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MEMORANDUM

CLIENT-MATTER NUMBER
045955-0101

Via Hand Delivery

TO: Ana Pena Wallace

FROM: Cleta Mitchell, Esq.

DATE: June 28, 2005

RE: MUR 5496 Huffman for Congress and Michael Sherrill, Treasurer, in his official capacity; Lawrence D. Huffman and Dean Proctor

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Enclosed is the Response to Reason to Believe Findings & Factual and Legal Analyses. Faxed copies of the signed and notarized Affidavits of Jamie Parsons, Brian Chatman and Gaye Watts are attached as Exhibits 6, 8 and 9. As we discussed I will send you the original affidavits once I receive all of them which will probably be tomorrow.

Please let me know if you have any questions. Thank you for your cooperation in this matter.

CMI/lmm

IN AND BEFORE THE
FEDERAL ELECTION COMMISSION

Respondents:
Huffman for Congress
and Michael Sherrill[1], Treasurer,
in his official capacity; Lawrence D.
Huffman and Dean Proctor

MUR 5496

2005 JUN 28 P 3:33

Response to Reason to Believe Findings &
Factual and Legal Analyses

Respondents Huffman for Congress, Lawrence D. Huffman and Dean Proctor ("Respondents"), through their designated counsel, hereby submit the following joint response to the Factual and Legal Analyses ("FLAs") of the Office of General Counsel ("OGC") in the above-referenced Matter Under Review regarding each of Respondents.

Factual Errors or Omissions

In several respects, the FLAs either omit or misstate pertinent facts that should be taken into consideration in the pre-probable cause conciliation negotiations. Respondents have either previously submitted factual information or are submitting it contemporaneously with this filing in order to insure the most accurate record is before the OGC for purposes of the pre-probable cause conciliation discussions.

1. Designation of Treasurer. The person who served as treasurer of the Committee during all times pertinent to the above-referenced MUR was Michael Sherrill. On October 7, 2004, Mr. Sherrill was replaced as Treasurer by David Blanton. However, the FLAs assert that Mr. Blanton "knowingly accepted an excessive contribution and a contribution in the name of another from Dean Proctor...that "they" accepted a loan outside the ordinary course of business...and that "they" violated 2 USC §434(b) for inaccurately reporting a $100,000 loan..."

Mr. Blanton was not involved with the Respondent Committee at the time of the actions at issue in the MUR. Perhaps there is another way to state the facts to simply state the Committee name and not to mention Mr. Blanton's name. Or perhaps the FLAs should refer to Mr. Sherrill as former treasurer, but as currently stated in the FLAs, the statements are not accurate and should be revised for accuracy.

2. Notice to Commission (self-reporting of violation(s)) Pre-dated the Filing of Complaints by Third Parties. The FLAs fail to set forth the exact and correct chronology of the notification to

[1] Michael Sherrill was the Treasurer of the Huffman for Congress Committee at all times pertinent to the facts of this MUR. The current treasurer, David Blanton, was not treasurer at any time during the circumstances and transactions material to the MUR.

the FEC of the problem loans. The self-reporting is important evidence of the innocence of Respondents of any assertions of "knowing" or "willful" violation of the law. The facts and dates the OGC should clearly note are as follows:

Saturday, July 17, 2004:	Gaye Watts advises Dean Proctor that the loan arrangement was illegal
Sunday, July 18, 2004:	Respondents contact and retain legal counsel to start resolving issue(s)
Monday, July 19, 2004:	Illegal loan is repaid; steps taken to correct previous mistakes Counsel for Respondents calls Office of General Counsel
Tuesday, July 20, 2004:	OGC and Counsel for Respondents confer via telephone, Respondents' counsel advises OGC of problem loans and requests meeting to allow Respondents to personally disclose to the OGC all facts regarding the loan (Exhibit 1)
Friday, July 30, 2004:	Respondents and Counsel meet with OGC and fully disclose facts concerning the loan (Exhibit 2)
Friday, July 30, 2004:	Complaint filed at FEC by Max Baker (3:17 p.m.) MUR 5496
August 4, 2004:	Counsel for Respondents meets with Adam Ragan, Reports Analysis Division, FEC who instructs counsel regarding how to amend FEC reports to properly report the various transactions (See Exhibit 3)
August 4, 2004:	Complaint filed at FEC by Sandy Lyons, Patrick McHenry & George Moretz MUR 5507
August 5, 2004:	July 2d Quarterly FEC Report for Huffman for Congress amended to reflect Dean Proctor as the source of the 06/17/04 loan of $100,000. Pre-Runoff FEC Report filed which showed the $100,000 loan from Dean Proctor returned and repaid; filings prepared in accordance with instructions from Reports Analysis Division of FEC
August 6, 2004:	Notice of Max Baker FEC Complaint received by Huffman for Congress (Exhibit #4)
August 9, 2004:	Chronology and documents submitted to FEC
August 11, 2004:	Notice of 2d Complaint received by Huffman for Congress (Exhibit 5)

It is important that the OGC clearly recognize and specifically acknowledge that the reporting of the violation(s) was undertaken by Respondents *prior* to the filing of either complaint and the documentation of the transaction(s) was provided to the OGC voluntarily as a follow-up to the July 30, 2004 meeting and not in response to any filing of a complaint by a third party.

For purposes of engaging in pre-probable cause conciliation negotiations, this is an important fact that must not be ignored or treated lightly. Respondents have demonstrated their good faith in making every effort to remedy the situation as soon as they knew a problem existed.

The chronology of dates is further evidence that there is not and was not a 'knowing or willful' violation of law involved in this matter or engaged in by Respondents. There is not a scintilla of evidence to the contrary as discussed further below, but certainly the facts of the self-reporting to the FEC should and must count in Respondents' favor. This chronology demonstrates the good faith in which Respondents have approached the situation from the outset.

The FLAs refer solely and only to the findings in response to "the complaints" filed by third parties, referencing the initiation of the matter only in a footnote. The first contact with the OGC was the result of Respondents' *sua sponte* admissions of violation(s), a fact which is minimized or ignored in the FLAs and which is deserving of more than passing reference.

3. Reporting Issue(s)

The FLAs conclude that there are reporting violations in the following respects:

a) Failure to properly report the Dean Proctor loan to David Huffman on the initial 2d Quarterly 2004 FEC report. Respondents acknowledge that the initial FEC report filed by the Committee for the 2d quarter of 2004 did not properly reflect the loan at issue in this proceeding. The Committee did not learn until after the report was filed that Dean Proctor was the source of the funds which David Huffman had loaned to the Committee in June, 2004. The manner in which the loan was reported was the genesis for the notification to Dean Proctor by Gaye Watts of the violation that had been committed. Respondents concede the error in the reporting but further state that at the time the Report was filed, the Committee had no knowledge that the source of the fund(s) was other than David Huffman via a loan from the BB&T bank. The error(s) in the reporting by the Committee are conceded but the explanation demonstrates that the Committee did not knowingly or willfully fail to report properly. See Affidavit of Jamie Parsons, Exhibit 6.

b) Failure to properly report the Peoples State Bank loan. Respondents do take issue with the finding contained in the FLAs regarding the manner in which the Committee reported the transactions on July 19, 2004, when David Huffman cashed the certificate of deposit and used the proceeds to repay Dean Proctor who in turn repaid BB&T bank. Counsel for Respondents met with Mr. Adam Ragan of the Reports Analysis Division of the Federal Election Commission and presented each transaction to him and requested guidance as to how each was to be reported. The Committee had planned to file a Schedule C-1 to reflect People's State Bank

as the source of funds, but were specifically advised that even the reference to "certificate of deposit" or "CD" was not correct and were instructed to state that the source of the funds was "personal funds".

If the OGC is now taking the position that a Schedule C-1 should have been filed to reflect that Peoples State Bank is the source of the funds, that is contrary to the instructions received at the time from the RAD. The Committee will amend its reports to add a Schedule C-1 if that is deemed necessary, but the Respondents should not be penalized for following the guidance of the RAD staff. See the attached Exhibit 7 for documentation of the instructions received from the staff analyst.

c) Failure to file an amended C-1 to reflect the security for the BB&T loan to David Huffman. At the time the amendment to the 2d Quarterly 2004 Report was prepared, the loan was unsecured and the reporting information was reported in the manner instructed by RAD staff. The OGC now inquires as to whether the loan has since been secured by Mr. Huffman's interest in his residence. Counsel for Respondents has contacted the BB&T ban to request copies of documentation of any public filing(s) to indicate perfection of a security interest in the home, but that information has not yet been received. Upon receipt of documentation of a mortgage, an amended Schedule C-1 will be filed if appropriate.

