

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 02-582 (CKK, KLH, RJJ)
)	
FEDERAL ELECTION COMMISSION,)	
<i>et al.</i> ,)	
Defendants.)	
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REPUBLICAN NATIONAL COMMITTEE,)	
<i>et al.</i> ,)	
Plaintiffs,)	
)	
v.)	Civ. No. 02-874 (CKK, KLH, RJJ)
)	
FEDERAL ELECTION COMMISSION,)	All consolidated cases.
<i>et al.</i> ,)	
Defendants.)	
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DECLARATION OF JAY C. BANNING

I, Jay C. Banning, do declare and state as follows:

1. My name is Jay C. Banning. I am currently Director of Administration and Chief Financial Officer of the Republican National Committee ("RNC"). I have served in those capacities since 1983, and I have been employed by the RNC in those and other capacities for twenty-six years. My curriculum vitae, which contains a more detailed description of my professional background, is attached hereto. See RNC Exhibit No. 2292, attached hereto as Attachment 1. Except where otherwise indicated, this declaration is based upon my personal knowledge.

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2. The various RNC exhibits attached to this declaration are to the best of my knowledge true and correct copies of records prepared and kept by the RNC in the course of its regularly conducted business activities.

3. My responsibilities as Director of Administration of the RNC include overall management of the RNC's facilities, human resources, and security. As Chief Financial Officer of the RNC, my responsibilities include managing the RNC's budget, overseeing its finance and accounting personnel, maintaining the RNC's books and records, overseeing the RNC's annual audit, signing all contracts, paying all bills, serving as assistant treasurer for the Republican National Conventions and for the various RNC non-federal accounts registered with state authorities under state law, and generally managing the RNC's finances.

I. History of the RNC's Non-Federal Accounts.

4. By the time I arrived at the RNC in 1976, the Federal Election Campaign Act ("FECA") was already in effect. The United States Supreme Court had recently ruled on its constitutionality, on January 30, 1976. After a period of legal analysis and adjustment, the RNC concluded that its historical ability to raise and spend money for state and local election activity, pursuant to state law, was not affected by FECA.

5. The first non-federal account opened by the RNC after enactment of the FECA was the "Committee to Preserve the National Republican Center" -- the so-called "building fund" account -- which was opened by the RNC on or before June 10, 1977. Non-federal funds raised for the building fund account are raised from corporations, labor unions, trade associations, and individuals. The Internal Revenue Service form assigning a taxpayer identification number to this account is attached hereto. See RNC Exhibit No. 1799, attached hereto as Attachment 2. In 1978, the building fund was used to purchase the RNC's current headquarters facility at 310 First Street, S.E., Washington, D.C. In 1991, the RNC used the

building fund to finance the purchase of a warehouse for records storage. All of the RNC's national operations are housed in the headquarters building, including activities supporting federal, state, and local elections, as well as the RNC's general research, policy analysis, and communications operations. Building fund money is not used for campaign activities or to influence federal elections.

6. Beginning in early 1978, the RNC opened several non-federal accounts reserved for funds raised in compliance with state campaign finance laws. These were each designated as Republican National State Elections Committee accounts ("RNSEC," pronounced "rehn-seck").

7. It is my understanding that state campaign finance laws vary widely from state to state. It is also my understanding, however, that it is possible to group the states into several categories that share common regulatory characteristics. The RNC assigned a separate RNSEC account to each such category and raises funds for each account in compliance with the laws of the states within that category.

8. On or before March 7, 1978, the RNC established the "RNSEC-Corporate" account. See RNC Exhibit Nos. 1797, attached hereto as Attachment 3 (IRS taxpayer identification number notice). The "RNSEC-Corporate" account collects corporate funds, which may be used to make contributions in the numerous states that permit corporate contributions in connection with state and local elections.

9. Some of the states that allow corporate contributions have specific limitations on the sources of the corporate contributions, however. For example, certain of those states do not allow corporate contributions by insurance companies or public utilities. The "RNSEC-Limited Corporate" account, also established on or before March 7, 1978, is used to raise corporate funds that do not originate with any of those sources that are prohibited under the laws of certain states. See RNC Exhibit No. 1798, attached hereto as Attachment 4 (IRS taxpayer identification number

notice). Amounts contained in the RNSEC-Limited Corporate account are used to pay for non-federal activities in those states.

