

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

**Cook 2000 Re-election Committee and
Camille Cook, as treasurer;
Merrill A. Cook; and Cook Associates, Inc.**

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CONCILIATION AGREEMENT

This matter was generated by a complaint filed with the Federal Election Commission ("The Commission") by Mike Zuhl, as chairman of the Utah State Democratic Committee. See 2 U.S.C. § 437g(a)(1). This matter was also initiated by the Commission pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Commission found reason to believe that the Cook 2000 Re-election Committee and its treasurer ("the Committee" or "Respondents") violated 2 U.S.C. §§ 434(b) and 441b during the 1996 election cycle. The Commission also found reason to believe that Merrill A. Cook and Cook Associates, Inc. ("Respondents") violated 2 U.S.C. § 441b.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Cook for Congress Committee was a political committee within the meaning of 2 U.S.C. § 431(4), and served as the authorized political committee of Merrill A. Cook in connection with his 1996 Congressional campaign. See 2 U.S.C. § 432(e)(1). In March of 1997, the Cook for Congress Committee notified the Commission via the filing of an amendment to its Statement of Organization that it had changed its name to the Cook '98 Re-election Committee. In March of 1999, the Cook '98 Re-election Committee notified the Commission via the filing of an amendment to its Statement of Organization that it had changed its name to the Cook 2000 Re-election Committee.

2. Camille Cook is the treasurer for the Cook 2000 Re-election Committee. Mrs. Cook was not the treasurer of the Committee at the time of the events in question. She is named as a Respondent herein only in her capacity as the current treasurer of the Committee. During the 1996 election cycle, Avis Lewis served as the Committee's treasurer.

3. In 1996, Merrill A. Cook was a candidate for the House of Representatives in Utah's 2nd Congressional District.

4. The R.T. Nielson Company ("Nielson") was retained by the Committee to provide campaign management services during the 1996 congressional campaign. Phillips, Twede & Spencer ("PTS") was retained by the Committee to provide advertising services during the 1996 congressional campaign.

5. Cook Associates, Inc. is a corporation within the meaning of 2 U.S.C. § 441b(a), and is headquartered in Salt Lake City, Utah. During the relevant time period, Cook Associates, Inc. was doing business under the name Cook Slurry Company.

6. At all relevant times, Merrill A. Cook was President of, and owned 100% of the stock in, Cook Associates, Inc.

7. In 1996, Avis Lewis was employed by the Respondent corporation as a secretary and office bookkeeper.

8. In 1996, Brett Jackman was an employee of the Respondent corporation.

9. The Federal Election Campaign Act of 1971, as amended, ("the Act") requires that treasurers of political committees file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1).

10. According to the Act, all campaign debts and obligations must be reported in a committee's periodic disclosure filings. 2 U.S.C. § 434(b)(8). For as long as debts remain outstanding, a political committee is required to continuously report their existence until such time as they are extinguished. 11 C.F.R. § 104.11(a). All outstanding obligations are to be reported on FEC Form 3 Schedule D, with specific references to: the amounts owed; the outstanding balance as of the beginning of the reporting period; the amounts incurred during that reporting period; payments made during that reporting period; and the outstanding balance at the close of the reporting period. Committees are also required to enclose with this schedule a statement setting out the amount(s) paid and explaining the conditions under which such obligations or debts are extinguished. 11 C.F.R. § 104.3(d). If the exact amount of the debt is not known, the report(s) shall state that the amount reported is an estimate. Once the exact amount is determined, the political committee shall either amend the reports(s) containing the

estimate or indicate the correct amount on the report for the reporting period in which such amount is determined. 11 C.F.R. §104.11(b).

11. A disputed debt is an actual or potential debt owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the committee.

11 C.F.R. § 116.1(d). A political committee must report disputed debts if a creditor has provided something of value to that committee. Disclosure includes any amounts paid to the creditor, any amount the political committee admits to owing and the amount the creditor claims is owed. Continuous reporting of the dispute is required to continue until the matter is resolved. 11 C.F.R. § 116.10.

