LAW OFFICES
WILLIAMS & CONNOLLY
725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

PAUL C. RAUSER
(202) 434-5155

February 23, 1999

Secretary
Federal Election Commission
Room 657
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4250

Dear Sir or Madam:

Enclosed for filing are 13 copies of the Brief of Haley R. Barbour in Response to General Counsel's Brief of December 21, 1998 in Matter Under Review 4250. Also enclosed is a copy to be file stamped and returned via messenger to Williams & Connolly.

Thank you for your assistance.

Sincerely,

Paul Rauser

Paul C. Rauser

Enclosure

PCR/hts

IN THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF	)	**MUR 4250**
HALEY R. BARBOUR	)	

BRIEF OF HALEY R. BARBOUR

IN RESPONSE TO GENERAL COUNSEL'S BRIEF OF

DECEMBER 21, 1998

Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005

Terrence O'Donnell
Dennis M. Black
Paul C. Rauser

Counsel to Haley Barbour

TABLE OF CONTENTS

INTRODUCTION

The General Counsel of the Federal Election Commission – prompted it appears, by the minority staff of the Senate Governmental Affairs Committee, *see* GC Brief at n.1[1/] – has filed a brief recommending that the Commission find that Haley Barbour committed a "knowing and willful" violation of the Federal Election Campaign Act of 1971 as amended ("FECA") for his role in the "Signet loan transaction," a 1994 collateralized loan from Signet Bank to the National Policy Forum ("NPF"), a non-profit think tank. The NPF used some of the Signet loan funds to partially repay a preexisting bona fide debt to the RNSEC, the soft money account of the Republican National Committee ("RNC").

The General Counsel advises the Commission that he believes that because the Signet loan transaction involved collateral indirectly provided by a Hong Kong corporation, that transaction was illegal under the Federal Election Campaign Act of 1971 as amended ("FECA" or "the Act"). As discussed in more detail below, the

---

[1/] It appears from footnote one of the General Counsel's brief and from the contents of the Brief in general that the minority of the Senate Committee may not have provided the Commission staff with a copy of the Committee's Final Report, dated March 10, 1998. To remedy this possible oversight, we attach at Tab "A" of this brief a copy of the "Chapter 29: Allegations Relating to the National Policy Forum" of the Final Report which addresses the matter that is the subject of MUR 4250. As the Commission can see, the Senate Committee concluded that the Signet loan transaction was in all respects legal and proper, Senate Report at 4212, and, contrary to the thinly-veiled implications in the General Counsel's brief, "that the facts cannot be twisted to support a charge that Barbour's testimony was anything less than truthful," *id.* at 4213. Mr. Barbour respectfully submits that the Committee's findings should dispose of this matter.

General Counsel's proposed finding is not merely unwarranted, it is wholly unjustified in fact and law. The Signet loan transaction has already been examined at length by both the Senate Committee on Governmental Affairs ("the Senate Committee") and by the U.S. Department of Justice. After through review, the Senate Committee concluded that that "[t]he transaction was . . . in all respects legal and proper," Senate Report at 4212, and the Department of Justice permitted the FECA statute of limitations to lapse without taking any action to charge Mr. Barbour with a "knowing and willful" violation of FECA under 2 U.S.C. § 437g(d).

In urging the Commission to third-guess two previous plenary investigations of this matter, the General Counsel has filed a brief that is deeply flawed, both factually and legally -- a brief that clearly reflects an obviously defective and one-sided view of the Signet loan transaction that the General Counsel has been fed by the minority staff of the Senate Committee, and a view of the law that can only be deemed risible. *First,* in a brief ripe with innuendo and smelling strongly of conspiracy theories, the general counsel has, ostrich-like, ignored key facts in the record that directly contradict the General Counsel's brief on every meaningful point. *Second,* the General Counsel has utterly failed to explain how this transaction, which involved a pledge of collateral by a U.S. corporation to a bank to support a loan non-profit think tank which used some of the money to repay a legitimate debt to an RNC soft-money account, could ever be a "contribution" covered by § 441e of FECA, or be covered by Commission regulations treating certain *hard*

money loan guarantees made *directly* to a political committee as "contributions." *Third,* the General Counsel utterly fails to allege facts showing that funds from the NPF's loan repayment to an RNC soft money account were *ever* used in connection with an "election" or contest for elective office of any kind, whether federal, state, or local. *Fourth,* the General Counsel offers no support – *none whatsoever* – for his view that § 441e applies to more than federal "hard money" "contributions" as defined in FECA, a view that has been rejected by courts, commentators, and current and former election law experts at both the Commission and Department of Justice. *Fifth,* the general counsel has failed even to *allege* facts suggesting that Mr. Barbour knew of the technical requirements of FECA as applied to this transaction, and has offered no reason why Mr. Barbour should be charged with a "knowing and willful" violation of the Act when at least *four sets of attorneys* – including expert election-law counsel retained for the purpose by the NPF – reviewed the transaction for the parties and found it to be *legal* – a position with which the Senate Committee concurs.

BACKGROUND

A. Background of the National Policy Forum.

A proper understanding of the Signet loan transaction requires a basic understanding of the National Policy Forum: what it was and did and, perhaps more important, what it was not and did not do. Haley Barbour conceived the National Policy Forum in 1993 as a public policy organization devoted to developing a policy agenda based on the views of ordinary Americans. At the earliest stages of planning, Mr. Barbour considered making the think tank he envisioned a part of the structure of the RNC.[2/] The group was intended, however, not to support and participate in election campaigns, as the RNC does, but instead to focus on issues of public policy. Because its proposed role lay in the realm of public policy, not politics, the concept of a think tank within the RNC structure was abandoned in favor of a separate group, Senate Report at 4196 & *id.* at n.5, one that would be more inclusive than a party entity and one that would invite participation by all Americans, including those who did not consider themselves Republicans, *id.*

[2/] The internal RNC memorandum cited by the General Counsel, GC Brief at 2-3, for the proposition that the NPF was a "subsidiary" of the RNC dates from this early planning stage, before the NPF was even formed. As discussed *infra,* the idea of a subsidiary organization was eventually rejected in favor of a think tank independent of the RNC, and the language cited by the FEC was in fact *deleted* from the final version of the memorandum in question. *See* Document RJ029350.

The think tank – eventually christened the National Policy Forum ("NPF") – was incorporated in the District of Columbia as a non-profit corporation. It was a like-minded organization to the RNC, to be sure, but in operational respects, the NPF was distinct: it had its own corporate charter, its own Articles of Incorporation, its own bylaws, its own offices, its own books (audited by Arthur Andersen), its own personnel, and its own bank accounts, and it filed its own tax returns. *See generally* Senate Report at 4196 n.5 (detailing facts underlying Committee conclusion that NPF and RNC were separate entities). The NPF had its own Board of Directors made up of prominent Americans involved in public life,[3/] and with the exception of Mr. Barbour, *no* member of the NPF Board was a member of the RNC after the initial formation phase.

Because it was a policy organization, and because it was applying for IRS recognition as a § 501(c)(4) social welfare organization,[4/] the NPF took extraordinary

---

[3/] A list of members of the NPF Board of Directors is attached at Tab "B."

[4/] Although immaterial to the matter before the Commission, *see* Senate Report at 4197 n.10 (NPF tax status not material to legality of loan transaction), an applicant for § 501(c)(4) status may operate as a § 501(c)(4) organization while its application is pending before the IRS. Like virtually all nonprofit groups seeking § 501(c)(4) status, the NPF carried on operations while its application for IRS recognition of status was pending. Almost four years *after* the NPF first applied for recognition of its § 501(c)(4) status, and *after* the NPF had ceased all active operations, the IRS denied, as an initial matter, the NPF's application for recognition as a § 501(c)(4) organization. The Senate Committee concluded, after investigation and comparison with the IRS treatment of another entity, that the IRS' decision "raised certain issues regarding partisanship at the IRS." Senate Report at 4197. The matter is currently on administrative appeal. Even on administrative appeal, the IRS can neither grant nor revoke § 501(c)(4) status but only recognize or not recognize an organization's status under § 501(c)(4). Under the Internal Revenue Code, the question whether a nonprofit satisfies § 501(c)(4) is for the courts to

measures to insure that its events and activities focused exclusively on policy, not politics. As NPF controller Steven Walker explained, NPF employees were "absolutely not" permitted to work for candidates while employed by the NPF "because it would give the impression that they were bringing the resources of National Policy Forum to the race, to the benefit of the candidate." Walker Dep. 79-80.[5/] Testifying about measures taken to ensure that speakers at NPF events who were also candidates did not cross over the line into electioneering, Walker indicated that

> [w]e were concerned that a panelist or a speaker that held a current office usually a State legislator who happened to be up for reelection that year might say and I'm running for reelection, I would appreciate your vote.
>
> We did our best to figure out, you know, if someone was running for reelection and tell them specifically you cannot campaign here. You can talk about your ideas and say about what you believe but you cannot say that you're running, you cannot ask for somebody's vote. And I believe we even went as far as to not advertise that so-and-so candidate for the fifth, you know, we wouldn't say, candidate for the 52nd, whatever they were called.

---

determine. *See* Bruce R. Hopkins, THE LAW OF TAX-EXEMPT ORGANIZATIONS 722 (6th ed. 1992); J. Blazek, TAX PLANNING AND COMPLIANCE FOR TAX-EXEMPT ORGANIZATIONS 293 (2d ed., 1993). In any event, no one can challenge the NPF's status as a nonprofit corporation organized under the laws of the District of Columbia.

[5/] All references to depositions refer to depositions given before the Senate Governmental Affairs Committee during its investigation into illegal and improper activity in connection with the 1996 elections.

Walker Dep. at 84.[6]

The NPF never advocated the election or defeat of any candidate for any office at any level, state or federal, at any time. It has never run political or issue advocacy advertising, has never made a political contribution or operated a political action committee, and has not engaged in voter registration or get out the vote efforts. In short, "the NPF undertook no campaign-related activities," Senate Report at 4196 n.6, and "never engaged in any election-related activities of any kind," *id.* at 4197 n.10.[7] Instead

---

[6] Indeed, the NPF's ban extended beyond electioneering to other political activity as well. The NPF "made very sure that we did not discuss pending legislation at our forums. We were interested in hearing about new ideas, ideas that worked. Anything that was pending either in the Federal level, the State level or the local level was not up for discussion or debate." Walker Dep. at 85.

[7] The NPF is thus not a "political committee" under FECA or FEC regulations. The FECA and related regulations define a "political committee" as a "committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year. . . ." and, although not relevant to this case, an organization may also become a political committee by making "expenditures" which, like FECA contributions, are limited by the Act to hard money used for the purpose of influencing a federal election. *See generally* 2 U.S.C. § 431(9); 11 C.F.R. § 100.8. *See* 2 U.S.C. § 431(4) and 11 C.F.R. § 100.5(a). It is indisputable that the NPF is *not* a political committee. Indeed, even if it *had* engaged in activity on behalf of individual candidates – and it did not – the NPF still would not be considered a political committee subject to the FECA unless supporting a candidate or candidates was its "major purpose." *See* Brief for Petitioner, FEC v. Akins, No. 96-1590 (U.S. 1997), at 33-37; Reply Brief for Petitioner, FEC v. Akins, No. 96-1590 (U.S. 1997), at 11-12 (explaining that "the relevant focus is on the organization's major purpose, not the major purpose of an individual disbursement," and noting that the plurality opinion in FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986), deemed it "undisputed" that MCFL was not a "political committee" because "[i]ts central organizational purpose [wa]s issue advocacy," *id.* at 252 n.6, even though MCFL had made independent expenditures of nearly $10,000 that "represent[ed] express advocacy of the election of particular candidates.").

of engaging in politicking or electioneering, the NPF, as its name implies, served an important role in the national policy debate, facilitating the exchange of ideas about issues of national public policy on a grassroots level.[8] In this respect, the NPF was consciously different from both the Democrat Leadership Conference ("DLC"), on which it was loosely modeled, and from typical Washington-based think tanks. The NPF was premised on the assumption that in America the most worthwhile ideas about national policy emanate not from political leaders, but from the grassroots where real people deal with real problems.

As part of this mission to promote grassroots public policy debate, the Forum conducted a series of more than eighty public policy forums and conferences across the nation,[9] from Lubbock, Texas to Crawfordsville, Indiana, to Little Rock, Arkansas. These forums united leaders from various levels of government and from the private sector with members of the public in an exploration of public policy issues. The NPF invited anyone and everyone to attend and participate, and many did: over 20,000 people

---

[8] As stated in its articles of incorporation, the purposes of the NPF include encouraging

> the involvement of citizens in free and open debate, the public exchange and development of ideas, discussions, dialogues, conference, 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 clearing house for the collection and review of research and ideas

on "issues of concern to or affecting the citizens of the United States of America."

participated in forums on issues like safe and prosperous neighborhoods, improving our nation's schools and education, national defense, and the environment – *not* electoral politics. *See generally* Senate Report at 4196 n.7 (discussing the "enormous breadth of activity undertaken at [NPF] public fora and conferences"). Those forums eventually led to the publication of *Listening to America,* a book which reflected the public policy recommendations of the forums. The NPF conducted its work through 14 policy councils, which were chaired by some of America's most distinguished public and private sector leaders and academic experts, including Jeanne Kirkpatrick, Richard Lugar, Dick Cheney, William Weld, William Barr, and Nancy Kassebaum.[10/] Each council was charged with crafting a report or agenda to enact into public policy the views of Americans as expressed in the forums. These reports eventually became a second book, *Agenda for America,* which set out a policy agenda to implement those recommendations.

An ambitious grassroots effort such as the NPF's requires substantial funding, funding that the NPF did not have at its inception. Operating on the principle that like-minded organizations help each other, and pursuant to a formal loan agreement, the RNC provided the NPF with an initial loan of $100,000 of seed money from the RNSEC, the

---

[9/] *See* Senate Report at 4196 n.9. A representative list of many of the NPF's public forums and conferences is attached at Tab "C."

[10/] A list of the NPF's Policy Councils and their Co-Chairs is attached at Tab "D."

RNC's "soft money" account,[11] with the expectation that more start-up loans would follow but that the NPF soon would be able to raise sufficient funds to sustain itself and to repay the indebtedness. Unfortunately, although the NPF succeeded in raising many millions of dollars in donations from both individuals and corporations,[12] the NPF's income failed to match the substantial outlays necessitated by its nationwide schedule of forums and conferences. As a result, the Forum continued to borrow from RNSEC to meet its operational expenses, as the chart attached at Tab "E" indicates. All of the RNSEC loans to NPF were reported to the FEC by the RNC as were all loan repayments to RNSEC. Every penny loaned to NPF from the RNC came from its non-federal soft money accounts.[13] There is not a penny of hard money anywhere in the Signet loan transaction, in the RNSEC loans to NPF, or in the NPF's loan repayments to the RNSEC.

---

[11] *See* Section II, *infra,* for a discussion of RNSEC and the significance of "soft money" accounts.

[12] The General Counsel's brief states that "[f]rom the beginning, Mr. Barbour treated the NPF as unrestricted by the campaign finance laws, allowing the NPF to solicit and accept not only large corporate donations, but also donations from foreign national sources," GC Brief at 6, insinuating that it would be improper to treat the NPF as unrestricted by the campaign finance laws. In fact, as the Senate Committee found, "because the NPF never engaged in any election-related activities of any kind, *it was never subject to federal election law.*" Senate Report at 4197 n.10 (emphasis added). As such, the NPF would be free to accept donations from many sources, including corporations *and* foreign nationals, just as other think tanks do. *See* Senate Report at 4196 (donations from foreign nationals would be legal). Despite its accusatory tone, the General Counsel's Brief does not dispute this for the simple reason that there is no basis in fact or law to dispute it. *See* GC Brief at 7 n.5 (noting but not challenging NPF donations in 1995 and 1996 by foreign nationals).

[13] By August 12, 1994, the NPF owed RNSEC $2,245,000.

B. The Signet loan transaction.

In light of its substantial indebtedness, and because the NPF anticipated that its donor base would "dry up" as donors turned their resources to political activity in an election year,[14] the NPF decided in 1994 to restructure its debt. Given the NPF's existing indebtedness, a commercial loan was only feasible with a guarantee or pledge of collateral, and the NPF set about finding such a pledge. In mid-1994, an NPF fundraiser named Fred Volcansek[15] met with Dan Denning, the NPF's Chief Financial Officer, and Donald Fierce, an RNC official, and discussed the NPF's faltering fundraising efforts and the NPF's outstanding debt. Senate Report at 4199. Young Brothers Development (USA) ["YBD(USA)"], a corporation chartered under the laws of Florida that had given to the RNC for several years, eventually agreed to post collateral on the loan, and after review by legal counsel for all parties – the NPF, YBD (USA), Signet Bank, and the RNC, which subordinated its debt – and a review by Mark Braden, Esq., an election law expert hired by the NPF to insure the legality of the transaction, *see* Braden Decl. at ¶ 3,

---

[14] *See* Senate Report at 4196 (noting that the NPF was competing with Congressional campaigns for donations during the summer and fall of 1994 and thus expected a fundraising shortfall during that period).

[15] The General Counsel states that Mr. Volcansek was "presumably" approached because of his expertise and contacts in the international business community. GC Brief at 10. In fact, as the Senate Committee noted, Daniel Denning – the individual who "approached" Mr. Volcansek according to the General Counsel – recalls no conversation with Mr. Volcansek relating to foreign sources of funds. Senate Report at 4199 n.22 (citing record). Likewise, although the General Counsel states that Mr. Volcansek "then met directly with Mr. Barbour," GC Brief at 10, the General Counsel significantly does

attached at Tab "F" – the loan closed in October of 1994. As set forth in the loan documents, the NPF used $1.6 million of the funds loaned by Signet to partially repay its debt to the RNSEC, retaining the balance to meet operating expenses.[16] As witnesses testified in the Senate Governmental Affairs Committee proceedings, YBD(USA) did not have sufficient assets at the time of the Signet loan transaction to collateralize the loan, and obtained those funds from Young Brothers Development Co., Ltd., its Hong Kong parent company, a fact known by Mr. Braden when he opined that the loan transaction was legal. *See* Braden Decl. at ¶¶ 4-5.

The General Counsel has suggested that Mr. Barbour should be charged with a "knowing and willful" violation of FECA because he was aware of the foreign source of the collateral funds, and because the Signet loan transaction – perhaps even the NPF – was in fact an elaborate subterfuge to funnel $1.6 million of foreign funds to the RNC for use in the 1994 congressional election campaigns. GC Brief at 34-35. *Independent of the numerous legal infirmities that are fatal to the General Counsel's legal position – infirmities catalogued below – his view of the facts is simply wrong.*

First, although the General Counsel repeatedly insists that Mr. Barbour was aware that the funds for the Signet loan guarantee came from a foreign corporation controlled

---

not suggest that Mr. Barbour told Mr. Volcansek that he was to solicit NPF donations from foreign nationals.

[16] Unfortunately, the NPF's expenses continued to outstrip its revenues, and it continued to borrow from RNSEC until the NPF ceased active operations at the end of

by a foreign national, *see, e.g.* GC Brief at 2; 14; 17-19; 24-25; 32-33; 35, the General Counsel – in an oversight that is perhaps attributable to the one-sided assistance received from the Senate minority staff – notably fails to notify the Commission of the substantial evidence that Mr. Barbour did *not* know the foreign source of the Signet loan guarantee funds. The General Counsel relies on four occasions on which Mr. Barbour was allegedly informed of the foreign source of the loan guarantee funds: a) an August 27, 1994 dinner attended by Mr. Young at which Mr. Young allegedly mentioned presenting the loan guarantee to his Hong Kong board; b) a 1995 meeting with Mr. Young in which Mr. Young allegedly declined forgiveness of the guarantee because of concerns over a Hong Kong audit; c) a discussion with Richard Richards in which Richards allegedly indicated that the transaction would involve funds transferred from the Hong Kong parent; and d) a meeting attended by Messrs. Volcansek, Denning, Fierce and Barbour at which Mr. Volcansek allegedly indicated that the transaction would involve funds transferred from the Hong Kong parent.

None of the four circumstances outlined by the General Counsel survive factual scrutiny. With respect to the first instance – the dinner attended by Ambrous Young – the General Counsel fails to point out that Mr. Denning, a key player in the loan guarantee transaction, attended the dinner but "did not recall any discussion that the funds for the loan guarantee come from a Hong Kong corporation." Senate Report at 4208.

1996, eventually owing the RNSEC approximately $2,475,000, which remains owing to this day.

With respect to the second, the General Counsel neglects to inform the Commission that Mr. Young testified that in the course of the referenced 1995 discussion with Mr. Barbour, he did not make "any special point" of the fact that the funds for the collateral came from Hong Kong, and, stated, moreover, "I think [Barbour] misunderstood me" at the time Mr. Young claims the point was raised. Senate Report at 4209. Indeed, after considering the available evidence, the Senate Committee concluded that "there is significant reason for uncertainty" regarding the discussions between Mr. Young and Mr. Barbour. *Id.* Turning to the General Counsel's third piece of evidence that Mr. Barbour "clearly" knew the source of the guarantee funds – Richard Richards' testimony before the Senate Committee that he informed Mr. Barbour of their foreign source – the General Counsel neglects to inform the Commission that in his deposition before the Committee, *Mr. Richards stated that Mr. Barbour had not been informed that the funds came from Hong Kong, but that the discussion of that matter "was all done between attorneys."* Senate Report at 4210.[17] Finally, the General Counsel points to Mr. Volcansek's testimony that he mentioned the foreign source of the funds in a meeting with Mr. Barbour, Mr. Denning, and Mr. Fierce. Once again, however, the General Counsel fails to mention that, like Mr. Barbour, Mr. Denning "recall[s] no such conversation," Senate

---

[17] This direct contradiction in Mr. Richards' own testimony is unsurprising. As the Senate Committee found, "several other aspects of Richards' testimony before [the Senate] Committee have been inconsistent or self-contradictory," and "Richards has *admitted* that he wrote correspondence to Barbour containing purposely inaccurate statements regarding his dealings with Barbour on this transaction." Senate Report at 4210.

