

Democratic National Committee

Steve Grossman, *National Chair* * Governor Roy Romer, *General Chair*

April 29, 1997

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Federal Election Commission
999 E Street, N.W.
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FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

Re: MUR 4250

Dear Mr. Noble:

The Democratic National Committee is supplementing the complaint it filed in the above-captioned MUR with the attached information from today's Time Magazine, indicating that the Republican National Committee received up to \$2.7 million in illegal contributions from Hong Kong, and deliberately and knowingly concealed those contributions by funneling them through the National Policy Forum--the RNC arm that is the subject of this MUR.

As explained in detail in our complaint, the National Policy Forum, a nonprofit corporation claiming exemption from taxation under section 501(c)(4) of the Internal Revenue Code, was set up by the RNC and is entirely maintained, financed and controlled by the RNC. Its activities have been indistinguishable from those conducted by the RNC itself: development and promotion of the Party's official message, providing benefits to RNC donors and showcasing Republican candidates for federal and other offices. As detailed in the complaint, RNC Chairman Haley Barbour, who also chairs NPF, has the power to appoint all the organization's directors, NPF's president was on the RNC payroll and the RNC provided more than \$2.5 million of financing for NPF over the past two years. Barbour himself once called NPF a mere "subsidiary" of the RNC.

Because the NPF is merely a project or arm of the RNC, its general expenses must be paid by the RNC with a combination of federal and non-federal funds--60% federal in a non-presidential election year, and 65% federal in a presidential year. 11 C.F.R. § 106.5(b)(2). Further, the RNC was obligated to pay all of the expenses of NPF in the first instance from a federal account, and transfer funds from a non-federal account to a federal account solely to cover the non-federal share of the allocable expenses of NPF. Id. § 106.5(i)(1).

The complaint we filed shows that, in violation of these rules, NPF has been financed entirely through "soft money" donations from corporations and wealthy individuals that are illegal under federal law. And by claiming to be a separate "social welfare" group, the RNC has evaded the

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requirements of federal election law that such contributions and expenses be publicly disclosed.

Now, the Time article reveals that the RNC actually used the National Policy Forum as a means to hide illegal foreign contributions to the RNC. According to the article, in the fall of 1994, RNC Chairman Barbour arranged for a foreign-owned U.S. firm, Young Bros. Development--USA, to put up \$2.2 million in certificates of deposit for a bank loan to NPF--certificates of deposit purchased with funds from the U.S. firm's Hong Kong parent company. The U.S. firm has essentially no assets or operations of its own, the article reports. The NPF then used much of the loan proceeds shortly thereafter to repay the funds NPF had borrowed from the RNC, and the RNC then used these proceeds for 1994 U.S. election activity.

In 1996, the bank then called in NPF's loan, with a balance of \$1 million due. The NPF refused to pay \$500,000 of the balance, and Young Bros. wound up paying that amount.

Under the Commission's regulations, a "contribution" includes a "loan," 11 C.F.R. § 110.7(a)(1), and a "loan" includes "a guarantee, endorsement, and any other form of security." Id. § 100.7(a)(1)(i). A loan from any person or entity other than a bank is a contribution by that person or entity. Id. § 100.7(b)(11). In this case, Young Brothers' putting up of collateral of \$2.2 million for a bank loan to NPF, and paying \$500,000 of NPF debt, constitutes a contribution to the NPF.

This loan and debt payment was a contribution to the RNC for two reasons. First, because the NPF is an arm of the RNC the expenses of which should have been allocated, the Young Bros.-secured loan and payment must be treated as a contribution to a federal account of the RNC. Second, most of the proceeds of the loan to NPF were passed through to the RNC. As Exhibit 5 of our original complaint showed (copy attached hereto for ready reference), just before the Young Bros.-secured loan was arranged, the NPF "owed" the RNC \$2.155 million dollars--almost exactly the amount of collateral put up by Young Bros. for the loan to NPF. In October 1994, following the Young Bros.-secured loan to NPF, NPF transferred \$1.6 million to the RNC. The RNC was then able to, and did, use these funds for the 1994 elections, according to Time.

By accepting this contribution, the RNC violated the law in at least five ways:

(1) This corporate contribution was used to cover NPF expenses which should have been paid mostly with federally permissible funds, in violation of 2 U.S.C. § 441b and the Commission's allocation regulations, 11 C.F.R. § 106.5(b).

(2) The contribution was excessive in amount, since no person may contribute in excess of \$20,000 per calendar year to a national party committee's federal account, and this contribution amounted to \$2.7 million. 2 U.S.C. §§ 431(11) & 441a(a)(1)(B).

(3) The contribution was illegal because it was made by a foreign national. A foreign national

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is prohibited from making any contribution, whether in connection with federal, state or local elections. 2 U.S.C. § 441e; 11 C.F.R. § 110.4(a). Thus, a guarantee of or security for a loan provided by a foreign national to a political committee for use for federally-allocable expenses, or for use in particular elections, is clearly illegal. In this case, the RNC used the foreign contribution for NPF expenses which should have been paid for mostly with federal funds and, according to the article, the RNC used the contribution directly for support of candidates.

The Young Bros. contribution was an illegal foreign contribution. Under the Commission's rulings, a contribution by a U.S. subsidiary is unlawful if the source of the funds is the foreign parent company. FEC Advisory Opinions 1992-16; 1989-29; 1989-20; 1985-3; 1982-10. With regard to this rule, the Commission has stated that:

The subsidiary must be able to demonstrate through a reasonable accounting method that it has sufficient funds in its account, other than funds given or loaned by its foreign national parent, from which the contribution is made. . . .

Advisory Opinion 1992-16, *supra*, 2 CCH Fed. Elec. Camp. Fin. Guide ¶ 6059 at p. 11,813(emphasis added).

In this case, the Hong Kong parent company provided funds to Young Bros. USA, which the U.S. subsidiary then used to make a contribution to the NPF/RNC. The U.S. company, with essentially no U.S. assets or revenue, then paid off \$500,000 of the debt to the NPF, representing another contribution. Under the Commission's rulings, these contributions clearly violated federal law, 2 U.S.C. § 441e.

(4) Not only were these foreign contributions to the RNC clearly illegal, they were also illegally concealed. As we pointed out in our complaint, the NPF was set up by the RNC precisely to evade the disclosure requirements of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations. Now it is clear that one purpose of this mechanism was to conceal illegal foreign contributions to the RNC. By failing to report the contribution from Young Bros., the RNC has violated 2 U.S.C. § 434, and the Commission's regulations, 11 C.F.R. § 104.3.

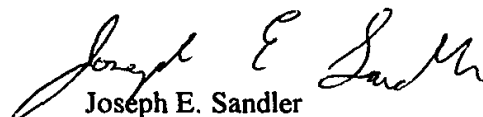
(5) By failing to report the loan from Young Bros., which was a loan to the RNC, the RNC has also violated the Commission's rules specifically requiring the reporting of loans made to a political committee, 11 C.F.R. 104.3(d).

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For the reasons set forth above, we respectfully request that the Commission expand its investigation in this MUR to include the receipt of illegal and concealed foreign contributions by the RNC.

Respectfully submitted,


Joseph E. Sandler
General Counsel

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