



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

DEC 23 2005

Ralph W. Holmen  
Associate General Counsel  
National Association of Realtors – 527 Fund  
430 North Michigan Avenue  
Chicago, Illinois 60611

RE: MURs 5577 and 5620  
National Association of Realtors – 527 Fund

Dear Mr. Holmen:

On December 13, 2005, the Federal Election Commission found that there is reason to believe that the National Association of Realtors – 527 Fund (“NAR 527”) violated 2 U.S.C. §§ 433 and 434, provisions of the Federal Election Campaign Act of 1971, as amended (“the Act”) by failing to register and report to the Commission as a political committee. This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission’s finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission’s consideration of this matter.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, 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.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures

Factual and Legal Analysis  
Procedures  
Designation of Counsel Form

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** National Association of Realtors – 527 Fund      **MURs:** 5577 and 5620

**I.      INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (“the Commission”) by Thomas Strini regarding seven flyers he received in the mail shortly before the 2004 General Election. *See* 2 U.S.C. § 437g(a)(1). The flyers concerned Richard Burr, a sitting Congressman in North Carolina from outside the complainant’s congressional district, who was a candidate for the U.S. Senate from North Carolina. According to the complainant, the National Association of Realtors (“NAR”) sent the flyers, which the complainant says advocated for Burr’s candidacy. While five of the flyers include a disclaimer that they were paid for by NAR, Internal Revenue Service (“IRS”) disclosure reports reveal that a separate 527 fund, National Association of Realtors – 527 Fund (“NAR 527”) may have in fact paid for these flyers.

**II.     FACTUAL AND LEGAL ANALYSIS**

NAR 527 was established in October 2000 and is registered with the IRS. In 2004, NAR 527 made approximately \$3 million in reported disbursements, almost all of which were for political advocacy campaigns on behalf of various federal candidates. *See* NAR 527 Form 990 at 7 (Jun. 17, 2005). For example, NAR 527’s disbursements included \$21,000 for the “cost of political advocacy mailers for Richard Burr,” approximately \$900,000 total for “political advocacy mailers” and “political advocacy campaigns” for Burr, Rick Renzi and Anne Northup, and approximately \$39,750 to research “voter sentiment” in connection with two Congressional races. *See id.*

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Based on its IRS disclosure reports, NAR 527 appears to have funded five of the pro-Burr flyers that were the subject of the complaints in MURs 5577 and 5620. These flyers apparently were sent to the general public in North Carolina, where Burr was a U.S. Senate candidate, in October 2004 and during the week prior to the 2004 General Election. Each of these flyers strongly praised Burr for his legislative accomplishments, stating, for example, “Richard Burr – Building a Stronger North Carolina ... One Neighborhood at a Time,” “For over a decade, Richard Burr has been a leader in the effort to improve the quality of life in North Carolina,” and “He has the experience to make North Carolina stronger.”

A publicly available description of NAR 527’s 2004 political activities described its use of flyers like those sent to North Carolina residents as part of a broader “public advocacy” program intended to generate support for specific federal candidates:

With a 2003-2004 budget expenditure of \$5.2 million, NAR’s Public Advocacy program conducted several innovative advocacy initiatives to generate public support for the aforementioned candidates [Johnny Isakson, Richard Burr, Anne Northup and Rick Renzi] in their election and reelection races. The initiatives included direct mail appeals, television/radio advertisements, print advertising and email communications complementing NAR’s RPAC independent Expenditures and Opportunity Race programs.

See 2004 Policy and Program Achievements, Goal: Increasing the Political and Grassroots Power of REALTORS®, available at <http://www.realtor.org/GAPublic.nsf/Pages/accomp04grass> (last visited Nov. 7, 2005). Similarly, in its IRS filings, NAR 527 described its primary exempt purpose as follows: “To collect funds from members to use for political advocacy purposes. Print, radio and other media buys are used to publicize political positions of candidates.” See NAR 527 Form 990 at 2.

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**A. SUMMARY OF THE LAW**

The Act defines a “political committee” as any committee, club, association, or other group of persons that receives “contributions” or makes “expenditures” for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The term “contribution” is defined to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). *See, e.g., FEC v. Survival Educ. Fund, Inc.*, 65 F.3d 285, 295 (2nd Cir. 1995) (where a statement in a solicitation “leaves no doubt that the funds contributed would be used to advocate [a candidate’s election or] defeat at the polls, not simply to criticize his policies during the election year,” proceeds from that solicitation are contributions).

**B. “POLITICAL COMMITTEE” STATUS**

NAR 527 is a Section 527 organization that files reports with the IRS. By law, a 527 organization is “a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.” 26 U.S.C. § 527(e)(1). The “exempt function” of 527 organizations is the “function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in a political organization,” or the election or selection of presidential or vice presidential electors 26 U.S.C. § 527(e)(2). As a factual matter, therefore, an organization that avails itself of 527 status has effectively declared that its primary purpose is influencing elections of one kind or another.

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NAR 527's public statements and activities point specifically to a focus on influencing many federal elections in 2004. Where, as here, the available information amply demonstrates that the objective of NAR 527 was to influence the federal elections in 2004, and NAR 527 apparently raised and spent thousands of dollars in furtherance of that objective, it is appropriate for the Commission to investigate whether, among those thousands spent and received, NAR 527 has made \$1,000 in "expenditures" or received \$1,000 in "contributions" as defined by the Act. If it has, NAR 527 is a political committee subject to the contribution limitations, source prohibitions, and reporting requirements of the Act.<sup>1</sup> See 2 U.S.C. §§ 431(4)(A), 433, 434, 441a, and 441b.

### III. CONCLUSION

The factual record provides a basis on which to infer at this stage that NAR 527 has made \$1,000 in "expenditures" or received \$1,000 in "contributions" as defined by the Act, see 2 U.S.C. §§ 431(8) and 431(9), and that the Commission should investigate whether NAR 527 is required to register and report as a political committee. Therefore, there is reason to believe that NAR 527 may have violated 2 U.S.C. §§ 433 and 434 by failing to register as a political committee with the Commission.

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<sup>1</sup> To address overbreadth concerns the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976), *FEC v Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986)

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