Report at 4207. Indeed, if the General Counsel's staff had taken the deposition of Mr. Fierce instead of having its brief spoon-fed by partisan political operatives, the staff would have learned that Mr. Fierce recalls no such conversation either.

In short, none of the four instances relied on by the General Counsel to demonstrate that Mr. Barbour "clearly" knew the foreign source of the funds forms a basis for such a conclusion. As the Senate Committee concluded:

- Mr. Young's testimony was far from clear.
- Mr. Richards' testimony is inconsistent and self-contradictory.
- Mr. Volcansek's testimony was contradicted.

Senate Report at 4213. Moreover, as the Senate Committee pointed out, "the only contemporaneous writings by Barbour that might be probative of his knowledge on this issue are his letters of August 30, 1994 and October 10, 1994. In both, Barbour states that YBD(USA) – a 'domestic corporation' – is guaranteeing the loan. This, of course, suggests that Barbour understood YBD(USA), not YBD(Hong Kong), to be the source of the funds for the NPF loan guarantee." Senate Report at 4210.[18]

---

[18] To the extent that the General Counsel's brief relies on Mr. Barbour's alleged knowledge at the time of the loan guarantee that Ambrous Young was not a U.S. citizen and was involved in the transaction, the available evidence fails to support the General Counsel's argument. YBD(USA) was a Florida corporation, and, as the Senate Committee concluded, Senate Report at 4199 n.24, Mr. Barbour knew that YBD(USA) was a RNC "Team 100" member and a past RNC donor; it was thus presumptively a domestic corporation whose giving decisions were not controlled by foreign nationals. Moreover, Ambrous Young's wife and children – his daughter, his son Steve Young and the remainder of the "Young Brothers" – were all U.S. citizens, and Ambrous Young himself was a U.S. citizen from 1970 until shortly before the Signet loan transaction. *See*

The evidence supporting the General Counsel's second principal factual contention – that the Signet loan transaction, or even the entire NPF, was a subterfuge to funnel $1.6 million of foreign funds to the RNC for use in the 1994 congressional election campaigns – is even less convincing. First, it is powerful evidence against the General Counsel's view that the Signet loan was a "subterfuge" to fund the 1994 congressional races that *none* of the Signet loan repayment funds were *ever used* in such an election campaign. As the Senate Committee investigating this transaction found, "there is no evidence that the $1.6 million repaid by the NPF to the RNSEC account was used for any electoral or campaign activity and thus had any impact in any 1994 Republican congressional victories." Senate Report at 4202.[19/] The facts indisputably support that view. *None of the funds* were ever paid into a federal political committee as defined by FECA, 2 U.S.C. § 431(4), or into a federal election campaign. Instead, a portion of the loan proceeds was used for the operating expenses of the NPF, a non-profit think tank that had no involvement with the federal elections and was not subject to the jurisdiction of the FEC. The remainder went to repay part of the NPF's substantial indebtedness to the RNC's Republican National State Election Committee

---

Senate Report at 4197 n.11; 4199 n.24. At best, as the Senate committee concluded, "[i]t is not clear when Barbour learned that Ambrous Young was no longer a citizen." *Id.*

[19/] To the extent that the General Counsel's view of this matter depends on a theory that the Signet loan repayment affected the 1996 races, the Senate Committee rejected that theory as well: "[T]here is no evidence that the YBD loan guarantee transaction, which was legal and authorized under federal election laws, was related to or affected the 1996 election campaigns." Senate Report at 4202-03.

("RNSEC") account, the so-called "non-federal" or "soft money" account[20/] from which the money had originally been loaned. *See* FEDERAL ELECTION COMMISSION CAMPAIGN GUIDE FOR POLITICAL PARTY COMMITTEES 6 (1989) ("If a party unit establishes two accounts – one for Federal activity and one for non-Federal activity, the Federal account alone is registered as a *political committee,* subject to the reporting rules and other Federal requirements."). It is beyond dispute that all of the money *ever* repaid from the NPF to the RNC – including funds from the Signet loan guaranteed by YBD(USA) – went into the RNSEC soft money account, and incontestable that none of that money – not one penny – was ever used in the federal elections. The General Counsel thus urges the Commission to discover a most unusual (and inept) subterfuge: one that utterly failed to achieve – indeed, that could not possibly have achieved – its alleged objective.

Moreover, the General Counsel neglects to mention that the representatives of YBD(USA) were informed that no part of the Signet loan proceeds would be used for the 1994 congressional elections by either the NPF or RNSEC. Benton Becker, an attorney for Ambrous Young and YBD(USA) who was instrumental in negotiating and reviewing the legality of the Signet loan guarantee, testified specifically that Mr. Barbour was careful to explain that the loan guarantee would not be a hard money contribution made in connection with the federal elections:

20/ The RNSEC in fact maintains a number of related soft money, non-federal accounts. For the sake of simplicity, this brief will refer to those accounts under the rubric "the RNSEC account."

> [Ambrous Young] also informed me that he was told by Mr. Barbour that the National Policy Forum was not a part of the Republican National Committee, that it, the National Policy Forum, was not within the auspices of the federal election laws, since it, as an organization, was not involved with federal elections. . . .

Becker Dep. at 31-32. Becker's recollection of his contacts with NPF personnel concerning the Signet loan guarantee confirm this:

> I was told that [the NPF] was tax-exempt. I was told that it was a think tank, and the most important thing, the most important thing I was told, it had absolutely nothing to do with the election of any candidate to Federal or State office.
>
> . . . .
>
> I was specifically told, and it was very clear – in fact, we saw literature to the effect that there was no association with any candidate for any office.

Becker Testimony before Senate Governmental Affairs Committee, at 89-90. Similarly, Ambrous Young testified that "[w]e have never discussed – nobody explained to me how the money should be utilized and this and that, nor mentioned to me about election of the congressional system." Young Dep. at 29. When queried again on this subject, Young was unequivocal:

> Q: What did you understand, as a general matter, was the use for which this money was sought?
>
> A: All I understood the Forum, the National Policy Forum, needs money.

Young Dep. at 30. In addition, Benton Becker, attorney for YBD(USA), was informed *in writing* prior to the loan transaction that *none* of the loan proceeds would be paid to a "political committee" as defined by FECA. See Tab "G" (Letter from Mark Braden, Esq.

to Benton Becker, Esq., Oct. 6, 1994).[21/] Two crucial pieces of evidence – what the loan guarantor was told about the use of the loan funds, and what was actually done with the loan funds – directly contradict the General Counsel's view that the Signet loan proceeds were funneled into the 1994 congressional races.

The General Counsel thus urges the Commission to find that Mr. Barbour committed a knowing and willful violation of FECA based on two singularly tenuous propositions: Mr. Barbour's knowledge of the ultimate foreign source of the funds for the Signet loan guarantee, and his intent to funnel the proceeds of the Signet loan to the RNC for use in the 1994 congressional elections. As noted, the General Counsel's evidence on the first of these propositions is contradicted by the record; the General Counsel's position on the second is simply unsupportable by any fact. However, as discussed at

---

21/ Richard Richards admits that he was confused when he wrote that the Signet loan funds repaid to the RNC may have been used for federal election "hard money" purposes. Richards acknowledged in an affidavit provided to the Senate Governmental Affairs Committee that

> in my September 16, 1996, letter, I stated that the repayment of funds by NPF to the RNC allowed the RNC to assist in congressional campaigns and, as a result, to gain the majority in Congress. Although I believe that the repayment of the loan made certain funds available to the RNC during the 1994 federal election cycle, the funds merely repaid the RNC for its earlier loans to NPF, and I now understand that these funds could not and were not used to directly benefit congressional candidates.

Richards Aff. ¶ 16. Richards acknowledged that his letter contained "several serious misstatements which, upon reflection, were made as negotiating tools and were not accurate." *Id.* As the NPF's repayment checks, attached at Tab "H" and the FEC reports for the RNSEC account, attached at Tab "I" demonstrate, Richards' belief on that score was indisputably false.

length below, even assuming all of this – the facts, knowledge, and intent of Mr. Barbour and others – and laying aside the obvious idiocy of spending $2.5 million in soft money the RNSEC *had already raised* in a "subterfuge" to funnel in a mere $1.6 million of soft money,[22] there is no "knowing and willful" violation of FECA here *as a matter of law.* Any such finding by the Commission is inappropriate and would, without any doubt whatsoever, be overturned by the courts.

[22] Indeed, in 1994 alone the NPF borrowed substantially more from RNSEC than it repaid.

DISCUSSION

The Commission cannot find a "knowing and willful" violation of FECA for a simple reason: whether considered as a loan guarantee to the NPF or as a transaction that permitted the NPF's eventual repayment of debts to the RNC's non-federal soft money account, the loan guarantee from YBD(USA) is not a "contribution" covered by the FECA. It thus falls outside the reach of 2 U.S.C. § 441e, the provision of FECA barring foreign national "contributions" that Mr. Barbour allegedly violated.

I. THIS CASE CANNOT FORM THE BASIS FOR A FINDING THAT MR. BARBOUR COMMITTED A "KNOWING AND WILLFUL" VIOLATION OF FECA §441e BECAUSE IT DOES NOT INVOLVE A LOAN GUARANTEE OR ENDORSEMENT THAT IS CONSIDERED A "CONTRIBUTION" UNDER FECA

A. "Contributions" under FECA: 2 U.S.C. § 437g(d).

Because Mr. Barbour is charged with involvement with a foreign national "contribution" in violation of FECA, it is essential to examine, as an initial matter, what a contribution is, something the General Counsel, despite tossing the word about in his brief numerous times, has neglected to do. "Contribution" is a key statutory term defined very precisely and carefully in FECA § 431, "Definitions," at § 431(8). That section provides the statutory definition of "contribution" that applies *"[w]hen used in this*

[Federal Election Campaign] Act." [23] As defined in § 431(8), "[t]he term 'contribution' includes . . . any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing an election for *Federal office* . . . ." (emphasis added). The Commission's regulatory definition tracks this statutory language. *See* 11 C.F.R. § 100.7(a)(1). In common parlance, such federal election contributions are known as "hard money." As Attorney General Reno noted recently in a related context,

> *[t]he concept of hard as opposed to soft money in the context of federal election law is important to an understanding of this matter.* The phrase 'hard money' is a colloquial phrase commonly used to refer to 'contributions' within the meaning of section 301(8) of the Federal Election Campaign Act (FECA). Section 301(8) of the FECA defines a 'contribution' as 'any gift . . . made by any person for the purpose of influencing any election for Federal office.' 2 U.S.C. § 431(8)(A)(i). Because the term is defined in terms of an intent to influence a federal campaign, hard money is also often referred to as 'federal' money, and the political parties maintain separate bank accounts, called federal and non-federal accounts, to keep the two kinds of donations separate. . . .
>
> In re Albert Gore (Dec. 2, 1997), at 4 (emphasis added).[24]

---

[23] "The term 'Act'" means the entire "Federal Election Campaign Act of 1971 as amended." 2 U.S.C. § 431(19). FEC regulations further explain that "*Act* means the Federal Election Campaign Act of 1971 (Pub. L. 92-225), as amended in 1974 (Pub. L. 93-443), 1976 (Pub. L. 94-283), 1977 (Pub. L. 95-216) and 1980 (Pub. L. 96-187)." 11 C.F.R. § 100.18.

[24] Attorney General Reno discussed the key distinction between contributions and non-contributions as part of her explanation to the Special Division of the U.S. Court of Appeals for the D.C. Circuit that she had found no "specific, credible evidence" to conclude that Vice President Gore's fund raising solicitations from the White House violated the Pendleton Act. The Attorney General concluded that "a violation of [the

B. A pledge of collateral made to the NPF is not a § 441 "contribution" because the statute and regulations that treat certain loan guarantees and endorsements as "contributions" are applicable to hard money only.

The General Counsel is quick to point out that FEC regulations treat *certain* loan endorsements and loan guarantees as FECA "contributions" of the type discussed above. GC Brief at 4-5. Those regulations do not, however, apply to the pledge of collateral at issue *here*. What the General Counsel neglects to point out is that the Commission's regulations reserve such special treatment of loan guarantees for *hard money transactions*. The loan guarantee/endorsement rules are, in fact, themselves part of the statutory and regulatory definition of "contribution" in 2 U.S.C. § 431(8)(B)(vii) and 11 C.F.R. § 100.7, discussed above. They therefore apply to "hard money" transactions made directly with a FECA candidate or political committee[25] *only*.[26] Those rules do not apply to soft money, and would *never*, in any event, reach a pledge of collateral or endorsement made to a third party corporation such as NPF which then repays a valid

---

Pendleton Act, referencing the FECA definition of 'contribution'] specifically requires a solicitation of hard money." In re Albert Gore (Dec. 2, 1997), at 4 (emphasis added).

[25] Each of these terms is used in the manner defined in FECA and the FEC's regulations. *See* 2 U.S.C. § 431(2) ("candidate"); 431(4) ("political committee").

[26] The structure of those regulations likewise reinforces the fact that they are meant to reach only guarantees or endorsements of federal, hard money loans. *See* 11 C.F.R. § 100.7(a)(1)(i)(A)-(D) (loan, endorsement, or guarantee to candidate or committee), § 100.7(a)(1)(i)(E) (loan from committee), §100.7(b)(11) (loan by State bank, federally chartered depository institution, or federally insured depository institution to committee – discusses provision of collateral and pledges by candidate or committee "receiving the loan"), § 100.8(b)(12) (same treatment for FECA hard money "expenditure[s]").

debt to a soft money account[27] that does itself even accept "contributions." There has been no suggestion, whether in statute, reported caselaw, regulation, or advisory opinion, that a bank that loans to a corporation that in turn donates "soft money," or a person who pledges collateral for such a bank loan to a corporation, makes a "contribution" under FECA, let alone the conduct at issue here: a collateralization by a domestic subsidiary of a foreign corporation of a domestic bank loan to a domestic think tank, which used part of the loan proceeds to repay part of a legitimate debt to a non-federal soft money account.[28] The General Counsel's efforts to show a "knowing and willful" violation of

---

[27] It is undisputed that the $1.6 million loan repayment was made by the NPF, which is not a foreign national within the meaning of FECA.

[28] For similar reasons, this could never be considered a "conduit case" within the meaning of 2 U.S.C. § 441f or any other theory. Even the FEC has refused to question so called "conduit" transactions in the context of loan repayments of legitimate debts. One such decision (In re Sherman for Congress, MUR 4314 (1996)) declined to find a violation where a candidate for federal office secured an accelerated repayment of a $275,000 loan from his state candidate committees for the purpose of loaning these funds to his federal hard money candidate committee, even though the FEC expressly forbids contributions from a candidate's nonfederal committee to his federal committee. The FEC rejected the complaint that this was a funneling of illegal funds to a hard money account and constituted laundering of tainted state funds. In another decision (In re Richard W. Fisher, MUR 4000 (1994)) a congressional candidate induced contributors to give the maximum amount to his federal candidate committee ($1,000 per person) and to give equal sums to his three prior federal campaign committees to help pay off prior campaign debts to the candidate. This was done with the express understanding that the candidate would then match the contributions made to his prior campaign committees with personal loans to his current federal committee. Because the prior committees actually owed the money to the candidate, the FEC found no violation, even though the stated purpose of the transaction was to permit contributors to exceed the $1,000 per person ceiling. The FEC determined that each part of the transaction was legal and that the sum of those parts was legal, despite the fact that it was a complex scheme designed to avoid the $1,000 cap and permit contributors, in effect, to give $4,000 to his present

FECA founder on this point, for without the benefit of the special "contribution" status given to hard money loan guarantees and endorsements, any attempt to treat the Signet loan as an illegal foreign "contribution" under § 441e is destined to fail.[29/]

II. THIS MATTER UNDER REVIEW CONTAINS NO IMPROPER FOREIGN CONTRIBUTION UNDER 2 U.S.C. § 441e BECAUSE IT DOES NOT INVOLVE A "CONTRIBUTION" UNDER THAT SECTION

The Commission should decline to find that Haley Barbour committed a "knowing and willful" violation of FECA for a second reason: the Signet loan transaction does not involve an improper foreign "contribution" within the meaning of 2 U.S.C. § 441e, the only section of FECA that prohibits foreign campaign contributions. As the plain language, structure, and legislative history indicate, as Craig Donsanto, head of the Department of Justice's election crimes unit has interpreted the statute, and as the only Federal Court to ever consider the issue have concluded, soft money, such as the NPF loan repayments at issue in this case, is simply outside the scope of § 441e. Moreover, even if non-contributions were even *arguably* covered by the statute, the uncertainty as to whether or not soft money was covered would bar any "knowing and willful" finding that

---

federal campaign. The FEC flatly rejected the complaint that Fisher laundered these funds and illegally used his prior campaign committees as a conduit.

29/ Moreover, to "collapse" the unquestionably lawful parts of this transaction so as to deem the transaction as a whole illegal would clearly be contrary to both fundamental fairness and past Commission practice. *See, e.g.*, In re Sherman for Congress, MUR 4314 (1996) (discussed *supra*); In re Richard W. Fisher, MUR 4000 (1994) (same).

did not involve hard money, particularly where, as discussed below, outside election law counsel reviewed the transaction and determined it to be *legal.*

A. FECA bars foreign hard money "contributions" only: 2 U.S.C. § 441e.

For exactly the same reason that the Signet loan pledge of collateral cannot be considered a "contribution" under the special loan guarantee/endorsement rules, *see* Section I, *supra*, this case also falls outside the ambit of § 441e: it does not involve a hard money "contribution" as that term is defined in 2 U.S.C. § 431(8). Section 441e(a) states:

> It shall be unlawful for a foreign national directly or through any other person to make any *contribution* of money or other thing of value, or to promise expressly or impliedly to make any such *contribution*, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such *contribution* from a foreign national.

(emphasis added). As the Attorney General emphasized in her analysis of the Pendleton Act, In re Albert Gore, at 4-5, the use of the FECA-defined term "contribution" is crucial. The plain, unambiguous language of § 441e incorporates the definition of "contribution" contained in 2 U.S.C. § 431(8) – a definition that expressly includes only hard money contributions to federal elections and that Congress made applicable to the entire FECA. As Craig Donsanto, the head of the Justice Department's election crimes unit, succinctly noted in an October 15, 1996 memorandum released by the Department's Office of Public Affairs as the Department's official position, "[t]he hallmark of soft money is that

it falls outside the regulatory web of the FECA – 441e included!" The only Federal court ever to consider this issue agreed, concluding that "the statute on its face therefore *does not proscribe soft money donations by foreign nationals* or anyone else." United States v. Trie, 23 F. Supp.2d 55, 60 (D.D.C. 1998) (emphasis added).[30/] There simply cannot be a violation of § 441e that does not involve hard money.

Here, no matter how the Signet loan transaction is viewed, no funds involved in that loan – whether from NPF, RNSEC, Signet Bank, Young Brothers Development (USA), or Young Brothers Development Co. Ltd. – were *ever* paid into a federal hard money election account or spent in connection with a federal election.[31/] No foreign-

---

[30/] The General Counsel's brief, in a curiously offhand treatment of a court ruling from this very jurisdiction that is devastating to the General Counsel's case, relegates the Trie opinion to a footnote without any attempt to challenge its reasoning or outcome. GC Brief at 2 n.2. The brief criticizes Trie, however, for failing to consider legislative history or prior Commission practice. Each of the General Counsel's quibbles is demonstrably incorrect: the legislative history was briefed in Trie, *see, e.g.* Trie Pretrial Motion 1a (May 6, 1998) at 12-13, and expressly considered by the Trie court, 23 F. Supp.2d at 60, which concluded that "it could not be more apparent that, with the exception of Section 441b, Congress intended the proscriptions of the Federal Election Campaign Act to apply only to 'hard money' contributions," *id.* The second alleged defect in Trie – past FEC practice – was also briefed, along with the reasons the court should not defer to past FEC practice. *See, e.g.*, Trie Pretrial Motion 1a, at 14. The Court apparently reached the correct conclusion that it should not defer to prior FEC practice that conflicted with the plain language of the statute. *See infra* at 14 n.23 (discussing inappropriateness of deferring to past, incorrect Commission interpretation of FECA).

[31/] The possibility that someone at YBD(USA) might testify that he or she *thought* that the loan guarantee *was* influencing the federal elections is wholly irrelevant. As the Commission has pointed out, "[s]uch a subjective standard would not only be impossible to administer, but could subject the recipient of the donation to sanctions for accepting money which would be lawful but for the subjective beliefs of the contributor's officers."

source "gift, subscription, loan, advance, or deposit of money or anything of value" was made "for the purpose of influencing an election for federal office." § 431(8). It is undisputed that the NPF loan repayment was deposited in soft money accounts only and used for permissible soft money purposes only.[32] There is simply no FECA "contribution" at issue, and no § 441e violation.

Because the statute specifically defines the term "contribution," "when used in this Act" – in other words, for all of FECA, with the exception of the national bank prohibition in § 441b, which has its own explicit definition of "contribution," *see* Trie, 23 F.Supp.2d at 60 – analysis need progress no further than the plain text of § 441e: it

---

Orloski v. FEC, No. 85-5012, Brief of FEC, at 11 n.9 (D.C. Cir. April 29, 1985) (rejecting complainant's argument that subjective belief of corporation's officers that donation would further a candidate's election chances sufficed to prove a contribution's "purpose," and noting that the FEC has rejected such an approach in favor of "clear and easily applied objective criteria"). The Commission's position in Orloski is the correct one: the intent of the donor cannot, by itself, transform a donation into a FECA "contribution."

