

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF LEGAL
COUNSEL

2004 MAR -1 P 2:50

2004 MAR -1 P 2:21

RECEIVED
FIC MAIL
OPERATIONS CENTER

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
National Republican Congressional Committee
And Christopher J. Ward, as treasurer

MUR 4953

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint filed by the Democratic Congressional Campaign Committee. The Federal Election Commission ("Commission") found reason to believe that the National Republican Congressional Committee and Christopher J. Ward, as treasurer (collectively "Respondents" or "NRCC"), violated 2 U.S.C. §§ 441b and 441a(f), and 11 C.F.R. §§ 102.5(a) (1)(i), 106.5(c) and 106.5(g)(1)(i).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to any finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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.

2004 MAR -1 P 2:21

1 IV. The pertinent facts in this matter are as follows¹:

2 1. The NRCC is a political committee within the meaning of 2 U.S.C. § 431(4).

3 2. Christopher J. Ward is the treasurer of the NRCC.

4 3. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits
5 corporations and labor organizations from making contributions in connection with Federal
6 elections, and prohibits political committees from knowingly accepting such contributions.

7 2 U.S.C. § 441b(a). The Act further prohibits political committees established by a national
8 party committee from accepting in excess of \$20,000 per calendar year from any person.

9 2 U.S.C. §§ 441a(a)(1)(B) and 441a(f).

10 4. Each organization, including a national party committee, which finances political
11 activity in connection with both federal and non-federal elections must follow depository and
12 allocation regulations at 11 C.F.R. §§ 102.5 and 106.5. These rules implement the contribution
13 and expenditure limitations established by 2 U.S.C. §§ 441a and 441b.

14 5. A national party committee, such as the NRCC, that has established separate federal
15 and non-federal accounts must make all disbursements, contributions, expenditures and transfers
16 by the committee in connection with any federal election from its federal account. Only funds
17 subject to the Act's prohibitions and limitations shall be deposited into the federal account.

18 11 C.F.R. § 102.5(a)(1)(i). *See also* 11 C.F.R. § 106.5(a).

¹ All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 1999 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

1 6. A national party committee, such as the NRCC, that makes disbursements in
2 connection with federal and non-federal elections must allocate the costs of certain allocable
3 activities between its federal and non-federal accounts. 11 C.F.R. § 106.5(a). So-called party
4 “issue advertisements” are included in this category. *See* Advisory Opinion 1995-25.

5 7. As the House campaign committee of the Republican Party, the NRCC must allocate
6 certain costs, including issue advertisements, according to the funds expended method
7 established at 11 C.F.R. § 106.5(c)(1). The NRCC must allocate a minimum of 65% of these
8 costs each year to its federal account. 11 C.F.R. § 106.5(c)(2).

9 8. The NRCC’s non-federal account can accept corporate contributions prohibited by
10 2 U.S.C. § 441b and contributions in excess of the limits prescribed by 2 U.S.C. § 441a(a).

11 9. A party committee that gives non-federal funds to a third party with the knowledge
12 that all or a part of the funds will be used to conduct activities which, if engaged in by the party
13 committee directly would have been allocable, must allocate the donation to the third party in the
14 same manner as it would have had the party committee made the expenditure directly. *See FEC*
15 *v. California Democratic Party*, 1999 WL 33633264 (E.D. Cal., Oct. 14, 1999.) (NO. CIV. S-97-
16 0891GEBPAN); *FEC v. California Democratic Party*, 13 F. Supp. 2d 1031 (ED Calif. 1989).
17 *See also* MUR 3774 (National Republican Senatorial Committee.)

18 10. In October of 1999, more than a year before the November 7, 2000 general election,
19 House Republicans inaugurated a multi-pronged project called “Stop the Raid!” As part of this
20 project, the NRCC, at the direction of the House Republican leadership, sponsored television
21 advertisements in the districts of eight to ten Democratic federal candidates who were viewed as
22 vulnerable to an electoral challenge in 2000. These advertisements accused Democrats of
23 planning to raid the Social Security Trust Fund surplus in the FY2000 budget for “more big

1 government programs.” Mike Mihalke of the media consulting firm of Brabender Cox Mihalke
2 provided media production and placement services. The NRCC allocated the costs of the
3 advertisements between its federal and non-federal funds.

4 11. In 1996, Edwin Buckham founded the United States Family Network (“USFN”), a
5 Virginia non-profit corporation exempt from federal income taxes under 26 U.S.C. § 510(c)(4).
6 Mr. Buckham, through his consulting firm, the Alexander Strategies Group, also served as the
7 USFN’s primary fundraiser. Mr. Buckham shared an office with Jim Ellis, who was affiliated
8 with Americans for Economic Growth (“AEG”), a 501(c)(4) organization, incorporated in North
9 Carolina and Virginia. Mr. Ellis also operated a consulting group called the J.H. Ellis Company
10 through which he had contracts with the Alexander Strategies Group and the NRCC.

11 12. At some point in the summer or early fall of 1999, Mr. Buckham possessed a script
12 for a possible radio advertisement relating to the issue of Social Security, which he discussed
13 with Mike Mihalke, of Brabender Cox Mihalke.