4. Date of release of Peoples State Bank collateral (certificate of deposit). The FLAs each reference the date of release of the collateral for the Peoples State Bank loan to David Huffman as June 30, 2004, and that is the date reflected on the bank document styled "Release of Collateral". That is not correct. The certificate of deposit was not cashed until July 19, 2004 and the date of the release of the collateral should have stated July 19, 2004 rather than June 30, 2004. The bank simply erred in dating the release document as the date of maturity of the first promissory note. The other documents from the bank clearly demonstrate that the CD was in fact not cashed until July 19, 2004, which should be sufficient for the OGC to know that there was a mistake on the release form.

5. There is no prohibition in the Act against unsecured loans. There is nothing in the Act or the Commission's regulations that prohibits unsecured loans to candidates for use in his/her campaign. What the law requires is that a loan be made by a lender in the ordinary course of business, which is demonstrated by the following factors: (1) usual and customary interest rate of the lending institution for the category of loan involved, (2) made on a basis that "assures repayment", (3) evidenced by a written instrument and (4) subject to a due date or amortization schedule 11 C.F.R. §100.82.

The regulations do not preclude a unsecured loan provided it meets the criteria set forth above. Banks make unsecured loans every day to customers known to them a good credit risks. The simple fact of loan being 'unsecured' is not a violation of the Act as suggested and stated in the OGC's FLAs.

6. The FLAs incorrectly and improperly state that the violation(s) that occurred were 'knowing and willful".

The most disturbing part of the three FLA reports is the OGC's completely baseless assertions that any of the events giving rise to the violations of law were "knowing" or "willful". There is *no* evidence of that and, in fact, there is uncontroverted evidence that the opposite is true, including the statements of Dean Proctor and David Huffman, both sworn under penalty of perjury.

The individuals whose affidavits are attached to this Response further testify that they (as persons with *first hand* knowledge of the facts) confirm that neither David Huffman nor Dean Proctor nor any *other* person associated with the Huffman campaign knew that the loan transaction was illegal as initially executed. See Affidavit of Jamie Parsons, Exhibit #6; Affidavit of Brian Chatman, Exhibit #8; Affidavit of Gaye Watts, Exhibit #9.

There is uncontroverted evidence that the Committee had no knowledge of the manner in which the funds had been obtained when Dean Proctor drew down on his line of credit and loaned the funds temporarily to David Huffman who then loaned the funds to the campaign. See Affidavit of Jamie Parsons, Exhibit #6 and Affidavit of Brian Chatman, Exhibit #8.

In its proposed findings in the FLAs, when discussing the issue of Mr. Proctor's loan to Mr. Huffman (which Mr. Huffman then loaned to the campaign), the OGC notes that the "information available at this time provides reason to investigate whether Mr. Proctor's excessive contribution and contribution in the name of another were knowing and willful," and thus subject to additional penalties. OGC then cites several authorities which purportedly define the standard for an action to be taken "knowingly and willfully."

While each of the authorities sets forth how the "knowingly and willfully" standard should be applied, the OGC fails to mention the types of evidence that might show that someone has *not* acted knowingly and willfully. OGC further fails to recognize that the government has the burden of proving that someone has acted knowingly and willfully. It is not the Respondents' burden to *prove* that they did not act in a knowing and willful manner in this (or any other) instance.

The authorities cited by OGC simply do not support the proposition that the burden is on Respondents to prove their actions were NOT knowing and willful, nor do the authorities support the OGC's finding of a knowing and willful violation under the facts of this case.

The Congressional Record. The first authority cited by the FEC comes from the daily edition of the Congressional Record. The passage cited is from the statement of Rep. Wayne Hays (D-OH) describing the conference bill regarding the 1976 amendments to FECA. The discussion of the "knowingly and willfully" standard is not long: the complete passage is:

> "Perhaps the most important phrase used in the enforcement section is 'knowing and willful.' As explained in House Report 94-917, that phrase refers to actions taken with full knowledge of all the facts and a recognition that the action is prohibited by law."

That is the extent of the reference during the debate on FECA regarding the standard for "knowing and willful" under the Act. One Congressman's mention of what a House Report *said* the standard means. The House Report referenced by Congressman Hays (in discussing a predecessor bill to the one ultimately passed) itself provides as follows:

> "H.R. 12406 places its reliance on civil enforcement, except as to substantial violations committed with specific wrongful intent. The bill distinguishes between violations of the law as to which there is not a specific wrongful intent which are subject to injunctive relief and civil penalties of up to $5,000 or the amount in question, whichever is greater, and violations as to which the Commission [ie, the FEC] has clear and convincing proof that the acts were committed with a knowledge of all the relevant facts and a recognition that the action is prohibited by law, which are subject to injunctive relief and a civil penalty of $10,000 or twice the amount in question. . . . Criminal penalties are reserved for knowing and willful violations involving an amount in excess of $5,000 and are punishable by a fine of up to $25,000 or three times the amount in question, imprisonment of up to one year, or both. The delineation of these different classes of offenses is intended to promote greater uniformity and certainty in enforcing the law." (emphasis added) House Rep. 94-917, 94th Cong., at 3-4 (Mar. 17, 1976).

Thus, the very Report relied on by OCG provides that in order to impose the intermediate class of penalties, the FEC must have "clear and convincing proof" that the acts at issue were committed with "recognition that the action is prohibited by law". Further, the most severe class of penalties can only be imposed on a similar showing of "clear and convincing proof", a showing which is wholly lacking here. The OGC cites to *no* evidence that any of the Respondents knew their actions were illegal and there is ample evidence that they did *not* know the loan(s) were illegal.

FEC v. John A. Dramesi for Congress Committee. The OGC then cites to *FEC v. John A. Dramesi for Congress Committee,* which deals with a proceeding against a campaign and its treasurer for accepting contributions in excess of $1,000 from a political committee. The campaign received a contribution from the NJ Republican State Committee for $5,000. At the time it made the contribution, the committee was not registered as a multi-candidate political committee, and so was not qualified to contribute more than the limit for an individual, rather than a PAC, donor.

The controversy in this case revolved around whether the campaign "knowingly" accepted a contribution in violation of the limits imposed by FECA. The court then discussed the difference between a "knowing" standard, as opposed to a "knowing and willful" one. A "knowing" standard, this court concluded, "does not require knowledge that one is violating a law, in contrast to the "knowing and willful" standard, which does require knowledge that one is violating the law.

While the court in this case allowed the normal penalty for violation of the contribution limits to stand, it did not impose any additional civil penalties (ie, those based on knowing and

willful violations of the FECA), presumably because there was no evidence the treasurer knew the contribution was illegal.

In this case, the OGC cannot cite to a single fact that would allow it to assert that any of the violation(s) of the Act that occurred as a result of the loan(s) were made with the knowledge of and/or a willful intent to break the law.

US v. Hopkins. *US v. Hopkins*, also cited by the OGC, deals with charges brought against officers of a savings & loan for conspiracy to commit an offense against the United States (18 USC §371), and for concealing material facts from the FEC (as an agency of the United States) (18 USC § 1001). Neither of these offenses arises under FECA, but rather are provisions of the criminal code.

With respect to the charge of concealing material facts from the FEC, the court states that the government may "prove that a false representation is made 'knowingly and willfully' by proof that the defendant acted deliberately and with knowledge that the representation was false." The court notes that the jury could infer from the defendants' scheme for disguising their corporate political contributions that the defendants meant to convey information they knew was false to the FEC.

In discussing the conspiracy charge, the court found that "the evidence need not show that a conspirator had specific knowledge of the regulations, nor need it conclusively demonstrate a conspirator's state of mind; '[i]t suffices to show facts and circumstances from which the jury could reasonably infer that [a conspirator] knew her conduct was unauthorized and illegal.'"

In the FLAs, the OGC paraphrases the quotations from *Hopkins* cited above in order to show the sorts of evidence that may be presented to show that a person acted knowingly and willfully in violating FECA. What the OGC fails to include in its recitation from *Hopkins* is the following:

> "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Hopkins* at 214, citing *Ingram v. United States*, 360 U.S. 672, 679 (1959).

Perhaps OGC did not include this language from *Hopkins* for the simple reason that it is actually helpful to Respondents and supports Respondents' assertion that the OGC cannot make a finding of a "knowing and willful" violation under the facts of this case.

