

JAN 04 2002

SENSITIVE

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5035

DATE COMPLAINTS FILED:

Original: June 26, 2000

Supplement: June 28, 2000

DATE OF NOTIFICATION: July 3, 2000

DATE ACTIVATED: December 13, 2000

EXPIRATION OF STATUTE OF

LIMITATIONS: September 29, 2004

STAFF MEMBER: Dawn M. Odrowski

COMPLAINANT: David Plouffe, Executive Director
Democratic Congressional Campaign Committee

RESPONDENTS: Ed Schrock for Congress and Robert Catron, as treasurer¹
Friends of Ed Schrock and its treasurer²
National Republican Congressional Committee and
Donna Anderson, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(2)
2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(A)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 433
2 U.S.C. § 434
11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED: FEC Disclosure Reports
State Disclosure Reports

FEDERAL AGENCIES CHECKED: None

¹ An amended Statement of Organization filed by Ed Schrock for Congress on January 5, 2001, named Robert Catron as the Committee's treasurer, replacing Rickie L. Richards.

² According to the Virginia State Board of Elections, Friends of Ed Schrock filed a final report with that office on December 29, 2000.

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EST-504-10-22

I. GENERATION OF MATTER

This matter was initiated by a complaint and a supplement thereto filed on June 26 and June 28, 2000, respectively, by David Plouffe, Executive Director of the Democratic Congressional Campaign Committee ("DCCC"). Complainant alleges that a \$25,000 donation made on September 29, 1999, by the National Republican Campaign Committee ("NRCC") from its non-federal account to the state committee of then-Virginia state senator, Ed Schrock, was effectively a contribution to Schrock's 2000 election for the U.S. House of Representatives in Virginia's 2nd Congressional District. Schrock was unopposed in his state election race and won re-election to his state senate seat on November 2, 1999. Schrock filed a Statement of Candidacy with the Commission declaring his candidacy for the U.S. House of Representatives in Virginia's 2nd Congressional District five weeks later.

Schrock's state senate committee, Friends of Ed Schrock, his federal committee, Ed Schrock for Congress, and the NRCC were notified of the complaints on July 3, 2000. Responses from Ed Schrock for Congress and the NRCC ("Respondents") were received on July 24, 2000. No response was received from Friends of Ed Schrock.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that multi-candidate political committees, such as the NRCC, may contribute an aggregate of \$5,000 per election to any Federal candidate. 2 U.S.C. § 441a(a)(2)(A). The Act also prohibits corporations and labor organizations from making contributions in connection with a federal election. 2 U.S.C. § 441b(a). Political committees may not make or accept contributions which exceed the

Act's limits under section 441a or which are prohibited by section 441b(a). *Id.*, 2 U.S.C. § 441a(f).

To ensure that prohibited and impermissible funds are not used in federal elections, either directly or indirectly, Commission regulations prohibit a candidate's non-federal campaign committee or account from transferring funds or assets to a candidate's principal campaign committee for a Federal election. 11 C.F.R. § 110.3(d).

Under the Act, a "candidate" is defined as an individual who seeks nomination for election, or election, to Federal office and an individual is deemed a candidate if he or she has received contributions or made expenditures aggregating in excess of \$5,000. 2 U.S.C. § 431(2)(A).

Each candidate is required to designate in writing a principal campaign committee no later than 15 days after becoming a candidate. 2 U.S.C. § 432(e)(1). The designation must be made by filing a Statement of Candidacy with the Commission on FEC Form 2 or by filing a letter containing the same information. 11 C.F.R. §§ 101.1(a) and 105.1. Each authorized campaign committee, which includes principal campaign committees, must file a Statement of Organization no later than 10 days after it has been designated pursuant to Section 432(e)(1). 2 U.S.C. § 433(a) and 11 C.F.R. § 102.1 (a). The Statement of Organization shall include, *inter alia*, the name and address of the treasurer.

Under the Act, "political committee" means any committee, club, association or group of persons which receives contributions or makes expenditures aggregating in excess of \$1,000 within a calendar year. 2 U.S.C. § 431(4)(A). The treasurer of each political committee must regularly file reports of receipts and disbursements in accordance with the Act. 2 U.S.C. § 434 et seq.

