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April 23, 2008

Thomasenia P. Duncan, Esquire
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

PRE-MUR # 470

Re: *Sua Sponte* Submission on Behalf of the
National Republican Congressional Committee

Dear Ms. Duncan:

Pursuant to the Commission's Statement of Policy Regarding Self-Reporting of Campaign Finance Violations, we respectfully submit this letter as part of a *sua sponte* submission on behalf of our client, the National Republican Congressional Committee (hereinafter the "NRCC" or "Committee"), a national political party of the Republican Party.¹ This letter follows our prior communications with your Office.

OVERVIEW

According to the Committee's internal procedures as adopted by its Executive Committee consistent with the Committee's bylaws, the Committee is to obtain a third-party accounting of its books and records not less than annually. Obtaining this audit is the responsibility of the Committee's oversight committee. Prior to January 28, 2008, the Committee believed that such audits had occurred each year through and including 2005, and that the 2006 audit was underway and near completion.

The NRCC's oversight committee had tasked Chris Ward with coordinating its annual audit for calendar year 2006. Ward had served at the NRCC since November 3, 1995, and as treasurer since 2003 through July 2007, and then became a consultant to the

¹ We note that the Commission's Policy is just that – a policy, and not a regulation. Nonetheless, the Committee is self-reporting in good-faith reliance upon that policy.

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Committee. On January 28, 2008, Ward informed the NRCC that no audit for the year 2006 was underway, let alone near completion. This occurred despite repeated inquiries over a number of months from the NRCC leadership, including the chairman's office and the head of the NRCC's oversight committee, and assurances from Ward that the audit was underway. Ward's consulting duties were terminated January 28, 2008.

Shortly thereafter, the NRCC learned that Ward had apparently fabricated a supposed draft final audit, and submitted the bogus 2006 financial statements to the NRCC's bank. The Committee then retained additional counsel, Covington & Burling LLP, on January 30, 2008, to review the matter, and upon their advice, the Committee reported the matter to the FBI, which opened a criminal investigation. On January 31, 2008, we contacted your office regarding potential issues with our year end report – at that point in time, we had no specific information that would lead us to believe that our reports were anything other than correct as filed, but in light of the revelations regarding the bogus audits, chose to notify your office of the irregularity.

Covington & Burling LLP retained PricewaterhouseCoopers to conduct a forensic investigation of the Committee's financial records. Since then, and as a result of the investigation being conducted, the Committee has learned that the last year for which the NRCC obtained a completed independent audit report was calendar year 2001. That audit was conducted and completed during 2002. It appears that after becoming treasurer in 2003, Ward submitted bogus audit reports to the Committee's bank for calendar years 2002, 2003, 2004, 2005 and 2006.

ANALYSIS

1. Unauthorized transfers of funds

Based on analysis conducted to date, it appears likely that over a period of several years Ward made several hundred thousand dollars in unauthorized wire transfers of NRCC funds to outside committees whose bank accounts he had access to, including joint fundraising committees in which the NRCC participated. He also appears to have made subsequent transfers of several hundred thousand dollars in funds from these outside committees to what appear to be his personal bank accounts. These unauthorized transactions date back to at least 2004. The exact dollar figures are currently a moving target, and as the investigation progresses, it is entirely possible that these figures will change, either by increasing or decreasing. The forensic investigation has also noted numerous instances in which the unauthorized transfers were either not accurately reported, or were not reported at all, on the Committee's disclosure reports.

2. Additional financial findings

The internal investigation also has determined that there was a discrepancy between the Committee's cash on hand as reported and its actual cash on hand over the last several years. The initial findings are as follows:

- At year end 2006, the Committee's actual cash on hand was approximately \$990,000 less than the amount reported to the Commission.
- The actual cash on hand as of the Committee's report for January 31, 2008 (filed on February 20, 2008) was approximately \$740,000 less than the amount reported to the Commission.

We suspect, but have not yet confirmed, that some of that discrepancy was due to unauthorized transfers of funds. As a result of these findings, we again contacted your Office. At that time, your Office advised us to adjust and correct the cash on hand amount on our next regularly-filed report. The Committee, in the interest of full and prompt disclosure, filed on March 13, 2008 a Form 99 informational notice reflecting that as of January 31, 2008, the NRCC's cash on hand was \$5,689,997.24 (an adjustment of \$740,152.89). This notice was based on the best information available to the Committee.

Additionally, the Committee has learned the amount reported as outstanding on the Committee's line of credit was \$200,000 less than the actual amount owed.

3. Timing for completion of forensic investigation

We emphasize that this information is preliminary, and is based only on the internal investigative work conducted to date. Forensic investigation work takes significant time, and in this case it requires review of thousands of transactions by a team of forensic auditors. This work is highly labor intensive and expensive. We currently anticipate that this investigation will take an additional four weeks, though it is possible more time will be needed. We will endeavor to inform your Office with respect to a more definite timeline as such information becomes available.

In addition, there is already an ongoing criminal investigation. We refrained from making extensive comments about this matter so as not to compromise the investigation being conducted by the FBI. Of course, the criminal investigation may develop additional evidence as well.

4. Nature of Violations and Corrective Action

As part of its submission, the Committee wishes to inform the Commission that: (1) upon discovery of the issues, the Committee put an end to the activity giving rise to the issues; (2) the Committee, having invested considerable time and resources into resolving its issues, is making a timely and complete disclosure to the Commission and intends to fully cooperate in the disposition of the matter; and (3) the Committee has implemented and continues to implement appropriate and timely corrective measures, including internal controls and safeguards necessary to prevent recurrence, and remains open to suggestion regarding additional controls and safeguards.

