

BEFORE THE FEDERAL ELECTION COMMISSION

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END CITIZENS UNITED PAC
100 M St., Suite 1050
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v. MUR No. _____

NRSC and KEITH DAVIS in his
official capacity as treasurer
425 2nd Street, NE
Washington, DC 20002

COMPLAINT

1. The NRSC (formerly the “National Republican Senatorial Committee”), a national party congressional committee, is violating federal campaign finance laws by paying millions of dollars for campaign advertising using restricted funds in a special purpose account that, by law, cannot be used for campaign activities.
2. In the Consolidated and Further Continuing Appropriations Act of 2015, Congress allowed national party committees to establish three separate, special purpose accounts for which the committees may accept contributions of up to 300% of the annual statutory contribution limits otherwise applicable to such committees.¹ By law, funds in these respective accounts may only be used to defray expenses for (1) a presidential nominating convention,² (2) the “construction, purchase, renovation, operation, and furnishing” of party headquarters buildings; or (3) the preparation and conduct of election

¹ 52 U.S.C. §§ 30116(a)(1)(B), (a)(2)(B), (a)(9).

² National congressional campaign committees, like the NRSC, are not permitted to maintain a special purpose account for presidential nominating conventions. 52 U.S.C. § 30116(a)(9)(A).

recounts and contests and other legal proceedings.³ All other expenses of these committees must be funded with contributions subject to the general statutory contribution limits applicable to national party committees.

3. The NRSC maintains at least one such special purpose account, for “election recounts and contests and other legal proceedings.” The committee’s campaign finance disclosure reports filed with the Federal Election Commission (“FEC” or “Commission”), however, indicate that it is openly violating the federal laws governing the limited, permissible uses of that special purpose account. In particular, the NRSC has reported spending over \$3.6 million from this “legal proceedings” account on expenses relating to media production and placement, research, direct mail, and digital consulting — *i.e.*, campaign expenditures made for the purpose of influencing federal elections, and which have no conceivable relation to any election recount or contest, or other legal proceeding.
4. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that NRSC has violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.* If the Commission, “upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission *shall make an investigation* of such alleged violation.”⁴

FACTS

5. The NRSC is a political committee established and maintained by a national political party, the Republican Party, and Keith Davis is its treasurer.⁵

³ 52 U.S.C. § 30116(a)(9).

⁴ 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

⁵ NRSC, Amend. Statement of Org. at 1 (Aug. 11, 2022). NRSC was previously named the “National Republican Senatorial Committee” but formally changed its name to “NRSC” in August 2014. *See* NRSC, Amend. Statement of Org. at 1 (Aug. 1, 2014).

6. The NRSC maintains a separate special purpose account pursuant to 52 U.S.C. § 30116(a)(9)(C). This account is subject to higher contribution limits—300% of the otherwise-applicable statutory contribution limit—but may be used solely to pay for expenses relating to election recounts and challenges and other legal proceedings.
7. During the 2022 election cycle, the NRSC began making disbursements from its recount and other legal proceedings account that were for campaign expenses.⁶ Specifically, the NRSC made at least twelve disbursements, aggregating \$3,605,923, for media services — *e.g.*, “Media,” “Media Placement,” or “Media Production” — and digital consulting, direct mail, or research services, with “Legal Proc” notations on its FEC disclosure reports, indicating that these expenses were paid for with funds from the committee’s special legal proceedings account.⁷

⁶ See Shane Goldmacher, *How a Record Cash Haul Vanished for Senate Republicans*, N.Y. Times (Sept. 3, 2022), <https://www.nytimes.com/2022/09/03/us/politics/senate-republican-committee-funds.html> (“Under campaign finance law, a portion of the [NRSC’s] funds are supposed to be walled off for legal expenses, and are not to be used for campaigning. Yet in July, the committee’s biggest expense — a \$1 million media buy, apparently for Colorado and Washington ads — came from those restricted legal funds, according to federal records.”).

⁷ NRSC, Disbursements, https://www.fec.gov/data/disbursements/?cycle=2022&data_type=processed&committee_id=C00027466&two_year_transaction_period=2020&two_year_transaction_period=2022&disbursement_description=LEGAL+PROC++MEDIA&disbursement_description=LEGAL+PROC+%26+DIGITAL&disbursement_description=LEGAL+PROC+%26+MAIL (last viewed Sept. 7, 2022).