1 The Act defines a "contribution" as including "any gift, subscription, loan, advance, or
2 deposit of money or anything of value made by any person for the purpose of influencing any
3 election for Federal office." 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.7(a)(1). An
4 "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, or gift of
5 money or anything of value, made by any person for the purpose of influencing any election for
6 Federal office." 2 U.S.C. § 431(9)(A)(i).

7 **B. Factual Background & Allegations**

8 Ed Schrock, an incumbent state senator in Virginia's 7th Senate District, ran unopposed
9 for re-election in Virginia's 1999 general election. About six weeks before the election, on
10 September 29, 1999, the NRCC made a \$25,000 donation of non-federal funds to Schrock's state
11 senate committee, Friends of Ed Schrock ("the State Committee"). Prior to the NRCC's
12 donation, Schrock had been named in a well-known political newsletter, *The Cook Political*
13 *Report*, as a potential Republican opponent of the incumbent U.S. Representative Owen Pickett
14 in Virginia's 2nd Congressional District in the 2000 election. Within a couple of weeks after the
15 NRCC's donation, the Associated Press reported that the NRCC was "attempting to recruit"
16 Schrock to challenge Pickett for the Congressional seat in 2000, but that a public decision by
17 Schrock to run for Congress would be an acknowledgement that he did not intend to serve out
18 the state senate term for which he was seeking re-election. David Espo, *Disarray in Planned*
19 *Republican Ad Blitz*, Associated Press News Wires, October 16, 1999. Attachment 1.

20 According to the State Committee's disclosure reports, within two weeks of receiving the
21 NRCC's donation, it spent, *inter alia*, approximately \$70,000 for television production and about
22 \$15,000 for printing. Complainant alleges that in light of Schrock's lack of opposition in his
23 state race, the reported disbursements by the State Committee for television production and

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1 printing and the asserted fact that Schrock was "openly weighing" a campaign for the 2000
2 Congressional race, Schrock spent the NRCC's funds on activities "that could only have been
3 intended to promote his Congressional candidacy." Complaint at 1-2. More specifically, in a
4 supplement to the complaint, Complainant relies upon a June 27, 2000 *Virginian-Pilot*
5 newspaper article and an April 15, 2000 *Congressional Quarterly* article to assert more directly
6 that Schrock spent state campaign funds, including the NRCC's donation, on advertisements and
7 direct mail sent outside his senate district which were designed to promote his candidacy for
8 Congress. Complaint Supplement at 1. Descriptions of the advertisements and direct mail
9 allegedly made for the purpose of influencing Schrock's congressional candidacy are contained
10 in both of these articles. Neither the complaint nor the responses filed by Respondents include
11 transcripts of the advertisements or copies of the direct mailings.

12 The April 2000 *Congressional Quarterly* article referenced by Complainant generally
13 concerns the NRCC's 1999 spending and compares the NRCC's strategy of non-election year
14 spending with that of the DCCC. Peter Wallsten and Derek Willis, *After Heavy '99 Spending,*
15 *Will GOP Runners Hit the Wall?*, *Congressional Quarterly Weekly*, April 15, 2000 at 881-883.
16 Attachment 2. In this context, the article discusses the NRCC's September 1999 donation to
17 Schrock's state committee. According to the article, the NRCC's \$25,000 "gave Schrock extra
18 cash to hit the airwaves despite his lack of a real race." *Id.* at 2. It describes the television
19 advertisements Schrock's State Committee purchased as featuring Schrock with his wife, a
20 teacher, and the parents at a local school and says the advertisements promoted the GOP agenda
21 and urged voters to support Republican candidates. *Id.* According to the article, the
22 advertisements were broadcast throughout the 2nd Congressional District. The article also says
23 that Schrock sent letters to voters throughout the Congressional District but does not describe

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1 their content. It then quotes Schrock as saying "I figured doing it couldn't hurt my name ID
2 down here." *Id.*

3 In discussing the NRCC's 1999 spending, the Congressional Quarterly article also states
4 that although Schrock was unopposed in his state race, "[NRCC Chairman Tom Davis] and GOP
5 strategists in Washington had their sights set on 2000 when Schrock would challenge Democratic
6 Rep. Owen B. Pickett in Virginia's Second [Congressional] District." *Id.* The article points out
7 that the NRCC spent about \$600,000 on state and local candidates and parties in Virginia in 1999
8 and helped the Republican Party gain control of the state legislature thus ensuring that it would
9 control Congressional redistricting in 2001. *Id.*

