



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCT -9 2012

Matthew R. Nicholson, Treasurer  
Friends of Dick Lugar, Inc.  
P.O. Box 55952  
Indianapolis, Indiana 46205

RE: MUR 6553  
Friends of Dick Lugar, Inc. and  
Matthew R. Nicholson in his official  
capacity as Treasurer

Dear Mr. Nicholson:

On April 17, 2012, the Federal Election Commission notified Friends of Dick Lugar, Inc. and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 2, 2012, the Commission found, on the basis of the information in the complaint and information provided by you that there is no reason to believe Friends of Dick Lugar, Inc. and you violated 2 U.S.C. § 434(b) or 11 C.F.R. § 106.3. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Roy Q. Lockett  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Friends of Dick Lugar, Inc. and MUR 6553  
Matthew R. Nicholson in his official  
capacity as Treasurer  
Dick Lugar

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Gregory Wright. See 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

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 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

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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.

1 regulations by making the appropriate allocations and reporting expenditures for campaign-  
2 related stops in its disclosure reports. Resp. at 3 (citing 11 C.F.R. § 106.3).<sup>2</sup>

3           A.       **Facts**

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

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

- 11       • **January 20 – January 23, 2011** (\$393.73). In a January 18, 2011, internet article titled  
12 "Sen. Richard Lugar seeks re-election," it was reported that "[Lugar] plans to return to  
13 Indiana on Friday [January 21] for a major fundraiser in Carmel, outside of Indianapolis."  
14 <http://www.journalgazette.net/article/20110118/NEWS07/110119502/1044/LOCAL08>.  
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<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, this issue is not discussed.

<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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- 1 • **May 31 – June 4, 2011** (\$513.36). The complaint cites two photos from Lugar's  
2 photostream on flickr.com, purporting to show Lugar at campaign events. The first  
3 shows Lugar at a meeting at his Indianapolis campaign headquarters. The caption below  
4 the photograph reads: "Dick Lugar with Volunteers: Dick Lugar visiting with volunteers  
5 at campaign headquarters on 6/1/11."  
6 <http://www.flickr.com/photos/dicklugar/5812157451/in/datetaken/>. The second  
7 photo shows Lugar at a NRSC/NRCC event in Evansville on June 4. The caption below  
8 it reads: "NRSC/NRCC event in Evansville: On Saturday, June 4, 2011 Senator Lugar  
9 joined Senate Minority Leader Mitch McConnell and Speaker Boehner, along with Sen.  
10 Coats and Indiana Reps. Bucshon, Young and Pence, for an NRSC/NRCC event in  
11 Evansville, IN."  
12 <http://www.flickr.com/photos/dicklugar/5808832495/in/datetaken/>.  
13
- 14 • **June 25 – June 26, 2011** (\$162.83). A photo of Lugar posing with a couple has the  
15 caption "Dick Lugar with Hoosiers: Dick Lugar greets Friends at a reception in Hamilton  
16 Co. on 6/26/11" and appears on Lugar's photostream on flickr.com.  
17 <http://www.flickr.com/photos/dicklugar/5962153570/in/datetaken/>.  
18
- 19 • **July 3 – July 5, 2011** (\$813.13). A series of 44 photos of Lugar posing with other  
20 individuals appears on Lugar's photostream on flickr.com with the label "Gathering of  
21 Friends in Syracuse [IN] on 7/3/11."  
22 <http://www.flickr.com/photos/dicklugar/596452860/in/photostream/in/datetaken/>.  
23
- 24 • **July 8 – July 10, 2011** (\$817.78). A photo of Lugar has the caption "Dick Lugar with  
25 Supporters: Dick Lugar attends a gathering of supporters in Morgan Co. on 7/9/11."  
26 <http://www.flickr.com/photos/dicklugar/5962261688/in/datetaken/>.  
27
- 28 • **August 24 – September 2, 2011** (\$551.14). An article in Politico states that Lugar  
29 attended a fundraiser in Kokomo. David Catanese, *No GOP Welcome Mat for Lugar in*  
30 *Kokomo*, POLITICO (Sept. 1, 2011). The complaint also cites to three photos, one of  
31 Lugar speaking, with the caption, "Dick Lugar in Indianapolis: Dick Lugar meets with  
32 Supporters in Indianapolis on 8/26/11," and two others of Lugar with other individuals  
33 and the captions: "Dick Lugar Greeting Supporters: Dick Lugar meets with friends in  
34 Allen County on 8/25/11" and "Dick Lugar with Supporters: Dick Lugar meets with  
35 Supporters in Columbus on 8/26/11."  
36 <http://www.flickr.com/photos/dicklugar/6093789363/in/datetaken/>,  
37 <http://www.flickr.com/photos/dicklugar/6097269299/in/datetaken/>,  
38 <http://www.flickr.com/photos/dicklugar/6101223918/in/datetaken/>.  
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40 The Committee acknowledges that there was campaign activity on each of the six trips  
41 but states that it allocated travel expenses so that the Committee paid its share of expenses

