



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 8, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Benjamin L. Ginsberg, Esq.
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037-1350

RE: MUR 3774
National Republican
Senatorial Committee and
Stan Huckaby, as treasurer

Dear Mr. Ginsberg:

On May 20, 1993, the Federal Election Commission notified your clients, the National Republican Senatorial Committee and Stan Huckaby, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On March 6, 1995, your clients were notified that the Commission had received an amendment to the complaint alleging similar violations of the Act by your clients. A copy of the complaint and the amendment were forwarded to your clients on those dates.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on August 1, 1995, found that there is reason to believe the National Republican Senatorial Committee and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a) and 11 C.F.R. § 102.5(a)(1)(i), provisions of the Act and Commission regulations. The Factual and Legal Analysis, which formed a basis for the Commission's findings, 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. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted to the General Counsel's

Benjamin L. Ginsberg, Esq.
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Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the Order and Subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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 Dawn Odrowski or Elizabeth Stein, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,



Lee Ann Elliott
Vice Chairman

Enclosures

Order to Submit Written Answers
Subpoena for Production of Documents
Factual and Legal Analysis

2019-04-29 14:40:00

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
) MUR 3774
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Mr. Stan Huckaby, Treasurer
National Republican Senatorial Committee
425 Second Street, NE
Washington, DC 20002

c/o Benjamin L. Ginsberg, Esq.
Patton Boggs, L.L.P.
2550 M Street, NW
Washington, DC 20037-1350

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

2025-04-29 14:00:00

Stan Huckaby, Treasurer
MUR 3774
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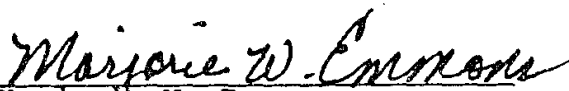
WHEREFORE, the Chairman of the Federal Election Commission
has hereunto set his hand in Washington, D.C. on this
7th day of August, 1995.

For the Commission,



Lee Ann Elliott
Vice Chairman

ATTEST:



Marjorie W. Emmons
Secretary to the Commission

Attachments
Interrogatories and Request for Documents

2025-08-07 10:00:00

INSTRUCTIONS

In answering the enclosed interrogatories and the request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from October 1, 1992 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Volunteer" shall mean any person who assisted an organization for five hours or more in the course of any week.

"Generic voter drive activity" shall include voter identification, voter registration and get-out-the-vote drives or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

Stan Huckaby, Treasurer
MUR 3774
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"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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QUESTIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. Identify all present or former officers, employees, agents or volunteers of the National Republican Senatorial Committee (hereinafter "NRSC") who have knowledge of the NRSC's payment of funds from NRSC's non-Federal account to the National Right to Life Committee, Inc., the Good Government Committee of Montgomery, Alabama, the American Defense Foundation, Inc. and Coalitions for America, Inc. Provide the title of each individual so identified and describe his or her responsibilities with respect to such payments.
2. With regard to the specific payments made by the NRSC's non-Federal account to the organizations listed below:

Group	Date	Amount
NRLC	10/02/92	\$ 25,000
NRLC	10/20/92	15,000
NRLC	11/17/92	45,000
NRLC	10/31/94	50,000
NRLC	11/01/94	50,000
NRLC	11/03/94	60,000
NRLC	11/04/94	15,000
ADF	10/02/92	250,000
ADF	11/10/92	30,000
ADF	3/12/93	170,000
ADF	5/26/93	40,000
GGC	11/18/92	7,000
CFA	10/20/92	50,000
CFA	11/11/92	40,000

For each listed payment:

- a. Identify the person(s) who solicited the payment, or requested or suggested that it be made.
- b. Identify the person(s) to whom such solicitation, request, or suggestion was made.
- c. Describe the purpose and substance of each communication relating to or referencing the payment, both before and after the payment was made, between any officer, employee, agent or volunteer of the NRSC and any officer, employee, agent or volunteer of the National Right to Life Committee, Inc., the Good Government Committee of Montgomery, Alabama, the American Defense Foundation, Inc., or the Coalitions for America, Inc. Identify the person(s) who initiated such communication. State the

date on which each communication occurred. Provide all documents containing, relating to, or referencing each such communication.

