

candidate whose race was targeted.

The GGC was registered in Alabama as a state political committee at the time it received NRSC's 1992 payment. If, as it appears, the NRSC's $7,000 payment to the GGC was a coordinated expenditure intended to influence the election of a federal candidate, GGC's acceptance of it would have triggered political committee status, requiring GGC to register and report with the Commission.[4] Consequently, there is reason to believe that the Good Government Committee violated 2 U.S.C. §§ 433 and 434. Since reports filed with the Alabama Secretary of State's Office confirm that GGC terminated in January 1994, however, the Commission shall take no further action against the Good Government Committee and its treasurer and close the file as to them.

4. As a state political committee, one of GGC's major purposes conceivably is to engage in campaign activity. Thus, GGC appears to meet the "major purpose" requirement established by the Supreme Court to ensure that the Act does not encompass groups engaged purely in issue discussion. See Buckley v. Valeo, 424 U.S. 1, 80 (1976) and FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 262 (1986).