BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Republicans for Choice Political Action Committee	)	MUR 5173
and Ann E.W. Stone, as treasurer	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that Republicans for Choice Political Action Committee and Ann E.W. Stone, as treasurer ("Respondent" or "the Committee") violated 2 U.S.C. § 441b(a) by knowingly accepting prohibited contributions in the form of loans from Direct Marketing Finance & Escrow, Inc. ("DMFE"); violated 2 U.S.C. § 434(b)(8) by failing to properly report the loan from DMFE; violated 11 C.F.R. § 102.5(a) by failing to pay federal expenditures totaling $282,594 from its federal account; violated 2 U.S.C. § 434(b) by misstating its cash-on-hand, receipts and disbursements for 1995 and 1996; violated 2 U.S.C. § 434(b)(3)(A) by failing to identify the occupation and name of employer for individual contributors itemized on its disclosure reports; and violated 2 U.S.C. § 434(b)(8) by reporting vendor adjustments of debts and obligations that did not occur on its 1995 and 1996 amended reports filed in August 1999.

NOW, THEREFORE, the Commission and the Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

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

III. Respondent enters voluntarily into this agreement with the Commission.

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

1. Respondent is a political committee within the meaning of 2 U.S.C. § 431(4), which maintains its headquarters in Alexandria, Virginia.

2. Ann E. W. Stone is the treasurer of the Committee.

3. The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 ("the Act") provides that a contribution includes any gift, subscription, loan, advance, deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). "Anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

4. A loan includes a guarantee, endorsement, and any other form of security. 11 C.F.R. § 100.7(a)(1)(i). A loan which exceeds the contribution limitations shall be unlawful whether or not it is repaid. *Id.* A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 C.F.R. § 100.7(a)(1)(i)(B). However, a loan of money by a state bank, federally chartered depository institution, or a depository institution where the accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Association and made in the ordinary course of business are not considered contributions as long as certain conditions are met. 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. § 100.7(b)(11).

5. Corporations are prohibited from making contributions in connection with a federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). No candidate, political committee or other person shall knowingly accept or receive a prohibited contribution. *Id.* A prohibited

contribution includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services or anything of value." 2 U.S.C. § 441b(b)(2).

6. Each political committee which finances political activity in connection with both federal and non-federal elections shall either establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections, or establish a separate federal account in a depository in accordance with 11 C.F.R. part 103. 11 C.F.R. § 102.5(a)(1). If the political committee establishes a separate federal account, the account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of 11 C.F.R. parts 102 and 104. 11 C.F.R. § 102.5(a)(1)(i). Only funds subject to the prohibitions and limitations of the Act shall be deposited in the separate federal account. *Id.* All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. *Id.* No transfers may be made to such federal account from any other account(s) maintained by the political committee for the purpose of financing activity in connection with non-federal elections, except as provided in 11 C.F.R. §§ 106.5(g) and 106.6(e). *Id.* Administrative expenses shall be allocated between the federal account and any other account maintained by the committee for the purpose of financing activity in connection with non-federal elections. *Id.*

7. Nonconnected committees that make disbursements in connection with federal and non-federal elections shall make those disbursements either entirely from funds subject to the prohibitions and limitations of the Act or from accounts established pursuant to 11 C.F.R. § 102.5. 11 C.F.R. § 106.6(a). Allocable expenses include: 1) administrative expenses including

rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate; 2) direct costs of a fundraising program or event where federal and non-federal funds are collected; and 3) generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. 11 C.F.R. § 106.6(b).

8. Administrative expenses and costs of generic voter drives are allocable according to the funds expended method, which allocates expenses based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. 11 C.F.R. § 106.6(c). The committee shall estimate and report this ratio at the beginning of each federal election cycle, adjust the ratio on each periodic report to reconcile it with the ratio of actual federal and non-federal disbursements made, and transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. *Id.*

9. Each treasurer of a political committee shall file reports disclosing, *inter alia*, the committee's cash-on-hand; total receipts, including contributions, transfers, loans, refunds and rebates, dividends and interest; and the total amount of disbursements, including expenditures, transfers, loan repayments, refunds, contributions made, and independent expenditures. 2 U.S.C. § 434(b)(1), (2), and (4); 11 C.F.R. § 104.3.

