

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MITCH MCCONNELL, et al.,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.

Civil Action No.
02-0582 (CKK, KLH, RJL)

All consolidated cases.

DECLARATION OF ALEXANDER N. VOGEL

I, Alexander N. Vogel, do depose and state as follows:

1. My name is Alexander N. Vogel. I am currently the General Counsel of the National Republican Senatorial Committee ("NRSC"). I have served in this capacity since approximately February 2001. Through this position, I am familiar with the day-to-day operations of the NRSC.

2. On or about August 6, 2002, the defendants in this case served a subpoena *duces tecum* on the NRSC pursuant to Rule 45 of the Federal Rules of Civil Procedure and on August 6, 2002, a deposition notice pursuant to Rule 30(b)(6) of the Fed. R. Civ. P. I am submitting this affidavit and its attached exhibits on behalf of the NRSC in lieu of both the NRSC's production of documents called for by the subpoena and the Rule 30(b)(6) deposition.

3. The NRSC is a Republican political committee established and maintained by a national political party as defined and used by 11 C.F.R. § 110.2(c)(2)(iii).

4. The NRSC is comprised of sitting Republican Members of the United States Senate. Republican Senators are considered members of the NRSC as a consequence of their membership in the Republican Caucus of the United States Senate. The chair of the NRSC is elected by the Republican Caucus of the United States Senate.

5. From time to time, Republican Senators have served in other NRSC offices, such as vice chair, or as chair of a particular program, such as the NRSC's Inner Circle. Program

chairs are typically asked to serve in such an honorary position due to their interest in, or connection to, a particular constituency.

6. The NRSC's primary function is to aid the election of Republican Senate candidates and otherwise support the goals of the Republican Party. The NRSC aids and encourages the election of Republican Senate candidates, and furthers the goals of the Republican Party by, among other things, contributing money to Republican Senate candidates; making expenditures on behalf of Republican Senate candidates; recruiting Republican Senate candidates; providing campaign services to Republican Senate candidates; advising Republican Senate candidates; and supporting the production and dissemination of general public communications that promote the Republican Party's position on issues of public concern and create a favorable political environment for Republican Senate candidates (hereinafter referred to as "issue advocacy communications"). The NRSC also conducts an active program of support for nonfederal electoral candidates and supports other Republican party building activities at the state and local level.

[C]¹7.

¹ Paragraphs in this affidavit designated with [C] are considered "Confidential" under the Protective Order entered by the Court on August 12, 2002. Paragraphs in this affidavit designated with [A] are considered "Attorneys Only" under the Protective Order.

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[C]8.

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[C]10.

[C]11. NRSC employees have ongoing contact with the officers and staff of Republican state political parties. The nature of these contacts vary, but include seeking information from the state party regarding political developments in the state; seeking and providing information about candidate recruitment; providing advice to the state party in its activities; and seeking the cooperation and assistance of the state party in the development and implementation of programs valued by the NRSC that benefit Republican candidates for federal, state and local office, such as get-out-the-vote and generic party efforts undertaken on behalf of the Republican ticket (commonly referred to as "Victory Programs") and issue advocacy communications.

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12. The NRSC maintains a series of federal accounts, into which it deposits funds consistent with the source restrictions and contribution limits of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 *et seq.* (2002) (“the Act”). From these accounts, the NRSC makes all its “contributions” and “expenditures,” as those terms are defined and used by the Act. The contents of these accounts are sometimes colloquially referred to as “hard money.”

13. The NRSC maintains a series of nonfederal accounts, into which it deposits funds inconsistent with the Act’s source restrictions or contribution limits. From these accounts, the NRSC disburses funds to candidates for state and local office; to nonfederal accounts of state and national political party committees and to non-party, non-candidate organizations not registered with the FEC. The NRSC also transfers funds from these accounts to its federal accounts to defray the nonfederal share of disbursements affecting both federal and nonfederal elections, as prescribed by 11 C.F.R. § 106.5. The contents of these accounts are sometimes colloquially referred to as “soft money.”

14. To ensure compliance with applicable state law, the NRSC segregates its nonfederal funds according to the source of funds received. For example, it maintains separate nonfederal accounts for corporate treasury funds, funds donated by individuals, funds donated by federally registered political committees in excess of federal limits, and funds donated by other sources. In some instances, applicable state law may require the NRSC to maintain a nonfederal account specifically for activity in a particular state. Activity in each of these accounts is disclosed on reports filed by the NRSC with the FEC.

15. The NRSC also maintains a building fund into which it deposits funds inconsistent with the Act’s source restrictions or contribution limits. The NRSC disburses

funds from this account to defray costs incurred for the construction and purchase of its office facility and associated capital expenditures.

