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**BEFORE THE FEDERAL ELECTION COMMISSION**

National Republican Congressional Committee,  
and Christopher J. Ward, as treasurer

MUR 5598

**NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE'S  
RESPONSE TO THE COMPLAINT IN MUR 5598**

By and through the undersigned counsel, the National Republican Congressional Committee ("NRCC"), and Christopher J. Ward as treasurer, submit this initial response to the complaint in MUR 5598. This matter concerns the recent election in Utah's second congressional district, specifically two mail pieces paid for by the Utah Republican Party. Because the complaint fails to allege a legal violation with respect to the NRCC, we respectfully request that the complaint be dismissed.

**I. Background**

By way of background, the politics of Utah's Second District has been described as "turbulent." Almanac of American Politics at 1615 (2004). In the period between 1992 and 2000, it has elected two Democratic and two Republican congressmen. In 2000, Democrat Jim Matheson won with 56% of the vote, but almost lost in 2002. That year, he ran against Republican John Swallow, and each candidate received about 49% of the vote. Matheson narrowly won, receiving 110,764 votes to Swallow's 109,123. The 2004 election was a rematch between Matheson and Swallow.

The complaint was filed by the Utah Democratic Party in the closing days of the election. Prior to filing the complaint, public polling had the race as a dead heat, with Swallow appearing to have the momentum. The momentum shifted when the Utah

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Democrats made much of a few mail pieces critical of Democrat Matheson, and paid for by the Utah Republican Party. For example, in a staged photo opportunity/press conference, the state Democratic chair stood on the curb of a street, and publicly said he was throwing the Utah Republican mail into the gutter where it belonged. The Democrats obtained several news stories that were critical of the Utah Republican Party's mail pieces, and effectively stalled Swallow's momentum. Matheson won the election with 54.8% of the vote.

## **II. Analysis**

Although an excellent and highly effective political move, the complaint fails to allege a violation of law by the NRCC (or anyone else, for that matter). The mail pieces were not paid for or otherwise purchased by the NRCC. Both pieces contain a disclaimer stating that the piece was paid for by the Utah Republican Party. The return address on each piece is that of the Utah Republican Party. And the postal permit indicium appears to be that of the Utah Republican Party.

Based upon the materials attached to the complaint, the mail pieces appear to constitute an exempt party activity (specifically, so-called "volunteer mail"): "The law allows for the Utah GOP and Swallow to operate a 'non-allocable' mail campaign, and that's what is being done, he said." GOP Breaks Campaign Laws, Utah Demos Say, Deseret Morning News (10/27/04). Under 11 CFR 100.87 & 100.147, state and local parties may spend unlimited funds for certain activities that benefit federal candidates, but are exempt from the definition of contribution or expenditure. Such activities can be fully coordinated with Federal candidates. Thus, the legal jargon thrown about in the complaint — "coordination," "common vendor," etc. — is irrelevant.

### III. Conclusion

Ultimately, the complaint was filed in the closing hours of a close campaign. Long on politics, but short on law, it attacks activities undertaken by the Utah Republican Party that are perfectly legal, and sanctioned by the Commission's own regulations. Critically, it was a Utah Republican Party piece, not paid for by the NRCC. Accordingly, the complaint ought to be dismissed.

Respectfully submitted,



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