If trying to conceal actions that one "knows" is illegal is evidence of "knowing and willful" violation, then the converse must also be true: being completely open and upfront about one's actions should be proof of whether a person "knowingly" broke the law by virtue of such actions.

In this instance, Mr. Proctor is the person who *told* Ms. Watts that he had loaned the funds to Mr. Huffman – which she then advised Mr. Proctor was illegal. And immediately upon

being told it was illegal, Mr. Proctor set in motion the events which led virtually instantaneously to the *sua sponte* submission to the FEC. OGC acknowledges that "if Mr. Proctor's account of what happened with Ms. Watts is true, it would not be consistent with the actions of someone who was trying to conceal a section 441f scheme." Of course, there is *no* evidence which controverts the sworn statements of Mr. Proctor stating the sequence of events under oath. OGC states that "Proctor's account remains to be verified". However, in conversation with Respondents' Counsel, Gaye Watts stated that she *told* the FEC that she believed Dean Proctor sincerely was unaware of the fact that his loan to David Huffman was illegal.

Further, the court in *Hopkins* implies that in showing that a person acted "knowingly and willfully" in making a false representation to a federal agency, the burden of proof is on the government. The accused does not have the burden of showing that he did not, in fact, know that his actions were illegal. *Hopkins* at 214-215. The defendants in Hopkins contended that the government had not presented sufficient evidence to prove that their failure to disclose the true source of the contributions at issue (what they'd concealed from the FEC) was willful. The court rejected this argument, finding instead that the government had "presented ample evidence to establish [that the defendants acted deliberately and with knowledge that their representations were false]."

The FEC has the burden of proving that Mr. Proctor, Mr. Huffman and the Committee acted knowingly and willfully with respect to violations of FECA arising from Mr. Proctor's loan to Mr. Huffman and must present some factual evidence of a "knowing and willful violation", which the OGC has utterly failed to do.

Nonetheless, in the interests of cooperation and in an attempt to bring this matter to resolution, Respondents herewith submit affidavits of three additional witnesses, including one from Ms. Watts, in order to assist with closing the investigation stages of this matter – and all three testify that they believe neither Mr. Huffman nor Mr. Proctor knew the Proctor loan was illegal.

Other Authorities: There are several cases under the Act in which the court declined to impose more substantial penalties on the violators other than those generally imposed, because the FEC did not establish that the violation was knowing and willful.

FEC v. Friends of Jane Harman, 59 F. Supp.2d 1046 (C.D. Cal. 1999). The FEC sued a campaign for violations of FECA resulting from a fundraiser held at a corporation's headquarters (and which was supposed to be funded through the corporation's PAC). Though the court upheld the FEC's findings that the campaign had violated FECA in a number of ways, it nevertheless declined to impose civil penalties for several reasons:

1. The <u>good faith</u> of the defendant campaign was apparent.

2. The corporation employee coordinating the fundraiser for the PAC contacted outside counsel in an attempt to be certain that everything for the fundraiser (in terms of contacting the executives of the company, etc.) was done properly; and

3. The violations at issue were not serious or deliberate.

In Respondents' case, they know now that these violation(s) of FECA are serious and Respondents have acknowledged that since the first contact with the OGC. However, Respondents have also made it clear from the outset and all the facts submitted verify that the violations were not deliberate. Respondents' good faith and complete forthrightness with the FEC should count for much more than OGC has acknowledged.

Evidence of a deliberate violation is the OGC's burden to produce which it has not done. All the evidence submitted clearly shows that Respondents were the first to notify the FEC of the loan and have fully and completely cooperated with the FEC as soon as the violation(s) were discovered. And Mr. Proctor's complete openness and willingness to discuss the facts of the loan with Ms. Watts demonstrates no effort to conceal a "known" or "deliberate" wrongdoing.

FEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988) The 9th Circuit here upheld the lower court's decision not to award civil penalties against the committee for violations of FECA related to guarantees of personal loans made to an unsuccessful candidate in order to retire his campaign debts. The lower court, in considering the imposition of approximately $85,000 of penalties on the committee, noted:

> "The circumstances of [the campaign's] candid reporting of the loan guarantees, the rapid repayment of the loan by the former candidate from personal funds and the clear innocence of [the campaign's] motives leaves no justifiable ground for the imposition of penalties." *FEC v. Ted Haley Congressional Committee*, 654 F.Supp 1120.

The 9th Circuit confirmed this treatment of the Defendant, noting that the imposition of civil penalties is discretionary.

Applying the Court's decision to the circumstances of this MUR, the transaction(s) were reversed the first business day following Respondents' being made aware of their illegality. The innocence of Mr. Proctor's and Mr. Huffman's motives cannot be overlooked and should be noted by OGC rather than being ignored or questioned without any factual basis for doing so.

Further, Respondents took the steps necessary to correct the improper loan(s) immediately and should not be penalized further by virtue of the innocent mistake of a volunteer.

The greatest penalty has already been suffered by Respondents: Mr. Huffman lost the race for the House of Representatives, because of the loan transactions. The polling data from the campaign clearly demonstrated that Mr. Huffman would have won the election, possibly winning the primary without a runoff, would have been the Republican nominee in a Republican district – and thus a member of the House of Representatives. All but for the issue of the "illegal loan", which cost him the election. See Affidavit of Brian Chatman, Exhibit #8.

Instead, Mr. Huffman now has $250,000 personal debt from the campaign *and* he lost his opportunity to become a congressman in the process.

The imposition of additional penalties from an innocent mistake that cost Mr. Huffman the election is unnecessary piling on and the OGC should be cognizant of these important facts.

7. OGC has incorrectly interpreted certain 'facts'. OGC has included some puzzling conclusions in the FLAs which bear correction.

a) Dean Proctor FLA, p. 6, lines 1 – 13; Huffman FLA, p. 12, lines 1-18. For some reason, OGC considers it "inconsistent" that Mr. Proctor stated that the Committee did not immediately need the proceeds of the June 17 loan, but there was a desire to obtain the loan "quickly in order to make the Committee's financial position, as reflected in is cash on hand, look stronger..." In the written submission, it was stated that the loan was obtained 'quickly' because of the "increasing expenses of the campaign."

These statements are not "potentially at odds with each other" as asserted by the OGC. Nor are these statements at odds with each other in fact. The campaign leaders had discussed with the candidate the need for him to obtain a loan in order to do *both* things: first, to insure that the cash on hand as of June 30, 2004 would be strong *and* in the event of a runoff election, to be able to stay on television immediately after the primary. See Affidavits of Jamie Parsons, Exhibit #6 and Brian Chatman, Exhibit #8.

And the reason for not simply cashing the certificate of deposit at Peoples Bank was to make sure the June 30, 2004 cash on hand was as large a sum as possible leading into the closing weeks before the primary. Campaigns make stranger calculations than this on a regular basis and while it may not make sense to outsiders later on, these decisions are often made quickly, under high pressure and public scrutiny, by volunteers with little or no experience in campaigns, in the heat of battle which a campaign always feels like. For the OGC to now infer some sinister or deceitful motive from the honest statements of the Respondents is completely unreasonable and without merit. And while OGC may not understand how certain decisions could have been made or the thought process behind the decisions, the OGC's determination that a decision may seem silly or stupid is no basis for inferring a "knowing and willful" violation of the law.

b) Dean Proctor FLA, p. 6, lines 14-19; David Huffman FLA, p. 12, Lines 19-20, p. 13, lines 1-4. OGC also concludes that there are inconsistencies between the press reports and other references to Mr. Huffman's use of his retirement savings to help fund the campaign and the documents filed by Respondents. There are no inconsistencies: Mr. Huffman *loaned* to the campaign funds consisting of retirement savings. Those were his personal funds and required no further reporting or disclosure, according to the instructions received from RAD staff during the August 4, 2004 meeting.

If OGC has further questions about Mr. Huffman's savings that he converted to cash and loaned to the campaign, it should simply ask for clarification rather than using mistaken information as the basis for an incorrect finding of a 'knowing and willful' violation, particularly when this has nothing to do with the Proctor transaction(s) and provides no evidence whatsoever of a "knowing and willful violation" on the part of Mr. Proctor or Mr. Huffman with regard to that transaction.

Conclusion

It has been almost a year since Respondents' counsel called the Office of General Counsel and reported the illegal loan involving the Huffman for Congress campaign. Respondents have said from the outset that they were prepared to enter into pre-probable cause conciliation negotiations. The Factual and Legal Analyses are apparently not concluded, because they still contain inferences that are wholly erroneous and demonstrate a need for additional investigation, requiring yet more time and greater expense.