[32] To the extent that a finding of a "knowing and willful" violation would be based on a theory that the NPF's loan repayment was made to RNSEC, but the repayment "freed up" hard money funds for the Congressional campaigns that otherwise would have been required to pay for RNSEC's soft money activities, such a theory would be both factually incorrect and legally invalid. First, as the chart attached at Tab "J" indicates, the RNC had ample non-federal funds available in the relevant time period even without the NPF repayment. Second, such an attenuated interpretation of the FECA "contribution" definition would be absurd, making a particular contribution's status as either legal soft money or illegal hard money turn on the vagaries of unrelated inflows and outflows from a national party's soft money account. Such an interpretation would call into question, for example, all corporate donations to soft money accounts, since most if not all soft money donations free up hard money that otherwise would be expended for purposes that are suitable for soft money. Attorney General Reno has

applies to hard money only, and therefore could never apply to the Signet loan.[33/] Reading § 441e to incorporate a different definition of "contribution" than the rest of the statute would also violate the "plain language" maxim of statutory construction that the same word used in different places in one statute should be read to have the same meaning.[34/] As the Commission has itself noted in construing a different provision, the predecessor to § 441c, "[i]f Congress intended that [the section] apply to State and local elections after the 1971 Act, it would seem logical that there would be some specific language or legislative history to this effect." FEC Advisory Opinion 1975-99. Indeed, reading the word "contribution" to mean something different than it does elsewhere in FECA would do more than violate a basic maxim of statutory construction: it would contravene the express congressional command that the § 431(8) definition of

---

expressly indicated that a "freeing up" theory is impermissible when enforcing the Act. *See* In re Albert Gore at 18, n.12.

33/ *See* Darby v. Cisneros, 509 U.S. 137, 147 (1993) ("Recourse to the legislative history . . . is unnecessary in light of the plain meaning of the statutory text."); Bourjaily v. United States, 483 U.S. 171, 178 (1987) (Rehnquist, C.J.); Garcia v. United States, 469 U.S. 70, 75 (1984) (Rehnquist, C.J.) ("only the most extraordinary showing of contrary intentions from [the legislative history] would justify a limitation on the 'plain meaning' of the statutory language"); United States v. Wiltberger, 18 U.S. (5 Wheat.) 76, 95-96 (1820) (Marshall, C.J.) ("Where there is no ambiguity in the words, there is no room for construction.").

34/ Commissioner v. Lundy, 516 U.S. 235, 249-50 (1996); Gustafson v. Alloyd Co., 513 U.S. 561 (1995); Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 479 (1992) (describing this as "the basic canon of statutory construction").

"contribution" applies "[w]hen used in this [Federal Election Campaign] Act," 2 U.S.C. § 431. Trie, 23 F.Supp.2d at 59-60.[35]

Finally, construing the word "contribution" in § 441e to extend beyond the definition set forth at § 431(8) – "for the purpose of influencing an election for *federal* office" – would create statutory anomalies as well, anomalies that Congress could not possibly have intended. Applying § 441e to state and local elections would be inconsistent, for example, with the preemption section of FECA, which explicitly states that "the provisions of this [Federal Election Campaign] Act, and of rules prescribed under this Act supersede and preempt any provision of State law with respect to *election to Federal office" only.* 2 U.S.C. § 453 (emphasis added).[36] Congress clearly could not

---

[35] Indeed, the Commission has recognized that when something other than the statutory definition of "contribution" is meant, another term should be used. FEC regulations set out at 11 C.F.R. § 104.8(e), which discusses the disclosure obligations for non-federal accounts such as the RNSEC, notably speaks of "donations," not "contributions." In contrast, those regulations applicable to federal accounts and political committees speak of "contributions," not "donations." *See* 11 C.F.R. §§ 104.8(a) (federal accounts), 104.1-104.5 & 104.7 (political committees). This pronounced difference in nomenclature is an acknowledgment on the part of the FEC of the point made throughout this brief: soft money donations to non-federal accounts such as RNSEC are *not* "contributions" under the FECA.

[36] *See also* S. Conf. Rep. No. 93-1237 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5587, 5668 ("The conference substitute follows the House amendment. It is clear that the Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by *Federal candidates and political committees* . . . ." (emphasis added)). Even the Commission's own rules indicate that § 441e's preemptive effect was not intended to extend to state and local elections. Title 11 C.F.R. § 108.7, an FEC regulation promulgated under § 453, states that "[t]he provisions of [FECA] as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State law *with respect to election to Federal office.*" Notably, the

have intended § 441e's foreign national prohibition to extend to state and local elections while at the same time expressly declining to give § 441e preemptive effect in that context. This absurd result disappears when § 441e is given its most natural, plain language reading: it regulates only "contributions" – federal contributions – as defined by FECA.

Nevertheless, even if the Commission were to look beyond the plain language and structure of the statute to its legislative history, the Commission must conclude, as the Trie court did, that the legislative history supports the conclusion that § 441e bars only "contributions" from foreign nationals – that is, those made in connection with elections to *federal* office. Although there is only sparse legislative history on the incorporation of the foreign national ban into FECA, what legislative history there is *expressly acknowledges* that the § 431(8) definition of contribution was to apply in interpreting § 441e. Speaking on this issue in the House, Representative William Frenzel, the Floor Manager of the FECA amendments, specifically addressed FECA's restrictions on what was a "contribution" covered by the statute, stating that "these loopholes make ambiguous the prohibition on contributions . . . by . . . foreign nationals. Since the exemptions apply to these . . . the courts may decide that certain types of

---

Commission expressly narrows the class of rules superseding state law to those "[l]imitation[s] on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. § 108.7(b)(3).

donations by . . . foreign nationals are permissible." H.R. Rep. No. 93-1239, at 141 (1974).

The only other indications in the legislative history[37] are the broad, non-specific floor statements of Senator Bentsen, who noted his concern with foreign influence over "American political candidates," noted that foreign monies "have no place in the American political system," and that his amendment "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782-83 (1974). Of course, the part of the "American political system" that is being addressed in FECA is that pertaining to federal election campaigns, and it is titled the

---

[37] Although the issue has never been squarely presented to the Supreme Court, a number of Justices have questioned whether legislative history may even be consulted in construing a statute, like § 441e, with potential criminal application in cases such as Trie, suggesting that in such a case, the rule of lenity demands a narrow construction of the statute. *See* Ratzlaf v. United States, 510 U.S. 135, 147 (1994) (invoking lenity in support of narrow construction notwithstanding "contrary indications in the statute's legislative history"); United States v. R.L.C, 503 U.S. 291, 309 (1992) ("It may well be true that in most cases the proposition that the words of the Untied States Code or the Statutes at Large give adequate notice to the citizen is something of a fiction . . . necessary fiction descends to needless farce when the public is charged even with knowledge of Committee Reports." (Scalia, J., joined by Kennedy, J., & Thomas, J., concurring)); United States v. Thompson/Center Arms Co., 504 U.S. 505, 521(1992) (reliance on legislative history, "that St. Jude of the hagiology of statutory construction," "is particularly inappropriate in determining the meaning of a statute with criminal application" (Scalia, J., joined by Thomas, J., concurring)); *id.* at 312 (criminal law may not require "knowledge of committee reports and floor statements, which are not law") (Thomas, J., concurring). *See also* Taylor v. United States, 495 U.S. 575, 603 (1990) (Scalia, J., concurring). Nevertheless, the only piece of statutory history discussing whether the statutory definition of "contribution" applies to § 441e explicitly indicates that it *does*. *See supra*.

Federal Election Campaign Act.[38] Moreover, courts, including the Supreme Court, routinely hold that such vague, non-specific legislative pronouncements are insufficient to infer the meaning of a statute. *See, e.g.,* United States v. Granderson, 511 U.S. 39, 67 (1994) (precluding broad statutory reading based "upon some vague intuition of what Congress might have had in mind" (quotation & ellipsis omitted) (Kennedy, J., concurring)). Again, the *only* specific legislative history on this point – Representative Frenzel's – merely reinforces the plain language of § 441: § 441e applies to hard money contributions *only*, and thus could never apply to the Signet loan transaction.

B. The NPF loan repayment was legal under the FEC's interpretation of § 441e which, in any event, is plainly incorrect.

The plain language, structure, and legislative history of § 441e all indicate that that section applies to nothing but federal hard money contributions. Nonetheless, in the past, the Commission has read § 441e to prohibit all foreign donations – whether hard money or soft money – when those donations are made "in connection with a convention, a caucus, or a primary, general, special, or runoff election in connection with any local, State, or Federal public office," 11 C.F.R. § 110.4(a).[39] The General Counsel's reliance

---

[38] Like the FECA, the legislative history of the Foreign Agents Registration Act and its 1966 amendments – the statutory predecessors of the current § 441e – were directed to concerns with the *federal* political process *only*. *See* S. Rep. No. 913, at 1 (1941); S. Rep. 143, 2, 4, 8 (1965).

[39] This may not, in fact, be the Commission's current position. *See* Amy Keller, *Foreign Money Probe May Hit Snag: It's Not Necessarily Illegal to Donate,* ROLL CALL, May 29, 1997 (reporting that Brad Litchfield, a Commission official responsible for

on this past practice invites two responses: first, it is irrelevant to the facts of this case and second, it is plainly wrong.

1. The Signet loan transaction falls outside § 441e even as that section is understood by the FEC.

At the outset, it is essential to note that even if past Commission interpretation of § 441e did ever prevail in court – a highly dubious proposition, for reasons discussed below – the Signet loan transaction would *still* not fall within the ambit of § 441e for the simple reason that there is *no* foreign soft money donation involved in this case. Instead, the Signet loan transaction involved a pledge of collateral by a domestic subsidiary of a foreign corporation which permitted Signet Bank to loan funds to the NPF, a non-profit corporation/U.S. think tank, which then used part of the loan proceeds to repay part of its legitimate debt to a non-federal soft money account. No statute or regulation has ever deemed such a loan repayment a contribution. Moreover, there is no law or FEC regulation that equates a loan guarantee or pledge of collateral in a soft money transaction with a soft money donation. Furthermore, the loan repayment here would at most be "in connection with" the RNSEC account, which funds many non-election-related soft money activities – such as general party building activity and contributions to the RNC building fund – that would be *permissible* under the FEC reading of § 441e because they are not in connection with any contest or race, whether state, local, or federal.

---

drafting the agency's advisory opinions, stated at a conference on campaign finance reform issues that foreign soft-money donations would not be illegal).

This last point is also crucial: there is a large class of RNSEC soft money that is *neither* federal hard money *nor* made in connection with local or State elections, caucuses, or the other contests listed in 11 C.F.R. § 110.4(a). As Attorney General Reno has pointed out, "'[s]oft money,' in contrast [to hard money], is commonly understood to refer to all other sorts of political donations to all sorts of political causes." In re Albert Gore, at 5. The RNSEC collects soft money funds for numerous non-election-related – non-§441e – activities.[40/] Because of this, showing that a hypothetical foreign donation went to the RNSEC account would not suffice to show a violation of § 441e, even under the General Counsel's view: it does not prove a connection to an elective contest.[41/] To prove such a connection, the General Counsel would first need to establish a foreign donation, which it cannot do here, and then would need to go beyond the RNSEC account to "trace" the foreign national's donation (assuming there were such a donation) through the RNSEC to a State or local election.[42/] It is impossible to trace such a donation in this case, even if the NPF repayment were considered a foreign donation, which it is not. As

---

[40/] RNSEC funds may be used, for example, for party building activities, donations to a building fund, and for the non-federal share of the RNC's administrative expenses. RNSEC funds were in fact used for all of these in the period immediately following the NPF loan repayment.

[41/] In this MUR, the General Counsel must show that Haley Barbour *knowingly and willfully* sought RNSEC donations in connection with an election, something, as discussed in the factual background and III.A, *infra,* the General Counsel simply cannot prove.

[42/] As noted, this sets aside the additional problem that there was no such foreign national donation to RNSEC here, but rather a loan guarantee to guarantee a bank loan to a non-profit corporation which then repaid a bona fide debt to a soft money account.

the chart attached at Tab "J" indicates, the RNSEC had ample funds available throughout the *entire* relevant time period even without the NPF loan repayment. Furthermore, as discussed below, even if the General Counsel's staff could establish that the pledge of collateral was a donation and trace funds from the NPF loan repayment to a State or local campaign – and it could not[43] – there would still be no possible violation of § 441e.

2. In any event, courts will reject the FEC's past interpretation of § 441e in favor of the plain language of the statute, just as the Trie court did.

Leaving aside the fatal problems with bringing a § 441e case under the Commission's past interpretation of that section, no court would ever accept that reading over the plain language of the statute. In the twenty-three years since § 441e took its present form, the Commission has not offered a single scrap of authority for its position on the interpretation of § 441e, a position that is opposed to the plain language, structure, and history of the FECA.

FEC Advisory Opinion 1987-25, attached at Tab "K" contains the FEC's sole non-conclusory explanation for its view that § 441e prohibits at least *some* soft money donations – those made in connection with State or local elections. In Advisory Opinion 1987-25, a foreign national student who wished to volunteer his services to a presidential – *i.e.* federal – election campaign sought an Advisory Opinion on the issue. The

---

[43] Should the General Counsel seek to supplement its brief to attempt to perform such a "tracing," we respectfully request notice and an opportunity to respond.

Commission determined that such volunteer activity would *not* violate § 441e, explaining that the term "contribution" was not subject to statutory definition in either Title 18 or

> in [the] F[oreign]A[gents]R[egistration]A[ct]. . . . In the 1976 amendments to the [Federal Election Campaign] Act, however, Congress repealed 18 U.S.C. § 613 and reenacted the foreign national prohibition [in the FECA]. *In doing so, Congress provided that the prohibition was governed by the definitions, and their exemptions in 2 U.S.C. § 431.* . . . In contrast, the prohibition has always been applicable in connection with any election whether Federal, state, or local. *See* 11 CFR 110.4(a)(1). Thus, by repealing and reenacting the foreign national prohibition as part of the Act in 1976, and by amending the definitions which govern interpretation of the term 'contribution' as used in the Act, Congress has limited the scope of the foreign national prohibition as to the meaning of the term "contribution," while retaining the aspect of the prohibition that extends to all elections.

FEC Advisory Op. 1987-25, at 1 (emphasis added). Because § 431(8)(B)(i) exempts uncompensated volunteer services from § 431(8)'s definition of "contribution," the Commission concluded that the foreign national student could volunteer his services to the presidential campaign.

Thus, in AO 1987-25, the Commission conceded, as it must, that § 431(8)'s definition of "contribution" applies to that term in § 441e, just as it does whenever it is "used in this Act." However, the Commission apparently believes (or believed) that a certain subset of soft money donations – those made in connection with State or local elections – falls *within* § 441e. That section, in the Commission's view, impliedly "repealed" the part of § 431(8)'s "contribution" definition that limits FECA

"contributions" to those made "for the purpose of influencing any election for Federal office."

This decision to incorporate *some* of the "contribution" definition's exemptions into § 441e while declining to apply its "federal election" requirement is, to put it bluntly, absurd and unsupportable. As Senator Fred Thompson, a member of the Senate Judiciary Committee and Chairman of the Governmental Affairs Committee, which has jurisdiction over the FECA, has pointed out: "soft money is either considered to be a contribution or not. And if it's not a contribution for one purpose in the statute, it's not a contribution for the other purpose in the statute." Transcript, U.S. Senate Committee on the Judiciary Hearings on Justice Department Operations (Apr. 30, 1997). During Senate debate on the scope of the resolution authorizing the Senate Governmental Affairs Committee's recent investigation into campaign fund raising, Senator Lieberman likewise noted that

> it is true that we have a statute, section 441e of title 2 of the United States Code that makes it – and I quote – "unlawful for a foreign national * * * to make any contribution * * * in connection with an election to any political office * * * or for any person to solicit, accept, or receive any such contribution from a foreign national." This provision has been cited for the proposition that any and all contributions by non-U.S. citizens or greencard holders to political parties is a criminal offense.
>
> But as is often true with the law, not everything is as it seems. Instead, under the election law's own definition of the term "contribution" and the Supreme Court's previous interpretations of election law terms similar to "in connection with an *election*," – provisions, I might add, that those seeking to limit our investigation seem not to want to change – under those laws *it is highly likely that the Court would find that section 441e does not criminalize so-called soft money contributions to national parties by foreigners. Let me say that again: soft money donations from*

> *non-U.S. citizens likely are not "illegal." That is because under the way our campaign laws now are drafted, soft money contributions are, by definition, not made in connection with an election, and only contributions made in connection with an election are illegal.*

143 Cong. Rec. S2114-15 (daily ed. Mar. 11, 1997) (statement of Sen. Lieberman) (emphasis added). Of course, Senator Lieberman's prediction proved accurate – the first court to look at the matter agreed that § 411e does not apply to soft money donations. *See* II.A, *supra.*

The Commission cites *no* statutory provision and *no* legislative history for the stunning – and utterly false – assertion in AO 1987-25 that Congress repealed the § 431(8) "federal election" requirement for purposes of § 441e,[44] or that Congress "amend[ed] the definitions which govern interpretation of the term 'contribution' as used in the Act," *id.*, for purposes of § 441e. The Commission's failure is understandable: the legislative materials nowhere contain the slightest suggestion that Congress did anything

---

[44] The FEC's suggestion of an implicit repeal flouts the venerable rule, frequently reaffirmed by the Supreme Court, that "'repeals by implication are not favored,'" Tennessee Valley Auth. v. Hill, 437 U.S. 153, 189 (1978) (quoting Morton v. Mancari, 417 U.S. 535, 549 (1974), in turn quoting Posadas v. National City Bank, 296 U.S. 497, 503 (1936)); United States v. Hansen, 772 F.2d 940, 944 (D.C. Cir.1985) (Scalia, J.) (same). *See generally* 1A *Sutherland on Statutory Construction* § 23.10 (C. Sands 4th ed. 1972 & Supp.). A court will, accordingly, not agree with the FEC's "implicit repeal" theory unless Congress' intent to repeal is "'clear and manifest,'" United States v. Borden Co., 308 U.S. 188, 198 (1939) (quoting Town of Red Rock v. Henry, 106 U.S. (16 Otto.) 596, 602 (1883)), something that is woefully lacking here. Instead, a court will read the statute to give effect to *both* the § 431(8) limitation of the term "contribution" to federal, hard money funds, and to the § 441e amendment which uses the word "contribution," just as the Trie court did. *See, e.g.*, Mail Order Ass'n of Am. v. United States Postal Serv., 986 F.2d 509, 515 (D.C. Cir. 1993).

of the kind.[45] Indeed, the Commission's own Advisory Opinion provides some of the strongest evidence that Congress intended to read § 441e using the "contribution" definition just as it stood in § 431(8): "[a]lthough it amended the statute in 1971, 1974, 1976, and 1979, Congress never expanded the Act's definition of contribution, or restricted the Act's exemptions from such definition, for purposes of the foreign national prohibition." FEC Advisory Op. 1987-25, at 1.[46]

The FEC's fanciful conclusion in AO 1987-25 that the foreign national prohibition has been and remains applicable to State and local elections – unsupported, then, as now, by any reference whatsoever to statutory text, structure, or concrete

---

[45] Presumably the Commission relies on Congress' inclusion of § 441e's phrase "to any political office" for its implied repeal and amendment of § 431(8)'s limitation of covered FECA "contributions" to elections for federal office. If this indeed is the Commission's theory (or past theory), the language cannot bear the weight the Commission put on it. Nowhere in the text or statutory history do the 1976 FECA amendments suggest such a repeal and amendment. Instead, the legislative history indicates that the language was simply dropped into the FECA without change from 18 U.S.C. § 613, § 441e's precursor, and made subject to FECA's existing definitions and enforcement provisions. *See* H. Conf. Rep. No. 94-1057, at 66 (1976), *reprinted in* 1976 U.S.C.C.A.N. 929, 981. Of course, the remarks of Representative Frenzel, quoted above, indicate that Congress was actively aware of what it was doing when it retained the word "contribution" during the transplant. This contrasts markedly with the tortured theory of implied "repeal and amendment" which, if it happened, has left no traces *anywhere* in the legislative record.

[46] Moreover, Congress never made any of the conforming changes that one would expect if it had actually sought to "repeal and amend" the definition of "contribution" to apply to State and local elections as well as federal elections for purposes of § 441e. Congress never altered its clear command that the § 431(8) definition of "contribution" applies "[w]hen used in this Act," 2 U.S.C. § 431, and never amended FECA's preemption section to indicate that § 441e's ban, unlike the rest of the Act, would preempt State law with respect to State and local elections, *see* 2 U.S.C. § 453.

legislative history – is directly contrary to FECA and would be disregarded by any court in favor of the plain language, just as the Trie court did.[47/]

Moreover, even if a court *did* find the statutory language of § 441e ambiguous after consulting the plain language, structure, and legislative history, a court would not simply defer to the FEC's reading of the section in light of the substantial constitutional issues raised by its interpretation and the fact that the statute serves in some circumstances as the basis for criminal enforcement. Although the FEC has interpreted § 441e as a bar to foreign contributions to any political election – federal, state, or local – governing D.C. Circuit law holds that because of the significant First Amendment issues raised by the interpretation of statutes reaching campaign expenditure and contribution activity, courts will not defer to that agency's interpretation under Chevron, U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 842 (1984), where Congress has not spoken clearly on the issue by statute. *See* Chamber of Commerce v. FEC, 69 F.3d 600,

---

[47/] *See, e.g.*, INS v. Cardoza-Fonseca, 480 U.S. 421, 446 (1987) ("a pure question of statutory construction" is not subject to agency deference but is "for the courts to decide"); FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 37 (1981) ("the thoroughness, validity, and consistency of an agency's reasoning are factors that bear on the amount of deference to be given an agency's ruling."); American Petroleum Inst. v. EPA, 906 F.2d 729, 740 (D.C. Cir. 1990) (stating that "an agency's conclusion that a particular course is compelled by a statute that is actually ambiguous does not display the caliber of reasoned decisionmaking necessary to warrant" deference); Baltimore & Ohio R.R. Co. v. ICC, 826 F.2d 1125, 1129 (D.C. Cir. 1987) (holding that agency may not "assert a nonexistent congressional prohibition as a means to avoid responsibility for its own policy choice"); International Bhd. of Elec. Workers v. NLRB, 814 F.2d 697, 707-08 (D.C. Cir. 1987) (holding that court need not sustain agency interpretation that was based, not on agency's judgment, but on its erroneous interpretation of statute).