10. The "RNSEC-Operating" account, also established on or before March 7, 1978, holds only individual donations. See RNC Exhibit No. 1796, attached hereto as Attachment 5. Funds in the RNSEC-Operating account may be used both in states that prohibit corporate funds and in many other states.

11. The RNC also established RNSEC state-specific accounts, which are used in connection with states whose campaign finance laws have peculiarities that would prevent the RNC from using RNSEC-Corporate, RNSEC-Limited Corporate, or RNSEC-Operating account funds for disbursements in those states. The RNC raises funds for these state-specific accounts pursuant to applicable state law.

12. The RNC established a state-specific account for Michigan on or before May 23, 1978. See RNC Exhibit No. 1795, attached hereto as Attachment 6 (IRS taxpayer identification number notice).

13. The RNC established a state-specific account for Vermont on or before July 5, 1978. See RNC Exhibit No. 1794, attached hereto as Attachment 7 (IRS taxpayer identification number notice). This account was later closed, in response to changes in state law.

14. The RNC established a state-specific account for Florida on or before March 21, 1980. See RNC Exhibit No. 1791, attached hereto as Attachment 8 (IRS taxpayer identification number notice). This account was later closed, in response to changes in state law.

15. The RNC established a state-specific account for Wisconsin on or before March 21, 1980. See RNC Exhibit No. 1793, attached hereto as Attachment 9 (IRS taxpayer identification number notice). This account was later closed, in response to changes in state law.

16. Additional state-specific accounts have been opened by the RNC over the years, in response to changes in state laws. In 1994, the RNSEC-Merchant account was opened to facilitate credit card donations to other RNSEC accounts. The RNSEC-Administrative account was opened in 1998 to accept donations from certain entities whose donations to political parties may not legally be used for campaign-related purposes, whether federal or non-federal. RNSEC-Administrative account funds are used solely to pay the non-federal share of the RNC's administrative overhead expenses.

17. The following is a complete list of the twelve RNSEC accounts currently maintained by the RNC:

- RNSEC-Corporate
- RNSEC-Limited Corporate
- RNSEC-Operating
- RNSEC Administrative
- RNSEC Merchant
- Michigan
- California
- New York
- Massachusetts
- North Carolina
- Rhode Island
- Missouri

18. The RNSEC accounts are registered as “political committees” or as “political party committees” in many of the states, pursuant to applicable state campaign finance laws. In other states, the RNSEC accounts are not required to be registered, but disbursements from the

RNSEC accounts in connection with state and local elections within those states are reported by the RNC to the relevant state election agencies, as required by state law.

19. The RNC currently employs three staff members, under my supervision, who do nothing but prepare disclosure reports for the RNSEC accounts. Those reports are regularly filed with the relevant state election agencies and are generally made available by the states for public review. I personally sign RNC disclosure reports filed in 30 states. In addition, I am personally listed as treasurer, deputy treasurer, or assistant treasurer for the RNC's state accounts in 30 states.

20. The RNC also maintains the Republican Governors Association's ("RGA") "Conference Account," which is used by the RGA primarily to hold funds raised from municipal securities dealers. Because the rules governing licensed municipal securities dealers may prevent them from contributing funds to federal, state, or local candidates, funds donated to the RGA Conference Account are not used in connection with any elections and are used instead to support associational activities of the RGA such as meetings, conferences, and noncampaign-related travel by RGA members and staff.

21. All funds raised by the RNC are reported to the Federal Election Commission, and may also be reported to one or more state election agencies, pursuant to applicable state law. All receipts from a single person aggregating to more than \$200 in a calendar year are itemized in reports filed monthly with the Federal Election Commission. The itemized reports provide information regarding the source of the donation, address of the donor, amount of the donation, date of the donation, and in the case of individual donors, the occupation and name of the employer. I am aware of no other type of organization that publicly reports its receipts in this much detail and this often.

22. All funds disbursed by the RNC are reported to the Federal Election Commission, and may also be reported to one or more state election agencies, pursuant to applicable state law. This includes all disbursements to state and local political party committees. All disbursements to the same person aggregating to over \$200 per calendar year are itemized in reports filed monthly with the Federal Election Commission. I am aware of no other type of organization that publicly reports its disbursements in this much detail and this often.

II. How the RNC Spends Non-Federal Funds.

23. The RNC spends non-federal funds, subject to applicable state law, on a very wide range of activities that are not in connection with federal elections.