- d. Describe the purpose of each payment.
 - e. Identify the person(s) who were involved in deciding whether, and in what amount, to make the payment. State the basis upon which the identified person(s) made such decisions.
 - f. State whether any officer, employee, agent or volunteer of the NRSC was in any way involved in, or informed of, any decision or understanding regarding how the payment was to be used. If so, identify the person so involved or informed, describe the nature of the involvement or information and state the date on which and method by which they were informed. Provide all documents evidencing, relating to or referencing any such involvement or information.
3. Identify and provide all documents relating to or referencing the payments listed in Question 2, including, but not limited to copies of the payment checks (front and back) and any cover letters not already provided in NRSC's responses to this matter, any contracts, reports, memoranda, letters, understandings, agreements, in-house correspondence, or plans relating to or referencing the timing, purpose, amount, or intended use of the payments.
 4. State whether any present or former officer, employee, agent, or volunteer of the NRSC engaged in any direct or indirect communications (other than those described in your answers to Question 2) with any officer, employee, agent or volunteer of the National Right to Life Committee, Inc., the American Defense Foundation, Coalitions for America, or the Good Government Committee, at any time from September 1, 1992 through January 1, 1995 with regard to any election activity or strategy. For each such communication, identify the person(s) who initiated and the person(s) who received the communication, describe the purpose and substance of the communication, and state the date on which the communication occurred. Provide all documents containing, relating to or referencing each such communication.
 5. Identify all present or former officers, employees, agents or volunteers of the NRSC who authorized, were involved in, or had knowledge of the making of coordinated party expenditures on behalf of Senator Paul Coverdell in 1992 or Senators Rod Grams or Rick Santorum in 1994. Describe the activities financed by such coordinated party expenditures. Provide all documents relating to or referencing such coordinated party expenditures.

6. State whether the NRSC engaged in or financed generic voter drive activity for the November 24, 1992 general election run-off in Georgia and the 1994 general election in Pennsylvania and Minnesota. If so, describe the type of activity, and state the dates and cost of such activity.
7. State whether any present or former officers, employees, agents, or volunteers of the NRSC engaged in any direct or indirect communications with any officer, employee, agent or volunteer of the Coverdell Senate Committee, the Rod Grams for U.S. Senate Committee or Santorum '94 between September 1, 1992 and the present regarding coordinated party expenditures, get-out-the-vote activity and voter guide distributions in connection with the respective elections of the candidates supported by each committee. If so, for each such communication, identify the person(s) who initiated and the person(s) who received the communication, describe the purpose and substance of the communication and state the date on which the communication occurred. Provide all documents containing, relating to or referencing each such communication.
8. Identify any present or former officers, agents, employees or volunteers of the NRSC who are, or at any time have been, officers, employees, agents or volunteers of the National Right to Life Committee, Inc., the American Defense Foundation, Inc., Coalitions for America, Inc., or the Good Government Committee. Describe the past and present role of such person(s) with both the NRSC and the NRLC, ADF, CFA or GGC.
9. State whether any officer, employee, agent or volunteer of the NRSC was in any way involved in, or informed of, any get-out the vote or voter identification activities conducted by or on behalf of, or voters guides prepared, financed or distributed by, the following groups in the states and during the periods indicated below. If so, identify the officer, employee, agent or volunteer so involved or informed and describe the nature of the involvement or the information. Provide all documents containing evidence of, relating to, or referencing such information or involvement.
 - a. National Right to Life Committee, Inc. in Georgia in 1992 and in Minnesota and Pennsylvania in 1994.
 - b. The American Defense Foundation or its founder, Eugene McDaniel in Georgia in 1992 and in Texas in 1993.
 - c. Coalitions for America in Georgia in 1992.
 - d. Good Government Committee in Georgia in 1992.
10. The following questions relate to specific statements

made in, or attached to NRSC's June 30, 1993 and April 16, 1995 responses to the complaint and amendment in this matter.

a. NRSC's June 30, 1993 response at page 2 states "[h]istorically, the NRSC has made donations from its non-federal account to a wide variety of non-partisan, tax exempt organizations." List all such donations made between January 1, 1990 and the present by payee, date and amount (other than those already listed in Question 2).

b. In the Affidavit of Phil Gramm attached to the NRSC's April 16, 1995 response, Senator Gramm states that he set NRSC's policy on donations made from NRSC's non-federal accounts to non-partisan, non-profit organizations. See Affidavit, Paragraph 2. State that policy and provide all documents containing, describing or referencing that policy.

11. Identify the person(s) who has the most knowledge with respect to your answers to these questions.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 3774

RESPONDENTS: National Republican Senatorial Committee and Stan Huckaby, as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint received on May 14, 1993, from counsel for the Democratic Senatorial Campaign Committee. The complaint alleges that the National Republican Senatorial Committee ("NRSC") made payments of non-federal funds to four organizations to circumvent the coordinated party expenditure limits of the Act and influence the 1992 Georgia run-off election of United States Senator Paul Coverdell. Those who received funds from the NRSC include the National Right to Life Committee ("NRLC"), the American Defense Foundation ("ADF"), the Good Government Committee ("GGC"), and the Coalitions for America ("CFA").

Complainant filed an amendment to the complaint on February 22, 1995, alleging that the NRSC and its then Chairman, Senator Phil Gramm, again circumvented the coordinated party expenditure limits of the Act by paying non-federal funds to the National Right to Life Committee in order to influence the 1994 federal elections of Senator Rick Santorum in Pennsylvania and Senator Rod Grams in Minnesota after nearly exhausting allowable coordinated expenditures in the two states.