10. Committees are required to report the amount and nature of outstanding debts and obligations owed by or to the committee. 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.3(d). When a committee obtains a loan or establishes a line of credit it must report the date of the loan, the loan amount, the interest rate and repayment schedule, and certification from the lending institution that the loan or extension of credit was made on terms and conditions no more favorable than for

other customers with similar credit worthiness. 11 C.F.R. § 104.3(d)(1). Committees must also report each time a loan or line of credit is restructured to change the terms of repayment. 11 C.F.R. § 104.3(d)(3). Where debts and obligations are settled for less than their reported amount or value, each report shall contain a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the amount paid. *Id.*

11. Committees are also required to disclose the identification of each person who makes a contribution or provides a dividend, interest or other receipt to the committee aggregating in excess of $200 within the calendar year together with the date and amount of the contribution or receipt. 2 U.S.C. §§ 434(b)(3)(A) and (G); 11 C.F.R. §§ 104.3(a)(2)(i)(A), 104.3(a)(4)(i) and (vi), and 104.8. In the case of an individual, identification means the name, mailing address, occupation and name of employer of the individual. 2 U.S.C. §§ 431(13); 11 C.F.R. § 100.12.

12. DMFE is incorporated in the state of Florida. Previously, DMFE was a corporation in the state of Virginia.

13. Raymond J. Bowie is the president of DMFE.

14. Ann E.W. Stone & Associates ("ASA") was a corporation in the state of Virginia that provided direct mail services to the Committee. Ann E. W. Stone was the president of ASA.

15. On August 23, 1991, the Committee, DMFE, and ASA signed the initial "Finance and Escrow Agreement" providing that DMFE was to extend money, on behalf of the Committee, to vendors providing postage, mailing, donor lists and other fundraising services. In return, the Committee was to pay 6.75% interest per month as it repaid the loan. Ann E. W. Stone signed this agreement on behalf of ASA, referred to in the agreement as the "Agency." Lara Lynn Jones signed the agreement as treasurer of the Committee, the "Client," and Raymond Bowie signed as president of DMFE. Repayment was to be made from an escrow account.

16. From September 1991 through March 1994, DMFE expended $1,066,413.20 (including interest) on behalf of the Committee in the form of payments to Committee vendors for postage, mailing lists, and other goods and services associated with the Committee's mail fundraising activities. Funds advanced by DMFE were used for federal and non-federal activities. DMFE spent $398,487 for federal election activity.

17. On April 23, 1993, the Committee and DMFE entered into an agreement that consolidated the loans DMFE made to the Committee. Under the terms of the new agreement, the Committee was to repay the loan to DMFE over four years at an interest rate of 54% per year.

18. This agreement and the agreements in 1994 and 1997 were signed by Ann E. W. Stone, on behalf of the Committee, and Raymond J. Bowie on behalf of DMFE. These consolidation and amendment agreements were between DMFE and the Committee and did not include ASA.

19. On September 9, 1994, the Committee and DMFE again altered the terms of the loan repayment and agreed to consolidate the accrued interest of $144,538.18. The Committee agreed to repay the principal over five years at an interest rate of 42% per year and the accrued interest over five years at a 0% interest rate.

20. On May 26, 1997, the Committee and DMFE signed a revised loan settlement and repayment plan which amended all previous agreements. Under this agreement, the Committee agreed to repay the principal amount owed at an interest rate of 10% annually over ten years. The agreement also provided that if the Committee made payments as outlined in the amended agreement, then DMFE would "forebear (sic) upon the collection of any additional accrued interest, late charges, or other penalties having arisen under the parties' existing" agreements.

21. DMFE's payment of funds on behalf of the Committee constituted a loan which was a corporate contribution to the Committee. Each re-negotiation of the loan resulted in benefits to the Committee in the form of lower interest rates and an extended use of the DMFE money.

22. The Committee did not report the loans from DMFE on its Schedule C during the 1995-1996 election cycle or on its amended reports for that period filed in August 1999. These reports disclosed interest payments made to DMFE from the Committee's federal and non-federal accounts, but did not reveal the loan owed to DMFE. The Committee did not correct this problem on its amended reports filed on April 18, 2001; rather, it reported the DMFE loans as a disputed debt on Schedules D.

23. The Committee allocated administrative and generic voter drive expenses totaling $566,462 between its federal and non-federal accounts in 1995 and 1996 using incorrect allocation ratios. In 1995, the Committee allocated 20% of administrative and generic voter drive expenses to its federal account and 80% to its non-federal account; in 1996, the Committee allocated these expenses 50% federal and 50% non-federal. The correct allocation ratios were 76% federal and 24% non-federal for 1995 and 99% federal and 1% non-federal for 1996.