Respondents respectfully urge the Office of General Counsel to accept the facts as submitted and work with Respondents to begin negotiations to attempt to bring this matter to a conclusion as soon as possible.

Dated: June 27, 2005

Respectfully submitted,

Cleta Mitchell

Cleta Mitchell, Esq.
Counsel for Respondents

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EXHIBIT 1

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CLIENT/MATTER NUMBER
999100-0101

July 20, 2004

VIA FACSIMILE (202) 219-0108

28044191626

Mr. Lawrence Norton
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Huffman for Congress; Lawrence David Huffman

Dear Mr. Norton:

This letter is to follow up on our telephone conversation earlier today regarding the above-referenced committee. Huffman for Congress is the principal authorized campaign committee for Lawrence David Huffman, candidate for the Republican nomination for the U.S. House of Representatives for the 10th District of North Carolina. ("Committee").

I was contacted and then retained day before yesterday by leaders of the Committee and Mr. Huffman seeking help with some problems with the Committee's FEC report. During the course of those discussions, I inquired regarding the loans from Mr. Huffman to his campaign and, based upon the facts presented to me at that time, I advised the Committee and Mr. Huffman that it appeared that one of the loans reported to the Commission had not been handled in accordance with Commission regulations and applicable provisions of FECA.

There was no intent to circumvent or violate the law in the matter of the mishandled loan. Rather, this is the first federal campaign for the individuals involved and they were simply unaware of the restrictions in federal law regarding loans for the benefit of federal campaigns. Upon my advice, the Committee and Mr. Huffman immediately took steps yesterday morning and repaid the loan at issue.

We are taking steps now to amend the FEC reports to properly disclose the source(s) of the loan which was repaid yesterday and no longer exists, but which did exist for a period of a few weeks.

In addition, the Committee leadership and Mr. Huffman requested my assistance in immediately advising the Commission of their error and asking for the opportunity to seek the Commission's guidance regarding this matter, which was the reason for my call earlier this afternoon.

The purpose of my letter is to request a meeting with you and/or your staff at the earliest possible date and to present to your office the details of what has transpired and what has been done so far to correct previous errors. I would stress again that there was no intent to circumvent the law and, upon learning of the FECA requirements governing loans for the benefit of federal campaigns, the individuals associated with the Committee and Mr. Huffman have been dedicated to doing everything in their power to correct the problems.

I am available this week to meet preliminarily with your office should that be convenient for you. Then I am out of state Monday through Wednesday of next week (July 26-28) but could meet later in the week or the following week (July 29, 30 or August 2 – 6).

Should you wish to have Mr. Huffman and /or representatives of the Committee present, that can be arranged as well. Since they will be traveling from North Carolina, we would need some advance notice regarding the meeting date and time. They will certainly make themselves available to accommodate your schedule.

The intent here is to fully disclose all transactions and events to the Commission in order that a proper remedy can be determined and to insure that all appropriate steps are being taken to identify and then rectify the errors.

Please contact me at (202) 295-4081 to schedule the meeting or to advise me of any other steps we should take in the interim.

Thank you for your prompt response. Your assistance is greatly appreciated

Sincerely,

Cleta Mitchell

Cleta Mitchell, Esq.
Counsel to Huffman for Congress and
Lawrence David Huffman

cc: Mr. Lawrence David Huffman

EXHIBIT 2

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CLIENT/MATTER NUMBER
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August 2, 2004

VIA FACSIMILE (202) 219-3923 AND ELECTRONIC MAIL

28044191629

Mr. Lawrence L. Calvert, Jr.
Deputy Associate General Counsel for Enforcement
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Huffman for Congress, C00398776

Dear Mr. Calvert:

This is to follow up on the meeting Friday afternoon, July 30, 2004 at your office. Thank you for taking time to meet with my clients David Huffman, Dean Proctor and the Huffman for Congress committee ("the Committee"), represented by its Chairman, Jamie Parsons and me.

We appreciate your prompt response in meeting with us so that we could explain the circumstances and facts surrounding the improper loan to the Committee on June 17, 2004. As my clients said on Friday, the failure to abide by the provisions of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act") and the Commission's regulations governing loans to candidates and campaign committees was not intentional, but rather was a result of lack of knowledge of the legal requirements for obtaining such loans.

We are in the process now of gathering all documents related to the transaction(s) at issue as well as developing a chronology of the facts, sworn statements and whatever other information will be of assistance to you in reviewing this matter and ascertaining the appropriate penalties and remedies.

In addition, I spoke at length this morning with the Reports Analysis Division of the Commission and the Committee and I are working with that office to be certain that we amend all previously filed reports properly and that the pre-runoff report due to be filed this Thursday, August 5, 2004 is completely accurate.

As of this writing, we have not yet received formal notice of any FEC Complaint filed against the Committee, the candidate or any other person associated with the Committee or the campaign. My clients' actions have been and continue to be completely voluntary and are taken in the spirit of correcting any and all errors and fully disclosing all transactions in accordance with applicable law.

It is my hope that we can submit to your office this week the documentation necessary for you to proceed in reviewing and processing this matter to the next stage.

I will be leaving on vacation on Saturday, August 7, 2004 and returning to the office on Monday, August 16, 2004. Hopefully, you will have received the package of materials from the Committee before my departure in order to allow your office to review the information during my absence. If there is a problem in finalizing the materials before I leave, I will be certain to advise you of the delay and the reasons for it.

Thank you again for your cooperation and assistance. If you need further information, please do not hesitate to contact me at (202) 295-4081.

Sincerely,

/s/ Cleta Mitchell

Cleta Mitchell, Esq.
Counsel to Huffman for Congress, et al.

cc: Mr. David Huffman
Mr. Dean Proctor
Mr. Jamie Parsons

EXHIBIT 3

Mitchell, Cleta

From: Mitchell, Cleta
Sent: Wednesday, August 04, 2004 2:38 PM
To: 'Tedkoch[redacted]
Cc: 'Jamie Parsons'; 'jamie[redacted]
Subject: Meeting with Adam Ragon

I met with Adam Ragon at FEC this morning and went over the proposed amendments regarding the loans and the reporting of the loans / repayment on the pre-runoff report. Here is result of what he told me:

April Quarterly 2004 -- fine as we have proposed amending it (deleting the $100,000 People's State Bank loan and corresponding receipt)

July Quarterly 2004 - fine as we have proposed amending it (adding the information regarding Dean Proctor as endorser/guarantor of the $100,000 loan on June 17, 2004)

Pre-Runoff 2004 - a couple of changes to our proposed report:
Schedule A:
p. 38, he said we could/should delete the reference to the CD based on his review of the checks today; so p. 38A, memo entry would say: Loan to Campaign

Schedule B:
p. 53A, should add a Memo Entry:
Loan incurred through Endorser, Dean Proctor, paid in full

Schedule C:
p. 59, delete "CD" and just leave it as "David Huffman, Personal FUnds" as Loan Source
p. 60, add after David Huffman on Loan Source: "(Line of Credit), so it will read "David Huffman (Line of Credit)
Election box to be checked is Other, above runoff primary

p. 61, Schedule C-1:
Amount of Loan is $150,000.00
Need interest rate on line of credit
Line B. Line of credit: Amount of this draw: $100,000.00 (rather than .00)
Total outstanding balance (same line) is $100,000.00

everything else is fine.

if you want to revise and send me to double-check that would be fine -- call when you are ready to discuss.
Thanks. Cleta

Cleta Mitchell, Esq.
Foley & Lardner LLP
3000 K Street, N.W.
Washington, D.C. 20007
(202) 295-4081 (direct line)
(202) 672-5399 (fax)
cmitchell@foley.com

EXHIBIT 4

AUG 1 8 2004

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG - 6 2004

Sherriff David Huffman
P.O. Box 442
Newton, NC 28658

Re: MUR 5496

Dear Mr. Huffman:

The Federal Election Commission received a complaint that indicates you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 5496. Please refer to this number in all future correspondence.

Under the Act you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials that you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Alva E. Smith at (202) 694-1650 or toll free at 1-800-424-9530. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jeff Jordan

Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration

Enclosures:
1. Complaint
2. Procedures
3. Designation of Counsel Statement

July 25, 2004

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MUR # 5496

Federal Elections Commission
999 E Street, NW
Washington, DC 20463

2004 JUL 30 P 3:17

SENSITIVE

To Whom It May Concern:

I am writing to request that the Federal Elections Commission (FEC) launch a formal investigation into the campaign of L. David Huffman, a candidate for U.S. Congress in North Carolina's Tenth District. There are two separate matters in which Mr. Huffman's campaign has very likely committed serious and egregious violations of federal election law. I will detail each of these issues and I request investigation into both.

