



Republican
National
Committee

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COUNSEL

SEP 20 5 59 PM '95

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September 20, 1995

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4250

Dear Mr. Noble:

This statement is in response to the Federal Election Commission's (FEC) notice, received on September 5, 1995, of the complaint filed in the above captioned matter under review. The Republican National Committee (RNC) submits that the facts demonstrate that there is no "reason to believe" that the RNC violated the Federal Election Campaign Act (FECA) or Commission Regulations relating to the activities delineated in the complaint.

Specifically, the Democratic National Committee (DNC) alleges that the National Policy Forum (NPF) is a project of the RNC. As such, the RNC violated 2 U.S.C. § 434 and 11 C.F.R. §§ 104.8(e) and 104.9 by failing to disclose the receipts and disbursements of NPF. The DNC also alleges that the RNC violated 2 U.S.C. §§ 441a(f) and 441b and 11 C.F.R. §§ 102.5, 106.5(a), 110.9(a) and 114.2 by not allocating NPF expenses between its federal and non-federal accounts. Alternatively, the DNC suggests that, if in fact the FEC determines NPF to be a separate non-profit corporation, the RNC accepted "millions of dollars worth of illegal corporate contributions" in violation of 2 U.S.C. § 441b and 11 C.F.R. §§ 114.2, 114.3 and 114.4. The RNC maintains these allegations are totally without merit. The RNC, therefore, respectfully requests that the FEC dismiss this frivolous complaint against the RNC. As we were informed by the DNC, this complaint was filed in retaliation for the RNC's legitimate complaint against the DNC for its sole use of non-federal funds to sponsor DNC health care advertisements, amounting to illegal corporate contributions.

Disclosure

The RNC is a 527 political committee registered with the FEC. All funds received by or disbursed by the RNC, whether federal or non-federal, are reported to the FEC as required by Commission regulations at 11 C.F.R. §§ 104.8 and 104.9. The RNC files its disclosure reports monthly.

NPF is a non-profit 501(c)(4) organization engaged in public policy debate on issues. NPF is separate and distinct from the RNC. None of NPF's receipts or disbursements are received or made by the RNC. To the best of our knowledge, NPF is not engaged in any federal election related activity. NPF's activities, therefore, would not be subject to FEC jurisdiction.

Based upon structure and purpose, the RNC and NPF are legally separate and distinct organizations. The RNC, therefore, has no legal obligation or authority to disclose the financial activity of NPF, a non-profit tax exempt 501(c)(4) organization.

FEC regulations stipulate a political committee that is established, financed, maintained or controlled by a national party committee is considered affiliated with that national party committee (11C.F.R. § 110.3(b)(i)). The practical effect of affiliation is that federal contributions made to or by affiliated federal committees are subject to the same federal contribution limits.

The DNC is attempting to misapply this federal affiliation standard to NPF, a 501(c)(4) organization. To reiterate, NPF is not a federal political committee subject to the FECA or FEC regulations. To the best of our knowledge, NPF does not contribute to or in any way support federal candidates, nor is it involved with any election related activities such as voter registration or generic get-out-the vote efforts. It is a forum to encourage public debate on issues.

Nothing in the FECA or FEC regulations prohibits the RNC from making non-federal contributions to such a non-profit tax exempt entity. The RNC has made loans to NPF and this financial activity has been timely disclosed on the appropriate RNC reports filed monthly with the FEC. Likewise, the involvement of RNC officers or employees in NPF is not regulated or prohibited under the FECA. Neither RNC donations to or the personal involvement of RNC officers with NPF automatically makes this non-profit 501(c)(4) organization part of the RNC. The RNC, therefore, has no legal responsibility and, more importantly, no legal authority to disclose NPF's financial activity.

Even if the FEC determined that NPF was involved in federal election related activities, exceeding its stated purpose as a non-profit 501(c)(4) organization (which to the best of our knowledge is not the case), and then determined NPF was affiliated with the RNC (which is not the case), the RNC would still not be responsible for disclosing the financial activity of NPF. Each affiliated federal political committee, except the authorized

committees of federal candidates, is responsible for filing its own financial disclosure reports with the FEC.

Moreover, NPF is not a project of the RNC. As stated previously, the RNC is a political committee, whereas NPF is a tax exempt non-profit 501(c)(4) organization. NPF funds are deposited into NPF accounts and disbursed from NPF accounts, not accessible to the RNC. They are not commingled with RNC federal or non-federal dollars.