[C]16.

17. The NRSC discloses information to the Secretary of the Senate on forms prepared by the FEC about each person that donates an aggregate amount exceeding \$200 during a calendar year to its federal accounts, its nonfederal accounts and its building fund, respectively. This information includes, but is not limited to, the person's name and address, and the date of receipt and amount of each particular donation.

18. The NRSC discloses information to the Secretary of the Senate on forms prepared by the FEC about each person to which it makes disbursements in an aggregate amount exceeding \$200 in a calendar year from its federal accounts, its nonfederal accounts and its building fund, respectively. This information includes the person's name and address; and the date, amount and purpose of each particular disbursement.

19. The NRSC raises funds in a variety of ways to support its organizational purposes and functions.

[A]20. The NRSC directs its efforts to raising funds generally without regard to their type, while preferring to raise federal funds. Usually, when seeking funds from major donors, NRSC Members and staff solicit federal and nonfederal funds simultaneously. Most

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NRSC fundraising events are designed to raise both federal and nonfederal funds. For example, the NRSC's annual Senate Dinner event raises both federal and nonfederal funds. Examples of documents pertaining to past Senate Dinner events are attached at Tab A. When donors have reached their federal contribution limit, the NRSC may encourage them to make additional donations to the NRSC's nonfederal account.

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[A]24.

[A]25. NRSC fundraising employees assist Republican Senators and Republican Senate candidates in raising funds for the NRSC. For example, NRSC fundraising employees identify prospective donors for Republican Senators and Republican Senate

candidates, and provide information that might be useful in the course of a solicitation.

Examples of such information are attached at Tab B.

[A]26. Similarly, NRSC fundraising employees prepare letters for Senators' or candidates' signatures, thanking individuals for their donations or requesting support. An example of such a letter is attached at Tab C.

[A]27. The donors whom Republican Senators contact on behalf of the NRSC are selected in a number of ways. Principally, they are selected based on their previous personal or political relationships with Republican Senators. For example, the NRSC sometimes urges a Republican Senator to contact a particular donor because that donor had supported the Senator's previous campaigns, and thus might be likely to respond favorably to an appeal by that Senator to support the NRSC. Similarly, the NRSC sometimes urges a Republican Senator to contact a particular donor from that Senator's home state. Senators sometimes request those who have made the maximum contribution to their campaign to contribute to the NRSC.

[A]28. Sometimes, the NRSC urges Republican Senators to contact particular donors because of shared public policy views, such as outreach efforts to the high-tech community by Senators with an interest in those issues. Examples of documents reflecting such assistance are attached at Tab D.

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[A]31.

[C]32. The NRSC relies principally on Republican Senate candidates and Republican Senators to raise funds for its federal and nonfederal accounts. To a much lesser extent, it has relied on some occasions on other Republican holders of Federal office.

[A]33. The NRSC enforces no quotas of funds to be raised by Republican Senators. The amount of time each Senator spends raising funds for the NRSC varies from Senator to Senator, with the chair of the NRSC normally devoting the largest portion of time. However, on some occasions, the NRSC and its leadership request Senators to raise funds in specified amounts, or to devote specified periods of time to fundraising. Also, in the 2002 election cycle, a few Senators offered to help solicit donors on the NRSC's behalf, in lieu of helping the NRSC by contributing excess campaign funds from the Senator's own campaign

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account to the NRSC.

[A]34.

[A]35.

[A]36. The NRSC does not use a tally or similar credit program to encourage fundraising by Republican Senators or Senatorial candidates. However, the NRSC advises Republican Senators of the amounts they have raised for the NRSC, and the NRSC is aware of which Senators have raised funds for the NRSC. The NRSC may occasionally make other Senators aware of how much a particular Senator has raised for the NRSC. The purpose is to encourage Senators to aid in furthering their collective interest in preserving or obtaining a majority, and any records of the amounts raised by Senators are not kept for the purpose of influencing expenditure decisions by the NRSC.

[A]37.

38. On a few occasions, the NRSC has engaged in joint fundraising both with a Republican Senate candidate and that candidate's state political party committee. However, the NRSC generally finds this not to be an efficient way of obtaining resources for state parties, because of the comparably small amounts of federal funds that state parties can raise under such arrangements.

39. The most common method of joint fundraising is for the NRSC to form a separate joint fundraising committee under FEC regulations with a Republican Senate candidate. A joint fundraising committee collects and deposits contributions, pays related expenses, allocates proceeds and expenses to the participants, keeps required records, and discloses overall joint fundraising activity to the FEC.