10 The June 27, 2000 *Virginian-Pilot* article also describes the advertisements and mailing
11 paid for by Schrock's State Committee. Ian Zack, *Va. Beach Lawmaker's Fund-Raising Move*
12 *Questioned*, *Virginian-Pilot*, June 27, 2000. Attachment 3.² In the context of discussing the
13 complaint filed by the DCCC in this matter, the article states that Schrock used the NRCC's
14 donation, in part, to buy television advertisements urging voters in South Hampton Roads to elect
15 Republican candidates in state legislative elections and to send thousands of mailers outside his
16 state senate district endorsing Republicans in races in Virginia Beach and Norfolk. *Id.* at 1.
17 Virginia Beach and part of Norfolk are in the 2nd Congressional District. Schrock's state
18 legislative district, the 7th Senate District, encompasses part of Virginia Beach. The article also
19 attributes to the NRCC a statement that it poured more than \$700,000 into Virginia in 1999 for
20 state races and party building, in part to influence federal and state legislative redistricting in
21 2001. *Id.*

² This newspaper article was attached to the supplemental complaint in this matter but is included here for the Commission's convenience.

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1 Schrock was re-elected to his state senate seat on November 2, 1999. On December 7,
2 1999, he filed with the Commission a Statement of Candidacy for the 2000 election for U.S.
3 Representative in the 2nd Congressional District naming Ed Schrock for Congress as his principal
4 campaign committee.³ This filing shortly followed a December 2, 1999 *Virginian-Pilot* article
5 that reported that Schrock was preparing to run for the 2nd District House seat in 2000 and had
6 held a fundraiser two weeks earlier which House Majority Leader Dick Armey attended. Ian
7 Zack, *Schrock Targets Pickett's House Seat, GOP Legislator Confirms Plans to Run for 7-Term*
8 *Democrat's Post*, *Virginian-Pilot*, December 2, 1999. Attachment 4. The article quotes Schrock
9 as commenting, "I guess it's no secret now. It just seems like the stars are lining up to do it." *Id.*
10 at 1.

11 The first disclosure report filed with the Commission by the Committee pinpoints the
12 likely date of the Schrock federal fundraiser as November 20, 1999 since it reported receiving
13 \$21,700 in contributions on that date. That report, covering the period between November 20
14 and December 31, 1999, also shows less than \$5,000 in disbursements.

15 The complaint maintains that the NRCC's donation and Schrock's spending of it amounts
16 to a transfer of funds or assets from a candidate's nonfederal campaign committee to the
17 candidate's federal campaign which is prohibited by 11 C.F.R. § 110.3(d). Complainant cites to
18 Advisory Opinion 1996-33 as an example of how a transaction that is legal in one context can
19 constitute a prohibited transfer of funds in another. In AO 1996-33, a state legislator running for
20 federal office proposed an arrangement whereby he would contribute surplus state campaign
21 funds to the re-election campaigns of fellow state legislators to allow them to contribute a
22 roughly equivalent amount to the requester's federal committee without depriving their state

³ The Committee filed a Statement of Organization on December 9, 1999.

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1 campaigns of needed funds. The Commission concluded that the proposed transaction would
2 replenish, in advance or afterward (in whole or in part), contributions made from the state
3 legislators' committee to the requester's federal committee thereby amounting to a transfer of
4 funds from the requester's state committee to his federal committee in violation of 11 C.F.R.
5 § 110.3(d).

6 **C. Responses to Complaints**

7 In response to the complaint, the then-treasurer of Ed Schrock for Congress ("the
8 Committee") filed a non-sworn response denying that the NRCC's donation related to federal
9 campaign activity. The Committee distinguishes the facts of this matter from those in Advisory
10 Opinion 1996-33 by noting that the NRCC's donation was given to Schrock's State Committee
11 and was spent in its entirety before the 1999 state elections and prior to the Committee's
12 existence. The Committee also states that Schrock supported his own state candidacy and that of
13 other state candidates through the State Committee's advertising and mailings and notes that the
14 NRCC's donation constituted only a small percentage of the funds the State Committee spent on
15 advertising. Committee Response at 1 and 2. Finally, the Committee disputes Complainant's
16 assertion that Schrock was openly weighing a Congressional campaign at the time of his state
17 senate re-election and contends that Schrock was not a federal candidate until after the state
18 election, noting that he did not file a Statement of Candidacy for the 2000 federal race until
19 December 7, 1999.