An examination of the complaint and the disclosure reports of the reporting entities reveals a repeated pattern of payments

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to various organizations by the NRSC's non-federal account in the days and weeks before U.S. Senate elections. In the case of the 1992 and 1994 elections identified in the complaint, these payments were made when the NRSC had nearly exhausted its ability to make expenditures on behalf of its candidates.

Responses to the original complaint were received from the NRSC. A response to the amended complaint was also received from the NRSC.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

National party committees occupy a special place within the political arena and the Federal Election Campaign Act of 1971, as amended ("the Act"), acknowledges this unique position by providing special mechanisms to allow national party committees an enhanced role within the process. The Act specifically provides that a national party committee or the party's senatorial campaign committee, or both in combination, may make a contribution of \$17,500 to each Senate candidate associated with the party in the year in which the candidate's election is held. 2 U.S.C. § 441a(h). A contribution is defined as "any gift, subscription, loan, advance or deposit of money or anything of value made by an person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). "Anything of value" includes all in-kind contributions, i.e., "the provision of any goods and services without charge. . ." 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

In addition to the \$17,500 contribution limit, the Act also permits national and state party committees to make extensive coordinated expenditures on behalf of candidates for federal office in the general election according to the formula set out in 2 U.S.C. § 441a(d). Coordinated party expenditures are those made by a national party committee on behalf of a specific candidate but not paid directly to the candidate or committee. The Act defines an "expenditure" as including any purchase, payment, distribution, loan, advance, deposit, or gift of money, or anything of value, made by any person for the purpose of influencing any election for federal office. No candidate or political committee shall knowingly make any expenditure in violation of the provisions of section 441a. 2 U.S.C. § 441a(f).

The coordinated expenditure provision enables political party committees to engage in activity that would otherwise result in a contribution to a candidate, and is the primary mechanism available to national and state party committees to support their candidates. See H.R. Rep. No. 94-1057, 94th Congress, 2d Session 59 (1976). The national and state political party committees may designate the party's senatorial campaign committees as their agent for purposes of making these expenditures. 11 C.F.R. § 110.7(a)(4), see also FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 28-29 (1981). The Act recognizes that parties are partisan organizations whose motivation is to further the goals of the party, and provides that a party, by definition, is incapable of

making independent expenditures. See 11 C.F.R. § 110.7(b)(4); Advisory Opinion 1980-119; and FEC v. Colorado Republican Federal Campaign Committee, 1995 WL 372934 *1 (10th Cir. 1995) ("Colorado Republicans"). Hence, expenditures by a party committee or its designated agent on behalf of a candidate are presumed to be coordinated with the candidate and count towards the coordinated expenditure limits established by 2 U.S.C. § 441a(d)(3), regardless of whether the expenditures are actually coordinated with the candidate's campaign.

The national party committee and the senatorial and congressional campaign committees may also conduct generic party activity without such activity resulting in either a contribution or counting towards a coordinated expenditure limit so long as no specific candidate is mentioned. 11 C.F.R. § 106.5(a)(2)(iv). Generic party activity includes voter identification drives, voter registration, get out the vote drives ("GOTV") and any other type of activity that encourages the general public to vote or support candidates of the particular party or associated with a particular issue, without mentioning a specific candidate. Id.

A party committee which finances political activity in connection with both federal and non-federal elections is required to either establish separate federal and non-federal accounts or conduct all activity in accordance with the limitations and prohibitions of the Act. 11 C.F.R. § 102.5(a)(1). All disbursements, contributions, expenditures and transfers in connection with any federal election must be

made from the committee's federal account. 11 C.F.R. § 102.5(a)(1)(i).¹ The Commission has previously determined that where an organization with federal and non-federal accounts appears to have violated 11 C.F.R. § 102.5 by disbursing funds from a non-federal account in connection with a federal election, the committee violated 2 U.S.C. § 441b(a) if the non-federal account contained corporate or labor organization funds at the time of the disbursement. See e.g., MURs 2998, 2160, 3670. If the disbursement is made for the purpose of influencing federal elections it also qualifies as a contribution and is subject to the Act's contribution limits. Multicandidate political committees, including a party's Senate campaign committee, may contribute up to \$5,000 per year to non-candidate political committees. 2 U.S.C. § 441a(a)(2)(C).