1. Loan Impropriety

A review of Sheriff David Huffman's documents clearly indicates that he is improperly reporting the terms and conditions of the loans to his campaign for Congress. These loans total more than $260,000.

Sheriff Huffman has reported the following loans on his FEC disclosures:

January 16, 2004	$6,647.01
March 1, 2004	$100.00
March 30, 2004	$100,000.00
May 10, 2004	$50,000.00
June 9, 2004	$10,000.00
June 17, 2004	$100,000.00
TOTAL:	**$266,747.01**

All reports state that each loan is from Sheriff David Huffman with no due date (term), no interest rate, and that each loan is NOT secured. By reporting in this manner, Huffman is stating that he provided this money without the use of a loan, line of credit or collateral.

A review of Sheriff Huffman's Financial Disclosure Statement filed with the U.S. House of Representatives, indicates that he does NOT have $266,747.01 in liquid assets to loan to his campaign. Therefore, he would need to secure some sort of loan arrangement involving another party to make a contribution totaling that amount. In short, this money could NOT have come from himself as he is claiming.

The FEC has definite rules on the terms and conditions of a loan to a campaign and public disclosure ensures that candidates are conducting their campaign in a lawful manner. The *Campaign Guide for Congressional Candidates and Committees*, issued by the FEC, clearly states that candidates MUST disclose the details of their loans:

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> When a committee obtains a loan from a bank or other permissible lending institution (or the candidate obtains one on behalf of his or her committee), the committee must file Schedule C-1 with the report covering the period in which the loan was obtained.

On May 4, 2004, the FEC sent a letter to Sheriff Huffman's campaign treasurer citing a lack of required information on the loans:

> Schedule C of your report fails to include information required by Commission Regulations. With every report submitted, you must provide the date incurred, the original source and amount of the loan, the due date, the interest rate, the cumulative payment, and the outstanding balance. In addition, if there are any endorsers or guarantors, their mailing address along with the name of their employer and occupation must be disclosed. Please amend your report to include the due date and interest rate.

A quote attributed to Sheriff Huffman in a Sunday, July 18, 2004 article in the *Hickory Daily Record* says that his loans are in fact tied to collateral and some lending institution:

> "While Moretz has anted the most, Catawba County Sheriff David Huffman may be the local candidate with the most at stake.
> He borrowed $266,000, more than 60 percent of his $423,543 raised, to help fund his campaign.
> Huffman borrowed $100,000 against his retirement earlier this year, he said. He says another $166,000 came from a bank loan."

Had the loan been from a bank, there would have, at the very least, been an interest rate. Yet no interest rate is reported.

Sheriff Huffman is making two conflicting claims: 1.) that the loans are all from himself, and 2.) that some of the loans are from a bank. He does not have the liquid assets to make the loans himself, and there is no interest rate as to indicate the loans came from a bank. These facts raise serious questions about **BOTH** of Sheriff Huffman's conflicting claims.

2. Illegal In-kind Donation

During the course of his campaign, Sheriff Huffman has been selling raffle tickets for $100 each with all proceeds going to his campaign for a chance to win a 2004 Ford Explorer automobile. One occasion on which the vehicle was documented was on May 29, 2004 at a festival in Hickory, North Carolina (see photograph). The Explorer was parked at Sheriff Huffman's campaign booth with a sign in front of it bearing Huffman's campaign logo and reading:

Win this Car!
Dale Jarrett Ford
2004 Ford Explorer
"Personally autographed by Dale Jarrett"
Retail values $33,695 – winner pays taxes, fees & tag
Grand Prize Drawing – Primary Election Day, July 20, 2004
8:00pm at Huffman Headquarters – Need not be present to win
$100.00 contribution to Huffman for Congress
561 Hwy. 70, SW
Hickory, NC 28602
828-322-3288

28041916 38

In order for Huffman's campaign to legally raffle the vehicle, the campaign would have had to purchase the Explorer. However, none of Huffman's FEC reports indicate that his campaign bought a Ford Explorer.

With this fact in mind, the only other option is for someone to have donated the Explorer as an in-kind contribution. If this is the case, a serious violation of campaign finance law has occurred. In regard to in-kind contributions, the *Campaign Guide for Congressional Candidates and Committees* states:

> The value of an in-kind contribution—**the usual and normal charge—counts against the same contribution limit as a gift of money**. Additionally, like any other contribution, in-kind contributions count against the donor's limit for the next election, unless they are otherwise designated (see page 12 for more information on designating contributions). 100.52(d)(1) and 100.54.

Since an in-kind contribution is measured by the usual and normal charge, then the Explorer would be valued at the $33,695 figure stated on the sign. **This figure greatly exceeds the maximum allowable contribution permitted by an individual.**

Additionally, as the sign advertised that the vehicle was from Dale Jarrett Ford and still bore a dealer license plate, **it begs the question as to whether the Explorer constituted an illegal corporate donation from Dale Jarrett Ford.**

Sincerely,

Max W. Baker
[redacted]
Hickory, NC 28601

BOBBI ANN GICKING NOTARY PUBLIC CATAWBA COUNTY, N.C.

Signed and sworn to before me this ____ day of _____, _____.

_____
NOTARY PUBLIC

My commission expires:
_____

EXHIBIT 5

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

AUG 1 1 2004

28044191640

Michael A. Sherrill, Treasurer
Huffman for Congress
PO Box 442
Newton, NC 28658

Re: MUR 5507

Dear Mr. Sherrill:

The Federal Election Commission received a complaint that indicates Huffman for Congress ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 5507. Please refer to this number in all future correspondence.

Under the Act you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials that you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Kim C. Stevenson at (202) 694-1650 or toll free at 1-800-424-9530. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration

Enclosures:
1. Complaint
2. Procedures
3. Designation of Counsel Statement

COPY

BEFORE THE FEDERAL ELECTION COMMISSION

Huffman for Congress Committee	)	
FEC ID Number C00398776;	)	
David Huffman, Candidate;	)	MUR #5507
Jamie Parsons, Campaign Chairman;	)	
Dean Proctor, Finance Chairman; and	)	
Dale Jarrett Ford, Inc.	)	

SENSITIVE

2004419642

COMPLAINT

NOW COMES Sandy Lyons, Patrick McHenry and George Moretz bringing a Complaint pursuant to 2 U.S.C. § 437g(a)(1) alleging multiple serious violations of the Federal Election Campaign Act and U.S. Criminal Code.

I. SUMMARY

North Carolina Congressional candidate David Huffman ("Huffman") appears to have illegally laundered up to $266,647.01 through his personal bank account into his federal campaign coffers (these illegally obtained funds comprise more than 60% of the funds used by Huffman during the Primary Election); this allegation is based upon review of the reports Huffman for Congress Committee ("Huffman's Committee") filed with the Federal Election Commission ("FEC") (attached hereto as Exhibit "A": Disbursements April Report; Exhibit "B": Loans April Report; Exhibit "C": Disbursements July Report; Exhibit "D": Loans July Report), the Financial Disclosure Statement David Huffman filed with the U.S. House of Representatives (attached hereto as Exhibit "E") and statements made by David Huffman to various newspapers (attached hereto as Exhibit "F"). These funds received by Huffman in the form of uncollateralized, undocumented, no interest, no due date and still-secret loans constitute unlawful and excessive political contributions. David Huffman has either failed to report receipt of these funds entirely or falsely and fraudulently reported these funds to the FEC as a loan of "personal funds only".

Huffman's Committee appears to have illegally accepted from Dale Jarrett Ford, Inc. in-kind contributions in excess of the maximum allowable contributions from a corporation. These contributions were received by Huffman's Committee in the form of a Ford Explorer valued at $33,695.00. Further, ***it appears that Huffman's Committee may have fraudulently attempted to conceal this illegal $33,695.00 contribution as an unitemized contribution.***

Huffman's fraudulent campaign filings violate the most basic federal laws and merit a swift FEC investigation and action.

II. FACTS

On January 12, 2004, David Huffman announced his candidacy for the U.S. Congress for North Carolina's 10th Congressional District. Huffman's Committee's April Quarterly FEC Report ("April Report") stated that on January 16, 2004, Huffman loaned his campaign $6,647.01 from his personal funds (attached hereto as Page 1 of 3 of Exhibit "B"). This loan is astonishingly close in number to

the "Cash on Hand at End" of the Committee to Re-elect L. David Huffman Sheriff (attached hereto as Exhibit "H").