8. The chart below summarizes the NRSC’s disbursements for campaign expenses from the legal proceedings account:

Date	Recipient	Disbursement Description	Amount
1/19/2021	TAG LLC	LEGAL PROC -DIGITAL CONSULTING	\$7,750
1/19/2021	AMERICA RISING LLC	LEGAL PROC-RESEARCH	\$27,709
3/26/2021	ON MESSAGE INC	LEGAL PROC - MEDIA PLACEMENT	\$999,982
4/7/2021	ON MESSAGE INC	LEGAL PROC - MEDIA	\$27,650
6/23/2021	ON MESSAGE INC	LEGAL PROC-MEDIA	\$223,978
4/22/2022	ON MESSAGE INC	LEGAL PROC - MEDIA PLACEMENT	\$1,067,235
5/10/2022	THE O'DONNELL GROUP	LEGAL PROC - MEDIA	\$19,995
5/18/2022	THE O'DONNELL GROUP	LEGAL PROC - MEDIA	\$11,154
6/8/2022	SRCP MEDIA INC.	LEGAL PROC - MEDIA PRODUCTION	\$2,618
6/8/2022	SIMIO CLOUD	LEGAL PROC - DIRECT MAIL PRODUCTION	\$3,250
6/22/2022	TAG LLC	LEGAL PROC - DIGITAL CONSULTING	\$207,852
7/28/2022	ON MESSAGE INC	LEGAL PROC - MEDIA	\$1,006,751
			\$3,605,923

9. On their face, the NRSC’s own descriptions of these disbursements belie any inference that the spending — most of which occurred between March 2021 and July 2022 — is related to any election recount or legal proceeding.

10. Moreover, the vast majority of these funds — over \$3.3 million — was paid to “On Message Inc.,” a company that, according to its website, offers a variety of campaign services, including “creative,” “digital,” “opinion research,” and “issue advocacy.”⁸ Its company logo even incorporates the terms “media,” “surveys,” and “digital.” There is no indication on its website or anywhere else that OnMessage provides any services related to election recounts or other legal proceedings.⁹

⁸ OnMessage Inc., Our Services, <https://onmessageinc.com/our-services-onmessage-inc/> (last viewed Sept. 7, 2022).

⁹ *Id.*

11. OnMessage’s website lists the NRSC as a client, and provides, as an example of the company’s work for the NRSC, an independent expenditure ad attacking Sen. Heidi Heitkamp that appears to be from the 2018 election cycle.¹⁰
12. According to a report in the New York Times, the NRSC’s July 28, 2022, disbursement to OnMessage, described in its FEC report as “LEGAL PROC – MEDIA,” was for “a \$1 million media buy, apparently for Colorado and Washington ads” that “came from [the NRSC’s] restricted legal funds.”¹¹ As quoted in the New York Times report, an NRSC spokesperson reportedly defended this disbursement by saying: “We will always find the most effective, efficient and creative way to get our message out and stretch every dollar, in accordance with the law. . . . If the Democrats don’t like that, tough.”¹² There is no indication of any explanation from the NRSC or its spokesperson for how this spending was “in accordance with the law.”
13. Likewise, TAG LLC, a vendor to which the NRSC reported payments of more than \$215,000 for “digital consulting” from its legal proceedings account, also does not appear to provide any services related to election recounts or legal proceedings. According to its website, the company (under the name “TAG Strategies,”¹³) offers services including “consulting and advising,” “digital marketing and fundraising,” and “web design and development” — but no legal or election recount-related services.¹⁴

¹⁰ OMI Impact: National Republican Senatorial Committee (ND), <https://onmessageinc.com/case-study-post/nrsc-nd/> (last viewed Sept. 7, 2022); see YouTube, NRSC IE (ND), “Heidi’s Hiding,” (Nov. 5, 2018), https://www.youtube.com/watch?v=KAh_AbvLakg (viewed Sept. 7, 2022).

¹¹ Goldmacher, *supra*.