24. Based on the correct allocation ratios, the Committee's federal account should have paid $514,519 for the administrative and generic voter drive expenses, but paid only $231,925. Thus, the federal account underpaid its share of administrative and generic voter drive expenses by $282,594 and the Committee failed to pay federal expenditures totaling $282,594 from its federal account. The Committee reported a debt of $282,594 owed to its non-federal account for these expenses on its 1996 amended Schedules D, filed in August and October 1999.

25. A reconciliation of the Committee's disclosure reports to its bank activity revealed misstatements of the amounts of cash-on-hand, total receipts, itemized receipts and

disbursements for 1995 and 1996. On its 1995 reports, the Committee understated beginning cash-on-hand by $9,098, total receipts by $480,606, and disbursements by $488,811. The Committee's 1996 reports understated receipts by $308,207 and disbursements by $333,772 and overstated ending cash-on-hand by $24,291. The Committee disclosed only 20% of itemized receipts in 1995 and 50% in 1996.

26. Although the Committee filed amended reports for 1995 and 1996 in August 1999, the Committee did not correct some of the misstatements and made a number of additional errors. Specifically, the amendments understated cash-on-hand by $9,098 as of January 1, 1995, reported transfers that did not occur totaling $112,014 in 1995 and $208,251 in 1996, did not disclose $9,706 of dividends or interest and $3,856 of refunds and rebates and did not properly itemize contributions in excess of $200. With respect to disbursements, the Committee's amendments under-reported transfers by $29,623 for 1995, did not disclose $30,574 in contributions to federal candidates and committees that had been disclosed on its original 1995 and 1996 reports, did not disclose $27,279 of other federal operating expenditures that had been disclosed on its original 1996 reports and did not include on Schedule H 4 shared federal/non-federal expenditures totaling $303,348 in the reported totals for 1995 or itemize $115,507 in shared expenditures for 1995 and 1996.

27. The Committee filed amended reports for 1995 and 1996 on April 18, 2001 that did not correct many of the misstatements on the 1999 amendments.

28. The Committee failed to identify the occupation and name of employer for individual contributors itemized on its disclosure reports, although the Committee had most of this information in its records. For the 1995 reports, 28 of 51 itemized contributions reviewed did not include the occupation and name of employer information, for 1996 13 of 36 contributions

reviewed did not have the information. In most cases, the missing contributor information was in solicitation responses from the contributors in the Committee's records; however, the itemized entries on the Committee's reports did not include the information, but stated "Best Efforts."

29. The Committee filed amended reports for 1995 and 1996 in August 1999, which continued to disclose improper contributor occupation and name of employer information. Of 41 itemized entries reviewed that did not include occupation and name of employer information on the Committee's original reports, 35 were not disclosed on the amendments, two stated that information was requested although the information was available in the Committee's records, and the required information was provided for only four.

30. The Committee failed to properly report its debts and obligations when it filed amended debt schedules for 1995 and 1996 in August 1999 that disclosed that debts owed to 11 vendors were "Adjusted by Vendor" when no adjustments actually occurred. The Committee filed comprehensive amended reports for 1995 and 1996 on August 16, 1999 (1995) and August 20, 1999 (1996). The Committee's amended debt schedules for 1995 and 1996 filed in August 1999 included annotations stating that a total of $223,590 in debts owed to 11 vendors were "Adjusted by Vendor."

31. The 1995 amended schedules stated that one debt of $1,060, owed to Gannon, McCarthy, Mason, Ltd. ("Gannon") was "vendor adjusted." The 1996 amended schedules stated that the following debts were "Adjusted by Vendor:" ASA ($92,393.60); Saturn Corporation ($40,910.58); Diversified Data Processing & Consulting dba Diversified Data & Communications, Inc. ("Diversified") ($18,400); Valley Press ($53,866.85); Direct Approach ($5,828.01); The Widmeyer Group ($3,082.50); Palmer Technical Services ($4,441.65); Touch Tone Marketing ($876.30); Chicago Telemarketing ($910.02) and Larry McCarthy ($1,820).