The Act also prohibits corporations from making contributions or expenditures in connection with federal elections and prohibits any candidate or committee from knowingly accepting such prohibited contributions or

1. Where a national party committee conducts activity which is in connection with both federal and non-federal elections, including generic party activity, all disbursements for the shared activity must still be from the federal account or from a separate allocation account established solely to pay allocable expenses. 2 U.S.C. § 106.5(g). The non-federal account must transfer funds to the federal account or an allocation account solely to cover the non-federal share of an allocable cost. *Id.* A national party Senate committee must allocate to its federal account a minimum of 65% of its administrative and generic voter drive expenses. 11 C.F.R. § 106.5(c)(2).

expenditures. 2 U.S.C. § 441b.² In order for the prohibitions of 2 U.S.C. § 441b to apply to corporate expenditures, however, the Supreme Court in FEC v. Massachusetts Citizens for Life ("MCFL") held that independent corporate expenditures must constitute "express advocacy." 479 U.S. at 248. Thus, a corporation may use its general treasury funds to make independent communications to the general public, including voter registration, GOTV material and phone banks, provided these activities do not expressly advocate the election or defeat of a clearly identified candidate. 11 C.F.R. § 114.4(b).³ However, corporate expenditures for such activities made in cooperation, consultation or concert with a candidate, a candidate's authorized committee or their agents are considered contributions and are thus prohibited by 2 U.S.C.

2. A corporation may, however, establish a separate segregated fund to accept contributions and make expenditures in connection with federal elections. 2 U.S.C. § 441b(b)(2)(C). The corporation then acts as a "connected organization," an organization which is not a political committee but which directly or indirectly establishes, administers or financially supports a political committee. 2 U.S.C. § 431(7); 11 C.F.R. § 100.6(c).

3. The Commission has proposed revisions to its regulations governing corporate voter registration and GOTV drives to clarify that voter registration and GOTV drives aimed at the general public are permitted provided that they do not expressly advocate the election or defeat of a candidate or political party and are not coordinated with a candidate or political party. See proposed revisions to 11 C.F.R. § 114.4(d) contained in Notice of Proposed Rulemaking for Independent Expenditures; Corporate and Labor Organization Expenditures; Proposed Rule, 57 Fed Reg. 33548, 33566 (1992). These provisions were proposed in light of the Supreme Court's ruling in FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) and subsequent cases interpreting that decision. See especially, Faucher v. FEC, 928 F. 2d 468 (1st Cir.), cert. denied, 502 U.S. 820 (1991)(invalidating the Commission's voter guide regulations at 11 C.F.R. § 114.4(b)(5)).

§ 441b. See 2 U.S.C. § 441a(a)(7)(B) and proposed Commission revisions to 11 C.F.R. 114.4(d), supra, at footnote 3 (providing that corporate voter drives shall not be coordinated with a candidate, group of candidates or political party). Thus, political party committees cannot use corporations as vehicles to make expenditures, which if made by the party itself, would be impermissible under the Act.

The Act also exempts from the definition of expenditure the costs of nonpartisan activity by corporations designed to encourage individuals to vote or register to vote.

2 U.S.C. § 431(9)(B)(ii). The legislative history of the 1979 amendments to the Act suggests that unlike corporations, party committees are not entitled to this exemption. In the 1979 amendments, Congress considered and apparently rejected extending 2 U.S.C. § 431(9)(B)(ii) to payments by party committees for voter drive activities. Instead, Congress passed a limited exemption for voter drives in support of a party's nominees for President and Vice President. See 2 U.S.C. § 431(8)(B)(xii) and (9)(B)(ix); S. Rep. No. 319, 96th Cong. 1st Sess. at 9 (1979) at 457 and S. 1757, 96th Cong. 1st Sess., reprinted in Legislative History of Federal Election Campaign Act of 1979 (hereinafter "Legislative History") at 457 and S. 1757, 96th Cong. 1st Sess. §§ 101(b)(5) and (c)(4) (1979), reprinted in Legislative History at 503, 506. Hence, a party committee cannot take advantage of an exemption for voter drive activity apparently unavailable to it by giving funds to an entity which does qualify for the exemption.

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An organization becomes a political committee pursuant to 2 U.S.C. § 431(4) if it receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year. Additionally, the Supreme Court has held that "[t]o fulfill the purpose of the Act [the designation of political committee] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Buckley v. Valeo, 424 U.S. 1, 79 (1976); MCFL, 479 U.S. 238, 252 n.6 (1986). If an organization meets the "major purpose test" and reaches the requisite contribution/expenditure dollar threshold, it must register with the Commission as a political committee and file periodic reports of receipts and disbursements. 2 U.S.C. §§ 433 and 434.

B. Allegations and Responses

Complaint

On November 24, 1992, pursuant to Georgia state law, a run-off election was held for United States Senate after neither Democratic incumbent Wyche Fowler nor Republican challenger Paul Coverdell received fifty percent of the vote in the regularly scheduled November 3, 1992 general election. Between November 10 and November 18, 1992, after having exhausted their coordinated expenditure limitations, the NRSC made \$122,000 in payments from their non-federal account to four tax-exempt groups. These payments included \$30,000 to the American Defense Foundation on November 10, \$40,000 to the Coalitions for America on November 11, \$45,000 to the National Right to Life Committee on

November 17, and \$7,000 to the Good Government Committee on November 18.⁴

The complaint alleges that the NRSC spent this non-federal money to influence the election of Republican Senate candidate Paul Coverdell in the Georgia run-off. Based on the timing of the payments and the fact that the groups are "closely tied to and have strongly supported the Republican party over time," the complaint alleges that NRSC knew that the money would be expended on behalf of Coverdell. Since NRSC's nonfederal account contains corporate contributions, the complaint also alleges that by making the payments, the NRSC violated 2 U.S.C. § 441b by using corporate money in connection with a federal election and 2 U.S.C. § 441a by making excessive contributions to the various groups.

