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2550 M Street, NW
Washington, DC 20037-1350
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

July 7, 2003

Benjamin L. Ginsberg
(202) 457-6405
bginsberg@pattonboggs.com

Michael Scurry, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2003 JUL -8 A 11: 36

Re: MUR 5197

Dear Mr. Scurry:

Pursuant to 11 C.F.R. §§ 111.16(c) and 111.18(d), Respondents National Republican Senatorial Committee ("NRSC") and Stan Huckaby, as treasurer ("NRSC") respectfully submit this response through counsel to the General Counsel's Factual and Legal Analysis of June 17, 2003. These events occurred two election cycles ago under a very different set of election laws and under different leadership at the NRSC. Mindful of the change in statutes that terminated the committees and accounts that received the contributions at issue, the NRSC wishes to conciliate this matter under reasonable terms.

Background

On April 13, 2001, the National Taxpayers Union ("NTU") filed a complaint against the Federal Home Loan Mortgage Corporation (Freddie Mac); the Federal National Mortgage Association (Fannie Mae); and the Building Fund and Nonfederal accounts of the National

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Republican Senatorial Committee ("NRSC"), and their Assistant Treasurer, D. Jan McBride. *See* Complaint at 1; *see also* General Counsel's Factual and Legal Analysis at 2, n.2.

Pursuant to the passage of the Bipartisan Campaign Reform Act of 2002, the NRSC terminated on January 1, 2003 both the Nonfederal Account and the Building Fund that are the subject of this Complaint. Jan McBride, who was named in the complaint as the NRSC's assistant treasurer, is no longer at the NRSC. Thus, the actual respondents to the complaint have ceased to exist or left the organization since the NRSC filed the July 11, 2001 response discussed in the Factual and Legal Analysis. That response stated that each of the Fannie Mae donations were deposited into the NRSC-Building Fund account, which was used exclusively for the purpose of construction or purchase of a building, in accordance with 2 U.S.C. § 431(8)(B)(viii). Eight of the twelve donations from Freddie Mac to the NRSC were properly deposited in the Building Fund account, which was used exclusively for the purpose of construction or purchase of a building, in accordance with 2 U.S.C. § 431(8)(B)(viii). *Id.* at 4. The NRSC conceded, however, that the October 14, 1999, donation from Freddie Mac of \$100,000 referenced in the complaint was improperly deposited in the Nonfederal account, in apparent violation of 2 U.S.C. § 441b. *Id.* The NRSC on its own discovered a July 17, 2000, donation from Freddie Mac of \$30,000 improperly deposited in the Nonfederal account. *Id.* The NRSC refunded all \$130,000 in impermissible donations to Freddie Mac on July 11, 2001. Factual and Legal Analysis at 5.¹

¹ It appears that one additional Freddie Mac donation, discovered by the General Counsel in the course of its investigation, was also improperly deposited by the NRSC in the Nonfederal account. This was a July 18, 2000,

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Discussion

Since this series of contributions at issue began, half the FEC Commissioners have been sworn in, the country has elected a new President, the majority in the Senate has switched, there have been two new Chairs of the NRSC and two other counsel, and the NRSC has come to be organized under a drastically different set of campaign finance laws. Also, since the NRSC filed its response, it has terminated the accounts cited in this Matter and fully refunded all three contributions at issue. *See Factual and Legal Analysis at 5, n.6.*

While there is an issue whether this Matter is now moot given the termination of the Nonfederal Account and the Building Fund, the NRSC is willing to conciliate given the cost of litigation and the passage of time and personnel. However, the obvious truth is that given BCRA, it is not possible for this violation to recur and the ultimate civil penalty of prohibiting all non-federal contributions has already been rendered.

In eliminating the accounts at issue and, therefore, the possibility that such activity could occur in the future, BCRA has also drastically reduced the NRSC's ability to pay civil penalties -- penalties designed to bring about conformity with a standard radically altered by operation of law. Since it has no Building Fund or Nonfederal accounts, there is no danger, post-BCRA, that the NRSC (or any other national party committee) will place building fund donations in a Non-Federal account. These facts should not be lost in arriving at a civil penalty. BCRA has changed

donation from Freddie Mac in the amount of \$250. *Id.* The NRSC was not aware of this donation until it received the Factual and Legal Analysis in this matter. If it had been aware of this \$250 donation at the time it made the other refunds, it would have included this amount. The NRSC refunded this amount from federal funds on July 2, 2003. *See Affidavit of Mindy Fitzwater, Assistant Treasurer, attached as Exhibit 1.*



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the standard to which the NRSC must conform.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Benjamin L. Ginsberg', written over a horizontal line.

Benjamin L. Ginsberg

24-04-407-0288


AFFIDAVIT OF MINDY FITZWATER

DISTRICT OF COLUMBIA:

Mindy Fitzwater, after being duly sworn, deposes and says as follows:

1. I am Mindy Fitzwater, and am the Assistant Treasurer of the National Republican Senatorial Committee ("NRSC"). I make this affidavit with personal knowledge of the facts set forth herein.
2. Upon review of the Factual and Legal Analysis of the General Counsel of the Federal Election Commission in MUR 5197, I reviewed our accounts in search of a July 18, 2000, donation from the Federal Home Loan Mortgage Corporation ("Freddie Mac") in the amount of \$250.
3. I discovered such a donation in a Nonfederal account, and not within the Building Fund account.
4. On July 2, 2003, I refunded \$250 to Freddie Mac. The attached letter and check were created by me or at my direction, and correctly represent the refund.

The above is true and correct to the best of my knowledge, information, and belief.


Mindy Fitzwater

Sworn to and subscribed before me this 17th day of July, 2003.


Notary Public

24-04-407-0289

STATEMENT OF DESIGNATION OF COUNSEL

MUR 5197

NAME OF COUNSEL: Benjamin L. Ginsberg

FIRM: Patton Boggs LLP

ADDRESS: 2550 M Street NW
Washington, DC 20037

TELEPHONE: (202) 457-6000

TELEFAX: (202) 457-6315

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

7/7/03
Date


Mindy Fitzwater, Assistant Treasurer

RESPONDENT'S NAME: National Republican Senatorial Committee and Stan
Huckaby, as Treasurer

ADDRESS: 425 2d Street N.E.
Washington, DC 20002

TELEPHONE: (202) 675-6034

TELEFAX: (202) 675-6058

24-04-407-0290