32. The Committee filed amended 1995 and 1996 Schedules D with its April 18, 2001 response. These amended schedules differ in several respects from the amended schedules filed by the Committee in Augus: 1999: they do not state that the debts owed to the vendors were "Adjusted by Vendor," and many of the figures have changed significantly. For example, the amount listed as incurred in 1995 for ASA was reduced from $96,231.34 on the 1999 amendments to $3,837.74 on the 2001 amendments, the outstanding balance at the end of 1995 and the beginning of 1996 changed from $103,192.20 to $10,798.60, and the amount incurred in 1996 changed from "(92,393.60) Adjusted by Vendor" to $0.00. Similarly, for Saturn Corporation, the amount listed as incurred in 1995 changed from $93,478.46 to $52,567.88, the outstanding balance at the end of 1995 and the beginning of 1996 changed from $96,493.50 to $55,582.92 and the amount incurred in 1996 changed from "(40,910.58) Adjusted by Vendor" to $0.00. Thus, the Committee changed many of the figures reported in the 1999 amendments as well as deleting or changing the annotations concerning vendor adjustments.

33. The Committee erroneously reported adjustments by these vendors that the vendors actually did not make. The vendors did not made adjustments in the debts the Committee owed to them in the amounts reported by the Committee. Several vendors, including Saturn Corporation, Diversified and Valley Press denied that they forgave any debt owed by the Committee. According to Diversified, there was no credit or reduction to the Committee's debt in 1996 and the Committee had paid the balance by August 5, 1996. In addition, documents obtained from Saturn Corporation do not reflect any debt forgiveness or adjustment of $40,910.55; to the contrary, they indicate that Saturn made efforts to obtain payment from the Committee. Monthly statements Saturn Corporation sent to the Committee do not reflect any

large adjustment and indicate balances owed between $34,640.67 and $41,896.03 in 1995 and 1996.

V. 1. Respondent violated 2 U.S.C. § 441b(a) by knowingly accepting prohibited contributions in the form of loans from Direct Marketing Finance & Escrow, Inc.

2. Respondent violated 2 U.S.C. § 434(b)(8) by failing to properly report the loan from Direct Marketing Finance & Escrow, Inc.

3. Respondent violated 11 C.F.R. § 102.5(a) by failing to pay federal expenditures totaling $282,594 from its federal account.

4. Respondent violated 2 U.S.C. § 434(b) by misstating its cash-on-hand, total and itemized receipts, and disbursements for 1995 and 1996.

5. Respondent violated 2 U.S.C. § 434(b)(3)(A) by failing to identify the occupation and name of employer for individual contributors itemized on its disclosure reports.

6. Respondent violated 2 U.S.C. § 434(b)(8) by reporting vendor adjustments of debts and obligations that did not occur on its 1995 and 1996 amended reports filed in August 1999.

VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of ninety-thousand dollars ($90,000), pursuant to 2 U.S.C. § 437g(a)(5)(A), such penalty to be paid as follows:

a. One initial payment of $15,000 due on ~~June~~ August 15, 2002;

b. Thereafter, beginning on ~~September 1~~ November 15, 2002, 5 consecutive quarterly payments of $15,000 each for a total of 6 payments over 18 months from the date of this agreement;

c. Each such installment shall be paid on the ~~first~~ fifteenth 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~~ 20th 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 Respondent. 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.

e. The Commission would not ordinarily agree to accept an installment payment plan extended over 18 months. However, based on Respondent's representations that it has limited cash on hand and that it is an ongoing committee with a reasonable expectation of cash flow over the installment period, the Commission has agreed to accept an installment plan in this matter.

2. A representative of Respondent, who will have ongoing responsibility for the submission of its disclosure reports, will meet with staff of the Commission's Reports Analysis Division to review the requirements for its disclosure reports and will promptly correct any errors in its 2002 reports.

3. Respondent will pay, from its federal account, 25% of all net contributions received by Respondent after the date this agreement becomes effective either to United States local, state or federal governments, to tax-exempt organizations described in Section 501(c) of the Internal Revenue Code, or for other non-federal election purposes, until a total of $258,094 has been so paid by Respondent. "Net Contributions" for the purposes of this agreement shall mean gross

federal contributions received by Respondent, less direct fundraising expenses paid by Respondent, after the date this agreement becomes effective.

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. Respondent shall have no more than thirty (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.

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:

Lawrence H. Norton
General Counsel

June 4, 2002
Date

FOR THE RESPONDENT:

Republicans for Choice Political Action Committee
and Ann E.W. Stone, as treasurer

By: J. Curtis Herge
General Counsel

May 20, 2002
Date