In response, the NRSC states that its payments to the non-party groups are legal donations "historically" made from its non-federal account to "a wide variety of non-partisan tax exempt organizations." The NRSC also states in response that the payments were accompanied by transmittal letters which stated that the money was to be used for "'good government activities' . . . 'in a manner consistent with' the organizations charter" and that "utilizing of this money in any way to influence a federal election is strictly prohibited."

The Commission has information that two of the groups which

4. The complaint also references additional payments from the NRSC totaling \$65,000: \$15,000 to the NRLC and \$50,000 to CFA made in October 1992. In fact, as the NRSC response specifies, the NRSC made a total of \$340,000 in payments to these groups in October 1992: \$250,000 to ADF, \$50,000 to CFA, and \$40,000 to NRLC.

received money from the NRSC, the NRLC and ADF, were active in the Georgia run-off race. NRLC received \$45,000 from the NRSC and the NRLC engaged in "non-partisan, issue oriented, get-out-the-vote activity" in the Georgia election. NRL PAC made independent expenditures on behalf of Coverdell contemporaneous with the receipt of the NRSC funds. The American Defense Foundation, a 501(c)(4) organization which describes its purpose as seeking to inform and educate on issues "including veterans affairs and problems relating to prisoners of war and persons missing in action, and to encourage public dialogue on these issues," received \$30,000 from the NRSC. ADF describes its activity as conducting nonpartisan registration and get-out-the-vote drives for military personnel and their families. There is a question whether the NRSC funds were used by ADF to finance the GOTV activities in the Coverdell/Fowler run-off election.

Amendment

On February 22, 1995, complainants filed an amendment stating that NRSC again violated the coordinated expenditure limitations of the Act by making \$175,000 in payments from non-federal funds to the NRLC between October 31 and November 4, 1994. The basis for the amendment was a series of statements made to a Washington Post reporter at a February 10, 1995 luncheon by Senator Phil Gramm, the Chairman of the NRSC at the time of the 1992 and 1994 elections. According to a February 12, 1995 Post article, Senator Gramm stated that "I made a decision . . . to provide some money to help activate pro-life voters in some key states where they would be pivotal in the election." (emphasis

added). Senator Gramm went on to say that the NRSC was particularly concerned about Senate elections in Minnesota and Pennsylvania. Senator Gramm later contacted the reporter and indicated that his original statement was incorrect and that the reason for the payments was that the NRSC's "message conformed to the Republican message."

The NRSC responded to the amendment on April 6, 1995, stating that its \$175,000 in payments to the NRSC are simply further examples of NRSC's "long-standing pattern of making donations to non-profit organizations." The response further states that a transmittal letter from the General Counsel of the NRSC again accompanied each payment stating that the "contribution to your organization should be used for good government activities that are consistent with your organization's not-for-profit character. Please note that utilizing this money in any way to influence a federal election is strictly prohibited." As evidence of their pattern of charitable giving, the NRSC cites the same 1992 non-federal payments at issue in the original complaint.

In an affidavit attached to NRSC's response, Senator Gramm states that after the luncheon where he made his initial comments to a Washington Post reporter, he "had a chance to review the facts and check the NRSC's records" and "realized that [his] off-the-cuff comments about NRSC's donations to the National Right to Life Committee had been incorrect."

Although it is clear that the recipient groups received funds from the NRSC, the circumstances surrounding the receipt and use of NRSC funds by these groups are unclear, such as whether the

funds were solicited from the NRSC, whether there was any understanding between the groups and the NRSC as to how the funds would be spent beyond the boiler-plate statement in the transmittal letter, and most notably, how the funds were used.

C. Analysis

As discussed below, a variety of factors including the timing of the payments, NRSC's near exhaustion of coordinated expenditures limits at the time the payments were made, public remarks by an NRSC official, and the close nature and strategic importance of the various races support an inference that the NRSC may have violated the Act given the information presently available. The NRSC's 1992 and 1994 payments are discussed in sections 1 and 2 below.