605 (D.C. Cir. 1995) (declining to apply Chevron deference where too-restrictive FEC definition of organization "member" would burden First Amendment right); Bush-Quayle '92 Primary Comm., Inc. v. FEC, 104 F.3d 448, 452 (D.C. Cir. 1997) (explaining that Chamber of Commerce involved FEC regulation of nonprofit corporations' "ability to convey political messages and solicitations"); FEC v. GOPAC, Inc., 917 F. Supp. 851, 860 (D.D.C. 1996) ("Distinguishable or not, the [Federal Election] Commission's advisory opinions are not entitled to Chevron deference because they are necessarily based on the Commission's interpretation of the Constitution . . . .").[48/]

Both the text of § 441e and the Commission's past interpretation of that text leave no doubt that First Amendment concerns will lead courts to reject Chevron deference to the FEC in interpreting § 441e. Numerous cases have reiterated the Supreme Court's consistent view that statutory provisions touching on both campaign expenditures and contributions pose serious First Amendment concerns. *See, e.g.*, Buckley v. Valeo, 424 U.S. 1, 23 (1976) (noting that FECA's expenditure and contribution limits "both

---

[48/] *Compare* Bush-Quayle '92 Primary Comm., 104 F.2d at 452 (permitting Chevron deference where First Amendment interests not present). *See generally* Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988) (declining to apply Chevron deference where NLRB construction would raise constitutional issues); Patricia M. Wald, *Judicial Review in Midpassage: The Uneasy Partnership Between Courts and Agencies Plays On*, 32 Tulsa L. J. 221, 244-45 (1996) ("The rule in our circuit, as elsewhere, is that Chevron deference gets trumped by the canon requiring avoidance of unnecessary constitutional determinations. Consequently, we do not ordinarily defer to an agency's interpretation of a statute if that interpretation raises a serious constitutional question that another interpretation might avoid." (footnote omitted)).

implicate fundamental First Amendment interests"); *id.* at 25 ("contribution" limits, like expenditure limits, are "subject to the closest scrutiny" (quotation omitted)); FEC v. National Conservative Political Action Comm., 470 U.S. 480, 495 (1985) (First Amendment associational interests implicated where "the contributors obviously like the message they are hearing from [the] organization[] and want to add their voices to that message"); Akins v. FEC, 66 F.3d 348, 354-55 (D.C. Cir. 1995) (the Supreme "Court's rationale concerning the constitutional implications of a broad application of the Act to expenditures applies equally to the Act's reach over contributions"), *vacated on other grounds*, 74 F.3d 287 (D.C. Cir. 1996), *cert. granted*, 65 U.S.L.W. 3825 (U.S. June 16, 1997) (No. 96-1590). Restrictions on political "solicitations" are, likewise, constitutionally suspect, *see, e.g.*, Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620 (1980); Bush-Quayle '92 Primary Comm., 104 F.3d at 452 (First Amendment interest involved in "ability to convey political messages and solicitations"), as are restrictions that burden a political party's ability to express its views, *see* Colorado Republican Fed. Campaign Comm. v. FEC,116 S. Ct. 2309, 2316 (1996) ("The independent expression of a political party's views is 'core' First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees."). In light of these significant First Amendment interests at stake in the interpretation of § 441e, there is virtually no possibility that a court will defer to the

Commission's prior interpretation of the section if, in fact, the Commission continues to adhere to that position.

Moreover, the Commission's past belief that the § 441e foreign national prohibition extends not only to federal elections, but to state and local elections as well, poses significant federalism issues of constitutional dimension. *See, e.g.,* Oregon v. Mitchell, 400 U.S. 112 (1970) (striking down provision of Voting Rights Act Amendments of 1970 as to state elections on ground that Article 1, § 2 of Constitution reserves power to regulate state and local elections to states). *Cf.* Gregory v. Ashcroft, 501 U.S. 452, 460-63 (1991) (discussing constitutional right of state to prescribe manner in which its officials will be chosen). These concerns, as well, will prohibit courts from deferring to the Commission's interpretation of the FECA in the current matter. *See, e.g.,* California State Bd. Of Optometry v. FTC, 910 F.2d 976, 981-82 (D.C. Cir. 1990) (declining to accord Chevron deference to FTC rulemaking that would preempt state authority). Given the magnitude of constitutional concerns raised by § 441e and the FEC's interpretation of it, courts simply will not defer to the FEC's views but will turn to the statute, look to the statutory definition of the term "contribution," and narrowly construe the scope of § 441e as discussed *supra.*

Courts will not defer to the FEC's interpretation of § 441 for a second reason: § 441e defines what conduct may and may not be the subject of criminal liability in cases such as Trie, and as such, lies outside the scope of the Chevron rule. *See* United States v.

McGoff, 831 F.2d 1071, 1080 n.17 (D.C. Cir. 1987) ("Needless to say, in this criminal context, we owe no deference to the Government's interpretation of the statute" (citing Chevron)); *id.* at 1084 n.22 (same); United States v. Douglas, 974 F.2d 1046, 1048 (9th Cir. 1992) ("it is unclear whether an agency's interpretation of a criminal statute is entitled to deference under Chevron").[49/] Any criminal court proceeding or appeal of the Trie ruling[50/] would pit the FEC's interpretation against the plain language of § 441e, a contest that the Commission interpretation would not survive. Contrary to the FEC's view, and consistent with that of Trie and Justice Department election law expert Craig Donsanto, *all* soft money falls outside the reach of § 441e. If the Signet loan transaction did involve a foreign national donation to RNSEC – and it does not – there simply would be no § 411e violation in this Matter Under Review.

[49/] *See also* United States v. O'Hagan, 117 S. Ct. 2199, 2220 (1997) (pointing out that in criminal case under § 10(b) of the Securities Exchange Act and SEC Rule 10(b) "no Chevron deference is being given to the agency's interpretation" (Scalia, J., concurring in part)); Crandon v. United States, 494 U.S. 152, 177 (1990) ("the vast body of administrative interpretation that exists – innumerable advisory opinions not only of the Attorney General, the OLC, and the Office of Government Ethics, but also of the Comptroller General and the general counsels for various agencies – is not an administrative interpretation that is entitled to deference under Chevron" in criminal context); Sweet Home Chapter of Communities for a Greater Oregon v. Babbitt, 30 F.3d 190, 194 (D.C. Cir. 1994) ("Keeping in mind that we are dealing with a criminal statute, I am not at all sure that Chevron even governs our review") (Silberman, J., with Mikva, C.J. and Wald, J., dissenting from denial of rehearing *en banc*).

[50/] Not surprisingly, the Department of Justice apparently has declined to appeal the Trie ruling on the scope of § 441e, evidently because prosecutors see no prospect of winning on appeal. See Ronald G. Shafer, *Washington Wire: Federal Lawyers Debate Appealing Dismissal of Part of A Fund-Raiser Case,* THE WALL STREET JOURNAL, May

III. EVEN IF THE FACTS AND LAW ARE AS THE GENERAL COUNSEL HAS ALLEGED THEM, THERE IS NO BASIS FOR FINDING A "KNOWING AND WILLFUL" VIOLATION OF FECA

Finally, even if the Commission were to conclude contrary to the facts and the law that there *was* a violation of § 441e in this MUR, there is no basis whatsoever to conclude that Mr. Barbour committed a "knowing and willful" violation. The D.C. Circuit has held that under FECA "a 'willful' violation must necessarily connote defiance or such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act," AFL-CIO v. Federal Election Commission, 628 F.2d 97, 101 (D.C. Cir. 1980); *see also* United States v. Trie, 21 F.Supp.2d 7, 16 (D.D.C. 1998) ("In establishing the civil and criminal penalty scheme under FECA, Congress expressly stated that the 'knowing and willful' requirement was intended to limit liability to cases in which 'the acts were committed with a knowledge of all the relevant facts and a recognition that the action is prohibited by law.'") (*quoting* H.R. Rep. No. 94-917, at 4 (1976)). As the General Counsel concedes, this "requires knowledge that one is violating the law," GC Brief at 35. The General Counsel does not make such a showing here – indeed, does not even allege the factual predicate for such a showing. Moreover, the General Counsel's brief acknowledges that this transaction was

---

29, 1997, at A1 (noting that "prosecutors fret that they won't win" a 441e soft money appeal).

reviewed by three sets of attorneys,[51] all of whom were sensitive to FECA concerns, and all of whom concluded the transaction was legal. This exhaustive review by counsel completely precludes a finding that Mr. Barbour committed a knowing and willful violation of the Act.

A. The General Counsel fails even to allege that Mr. Barbour was factually aware of § 441e's foreign national prohibition or the contours of that provision.

First, the General Counsel's Brief virtually ignores the obligation to prove that Mr. Barbour had specific knowledge that the Signet loan transaction was contrary to FECA, noting only, without citing to any fact whatsoever, that "as an attorney with vast political experience Mr. Barbour knew of the foreign national prohibition, a prominent component of campaign finance law." The failure to cite *any* factual basis for this unsupported allegation alone dooms the General Counsel's efforts to show a "knowing and willful" violation.

Moreover, familiarity with the specific requirements of § 441e should not be assumed lightly. The Commission would do well to consider the exchange that occurred between the Attorney General and Senator Thompson when the Attorney General appeared before the Senate Judiciary Committee on April 30, 1997. Senator Thompson told the Attorney General: "I think it is a total mess – the campaign finance laws in this country right now." The Attorney General later concurred: "Senator, one of the things

[51] The General Counsel's Brief neglects to mention that a fourth set of attorneys – attorneys for Signet Bank – also reviewed the transaction.

that I have learned is that when I think something means something under the election law, and I look at how it's been construed by the others, I think it is a very difficult issue to trace through. . . ." Indeed, the Attorney General continued, "Congress has set up this extraordinarily elaborate system with the elections commission and the allocation between soft and hard money. *It is a very confused situation.* One definition will mean one thing in one context, and sometimes another definition then another." Senator Thompson summed up the exchange: "You've got a conglomeration of federal regulations and court decisions that has created a total mess in this area, *and I can sympathize with anybody that concludes that the law's not clear."* Transcript, U.S. Senate Committee on the Judiciary Hearings on Justice Department Operations (Apr. 30, 1997) (emphasis added). When the nation's chief law enforcement officer finds the law to be "very confused" with "one definition [meaning] one thing in one context, and sometimes another definition then another," and the Chairman of the Senate Committee on Governmental Affairs and its campaign financing inquiry states that "the law is not clear," the General Counsel must do more to show actual knowledge of FECA's requirements than mindlessly speculate that Mr. Barbour "as an attorney with vast political experience" had specific knowledge of FECA's requirements.

Second, even assuming *arguendo* that Mr. Barbour had some knowledge of § 441e, the General Counsel *does not even allege,* let alone offer proof, that Mr. Barbour had specific understanding concerning § 441e's applicability to the Signet loan

transaction or, for that matter, to anything other than a straightforward hard money contribution. As set out *supra* at I and II, when one traces through the "extraordinarily elaborate" statutes and regulations, it is clear that everything that Mr. Barbour and the NPF did with respect to the Signet loan transaction fell within the letter and spirit of the law. It is also clear that even the FEC regulations fail to contain any provision that would equate a loan guarantee or pledge of collateral to a soft money donation, much less a hard money contribution. But even if the Commission disagrees, it could not possibly take the position, urged by the General Counsel without any evidence to support it, that Mr. Barbour's actions reflected "defiance or such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act." AFL-CIO, 628 F.2d at 101. To do so would ignore the fact that even career campaign finance specialists find this area at best unclear. Independent of those campaign finance specialists who find that 441e clearly does not cover soft money,[52] no less an authority than the former FEC head of enforcement has stated that there are "real concerns" and "legal issues . . . about whether soft money would come under restrictions." Kenneth Gross, *quoted in* Amy Keller, *Foreign Money Probe May Hit Snag: It's Not Necessarily Illegal to Donate,* ROLL CALL, May 29, 1997. Attorney General Reno has acknowledged

---

[52] Craig Donsanto, head of the Department of Justice's election crimes unit, for example. *See also* Amy Keller, *Foreign Money Probe May Hit Snag: It's Not Necessarily Illegal to Donate,* ROLL CALL, May 29, 1997 (reporting that Brad Litchfield, a Commission official responsible for drafting the agency's advisory opinions, stated at a conference on campaign finance reform issues that foreign soft-money donations would not be illegal).

in testimony before the Senate Judiciary Committee that this is "a very difficult issue"; Senator Fred Thompson agreed, adding that "my problem is, I don't think the FEC's addressed this." Transcript, U.S. Senate Committee on the Judiciary Hearings on Justice Department Operations (Apr. 30, 1997). The Commission itself has noted in its Annual Reports to Congress that "[t]hese questions have presented problems for the Commission and candidates, particularly since the legislative history is unclear in this area." *FEC Annual Report* (1984) (emphasis added); *FEC Annual Report* (1985). Another writer, researching this issue on behalf of Congress, has likewise concluded that "[t]he applicability of Section 441e to soft money contributions to national parties is unsettled . . . . [T]his section does not expressly address soft money." Joseph E. Cantor, *CRS Report for Congress - Foreign Money and American Elections: The Law and Current Issues* 2 (Jan. 21, 1997).[53/] The scope of § 441e is unclear *at best,* precluding the type of "knowing and willful" finding urged here.

[53/] Independent of the question whether § 441e covers soft money donations, much less soft money loan guarantees and pledges of collateral, commentators, including both the Public Integrity Section of the Department of Justice and the Commission, have pointed out additional "legal uncertainty concerning the reach of section 441e to contributions by *foreign-owned . . . domestic subsidiaries*," DEP'T OF JUSTICE, FEDERAL PROSECUTION OF ELECTION OFFENSES 103 (6th ed. 1995) (emphasis added), such as YBD(USA). *See FEC Annual Report* (1984) (asking Congress for guidance [never given] on "[w]hether or not an American subsidiary of a foreign corporation should be allowed to make contributions directly" to State and local candidates); *FEC Annual Report* (1985) (same). This provides an additional reason for the FEC to decline a "knowing and willful" finding here.

Even if the Commission were to find – and it could not – that the applicability of § 441e to soft money transactions and the scope of that ban were settled and well-known, and even if it had a basis to argue that in the context of soft money a loan guarantee or pledge of collateral was a donation, to find a violation of the law on the facts of this case would also require the Commission to show that Mr. Barbour had specific knowledge of the law *as it applied* to several novel propositions:

- The repayment of a valid – and duly reported – debt falls within whatever definition of "contribution" is applicable in lieu of the statutory definition, contrary to the plain meaning of the word "contribution" and to the FEC's interpretation of the term.
- If a corporation takes out a valid loan to repay a debt, the resulting "contribution" to the creditor is made, not by the corporation taking out the loan, but by the bank.
- If another corporation posts collateral to secure repayment of the *second loan*, the resulting "contribution" to the original creditor is made, not by the corporation taking out the loan and repaying the debt, nor by the bank providing the funds to that corporation, nor even by the corporation posting the collateral, but by whatever party happens to have provided the corporation posting the collateral with the funds necessary to purchase the collateral.

The General Counsel has not, and could not, show Mr. Barbour's specific legal knowledge as to any of these highly dubious propositions at the heart of the General Counsel's theory. Yet to prove a "knowing and willful" violation of FECA, the Commission will not only have to show that these propositions *are* the law – an impossible task, for the reasons catalogued above – he will have to show that Mr. Barbour *knew* that they were. The widespread uncertainty concerning the applicability of

§ 441e to soft money and domestic subsidiaries, and the sheer novelty of the General Counsel's position in this Matter Under Review completely preclude any finding that Mr. Barbour violated FECA "knowingly and willfully," particularly in light of the General Counsel's utter failure to offer *any proof* of what Mr. Barbour knew or did not know about the law.

B. The Signet loan transaction was reviewed by expert outside counsel on behalf of the NPF and cannot, therefore, provide the basis for finding that Mr. Barbour "knowingly and willfully" violated FECA.

Finally, the uncontroverted record indicates – and the General Counsel does not even attempt to dispute – that the parties to the Signet loan transaction did what prudent actors often do when operating in a complex, unclear regulatory area: they hired legal counsel to ensure that the transaction was lawful and proper. Mark Braden of Baker & Hostetler, who has unquestionable expertise in federal election law, was retained by the NPF, reviewed the loan transaction on its behalf, and authored a written legal opinion confirming that the transaction did not violate any federal election laws. *See* Braden Decl. Through his work, Mr. Braden learned all of the material facts that the General Counsel claims constitute a violation of FECA. Most importantly, Mr. Braden learned that YBD(USA)'s foreign parent was providing YBD(USA) with funds necessary to post

the collateral for the Signet Bank loan to the National Policy Forum, *id.* at ¶ 4,[54/] and he knew that the National Policy Forum was using some of the proceeds of the loan to repay some its debt to RNSEC, *id.* Nevertheless, Mr. Braden concluded and opined in writing that:

> (1) YBD(USA's), Inc. participation in this loan transaction as a third party provider of collateral does not conflict with any provision of any federal election or campaign financing regulation; . . . (3) we are not aware of any federal or state statute which would prohibit YBD(USA), Inc. from pledging its collateral to the bank as security for the repayment of the proposed loan by NPF.

See Tab F. Mr. Braden stands by that opinion to this day. *See* Braden Decl. at ¶ 6.[55/] Moreover, Mr. Braden has stated that when he was engaged he assumed that the NPF would rely on his advice regarding the propriety of the Signet loan transaction, *id.* at ¶ 3, and believes that if he had concluded that the proposed Signet loan transaction was improper or violated the federal campaign laws in any way, the NPF would not have engaged in the transaction, *id.* at ¶ 7. Given Mr. Braden's unquestioned expertise in election law, it is absurd to fault Mr. Barbour for a "knowing and willful violation" of the

---

[54/] The General Counsel does not contest this; indeed, the General Counsel concedes that the evidence "strongly suggests that outside counsel may have been informed of the foreign source of the collateral." GC Brief at 21 n.19.

[55/] It is particularly troubling that, notwithstanding the impediment that Mr. Braden's opinion poses to the General Counsel's proposed finding of a "knowing and willful" violation," the General Counsel made his recommendation without exercising his authority to depose Mr. Braden or attempting to interview him. Had the General Counsel done so, the General Counsel would have learned (as he apparently assumes) that Mr. Braden was aware of all material facts when he issued his opinion letter and concluded that the transaction was perfectly legal.

election laws when a career specialist like Mr. Braden concluded on behalf of the NPF that the transaction was legal.

Mr. Braden was not the only attorney to bless the transaction. Benton Becker, counsel to YBD(USA) and former counsel to President Ford, also concluded, as he repeatedly testified before the Senate, *e.g.* Becker testimony 93-94; 98-99, that the transaction was legal. The General Counsel's Brief also concedes, GC Brief at 20 n.18, that David Norcross, General Counsel to the RNC, stated that the transaction was "perfectly legal and appropriate." Counsel for the bank also approved the transaction. In total, as the Senate Committee found, "[f]our sets of attorneys reviewed the NPF loan guarantee transaction before it was consummated," and "all of these counsel concluded that the transaction was legal in all respects." Report at 28-29.[56]

The General Counsel's brief attempts to circumvent the exhaustive legal review of the Signet loan transaction by simply terming counsel's opinion of the Signet loan transaction "erroneous." GC Brief at 20. This, however, sidesteps the real issue, one that is fatal to the General Counsel's case: the fact that the Signet loan transaction was vetted *in advance* by *four sets of attorneys*, including outside election-law counsel retained specifically for the purpose, completely precludes any finding of willfulness. In specific intent cases, the D.C. Circuit has made clear that "good faith reliance upon advice of

---

[56] Indeed, we are unaware of even a single witness who has testified to harboring any doubts at all at the time of the transaction up to today that the transaction complied in all respects with all applicable laws.

counsel" precludes a finding of liability. *See* United States v. Defries, 129 F.3d 1293, 1308 (D.C. Cir. 1997); United States v. Hansen, 772 F.2d 940, 947 (D.C. Cir. 1985). The propriety of the Signet loan transaction was reviewed by counsel for all parties, including the RNC and the NPF; any suggestion that Mr. Barbour engaged in a "knowing, conscious, and deliberate flaunting of the Act" is simply unsupportable.

CONCLUSION

The General Counsel's recommendation that the Commission find that Haley Barbour committed a "knowing and willful" violation of the Federal Election Campaign Act is utterly unjustified. It relies on a distorted, one-sided view of the facts that, to be charitable, likely resulted from the selective assistance provided by the minority staff of the Senate Committee on Governmental Affairs, ignoring entirely the Report of the committee that considered the evidence. It relies on a novel and unsupportable view of the Commission's loan guarantee regulations and a view of § 441e that has no basis in law and has been rejected by the only court to consider it. It defies common sense by arguing that a repayment of a legitimate loan is a contribution. It assumes, without pointing to any facts, Mr. Barbour's knowledge of complicated minutiae of campaign finance law and the dubious legal propositions that are relied on by the General Counsel, and ignores the fact that this transaction was thoroughly vetted by experienced attorneys. It ignores contemporaneous and informed legal advice that the transaction was fully

compliant with FECA. It disregards without any justification the decision of the United States District Court for the District of Columbia that § 441e does not bar foreign soft money donations (although there is no such donation in this case). As the deficiencies in the General Counsel's presentation should make clear, this is not a difficult case: the Signet loan was "legal and authorized under federal election laws." Senate Report at 4203. The Commission should reject the General Counsel's recommendation out of hand.