12. Pursuant to 2 U.S.C. § 441b(a)(2), the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or anything of value. The Commission's regulations define "anything of value" to include, among other things, all in-kind contributions, i.e., "the provision of any goods and services without charge or at a charge which is less than the usual and normal charge for such goods or services...." 11 C.F.R. §§ 100.7(a)(iii) and 100.8(a)(1)(iv).

13. Pursuant to 2 U.S.C. § 441b(a), corporations are prohibited from making any expenditure or contribution, directly or indirectly, in connection with a Federal election, and their officers and directors are prohibited from consenting to such activities.

14. Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any political committee to accept or receive, directly or indirectly, any contribution made in connection with a Federal election from a corporation.

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15. Employees of a corporation may make occasional, isolated, or incidental use of corporate facilities, meaning activity which does not exceed one hour per week or four hours per month and which does not interfere with the organization's normal activities.

11 C.F.R. § 114.9(a) When an individual goes beyond "incidental use" of corporate facilities to benefit a candidate or political committee, that employee is required to reimburse the corporation for the use of those facilities at the normal and reasonable rental rate. Such reimbursements must be made within a commercially reasonable time. These categories of payments are considered in-kind contributions and as such must be reported by the benefiting campaign committee in its periodic disclosure filings. 11 C.F.R. §§ 114.9(a)(2) and 104.13. Any corporation that permits its employee's political activities to exceed the limited safe harbors afforded by the Act has violated 2 U.S.C. § 441b.

16. During the 1996 election cycle, with respect to the following debts, or disputed debts, involving Nielson, the Committee failed to report:

- a. in the 1996 April Quarterly Report (1/1/96-3/31/96) that the Committee incurred a debt of \$40,000 and that an outstanding balance of \$20,000 remained at the end of that reporting period. The Committee also did not report that payments on this outstanding debt were made during the 1996 12 Day Pre-Convention Report (4/1/96-4/14/96) and the 1996 Pre-Primary Report (4/15/96-6/5/96); during which reporting period it was extinguished;
- b. in the 1996 April Quarterly Report (1/1/96-3/31/96) that the Committee incurred a debt of \$12,000 and that an outstanding balance of \$9,000 remained at the end of that reporting period. The Committee did not report in the 1996

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12 Day Pre-Convention Report (4/1/96-4/14/96) that this outstanding debt was extinguished during that reporting period;

- c. in the 1996 Pre-Primary Report (4/15/96-6/5/96) that the Committee had incurred an estimated debt of \$50,000 and that an outstanding balance of \$22,825.03 remained at the end of that reporting period. The Committee failed to report in the 1996 July Quarterly Report (6/6/96-6/30/96) and in the 1996 October Quarterly Report (7/1/96-9/30/96) that payments were made on this outstanding estimated debt. The Committee did not report in the 1996 October Quarterly Report (7/1/96-9/30/96) that this outstanding estimated debt was extinguished during that reporting period;
- d. in the 1996 July Quarterly Report (6/6/96-6/30/96) that the Committee incurred and left outstanding at the end of that reporting period a debt of \$5,000. The Committee did not report in the 1996 October Quarterly Report (7/1/96-9/30/96) that this outstanding debt was extinguished during that reporting period;
- e. in the 1996 July Quarterly Report (6/6/96-6/30/96) that the Committee incurred a debt of \$7,625.25 and that a balance was left outstanding at the close of that reporting period. The Committee also did not report in the 1996 October Quarterly Report (7/1/96-9/30/96) that this outstanding debt, which at some point became a subject of dispute with Nielson, was extinguished during that reporting period;
- f. in the 1996 October Quarterly Report (7/1/96-9/30/96) that the Committee had incurred a debt of \$50,000 and that an outstanding balance of \$29,500 debt

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remained on that debt at the close of that reporting period. The Committee did not report in the 1996 12 Day Pre-Election Report (10/1/96-10/16/96) that the outstanding balance on this debt, which at some point, became a matter of dispute between the Committee and Nielson, was extinguished during that reporting period;