Huffman's Committee's April Report further stated that on March 30, 2004, Huffman loaned his campaign $100,000.00 from his personal funds (attached hereto as Page 3 of 3 of Exhibit "B"). ***On May 4, 2004, the FEC notified Huffman's Committee of its failure to include required essential information regarding the interest rate and due date of the $100,000.00*** (attached hereto as Exhibit "I"). ***Huffman's Committee has FAILED to disclose to the FEC the actual source of this $100,000.00.***

Huffman's Committee's July Quarterly FEC Report ("July Report") stated that on May 10, 2004, Huffman loaned his campaign $50,000.00 (attached hereto as Page 1 of 3 of Exhibit "D"). ***For the second time, Huffman's Committee FAILED to disclose to the FEC the actual source of this $50,000.00.*** Huffman's Committee's July Report stated that on June 9 2004, Huffman loaned his campaign $10,000.00 (attached hereto as Page 2 of 3 of Exhibit "D"). ***For the third time, Huffman's Committee FAILED to disclose the actual source of this $10,000.00.*** Huffman's Committee's July Report stated that on June 17, 2004, Huffman loaned his campaign another $100,000.00 (attached hereto as Page 3 of 3 of Exhibit "D"). ***For the fourth time, Huffman's Committee FAILED to disclose the actual source of this $100,000.00.***

On July 18, 2004, The Hickory Daily Record reported David Huffman as stating $166,000.00 of the money he has loaned his campaign "came from a bank loan" (attached hereto as Exhibit "F"). This statement directly contradicts what Huffman's Committee has reported to the FEC. Again, Huffman's Committee has reported to the FEC that money Huffman loaned his campaign came from Huffman's personal funds (see of Exhibits "B" and "D").

On July 18, 2004, The Hickory Daily Record reported David Huffman as stating that $100,000.00 of the money he has loaned his campaign he borrowed "against his retirement earlier this year" (attached hereto as Exhibit "F"). However, ***Huffman stated in the Financial Disclosure Statement he filed with the U.S. House of Representatives his ONLY LIABILITY as being a $25,500.00 mortgage on his vacation home.*** (attached hereto as Page 5 of 6 of Exhibit "E"). And, once again, Huffman's Committee has reported to the FEC that money Huffman loaned his campaign came from Huffman's personal funds (Exhibits "B" and "D").

On or before May 29, 2004, Huffman's Committee began advertising the raffling of a 2004 Ford Explorer valued at $33,695.00 (attached hereto as Exhibit "J"). However, ***Huffman's Committee's April and July Reports do NOT disclose a disbursement for the purchase of the 2004 Ford Explorer.*** (see Exhibits "A" and "C").

III. THE LAW and APPLICATION

1. The Secret $266,647.01 Loans Constitute Campaign Contributions Far in Excess of the Amount Allowed by Law and Were Illegally Misreported to the FEC.

A bank loan to a candidate finance his campaign will be considered a contribution and subject to contribution limits, unless it:

(1) Bears the usual and customary interest rate of the lending institution for the category of loan involved;
(2) Is made on a basis that assures repayment;
(3) Is evidenced by a written instrument; and
(4) Is subject to a due date or amortization schedule.

11 CFR 100.82(a).

All loans made by a candidate to his authorized committee including loans derived from a bank loan to the candidate shall be disclosed to the FEC. *11 CFR 104.3(a)(3)(vii)(B).* When a candidate obtains a bank loan for use in connection with the candidate's campaign, the candidate's committee shall disclose to the FEC the following information:

(1) The date, amount, and interest rate of the loan, advance, or line of credit;
(2) The name and address of the lending institution; and
(3) The types and value of collateral or other sources of repayment that secure the loan, advance, or line of credit, if any.

11 CFR 104.3(d)(4).

"A gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution." *11 CFR 100.52(a).* "A loan that exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid." *11 CFR 100.52(b)(1).*

David Huffman's third party – uncollateralized, undocumented, no interest, no due date – loans were NOT arms-length transactions made on usual and customary terms. The third party loans were illegal contributions that were made for the purpose of influencing the outcome of the election.

Federal criminal law further prohibits individuals from knowingly and willfully "mak[ing] any false, fictitious or fraudulent statements or representations... within the jurisdiction of any department or agency of the United States." *18 U.S.C. § 1001.* The FEC is an "agency" within the meaning of section 1001, *see U.S. v. Crop Growers Corp., 954 F.Supp 335, 354 (D. D.C. 1997),* and each violation of this criminal statute could result in a fine of up to $10,000.00, imprisonment for up to five years, or both. *Id.*

David Huffman's reporting the $266,474.01 infusion into his campaign as a loan of "personal funds only" is false, fraudulent and fictitious. These funds were not his own as evidenced by Huffman's statements to the press and the Financial Disclosure Statement he filed with the U.S. House of Representatives (see Exhibits "E" and "F"). Huffman's filing is knowingly inaccurate and violates the U.S. criminal code. *18 U.S.C. § 1001.*

2. *The $33,695.00 Car Raffle Proceeds Constitutes an Excessive Political Contribution that Should Have Been Reported to the FEC.*

The donation of goods offered free or at less than the usual charge is called an in-kind contribution. *See Campaign Guide for Congressional Candidates and Committees*, http://www.fec.gov/pages/candguide2004/chapt3.htm, (March 2004 Edition) citing *11 CFR 100.52(d)(1)*. The value of an in-kind contribution – the usual and normal charge – counts against the same contribution limit as a gift of money. *Id.*

Huffman's Committee's acceptance of 2004 Ford Explorer constituted an in-kind contribution that was excessive and illegal. The illegal in-kind contribution of 2004 Ford Explorer was received on or before May 29, 2004, as evidenced by Huffman's Committee's advertising of the car raffle at The Greater Hickory Smoke on May 29, 2004 (see Exhibit "J"). However, Huffman's Committee's April and July Reports, which disclose all receipts and disbursements up through and including July 15, 2004, do not disclose the receipt of this illegal in-kind contribution nor a disbursement for the purchase of the 2004 Ford Explorer (see Exhibits "A" and "C").

V. ***PRAYER FOR RELIEF***

David Huffman's verifiable written contradictions regarding the financing of his campaign and his refusal to disclose to the FEC the source of more than 60% of his campaign funds makes a public mockery of campaign finance laws and shreds the most basic ethical requirements required of candidates. ***When questioned about his failure to disclose the source of the $266,647.01 Huffman stated, "How can that be a lot of money in this day and time?"*** (see Page 6 of Exhibit "F"). It is "a lot of money" to the vast majority of voters in North Carolina's 10th Congressional District; and, apparently, as evidenced by Huffman's Financial Disclosure Statement, it should be considered "a lot of money" to him (see Exhibit "E"). That a candidate would even consider financing his campaign in such a way raises serious questions about his judgment, character and respect for the law – questions properly put before the voters of North Carolina's 10th Congressional District.

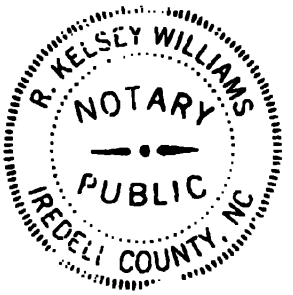
But Huffman's apparent violations of the law are properly brought before the Federal Election Commission and/or Department of Justice. Therefore, Sandy Lyons, Patrick McHenry and George Moretz respectfully request that the Commission fully investigate the campaign activities of the Huffman for Congress Committee with particular emphasis upon the unreported, excessive and unlawful third-party contributions that have come in the form of loans and payments to the candidate. Criminal violations should be referred to the Department of Justice's Public Integrity section.

The Commission and other federal law enforcement officials must do all they can to deter and punish such laundering campaign contributions. The Commission should take immediate and appropriate action under 2 U.S.C. § 437g(d)(1).