By: Terrence O'Donnell

Terrence O'Donnell
Dennis M. Black
Paul C. Rauser

725 12th Street, N.W.
Washington, D.C. 20005
(202) 434-5000

Counsel to Haley Barbour

February 23, 1998

4

105TH CONGRESS
2d Session

SENATE

REPORT

INVESTIGATION OF ILLEGAL OR IMPROPER ACTIVITIES IN CONNECTION WITH 1996 FEDERAL ELECTION CAMPAIGNS

FINAL REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TOGETHER WITH

ADDITIONAL AND MINORITY VIEWS

Volume 3 of 6

MARCH 10, 1998.—Ordered to be printed

UNITED STATES SENATE

COMMITTEE ON GOVERNMENTAL AFFAIRS

SPECIAL INVESTIGATION FINAL REPORT

Chapter 29: Allegations Relating to the National Policy Forum

ALLEGATIONS RELATING TO THE NATIONAL POLICY FORUM

The National Policy Forum ("NPF") was founded in 1993 as a "grassroots" think tank to develop a policy agenda through a series of "town meetings," *i.e. policy forums, throughout the nation.* The NPF was formed by Haley Barbour, then the recently elected Chairman of the Republican National Committee ("RNC"), and others, and started with $100,000 in RNC "seed money." The NPF was structured as a nonprofit corporation under Section 501(c)(4) of the Internal Revenue Code.[1]

The Committee's investigation of the NPF covered a wide range of allegations. The lion's share of these allegations related to a "loan guarantee" transaction involving the NPF and a Florida Corporation named Young Brothers Development (USA), Inc. ("YBD (USA)"), the subsidiary of a Hong Kong entity, Young Brothers Development, Ltd. ("YBD (Hong Kong)"). Such allegations included claims that:

(1) the NPF was utilized to launder or illegally "funnel" money from the Hong Kong entity into the RNC to assist the RNC in the 1994 federal election cycle;

(2) the NPF received money from the Hong Kong entity in exchange for government favors or business considerations and;

(3) the NPF misused its non-profit tax status in some fashion.

In pursuing the allegations, the Committee subpoenaed documents from many sources, deposed fourteen individuals and conducted several interviews. In the course of these efforts, several of the subpoenaed parties objected to certain of the Committee's inquiries, citing the Committee's limited jurisdiction to the 1996 election cycle. On July 3, 1997, Chairman Thompson issued an Order clarifying these parties' obligations. The Order provided that information predating November 1994 (the beginning of the 1996 election cycle) must be provided if it sheds light on efforts by the NPF to raise foreign funds during the 1996 election cycle, but that "it is not appropriate for the Committee to inquire into matters that relate only to the 1994 federal election campaigns."[2] Following issuance of the Order, although preserving their objections, the NPF and NPF witnesses fully complied.[3]

None of the witnesses associated with the NPF or the Young Brothers companies invoked their Fifth Amendment rights or fled the country to avoid testifying before the Committee. In contrast to numerous Democratic donors, fundraisers and administration officials, persons associated with the NPF and the Young Brothers appeared voluntarily for Committee depositions. Indeed, Ambrous

[1] *See* 26 U.S.C. §501(c)(4)(1997).
[2] *See* Order of Chairman Fred Thompson, July 3, 1997 (Ex. 1).
[3] *See* Catalog of NPF Document Production (Ex. 2).

Young, the Director of YBD (Hong Kong), voluntarily traveled from Hong Kong to London to be deposed by the Committee. Former RNC Chairman Haley Barbour voluntarily testified at length before the Committee.

FORMATION AND FINANCING OF THE NATIONAL POLICY FORUM

The NPF was created in the spring of 1993 as a "participatory policy institute . . . in which average citizens, community leaders, people away from Washington, legislators, local officials, state officials, as well as Federal officials had an opportunity to participate in the issues that face our government."[4] The NPF was initially envisioned as a wing or subsidiary of the RNC. That initial plan was rejected, however, in favor of the creation of a separate, distinct and independent policy institute under Section 501(c)(4) of the Internal Revenue Code.[5] According to the NPF's first president, Mr. Michael Baroody, "[t]he National Policy Forum was to be a Republican Center for the exchange of ideas. As I used to say routinely at the start of our forums, that was decidedly and intentionally not the same as a center for the Republican exchange of ideas—meaning NPF was to be open to all and set out to hear from all, regardless of party."[6]

At its formation, the NPF received a $100,000 loan from the RNC. As NPF fundraising efforts failed to satisfy NPF expenses, the NPF received additional loans from the RNC. The NPF leadership discussed a range of fundraising options, including the possibility of soliciting money from foreign sources (which would be legal for a non-profit corporation.)[7] By the end of 1993, the NPF had a debt to the RNC in the amount of $260,000. By mid-1994, that amount had grown to approximately $2 million.[8]

The NPF debt threatened to grow larger through 1994 as the pace of NPF forums increased.[9] During the summer and fall of 1994, the NPF was competing with Congressional campaigns for contributions from prospective donors. Expecting a fundraising shortfall during that period, NPF attorneys negotiated and obtained a $2.1 million loan from Signet Bank to refinance part of its preexisting debt to the RNC and to provide the NPF with operating funds.

---

[4] *See* Deposition of Haley Barbour, July 19, 1997, p. 19–20.

[5] The NPF had a separate board of directors, separate management, separate employees, separate operations and separate offices from the RNC. The RNC and NPF had separate accounting systems, and did not commingle funds. In short, the two organizations were two separate legal entities. *See* Barbour testimony, p. 117:

> Senator Glenn has said the NPF was an arm or subsidiary of the RNC. That is not correct. Indeed, I had originally considered establishing the policy institute as a part of the RNC. Over time and before it was founded, however, I came to the conclusion that the policy institute should be separate from the RNC for a variety of reasons.

[6] *See* Testimony of Michael Baroody, July 23, 1997, p. 190. The nature of the relationship between the NPF and the RNC was not material in assessing the legality of the matters at issue. Because the NPF undertook no campaign-related activities, its actions were not subject to federal campaign restrictions, no matter what link it had to the RNC.

[7] *See generally* Baroody testimony, pp. 202–05.

[8] *See* Baroody testimony, p. 206.

[9] Between 1993 and 1996, the NPF held over 90 public conferences and issues fora involving thousands of people throughout the nation and published two books reflecting its findings. The NPF had 14 "policy councils" involved in these efforts with over 1500 members. *See generally* Deposition of Kenneth Hill, July 11, 1997, pp. 46–48. The NPF's document production to the Committee demonstrated an enormous breadth of activity undertaken in its public fora and conferences.

By 1996, the NPF's continuing fundraising shortfalls led to a crisis. In early 1996, the NPF negotiated to defer one of its payments on the Signet Bank loan. By June 1996, the NPF indicated to Signet that it would default on the $1.5 million remaining due on the loan. Signet Bank exercised its right to take collateral posted by YBD (USA) to cover the default. Following its default on the Signet Bank loan, the NPF also defaulted on approximately $2.5 million in outstanding debt to the RNC.

In January 1997, the NPF's operations ceased. On February 21, 1997, the IRS issued a letter ruling disapproving the NPF's 1993 application for 501(c)(4) status. Although the dispute regarding NPF's tax status had no actual tax implications—the NPF never earned any profit or conferred any tax deductions on its donors—the IRS's decision has been appealed.[10] The appeal is pending.

THE RNC'S RELATIONSHIP WITH THE YOUNG BROTHERS COMPANIES

The relationship among the RNC and Young Brothers Development (USA) began in 1991. At that time, Young was a U.S. citizen and served as Director of a Hong Kong corporation, YBD (Hong Kong).[11]

In 1991, Alex Courtelis was a commercial real estate developer doing business in Florida. Courtelis also served as an official of the RNC's "Team 100" program.[12] In 1991, Courtelis and Young began to discuss a potential shopping center deal in Southern Florida. In structuring the potential deal, YBD (USA), a Florida corporation and a subsidiary of YBD (Hong Kong), was formed. By October of 1991, negotiations for the real estate purchase were progressing. Courtelis asked Young to consider contributing $100,000 to the RNC to become an RNC "Team 100" member.[13]

Team 100 members were provided with several benefits, including invitations to certain Team 100 events each year. Although then a U.S. citizen, Young spent a considerable amount of time abroad. Young's sons, all U.S. citizens, spent substantially more

---

[10] There has been significant controversy regarding the IRS's February 21, 1997 ruling. During the Committee's hearings, the IRS's disapproval of the NPF's application was sharply contrasted with the IRS's approval of tax-exempt status for the Democratic Leadership Council. Although this comparison raised certain issues regarding partisanship at the IRS, the discussion of the NPF's tax status was not material to the legality of the NPF loan guarantee transaction. In short, because the NPF never engaged in any election-related activities of any kind, it was never subject to federal election law, regardless of whether it did or did not qualify for tax-exempt status.

[11] Ambrous Young was born in the People's Republic of China, emigrated to Taipei, Taiwan when he was 14 years old, and was granted U.S. citizenship in 1970. Young's wife, four sons and daughter are all U.S. citizens. Young, a Hong Kong resident, gave up his U.S. citizenship at the end of 1993. Benton Becker, counsel to YBD (USA), was asked why Young gave up his U.S. citizenship:

> Senator Durbin. Do you know why he renounced his U.S. citizenship?
> Mr. Becker. Well, I've asked him that question, and every time I ask him that question he always says, "That's not the right word, Benton. I didn't renounce anything. I still feel strongly about the United States." He said that he simply decided that he wanted to create a single citizenship in the Republic of China and in Hong Kong, and he just doesn't come to the U.S., doesn't have any real reason to come to the U.S., and his children have all graduated from colleges in the U.S. He used to spend a lot of time here visiting his children when they were studying. That's the only explanation that's ever been given to me.

See Becker testimony, July 23, 1997, pp. 135–36. Although the Committee obtained certain tangential evidence suggesting that Young's decision may have been influenced by prospective tax implications, the Committee has received nothing conclusive on that issue.

[12] Becker testimony, p. 40.

[13] *Id.* at 42.

time in the U.S. Young and Courtelis determined that the Team 100 membership would be in the name of YBD (USA) so that Young's sons could attend the Team 100 events.[14] The funds for YBD (USA)'s Team 100 donations were provided, in the form of a loan, from YBD (Hong Kong) to YBD (USA).[15]

In Spring 1992, after the YBD (USA)'s $100,000 in Team 100 contributions had been made, the shopping center deal involving YBD (USA) and Courtelis fell through.[16] Thereafter, YBD (USA) continued to pursue several U.S. real estate opportunities but apparently did not generate sufficient funds to repay immediately YBD (Hong Kong) for its $100,000 loan.[17]

If the RNC had reason to know that the funds for the YBD (USA) Team 100 contributions were derived from a foreign source rather than the U.S. earnings of a domestic corporation, acceptance of this donation would have been illegal. According to Richard Richards, then the President of YBD (USA):

> To the best of my knowledge no officer or employee of the RNC or anyone associated with the RNC other than Mr. Courtelis knew at the time that the Young Brothers USA contributions to the RNC arose out of Young Brothers Hong Kong money.[18]

The RNC did not obtain financial or other information indicating that YBD (USA) had insufficient income in the U.S. to make a legal donation. Rather, it appears that Courtelis and the RNC relied upon the representations of the YBD (USA) counsel, Benton Becker, that the donations were proper.[19]

The RNC has informed the Committee that it returned contributions to YBD (USA) in May 1997 when it obtained information indicating their possible foreign origin.

---

[14] *Id.*

[15] *See* Becker testimony, p. 174; Becker testimony, p. 43.

[16] Becker believed when the Team 100 contributions were made that YBD (USA) would generate U.S. earnings sufficient to cover the contributions. *See* Becker testimony, p. 172: "The actual Team 100 commitment and payment occurs [in late 1991] while the [YBD (USA)]shopping center deal is still viable."

[17] Richards, Becker and Young have all testified that it was their intention that YBD (USA) would engage in substantial business in the United States. Although several potential ventures were explored—including various commercial real estate opportunities and an investment in a software company—none came to fruition. Although the Committee understands that YBD (USA) did have income from property management activities and certain interest income during its lifetime, the Committee has insufficient information to determine whether this income was sufficient to account for any substantial portion of the Team 100 donations.

[18] *See* Affidavit of Richard Richards, Esq. (Ex. 3) The affidavit was created under the following circumstances:

> Mr. Richards: . . . [I]t was probably a couple of weeks ago. The attorneys that represent The Republican National Committee asked if they could see me, and they flew out to Ogden, Utah, where I live and presented me with an affidavit that they had previously prepared consistent with some telephone conversations I had with them. We went over the affidavit. There were some things that I felt were not accurate. We made the changes. I signed the affidavit and it appears here today. . . .
>
> Mr. Madigan (Majority Counsel): . . . [D]oes it [the affidavit] accurately reflect the facts as you know them?
>
> Mr. Richards: I think so. I don't know of anything that is not true.

Testimony of Richard Richards, July 25, 1997, pp. 91–92.

[19] Courtelis (now deceased) dealt with Becker on behalf of the RNC. Courtelis was not an attorney, but apparently knew that Mr. Young and his family were U.S. citizens. Becker performed a legal analysis of the transaction, and prepared a memorandum advising that the transaction be legally structured such that a loan would be made from YBD (Hong Kong) to YBD (USA) which YBD (USA) would repay with its U.S. earnings. *See* Memorandum from Benton Becker to File, October 11, 1991 (Ex. 4).

SOLICITATION OF THE YBD (USA) LOAN GUARANTEE TO THE NPF

In the spring of 1994, an NPF fundraiser named Fred Volcansek met with Dan Denning, the NPF's Chief Financial Officer, and Donald Fierce, an RNC official.[20] The three discussed the faltering fundraising efforts of the NPF, and the NPF's outstanding debt to the RNC.[21] It was agreed that Volcansek would work to find an entity willing to provide a loan or a loan guarantee to the NPF.[22]

In the summer of 1994, Fred Volcansek contacted his friend Richard Richards, a former RNC chairman with a law practice in Washington, D.C. The NPF recognized that, as a result of the impending congressional elections, the RNC and congressional campaigns would present stiff competition for available fundraising sources through November, 1994. The NPF also recognized that the competition for funds could present the NPF with a significant cash flow problem in the coming months. Richards had introduced Volcansek to Ambrose Young and knew of Richards' relationship with Young. Volcansek asked Richards if Young or the Young companies might agree to provide a loan guarantee the NPF.[23]

In early August 1994, Ambrous Young, along with his son, Steven Young, and Richards, met over dinner in Washington with Barbour, Volcansek and Denning. Barbour knew that YBD (USA) was already a Team 100 member.[24]

At the dinner, Barbour requested that Young consider whether YBD (USA) would provide a loan guarantee to the NPF. Young agreed to consider it, and asked for information on the NPF and the proposed loan guarantee.[25] Mr. Barbour responded in writing on August 30, 1994, and explained that, by obtaining a bank loan guaranteed by YBD (USA), the NPF:

> . . . would not need to raise funds during the fall's political season when competition for contributions is especially keen, and most potential donors are focused on elections and not public policy.[26]

---

[20] Volcansek testimony, July 24, 1997, pp. 10–11, 27.

[21] Volcansek testimony, p. 28.

[22] Volcansek testimony, p. 30. *Note:* Mr. Volcansek's testimony regarding this meeting differs somewhat from that of Mr. Denning. Mr. Volcansek, an "international businessman," believed that he had been asked to assist with seeking a loan guarantee due to his foreign expertise. *See* Volcansek testimony, p. 57. Mr. Denning recalls no conversation relating to foreign sources of funds. See Deposition of Daniel B. Denning, June 30, 1997, p. 74–75.

[23] Volcansek testimony, p. 12.

[24] It is not clear when Barbour learned that Ambrous Young was no longer a citizen. *See* Barbour testimony, p. 231–32. Ambrous Young's son, Steve Young, was a U.S. citizen. *See* Deposition of Richard Richards, June 10, 1997, p. 56. Barbour believed that the name "Young Brothers" in YBD (USA) referred to Steve Young and his brothers, all of whom are U.S. citizens. Barbour testimony, pp. 208–09.

[25] Young deposition, p. 35.

[26] *See* Letter from Haley Barbour to Ambrous Young, with attachment, August 30, 1994 (Ex. 5). Ambrous Young prepared a letter in reply dated September 9, 1994 expressing reservations regarding the loan guarantee proposal. Letter to Haley Barbour from Ambrous Young, Sept. 9, 1994. (Ex. 6). Although the letter was to be delivered to Barbour by Young's son, Barbour does not recall receiving the letter, and no such letter appears in the RNC or NPF files. The Minority has theorized that one sentence in Young's September 9, 1994 letter suggests that Mr. Barbour was actually soliciting funds from Young for use in the 1994 elections:

> . . . [W]e are willing to consider the support of the $2.1 million which is the amount you have expressed to me is urgently needed and directly related to the November election.

Haley Barbour stated that the above-quoted sentence from Young's letter refers to Barbour's earlier statement that the NPF would have significant trouble raising funds in the months pre-

Continued

Young asked Becker to act as counsel to negotiate the terms of the potential loan guarantee from YBD (USA) to the NPF. Young asked Becker to make all efforts to obtain security in the event of an NPF default.[27]

Young and Becker both testified that they understood that the loan guarantee sought by Barbour was for the NPF, and understood the NPF to be a separate entity from the RNC:

> *Ambrous Young Deposition Testimony*
>
> Q: What did you understand, as a general matter, was the use for which this money was sought?
>
> A: All I understood the Forum, the National Policy Forum needs money. . . .[28]
>
> *Benton Becker Deposition Testimony*
>
> He [Ambrous Young] also informed me that he was told by Mr. Barbour that the National Policy Forum was not part of the Republican National Committee, that it, the National Policy Forum, was not within the auspices of the Federal election laws, since it, as an organization, was not involved with Federal elections, that it was a think tank. . . .[29]

It was also clear that the Florida corporation, YBD (USA), would be the loan guarantor:

> No one ever considered the Hong Kong entity as being the loan guarantor. From day one, the consideration, it is my understanding, had always been the U.S. corporation. . . .[30]

In negotiating the terms of the loan guarantee, Becker asked the RNC General Counsel, David Norcross, whether the RNC would formally agree to repay any loss by YBD (USA) if the NPF defaulted.[31] Norcross told Becker that the RNC could not do so.[32] Becker nevertheless continued to request some form of commitment from the RNC. Ultimately, Barbour responded with a letter committing to raise the issue with the RNC Budget Committee and

---

ceding the November elections, not that the NPF loan guarantee would somehow be used in the elections.

Whether or not Barbour received Young's September 9, 1994 letter is not material to the Committee's assessment of the transaction.

[27] Young deposition, p. 37.

[28] *Id.* Young also testified:

> [N]obody explained to me how the money should be utilized and this and that, nor mentioned to me about election of the congressional system. . . .

Young deposition at 29.

[29] Becker deposition, pp. 31–32.

Volcansek also explained to Young that, as an individual without U.S. citizenship, Young could not have any role in the federal elections:

> Many times I had the opportunity to explain to Mr. Young that he could not participate in our political process. I explained to Mr. Young that it was impossible for him to participate in the process of elections and to directly contribute in any way to the Republican National Committee or to any individual campaign. (Volcansek testimony, p. 81).

[30] *See* Becker testimony, p. 124.

[31] Becker deposition, pp. 38–39.

[32] Becker deposition, pp. 39.

seek its approval in the event that the NPF defaulted on an outstanding debt to "a domestic corporation."[33]

To evaluate Barbour's "commitment," Young and Becker consulted with Young's long-time friend, Richard Richards. Richards informed Young and Becker that he believed that the RNC Chairman would have power to compel the RNC Budget Committee to cover any NPF default.[34] Richards, Becker and Young recognized that Barbour's "commitment" was not a judicially enforceable obligation.[35]

Following such consultations, Becker, along with attorneys for the NPF and Signet Bank, the lender, analyzed the proposed loan guarantee transaction. Mr. Volcansek described such efforts as follows:

> [N]umerous nationally prominent campaign finance lawyers reviewed this transaction and deemed it perfectly legal, ethical, and proper in all respects. This was a transaction that was conducted in the full light of day with the most extensive legal review that I have ever seen for a transaction of comparable value.[36]

On September 19, 1994, Barbour wrote to Ambrous Young, thanking Young for YBD (USA)'s agreement to make the loan and describing Barbour's dealings with Young's son, Steve:

> . . . I was heartened by Steve's telling me that at the end of the year consideration would be given to doing even more. The Young family and your company are exceptionally generous, and I am genuinely grateful for the confidence you are showing in me.[37]

On October 13, 1994, the loan guarantee documents were signed. The transaction was structured as follows: Signet Bank loaned $2.1 million to the NPF. The loan was collateralized by $2.1 million in CD's posted by YBD (USA). As NPF made its quarterly loan payments to Signet Bank, Signet Bank would release the CD's to YBD (USA). In the meantime, YBD (USA) earned market-rate interest on the CD's.[38] YBD (USA) received the funds to purchase the $2.1 million in CD's to be posted as collateral for NPF's loan in the form of a loan from its parent, YBD (Hong Kong).

When the NPF received the $2.1 million in loan proceeds on October 13, 1994, it wrote to Signet Bank indicating that $1.6 million of the proceeds would be used to retire a portion of the NPF's debt to the RNC's non-federal Republican National State Election Com-

---

[33] *See* Letter from Haley Barbour to Benton Becker, August 30, 1994, p. 1 (Ex. 7); *See* also Becker deposition, pp. 39–40; Barbour deposition, pp. 72–74.

[34] *See* Richards testimony, p. 78–79.

[35] *See* Becker deposition, p. 39.

