FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 9, 1998

John J. White, Jr.
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620 Kirkland Way, Suite 200
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RE: MURs 4693, 4737 and 4868
Washington State Republican Party—
Federal Account
and Al Symington, as treasurer

Dear Mr. White:

On November 14, 1997 and April 10, 1998, the Federal Election Commission ("Commission") notified your clients, the Washington State Republican Party—Federal Account, and Al Symington, as treasurer, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to your clients at those times.

Upon further review of the allegations contained in the complaints and information supplied by you, and upon review of information ascertained in the normal course of carrying out its supervisory responsibilities, the Commission, on December 4, 1998 found that there is reason to believe that the Washington State Republican Party—Federal Account, and Al Symington, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a), provisions of the Act, and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i) of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Scott E. Thomas
Acting Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RE: MURs 4693, 4737 and 4868

RESPONDENTS: Washington State Republican Party—Federal Account
Al Symington, as treasurer

I. GENERATION OF MATTER

MUR 4868 was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. 437g(a)(2). MUR 4693 was generated by a complaint filed with the Commission on November 6, 1997 by the Washington State Democratic Central Committee and Paul Berendt, the Chair ("WSDCC"). *See id.* MUR 4737 was generated by a complaint filed with the Commission on April 3, 1998 by the WSDCC. *See id.*

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

An organization which is a political committee under the Act must follow prescribed allocation procedures when financing political activity in connection with federal and non-federal elections. 11 C.F.R. §§ 102.5 and 106.5(g). These rules implement the contribution and expenditure limitations and prohibitions established by 2 U.S.C. §§ 441a and 441b. Specifically, the Act prohibits corporations and labor organizations from making contributions in connection with federal elections, and prohibits political committees from knowingly accepting such contributions. 2 U.S.C. § 441b(a). Moreover, the Act provides that no person shall make contributions to a state committee's federal account in any calendar year which in the aggregate

exceed $5,000, and prohibits the state committee from knowingly accepting such contributions. 2 U.S.C. § 441a(a) and (f).

A party committee, such as the Committee, that has established separate federal and non-federal accounts must make all disbursements, contributions, expenditures and transfers in connection with any federal election from its federal account. 11 C.F.R. § 102.5(a)(1)(i). Except for the limited circumstances provided in 11 C.F.R. § 106.5(g), no transfers may be made to a federal account from any other accounts maintained by the committee for the purpose of financing non-federal election activity. *Id.*

A state party committee that has established separate federal and non-federal accounts must pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense. 11 C.F.R. § 106.5(g)(1)(i). For each transfer of funds from a committee's non-federal account to its federal account, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 C.F.R. § 104.10(b)(3) and 11 C.F.R. § 106.5(g)(2)(ii)(A).

According to 11 C.F.R. § 106.5(g)(2)(ii)(B), funds transferred from a committee's non-federal account to its federal account may not be transferred more than 10 days before or more than 60 days after the payments are made for which the transferred funds are designated. Furthermore, if the requirements of 11 C.F.R. § 106.5(g)(2)(ii)(A) and (B) are not met, any portion of a transfer from a committee's non-federal account to its federal account shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act. 11 C.F.R. § 106.5(g)(2)(iii). Because transfers from a non-federal account to a federal account may be made solely to cover the non-federal share of an allocable expense,

transfers to a federal account for the purpose of financing purely non-federal activity are prohibited. *See* MUR 4701 (Vermont State Democratic Federal Campaign Committee); *see also* MUR 4709 (Philadelphia Democratic County Executive Committee).

B. MUR 4868

On February 26, 1997, the Commission sent the Committee a Request for Additional Information ("RFAI"), referencing the Committee's 1996 30 Day Post-General Report, which raised various questions about the report. Among other items, the RFAI notified the Committee of impermissible transfers from the non-federal account to the federal account for 100% non-federal activity.

