



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

**JUN 17 2003**

Alex N. Vogel, General Counsel  
National Republican Senatorial Committee  
425 Second Street, NE  
Washington, DC 20002

**RE: MUR 5197  
National Republican Senatorial  
Committee and Stan Huckaby,  
as treasurer**

**Dear Mr. Vogel:**

On April 23, 2001, the Federal Election Commission notified your clients, the National Republican Senatorial Committee and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on June 10, 2003, found that there is reason to believe the National Republican Senatorial Committee and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for 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 submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

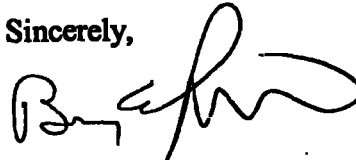
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily 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 matter to be made public. If you have any questions, please contact Michael E. Scurry, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Vice Chairman

Enclosures  
Factual and Legal Analysis  
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENTS:** National Republican Senatorial MUR: 5197  
5 Committee and Stan Huckaby,  
6 as treasurer  
7

8 This matter was generated by a complaint filed with the Federal Election Commission by  
9 John Berthoud, President of the National Taxpayers Union ("Complainant"), *see* 2 U.S.C.  
10 § 437g(a)(1), and on the basis of information ascertained by the Commission in the normal  
11 course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). Complainant  
12 alleged that the National Republican Senatorial Committee and Stan Huckaby, as treasurer  
13 ("Respondents"), violated provisions of the Federal Election Campaign Act of 1971, as amended  
14 ("the Act").

15 **I. LAW<sup>1</sup>**

16 The Act prohibits "any corporation organized by authority of any law of Congress" from  
17 making "a contribution or expenditure in connection with any election to any political office."  
18 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political committee, or other person"  
19 from knowingly accepting or receiving "any contribution prohibited by this section." *Id.*

20 For purposes of Section 441b, the terms "contribution" and "expenditure" include "any  
21 direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services,  
22 or anything of value . . . to any candidate, campaign committee, or political party or organization,  
23 in connection with any election to any of the offices referred to in" Section 441b.

24 The Act excludes from the definition of contribution:

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<sup>1</sup> The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Factual and Legal Analysis exclude the changes made by BCRA.

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any gift, subscription, loan, advance, or deposit of money or anything of value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.

2 U.S.C. § 431(8)(B)(viii). This is the so-called "building fund exemption." *See, e.g.*, Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, and 1983-8. Funds falling under the building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore, national and state committees of political parties may accept donations covered by the building fund exemption from corporations organized by authority of any law of Congress. *See id.* The provisions of the building fund exemption apply only to "a national or a State committee of a political party" and not to other committees, such as local party committees or PACs. *See* Advisory Opinions 1988-12, 1996-8, and 1978-78.

## II. COMPLAINT

On April 23, 2001, Respondents were notified of the complaint.<sup>2</sup> The complaint alleged that "two Congressionally-chartered corporations, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae)" made contributions to the non-federal accounts of several national party committees in violation of 2 U.S.C. § 441b(a). After a discussion of the applicable law, the complaint stated, "Fannie Mae and Freddie Mac are strictly prohibited from making contributions to the nonfederal accounts of national party committees which are used to influence federal, state, or local elections."

<sup>2</sup> The NRSC-Non Federal and its treasurer and the National Republican Senatorial Committee Building Fund and D. Jan McBride, as assistant treasurer, were originally notified as respondents. Both are non-federal accounts of the National Republican Senatorial Committee. The National Republican Senatorial Committee responded on behalf of its non-federal accounts in this matter and appears as a respondent along with its treasurer.

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1 The complaint included "a 1997-2000 summary report of soft money donations to  
2 nonfederal accounts" by Freddie Mac and Fannie Mae,<sup>3</sup> which named the accounts involved in  
3 the alleged violations and gave the dates and amounts of the contributions in question.  
4 Complainant stated that "some of these contributions may have been made to permissible  
5 'building fund' accounts." Nevertheless, the complaint calculated that Fannie Mae's  
6 "non-building soft money donations totaled almost \$340,000" and that "Freddie Mac's  
7 non-building soft money donations totaled slightly in excess of \$400,000." The complaint  
8 requested that the Commission "examine the building fund contributions (in excess of \$1 million  
9 by Fannie Mae and in excess of \$2.4 million by Freddie Mac) to ensure that these funds were not  
10 diverted to prohibited nonfederal accounts."

11 **III. RESPONSE**

12 By letter dated July 11, 2001, Respondents, through counsel, submitted a response to  
13 Complainant's allegations against the NRSC-Building Fund and the NRSC-Nonfederal accounts.  
14 The response first addressed the donations from Fannie Mae to the NRSC-Building Fund. The  
15 response stated that each of these donations "was deposited into the NRSC's Building Fund  
16 account, which is used exclusively for the purpose of construction or purchase of a building, in  
17 accordance with 2 U.S.C. 431(8)(B)(viii)." The response stated that "none of these contributions  
18 were used to impact federal, state, or local election related activities" or "diverted to prohibited,  
19 or non-federal accounts." The response stated that the complaint's "allegation that the NRSC  
20 violated federal law by accepting impermissible donations from Fannie Mae is baseless."

