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FIRST GENERAL COUNSEL'S REPORT

MUR: 6553

DATE COMPLAINT FILED: April 10, 2012

DATE OF NOTIFICATION: April 17, 2012

LAST RESPONSE RECEIVED: May 9, 2012

DATE ACTIVATED: May 17, 2012

EXPIRATION OF SOL: Jan. 20, 2016 –  
Sept. 2, 2017

COMPLAINANT:

Gregory Wright

RESPONDENTS:

Friends of Dick Lugar, Inc. and Matthew R.  
Nicholson in his official capacity as Treasurer  
Senator Dick Lugar

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 434(b)  
11 C.F.R. § 106.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

U.S. Senate Select Committee on Ethics

I. INTRODUCTION

The complaint alleges that Senator Dick Lugar may have violated the Federal Election Campaign Act, as amended (the "Act"), by using official Senate funds for travel from Washington, D.C. to Indiana to campaign and attend fundraisers. The complaint specifically cites six trips that Lugar took to Indiana in 2011 for which he received reimbursement from the Senate and during which he allegedly spent part of the time campaigning. The complainant requests that the Commission investigate Lugar's travel and determine whether his authorized committee, Friends of Dick Lugar, Inc. and Matthew R. Nicholson in his official capacity as

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Treasurer (the "Committee"), must reimburse the government for all or part of the travel related to the trips.

The Committee's response<sup>1</sup> argues that in situations where Lugar's trips involved both campaign and non-campaign-related stops, the Committee complied with Commission regulations by making the appropriate allocations and reporting expenditures for campaign-related stops in its disclosure reports. Resp. at 3 (citing 11 C.F.R. § 106.3).<sup>2</sup>

Based on the discussion below, we recommend that the Commission find no reason to believe that the Committee and Lugar violated 2 U.S.C. § 434(b) or 11 C.F.R. § 106.3 in connection with the travel, and close the file.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Facts

From January 2011 to September 2011, Lugar traveled from Washington, D.C. to Indianapolis, Indiana on six occasions for trips that included both official and campaign activity. See Complaint Attachment "Did Senator Lugar Use Taxpayer Money for Political Travel?"; see also Resp. at 1-2. Lugar received reimbursement from the Senate for at least part of the travel expenses incurred during these trips. *Id.*

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<sup>1</sup> A separate notification was sent to Lugar. The Committee's response does not specifically indicate whether its response was submitted also on Lugar's behalf, nor did Lugar submit a separate response to the complaint.

<sup>2</sup> Although the Committee acknowledges that one of the six trips noted in the complaint should not have been reimbursed with Senate funds, the Committee notes that the use of Senate funds in connection with an officeholder's travel is governed by Congressional appropriations statutes and that "mixed purpose travel," which involves officeholder travel, is subject to oversight by the Senate Ethics Committee. Resp. at 2. Because the Commission does not have jurisdiction over the question of whether or not Lugar properly used Senate funds in connection with his officeholder travel, we do not discuss this issue in the report.

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The six trips from Washington, D.C. to Indiana, amounts reimbursed,<sup>3</sup> and reported campaign activity, as alleged in the complaint, are summarized below.