Respectfully Submitted,

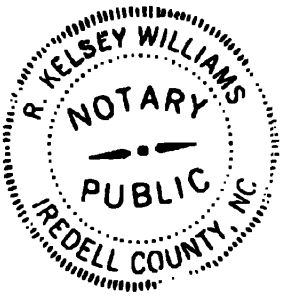
Sandy Lyons
[redacted]
Hickory, NC 28601

Signed and sworn to before me
this 3rd day
of August, 2004.
Notary Public
My Commission Expires:



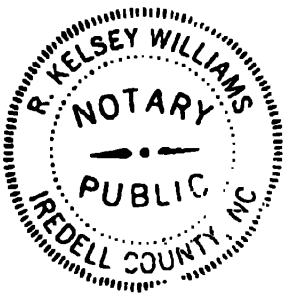
Patrick McHenry
[redacted]
Cherryville, NC 28021

Signed and sworn to before me
this 3rd day
of August, 2004.
Notary Public
My Commission Expires:



George Moretz
[redacted]
Hickory, NC 28601

Signed and sworn to before me
this 3rd day
of August, 2004.
Notary Public
My Commission Expires:



2804419646

EXHIBIT 6

Catawba County
North Carolina

Affidavit of Jamie Parsons

I, Jamie Parsons, do hereby affirm and state:

1. I served as the volunteer campaign chairman for the Huffman for Congress campaign in which David Huffman was a candidate in 2004 for the Republican nomination for the U.S. House of Representatives for the 10th district of North Carolina.

2. I worked closely with David Huffman, the candidate, and Dean Proctor, the volunteer finance chairman of the campaign.

3. In mid-June, 2004, at a meeting at our campaign headquarters, the three of us plus our campaign consultant, Brian Chatman, discussed the fact that the campaign expenses were going to be ratcheting upward within the next several weeks as the July primary date approached.

4. We also discussed at that meeting the fact that David Huffman, the candidate, might need to borrow money from a local bank against his assets to loan to the campaign.

5. Dean Proctor volunteered to work on helping to arrange for the loan from the Bank in order that the campaign would have the funds it would need.

6. Shortly after the meeting, the funds were deposited into the campaign depository account as a loan from David Huffman to the campaign.

7. I was not aware at the time of exactly what arrangements had been made to obtain the funds, and I knew only that Dean and David had taken care of it pursuant to our conversation in the meeting.

8. On Saturday evening, July 17, 2004, I was contacted by the campaign consultant Brian Chatman who had been contacted by Dean Proctor that afternoon.

9. Dean Proctor told Brian Chatman that Gaye Watts had come to his house that day and asked him where the money had come from which had been loaned to the campaign by David Huffman.

10. Dean Proctor told Gaye Watts that he (Dean Proctor) had drawn down on his own line of credit and loaned the funds to David Huffman until such time as David could get to the bank and sign the documents to obtain the loan the bank had agreed to make to David Huffman. Gaye Watts told Dean Proctor that handling the transaction in that manner was illegal.

11. Dean Proctor immediately contacted Brian Chatman to ask if Gaye Watts' statement about the loan was accurate.

12. Brian Chatman then reported these conversations to me and I asked Brian Chatman, "Is she correct? Is there a problem with the loan?"

13. Brian Chatman advised me that he was not certain whether that was correct or not.

14. I asked Brian Chatman if he knew anyone who was an expert in these types of matters and he said he knew an attorney in Washington D.C who specialized in campaign finance law as I would talk to

someone who was knowledgeable to make sure that everything was correctly entered and reported to the FEC.

15. I directed Brian Chatman to please contact the attorney he knew the following day, Sunday, July 18, 2004.

16. Brian Chatman then contacted Cleta Mitchell and arranged for a conference call with her for that evening (Sunday, July 18, 2004).

17. A conference call with Cleta Mitchell was conducted on Sunday evening with the following participants: Brian Chatman, Dean Proctor and myself.

18. We described the facts of what had transpired, how the two loans (Peoples Bank and BB&T) had been taken out and then how the funds from one loan purchased a certificate of deposit and the other loan proceeds had been deposited into the campaign account.

19. Cleta Mitchell advised us that indeed, the loan from BB&T Bank had not been made in a legal manner and we needed to not only correct the situation as soon as the banks opened the next morning, but we also needed to report the problem(s) to the Federal Election Commission.

20. We agreed to reverse the transactions immediately as follows: The certificate of deposit which was being held at People's State Bank was to be cashed and the funds used to deposit into the campaign. The campaign would then issue a check to David Huffman who would pay Dean Proctor the amount drawn down on his line of credit. BB&T Bank would then proceed to make the loan to David Huffman personally that it had previously agreed it would make.

21. We immediately and voluntarily took the steps outlined above. BB&T Bank had always stated that it would make a loan to David Huffman for the campaign because the bank personnel knew David Huffman, knew his financial status and knew that he had the assets and honor to repay the loan.

22. Prior to Saturday, July 17, 2004, I had no knowledge that there was any problem with the source of the funds or the manner that these funds were deposited into the campaign.

23. I state emphatically that neither David Huffman NOR Dean Proctor knew that there was a legal problem with Dean Proctor's drawing on his personal line of credit and loaning the funds to David Huffman temporarily for the use in David's campaign.

24. Neither Dean Proctor nor myself had any prior experience working on a federal campaign. David Huffman had worked as a volunteer with Richard Burr and Sen. Elizabeth Dole before his campaign but he had no experience with or responsibility for the financial aspects of those or any other federal campaign prior to his own congressional campaign.

25. I had never worked with or for any political campaign in any capacity prior to the Huffman for Congress campaign.

26. Those of us involved with the Huffman campaign knew there were restrictions on contributions to the campaign but none of us knew that there were any specific restrictions or federal laws governing obtaining a loan for use in the campaign.

27. The moment someone raised the question of possible impropriety with the loan, David Huffman, Dean Proctor, Brian Chatman and I immediately took action to find out the law, correct any errors and voluntarily report in person any transgressions to the FEC.

28. David Huffman, Dean Proctor and the Huffman for Congress campaign are totally innocent of the allegations that any of us involved with the campaign knew the loan was improper before Gaye Watts came to Dean Proctor's home on July 17, 2004.

29. I can personally attest that David Huffman did not intentionally or knowingly violate the federal campaign finance laws by virtue of his involvement or actions regarding any loan to this campaign.

30. I can personally attest that Dean Proctor did not intentionally or knowingly violate the federal campaign finance laws by virtue of his involvement or actions regarding any loan to this campaign.

31. It is my sincere belief based on my personal knowledge of the facts that no one involved with the Huffman for Congress campaign would have knowingly violated the federal campaign finance laws in any manner whatsoever.

32. It is also my sincere belief that no one involved with the Huffman for Congress campaign ever knowingly violated the federal campaign finance laws in any manner whatsoever.

Further Affiant sayeth not.

Jamie Parsons

On this 24th day of June, 2005, Jamie Parsons personally appeared before me and stated under penalty of perjury that the above and foregoing statements are true and correct to the best of his information and belief.

Sandra W. Whitener
Notary Public

My Commission Expires: 11/28/2008

EXHIBIT 7

Mitchell, Cleta

From: Tedkoch[redacted]
Sent: Sunday, August 01, 2004 6:39 PM
To: CMitchell[redacted]
Subject: Schedule C-1

Cleta,

As a follow-up to our conversation, I think that a Schedule C-1 is not required if a candidate gives the money to his/or campaign or lends the money to his/her campaign from personal funds.

If the candidate, however, obtains a loan from a lending institution and in turn lends the money to his/her campaign, it appears that a Schedule C-1 may be required. I may be reading this wrong, but I'll attach the directions provided from the FEC in the event it helps with any clarification.

-Ted

EXHIBIT 8

Wake County
North Carolina

Affidavit of Brian Chatman

I, Brian Chatman, do hereby affirm and state:

1. I served as the campaign consultant for the Huffman for Congress campaign in which David Huffman was a candidate in 2004 for the Republican nomination for the U.S. House of Representatives for the 10th district of North Carolina.

2. I worked closely with David Huffman, the candidate, Jamie Parsons, the campaign manager and Dean Proctor, the volunteer finance chairman of the campaign.

3. In mid-June, 2004, at a meeting at our campaign headquarters, the four of us discussed the fact that as the July primary date approached, we needed to be prepared for the possibility of a runoff, even though our polling data showed that David Huffman was winning without a runoff. We knew that if there was a runoff election, we would need money in the bank to go up on television and stay on television through the brief runoff period.

4. We also discussed at that meeting the fact that David Huffman, the candidate, might need to borrow money from a local bank to loan to the campaign so that we would have a strong cash position on our June 30 FEC report *and* also have money for television for the runoff if a runoff occurred.

5. Dean Proctor volunteered to work on helping to arrange for a bank loan in order that the campaign would have the funds it needed for whatever purpose(s) we needed them for.

6. Shortly after the meeting, the funds were deposited into the campaign depository account as a loan from David Huffman to the campaign.

7. I was not aware at the time of the deposit into the campaign account exactly what arrangements had been made to obtain the funds, and I knew only that Dean and David had taken care of it pursuant to our conversation in the meeting.