20 The NRCC's non-sworn response maintains that its \$25,000 donation to Schrock's State
21 Committee was a legal contribution to the re-election campaign of a state candidate and thus is
22 outside the Commission's jurisdiction. It contends that neither 11 C.F.R. § 110.3(d) nor
23 Advisory Opinion 1996-33 are applicable to this matter because there was no transfer of funds by

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1 the State Committee to Schrock's federal campaign and no contributions by Schrock's state
2 committee to state candidates who subsequently made contributions to Schrock's federal
3 campaign. NRCC response at 2. It, too, notes that its donation was spent by the State
4 Committee prior to the state election and before Schrock became a federal candidate, and points
5 out that the complaint itself asserts that the money was used to buy television advertisements
6 urging voters to elect Republican candidates in state legislative elections. *Id.* The NRCC also
7 states that its donation to Schrock was a fraction of the \$571,500 it contributed to Virginia state
8 candidates in an effort to win control of the Virginia state legislature so that Republicans would
9 control redistricting in 2001. *Id.*

10 **D. Analysis**

11 In this Office's view, the central questions in this matter are whether the NRCC's
12 \$25,000 non-federal donation to Schrock's State Committee was made for the purpose of
13 influencing Schrock's election to Congress, and regardless of the answer to that question,
14 whether the State Committee's disbursements for advertising and direct mail were made for the
15 purpose of influencing Schrock's election to Congress.⁴ If the NRCC's donation of non-federal
16 funds was for the purpose of influencing a federal election, then the NRCC would have violated
17 2 U.S.C. § 441a(a)(2) by making an excessive contribution to Schrock and 2 U.S.C. §§ 441b and
18 441a(f) by financing federal activity from its non-federal account which contains corporate funds
19 and funds in excess of the Act's contribution limits. Under this scenario, the State Committee

⁴ The initial complaint frames the legal theory as one involving a prohibited transfer from a candidate's non-federal campaign committee to the candidate's federal committee in violation of 11 C.F.R. § 110.3(d). Complaint at 2. Given that Schrock had not yet established a federal political committee, this Office believes a more appropriate analysis is whether Schrock's State Committee itself became a federal committee by receiving contributions or making expenditures in excess of the \$1,000 threshold triggering political committee status. See 2 U.S.C. § 431(4)(A).

1 would have violated 2 U.S.C. §§ 433 and 434 for failing to register and report as a federal
2 committee by virtue of having accepted a contribution in excess of the \$1,000 threshold required
3 for status as a political committee under 2 U.S.C. § 431(4) and 2 U.S.C. §§ 441a(f) and 441b
4 because the NRCC's non-federal account contains corporate and excessive funds. Even if the
5 NRCC's donation was not a contribution, if the State Committee's disbursements for
6 advertisements and direct mailings were made for the purpose of influencing Schrock's federal
7 election, the State Committee would still have violated 2 U.S.C. §§ 433 and 434 and 2 U.S.C.
8 §§ 441b and 441a(f) since the Commonwealth of Virginia permits state committees to accept
9 unlimited contributions from corporations, labor unions, individuals and other political
10 committees. See Edward D. Feigenbaum, J.D. and James A. Palmer, J.D., *Campaign Finance*
11 *Law 2000*, at Chart 2-A: Contribution and Solicitation Limitations (Federal Election
12 Commission)(2000).

13 In determining whether expenses for broadcasts or other communications in which a
14 current or likely federal candidate participates is made for the purpose of influencing a federal
15 election, the Commission has examined the stated purpose of the communication and analyzed
16 whether the surrounding facts and circumstances, including the content of the communication,
17 support that purpose. Among the factors the Commission has considered in reviewing the
18 content of communication is whether the communication advocates the election or defeat of a
19 federal candidate; contains a solicitation for contributions; references the candidate in his or her
20 capacity as a federal candidate or references the candidate's campaign or election; and where a
21 state legislator is involved, whether the communication is broadcast or otherwise distributed
22 outside the legislator's district. See, e.g., Advisory Opinions 1999-11 (payments for billboards
23 inviting the public to coffees with state legislator intending to run for federal office); 1994-15

1 (production and broadcast of a monthly half-hour cable television public affairs programs
2 involving a member of Congress running for re-election); 1992-5 (production and broadcast of a
3 series of public affairs forums featuring a member of Congress seeking re-election); and 1982-56
4 (federal candidate endorsing a local candidate in a television advertisement for local candidate).