On April 8, 1997, the Committee filed an amended 1996 30 Day Post-General Report. The Committee's accompanying letter acknowledged that, due to bookkeeping errors, the Committee had transferred $285,316.22 more from the state (non-federal) account to the federal account than it should have.[1] On May 23, 1997, the Committee confirmed that it had reimbursed its federal account from its non-federal account for 100% non-federal activity in the amount of $80,203.89. It stated that these activities, which were labeled "V-96-Kem," "FD," "TV Ad," and "Gub," did not result in any benefit to a federal candidate. The Committee also promised to repay both the amounts of $285,316.22 and $80,203.89, for a total of $365,520.11, by June 1997.

[1] Washington State law draws a distinction between "non-exempt" contributions and "exempt" contributions that is roughly analogous to the federal/non-federal distinction. "Non-exempt" contributions are subject to certain limits. Revised Code of Washington ("RCW") § 42.17.640(6). "Exempt" contributions, which are required to be used for voter registration, absentee ballot information, get-out-the-vote campaigns, and the like, are exempt from state contribution limitations. RCW § 42.17.640(14). It appears that the overtransfers at issue here came from the exempt account, as all repayments from the federal account were made to that account.

C. MUR 4693

The WSDCC's complaint, which referenced the overtransfers described in the Committee's amended 30 Day Post-General Report, stated that the Committee overtransfered $285,316.22 in non-federal funds into its federal account, and then spent over $300,000 from its federal account on "campaign mailings, phone banks, advertisements, and other get-out-the-vote activities." According to the WSDCC, the Committee "knowingly and willfully transferred these funds illegally in order to finance" these activities. Further, the WSDCC claimed that, in order to finance the transfer, the RNC transferred $400,000 to the Committee's non-federal account on October 11, 1996; one week later, on October 18, 1996, the Committee transferred $425,000 from its non-federal account to its federal account, of which $285,316.22 was later determined to be an overtransfer.

The WSDCC also charged that the Committee may have illegally funneled a $100,000 non-federal contribution from Services Group of America, Inc. ("SGA") into its federal account. According to the WSDCC, the $100,000 contribution, which was received by the Committee's non-federal account one day before the non-federal account transferred $100,000 to the federal account "deserves further investigation as to whether this amount constitutes an allocable transfer."

In response to the complaint, the Committee explained the acknowledged overtransfers by stating that, when transferring funds from its non-federal account to its federal account to reimburse the latter for the non-federal allocable share of expenses on October 18, 1996, it believed the non-federal allocation to be "not less than" $425,000. However, the Committee admitted that "during the campaign our bookkeeper was overwhelmed by the volume of

transactions and failed to keep proper track of the capacity to transfer funds to the federal account. As a result, we transferred $285,316.22 more than we should have." Additionally, the Committee's response stated that, as a result of the Commission's RFAI, it would repay the $80,203.89 in 100% non-federal fundraising expenses spent by the federal account.

The Committee stated, however, that "during the time covered by the incorrect allocation of federal expenses (October 18 through November 25, 1996), [the Washington State Republican Party] made no contributions to any federal candidates. None of the funds erroneously transferred to the federal account were received by federal candidates." The Committee also pointed out that it could legally have borrowed money to cover the 1996 shortfall "had it realized its computation of the amount eligible to be transferred to the federal account was insufficient to meet the current obligations."[2]

In addition, the Committee maintained that the $400,000 transfer from the RNC and the $100,000 contribution from SGA were entirely proper. The Committee confirmed that that it received $400,000 from the RNC, which was "properly placed in the [Washington State Republican Party's] state 'exempt activities' account." The Committee further observed that, during the month of October 1996, $2,437,729 was deposited in the state accounts, and that the "$400,000 was commingled with other deposited funds." It appears that the Committee is

[2] On April 15, 1998, Washington State's Public Disclosure Commission ("PDC") charged the Washington State Republican Party with a number of campaign law violations that allegedly occurred during the 1996 election. After auditing the Party, the PDC determined that the party had accepted contributions in excess of legal limits, given contributions to candidates in excess of legal limits, and used exempt contributions for purposes other than those allowable, among other violations. On June 23, 1998, the PDC and the Party reached a settlement whereby the Party stipulated to most of the alleged violations. Among other penalties, the Party agreed to reimburse $147,300 from its non-exempt contributions account to its exempt contributions account and to improve its internal accounting controls.

arguing that the receipt of funds from the RNC was either unnecessary and/or was unrelated to the transfer of funds from its non-federal to its federal account.