- **January 20 – January 23, 2011** (\$393.73). In a January 18, 2011, internet article titled “Sen. Richard Lugar seeks re-election,” it was reported that “[Lugar] plans to return to Indiana on Friday [January 21] for a major fundraiser in Carmel, outside of Indianapolis.” <http://www.journalgazette.net/article/20110118/NEWS07/110119502/1044/LOCAL08>.
- **May 31 – June 4, 2011** (\$513.36). The complaint cites two photos from Lugar’s photostream on flickr.com, purporting to show Lugar at campaign events. The first shows Lugar at a meeting at his Indianapolis campaign headquarters. The caption below the photograph reads: “Dick Lugar with Volunteers: Dick Lugar visiting with volunteers at campaign headquarters on 6/1/11.” <http://www.flickr.com/photos/dicklugar/5812157451/in/datetaken/>. The second photo shows Lugar at a NRSC/NRCC event in Evansville on June 4. The caption below it reads: “NRSC/NRCC event in Evansville: On Saturday, June 4, 2011 Senator Lugar joined Senate Minority Leader Mitch McConnell and Speaker Boehner, along with Sen. Coats and Indiana Reps. Bucshon, Young and Pence, for an NRSC/NRCC event in Evansville, IN.” <http://www.flickr.com/photos/dicklugar/5808832495/in/datetaken/>.
- **June 25 – June 26, 2011** (\$162.83). A photo of Lugar posing with a couple has the caption “Dick Lugar with Hoosiers: Dick Lugar greets Friends at a reception in Hamilton Co. on 6/26/11” and appears on Lugar’s photostream on flickr.com. <http://www.flickr.com/photos/dicklugar/5962153570/in/datetaken/>.
- **July 3 – July 5, 2011** (\$813.13). A series of 44 photos of Lugar posing with other individuals appears on Lugar’s photostream on flickr.com with the label “Gathering of Friends in Syracuse [IN] on 7/3/11.” <http://www.flickr.com/photos/dicklugar/596452860/in/photostream/in/datetaken/>.
- **July 8 – July 10, 2011** (\$817.78). A photo of Lugar has the caption “Dick Lugar with Supporters: Dick Lugar attends a gathering of supporters in Morgan Co. on 7/9/11.” <http://www.flickr.com/photos/dicklugar/5962261688/in/datetaken/>.
- **August 24 – September 2, 2011** (\$551.14). An article in Politico states that Lugar attended a fundraiser in Kokomo. David Catanese, *No GOP Welcome Mat for Lugar in Kokomo*, POLITICO (Sept. 1, 2011). The complaint also cites to three photos, one of Lugar speaking, with the caption, “Dick Lugar in Indianapolis: Dick Lugar meets with Supporters in Indianapolis on 8/26/11,” and two others of Lugar with other individuals and the captions: “Dick Lugar Greeting Supporters: Dick Lugar meets with friends in

<sup>3</sup> The complaint does not cite the source of its information, nor does the Committee provide specific information about the reimbursement amounts.

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Allen County on 8/25/11" and "Dick Lugar with Supporters: Dick Lugar meets with Supporters in Columbus on 8/26/11."

<http://www.flickr.com/photos/dicklugar/6093789363/in/datetaken/>,

<http://www.flickr.com/photos/dicklugar/6097269299/in/datetaken/>,

<http://www.flickr.com/photos/dicklugar/6101223918/in/datetaken/>.

The Committee acknowledges that there was campaign activity on each of the six trips

but states that it allocated travel expenses so that the Committee paid its share of expenses

incurred during those trips pursuant to 11 C.F.R. § 106.3 and reported those expenditures in its

disclosure reports. *Id.* at 2-3.

#### B. Legal Analysis

The complaint alleges that Respondents may have violated campaign finance laws by

receiving reimbursement from the Senate for travel expenses incurred, in part, for campaign

activity.<sup>4</sup> Section 106.3 of the Commission's regulations governs allocation of expenses between

campaign and non-campaign-related travel and provides that all expenditures for a House or

Senate candidate's campaign-related travel shall be reported, including travel expenses paid for

by a candidate from personal funds. 11 C.F.R. § 106.3(a), (b)(1); *see also* 2 U.S.C. § 434(b)(4)

(providing that political committees must disclose disbursements). Where a candidate's trip

involves both campaign-related and non-campaign-related stops, the expenditures allocable for

campaign purposes are reportable and are calculated on the actual cost-per-mile of the means of

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<sup>4</sup> The complaint also alleges that the travel reimbursements from the federal government may violate the Hatch Act. *See* Complaint Attachment "Did Senator Lugar Use Taxpayer Money for Political Travel?" Because the enforcement of the Hatch Act is not within the Commission's jurisdiction, we do not include any discussion of this issue in this report. In addition, Citizens for Responsibility and Ethics in Washington filed a complaint with the Senate Select Committee on Ethics alleging that Lugar had been improperly reimbursed for hotel expenses he incurred over many years. As a result, Lugar reimbursed the Senate Disbursing Office almost \$14,700 for improperly billed hotel stays in Indiana, and the Ethics Committee dismissed the complaint.

1 transportation actually used, starting at the point of origin of the trip, via every campaign-related  
2 stop and ending at the point of origin.<sup>5</sup> 11 C.F.R. § 106.3(b)(2).