5 In instances where the purpose of a communication, broadcast, or other activity in which
6 a federal candidate is appearing is to support the candidate in his or her capacity as a state or
7 federal officeholder, the Commission has concluded that the event, communication or broadcast
8 is not for the purpose of influencing a federal election. For example, in Advisory Opinion 1999-
9 11, the Commission concluded that a state senator running for Congress could continue to pay
10 for billboards advertising weekly coffees she held for constituents with funds from her state
11 committee without the payments resulting in a contribution or expenditure where the purpose of
12 the payments was to support the candidate in her state legislative capacity and the relevant facts
13 supported that purpose. Facts considered to be significant were the candidate's representation
14 that no one would solicit contributions or expressly advocate the candidate's federal election at
15 the coffee; that the discussion at those events would be limited to state constituent concerns; that
16 the coffees would not be advertised outside her legislative district; that the scope of the
17 advertising for, and frequency of, the coffees would be unchanged from previous years; and that
18 none of the information concerning the constituent participants would be made available for use
19 by her Congressional campaign.

20 Even where a federal candidate's participation in a broadcast was not an officeholder duty
21 but involved campaigning for a local candidate, the Commission has determined that no
22 contribution to the federal candidate results. In Advisory Opinion 1982-56, the Commission
23 concluded that no contribution would result where a Congressman seeking re-election appeared

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1 in a campaign advertisement of a candidate for county prosecutor because the stated purpose of
2 the advertisement and the Congressman's appearance in it were to endorse and influence the
3 election of the county candidate and the content of the advertisement did not reflect an intent to
4 influence the Congressman's election. Although the Commission generally recognized such
5 appearances may benefit a candidate's federal election, the Commission pointed out that the
6 advertisement identified the Congressman only by name and title, did not mention his own
7 candidacy, did not advocate his election or his opponent's defeat and contained no solicitation of
8 contributions to his campaign. The Congressman's district was entirely within the county in
9 which the state candidate sought election.

10 In this matter, although neither the NRCC nor the Committee directly addresses the
11 specific purpose of the NRCC's donation of non-federal funds to the State Committee, both
12 indicate that the general purpose of the NRCC's 1999 non-federal spending in Virginia and the
13 communications paid for by the State Committee was to help elect state candidates. In particular,
14 the NRCC states that it contributed a total of \$571,500 to Virginia state candidates "in an effort
15 to win the state legislature so as to control the redistricting process" in 2001,⁵ and the Committee
16 characterizes the NRCC's non-federal donation as a non-federal contribution to a state candidate
17 who "supported his own state candidacy and other state candidates via television advertising and
18 mail." NRCC Response at 2 and Committee Response at 2.

19 Other available information tends to support the conclusion that the more immediate
20 purpose of the NRCC's donation and the communications paid for by the State Committee was

⁵ The ability to control redistricting may, of course, influence future federal and state elections. However, the Commission has not considered attempts to influence reapportionment decisions of a state legislature or litigation relating to those decisions as the type of election-influencing activity covered by the Act. See, e.g., Advisory Opinion 1982-37 (donations to members of Congress to be used solely to defray legal expenses relating to reapportionment do not constitute contributions and expenditures).

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1 to elect state candidates throughout Virginia, notwithstanding news reports that Schrock and
2 NRCC officials had a possible 2nd District 2000 Congressional race in mind when the NRCC
3 made its 1999 donation. A review of the NRCC's FEC disclosure reports confirms that the
4 NRCC indeed contributed \$571,500 to both state and local candidates in Virginia in 1999,
5 including Schrock. As the NRCC's heavy spending in Virginia indicates, control of the Virginia
6 General Assembly was an acknowledged goal of the Republican Party going into the 1999
7 elections since the party already controlled the state senate and the state house was virtually split
8 between the parties. See, e.g., R.H. Melton, *GOP Financial Floodgates Open In Effort to Take*
9 *Over Assembly*, Washington Post, September 16, 1999. Attachment 5.