1. 1992 Activity

On November 24, 1992, three weeks after the November 3, 1992 general election, a Senate run-off election was held in Georgia between Republican Paul Coverdell and Democrat Wyche Fowler. Prior to the general and run-off elections, the NRSC had made direct contributions of \$17,500 and coordinated expenditures of \$535,607 on behalf of Paul Coverdell, the maximum allowed for an election. On November 6, 1992, the NRSC sought an advisory opinion from the Commission to determine whether the NRSC could permissibly make additional coordinated expenditures for the run-off. On November 19, 1992 the Commission advised the NRSC that it had split 3-3 on a draft opinion holding that no additional coordinated expenditures were available. The next day, the NRSC reported making an additional \$535,000 in coordinated

expenditures for Coverdell in the run-off.⁵

Between November 10 and November 18, 1992, while awaiting the Commission's decision regarding the permissibility of additional coordinated expenditures, the NRSC made payments of \$30,000 to the ADF, \$40,000 to CFA, \$45,000 to NRLC and \$7,000 to the GGC. At the time the NRSC made the payments, news reports in early November 1992 quote Coverdell aides as saying the campaign was low on cash in what was expected to be a very close run-off. Additionally, two of the organizations which received money from the NRSC, the NRLC and the ADF, are accomplished at turning out the vote for their target issues. See, e.g., newsletter attached as Exhibit 10 to the complaint.

Both the NRLC and the ADF engaged in GOTV activity in the run-off. Because the NRLC is not a reporting entity, the public record does not indicate how or when NRSC's funds were used. However, the NRLC's apparent last-minute GOTV activity in the run-off coincides with receipt of NRLC's payment.

The reports of NRL PAC, NRLC's separate segregated fund, also reflect last-minute support of Coverdell. NRL PAC reports show no support for Coverdell prior to the run-off even though Coverdell faced the same opponent in the general election three weeks earlier. NRL PAC's reports for the run-off, however, reflect a \$2,500 contribution to Coverdell and \$15,330 in independent expenditures for radio ads supporting him, all made

5. Due to refunds from vendors, NRSC's disclosure reports reveal that it ultimately made \$509,570 in coordinated expenditures for the run-off.

within 48 hours of NRSC's November payment.⁶

ADF also engaged in voter turn out efforts in the run-off. A November 21, 1992 newspaper article attached to the complaint describes ADF President Eugene "Red" McDaniel's appearances "touring military facilities and talking about Tuesday's run-off election . . ." While it is clear that ADF engaged in GOTV activity for the run-off less than a week after receiving NRSC's \$30,000 payment, the public record does not indicate how NRSC's funds were used since the ADF is not a reporting entity and has not established a separate segregated fund.

Additionally, the NRSC's disclosure reports reveal that in 1992 and 1993, the NRSC had an established pattern of making contributions to the ADF from its non-federal account in proximity to Senate elections. The ADF received \$250,000 prior to the 1992 general election, \$30,000 prior to the 1992 run-off, and \$210,000 in the months prior to the May 1993 special Texas Senate election and June 1993 Senate run-off,⁷ for a total of \$490,000. Although the NRSC made no additional contributions to ADF in 1994, the ADF has continued to receive funds from the Republican National

6. NRL PAC appears to have shared the cost of its independent expenditure radio ad campaign for Coverdell with Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress ("MCCL PAC"). MCCL PAC reports making independent expenditures totaling \$11,956.25 to the same radio stations listed in NRL PAC's reports, on the same date and in the same amounts. It also made a \$2,500 contribution to Coverdell on November 17, 1992, the same day as NRLC PAC.

7. Of the \$210,00 paid to ADF prior to the special Senate election in Texas, NRSC's non-federal reports describe the purpose of a \$170,000 payment as "party building."

Committee.

There are significant questions outstanding regarding CFA and GGC, the other two recipient organizations that received payments from the NRSC, such as the circumstances surrounding why the payments were made or what they were used for.

The NRSC asserts that payments to all four recipient groups were part of its past practice of making donations to tax-exempt non-partisan organizations from its non-federal account. However, since January 1991 when the NRSC's non-federal account was first required to file reports, all but two of its fifteen donations to non-profit groups⁸ were made to the four organizations named in this matter between four days and two months preceding U.S. Senate elections. The remaining two donations were made to the Fair Government Foundation in October 1994 and February 1995.

2. 1994 Activity

In 1994, the NRSC once again made payments to the NRLC from its non-Federal account in the week before the general election. Between October 31, and November 4, the NRSC made four payments totaling \$175,000 to NRLC.⁹ In public comments to reporters, former NRSC chairman Senator Phil Gramm confirmed that the NRSC made the payments to assist Republican candidates in specific

8. The public record does not indicate whether the NRSC made any such donations in July 1994 since the NRSC apparently failed to file supporting schedules itemizing the \$102,500 in "other disbursements" the non-federal account made that month. Itemization is required pursuant to 11 C.F.R. § 104.9(c).

9. NRSC's 1994 payments to the NRLC consisted of the following: \$50,000 on October 31, \$50,000 on November 1, \$60,000 on November 3, and \$15,000 on November 4.

races stating:

the Minnesota race turned on us in the last 20 days and . . . I made a decision that we were on the verge of losing that race. Pennsylvania turned on us . . . and the focus of this expenditure was trying to get into those states where we thought it made a difference.

