

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The South Dakota Democratic Party and  
Bill Nibbelink, as treasurer<sup>1</sup>

MUR 4503

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn and notarized complaint filed by the National Republican Senatorial Committee on October 10, 1996. An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that the South Dakota Democratic Party ("State Party") and Bill Nibbelink, as treasurer, (collectively "Respondents") violated 2 U.S.C. §§ 441a, 441a(f) and 434(b), and 11 C.F.R. § 102.5(a).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.

<sup>1</sup> On July 15, 2000, the South Dakota Democratic Party informed the Commission that Bill Nibbelink is its new treasurer.

IV. The pertinent facts in this matter are as follows:

1. The State Party is a political committee within the meaning of 2 U.S.C. § 431(4), and is registered with the Commission pursuant 11 C.F.R. § 102.1.
2. Bill Nibbelink is the current treasurer of the State Party.
3. The State Party purchased campaign brochures from Ambrosino & Muir in connection with the 1996 general election race between Congressman Tim Johnson and Senator Larry Pressler. One of the campaign brochures set forth Congressman Johnson's position on federal funding for student loans and asked the recipient to vote for Tim Johnson by absentee ballot ("the student absentee piece").
4. The State Party paid Ambrosino & Muir \$8,900 for the student absentee piece, and allocated 37.5% of the cost of the piece (\$3,337.50) to its Federal account and 62.5% of the cost (\$5,562.50) to its Non-Federal account.
5. Based on the ratio of space devoted candidates for Federal office compared with the total space devoted to all Federal and non-Federal candidates, 83% of the cost of the student absentee piece (\$7,387) should have been allocated to the State Party's Federal account and only 17% (\$1,513) should have been allocated to the non-Federal account.
6. The State Party also paid Ambrosino & Muir to prepare a piece, mailed to senior citizens, that asked the recipient to vote for Tim Johnson. ("the senior absentee piece").

7. The State Party paid Ambrosino & Muir \$12,240 for the senior absentee piece, and allocated 37.5% of the cost of that piece (\$4,590) to its Federal account and 62.5% of the cost (\$7,650) to its Non-Federal account.
8. Based on the ratio of space devoted candidates for Federal office compared with the total space devoted to all Federal and non-Federal candidates, 78% of the cost of the senior absentee piece (\$9,547.20) should have been allocated to the State Party's Federal account and only 22% (\$2,692.80) should have been allocated to the non-Federal account.
9. The State Party's non-Federal account is funded by contributions that are not subject to the limitations of the Federal Election Campaign Act (the "Act").
10. The State Party coordinated its expenditures for the student and senior absentee pieces with Congressman Johnson and/or his campaign committee.
11. The State Party did not report its expenditures for the student and senior absentee pieces as coordinated party expenditures.

V. Respondents violated 2 U.S.C. §§ 441a and 441a(f) and 11 C.F.R. § 102.5(a) by paying for the student and senior absentee pieces using contributions that are not subject to the limitations of the Act.

VI. Respondents violated 2 U.S.C. § 434(b) by failing to report \$21,140 in coordinated party expenditures made on behalf of Congressman Johnson's campaign committee.

VII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Seven Thousand, Five Hundred dollars (\$7,500.00), pursuant to 2 U.S.C.

§ 437g(a)(5)(A).

23-04-406-3889

VIII. Respondents will transfer Nine Thousand, Six dollars and Seventy cents (\$9,006.70) from their Federal account to their non-Federal account.

IX. In the future, Respondents will use the appropriate allocation ratio when paying for communications that urge support for clearly identified candidates for federal and nonfederal office.

X. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein, or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

XI. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XII. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XIII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

23-04-406-3890

FOR THE COMMISSION:

Lawrence H. Norton  
~~XXXXXX~~  
~~XXXXXX~~  
Acting General Counsel

BY:

Abigail A. Shaine

Abigail A. Shaine  
Acting Associate General Counsel

Date

9/21/01

FOR RESPONDENTS:

Brian G. Svoboda

Brian G. Svoboda  
Counsel to Respondents

Date

17 August 2001

Date