10 The available information about the content of the State Committee-financed
11 advertisements and direct mailings also supports viewing the purpose of those communications,
12 and the NRCC's non-federal donation, as helping elect state candidates. As described in the
13 news articles relied upon by Complainant, the State Committee's communications contained
14 endorsements of Republican candidates in certain state races and/or urged support for
15 Republicans and the "Republican agenda" in general at a time when no federal election appeared
16 on the ballot. Neither the complaints nor these newspaper accounts allege or suggest that the
17 communications identified Schrock as a candidate or potential candidate for federal office,
18 contained solicitations for contributions for a potential federal race or even mentioned a federal
19 election. See Complaint, Supplemental Complaint and Attachments 2 and 3.

20 Finally, an examination of the State Committee's disclosure reports indicates that the
21 NRCC's donation was not used to pay the disbursements for advertising and mailings cited by
22 Complainant. The State Committee's report covering the period between October 1 and 15,
23 1999, shows that it had \$103,319.53 cash on hand as of September 30, 1999, an amount

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1 sufficient to pay for all of the \$88,674.35 in disbursements it made during that time, including
2 the specific disbursements for the communications Complainant alleges were intended to
3 influence Schrock's federal election. Attachment 7 at 7. The State Committee reported
4 receiving the NRCC's donation on October 2, 1999. *Id.* at 4.

5 The distribution of the State Committee-financed advertisements and mailings throughout
6 the 2nd Congressional District, including in areas outside of Schrock's legislative district as stated
7 in one of the news articles cited by Complainant, could be viewed as support for concluding that
8 the communications were intended to influence a federal election. However, in this case, the
9 advertisements have been described as urging voters to support Republican state candidates and
10 the Republican agenda in an election that did not include federal candidates on the ballot.
11 Moreover, the Committee mailings are described in one of the news articles as endorsements of
12 other Republican candidates in races in Virginia Beach and Norfolk. As noted earlier, Virginia
13 Beach and parts of Norfolk lie within the 2nd Congressional District, as does Schrock's state
14 senate district. This fact suggests that the mailings may have been distributed in areas of the 2nd
15 Congressional District lying outside of Schrock's state senate district because they endorsed
16 candidates in other state legislative districts also within the 2nd Congressional District rather than
17 because they were intended to influence Schrock's eventual federal election. Although the news
18 articles do not name specific candidates who were endorsed, the State Committee's disclosure
19 reports confirm that Schrock made non-federal donations to several state House candidates

1 whose districts also were located fully or partially within the 2nd Congressional District.⁶

2 Schrock's public support for state legislative candidates is also evidenced by his participation in
3 a Republican rally and door-to-door campaign for Republicans in eight contested seats in the
4 Hampton Roads area in late September, 1999, around the time of the NRCC's non-federal
5 donation. See *Campaign Digest*, *Virginian-Pilot*, September 26, 1999.

6 Attachment 6.

7 MURs 3855/3937 (Seastrand) raised an issue similar to the one presented here: whether
8 advertisements featuring a state legislator, financed by her state committee and broadcast after
9 she announced her federal candidacy were intended to influence her federal election. The radio
10 advertisements in MURs 3855/3937 featured a California assemblywoman and were broadcast in
11 1993 throughout the Congressional District that included her state legislative district after she
12 had filed a Statement of Candidacy indicating that she was running for the U.S. House seat in
13 that Congressional District in the 1994 election. In the advertisements, the assemblywoman
14 identified herself as a Republican state representative "representing your interests by fighting
15 higher taxes, fee increases and burdensome regulations" and urged constituents to register and to
16 vote in a November 1993 special election on a state ballot initiative. The Commission
17 determined that there was no reason to believe that the Act was violated. The advertisements
18 lacked express advocacy or a solicitation for contributions; they were aired prior to a special

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⁶ These donations are: \$1,500 to Rowena Fuller (88th House District) on September 30, 1999, \$2,805 to Thelma Drake (87th House District) on November 17, 1999 and \$250 to Bob Tata (85th House District) on November 19, 1999. The 85th House District is comprised of part of Virginia Beach and lies within the 2nd Congressional District; the 87th House District is comprised of parts of Norfolk and Virginia Beach and lies within the 2nd and 3rd Congressional Districts; the 88th House District is comprised of part of Norfolk and lies within the 2nd and 3rd Congressional Districts.

1 election in which no federal candidates were on the ballot and a full year before the 1994
2 Congressional election; and they concerned a state ballot initiative, expenses for which were
3 outside the scope of the Act according to Commission advisory opinions. The Commission's
4 decision was also in accord with a series of Advisory Opinions holding that broadcasts in which
5 an officeholder participates in the performance of his or her duty as an officeholder is not
6 campaign-related even if the officeholder's participation incidentally benefits his or her federal
7 candidacy.