Moreover, based upon the results of its own self-initiated review, the Committee believes the following to be true:

- ***The type of violation:*** The Committee's violations were not knowing and willful, and did not result from reckless disregard for legal requirements or deliberate indifference to indicia of wrongful conduct. Instead, the violations were centered around a failure to report activity that appears to be the potentially criminal conduct of one individual.
- ***The magnitude of the violation:*** The Committee's issues resulted from a handful of discernable events, and not an ongoing pattern of intentional or reckless misreporting. There is not a history of similar conduct by the Committee. To date, the Committee is not aware of any other individual who knew of the violation until after the conduct occurred. Nor is the Committee aware that any other individual was coerced into participating in the violation.
- ***The origin of the violation:*** The Committee's conduct was not intended to advance its interests or to defraud it for the personal gain of a particular individual – in fact, the Committee was unaware of the activity giving rise to the current issues. There were internal controls and procedures in place. Although those procedures failed to prevent the problematic conduct in this instance, they have since been modified to ensure such conduct will not occur in the future.

Moreover, the Committee has undertaken significant corrective action, and instituted self-governance measures:

- ***Investigative and corrective actions:*** The issues that have generated this ~~same~~ *spontaneous* submission ceased upon discovery and appropriate corrective measures were taken shortly thereafter. The Committee continues to thoroughly review the nature, extent, origins, and consequences of the conduct and related behavior. In addition to promptly clarifying the public record regarding its cash on hand, the Committee will prepare and file amendments that correct and clarify the public record by making appropriate and timely disclosures.
- ***Post-discovery compliance:*** The Committee has taken measures to make certain that there are assurances that the conduct will not occur in the future. Furthermore, the Committee has supplemented its existing internal controls,² and adopted and ensured enforcement of more effective internal controls and procedures designed to prevent a recurrence, with specific emphasis on this issue here, unauthorized wire transfers. By way of summary, the Committee has already instituted the following:
 - ✓ All external wire transfers now require confirmation from a second, additional individual prior to the bank processing the wire. Although the Committee had safeguards in place (specifically, two sets of codes were required to authorize a wire, as well as written sign off by multiple individuals), those safeguards did not prevent what occurred (as various

² Such controls pre-date, but are similar to those set forth in the Commission's Statement of Policy on a Safe Harbor for Misreporting Due to Embezzlement.

duties became concentrated with Ward, he came into possession of both sets of codes).

- ✓ The internal review has not uncovered any instance of Ward improperly issuing checks to himself or companies he controlled from the NRCC³ (the Committee's policy has been that all checks over \$25,000 required a second signature).
- ✓ The Committee is implementing procedures for periodic bank reconciliations.⁴ New software is being installed, and once installed, the Committee will incur the expense of re-entering 2008 data and prior years as needed. The Committee is also changing its data processing vendor to one that has increased compliance and reconciliation capability (the previous vendor was unable to perform a bank reconciliation, and any bank reconciliation was performed in-house presumably by Ward⁵).
- ✓ The Committee has retained both Huckaby Davis Lisker and the Compliance Consulting Company of Virginia to prepare the Committee's disclosure reports. Keith Davis now serves as the Committee's treasurer.
- ✓ The Committee has enhanced its already thorough internal sign-off procedure. In addition to obtaining sign-off from the relevant division director and counsel, the executive director and treasurer will both review each invoice prior to issuing payment.
- ✓ The Committee will continue to review contributions for compliance with source and limitation restrictions, ensure that the Committee's treasurer exercise his best efforts and the like.⁶ The review did not uncover any issues that have caused the Committee to change its procedures in such areas.
- ✓ The Committee will continue to ensure that all bank accounts are opened in the name of the Committee. The review did not uncover any accounts opened in Ward's name or the like.

³ However, the review did uncover evidence that Ward, after transferring funds from the NRCC to affiliated joint fundraising committees, did write unauthorized checks from those committees to himself.

⁴ The Committee will now, as a matter of policy, review bank statements for unauthorized transactions and reconcile its accounting records each month. Similarly, bank records will be reconciled to disclosure reports prior to filing. These reconciliations will be done by someone other than a check signer or an individual responsible for handling the committee's accounting.

⁵ The review has determined that the Committee apparently did periodic reconciliations on a monthly basis for years. In fact, as controller Ward did those reconciliations and presented the results to the Committee's treasurer. Once Ward became treasurer in 2003, it appears as that, unbeknownst to the Committee, the bank reconciliations became more infrequent.

⁶ Consistent with the Commission's policy statement, this review was not conducted by individuals who have banking authority.

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Finally, the Committee took voluntary steps immediately upon learning of the issues and has attempted to provide a comprehensive and detailed disclosure of the results of its internal review to the Commission in a timely manner. Likewise, the Committee will make relevant records and witnesses available to the Commission, and made and will continue to make all reasonable efforts to secure the cooperation of relevant employees, volunteers, vendors, donors and other staff without requiring compulsory process. It has attempted to provide the Commission with sufficient information for it to evaluate the measures taken to correct the situation and ensure that the conduct does not recur. In the event the Commission has additional questions, the Committee intends to cooperate with such inquiries.

In conclusion, the NRCC is providing this update on the status of its own internal investigation. It is important to note that this is preliminary, and that the investigation is ongoing and the information provided herein may change and be supplemented when the investigation is completed. We will endeavor to keep your Office informed on a regular basis.

Please do not hesitate to contact us with any questions or concerns.

Respectfully,



Donald F. McGahn II
*Counsel, National Republican
Congressional Committee*