Hours after leaving the luncheon where the statements were made, but prior to the running of the story, Senator Gramm telephoned a reporter to say that he had been mistaken in his explanation as "the rules under which you contribute to groups like this through political committees are very strictly set." Senator Gramm's revised statements may reflect a recognition on his part that his previous statements constituted an admission that the NRSC used the NRLC as a vehicle to make additional coordinated expenditures on behalf of Grams and Santorum.

Although Senator Gramm contacted the reporter to correct his statements before publication, asserting instead that the money was given because the NRLC's message conformed to the Republican message, he appeared on ABC's This Week With David Brinkley on February 12, 1994, two days after making the original statements saying "[c]learly we made the judgment that where we had close races . . . activism on behalf of the pro-life cause would help our candidates." In response to a question on whether the contributions were not simply a way of doing indirectly what the NRSC was prohibited from doing directly, Gramm responded with the following statement: "We promote the message of groups that are comfortable with us. We must have done a pretty good job. We -- there are 11 new senators. We won all 11 of those seats."

The combined national and state party coordinated

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expenditure limit for the 1994 Pennsylvania Senate race was \$1,075,544. The combined national and state party coordinated expenditure limit for the 1994 Minnesota Senate race was \$385,588. As of October 25, 1994, the NRSC had made its final significant coordinated expenditures for the Minnesota and Pennsylvania races. At that time, the NRSC had spent \$1,063,150 in Pennsylvania and \$379,999 in Minnesota.¹⁰ Six days after making the last of these expenditures, which brought the NRSC close to its statutory limit for these elections, the NRSC made the first of its four payments to the NRLC.

News reports support Senator Gramm's statements that the Minnesota and Pennsylvania elections remained very close in the final weeks of the campaign. In Pennsylvania, Rick Santorum, who had been gaining steady ground, faced several problems after October 25. In the last week of October, Santorum's opponent was endorsed by Republican Theresa Heinz, widow of U.S. Senator John Heinz. On October 26, Santorum's opponent began airing an advertisement containing videotape of Santorum advocating raising the eligibility age for social security.¹¹ Santorum himself acknowledged on November 3, 1994 that the ad had hurt him, particularly in the middle of the state. Polls also showed a drop

10. The NRSC made an additional \$1,150 in coordinated expenditures in Pennsylvania after October 25. The Pennsylvania expenditures were made in part by the Pennsylvania Republican Party.

11. The ad featured videotape of Santorum saying "It's ridiculous to have a retirement age in this country of 65" and that he would move back the retirement age to "at least 70. . . I'd go farther if I could."

in Santorum's support in the final two weeks which analysts attributed to the ad.¹²

Similarly, news accounts in Minnesota show that Rod Grams' opponent Ann Wynn was gaining on him in the twenty days before the election. A Minneapolis Star Tribune poll completed October 17 showed Grams at 42% to Wynn's 35%, while a poll by the same organization completed November 4, 1994 showed Grams at 42% to Wynn's 38%, within a 4 point margin of error. The accompanying Minneapolis Star Tribune article on November 6 opined that: "[w]ith the electorate split between Wynn and Grams, the election now hinges on who does a better job of activating supporters and getting them to vote on Tuesday." On October 23, 1994, Wynn also received the endorsements of both the Minneapolis Star Tribune and the St. Paul Pioneer Press, the two major metropolitan papers in the state. Finally, October Quarterly disclosure reports showed Wynn entering the last stretch of the election with more cash on hand than Grams.

Both the Pennsylvania and Minnesota Senate races were key to a Republican Senate majority.¹³ The timing of the NRSC's payments to NRLC, made when two strategically important races appeared to

12. Polls conducted by the Greensburg Tribune-Review which had Wofford and Santorum at 40% each on October 20, showed Wofford with a 44% to 43% edge by November 3 while KDKA TV polls showed Wofford's lead widen from 1 point to 4 points between October 18 and November 2.

13. The closeness and strategic importance of the Pennsylvania race for the Republican party is also evidenced by NRSC political director, Paul Curcio, traveling with Santorum in the last week of the campaign.

turn against their candidates and NRSC had nearly exhausted its permissible spending limits, seems to support Gramm's initial statement that the payments to NRLC were made to aid Grams and Santorum. Moreover, given the closeness of both races, success appeared to depend on high voter turnout necessitating the maximum possible GOTV effort. Under these circumstances, NRSC's decision to make "donations" to NRLC, an organization with an established grassroots network, in the week before the 1994 general election, raises questions as to whether NRSC contributed to the NRLC to influence federal elections.