1 incurred during those trips pursuant to 11 C.F.R. § 106.3 and reported those expenditures in its  
2 disclosure reports. *Id.* at 2-3.

3           **B.       Legal Analysis**

4           The complaint alleges that Respondents may have violated campaign finance laws by  
5 receiving reimbursement from the Senate for travel expenses incurred, in part, for campaign  
6 activity.<sup>4</sup> Section 106.3 of the Commission's regulations governs allocation of expenses between  
7 campaign and non-campaign-related travel and provides that all expenditures for a House or  
8 Senate candidate's campaign-related travel shall be reported, including travel expenses paid for  
9 by a candidate from personal funds. 11 C.F.R. § 106.3(a), (b)(1); *see also* 2 U.S.C. § 434(b)(4)  
10 (providing that political committees must disclose disbursements). Where a candidate's trip  
11 involves both campaign-related and non-campaign-related stops, the expenditures allocable for  
12 campaign purposes are reportable and are calculated on the actual cost-per-mile of the means of  
13 transportation actually used, starting at the point of origin of the trip, via every campaign-related  
14 stop and ending at the point of origin.<sup>5</sup> 11 C.F.R. § 106.3(b)(2).

15           In 2002, the Commission adopted an interpretive rule clarifying that the travel allocation  
16 and reporting requirements of 11 C.F.R. § 106.3(b) do not apply to the extent that a candidate  
17 pays for certain travel expenses using funds authorized and appropriated by the federal

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<sup>4</sup>       The complaint also asserts 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, this issue is not discussed.

<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).

1 government.<sup>6</sup> Interpretation of Allocation of Candidate Travel Expenses, 67 Fed. Reg. 5445  
2 (Feb. 6, 2002) ("Interpretive Rule"). Further, section 106.3(d) provides that, "Costs incurred ...  
3 for travel between Washington, DC, and the State or district in which [the Senate or House  
4 candidate] is a candidate need not be reported unless paid by a candidate's authorized  
5 committee(s), or by any other political committee(s)."

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

10 With regard to the costs associated with the sixth trip, from August 24 to September 2,  
11 2011, Lugar initially requested and received reimbursement from the Treasury, but ultimately  
12 paid the costs with his own personal funds. Pursuant to 11 C.F.R. § 106.3(d), that amount need  
13 not be reported because the travel was between Washington, D.C. and Indianapolis, Indiana and  
14 was not paid by his authorized committee, or by any other political committee. Thus, it appears  
15 that none of the payments for the expenses related to the travel between Washington, D.C. and  
16 Indianapolis resulted in violations of either 2 U.S.C. § 434(b) or 11 C.F.R. § 106.3.

17 The Committee was required to allocate and report any expenses related to campaign  
18 activities that occurred during Lugar's time in Indiana. See 11 C.F.R. § 106.3(b)(2). In the  
19 response, the Committee acknowledges that Lugar participated in campaign events on each of  
20 the six trips. Resp. at 2-3. For the trips in January, May, June, and July 8-10, the Committee  
21 states that the trips were comprised of a "majority of official events." *Id.* The Committee also

<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 states that expenses related to campaign events were paid for with campaign funds, *e.g.*, mileage  
2 to and from campaign headquarters and campaign events, and that it properly reported such  
3 disbursements in its Commission disclosure reports. *Id.* There is no information indicating that  
4 the Committee misreported or failed to report those costs.<sup>7</sup>

5 Therefore, the Commission finds no reason to believe that Friends of Dick Lugar, Inc.  
6 and Matthew R. Nicholson in his official capacity as Treasurer or Dick Lugar violated 2 U.S.C.  
7 § 434(b) and 11 C.F.R. § 106.3.

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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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