[36] *See* Volcansek testimony, pp 14–15. See also Memorandum from Benton Becker to Ambrous Young, dated September 23, 1994 (Ex. 8):

> These procedures outlined in this memo are calculated to accomplish the following goals:
>
> 1. To insure that no arguable violation of U.S. law could result to YBD or its principals. . . . [p. 1]

With this in mind, as you have instructed, all considerations have been made to assure that no claim and no violation of law could result from YBD (USA) serving as a loan guarantor. [p. 3]

[37] *See* Letter from Haley Barbour to AmbrousYoung, September 19, 1994 (Ex. 9).

[38] Testimony of Benton Becker, July 23, 1997, p. 47.

mittee ("RNSEC") account.[39] On October 20, 1994, $1.6 million of the outstanding debt of $2.4 million was repaid to the RNSEC account.[40] The remaining $500,000 was applied to NPF expenses. NPF's $1.6 million repayment reduced its debt to the RNSEC account to approximately $800,000.[41]

ALLEGATIONS REGARDING THE 1994 ELECTIONS

Although matters relating to the 1994 elections are not within this Committee's investigative mandate, certain charges relating to such elections were raised during Committee hearings. The Minority has alleged that the $1.6 million debt repayment by the NPF to the RNC was used by the RNC to fund critical campaign activities in Congressional districts across the country. Specifically, the Minority contends that the flow of funds evidences a plan to funnel foreign money into the 1994 elections, i.e. from YBD (Hong Kong) to YBD (USA) to Signet Bank to collateralize a loan to the NPF, a portion of which was utilized to repay a legitimate pre-existing debt to the RNC. Barbour offered two reasons why that allegation was "wrong in fact, and . . . wrong in effect."[42] First, all the funds were loaned from and repaid to the RNSEC "non-federal" account. Such funds cannot be used on behalf of any candidate in a federal election.[43] There is no evidence that these funds found their way to any federal "hard money" accounts, or that the RNSEC funds were used in coordination with any congressional candidate.

Second, there was no shortage of funds in the RNSEC account: The RNC's RNSEC account had more than $3 million available for use as of October 19, 1996—before it received the $1.6 million NPF repayment.[44] Shortly following the NPF repayment, the RNC transferred $500,000 from the RNSEC account to its building fund, which was utilized for the physical operations of the RNC, and transferred $1.6 million in repayment of an outstanding RNC loan from Signet Bank.[45] In addition, the funds available for use from the RNSEC account, including funds available via a line of credit, never dipped below $5 million between October 20, 1994 and the election.[46] In sum, there is no evidence that the $1.6 million repaid by the NPF to the RNSEC account was used for any electoral or campaign activity and thus had any impact in any 1994 Republican congressional victories.[47] Moreover, there is no evidence that the

---

[39] *See* Letter from NPF Comptroller Steven Walker to Kevin Killoren of Signet Bank, October 13, 1994, (Ex. 10).

[40] *See* Deposition of Haley Barbour, pp. 85–86.

[41] *See* Deposition of John Bolton, July 15, 1997, p. 46.

[42] *See* Barbour testimony, pp. 254–55.

[43] *See* Barbour testimony, p. 254.

[44] *See* Chart, Republican National Committee, Non-Federal Funds Available October, 1994—November, 1994 (Ex. 11).

[45] *See* Barbour testimony, pp. 127, 252.

[46] *See* Ex. 11.

[47] *See* Barbour Testimony, pp. 127, 235–37.

Allegations have also been made that a seven day delay in debt repayment by the NPF to the RNSEC account (from October 13 until October 20, 1994) evidences a conspiratorial intent to delay public disclosure of such repayment. The Committee has not received an explanation of this delay from any person responsible for it, but Barbour suggested a possible rationale:

> I never talked to Steve Walker [the NPF Controller] about it, but if he had asked me, if he would have asked me, I would have told them wait and make the payment, the repayment, actually, on October 20th or thereafter, because when you are raising money like we do, almost not exclusively, but very heavily from small donors, you don't want the newspaper saying the RNC got a $1.5 million contribution or a $2.5 million contribution because then your small donors say, well, they don't need more money. You

YBD loan guarantee transaction, which was legal and authorized under federal election laws, was related to or affected the 1996 election campaigns.

DEALINGS BETWEEN BARBOUR AND YOUNG: JANUARY 1995—JUNE 1996

Following the 1994 elections, Young and Barbour communicated on several occasions. In early 1995, Young made a trip to the United States for medical treatment. During that trip, Barbour arranged for Young to meet briefly with Speaker Gingrich and Senator Dole in their Congressional offices. Although discussions at such meetings included the possible fate of Hong Kong following the British departure and the Taiwanese-Chinese relationship, there was no discussion relating to any legislation, government program or government contract of any kind.[48]

In August 1995, Barbour paid a visit to Young in Hong Kong and asked if YBD (USA) would relinquish the CD's held by Signet Bank, effectively "forgiving" NPF's obligation to repay YBD (USA). Young agreed to consider the matter.[49]

In late 1995, Barbour planned a trip to Beijing, including a meeting with the Chinese Foreign Minister. Barbour invited Young to accompany him. Young agreed.[50] In early 1996, Barbour met with the foreign minister while Young and others attended this ceremonial meeting.[51] Mr. Young described the encounter as follows:

> Q: Can you describe the type of reception given by the Chinese Government to Haley Barbour on that trip?
>
> A: The reception, I would say—I will give a rate: I would say third class or lower.
>
> Q: Do you know why that type of reception was given to Haley Barbour?
>
> A: Much later I was puzzled why they do that, because, as a party Chairman for China they always want to win friendship from the United States, and later I raised the

---

know, that chills-the small donors drive our party. Our average contribution at the RNC was $45.

Barbour testimony, p. 190.

[48] Neither Young nor any of his companies ever did business or sought any business with the United States Government. *See* Young deposition, p. 83; Volcansek testimony, p. 77; Barbour testimony, pp. 196, 198.

[49] The Minority has argued that one portion of Young's testimony regarding his August 1995 conversations with Barbour should be read to indicate that Young explained to Barbour that forgiveness was impossible because YBD (Hong Kong), the actual source of funds for the loan guarantee, was undergoing a government audit. Barbour, however, recalls no such explanation, and recalls that Young agreed to consider his request for forgiveness. Barbour's recollection on this point is supported by that of Young's lawyer, Richard Richards. Richards wrote:

> Shortly after the loan was made, you [Barbour] journeyed to Hong Kong, and approached Mr. Young for the first time about the question of forgiveness of the loan. Mr. Young called me and told me of the discussion and informed me that he wanted to be as helpful to you as he could and he would take the request for forgiveness under advisement.

See Letter from Richard Richards to Haley Barbour, September 17, 1996 (Ex. 12). In any event, Barbour's knowledge or lack thereof regarding YBD (Hong Kong)'s role in the transaction was immaterial—as discussed elsewhere herein, the loan guarantee transaction was legal whether or not the funds originated in Hong Kong.

[50] Young testified that he agreed to go on the trip as a gesture of "friendship" to Barbour. Mr. and Mrs. Young, Mr. and Mrs. Barbour, and Mr. and Mrs. Richard Richards all participated in the trip, which apparently included sightseeing in and outside Beijing. *See Ex.* 3. Mr. Young and Mr. Barbour both testified that they neither discussed nor did any business of any kind while on the trip to China, or at any other time. *See Young deposition, pp. 83, 85–86; see* Barbour deposition, p. 106.

[51] *See* Ex. 3; Becker testimony, p. 49; *see* Young deposition, pp. 84–85.

> question through my personal friends who did ask the questions and they come back to me and said that during that particular moment the Chinese government are in favor of the winning of President Clinton, i.e. the Democrats, so they tried not to offend the Democrats, so therefore they lowered down Mr. Barbour. That's the answer I got.[52]

Although there was apparently no discussion relating to forgiveness of the loan guarantee during the trip to China, the topic arose again in 1996.

By 1996, it was clear that the NPF's disappointing fundraising efforts would not support its operating expenses. The NPF had taken a series of loans from the RNC, but the RNC was becoming increasingly reluctant to extend credit.[53] The NPF missed its January 1996 loan repayment to Signet Bank, and asked Signet (the lending bank) and YBD (USA) (the loan guarantor) for permission to defer the payment.[54] Both agreed.

In or about May 1996, Barbour had a conversation with Richard Richards regarding the loan guarantee. During that conversation, Barbour understood Richards to agree that YBD would not object if NPF defaulted on the $1.5 million in funds remaining due on the loan and Signet Bank took the YBD (USA) CD's.[55] By contrast, Richards has described that conversation as follows:

> I did not say, because I did not have the authority to say, "Go ahead and default and we will do nothing." In essence that would that would be our way of forgiving the loan. I think I did say I doubted Mr. Young would sue you in the event of default, but Mr. Young did not say that, and did not give me authorization to say we wouldn't sue and therefore, go ahead and default and we'll simply walk away.[56]

By June 1996, NPF had informed Signet Bank that it intended to make no further payments and would default on the loan. Later that summer, Signet accelerated the loan and took $1.5 million in YBD (USA) CD's.[57]

DISPUTE AND SETTLEMENT

In July 1996, after learning of the default, Richards and Becker wrote to Barbour and asked him to obtain authorization from the RNC Budget Committee for the RNC to repay the NPF's debt to YBD (USA). In August, 1996, at the Republican Convention, Barbour sent the President of the NPF, John Bolton, to present the issue to the Budget Committee. Bolton made a presentation, but the Committee tabled the matter.[58]

When Richards and Becker learned that the RNC Budget Committee would not cover the NPF default, they became very angry. Although Richards and Becker recognized that the RNC did not

---

[52] Young deposition, p. 84.
[53] Becker testimony, p. 46.
[54] Becker deposition, pp. 55–57.
[55] *See generally* Barbour testimony, pp. 147, 149–151.
[56] *See* Ex. 12.
[57] *See generally* Becker testimony, p. 30.
[58] *See* Bolton deposition, July 15, 1997, p. 82.

have a legally cognizable obligation to cover the NPF default, they decided, in service to their client, YBD (USA), to attempt to pressure to the RNC to cover the loss.[59]

On September 17, 1996, Richards wrote to Barbour threatening to sue him and laying out a purported factual record of the transaction.[60] Included in the letter were claims that Barbour had offered to arrange "business opportunities" in China in return for loan forgiveness, and that the loan guarantee was originally made in order to funnel money to sixty targeted House seats. Richards has since recanted several of those statements:

Mr. Richards' Testimony:

> Q: Is there anything in this letter that you feel requires some level of clarification to be properly understood?
>
> A: Yes. The tone—the reference in the letter to business is grossly misleading, because we didn't go there to get business. We didn't discuss business. But Ambrous's ability to pay the loan depended upon him getting business. And so I know the tone of the letter kind of says we all went there for a business purpose, and that isn't quite accurate. And I attribute that to writing the letter when I was grossly irritated.[61]

Mr. Richards' Affidavit:

> At the time I wrote this letter, the repayment of collateral was very much at issue and I was concerned that my client, Mr. Young, would suffer as a result of an NPF default. Accordingly, in the letter, *I made several serious statements which, upon reflection, were made as negotiating tools and were not accurate.* In particular, I stated that if Mr. Young could get some business opportunities it may justify the contribution of a portion of the loan collateral. I know of no business activities Mr. Barbour was ever asked to undertake or did undertake on behalf of Mr. Young, his sons, or any of the Young Brothers entities either in the United States or abroad. In addition, in my September 17, 1996 letter, I stated that the repayment of the loan made certain funds available to the RNC during the 1994 federal election cycle, the funds merely repaid the RNC for its earlier loans to NPF, and *I now understand that these funds could not and were not used to directly benefit congressional candidates.*[62]

The statements in Mr. Richards' September 17, 1996 letter have also been contradicted by the testimony of Young and Barbour:

Testimony of Ambrous Young:

> Q: Did you or any Young Brothers business benefit financially as a result of your trip with Haley Barbour to China?

---

[59] *See e.g.* Memorandum from Becker to Young and Richards, September 16, 1996 (Ex. 13).
[60] *See* Ex. 12.
[61] Richards deposition, June 19, 1997, p. 112.
[62] *See* Ex. 3 (emphasis supplied); *see supra* n. 20 (discussing origin of Mr. Richards' affidavit.)

A: No.

* * * * *

Q: So Haley Barbour never suggested any business?

A: Never at all, nor we approached him or him approached us. . . . I have never had any business in mind.[63]

Testimony of Haley Barbour:

Q: Did Mr. Young articulate any point of view that you can recall that specifically would have helped Young Brothers Development either in this country or in China or Hong Kong, anywhere—or Taiwan?

A: He never said anything to me or in front of me about his company's business or businesses or his companies' businesses or business, ever.[64]

After receiving Richards' September 17, 1996 letter, Barbour decided that the best course of action was no response.[65] Richards followed with an October 16, 1996 letter containing the following statement:

I believe it is significant that Bob Dole and the Republican Party are now challenging contributions made to the Clinton campaign by Indonesian citizens through an American contact. Obviously there are some differences between that situation and ours; however, I think we stand the same risk of some very adverse publicity if the loan were forgiven. . . .[66]

Richards has since testified as follows regarding the meaning of his reference to "differences" between the Clinton campaign and the YBD loan guarantee:

Ambrous Young's money did not go to a political campaign, where I believe that the money, the Indonesian money went to the Presidential campaign and to the Democratic party for campaign purposes. Ours went to a think tank. Ours went to the Forum.[67]

Following the 1996 elections, Becker and the NPF negotiated a settlement.[68] The NPF repaid (with RNC funds) approximately half of the $1.5 million lost by YBD (USA).[69]

---

[63] Young deposition, pp. 83–86.

[64] Barbour testimony, pp. 197–198.

[65] *See id.* p. 146. Barbour testified "Now, that's what I took the letter to be, a negotiating tool to try to put pressure on me. That's why I didn't respond. And it's also why I didn't give it credibility."

[66] *See* Letter from Richards to Barbour, October 16, 1996 (Ex. 14).

[67] Richards deposition, June 19, 1997, p. 114.

[68] The NPF agreed to pay $800,000 in settlement of the dispute but then reduced that amount by $50,000—the interest accrued to date by the YBD (USA) certificates of deposit. Becker testimony, pp. 52–53.

[69] Becker testimony, pp. 52–53. The Committee also investigated allegations of two other allegedly foreign donations to the NPF. First, the Committee reviewed a $25,000 donation on August 2, 1996 from the Pacific Cultural Foundation, a non-profit think-tank located in Taiwan. The NPF was one of several U.S. organizations that received funds from the Pacific Cultural Foundation. Second, the Committee reviewed a $50,000 donation from Panda Industries on or about July 18, 1995. Panda Industries and related entities are the subject of further examination in the section on Ted Sioeng of the Committee's Report. Under present law, such donations are legal.

Mr. Becker has informed that Committee that, although YBD (USA) admittedly has no legal right to return of the $800,000, it continues to request that the RNC reimburse it for its losses.

ALLEGATIONS RELATING TO THE TESTIMONY OF HALEY BARBOUR

As the Committee's investigation progressed, the Minority's focus shifted from the mechanics of the loan guarantee transaction to allegations that Haley Barbour had given false testimony. The Minority's allegations regarding Barbour's testimony relate principally to one set of statements: During the hearing and his deposition, Barbour testified that he did not have credible information until the Spring of 1997 that the funds for the CD's collateralizing the NPF loan from Signet Bank were obtained by YBD (USA) via a loan from it parent, YBD (Hong Kong).[70]

To be clear, neither Barbour nor any other person questioned during this investigation denied that the funds for the NPF loan guarantee originated in Hong Kong—that fact was never in dispute. Rather, Barbour stated that he did not have credible information on that topic until he reviewed NPF files retrieved from storage in Spring 1997. Moreover, whether or not Barbour personally knew prior to 1997 that the funds for the guarantee originated in Hong Kong is not material to the Committee's assessment of the loan guarantee transaction. As noted above, the NPF was a nonprofit corporation and it was free to accept donations from foreign sources.

The Minority has theorized that there were certain occasions prior to Spring 1997 when, contrary to his testimony, Barbour was informed that the funds for the NPF guarantee originated in Hong Kong.

First, the Minority cites a conversation sometime prior to October 1994 among Barbour, Fred Volcansek (then engaged in NPF fundraising), Dan Denning (the NPF Chief Financial Officer) and Dan Fierce (an RNC official). Volcansek testified that, during that conversation, he told the group that the loan guarantee money would originate in Hong Kong.[71] When questioned regarding this conversation Barbour responded:

> Fred may be right and I may not have heard it because it was not relevant. That issue is a totally irrelevant issue. It was then and it is now, but I do not recall his saying that in that meeting or any other meeting. . .[72]

Denning, who also attended the meeting, testified that he recalled no such conversation with Volcansek or anyone else.[73] Indeed, Volcansek himself testified that:

> [A]s I tried to point out to Mr. Baron a moment ago, that wasn't an issue. I mean, the significance of it being a foreign transaction, because of our viewpoint on the whole matter, the fact that I mentioned it and brought it up in the overall context of a long and lengthy meeting about a

[70] Barbour deposition, pp. 130–131.
[71] Volcansek deposition, p. 108–109.
[72] Barbour testimony, p. 141.
[73] *See* Denning deposition, p. 222.

> lot of things, I'm not surprised that Mr. Denning didn't focus on what I said.[74]

The second instance in which, according to the Minority, Barbour learned that YBD (Hong Kong) was lending the funds to YBD (USA) for the loan guarantee was an alleged conversation at an August 1994 dinner in Washington. The dinner was attended by Ambrous Young, Steve Young, Barbour and Denning.[75] The Minority argues that Young told Barbour during that dinner that the funds for the loan guarantee would come from YBD (Hong Kong). In support of that proposition, however, the Minority has only cited a single question and answer from Ambrous Young's deposition:

> Q: Can you describe in general what you recall was the discussion at the dinner?
>
> A: The discussion basically was Mr. Haley Barbour requested me to consider for the loan of $3.5 million and assured me of the safe return of the loan, but as a result of that, I could not commit, nor have the power to commit, but requested him to give us more information so that we can present it to YBD (Hong Kong) Board of Directors for further consideration.[76]

However, in his answer, Young *said nothing* to indicate that funds from the YBD (USA) CD's came from Hong Kong. Even if Young had stated that he needed to take the issue to the Board of YBD (Hong Kong), such a statement does not necessarily indicate that the actual funds for the loan guarantee were originating in Hong Kong rather than from the U.S. subsidiary. This interpretation of Young's testimony parallels other evidence obtained by the Committee, including the following statement by Barbour:

> I remember Mr. Young saying that he having a favorable but non-committal response, not that he would have to go back to his board . . .[77]

This interpretation is also supported by Barbour's August 30, 1994 letter to Young's attorney, Benton Becker (written shortly after the dinner):

> It is my understanding one of your clients—a domestic corporation—is considering guaranteeing a . . . bank loan to the National Policy Forum (NPF).[78]

In addition, Denning, an NPF official also attending the dinner that night, did not recall any discussion that the funds for the loan guarantee come from a Hong Kong corporation.[79]

Next, the Minority cited a 1995 conversation between Young and Barbour, during Barbour's visit to Young's yacht in Hong Kong. During that visit, Barbour and Young had a discussion regarding the possibility that the NPF might default on the Signet Bank loan. Barbour asked Young whether YBD (USA) would "forgive"

---

[74] Volcansek testimony, pp. 48–49.
[75] *See generally* Denning deposition, p. 153.
[76] Young deposition, p. 35.
[77] Barbour testimony, p. 142.
[78] *See* Letter from Haley Barbour to Ambrous Young dated October 10, 1994 faxed to Benton Becker on October 11, 1994 (Ex. 15).
[79] *See generally* Denning deposition, pp. 153–159.

any such default. Young testified regarding that exchange as follows:

> Q: What was your response to Mr. Barbour's proposition that the loan be forgiven, as we have discussed?
>
> A: I said no in the manner of an apology. I explained to him that we have difficulties to do that, because the YBD (USA) money, which was guaranteed under the form of a certificate, deposit certificate, for the Forum loan, was a loan from YBD Hong Kong, and YBD Hong Kong we are facing a government audit every year. Without justification to the directors, or to the board, who approved such loan could face government punishment, so therefore I explain this cannot be done.[80]

It is clear from Young's testimony that he recalls discussing the issue of forgiveness with Barbour. It is also clear why Young ultimately did not regard forgiveness as a viable option. It is not clear, however, that Young explained his reasons for rejecting forgiveness during the 1995 conversation with Barbour.[81] Indeed, when Young's attorney, Richard Richards, memorialized the 1995 conversation in his September 1996 letter to Barbour, Richards made no mention of the YBD (Hong Kong) government audit and, contrary to Young's testimony, indicated that Young was actually considering forgiving the NPF obligation:

> Shortly after the loan was made, you [Barbour] journeyed to Hong Kong and approached Mr. Young for the first time about the question of forgiveness of the loan. Mr. Young called me and told me of the discussion and informed me that he wanted to be as helpful to you as he could and he would take the request of forgiveness under advisement.[82]

Further, other portions of Young's own testimony also raise questions regarding the content of his communications to Barbour in August 1995. For example, Young testified that he and Barbour were "concentrating on the subject of forgiving the loan [to NPF]" and *did not* make "any special point" of the fact that the funds for the loan guarantee had originated in Hong Kong.[83] In addition, Young testified that, as the conversation with Barbour progressed on the issue of forgiveness, "I think he [Barbour] misunderstood me . . ." and that Barbour mistakenly believed that Young had agreed to provide NPF with yet further funds in order to pay off the Signet Bank loan.[84] In sum, there is significant reason for uncertainty regarding the content of Young's and Barbour's 1995 conversation.

---

[80] Young deposition, pp. 57–58.

[81] When read the portion of Young's testimony relating to a government audit of YBD (Hong Kong), Barbour replied:

> I do not recall him saying, and I did not understand him to say, anything like that.