14 13. During the week of October 4, 1999, Mr. Buckham solicited the NRCC for \$500,000
15 in non-federal funds for “media and grassroots” efforts on behalf of the USFN. The NRCC
16 initially denied the request. Mr. Buckham renewed his request during the week of October 11,
17 1999 and the NRCC again told Mr. Buckham that it would not make the donation. Despite its
18 earlier refusals to transfer funds to the USFN, on October 20, 1999, the NRCC transferred
19 \$500,000 in non-federal funds to the USFN. The NRCC representative who hand-delivered the
20 check to Mr. Buckham made statements at the time to the effect that the NRCC did not want to
21 know how the funds would be used.

22 14. In October of 1999, the NRCC utilized specific procedures to approve and process
23 large donations. These procedures were not used with regard to the \$500,000 donation made to

1 the USFN. For instance, although large donations made by the NRCC were generally brought to
2 the NRCC's Executive Committee (consisting of approximately 40 Republican House members)
3 in advance, that process was not followed in this case, even though it represented the largest
4 single donation to an outside group by the NRCC in 1999. The form that was used to process the
5 October 20, 1999 donation to USFN, entitled "State Level Contribution/Transfer Check
6 Request," required the signatures of the NRCC's campaign, executive and administrative
7 divisions. The form evidencing the check request for the USFN donation was signed by the
8 NRCC's then-treasurer, lacked any signature from the executive division, and was signed by the
9 NRCC's political director, on November 1, 1999, twelve (12) days after the donation was
10 actually made.

11 15. The Commission has evidence that, prior to the NRCC's transfer of funds to the
12 USFN, Mr. Buckham orally agreed with his officemate, Jim Ellis, that AEG, which focused on
13 economic issue, would run the advertisements rather than the USFN.

14 16. The Commission has evidence that, on October 21, 1999, one day after the funds
15 were transferred from the NRCC to the USFN, the USFN transferred \$100,000 of the funds to
16 AEG, and on October 26, 1999, the USFN transferred another \$200,000 to AEG. AEG retained
17 two vendors, Mike Mihalke of Brabender Cox Mihalke and Government Impact Services, to
18 produce and place two sets of radio advertisements. AEG expended approximately \$260,000 on
19 this advertising program. The AEG advertisements, which began running approximately one
20 week after AEG's receipt of the funds from the USFN, criticized alleged Democratic efforts to
21 spend portions of the Social Security surplus on the FY2000 budget for "foreign aid and big
22 government programs." One of the AEG advertisements ran in the districts of four vulnerable
23 Democrats and the other ran in the districts of six Republican Representatives and one

1 Democratic Representative who were perceived to need shoring up to ally themselves with the
2 Republicans on the upcoming FY2000 budget vote.

3 17. The Commission has evidence that, at the time of this transfer of funds to the USFN,
4 the NRCC knew through its agents that the USFN planned to pass all or part of the \$500,000 on
5 to a third party for the purpose of running "issue" advertisements.

6 18. Had the NRCC itself sponsored the issue advertisements sponsored by AEG it would
7 have had to finance, at a minimum, 65% of the costs of those activities with federal funds. *See*
8 11 C.F.R. § 106.5(c)(2).

9 V. 1. Respondents violated 2 U.S.C. §§ 441b and 441a(f) by using excessive and
10 prohibited funds to finance federal election activity, 11 C.F.R. §§ 102.5(a)(1)(i) and
11 106.6(g)(1)(i) by failing to make payments from its federal accounts, and 11 C.F.R. § 106.5(c)
12 by failing to allocate its payments for joint federal and non-federal activities between its federal
13 and non-federal accounts. Respondents will cease and desist from violating 2 U.S.C. §§ 441b
14 and 441a(f) and 11 C.F.R. §§ 102.5(a)(1)(i), 106.5(c) and 106.6(g)(1)(i).

15 VI. Respondents will pay a civil penalty to the Federal Election Commission in the
16 amount of Two Hundred Eighty Thousand Dollars (\$280,000), pursuant to 2 U.S.C.
17 § 437g(a)(5)(A).

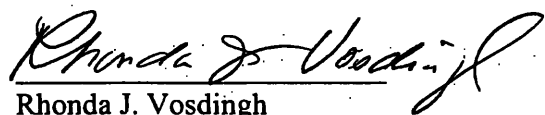
18 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
19 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review
20 compliance with this agreement. If the Commission believes that this agreement or any
21 requirement thereof has been violated, it may institute a civil action for relief in the United States
22 District Court for the District of Columbia.

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

3 IX. Respondents shall have no more than 30 days from the date this agreement has
4 become effective to comply with and implement the requirements contained in this agreement
5 and to so notify the Commission.

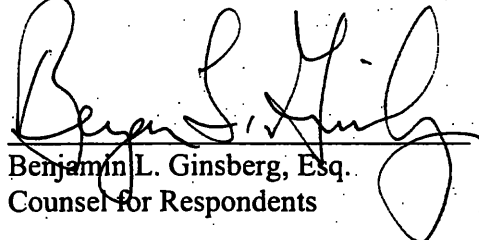
6 X. This Conciliation Agreement constitutes the entire agreement between the
7 parties on the matters raised herein, and no other statement, promise, or agreement, either written
8 or oral, made by either party or by agents of either party, that is not contained in this written
9 agreement shall be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

10 FOR THE COMMISSION:
11 Lawrence H. Norton
12 General Counsel
13

14
15 BY: 
16 Rhonda J. Vosdigh
17 Associate General Counsel
18 for Enforcement
19
20
21

4/5/04
Date

22 FOR RESPONDENTS:

23 
24 Benjamin L. Ginsberg, Esq.
25
26
27 Counsel for Respondents
28

March 1, 2004
Date