- g. in the 1996 Pre-Primary Report (4/15/96-6/5/96) that it had incurred debts amounting to \$1,938.15. This amount remained outstanding at the close of that reporting period. The Committee also did not report that the debts remained outstanding in the 1996 July Quarterly Report and failed to report that these debts were extinguished during the 1996 October Quarterly reporting period (7/1/96-9/30/96);
- h. in the 1996 July Quarterly Report (6/6/96-6/30/96) that it had incurred debts amounting to \$2,911.33. The Committee further failed to report that this amount remained outstanding at the close of that reporting period and failed to report that the debts were extinguished during the 1996 October Quarterly reporting period (7/1/96-9/30/96);
- i. in the October Quarterly Report (7/1/96-9/30/96) that it had incurred \$5,529.24 in disputed debts. The Committee also did not report in the disclosure reports that followed the existence of these disputed debts and whether or not the disputes were resolved or the debts extinguished;

17. At some point after the 1996 Primary Election and prior to the 1996 General Election, the Committee was in receipt of an invoice for \$100,000 issued by Nielson. During October 1996, the Committee made payments amounting to \$16,000 on

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this invoice and reported these disbursements in the 1996 30 Day Post Election Report. Merrill A. Cook and the Committee called into question the legitimacy of the invoice in the civil case filed by Nielson against Merrill A. Cook and the Committee following the 1996 election. The suit was heard before a jury in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah. The legitimacy of this invoice is currently one of the issues on appeal before the Utah Supreme Court. The legal requirements under the Act necessitating that the Committee disclose the \$100,000 as a debt or disputed debt and the payments made on that amount are distinct from the issue of whether the underlying invoice was legitimate. Therefore, under the Act the Committee should have reported the \$100,000 as a debt or disputed debt in disclosure reports filed with the Commission in 1996.

18. The Committee did not disclose in FEC filings that a debt to PTS incurred during the 1996 30 Day Post Election reporting period (10/17/96-11/25/96) and left outstanding at the close of that period was an estimate. The Committee did not disclose in the 1996 Year End Report (11/25/96-12/31/96) that the amount of money owed to PTS became a matter of dispute during that reporting period. The Committee did not report in the 1997 Mid-year Report (1/1/97-6/20/97) that this dispute was resolved through a negotiated settlement during that reporting period. The Committee did file an Amended 1996 30 Day Post Election Report. This report was postmarked on January 31, 1996, the same postmark date as the Committee's 1996 Year End Report. Both of these reports set forth the status of the financial relationship between the Committee and PTS as of the date the two reports were postmarked. However, the two reports should have disclosed the status of any debts, disputed debts owed to PTS and disbursements made to PTS

during the reporting specific time periods encompassed by those reports, i.e. the status of the debts or disputed debts owed to PTS and the disbursements made to PTS during the 1996 30 Day Post Election Report time period (10/17/96 - 11/25/96) and the 1996 Year End time period (11/25/96 - 12/31/96).

19. In 1996, Avis Lewis was employed at Cook Associates, Inc. as a secretary and office bookkeeper. Ms. Lewis also served as a volunteer Committee treasurer during the 1996 campaign. Ms. Lewis performed some of the duties of Committee treasurer on company time, while on company premises, utilizing company resources. Ms. Lewis' use of corporate resources in performing the duties of Committee treasurer during the 1996 election cycle went beyond the "incidental use" of corporate facilities permitted under the Commission's regulations. Ms. Lewis did not reimburse the Respondent corporation for her use of its facilities in performing her duties as treasurer for the Committee.

20. In 1996, Brett Jackman was employed by Cook Associates, Inc. During this time period, he set up, took down, transported and stored campaign signs on company time using company resources. These signs were eventually stored by Mr. Jackman at a company owned plant in Lehi, Utah. The Committee failed to report Mr. Jackman's activities or the use of these corporate resources as in-kind contributions in the Committee's 1996 FEC disclosure reports.