Barbour deposition, p. 120.

[82] *See* Ex. 12. Although there are significant questions regarding the accuracy of many portions of Richards' letter (including Richards' own admissions that the letter was written as a bargaining tool), Young testified generally that this portion of the letter was accurate. *See* Young deposition, p. 86–87.

[83] *See* Young deposition, p. 58.

[84] *See* Young deposition, p. 59.

Finally, the Minority cites certain alleged communications between Richard Richards and Barbour as possibly providing Barbour with knowledge prior to 1997 that YBD (USA) was lent the funds for the CD's by its Hong Kong parent. Specifically, the Minority has focused upon an alleged 1994 telephone call between Richards and Barbour (which Richards mentioned for the first time during his hearing testimony), and statements in Richards' September 17, 1996 letter.[85] In both, Richards states that the funds for the NPF guarantee would be transferred (via a loan) to YBD (USA) from YBD (Hong Kong). The following, however, was Richards' sworn deposition testimony on June 19, 1997:

> Q: On the third page, first paragraph begins, "With this in mind, as you have instructed, all considerations have been made to assure that no claim and no violation of law could result from YBD (USA) serving as a loan guarantor."
>
> Now, that paragraph goes on to discuss a loan from YBD (Hong Kong) to YBD (USA). Mr. Richards, do you know if that loan transaction was, in fact, performed? . . .
>
> A: Yes it was. It was the source of the funds in the American bank.
>
> Q: Were the details of that loan transaction ever communicated to Mr. Barbour?
>
> * * * * *
>
> A: No. It was all done between attorneys.[86]

Indeed, several other aspects of Richards' testimony before this Committee have been inconsistent or self-contradictory. (In fact, Richards contradicted *himself* on several issues during his public testimony.[87]) Also, Richards has *admitted* that he wrote correspondence to Barbour containing purposely inaccurate statements regarding his dealings with Barbour on this transaction:

> At the time I wrote this letter, the repayment of collateral was very much at issue and I was concerned that my client, Mr. Young, would suffer as a result of an NPF default. Accordingly, in the letter, I made several statements which, upon reflection, were made as negotiating tools and were not accurate.[88]

As noted above, the only contemporaneous writings by Barbour that might be probative of his knowledge on this issue are his letters of August 30, 1994 and October 10, 1994. In both, Barbour states that YBD (USA)—a "domestic corporation"—is guaranteeing the loan. This, of course, suggests that Barbour understood YBD (USA), not YBD (Hong Kong), to be the source of funds for the NPF loan guarantee.

---

[85] Barbour testified that he did not regard the September 17, 1996 letter as credible when he received it. *See* Barbour deposition 145–46; *see also* Bolton deposition, July 15, 1997, pp. 138–40.

[86] Richards deposition, June 19, 1997, p. 106.

[87] For instance, when questioned during the hearings by the Minority, Richards stated that language in his September 17, 1996 letter to Barbour was accurate. When questioned by the Majority, Richards confirmed that his affidavit contradicting that letter was actually accurate. *See generally* Richards testimony, p. 91–92.

[88] Ex. 3.

Barbour summarized his response to questions regarding the accuracy of his testimony in the following exchange with Senator Lieberman:

> Senator Lieberman: . . . So I am puzzled, with all respect and affection, which I have for you, that you never—that you did not know that this money was going to come. My God, you went to Hong Kong to see Mr. Young, and I am just surprised that you did not know at any point in this, and again, it is legal, that the money was going to come from Hong Kong to YBD (USA).
>
> Mr. Barbour: Senator, I appreciate the statement of affection, which you know is mutual . . . and the fact of the matter is . . . it would be easier to say, hey, I knew all along, it was legal, it didn't make any difference. The problem with that is I didn't. . . . It was irrelevant, the whole time. Maybe that is why it just never caught my attention if different people in fact really did bring it up, but the fact of the matter is, it was legal either way, version A, version B. It happens that version A is what I truly remember and what I got to tell you is the truth, and I knew that Mr. Young was the head of the family, and I knew that the family lived in Hong Kong, and the boys, the sons, the Young Brothers, I assumed, were all Americans, that their mama was an American, and it didn't—you know—this is somebody that had been giving to the RNC.
>
> So I just had to tell you like I remember it, and like I said, it would be easier to tell it another way, but it is the truth.[89]

DISCUSSION

The NPF loan guarantee transaction did not violate existing law

Four sets of attorneys reviewed the NPF loan guarantee transaction before it was consummated: Mark Braden, a nationally recognized election law expert represented the NPF; Shea and Gardner, a prominent Washington firm, represented Signet Bank; Benton Becker, a former U.S. Attorney and counsel to President Ford, represented YBD (USA); and David Norcross, the General Counsel of the RNC, represented the RNC in its role as NPF's creditor. Documents and testimony obtained by the Committee indicate that all of these counsel concluded that the transaction was legal in all respects.[90] Indeed, the testimony is undisputed that the transaction was carefully structured to clear all legal hurdles:

> To the point of the matter, Senator, is nobody was hiding anything or concealing anything. It was a commercial transaction, and it didn't matter that the money was coming from a foreign corporation to its subsidiary in the U.S.[91]

---

[89] Barbour testimony, pp. 208–09.

[90] As noted above, there is no dispute that the NPF was legally able to receive foreign contributions or assistance.

[91] *See* Becker testimony, p. 164.

> [W]hat would be the motive for Mr. Young to enter into such a nefarious plot? There would be no motive. . . . nothing to gain by that.[92]

In sum, the Committee has found no evidence of any plan involving the NPF to inject foreign funds into the 1994 or any other federal election.[93] Rather, the Committee finds that the NPF loan guarantee was a legitimate commercial transaction intended to facilitate funding for the NPF's continuing operations. The transaction was thus in all respects legal and proper.

There is no evidence that the loan guarantee transaction involved an illegal or improper "quid pro quo" arrangement

The loan guarantee transaction did not involve an illegal or improper "quid pro quo" arrangement. Neither YBD (USA) nor YBD (Hong Kong) ever had any dealings with the U.S. Government. YBD (USA) counsel Benton Becker testified as followed:

> Senator Collins: Have Mr. Young, Mr. Ambrous Young, or YBD (USA) or YBD (Hong Kong) to your knowledge ever asked Haley Barbour for assistance in obtaining contracts or business or assistance of some sort from the United States Government?
>
> Mr. Becker: I have asked that question several times several ways of my clients, and they have answered those questions—that question under oath, and I'll repeat their answer. The answer is unequivocally no.
>
> * * * * *
>
> There was no special favor, no quid pro quo, no under-the-table understanding or deal.[94]

The NPF was not subject to federal election law restrictions on foreign contributions

Evidence obtained by the Committee demonstrated that the NPF did not engage in any campaign related activities in either 1994 or 1996. Thus, it was not subject to restrictions on foreign funding.

The NPF did not misuse its tax status

Although the NPF's application for 501(c)(4) tax exempt status was not approved, the NPF's tax status was never relevant. The

---

[92] *See* Becker testimony, p. 165–166. Recognizing that the transaction was subject to such exacting legal review, some have attempted to adopt an alternative legal theory unsupported by the facts of the transaction. Proponents of this theory argue that the Committee should ignore all the efforts undertaken to ensure that the arrangements were legal and instead focus on certain alleged communications among Barbour and Young preceding the transaction. They argue that Barbour may have violated federal election law (in particular 2 U.S.C. §441e) when he solicited a loan guarantee for the NPF from Young. Specifically, they argue that Barbour illegally solicited a foreign contribution from Young "for the purpose of influencing a federal election" by suggesting that the contribution to the NPF would help the Republican Party's prospects for the upcoming 1994 elections. This theory is infirm in several important respects, including that it mischaracterizes the evidence obtained by the Committee. Contrary to the theoretical assertions, Young testified that neither Barbour nor others associated with the NPF or RNC ever informed him that the NPF loan guarantee would assist Republican candidates in the 1994 election. Young deposition, p. 29–30. Likewise, Volcansek (the NPF fundraiser) explained to Mr. Young that, as an individual without U.S. citizenship, Young could not have any role in the federal elections. Volcansek testimony, p. 81.

[93] The opposite is true—the NPF was a significant drain on RNC resources, ultimately defaulting on $2.5 million in RNC loans.

[94] Testimony of Benton Becker, July 23, 1997, pp. 117–118, 120.

NPF was a non-profit corporation that never had any income. Thus, the NPF could never have incurred any tax liability. Moreover, because the NPF was organized as a 501(c)(4) rather than a 501(c)(3) entity, no donor ever received any tax deduction for a contribution to the NPF.

The evidence does not support a conclusion that barbour misled this committee

There is insufficient credible evidence to conclude that Barbour misled this Committee:

- Mr. Volcansek's testimony was contradicted.
- Mr. Richard's testimony is inconsistent and self-contradictory.
- Mr. Young's testimony was far from clear.
- Moreover, contemporaneous documents support Mr. Barbour's recollection.[95]

The Committee concludes that twisting Barbour's remarks to make a charge of illegal activity is wrong and unfair. Although the elaborate chain of evidence is subject to being confused or deliberately misrepresented, the Committee's conclusion is that the facts cannot be twisted to support a charge that Barbour's testimony was anything less than truthful.

[95] *See supra.*

D

National Policy Forum

Board of Directors

Representative John Boehner
United States Representative from Ohio

Senator William D. Brock
Former United States Senator from Tennessee
Former Secretary of Labor
Former United States Trade Representative

The Honorable Jeb Bush
Former President, Florida Future Foundation
Former Secretary of Commerce, State of Florida

Mayor James Garner
Mayor of the Village of Hempstead, New York

The Honorable Gwendolyn King
Vice President, Philadelphia Electric Power
Former Commissioner of Social Security

Senator Teresa Lubbers
State Senator from Indiana

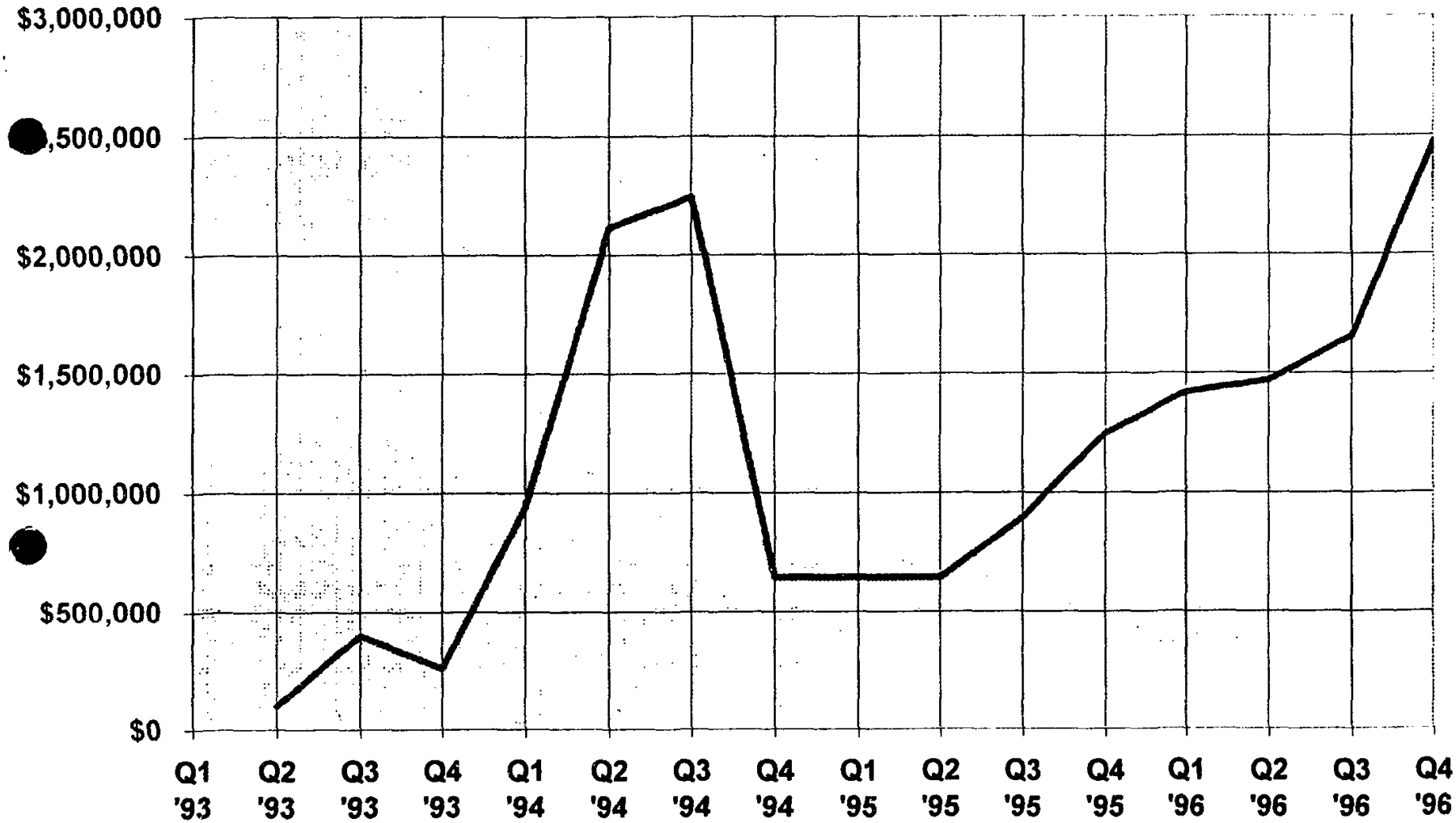
Representative Robert Michel
Former Republican Leader of the United States House of Representatives
Former United States Representative from Illinois

Senator Don Nickles
United States Senator from Oklahoma

Governor George Voinovich
Governor of Ohio

The Honorable John Bolton
Former President of National Policy Forum
Former Assistant Secretary of State for International Organizations
Former Assistant Attorney General of the United States

IN THE RED:
NPF Debts to the RNC
1993-1997



F

IN THE FEDERAL ELECTION COMISSION

IN RE:
MATTER UNDER REVIEW 4250

DECLARATION OF E. MARK BRADEN

I, E. Mark Braden, hereby declare as follows:

1. I have personal knowledge of all information contained in this Declaration.

2. I am currently, and was at all times relevant to this Declaration, an attorney with Baker & Hostetler LLP specializing in election law, including compliance issues arising out of the Federal Election Campaign Act of 1971, as amended ("FECA"). I have served as a consultant to the U. S. House of Representatives on election law and campaign finance issues. In addition, I have taught courses at George Washington and Catholic Universities on election law.

3. In September of 1994, I was engaged by the National Policy Forum ("NPF"), a nonprofit corporation, to represent NPF with respect to a loan transaction (the "Signet loan transaction") of approximately two million dollars involving the NPF, the borrower; Signet bank, the lender; and Young Brothers Development (USA), Inc. ("YBD(USA)"), a Florida corporation that acted as loan guarantor. It was my

understanding that I was engaged, in part, because of my election law expertise and my experience in the election law compliance area. I assumed that my client would rely on my advice regarding the propriety of the Signet loan transaction.

4. As part of my engagement on behalf of the NPF, I reviewed the transaction for compliance with the federal election laws, including FECA. Among other facts, I was aware of the following:

a) The Signet loan was to be guaranteed by YBD(USA) through the purchase of certificates of deposit to be used as collateral.

b) YBD(USA) would obtain the funds to purchase the collateral from its parent, a Hong Kong company.

c) A significant portion of Signet loan proceeds would be used by NPF to repay part of NPF's existing debts to the Republican National State Election Committee.

5. After careful review, I concluded that the Signet loan transaction was legal and proper. On behalf of my client, I provided a written opinion letter on October 6, 1994 to Mr. Benton Becker, counsel to YBD(USA), stating the following:

> (1) YBD(USA), Inc.'s participation in this loan transaction as a third party provider of collateral does not conflict with any provision of any federal election or campaign financing regulation;...(3) we are not aware of any federal or state statute which would prohibit YBD(USA), Inc. from pledging its collateral to the bank as security for the repayment of the proposed loan by NPF.

6. I stand by that opinion to this day, and continue to believe that the Signet loan transaction did not violate any federal election laws, FECA included.

7. It is my opinion that if I had concluded that the proposed Signet loan transaction was improper or violated the federal campaign laws in any way, my client would not have engaged in the transaction.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.

Dated this 19th day of February 1999

E. Mark Braden (419915)
Baker & Hostetler LLP
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036

BAKER & HOSTETLER

COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500
FAX (202) 861-1783 • TELEX 2357276
WRITER'S DIRECT DIAL NUMBER (202) 861-1504

October 6, 1994

VIA FACSIMILE AND FIRST CLASS MAIL

Benton L. Becker
Secretary/Treasurer/General Counsel
Young Brothers Development (USA), Inc.
The Kendar Building
1550 Madruga Avenue
Suite 329
Coral Gables, Florida 33146

Re: Loan Guarantee

Dear Mr. Becker:

The National Policy Forum ("NPF") is seeking a loan of $2.1 million from the Signet Bank of Washington, D.C. ("Bank"). NPF is seeking the loan to partially repay certain outstanding loan obligations, current debts and to temporarily finance the operations of NPF pending the receipt of existing pledges and other donations to the organization. Young Brothers Development (USA), Inc. ("YBD (USA), Inc."), a for profit Florida corporation, has stated to NPF that it is willing to provide collateral security to the Bank in sufficient size and form so that the Bank will agree to loan $2.1 million to NPF pursuant to the Bank's normal and usual commercial practices and terms.

You have requested our review of whether this transaction conflicts with certain United States laws. Your concern arises out of the fact that the existing and currently due loan obligations of NPF are to an organization which has an affiliated political committee as defined by the Federal Election Campaign Act of 1971, as amended (the "Act").

FACTS

The National Policy Forum is organized as a corporation pursuant to provisions of the District of Columbia Non-Profit Corporation Act.[1] The articles of incorporation restrict its operation exclusively for social welfare purposes within the

[1] See Attachment 1

meaning of Section 501(C)(4) of the Internal Revenue Code. NPF describes itself as a broad base inclusive organization designed to "go out to the grassroots" to listen to Americans about issues on their minds and develop a search for ideas that work. For purposes of this letter, we have been assured (and assume it to be true) that NPF makes no contributions or expenditures in connection with or to influence any election and assured that NPF is opened to all Americans who have ideas to offer for meeting the challenges Americans face today in their individual lives, their families, their communities and their work.

The NPF will use a portion of the Bank's loan proceeds to repay its presently outstanding loan obligations. We have been assured (and assume it to be true) that the partial repayment by NPF of such outstanding loan obligations will not be made to a political committee as defined by the Act.[1]

Based upon the facts and circumstances stated in this letter: (1) YBD (USA's), Inc. participation in this loan transaction as a third party provider of collateral does not conflict with any provision of any federal election or campaign financing regulation; (2) the transaction does not conflict with any provision of NPF's bylaws or articles of incorporation; and (3) we are not aware of any federal or state statute which would prohibit YBD (USA), Inc. from pledging its collateral to the Bank as security for the repayment of the proposed loan by NPF.

Sincerely,

E. Mark Braden

EMB/bss

cc: Mr. Dan Danning

[1] 11 C.F.R. § 100.5 (1994).

H

NATIONAL POLICY FORUM 5-93
229 1/2 PENNSYLVANIA AVE., S.E.
WASHINGTON, DC 20003

1090

15-80/540
3818

Oct. 15 19 93

PAY TO THE ORDER OF R. N. S. E. C. $ 150,000.00

One Hundred Fifty Thousand and no/100 ---------- DOLLARS

SIGNET BANK N.A.
ACH R&T 054000607
Washington, DC 20008

FOR partial loan repayment

Dorothy Moley
Kenneth J. Weil

NATIONAL POLICY FORUM 5-93
229 1/2 PENNSYLVANIA AVE., S.E.
WASHINGTON, DC 20003

1208

15-80/540
3816

December 15 19 93

PAY TO THE ORDER OF Republican National Committee $ $50,000.00

Fifty Thousand and ---------------------------------- no/100 DOLLARS

SIGNET BANK N.A.
ACH R&T 054000807
Washington, DC 20008

FOR loan repayment

93040353474

NPF 000197

NATIONAL POLICY FORUM 6-93
229 1/2 PENNSYLVANIA AVE., S.E.
WASHINGTON, DC 20003

2545

15-99/510
3818

October 20 19 94

PAY TO THE ORDER OF R.N.S.E.C. $ $75,000.00

Seventy Five Thousand and ---------- no/100 DOLLARS

SIGNET BANK N.A.
ACH R&T 051000017
Washington, DC 20068

FOR Loan repayment

Catherine W. Keller

PAY TO THE ORDER OF
FOR DEPOSIT ONLY
REPUBLICAN NATIONAL STATE
ELECTIONS COMMITTEE-OPERATING

NATIONAL POLICY FORUM 5-93
229 1/2 PENNSYLVANIA AVE., S.E.
WASHINGTON, DC 20003

2546

October 20 1994

PAY TO THE ORDER OF R.N.S.E.C. $1,525,000.00

One Million Five Hundred Twenty Five Thousand and ---- no/100 DOLLARS

SIGNET BANK N.A.