24. It is well-known that for many years the RNC has produced and aired television, radio, and print advertising promoting the Party's message on many issues, without expressly advocating the election or defeat of clearly identified federal candidates. Examples of such "issue advertisements" sponsored by the RNC in recent years are attached with this declaration. See RNC Exhibit No. 1760, attached hereto as Attachment 10 (1994 *TV Guide* print advertisement regarding Contract with America).

25. Under current Federal Election Commission regulations, the RNC is required to pay for issue advertisements using no more than 35 percent non-federal funds and no less than 65 percent federal funds during presidential election years. During non-presidential election years, the RNC is required to pay for issue advertisements with no more than 40 percent non-federal funds and no less than 60 percent federal funds. See 11 C.F.R. § 106.5. During the 2000 election cycle, the RNC provided, either directly or through state parties, \$43.6 million of non-federal funds and \$27.6 million of federal funds for issue advertising.

26. It is far less well known that the RNC also pays for a range of other vital party-building and associational activities in whole or in part with non-federal funds.

27. Many of the costs associated with these activities are reflected in the RNC's "administrative overhead" expenses, which under current law are paid for using a mix of federal and non-federal funds. Administrative overhead includes the operating costs of RNC facilities, such as utility bills and maintenance, fundraising costs, and routine expenses for travel and supplies. Administrative overhead also includes the salaries of RNC employees. During the 2000 election cycle, the RNC spent \$35.6 million of non-federal funds and \$52.9 million of federal funds on administrative overhead.

28. Examples of party-building and associational activities paid for in whole or in part with non-federal funds include, but are not limited to, the following:

(a) **Direct support for state and local candidates.** The RNC provides direct support for state and local candidates, as does the RGA. All RGA disbursements are reported by the RNC to the Federal Election Commission on the RNSEC disclosure reports. The RNC also sometimes provides direct support for state and local referenda and ballot initiative campaigns. Such direct support takes the form of contributions to state and local candidates and other political committees, as well as disbursements for advertising or other materials advocating the election or defeat of state and local candidates or support or opposition to referenda and ballot initiatives. The RNC's support for state and local candidates includes direct support for state and local candidates in the five states that currently hold their state and local elections during odd-numbered years, when there are ordinarily no federal candidates on the ballot. These five states are Kentucky, Louisiana, Mississippi, New Jersey, and Virginia. Many states hold municipal elections during odd-numbered years, and special elections for state office sometimes occur during odd-numbered years even in states that hold their regularly scheduled elections in even numbered federal election years.

The following chart demonstrates the scale of RNSEC support, using 100 percent non-federal funds, for state and local election activity during the most recent two odd-numbered election years, 1999 and 2001.

**RNSEC DISBURSEMENTS FOR STATE AND LOCAL
ELECTION ACTIVITY IN ODD-YEAR ELECTIONS**

	Transfers to State Party	Contributions to State and Local Candidates	Direct Spending	Total
1999				
Kentucky	\$75,050			\$75,050
Louisiana	\$2,000	\$172,282		\$174,282
Mississippi	\$732,500	\$614,850		\$1,347,350
New Jersey	\$26,400			\$26,400
Virginia	\$402,280	\$258,000		\$660,280
Other state elections	\$2,731,680	\$636,350		\$3,368,030
Mayoral elections		\$5,500		\$5,500
TOTAL (All state and local elections combined)	\$3,969,910	\$1,686,982		\$5,656,892
2001				
Kentucky				
Louisiana	\$15,500	\$5,000		\$20,500
Mississippi	\$42,500			\$42,500
New Jersey	\$72,000	\$3,040,304	\$1,167,000	\$4,279,304
Virginia	\$1,817,682	\$4,040,715		\$5,858,397
Other state elections	\$4,347,342	\$1,063,311		\$5,410,653
Mayoral elections		\$50,000		\$50,000
TOTAL (All state and local races combined)	\$6,295,024	\$8,199,330.18	\$1,167,000	\$15,661,354.18

(b) **State and local government affairs.** The RNC supports the associational activities of Republican state and local officials. For example, the RNC sponsors gatherings of

Republican governors, lieutenant governors, state attorneys general, secretaries of state, and mayors. See RNC Exhibit No. 0435, attached hereto as Attachment 11 (Feb. 3, 2001, memorandum describing functions and activities of “Republican Lieutenant Governors Association”). The purpose of these gatherings is to allow Republican state and local officials to exchange information and ideas regarding legislative accomplishments and initiatives and to discuss among themselves major issues facing states, localities, and the Republican Party. The RNC, through its full-time Director of Government Affairs, also arranges and pays for meetings between Republican state and local officials and Congressional or Executive Branch officials, in order to highlight the accomplishments of Republican officials at the state and local level. During the 2009 election cycle, the RNC spent \$199,000 of non-federal funds and \$333,500 of federal funds on state and local government affairs.

