



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUN 17 2003

Charles R. Spies, Deputy Counsel  
Republican National Committee  
310 First Street Southeast  
Washington, D.C. 20003

RE: MUR 5197  
Republican National Committee and  
Michael L. Retzer, as treasurer

Dear Mr. Spies:

On April 23, 2001, the Federal Election Commission notified your clients, the Republican National Committee and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on June 10, 2003, found that there is reason to believe the Republican National Committee and Michael L. Retzer, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 104.8(e), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, 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 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.

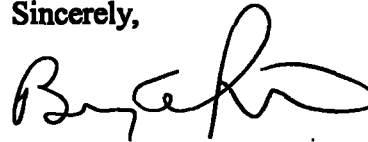
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily 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 matter to be made public. If you have any questions, please contact Michael E. Scurry, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Vice Chairman

Enclosures  
Factual and Legal Analysis  
Conciliation Agreement

24-04-407-0220

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Republican National Committee MUR: 5197  
5 and Michael L. Retzer, as treasurer  
6  
7

8 This matter was generated by a complaint filed with the Federal Election Commission by  
9 John Berthoud, President of the National Taxpayers Union ("Complainant"), *see* 2 U.S.C.  
10 § 437g(a)(1), and on the basis of information ascertained by the Commission in the normal  
11 course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). Complainant  
12 alleged that the Republican National Committee and Michael L. Retzer, as treasurer  
13 ("Respondents"), violated provisions of the Federal Election Campaign Act of 1971, as amended  
14 ("the Act").

15 **I. LAW<sup>1</sup>**

16 The Act prohibits "any corporation organized by authority of any law of Congress" from  
17 making "a contribution or expenditure in connection with any election to any political office."  
18 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political committee, or other person"  
19 from knowingly accepting or receiving "any contribution prohibited by this section." *Id.*

20 For purposes of Section 441b, the terms "contribution" and "expenditure" include "any  
21 direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services,  
22 or anything of value . . . to any candidate, campaign committee, or political party or organization,  
23 in connection with any election to any of the offices referred to in" Section 441b.

24 The Act excludes from the definition of contribution:

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<sup>1</sup> The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Factual and Legal Analysis exclude the changes made by BCRA.

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any gift, subscription, loan, advance, or deposit of money or anything of value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.

2 U.S.C. § 431(8)(B)(viii). This is the so-called "building fund exemption." *See, e.g.*, Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, and 1983-8. Funds falling under the building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore, national and state committees of political parties may accept donations covered by the building fund exemption from corporations organized by authority of any law of Congress. *See id.* The provisions of the building fund exemption apply only to "a national or a State committee of a political party" and not to other committees, such as local party committees or PACs. *See* Advisory Opinions 1988-12, 1996-8, and 1978-78.

National party committees must report receipts to the committee's non-federal account aggregating in excess of \$200 in a memo Schedule A. *See* 11 C.F.R. § 104.8(e).

## II. COMPLAINT

On April 23, 2001, Respondents were notified of the complaint.<sup>2</sup> The complaint alleged that "two Congressionally-chartered corporations, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae)" made contributions to the non-federal accounts of several national party committees in violation of 2 U.S.C. § 441b(a). After a discussion of the applicable law, the complaint stated, "Fannie Mae

<sup>2</sup> The Republican National State Elections and RNC Committee to Preserve the Dwight D. Eisenhower National Republican Center were originally notified as respondents. Both are non-federal accounts of the Republican National Committee. The Republican National Committee responded on behalf of its non-federal accounts in this matter and appears as a respondent along with its treasurer. Additionally, Robert M. Duncan served as treasurer of this committee at the time the complaint was filed.

1 and Freddie Mac are strictly prohibited from making contributions to the nonfederal accounts of  
2 national party committees which are used to influence federal, state, or local elections."

3 The complaint included "a 1997-2000 summary report of soft money donations to  
4 nonfederal accounts" by Freddie Mac and Fannie Mae,<sup>3</sup> which named the accounts involved in  
5 the alleged violations and gave the dates and amounts of the contributions in question.

6 Complainant stated that "some of these contributions may have been made to permissible  
7 'building fund' accounts." Nevertheless, the complaint calculated that Fannie Mae's  
8 "non-building soft money donations totaled almost \$340,000" and that "Freddie Mac's  
9 non-building soft money donations totaled slightly in excess of \$400,000." The complaint  
10 requested that the Commission "examine the building fund contributions (in excess of \$1 million  
11 by Fannie Mae and in excess of \$2.4 million by Freddie Mac) to ensure that these funds were not  
12 diverted to prohibited nonfederal accounts."