With respect to SGA's donation of $100,000 to the Committee's state exempt account, the Committee stated that its "computation of the permissible transfers from the non-federal account to the federal account to pay the non-federal share of allocable expenses was correct." The Commission has analyzed the Committee's disclosure reports and has discovered no allocation errors. Therefore, the Committee's $100,000 transfer from its non-federal fund to its federal fund appears to have been permissible.

D. MUR 4737

The WSDCC filed a second complaint charging that the Committee's 1997 Year End Report disclosed a $248,000 transfer from its non-federal account to its federal account, in violation of 11 C.F.R. § 106.5(g)(2)(iii).

The Committee's response acknowledges the overtransfer of $248,000, beginning in July 1997, which it stated that it discovered during preparation of its 1997 Year End Report. The Committee stated that it borrowed $200,000 from its bank to repay the excess transfers and was also able to repay an additional $95,000 from other funds. The Committee used this $295,000 to repay the 1997 overtransfer and some of the outstanding balance of the 1996 overtransfers.

The Committee's 1998 April Quarterly Report, filed shortly before its response to the MUR 4737 complaint, shows that it repaid the 1997 overtransfer of $248,000 and $47,000 of the outstanding balance of the 1996 overtransfers during the reporting period. The Committee's amended 1998 April Quarterly Report, filed after its response, shows that it repaid an additional

$50,000 of the outstanding balance of the 1996 overtransfers during the reporting period, leaving an unpaid balance of $139,520.11.[3]

In order to avoid "future excess transfers," the Committee pledged to begin monthly FEC reporting and to modify or replace its program with one that will "track expenses on a daily or weekly basis to ensure that transfers are supported by allocable expenses paid." The Committee's 1998 July and August Monthly Reports reflect additional repayments. The Committee's 1998 October Monthly Report reflects that the Committee has repaid the entire overtransfer.

III. CONCLUSION

The activity described above clearly shows, as the Committee acknowledged, that it made significant improper transfers from its non-federal account to its federal account. The excess transfer of $285,316.22 from the Committee's non-federal account to its federal account occurred on October 18, 1996, only eighteen days before the November 5, 1996 election. At a time when money was presumably most urgently needed, the transfer could have allowed the Committee to pay for federal expenses with impermissible non-federal funds. Indeed, an analysis of the Committee's amended 30 Day Post-General Report reveals that, without the overtransfer, the Committee would have had insufficient funds to cover expenses during the time period covered

[3] The Committee claimed that, according to its deposit records (which the Committee did not provide), it placed funds that were eligible for the federal account into the non-federal account instead. For example, the Committee stated that checks from individual donors who had not reached their federal contribution limits and checks from unincorporated businesses were deposited into the non-federal account, rather than into the federal account. The Committee has not quantified the full extent to which eligible federal funds were deposited into the non-federal account, but it believes that a "significant amount" was so deposited. The Committee requested that this be considered a "factor in mitigation of the 1996 and 1997 excess transfers." However, 11 C.F.R. § 102.5(A)(2)(i) states that only "[c]ontributions designated for the federal account" may be deposited in a political committee's federal account. Therefore, contrary to the Committee's argument, these contributions were not eligible to be deposited in the federal account unless the donors had so designated them.

by the 30 Day Post-General Report, October 16, 1996-November 25, 1996.[4] Therefore, there is reason to believe that the Washington State Republican Party--Federal Account and Al Symington, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a), and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i).

[4] The Commission added $39,721.61 in beginning cash on hand, $44,833.38 in contributions, a $5,000 transfer from affiliated/other party committees, $27,246.17 in loan repayments received, $17.80 in other federal receipts, and $966,240.39 in transfers from nonfederal accounts for joint activity. The total is $1,083,059.40. The Commission then subtracted total disbursements of $1,354,669.69, and ended up with -$271,610.25. Thus, the excess transfer of $285,316.22 made the difference between having enough cash to cover expenses and lacking the funds to do so.