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<sup>3</sup> This summary report apparently was created by running a transaction query (data by individual) on the Commission's website. Complainant apparently used the names "Fannie Mae" and "Freddie Mac" as the last names in this individual search. The receipts generated were attached to the complaint. The complaint did not include receipts generated using "FannieMae" as the last name or "Mae, Fannie" and "Mac, Freddie" as the last and first names, which would have included more Fannie Mae and Freddie Mac donations. This caused the complaint to exclude \$496,250 in receipts reported from Fannie Mae and Freddie Mac from 1997-2000.

1 The response next addressed 8 of the 12 donations from Freddie Mac to the NRSC-  
2 Building Fund referenced in the complaint.<sup>4</sup> The response stated that each of these eight  
3 donations "was deposited into the NRSC's Building Fund account, which is used exclusively for  
4 the purpose of construction or purchase of a building, in accordance with 2 U.S.C.  
5 431(8)(B)(viii)."

6 Finally, the response addressed the donation from Freddie Mac to the NRSC-Nonfederal  
7 referenced in the complaint and one additional donation from Freddie Mac to the NRSC-  
8 Nonfederal not referenced in the complaint. The donation referenced in the complaint was a  
9 \$100,000 donation from Freddie Mac reported as received by the NRSC-Nonfederal on  
10 October 14, 1999. The response stated that this donation "was deposited into the NRSC's non-  
11 federal account for use in offsetting compliance costs, such as legal and accounting expenses."  
12 The response stated that "the NRSC believes that this contribution was erroneously deposited to  
13 the NRSC non-federal account." The donation not referenced in the complaint was a \$30,000  
14 donation from Freddie Mac reported as received by the NRSC-Nonfederal on July 17, 2000. The  
15 response stated that "this contribution was also incorrectly deposited to the NRSC non-federal  
16 account in apparent violation of 2 U.S.C. Sec. 441(b)." The response stated that it brought this  
17 donation to the attention of the Commission "in the interest of full disclosure and in an attempt to  
18 demonstrate our good faith intent to resolve this complaint."<sup>5</sup>

19 The response concluded that, "To the extent that the NTU complaint has merit, it is with  
20 respect to the contribution dated October 14, 1999 (in the amount of \$100,000) and the

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<sup>4</sup> The response failed to address four donations referenced in the complaint from Freddie Mac to the NRSC-Building Fund totaling \$450,000. See discussion in Analysis, *infra*.

<sup>5</sup> The response failed to address a \$250 donation from Freddie Mac to the NRSC-Nonfederal (not included in the complaint) reported as received on July 18, 2000. See discussion in Analysis, *infra*.

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1 contribution dated July 17, 2000 (in the amount of \$30,000).” According to the response, the  
2 National Republican Senatorial Committee refunded the \$130,000 amount to Freddie Mac “as  
3 soon as it was brought to our attention” that a violation occurred. The National Republican  
4 Senatorial Committee’s August 2001 disclosure report confirms that this amount was refunded  
5 on July 11, 2001.

6 **IV. ANALYSIS**

7 Fannie Mae and Freddie Mac are corporations organized by authority of laws of  
8 Congress, 12 U.S.C. § 1716 *et seq.* and 12 U.S.C. § 1451 *et seq.*, respectively, and therefore may  
9 not make any contribution in connection with any election to any political office. 2 U.S.C.  
10 § 441b(a). Respondents conceded that two donations from Freddie Mac—a \$100,000 donation  
11 received on October 14, 1999 and a \$30,000 donation dated July 17, 2000—were improperly  
12 deposited into the National Republican Senatorial Committee’s non-federal account for use in  
13 offsetting compliance costs, such as legal and accounting expenses.<sup>6</sup> It appears that one  
14 additional Freddie Mac donation—a \$250 donation received on July 18, 2000—was also  
15 improperly deposited by the National Republican Senatorial Committee for the same purpose.<sup>7</sup>

16 Therefore, there is reason to believe that the National Republican Senatorial Committee  
17 and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441b(a).

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<sup>6</sup> Respondents did not address \$450,000 in donations from Freddie Mac to the National Republican Senatorial Committee’s building fund referenced in the complaint. However, the reported deposit of these donations to the National Republican Senatorial Committee’s building fund indicates that these donations were used in compliance with the Act. The complaint and response do not present any information to the contrary.

<sup>7</sup> There is no information in hand that the National Republican Senatorial Committee refunded this \$250 amount to Freddie Mac.

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