The RNC does not make or control NPF disbursements. The RNC is an unincorporated political organization created every four years under the rules established by the elected delegates from each of the fifty states, the U.S. Territories and the District of Columbia at the Republican national presidential nominating convention. Membership of the RNC consists of a national committeeman, a national committeewoman elected from each State, Territory and the District of Columbia plus the state party chairman from each State, Territory and the District of Columbia. The rules of the RNC do not recognize or provide for the establishment of NPF or any other non-profit 501(c)(4) organization, nor has the RNC ever voted to establish NPF. Accordingly, if the RNC ever adopted any resolution to control or direct NPF activities it would have no legal or practical effect.

Even if NPF were an affiliated federal political committee (which it is not) the RNC would not be responsible for reporting NPF's financial activity. Each committee would be responsible for its own reporting.

We submit, therefore, that the RNC has not violated FECA recordkeeping, registration or reporting requirements as delineated in 2 U.S.C. §§ 432, 433 and 434 or FEC regulations.

Allocation

The DNC has alleged that the RNC has violated 2 U.S.C. §§ 441a(f) and 441b for not allocating the expenses of NPF between the RNC's federal and non-federal accounts as required under FEC regulations at 11 C.F.R. § 106.5(a).

The allocation regulations apply to political committees that maintain federal and non-federal accounts. These regulations require national party committees to pay for administrative expenses with a minimum of 60% federal dollars in non-presidential election years. The RNC fully complies with this requirement and reports these transactions on the appropriate schedules on its monthly FEC reports. The RNC acknowledges that if it were to conduct activities similar to NPF, under FEC regulations found at 11 C.F.R. § 106.5(a), as a national party committee it would be required to allocate those administrative expenses. The fact is, the RNC is not making or controlling any such expenditures. They are being made by NPF, a 501(c)(4) organization which to the best of our knowledge is not involved in any federal election related activity and,

therefore, not subject to FEC regulations. The presumption underlying the FEC's allocation regulation pertaining to national party committees which is that administrative expenditures by a national committee of a political party affect federal election activity, does not apply to a non-profit organization.

The DNC, on the other hand, has not consistently complied with FEC allocation requirements. It has, as you know, publicly admitted to funding its 1994 health care ads exclusively through its non-federal accounts.

In contrast, as previously discussed, the activities of NPF, a non-profit tax exempt 501(c)(4) organization, are not subject to these allocation requirements. NPF funds are not received or spent by any federal or non-federal RNC account. NPF is responsible for its own receipts and disbursements. The RNC has no legal access to NPF bank accounts. Since NPF is not a project of the RNC (see discussion above); since the RNC does not deposit NPF receipts or make NPF disbursements; and since the RNC has no legal access to NPF bank accounts, its activities are not subject to the RNC's allocation requirements.

Even if NPF was an affiliated federal political committee, the RNC would still not be responsible for the federal non-federal allocation of NPF expenditures. It would be the responsibility of NPF.

The RNC has not made or controlled NPF disbursements. The RNC, therefore, has no legal responsibility or authority to allocate NPF expenditures under FEC regulations at 11 C.F.R. § 106.5(a). As a result, we submit that the RNC has not violated 2 U.S.C. §§ 441a(f) and 441b and 11 C.F.R. §§ 102.5, 106.5(a) and (b), 110.9(a) and 114.2.

Corporate Contributions

The DNC alleges in the alternative that if the FEC determines NPF to be a separate non-profit 501(c)(4) corporation that it made excessive illegal corporate contributions to the RNC. This is an allegation born of hope not fact. The RNC has received no direct or in-kind contribution from NPF. It has the same access to NPF materials as does the general public. The DNC alleges that the major purpose of NPF is to make contributions and expenditures on behalf of the RNC. In fact, NPF articles of incorporation (attached as Exhibit 1 of the DNC complaint) describe its purpose as follows:

To encourage the involvement of citizens in free and open debate, the public exchange and development of ideas, discussions, dialogues, conferences, and discourses, to promote public forums, seminars and colloquia and information dissemination to the general populace, to develop a national Republican policy agenda and to serve as a clearinghouse for the collection and review of research and ideas on issues affecting foreign affairs, national security, economy, environment, energy, government lands,

commerce, labor, federal budget, government restructuring and regulatory reform, fiscal and tax policy, international trade, education, states, cities, urban and suburban life, crimes, justice and judicial reform, human services, health care, agriculture, rural life, small business and entrepreneurial enhancement and other issues of concern to or affecting the citizens of the United States of America.