FOR Loan repayment

Catherine W. Keller

PAY TO THE ORDER OF
BANK OF VIRGINIA
FALLS CHURCH, VA.
FOR DEPOSIT ONLY
REPUBLICAN NATIONAL STATE
ELECTIONS COMMITTEE 531 730 7267

DBD 000064

CHEDULE I

I

AGGREGATION PAGE
NON-FEDERAL ACCOUNTS OF NATIONAL PARTY COMMITTEES

(Use a separate Aggregation Page for each nonfederal account)

AME OF FEDERAL COMMITTEE

REPUBLICAN NATIONAL COMMITTEE

AME OF ACCOUNT

Republican National State Election Committee

COVERAGE PERIOD

FROM **10-20-94** TO **11-28-94**

	COLUMN A TOTAL THIS PERIOD	COLUMN B YEAR-TO-DATE
ECEIPTS (ATTACH SUPPORTING MEMO SCHEDULE A ITEMIZING RECEIPTS GREGATING IN EXCESS OF $200 DURING THE CALENDAR YEAR)		
1. TOTAL RECEIPTS	10,007,279.13	30,282,973.62
SBURSEMENTS: (ATTACH SUPPORTING MEMO SCHEDULE B ITEMIZING DISBURSEMENTS GREGATING IN EXCESS OF $200 DURING THE CALENDAR YEAR)		
2. TRANSFERS TO FEDERAL OR ALLOCATION ACCOUNT FOR ALLOCABLE EXPENSES	3,306,446.64	12,431,077.21
3. TRANSFERS TO STATE/LOCAL CANDIDTAE SUPPORT	1,484,000.00	6,550,384.05
4. DIRECT STATE/LOCAL CANDIDATE SUPPORT	1,069,500.00	2,798,000.00
5. OTHER DISBURSEMENTS	2,336,546.88	6,049,977.27
TOTAL DISBURSEMENTS (ADD 2, 3, 4, AND 5)	8,196,493.52	27,799,438.53
SUMMARY		
BEGINNING CASH ON HAND (FOR COLUMN B USE CASH AS OF JANUARY 1ST)	713,738.92	40,989.44
RECEIPTS (FROM LINE 1)	10,007,279.13	30,282,973.62
9. SUBTOTAL	10,721,018.05	30,323,963.06
1 DISBURSEMENTS (FROM LINE 6)	8,196,493.52	27,799,438.53
1 ENDING CASH ON HAND	2,524,524.53	2,524,524.53

*** Republican National State Election Committee ***
FEC Report
Itemized Report for Period: 10/20/94 Thru 11/28/94
Year to Date Total Over $200.00

Name Address City, State Zip	Employer/ Occupation	Receipt Date	Receipts This Period	Aggregate YTD
Mr. & Mrs. Fristoe Mullins Apartment 4-e 2) S Brentwood Blvd C ayton, MO 63105-1633	Retired	10/21/94	500.00	$500.00
Mr. Fristoe Mullins 2) South Brentwood Bulevard S nt Louis, MO 63105-1601	Retired	10/27/94	500.00	$500.00
M lticolor Specialities, Inc. B x 50539 2.01 South 54th Avenue Cicero, IL 60650		10/27/94	111.00	$321.00
M s. Gwendolyn Murphy 1441 Carlton Road Hillsborough, CA 94010		10/27/94	750.00	$750.00
M . William C Myler 1054 North Dr Mount Pleasant, MI 48858-2851	Information Requested 10/21/94	10/21/94	500.00	$500.00
M . Veronica Nagymihaly 2520 S Miami Ave Miami, FL 33129-1530	Self-employed Owner - Apartment Buildings	11/04/94	500.00	$500.00
Nuiman Group, Ltd 910 16th #500 D nver, CO 80202		10/21/94	250.00	$290.00
Nat'l. Republican Cong. Comm. 320 First Street S.e. W shington, DC 20003		11/07/94	400,000.00	$400,000.00
National Policy Forum Southeast 2) 1/2 Pennsylvania Avenue W shington, DC 20003		10/20/94 10/20/94 10/20/94	762,500.00 75,000.00 762,500.00	1,600,000.00
N tpac 2000 Individual Account S ite 207 600 Pennsylvania Avenue S.e. Washington, DC 20003		11/07/94	5,000.00	$5,000.00

NON-FEDERAL ACCOUNTS OF NATIONAL PARTY COMMITTEES

(Use a separate Aggregation Page for each nonfederal account)

NAME OF FEDERAL COMMITTEE

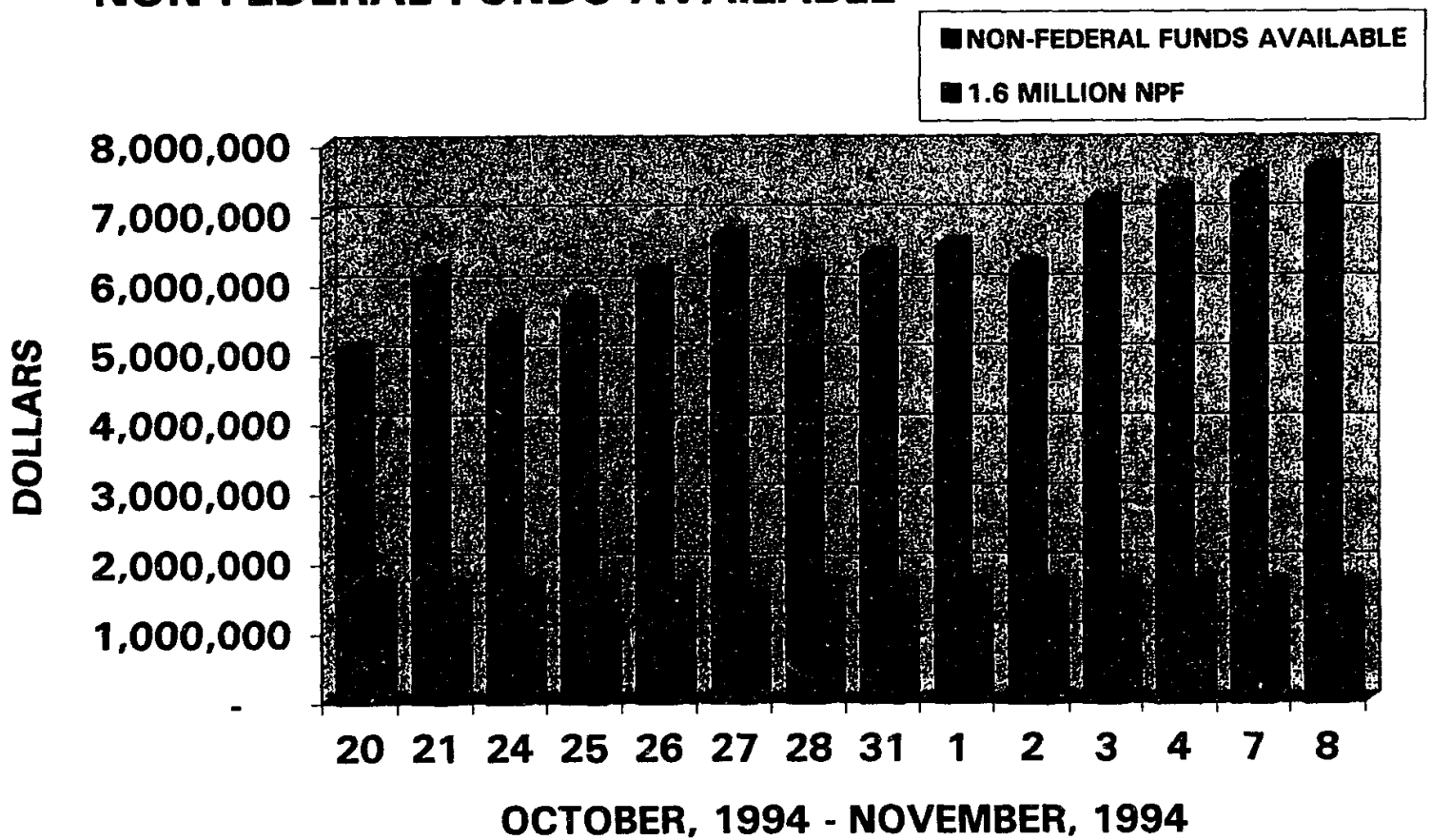
REPUBLICAN NATIONAL COMMITTEE

NAME OF ACCOUNT	COVERAGE PERIOD FROM	COVERAGE PERIOD TO
Republican National State Election Committee	10-01-93	10-31-93
	COLUMN A TOTAL THIS PERIOD	COLUMN B YEAR-TO-DATE
RECEIPTS (ATTACH SUPPORTING MEMO SCHEDULE A ITEMIZING RECEIPTS AGGREGATING IN EXCESS OF $200 DURING THE CALENDAR YEAR)		
1. TOTAL RECEIPTS:	1,337,019.49	7,089,793.49
DISBURSEMENTS: (ATTACH SUPPORTING MEMO SCHEDULE B ITEMIZING DISBURSEMENTS AGGREGATING IN EXCESS OF $200 DURING THE CALENDAR YEAR)		
2. TRANSFERS TO FEDERAL OR ALLOCATION ACCOUNT FOR ALLOCABLE EXPENSES	475,521.38	4,631,723.19
3. TRANSFERS TO STATE/LOCAL CANDIDTAE SUPPORT	96,000.00	667,429.22
4. DIRECT STATE/LOCAL CANDIDATE SUPPORT	380,500.00	646,151.00
5. OTHER DISBURSEMENTS	404,268.28	1,901,140.13
6. TOTAL DISBURSEMENTS (ADD 2, 3, 4, AND 5)	1,356,289.66	7,846,443.54
SUMMARY		
7. BEGINNING CASH ON HAND (FOR COLUMN B USE CASH AS OF JANUARY 1ST)	103,195.55	840,575.43
8. RECEIPTS (FROM LINE 1)	1,337,019.49	7,089,793.49
9. SUBTOTAL	1,440,215.04	7,930,368.92
10. DISBURSEMENTS (FROM LINE 6)	1,356,289.66	7,846,443.54
1. ENDING CASH ON HAND	83,925.38	83,925.38

ITEMIZED REPORT COVERING PERIOD FROM OCT 1 93 THRU OCT 31 93 OVER $200.00

Full Name, Mailing Address and ZIP Code	Occupation/Place of Business	Date (month, day, year)	Amount of Each Receipt this Period	Calendar YTD
NRA Political Victry Fund 1600 Rhode Island Ave Nw Washington, DC 20036		OCT 6 93 OCT 8 93	125,000.00 150,000.00	275,000.00
Nat'l Assn of Chain Drug Stores Po Box 1417-D49 Alexandria, VA 22314		OCT 19 93	15,000.00	15,000.00
National Policy Forum 229 1/2 Pennsylvania Ave. Washington, DC 20003		OCT 18 93	150,000.00	150,000.00
Nationwide Insurance Co. One Nationwide Plz Columbus, OH 43216		OCT 21 93	5,000.00	5,000.00
Natl Rep Congressional Committee 320 First St Se Washington, DC 20003		OCT 22 93 OCT 8 93 OCT 8 93 OCT 28 93	25,000.00 15,316.00 13,789.30 12,500.00	319,105.30
Mr & Mrs Michael W Naumann 6307 Bostonian #3 San Antonio, TX 78218	Trucker Contract Freighters	OCT 8 93	295.00	295.00
Ms Nancy F Nelson 10 Lincoln Ave Nantucket, MA 02554	Requested but not received OCT 5 93	OCT 5 93	295.00	295.00
Rick Nelson Po Box 540 Atmore, AL 36504	Requested but not received OCT 27 93	OCT 27 93	330.00	330.00
Norwest Corporation 6th & Marquett Streets Norwest Center Minneapolis, MN 55479		OCT 27 93	5,000.00	5,000.00
Ohio Farm Bureau Feder. 141 Walnut Ridge Lane Westerville, OH 43081		OCT 14 93	330.00	330.00
Ortega Interiors 13281 Nw 43 Avenue Opa-Locka, FL 33054		OCT 21 93	250.00	250.00
Mr Jorge M Perez 3100 Sw 109th Ave Miami, FL 33165	Requested but not received OCT 6 93	OCT 6 93	295.00	295.00
Mr Charles L Pospisil 201 W Lewis New Albany, IN 47150	Requested but not received OCT 5 93	OCT 5 93	295.00	295.00

REPUBLICAN NATIONAL COMMITTEE
NON-FEDERAL FUNDS AVAILABLE



Citation Search Result Rank 1 of 1 Database
O 1987-25 FEC
Cite as: 1987 WL 61721 (F.E.C.))

1 Ricardo A. Otaola
101 New Mexico Avenue, N.W.
Washington, D.C. 20016

eptember 17, 1987

Dear Mr. Otaola:

This responds to your letter of July 21, 1987, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ('the Act'), to uncompensated volunteer services performed by a foreign national n a 1988 presidential campaign.

Your letter states that you are a Venezuelan citizen and have been in the United States for the past eight years as a student of international relations nd international business. You indicate that you have developed a great nterest in American politics and the electoral process in general. While you remain in the United States, you would like to work, without any compensation, s a volunteer for a 1988 presidential campaign. You ask whether such activity s permitted under the Act.

As a foreign national you are prohibited, either directly or through any other erson, from making a 'contribution of money or other thing of value . . . in onnection with an election to any political office . . ..' 2 U.S.C. § 441e. You state, however, that you intend to work solely as an uncompensated volunteer for a 1988 presidential candidate. Volunteer services by individuals are pecifically exempt from the definition of 'contribution' contained in the Act. The statutory language provides that 'the term 'contribution' does not include-- (i) the value of services provided without compensation by any individual who olunteers on behalf of a candidate or political committee.' 2 U.S.C. § 431(8)(B)(i). Your work as a volunteer without compensation would not, therefore, result in a contribution to a candidate because the value of ncompensated volunteer services is specifically exempted from the definition of ontribution under the Act. [FN1] See, e.g., Advisory Opinion 1984-43 (donation of corporate officer's volunteer services to appear in a candidate's TV spot not onsidered a contribution) and Advisory Opinion 1982-31 (a student may volunteer ncompensated services to a campaign without making a contribution).

This conclusion is consistent with the statutory changes Congress has made with espect to foreign nationals. The foreign national prohibition was originally nacted as 18 U.S.C. § 613 in 1966 when Congress amended the Foreign Agents Registration Act of 1938 ('FARA'). 80 Stat. 244 (1966). At that time the term 'contribution' was not subject to any statutory definition in either Title 18 or n FARA. See 18 U.S.C. § 591 (1970) and 80 Stat. 244 (1966). In the 1976 amendments to the Act, however, Congress repealed 18 U.S.C. § 613 and reenacted he foreign national prohibition as Section 324 of the Act, codified at 2 U.S.C. 441e. 90 Stat. 486, 493, 496 (1976). In doing so, Congress provided that the prohibition was governed by the definitions, and their exemptions in 2 U.S.C. § 431. Although it amended the statute in 1971, 1974, 1976, and 1979, Congress ever expanded the Act's definition of contribution, or restricted the Act's

xemptions from such definition, for purposes of the foreign national prohibition. In contrast, the prohibition has always been applicable in connection with any election whether Federal, state, or local. See 11 CFR 10.4(a)(1). Thus, by repealing and reenacting the foreign national prohibition as part of the Act in 1976, and by amending the definitions which govern interpretation of the term 'contribution' as used in the Act, Congress has imited the scope of the foreign national prohibition as to the meaning of the erm 'contribution,' while retaining the aspect of the prohibition that extends to all elections.

***2** The Commission has concluded herein that because uncompensated volunteer ervices are not considered to be a contribution under the Act, any individual, including a foreign national, may volunteer his or her uncompensated services to candidate without making a contribution to that candidate. The Commission onsidered the extent to which this conclusion conflicts with Advisory Opinion 1981-51, and by a vote of 2-4 declined to supersede or overrule Advisory Opinion 981-51.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or ctivity set forth in your request. See 2 U.S.C. § 437f.

Sincerely,

Scott E. Thomas
Chairman for the Federal Election Commission

nclosures (AO 1984-43, 1982-31, and 1981-51.)

N1 While this may appear to be a discrepancy in the Act, it seems that Congress was not only aware of this provision but chose not to correct its otential effect. Representative Bill Frenzel stated that

> . . . these loopholes make ambiguous the prohibitions on contributions in the name of another and contributions by unions, corporations and foreign nationals. ince the exemptions apply to these sections as well, if the Committee bill asses with the loopholes intact, the courts may decide that certain types of donations by unions, corporations and foreign nationals are permissible.

.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 141 (1974), reprinted in egislative History of Federal Election Campaign Act Amendments of 1974, at 775 (1977).

EDERAL ELECTION COMMISSION
AO 1987-25, 1987 WL 61721 (F.E.C.)
END OF DOCUMENT

C

NPF Forums/Conferences
(Partial list)

Date	City	Topic
11/15/93	Orlando, FL	Safe Neighborhoods
12/07/93	Fort Mitchell, KY	Improving Education
12/08/93	Cincinnati, OH	Safe Neighborhoods
12/11/93	Billings, MT	Natural Resources & Energy
02/23/94	Princeton, NJ	Legal & Regulatory Reform
02/26/94	Atlanta, GA	Reforming Health Care
02/28/94	Hampton, VA	Entrepreneurship
03/04/94	San Diego, CA	Defense
03/09/94	Detroit, MI	Small Business/Safe Neighborhood
03/10/94	Lafayette, LA	Natural Resources & Energy
03/10/94	Beloit, WI	Strengthening the family
03/14/94	Atlanta, GA	Economic Growth
03/19/94	South Bend, IN	US Leadership
03/21/94	Hempstead, NY	Small Business
03/26/94	Fresno, CA	Natural Resources & Energy
03/29/94	Dallas, TX	Safe Neighborhoods
03/30/94	Lubbock, TX	Schools & Education
04/05/94	Columbus, OH	Safe Neighborhoods
04/06/94	Portland, ME	Schools & Education
04/08/94	Sacramento, CA	Natural Resources & Energy
04/08/94	Greensboro, NC	Free Individuals/Free Society
04/09/94	New Haven, CT	Reforming Health Care
04/15/94	Trenton, NJ	Size & Scope of Government
04/15/94	Tampa, FL	Small Business
04/18/94	Richmond, VA	Schools & Education
04/20/94	Midland, TX	Natural Resources & Energy
04/23/94	Winfield, IL	Reforming Health Care
04/23/94	Irving, TX	Reforming Health Care
04/26/94	Indianapolis, IN	Legal & Regulatory Systems
04/29/94	Washington, DC	Natural Resources & Energy
05/02/94	Reno, NV	Environment

NPF Forums/Conferences
(Partial list)

Date	City	Topic
05/03/94	Rockville, MD	Economic Growth
05/05/94	Seattle, WA	Strengthening the Family
05/09/94	Pryor, OK	Schools & Education
05/09/94	Denver, CO	Environment
05/10/94	Grand Rapids, MI	Schools & Education
05/11/94	Fayetteville, NC	Defense
05/14/94	Albuquerque, NM	Defense
05/16/94	Hempstead, NY	Schools & Education
05/19/94	Little Rock, AK	Strengthening the Family
05/21/94	Northridge, CA	Global Marketplace
05/21/94	Charleston, SC	Defense
05/21/94	Salina, KS	Natural Resources & Energy
05/23/94	Knoxville, TN	Strengthening the Family
05/25/94	Cupertino, CA	Global Marketplace
05/25/94	Fairfax, VA	Safe Neighborhoods
05/26/94	Charlotte, NC	Size & Scope of Government
06/01/94	Glendale, CA	Schools & Education
06/02/94	Portland, OR	Environment
06/02/94	Jackson, MS	Economic Growth
06/03/94	San Antonio, TX	Economic Growth
06/06/94	Lebanon, MO	Small Business
06/06/94	Yorba Linda, CA	Defense
06/07/94	Houston, TX	Global Marketplace
06/08/94	Washington, DC	Environment
06/13/94	Bloomington, IL	Global Marketplace
09/17/94	Crawfordsville, IN	Energy/Small Business
12/06/94	Washington, DC	Environment
12/14/94	Denver, CO	Natural Resources & Energy
12/15/94	Salt Lake City, UT	Natural Resources & Energy
04/03/95	Washington, DC	Common Sense & Environment
04/11/95	Washington, DC	Tax Relief & Environment

NPF Forums/Conferences
(Partial list)

Date	City	Topic
04/20/95	Washington, DC	Medicare Reform
05/09/95	Washington, DC	Federal Regulatory Reform
05/10/95	Washington, DC	Trade & Economy
05/24/95	Washington, DC	Defense
06/07/95	Washington, DC	Small Business
06/08/95	Washington, DC	Health Care Reform
06/13/95	Washington, DC	Small Business
06/13/95	Washington, DC	Endangered Species
07/11/95	Washington, DC	Property Rights
08/03/95	Washington, DC	Environment
09/16/95	Washington, DC	FDA Reform
09/19/95	Washington, DC	Tax Reform
09/25/95	Washington, DC	Hi-Tech
09/26/95	Washington, DC	Energy
10/10/95	Washington, DC	Reforming FDA
10/25/95	Washington, DC	American Competitiveness
02/07/96	Washington, DC	Term Limits
05/01/96	Washington, DC	21st Century Workplace
05/14/96	Washington, DC	Financial Services

National Policy Forum

Policy Councils and Council Co-Chairs

Free Individuals in a Free Society
- William J. Bennett
- Carol Iannone

Health Care Grounded in American Values
- Nancy Johnson
- Carroll A. Campbell, Jr.

Strengthening the Family
- Nona M. Brazier
- Tommy G. Thompson

Reforming the Legal and Regulatory Systems
- Marilyn Tucker Quayle
- Robert H. Bork

Improving Schools and Education
- Lamar Alexander
- Lynn Martin

The Environment
- Gale Norton
- Bob Kasten

Safe and Prosperous Neighborhoods
- Deborah Pryce
- William P. Barr

Natural Resources, Agriculture and Energy
- Malcolm Wallop
- Wendy Lee Gramm

Economic Growth and Workplace Opportunity
- Phil Gramm
- Noel Irwin-Hentschel

Competing in the Global Marketplace
- Carla Hills
- Oren L. Benton

Entrepreneurship and Small Business
- Jack Kemp
- Michele H. Dyson

U.S. Leadership in a Changing World
- Richard G. Lugar
- Nancy Landon Kassebaum

Reducing the Size and Scope of Government
- William F. Weld
- Cheryl A. Lau

Assuring America's Security
- Dick Cheney
- Jeane Kirkpatrick