### 13 **III. RESPONSE**

14 By letter dated May 10, 2001, the Republican National Committee, through counsel,  
15 submitted a response to the complaint. With regard to Fannie Mae's payments to the Republican  
16 Governors Association ("RGA"), the response explained that the RGA "operates within and  
17 reports through the Republican National State Elections Committee ('RENSEC'). RENSEC is  
18 the RNC's non-federal component." The response then stated that from 1998 to 2000 the RGA

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<sup>3</sup> This summary report apparently was created by running a transaction query (data by individual) on the Commission's website. Complainant apparently used the names "Fannie Mae" and "Freddie Mac" as the last names in this individual search. The receipts generated were attached to the complaint. The complaint did not include receipts generated using "FannieMae" as the last name or "Mac, Fannie" and "Mac, Freddie" as the last and first names, which would have included more Fannie Mae and Freddie Mac donations. This caused the complaint to exclude \$496,250 in receipts reported from Fannie Mae and Freddie Mac from 1997-2000.

Furthermore, subsequent to the complaint, the Republican National Committee's non-federal account reported a contribution of \$250,000 from Freddie Mac as received on 12/20/01. See discussion on pages 4-5, *infra*.

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1 deposited \$51,470 in contributions from Fannie Mae in the RENSEC account.<sup>4</sup> The response  
 2 stated that the Republican National Committee refunded \$51,470 to Fannie Mae after receiving a  
 3 fax from Fannie Mae on April 19, 2001, which it included as Attachment 1 to its response. The  
 4 response stated that this fax requested the \$51,470 amount "be either redesignated to the  
 5 Eisenhower Building Fund, or be refunded." The response included, as Attachment 2, copies of  
 6 the refund letter and check to Fannie Mae. The Republican National Committee claimed that it  
 7 "at no point knowingly accepted or received any contribution prohibited by 2 U.S.C. § 441b(a)."<sup>5</sup>

#### 8 IV. ANALYSIS

9 Fannie Mae and Freddie Mac are corporations organized by authority of laws of  
 10 Congress, 12 U.S.C. § 1716 *et seq.* and 12 U.S.C. § 1451 *et seq.*, respectively, and therefore may  
 11 not make any contribution in connection with any election to any political office. 2 U.S.C.  
 12 § 441b(a). The Republican National Committee deposited \$51,470 of Fannie Mae's  
 13 contributions to the RGA into the Republican National State Elections Committee account that  
 14 might have been used to support state or local candidates for election in violation of 2 U.S.C.  
 15 § 441b(a). The \$51,470 contribution from Fannie Mae consists of \$40,000 referenced in the  
 16 complaint, another \$10,000 not referenced in the complaint but reported by the Republican  
 17 National Committee as having been received on 03/30/00, and \$1,470 not reported by the  
 18 Republican National Committee. The response brought this \$1,470 non-reported amount to the

<sup>4</sup> This \$51,470 amount includes the \$40,000 in total contributions from Fannie Mae addressed in the complaint as well as \$11,470 not addressed in the complaint. The Republican National Committee reported \$10,000 of this \$11,470 as received from Fannie Mae on March 30, 2000. The Republican National Committee apparently did not report the remaining \$1,470.

<sup>5</sup> The response acknowledged that the Republican National Committee received donations to the RNC Committee to Preserve the Dwight D. Eisenhower National Republican Center ("Eisenhower Building Fund") from Freddie Mac. According to the response, "[T]he RNC does not use the Eisenhower Building Fund for any activity in connection with any election to any political office."

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1 attention of the Commission. Respondents appear to have violated the Commission's regulation  
2 at 11 C.F.R. § 104.8(e) by failing to report this \$1,470 receipt in a memo Schedule A.

3 In addition, subsequent to its response, the Republican National Committee reported, in  
4 its 2001 Year End Report, receipt by an account other than its building fund account of a  
5 \$250,000 contribution from Freddie Mac dated 12/20/01. There is no information in hand  
6 indicating that this \$250,000 contribution has been either redesignated to a building fund account  
7 or refunded to Freddie Mac. Disclosure reports indicate that the Republican National Committee  
8 placed this \$250,000 contribution into its non-federal account during the same year it refunded  
9 \$51,470 from the very same account to Fannie Mae.

10 Therefore, there is reason to believe that the Republican National Committee and  
11 Michael L. Retzer, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 104.8(e).

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