As indicated in NPF's purpose, the beneficiary of NPF activities is the American public, not the RNC. We submit that there has been no receipt of excessive or prohibited contributions by the RNC based upon the activities of NPF, therefore no violation of 2 U.S.C. §§ 441a(f) or 441b or FEC regulations has occurred.

DNC Statement of Facts

We must address certain statements made by the DNC in their complaint because such statements are either erroneous or misinterpretations. The RNC's failure to discuss each statement of fact presented by the DNC, however, should not be interpreted by the FEC as RNC acceptance of the accuracy of the DNC's factual representations or analysis.

1. Statement of fact 4

We dispute the DNC's allegation that NPF is an "arm" of the RNC (see discussion above). Also the purpose of NPF has been misrepresented by the DNC. The stated purpose of NPF found in its articles of incorporation must be read in its entirety (see "Corporate Contributions" above).

2. Statement of fact 5

The memorandum referred to as Exhibit 2 is factually and legally incorrect and had a limited distribution at an RNC fundraising event as part of a larger fundraising package. The particular memorandum in question received neither finance division, legal or executive approval. Once this inaccurate memorandum was discovered it was eliminated from all future RNC fundraising efforts. As a result, the National Advisory Counsel contemplated and discussed in the memorandum was never formed. In short, this misleading memorandum was the product of overzealous but misinformed fundraisers.

3. Statement of fact 6

DNC's Exhibit 3 highlights the fact that RNC Chairman Haley Barbour is also Chairman of NPF insinuating that this automatically makes NPF a part of the RNC. Although overlapping officers in federal political committees may be viewed by the FEC as a potential indicia of political committee affiliation, it does not make a non-profit organization or any other non-political organization an affiliated political committee. If that were the case the DNC should be advised to curtail the involvement of its own officeholders, officials and senior employees in organizations such as the DLC or any other similar or non-profit organization.

4. Statement of fact 9

The DNC states that the President of NPF from its formation in 1993 to June 1994, Michael Baroody, was also on the RNC payroll during the same period. The Michael Baroody on the RNC payroll during this period is not the individual who was president of NPF.

5. Statement of fact 10

The DNC insinuates that there was a substantial overlap of other officials and employees of the RNC ,”its campaign committees” and NPF. It then proceeds to list two individuals. One was an NPF employee who took a position with the RNC (*not overlapping employment but leaving one job and taking another*). The second individual left NPF employment to take a position with the National Republican Senatorial Committee , an organization not controlled by the RNC (*also, not overlapping employment*). As suggested in paragraph 3, if this kind of activity is an indication of affiliation, the DNC should quickly examine the employment histories of its current and former employees.

6. Statement of fact 12.

The referral to the National Republican Congressional Committee (NRCC) has absolutely no relevance to any possible RNC violation of the FECA or FEC regulations. It is a separate and distinct committee not under the control of the RNC.

7. Statement of fact 15

The memorandum discussed in DNC Exhibit 2 has already been explained in paragraph two.

8. Statement of fact 16

The DNC alleges that the RNC was distributing a questionnaire which was an initial project of NPF. The questionnaire distributed by the RNC was an RNC project paid for by the RNC and treated and reported as an RNC overhead expenditure subject to the FEC’s allocation rules. The RNC published and distributed the results of this questionnaire to more than 150,000 recipients including, but not limited to, the media, Congressmen, governors, state and local officials and party leaders as well as NPF.

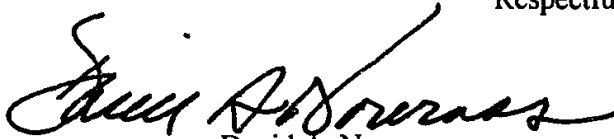
9. Statement of fact 26

Contrary to the insinuations of the DNC, Chairman Barbour makes it very clear in DNC Exhibit 13 that NPF is a separate organization from the RNC. Not only is NPF legally separate and distinct from the RNC as discussed above, the evidence shows that there was no attempt to represent that NPF was a RNC project.

Conclusion

In conclusion , based upon the RNC's factual and legal analysis discussed above, the DNC has failed to provide any credible evidence that the RNC has violated the FECA or FEC regulations with regard to its activities referred to in the above captioned matter under review (MUR). The FEC, therefore, should find "no reason to believe" that the RNC violated the FECA or FEC regulations and close the file as it pertains to the RNC in MUR 4250.

Respectfully submitted,



David A. Norcross
General Counsel



Thomas J. Josefiak
Counsel