21. Merrill A. Cook, as an officer of the corporation, consented to Ms. Lewis' and Mr. Jackman's use of corporate resources and assets on behalf of his 1996 congressional campaign.

22. Mr. Cook and the Committee contend that the reporting violations involving Nielson as set forth in this Agreement were in part a result of Nielson's

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failure to provide the Committee with account reconciliations during the 1996 election cycle.

23. Mr. Cook and the Committee further contend that the reporting violations as set forth in this Agreement were in part the result of the failure of the individual responsible for compliance with FEC reporting and recordkeeping requirements to properly perform her duties and that the Committee has since taken steps to ensure that such violations do not occur in the future.

24. The Respondents' contend that while Brett Jackman was employed at Cook Associates, Inc. in 1996, he also volunteered for the campaign committee. It was in his capacity as a volunteer that Mr. Jackman set up, took down and transported campaign signs to a company owned trailer in Lehi, Utah. The Respondents' contend that Mr. Jackman performed these volunteer activities on the way from his home to his work site, which on some occasions might be the Salt Lake City headquarters or the plant in Lehi. Mr. Jackman performed these activities on behalf of the Committee on four (4) or five (5) occasions. The Respondents contend that Mr. Jackman's activities were voluntary and incidental to his duties at Cook Associates, Inc.

25. The Commission has determined that a higher civil penalty would ordinarily be appropriate in this type of matter. However, the Commission recognizes the unusual set of circumstances surrounding the Respondents' financial status, as detailed in financial information provided to the Commission. In light of this situation, The Commission will agree to a civil penalty of \$8,000.

V. 1. The Cook 2000 Re-election Committee and its treasurer failed to properly report debt to the R.T. Nielsen Company and Phillips, Twede & Spencer in FEC disclosure

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reports from the periods encompassed by the 1996 April Quarterly Report through the 1997 Mid-year Report, in violation of 2 U.S.C. § 434(b).

2. The Cook 2000 Re-election Committee and its treasurer failed to report Ms. Lewis' and Mr. Jackman's activities and their use of corporate resources to benefit the Committee as in-kind contributions on the Committee's 1996 FEC disclosure reports, in violation of 2 U.S.C. § 434(b).

3. The Cook 2000 Re-election Committee and its treasurer received and accepted in-kind contributions from Cook Associates, Inc. in violation of 2 U.S.C. § 441b.

4. Cook Associates, Inc., made in-kind contributions to benefit the Cook 2000 Re-election Committee during the 1996 election cycle, in violation of 2 U.S.C. § 441b.

5. Merrill A. Cook, as an officer of Cook Associates, Inc., consented to Cook Associates, Inc. making in-kind contributions to benefit the Cook 2000 Re-election Committee during the 1996 election cycle, in violation of 2 U.S.C. § 441b.

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Eight Thousand Dollars (\$8,000), pursuant to 2 U.S.C. § 437g(a)(5)(A), such payment to be paid as follows:

a. One initial payment of Five Thousand Dollars (\$5,000) due thirty (30) days from the date that this agreement becomes effective;

b. Thereafter, beginning on the first day of the following month if this agreement becomes effective during the first five days of a month, otherwise beginning on the third month following the month of the effective date of this agreement, two (2) consecutive monthly installment payments of One Thousand Five Hundred Dollars (\$1,500) each;

c. Each installment shall be paid on the first day of the month in which it becomes due.

d. In the event that any installment payment is not received by the Commission by the fifth day of the month in which it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the Respondents. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

2. The Cook 2000 Re-election Committee, and Camille Cook, as treasurer, will amend all reports currently on file with Commission to accurately reflect the status of debts, disputed debts and disbursements during the relevant time periods.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lois G. Lerner
Acting General Counsel

BY: Abigail Shaine
Abigail Shaine
Acting Associate General Counsel

7/11/01
Date

FOR THE RESPONDENTS:

William A. Cook
Name
Position 1996 Candidate
for Congress

June 8, 2001
Date