(c) **Political training and support.** The RNC conducts training seminars on a range of practical skills and topics, including “grass roots” organization and mobilization techniques, fundraising, campaign management, and campaign finance legal compliance. These training seminars are attended by Republican candidates, activists, and campaign staff, including many who are principally involved in the campaigns of state and local candidates, as well as state and local party officials. As an example, instructional materials produced by the RNC for RNC-run seminars on fundraising for “state legislative and local campaigns” are attached hereto. See RNC Exhibit No. 1612, attached hereto as Attachment 12. Typical attendees for such seminars include campaign managers for state and local candidates. See RNC Exhibit No. 2165, attached hereto as Attachment 13 (application to attend RNC fundraising seminar by Cynthia Wilcox, campaign manager for Boise, Idaho mayoral campaign). During 2000 election cycle, the RNC conducted 117 so-called “nuts and bolts” seminars, providing training on grass roots organization and “get-out-the-vote” activities. See RNC Exhibit No. 0387, attached hereto as

Attachment 14 (example of “nuts and bolts” training materials). In addition, the RNC conducted 3 Campaign Management College seminars, teaching campaign management strategies and skills, and a Campaign Finance College seminar, focusing on fundraising techniques. Attendees included activists, candidates, and campaign staff from the federal, state, and local level. At least 10,000 people participated in RNC-sponsored training seminars nationwide during the 2000 election cycle. Examples of Republican governors who participated in the RNC’s training programs during the 2000 election cycle are Governors Jeb Bush (Florida), Mike Huckabee (Arkansas), George Ryan (Illinois), Frank Keating (Oklahoma), Bob Taft (Ohio), and John Engler (Michigan). The RNC currently employs four full-time staff engaged in overseeing political training and support in its Political Education and Training Department. During the 2000 election cycle, the RNC spent \$391,000 of non-federal funds and \$671,000 of federal funds on political training and support.

(d) **Research.** The RNC currently employs 41 researchers who generate a large volume of original research and analysis on public policy issues, media coverage of the Republican Party, legislative initiatives and accomplishments of Republican officeholders, state and local elections, and federal elections. This research is distributed to RNC officers and staff, RNC national committeemen and committeewomen, Republican state party chairmen, Republican officeholders at the federal, state, and local levels, RNC donors and adherents, the media, and the general public. The RNC uses this research to help refine the Party’s message and positions on major issues and to disseminate the same widely within and without the Party. See RNC Exhibit No. 0045, attached hereto as Attachment 15 (example of RNC research brief on public policy issue). During the 2000 election cycle, the RNC spent \$1,322,000 of non-federal funds and \$2,298,600 of federal funds on research.

(e) **Support for allied groups and minority outreach.** The Republican Party benefits from the activism and organizational capacity of numerous allied groups, including College Republicans, Young Republicans, and Republicans Abroad. These organizations operate independently of the RNC, but the RNC uses non-federal funds to provide them with financial support. These allied groups recruit members, register voters, and propagate the message of the Republican Party. The RNC supports allied organizations that work to expand minority membership in, and support for, the Republican Party. These organizations include the Hispanic Assembly, the National Federation of Republican Women, and the National Black Republican Council. The RNC also develops and disseminates materials aimed at national, state, and local party staff to build minority outreach efforts. See RNC Exhibit No. 2239, attached hereto as Attachment 16 (RNC manual on outreach to Hispanics); RNC Exhibit No. 0275, attached hereto as Attachment 17 (RNC strategic plans for minority outreach efforts). In addition, the RNC produces and distributes promotional materials directed to potential minority supporters. One example is a Spanish-language video produced by the RNC this year in order to deliver the Republican message to Hispanics. The tape features appearances by Hispanic leaders in the Republican Party, such as HUD Secretary Mel Martinez. During the 2000 election cycle, the RNC spent \$1,211,000 of non-federal funds and \$2,163,000 of federal funds on support for allied groups and minority outreach.