3 In 2002, the Commission adopted an interpretive rule clarifying that the travel allocation  
4 and reporting requirements of 11 C.F.R. § 106.3(b) do not apply to the extent that a candidate  
5 pays for certain travel expenses using funds authorized and appropriated by the federal  
6 government.<sup>6</sup> Interpretation of Allocation of Candidate Travel Expenses, 67 Fed. Reg. 5445  
7 (Feb. 6, 2002) ("Interpretive Rule"). Further, section 106.3(d) provides that, "Costs incurred ...  
8 for travel between Washington, DC, and the State or district in which [the Senate or House  
9 candidate] is a candidate need not be reported unless paid by a candidate's authorized  
10 committee(s), or by any other political committee(s)."

11 Thus, under the Interpretive Rule and section 106.3(d), Lugar was not required to allocate  
12 or report any expenses related to travel between Washington, D.C. to Indianapolis if paid for by  
13 the Senate. The travel costs for five of the six trips from Washington, D.C. to Indiana were  
14 reimbursed by the Senate, and therefore, those expenses need not be allocated or reported.

15 With regard to the costs associated with the sixth trip, from August 24 to September 2,  
16 2011, Lugar initially requested and received reimbursement from the Treasury, but ultimately  
17 paid the costs with his own personal funds. Pursuant to 11 C.F.R. § 106.3(d), that amount need  
18 not be reported because the travel was between Washington, D.C. and Indianapolis, Indiana and  
19 was not paid by his authorized committee, or by any other political committee. Thus, it appears

<sup>5</sup> Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures are reportable. Campaign-related activity shall not include any incidental contacts. 11 C.F.R. § 106.3(b)(3).

<sup>6</sup> The Commission explained that this interpretation is based on the exclusion of the federal government from the definition of a "person" in 2 U.S.C. § 431(11). Interpretive Rule, 67 Fed. Reg. at 5445. Therefore, "the Commission acknowledges that a candidate's travel expenses that are paid for using funds authorized and appropriated by the Federal Government are not paid for by a 'person' for purposes of the Act." *Id.*

1 that none of the payments for the expenses related to the travel between Washington, D.C. and  
2 Indianapolis resulted in violations of either 2 U.S.C. § 434(b) or 11 C.F.R. § 106.3.

3 However, the Committee was required to allocate and report any expenses related to  
4 campaign activities that occurred during Lugar's time in Indiana. *See* 11 C.F.R. § 106.3(b)(2).  
5 In the response, the Committee acknowledges that Lugar participated in campaign events on  
6 each of the six trips. *Resp.* at 2-3. For the trips in January, May, June, and July 8-10, the  
7 Committee argues that the trips were comprised of a "majority of official events." *Id.* The  
8 Committee also asserts that expenses related to campaign events were paid for with campaign  
9 funds, *e.g.*, mileage to and from campaign headquarters and campaign events, and that it  
10 properly reported such disbursements in its Commission disclosure reports. *Id.*

11 We are not able to independently verify, through the Committee's disclosure reports,  
12 disbursements related to the campaign events at issue here, because we do not have specific  
13 information regarding the amounts of the disbursements or the name of the entity or person to  
14 whom the disbursements were made. Although the reports show a number of disbursements for  
15 travel expenses, we are unable to connect those disbursements with the specific Indiana trips  
16 identified in the complaint. However, notwithstanding our inability to specifically identify from  
17 the Committee's disclosure reports how it paid for many of its campaign travel expenses during  
18 the time periods identified in the complaint, the complaint presents no information indicating that  
19 the Committee misreported or failed to report those costs.<sup>7</sup>

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<sup>7</sup> The full amount of the travel expenses noted in the complaint is approximately \$3,300, and the Committee contends that a majority of the travel was for the purpose of officeholder activity, not campaign-related activity. As such, even if there was some information that the Committee's allocation or reporting was not proper, pursuing any related violation would not warrant use of the Commission's limited resources.

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Accordingly, we recommend that the Commission find that there is no reason to believe that Friends of Dick Lugar and Matthew R. Nicholson in his official capacity as Treasurer or Dick Lugar violated 2 U.S.C. § 434(b) and 11 C.F.R. § 106.3, and close the file.

**III. RECOMMENDATIONS**

1. Find no reason to believe that Friends of Dick Lugar, Inc. and Matthew R. Nicholson in his official capacity as Treasurer violated 2 U.S.C. § 434(b) or 11 C.F.R. § 106.3.
2. Find no reason to believe that Dick Lugar violated 2 U.S.C. § 434(b) or 11 C.F.R. § 106.3.
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letter.
5. Close the file.

Anthony Herman  
General Counsel

8-15-12  
Date

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