BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5322
Gordon Smith for U.S. Senate, Inc. (96) and	)	
Stan Huckaby, in his official capacity as treasurer	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Neel Pender of Bill Bradbury for U.S. Senate and by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Gordon Smith for U.S. Senate, Inc. (96) and Stan Huckaby, in his official capacity as treasurer ("Respondents"), violated 2 U.S.C. §§ 434(b)(3)(E), 434(b)(4)(D) and 434(b)(8).

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).

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]

1. Gordon Smith for U.S. Senate, Inc. (96) is a political committee within the meaning of 2 U.S.C. § 431(4), and is the authorized principal campaign committee for Gordon H. Smith's 1996 Senatorial campaign.

2. Stan Huckaby is the treasurer of Gordon Smith for U.S. Senate, Inc. (96).

3. The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that the treasurer of a political committee shall file reports of receipts and disbursements in accordance with 2 U.S.C. § 434. *See* 11 C.F.R. § 104.3.

4. Any candidate who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered, for purposes of this Act, as having received the contribution or loan, or as having made the disbursement, as the case may be, as agent of the authorized committee of such candidate. 2 U.S.C. § 432(e)(2). Each report filed by such committee shall disclose, *inter alia,* loans made by or guaranteed by the candidate and all other loans. 2 U.S.C. § 434(b)(2)(g). Each report shall also identify each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan. 2 U.S.C. § 434(b)(3)(E). Furthermore, for authorized committees, each report shall disclose the disbursements relating to

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[1] All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

repayment of loans made or guaranteed by the candidate. 2 U.S.C. § 434(b)(4)(D). Finally, each report shall disclose the amount and nature of outstanding debts. 2 U.S.C. § 434(b)(8).

5. At the time relevant to this matter, the Act required that when a candidate received a loan for use in connection with his campaign, his or her authorized committee was required to itemize such loans as loans from the lending institution rather than the candidate. *See* 11 C.F.R. § 104.3(a)(3)(vii)(B) (2001 edition). If a candidate made repayments on the loan from personal funds, the committee had to report the payments to the bank as in-kind contributions to the committee, by disclosing a contribution from the candidate on Schedule A, an expenditure to the lender on Schedule B, and a reduction of the amount owed on Schedule C. *See* Advisory Opinion 1994-26.

6. In the Fall of 1995, Gordon Smith obtained a $2 million line of credit from U.S. National Bank of Oregon ("U.S. Bank"), most of the proceeds of which were loaned to and used for Gordon Smith for U.S. Senate, his authorized principal campaign committee for a 1995 special election. In May 1996, Respondents assumed Gordon Smith for U.S. Senate's debt relating to the line of credit from U.S. Bank, and Gordon Smith agreed to look to Respondents for payment.

7. Senator Smith made all the principal and interest payments on the 1995 line of credit from personal funds or funds obtained from a home equity loan he and his wife obtained from Portland Mortgage in 2000. Until 2002, the Respondents did not report any principal repayments on the 1995 line of credit made after January 7, 1999. Moreover, some principal payments prior to 1999 also were not reported. As a result, a disparity increased over time between the debt balance shown on Respondents' disclosure reports, which remained largely stagnant, and the

actual decreasing amount of the loan balance. For example, Respondents' 1999 Year-End Report showed a loan balance of $1,634,427, when the loan balance was actually $935,452, a difference of nearly $700,000.

8. Respondents' original 2000 Mid-Year Report did not disclose eight separate principal payments from January 2000 to May 2000 totaling $935,452. Moreover, Respondents continued to report a loan balance of $1,634,427 on the U.S. Bank loan instead of a zero balance reflecting that the loan had been paid off in May 2000, and did not report accurately the amount of Respondents' outstanding debt to Senator Smith. Additionally, Respondents did not file a Schedule Form C-1 and accompanying loan documents showing that the final payment of $589,321 on the U.S. Bank line of credit was derived from the proceeds of a larger home equity loan Senator Smith and his wife had obtained shortly before from Portland Mortgage.

9. On May 29, 2002, Respondents amended their 2000 Mid-Year Report to state that Senator Smith made a $1,634,427.82 loan at 0% interest from his personal funds on May 2, 2000, and that Respondents retired that amount of remaining debt on the 1995 line of credit on the same date. Respondents' subsequent reports also show a May 2, 2000 loan in the amount of $1,634,427.82 from Gordon Smith. Respondents' amended and subsequent reports do not reflect that Senator Smith repaid $1,634,427.82 in principal payments to U.S. Bank over a period of time ending with a final payment of $589,321.23 in May 2000, rather than all on May 2, 2000.

10. On November 9, 2004 and August 16, 2005, the Commission found reason to believe that violations occurred only with regard to reporting of the loans discussed herein, and not with regard to the source, amount and funds used for the repayment of the loans. The Commission has made no findings that the violations in this matter were knowing and willful.

11. Respondents have amended their 2000 Mid-Year Report and subsequent reports to reflect the actual dates that principal repayments were made to U.S. Bank during the time period covered by the 2000 Mid-Year Report and to reflect the actual loan dates and amounts of their outstanding debt to Senator Smith for his principal payments of the 1995 line of credit. Respondents also included a notation on an amended Schedule C accompanying their amended 2000 Mid-Year Report indicating that $397,252 of principal payments were not reported prior to the 2000 Mid-Year Report. Additionally, Respondents have filed a Schedule C-1 reflecting that the $589,321 used to make the final payment on the U.S. Bank loan was derived from a home equity loan.

V. 1. Respondents did not properly disclose all disbursements relating to the repayment of loans made or guaranteed by the candidate and the amount of outstanding debt, in violation of 2 U.S.C. §§ 434(b)(4)(D) and 434(b)(8).

2. Respondents did not properly report each person who made a loan to them, the endorser and guarantor of such loan and the date and amount of such loan, in violation of 2 U.S.C. § 434(b)(3)(E).

3. Respondents will cease and desist from violating 2 U.S.C. §§ 434(b)(3)(E), 434(b)(4)(D) and 434(b)(8).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Eleven Thousand dollars ($11,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

when candidates obtain lines of credit and reloan the proceeds to their authorized committees, the committees are not required to report the candidates' repayments to the lending institution. *See* 11 C.F.R.

§§ 104.3 (a)(3) (vii)(B), (b)(2)(iii)(A) and (b)(4); Brokerage Loans and Lines of Credit, Explanation and Justification, 67 Fed. Reg. 38,353, 38,355 (June 4, 2002). Therefore, had Senator Smith obtained the line of credit after 2002, the Respondents would not be required to report Senator Smith's repayments to U.S. Bank.

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.

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

FOR THE COMMISSION

Lawrence H. Norton
General Counsel

BY: _____ _____
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

6/18/06
Date

FOR THE RESPONDENTS

_____ NOVEMBER 15, 2005
Craig Engle
Counsel for Respondent

Date