8 As in MURs 3855/3957, the advertisements and direct mailings that Complainant alleges
9 were paid for with NRCC's donation to Schrock's State Committee apparently contained no
10 express advocacy and did not solicit contributions, concerned state elections in which no federal
11 candidate appeared on the ballot and were broadcast a year before the relevant Congressional
12 election. Additionally, unlike the assemblywoman in MURs 3885/3957 and the Congressional
13 incumbent in Advisory Opinion 1982-56, at the time the State Committee-financed
14 communications were distributed, Schrock had not yet announced his federal candidacy and had
15 undertaken no activities indicating that he had decided to become a federal candidate. Although
16 Schrock may have been considering a run for Congress at the time the NRCC made its donation
17 to the State Committee, there are no allegations in the complaint or in the news articles
18 accompanying the complaint that Schrock ever publicly announced his intention to run for
19 Congress or referred to himself as a federal candidate in the State Committee's communications
20 or otherwise. See, e.g., 11 C.F.R. § 100.8(b)(1)(ii). Additionally, there are no allegations or

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1 indications that Schrock tried to amass campaign funds for his federal election prior to his re-
2 election to the state senate.⁷ *Id.*

3 Given that neither the NRCC's donation nor the disbursements made by the State
4 Committee for the advertisements and mailings referenced in the complaint appear to have been
5 made for the purpose of influencing Schrock's election to Congress, Schrock became a federal
6 candidate within the meaning of 2 U.S.C. § 431(2) on November 20, 2000 when, according to
7 the Committee's first disclosure report, it received contributions totaling \$21,700. Thus, Schrock
8 was required to file a Statement of Candidacy designating his principal campaign committee
9 within fifteen days, or by December 6, 1999. His Statement of Candidacy, dated December 3,
10 1999, was filed with the Commission via first-class mail on December 7, 1999. A Statement of
11 Organization was timely filed. Given the *de minimus* nature of missing the Statement of
12 Candidacy filing deadline by one day, and in light of the fact that the Committee's Statement of
13 Organization and first report were timely filed, this Office is making no recommendation
14 concerning Schrock's Statement of Candidacy filing.

15 Based on the foregoing, this Office concludes that neither the NRCC's donation of non-
16 federal funds to the State Committee nor the State Committee's disbursements for the
17 advertisements and mailings featuring Schrock appear to have been made for the purpose of
18 influencing a federal election. Therefore, this Office recommends that the Commission find no
19 reason to believe that the National Republican Congressional Committee and Donna M.
20 Anderson, as treasurer, Ed Schrock for Congress and Robert J. Catron, as treasurer, and Friends

⁷ Of course, if the Commission were to decide that NRCC's non-federal donation were made for the purpose of influencing Schrock's election to federal office, Schrock would have met the definition of a candidate under the Act when he received the funds despite the absence of public actions indicating he was a candidate. See 2 U.S.C. § 431(2). However, for the reasons noted in this report, this Office concludes that the NRCC's donation of non-federal funds to the State Committee was not a contribution.

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of Ed Schrock violated the Act or Commission regulations based on the complaint and supplemental complaint filed in this matter.

III. RECOMMENDATIONS

1. Find no reason to believe that the National Republican Congressional Committee and Donna M. Anderson, as treasurer, violated the Act or Commission regulations based on the complaint and supplemental complaint filed in this matter.

2. Find no reason to believe that Ed Schrock for Congress and Robert J. Catron, as treasurer, violated the Act or Commission regulations based on the complaint and supplemental complaint filed in this matter.

3. Find no reason to believe that Friends of Ed Schrock violated the Act or Commission regulations based on the complaint and supplemental complaint filed in this matter.

4. Close the file and send the appropriate letters.

Lawrence H. Norton
General Counsel

1/3/02
Date

BY: Rhonda J. Vosdigh
Rhonda J. Vosdigh
Acting Associate General Counsel

Attachments

1. October 16, 1999 Associate Press Newswires article
2. April 15, 2000 Congressional Quarterly Weekly article
3. June 27, 2000 Virginian-Pilot article
4. December 2, 1999 Virginian-Pilot article
5. September 16, 1999 Washington Post article
6. September 26, 1999 Virginian-Pilot article
7. Friends of Ed Schrock Disclosure Report