40. The NRSC and the other participants in a joint fundraising committee agree to a formula for allocating proceeds and expenses. The formula ensures that each participant receives only those contributions that fall within its own source restrictions and contribution limits. It also ensures that each participant pays a share of the joint fundraising expenses that reflects the percentage it receives of the total funds raised.

[A]41. The allocation formula is determined by the priority the NRSC ascribes to funding the various participants, and by the operation of federal source restrictions and contribution limits. A typical joint fundraising allocation formula will allocate the first \$2,000 of every contribution from an individual to the participating candidate, with \$1,000

designated to the primary election and \$1,000 to the general election; and the next \$20,000 to the NRSC's federal account. Because the NRSC is normally the only participant eligible to receive nonfederal funds, any remaining amounts of an individual contribution will be allocated to the NRSC's nonfederal account, as will the entirety of any contribution from a federally prohibited source.

42. The NRSC and the other participants in a joint fundraising committee sign a written agreement naming the joint fundraising committee as their fundraising representative and stating the allocation formula. An example of such a written agreement is attached at Tab F.

43. A joint fundraising committee establishes separate bank accounts for joint fundraising receipts and disbursements. Each participant amends its statement of organization on file with the FEC to identify the accounts as among its designed depositories. A joint fundraising committee maintains federal accounts to accept funds consistent with the Act's source restrictions and contribution limits, and nonfederal accounts to accept other funds.

44. The joint fundraising committee notifies the public of the allocation formula in its solicitations. It also notifies donors of the right, notwithstanding the allocation formula, to designate any portion of a contribution to any one participant, to the extent permitted by law. Finally, it notifies donors that the formula may change if they make a contribution that would exceed the amount that could be received by any one participant. Examples of such notices are attached at Tab G.

45. The joint fundraising committee screens contributions and keeps records to ensure that the contributions received comply with applicable source restrictions and contribution limits. The participants report the proceeds allocated to them, itemizing each separate

contribution. Expenses associated with the joint fundraiser are disclosed by the joint fundraising committee, allocated to each participant according to the formula, and are normally deducted from each participant's share of the proceeds.

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[C]50.

51. The NRSC uses a variety of donor programs to motivate persons to donate funds. These programs tend to be associations of donors and fundraisers, who are grouped by the nature and extent of the funds given or raised. Examples of such programs, their qualifications for membership and the benefits offered to members are described in the documents attached at Tab J.

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59. The NRSC supports the activities of Republican state political party committees in several ways.

60. The NRSC transfers funds from its federal account to the federal accounts of Republican state political party committees.

61. The NRSC transfers funds from its nonfederal accounts to the nonfederal accounts of Republican state political party committees in the manner permitted by applicable law.

[A]62.

[C]63. The NRSC also supports Republican state political party committees in producing and disseminating issue advocacy communications. In my experience, the large majority of the NRSC's nonfederal transfers to state and local party committees have been to support the nonfederal share of issue advocacy communications. Frequently, these communications refer to Republican Senate candidates or their Democratic opponents, while not expressly advocating any candidate's election or defeat. Examples of scripts for such communications are attached at Tab N.

[C]64. In addition to supporting issue advocacy communications, the NRSC transfers federal and nonfederal funds to state and/or local party committees for voter identification, voter registration and get-out-the-vote efforts. These efforts have a significant effect on the election of federal as well as state and local candidates.

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[A]66.

[A]67. When the NRSC transfers funds to state party committees, including nonfederal funds, for the purpose of disseminating issue advocacy communications, it first develops the communications in consultation with the state party and media consultants, who are generally retained by the state party at the request or suggestion of the NRSC, and then provides the communications to the state party, together with the necessary funds to distribute them locally. State parties may, but generally do not, reject the communications.

[A]68. The NRSC participates in the creative development of issue advocacy communications it supports, and works with the state parties and consultants to determine their content, timing and placement. For example, the NRSC's political staff expresses views on questions of communications strategy. The NRSC's research staff reviews scripts of proposed communications in advance for accuracy, and the NRSC's legal counsel reviews them for legal compliance. The NRSC does not permit issue advocacy communications it supports to be recorded or produced until they have been approved by NRSC counsel and NRSC senior employees.

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73. The NRSC sometimes donates nonfederal funds to one of the other Republican national political party committees.

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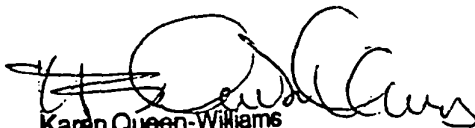
[A]78.

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FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
September 16, 2002.


Karen Queen-Williams
Notary Public, District of Columbia
My Commission Expires: 10/31/02