The NRSC responded to the amended complaint by reasserting its original contention that the payments to NRLC are merely "routine" contributions to charitable and good government activities. As support for the routine nature of these contributions, NRSC points to the 1992 contributions at issue in the original complaint and a 1995 contribution to the Fair Government Foundation. NRSC additionally provided copies of transmittal letters accompanying the 1994 payments which state that "utilizing any of this money in any way to influence a federal election is strictly prohibited." Finally, NRSC provided the affidavit of Senator Gramm which states that "these donations. . . were not used in connection with any federal election" but were made "solely in support of organizations whose philosophy was compatible with the Republican Party's platform." Senator Gramm further stated that while he set the policy for such donations, he "did not generally approve any particular donation." With respect to his comments to reporters at the 1995 luncheon, Gramm said that

after he had "an opportunity to review the facts and check the NRSC's records" he realized his "off the cuff comments about the NRSC's donations to the NRLC had been incorrect."

Although Senator Gramm has disavowed his initial remarks to reporters, his later comments on the David Brinkley program, that the NRSC made a judgment that "activism on behalf of the pro-life cause would help our candidates," as well as the timing and other circumstances surrounding the NRSC's payments, suggest his initial remarks were accurate. In addition, NRSC's assertion that the payments were routine charitable contributions accompanied by cautionary disclaimer letters does not adequately refute the possibility that the funds were to aid the election of federal candidates given the close proximity of each donation to a United States Senate election. See MCFL, 479 U.S. 238, 249 (1986). Information that is not currently known, including whether or not the payments were solicited, how the payees were chosen, why the payments were made when they were, discussions between the parties, and use of the money, would permit a fuller factual record for assessing whether the payments were intended to influence specific federal races.

The amended complaint suggests that the money paid by NRSC to NRLC was spent in the Grams and Santorum elections by NRLC's state affiliates, MCCL and Pennsylvania Pro-Life Federation ("PPLF"), both of whom also have separate segregated funds. Because NRLC, MCCL and PPLF are all non-reporting entities, however, the public record does not indicate how these entities used NRSC's funds. With regard to the separate segregated funds,

while no activity by MCCL PAC or PPLF PAC is directly traceable to NRLC through currently-available information, both committees apparently financed activity in connection with the Grams and Santorum elections.¹⁴ MCCL PAC reported \$89,943 in independent expenditures on behalf of Rod Grams between October 24 and November 11, 1994; \$53,500 of these expenditures were made after NRSC began making its payments to NRLC.¹⁵ PPLF PAC made \$2,300 in contributions to Santorum prior to NRSC's payments to NRLC. In the reporting period corresponding to NRLC's payments, most of PPLF PAC's \$13,818 in disbursements appear to be attributable to a voter guide or other large printing.¹⁶

In sum, it appears that the NRSC, after exhausting its own ability to support its candidates, may have paid NRLC, ADF, CFA and GGC to perform GOTV activity on behalf of specific federal candidates in targeted races without using funds subject to the

14. The amended complaint suggests that one use of the NRSC funds may have been a last minute get-out-the-vote phone campaign funded through an Austin, Texas telemarketing firm. A Minneapolis Star Tribune article attached to the complaint describes such a campaign which supported Republican candidates in Minnesota, Michigan and Tennessee who opposed abortion, including Grams. The article does not identify the organization who funded the campaign. Although the telemarketing firm was given the "rush order" on Friday, November 4, the same day NRSC made its last donation to NRLC, at this time it is unclear who funded this particular phone effort.

15. MCCL PAC did not report receipt of any transfers from NRLC or MCCL during this period. However, after reporting receipts of only \$385 from July 1 through October 19, 1994, MCCL PAC reported \$70,465 in receipts between October 20 and November 28, 1994, 99% from unitemized contributions. Additionally, MCCL's General Fund appears to have initially paid for \$8,936 in independent expenditures which should have been paid for by MCCL PAC.

16. These disbursements are for "postage for voters guide," "printing" and "shipping."

Act in violation of 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. § 102.5(a)(1).

3. Conclusion

By virtue of its close relationship with its candidates, political party committees are considered incapable of making independent expenditures. 11 C.F.R. § 110.7(b)(4). Therefore, all expenditures made by the NRSC in connection with the general election of an identified candidate are treated as coordinated expenditures. FEC v. Colorado Republicans, 1995 WL 372934 (10th Cir. 1995). Had the NRSC conducted GOTV activity aimed at specific federal candidates, expenditures for those activities would be treated as coordinated expenditures subject to the applicable Section 441a(d) limit. Instead, it appears from the timing of the payments, the close nature and strategic importance of the races and public remarks made by NRSC's then-chairman, that the NRSC may have made payments to the tax-exempt recipient organizations to conduct GOTV activity, and possibly other federal election activity, in Georgia, Minnesota and Pennsylvania that the NRSC could not have undertaken itself without exceeding the Act's limits.

Based upon the foregoing, there is reason to believe that the National Republican Senatorial Committee and Stan Huckaby as treasurer violated 2 U.S.C. §§ 441a(f), 441b(a) and 11 C.F.R. § 102.5(a)(1)(i).