(f) **Communications.** The RNC's Communications Department, which currently employs 31 persons, disseminates public information about the Republican Party and responds to inquiries from the public and the media. A presentation prepared by the Communications Department describing its mission and functions is attached hereto. See RNC Exhibit No. 2169, attached hereto as Attachment 18. The RNC's public communications efforts are vital to propagating the Party's message and clarifying its positions on major public policy issues. For

everything from their own administrative overhead to voter mobilization, grass roots organizing, and media. By transferring non-federal funds to the state parties, the RNC is able to help sustain strong state party organizations, even in states that have limited in-state donor bases. These transfers ensure that funds are distributed to state party organizations that would otherwise have difficulty raising substantial funds on their own.

IV. Effect of the BCRA on RNC Operations.

32. The RNC currently employs 378 individuals. Based on current projections, the RNC expects that the ban on raising and spending non-federal funds by national political party committees will require the RNC to lay off approximately 150 employees, accounting for approximately 40 percent of the RNC's total workforce.

33. It is too soon to say how reductions in personnel and operational spending will be distributed across the RNC's many activities that are financed in whole or in part with non-federal funds.

34. While the BCRA permits the RNC to raise and spend funds subject to federal source and amount limitations, the RNC will not be able to replace non-federal funds with federal funds. The RNC has historically lacked sufficient federal funds to meet the needs of its federal candidates. For example, during the 1993-1994, 1995-1996, 1997-1998, and 1999-2000 election cycles, the RNC did not provide every eligible House and Senate candidate with the maximum permissible contributions and coordinated expenditures. Indeed, the RNC's federal accounts ended up in debt at the end of the 1993-94, 1995-96, and 1997-98 election cycles. If the RNC had had more federal funds available, it would have contributed more money to more federal candidates. Devoting additional resources to raising federal funds will not make up for lost non-federal funds because the RNC already maximizes its investment in prospecting for

additional donors of federal funds. Further prospecting would result in diminishing marginal returns.

35. Based on my 26 years of experience working with RNC financial issues, it is clear to me that the BCRA will severely restrict the ability of the RNC to:

- (a) communicate with its adherents;
- (b) provide direct financial support to state and local candidates;
- (c) provide direct financial support to state and local political parties;
- (d) work closely with state and local parties and candidates, especially if these parties and candidates are continuing to raise and spend non-federally regulated funds; and
- (e) disseminate the Party's message on important issues to a broad national audience.

I declare under penalty of perjury that the foregoing is true and correct.


Jay C. Banning

Executed on October 4, 2002

JAY C. BANNING
2127 California Street, N.W.
Washington, D.C. 20008
(202) 483-5216

EXPERIENCE

REPUBLICAN NATIONAL COMMITTEE, WASHINGTON, D.C. 1976-PRESENT
DIRECTOR OF ADMINISTRATION/CHIEF FINANCIAL OFFICER, 1983 - PRESENT
Responsible for all accounting systems and the administration of the headquarters building including Building Management, Security, Personnel, Information Services, Graphic Services, and Executive Secretariat Services.

COMPTROLLER, 1981-1983

In addition to managing the day to day financial operations, prepared and monitored all budgeting processes and approved all invoices and receivables. Controlled all coordinated expenditures for the 1976, 1980, 1984, 1988, and 1992 Presidential Campaign Committees for the National Committee.

DIRECTOR OF ACCOUNTING, 1976 - 1981

Managed the day to day operations of all the financial aspects of the National Committee.

TED JONES AND COMPANY, C.P.A., REHOBOTH BEACH, DELAWARE
1974 - 1976

Staff accountant for a public accounting firm handling a variety of clients.

EDUCATION

Madison College, Harrisburg, Virginia, December 1973
Bachelor of Science Degree, Accounting/Business Administration

Brandywine College, Wilmington, Delaware, June 1971
Associate of Science Degree, Accounting and Finance

AFFILIATIONS

Assistant Treasurer 2004, *Republican National Convention*
Assistant Treasurer 2000, *Republican National Convention*
Member of the Board of Directors, *National March of Dimes 1998-2000*
Assistant Treasurer, *1996 Republican National Convention*
Volunteer Training Representative, *International Republican Institute, Nairobi, Kenya 1994*
Assistant Treasurer, *1992 Republican National Convention*
Treasurer, *1988 Republican National Convention*
Assistant to the Chairman for Special Events, *1984 Republican National Convention*
Director of Housing and Transportation, *1980 Republican National Convention*
D.C. Republican Committee, *1974 - 1976*
Young Republicans, *1974 - 1976*
College Republicans, *1969 - 1973*

RNC EXHIBIT 2292

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