8. On Saturday, July 17, 2004, I received a phone call from Dean Proctor.

9. Dean Proctor told me that Gaye Watts had come to his house that day and asked him where the money had come from which had been loaned to the campaign by David Huffman.

10. When Dean Proctor told Gaye Watts that he (Dean Proctor) had drawn down on his own line of credit and given the funds to David Huffman, Gaye Watts told Dean Proctor that the transaction was illegal.

11. Dean Proctor called to ask me if it was true that such a transaction was illegal.

12. I told him that I thought there might be problems with that type of transaction.

13. I immediately contacted Jamie Parsons to tell him what Dean Proctor had told me, which the first time that Jamie Parsons knew the source of the funds that had been deposited into the campaign account.

14. Jamie Parsons asked me if I knew anyone who was an expert in these types of matters and I told him I knew an attorney who specialized in campaign finance law.

15. Jamie Parsons asked me to please contact the attorney the following day, Sunday, July 18, 2004.

16. I contacted Cleta Mitchell and arranged for a conference call with her for that evening (Sunday, July 18, 2004).

17. A conference call with Cleta Mitchell was conducted on Sunday evening Jamie Parsons, Dean Proctor and myself.

18. We described the facts of what had transpired, how the two loans (Peoples State Bank and BB&T) had been taken out and then how the funds from one loan purchased a certificate of deposit and the other loan proceeds had been deposited into the campaign account. This weekend was the first time that I became aware of the facts concerning the loan(s).

19. Cleta Mitchell advised us that indeed, the loan from BB&T Bank had not been made in a legal manner and we needed to not only correct the situation as soon as the banks opened the next morning, but we also needed to report the problem(s) to the Federal Election Commission.

20. We agreed to reverse the transactions as follows: The certificate of deposit which was being held at People's State Bank was to be cashed and the funds used to deposit into the campaign. The campaign would then issue a check to David Huffman who would pay Dean Proctor the amount drawn down on his line of credit. BB&T Bank would then proceed to make the loan to David Huffman personally that it had previously agreed it would make to make.

21. We did take the steps outlined above. BB&T Bank had stated to Dean Proctor and David Huffman that it would make a loan to David Huffman for the campaign because the bank personnel knew David Huffman, knew his financial status and knew that he had the assets and honor to repay the loan. Hickory, North Carolina is a small town and the bankers know all the people in town and know who to loan money to and who not to loan money to.

22. Prior to Saturday, July 17, 2004, I had no knowledge that there was any problem with the source of the funds deposited into the campaign.

23. I state emphatically that neither David Huffman NOR Dean Proctor knew that there was a legal problem with Dean Proctor's drawing on his personal line of credit and loaning the funds to David Huffman temporarily for the use in David's campaign.

24. If either Dean Proctor or David Huffman had known that obtaining a loan in this manner was illegal, they would not have entered into the transaction. Neither of them had any knowledge of the complexities of law governing loans to federal campaigns and neither of them would have done anything intentionally to break the law.

26. Even though I have been involved with various federal campaigns in the past, I was not aware of the intricacies or all the restrictions involving federal laws governing obtaining a loan for use in the campaign.

27. The moment someone raised the question of possible impropriety with the loan, David Huffman, Dean Proctor, Jamie Parsons and I immediately took action to find out the law, correct any errors and report any transgressions.

28. David Huffman, Dean Proctor and the Huffman for Congress campaign are totally innocent of the allegations that anyone involved with the campaign knew the loan was improper before Gaye Watts came to Dean Proctor's home on July 17, 2004.

29. I am absolutely certain that David Huffman did not knowingly violate the federal campaign finance laws by virtue of his involvement or actions regarding any loan to the campaign.

30. I am absolutely certain that Dean Proctor did not knowingly violate the federal campaign finance laws by virtue of his involvement or actions regarding any loan to the campaign.

32. No one involved with the Huffman for Congress campaign would have knowingly violated the federal campaign finance laws in any manner whatsoever.

33. No one involved with the Huffman for Congress campaign ever knowingly violated the federal campaign finance laws in any manner whatsoever.

34. I was acutely aware of the polling data and the status of the candidates in the race for Congress in the closing weeks before the July primary. If this loan transaction had not occurred and become a campaign issue, I am certain that David Huffman would have won the primary election without a runoff.

35. The Huffman for Congress campaign did not *need* to commit an illegal act to win because David Huffman was already winning – and because of the loan, David Huffman did not win the primary without a runoff and then he lost the runoff election.

36. Losing the election and having $250,000 in debt from the campaign seems to me to be sufficient punishment inflicted on an honest and patriotic American, which is what David Huffman is.

37. Both Dean Proctor and David Huffman are honest men of impeccable character and this loan situation was simply an honest mistake.

Further Affiant sayeth not.

Brian E. Chatman

Brian Chatman

On this 27th day of June, 2005, Brian Chatman personally appeared before me and stated under penalty of perjury that the above and foregoing statements are true and correct to the best of his information and belief.

SEAL

Teresa B. Peretti

Notary Public

My Commission Expires: 2-10-2009

EXHIBIT 9

Catawba County
North Carolina

Affidavit of Gaye Watts

I, Gaye Watts, do hereby affirm and state:

1. During 2004, I served as the paid finance director of a campaign for a candidate for the US House of Representatives for the 10th congressional district in North Carolina.

2. As part of my duties, I regularly reviewed the campaign finance reports and other filings of the opposing candidates for the same office.

3. David Huffman was one of the opposing candidates seeking the Republican nomination for the U.S. House of Representatives for the 10th district of North Carolina.

4. I reviewed the FEC reports filed by Huffman for Congress during the spring and summer of 2004 as well as his personal financial disclosure report filed with the clerk of the US House of Representatives.

5. During the course of my review, I saw that Mr. Huffman reported that he had loaned his campaign $100,000.

6. I did not see how it was possible for Mr. Huffman to have made a personal loan to his campaign based on the information I had learned from reviewing his personal financial disclosure report and I further questioned the 0% interest rate for the loan listed on the Huffman FEC filing.

7. The campaign I was working for had retained a private investigator to research background and financial filings on all candidates in the race. I asked him to review all public filings related to Mr. Huffman to try to determine the source of the funds of the $100,000 loan from Mr. Huffman to his campaign because I did not believe it was possible for the funds to have come from Mr. Huffman's own funds.

8. The investigator found no evidence of any security interests filed at the courthouse which would have been necessary for the loan to be properly secured if obtained through a bank.

9. There was some rumor that perhaps the source of the funds was Dean Proctor, the volunteer finance chairman of the Huffman for Congress campaign.

10. I have known Dean Proctor for many years and have found to be a man of integrity and honor in his dealings with me. I did not believe and do not believe that Dean Proctor would knowingly break the law.

11. On Saturday, July 17, 2004, I drove to Dean Proctor's home and talked to him about the questions that had arisen regarding the source of the $100,000 loan from David Huffman to his campaign.

12. As soon as I brought it up, Dean Proctor immediately told me that he had obtained the funds on his line of credit and given the funds to David Huffman for his campaign.

13. Dean Proctor said this was handled in this manner because David Huffman was traveling and Dean Proctor just drew down on his line of credit until they could make the loan to David Huffman when they had time to do so.

14. I told Mr. Proctor that it was not legal for him to have provided the funds to David Huffman *or* his campaign for use in the campaign. I further told him that even a spouse or child cannot give a contribution or make a loan to a campaign above the legal limit that applies to everyone else.

15. Dean Proctor immediately said he had no idea there was anything wrong with the way he had secured the funds for the campaign and that he would take the necessary steps to make it right "on Monday morning".

16. I told him that he and the campaign should hire an attorney because the loan had already been made and it wasn't going to go away and it would not be that simple to reverse.

17. I observed Dean Proctor when I told him that the loan was a violation of the campaign finance laws and he seemed genuinely surprised to find out that he couldn't legally do what he had done.

18. He was firm in saying repeatedly "I didn't know this" and "I will make sure this is corrected on Monday."

19. The Dean Proctor I know would not knowingly break the law.

20. In my opinion, Dean Proctor did not knowingly break the law.

21. I cried all the way home because I felt badly that this was going to be a serious problem for Mr. Proctor who has been a long time family friend.

Further Affiant sayeth not.

Gaye Watts

On this 27th day of June, 2005, Gaye Watts personally appeared before me and stated under penalty of perjury that the above and foregoing statements are true and correct to the best of her information and belief.

SEAL

Notary Public

My Commission Expires:

My Commission Expires 11-02-2008