¹² Goldmacher, *supra*.

¹³ Tag Strategies, Terms of Service, <https://tagstrategies.co/terms-of-service/> (last viewed Sept. 7, 2022).

¹⁴ TAG Strategies, What We Do, <https://tagstrategies.co/services/> (last visited Sep 7, 2022).

14. Publicly available information, including websites and FEC disclosure records, indicates that the other vendors that received disbursements from the NRSC’s recount and legal proceedings account also provide campaign services, and do not offer election recount or other legal services.¹⁵

SUMMARY OF THE LAW

15. FECA provides that “no person shall make contributions” to a political committee established and maintained by a national political party that aggregate in excess of a specified amount — \$36,500 for the 2022 election cycle — in a calendar year.¹⁶
16. In 2015, however, Congress amended FECA to allow national party committees to create three types of special purpose accounts that may each accept annual aggregate contributions of up to three times that general contribution limit — up to \$109,500 for the 2022 election cycle. By law, funds in each of these respective accounts may only be used to defray expenses for (1) a presidential nominating convention, (2) the “construction, purchase, renovation, operation, and furnishing” of party headquarters buildings; or (3) “the preparation for and the conduct of election recounts and contests and other legal proceedings.”¹⁷ National congressional campaign committees, like the NRSC, are not

¹⁵ See SRCP Media, Services, <https://srcpmedia.com/about/#services> (last visited Sep 7, 2022); America Rising Corp., About Us, <https://americarisincorp.com/about-us/> (last visited Sep 7, 2022). “The O’Donnell Group” does not appear to have a website, and none of the other committees, aside from the NRSC, that have reported disbursements to the company describe paying for “legal” services; all disbursements are described as “media,” “travel,” “political consulting,” or “fundraising consultant.” Disbursements to “O’Donnell Group,” https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=O%27Donnell+Group (last viewed Sept. 8, 2022). Likewise, “Simio Cloud” does not appear to have a website, and the RNC and NRCC, which are the only other committees that have made disbursements to “Simio Cloud,” have described those payments as “list rental” or “list acquisition.” Disbursements to “Simio Cloud,” https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Simio+Cloud%20&recipient_name=SimioCloud (last viewed Sept. 8, 2022).

¹⁶ 52 U.S.C. § 30116(a)(1)(B); see 11 C.F.R. § 110.1(c)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021), https://www.fec.gov/resources/cms-content/documents/fedreg_notice_2021-03.pdf (“2022 Contribution Limits”). Commission regulations define a national party committee to include the “Senate campaign committee” of a national political party. 11 C.F.R. § 110.1(c)(2)(iii).

¹⁷ 52 U.S.C. § 30116(a)(9)(C); see 2022 Contribution Limits, *supra*.

permitted to maintain an account for presidential nominating conventions; they can only maintain the latter two types of special purpose accounts, for party headquarters and recounts.¹⁸

17. Thus, all other expenses of these committees, including all expenses for campaign services, must be funded with contributions subject to the general statutory contribution limits, *i.e.*, currently \$36,500 per year, and not from the special purpose accounts, each of which can presently accept up to \$109,500 per year.
18. FECA prohibits any political committee from knowingly accepting contributions or making expenditures in violation of these limits.¹⁹
19. The Commission has explained that based on the 2015 amendment’s legislative history, prior Commission precedent regarding the “raising and spending of recount funds,” which prohibited the use of recount funds for campaign activities, “would apply to [these] national party committee accounts”²⁰ such that the funds in such accounts “also could not be used for the purpose of influencing a federal election.”²¹
20. In MUR 7390, the Commission stated that “[s]ubsequent to the 2015 [statutory] amendment” that allowed national party committees to create these special purpose recount/legal proceedings accounts, “the Commission reaffirmed its longstanding view that that funds raised by a candidate for recounts and ‘lawsuits directly related to the counting and recounting of ballots’ are subject to the Act’s limitations, prohibitions, and

¹⁸ 52 U.S.C. § 30116(a)(9)(A) (“A separate, segregated account of a national committee of a political party (other than a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to a presidential nominating convention.”).

¹⁹ 52 U.S.C. § 30116(f); *see* 11 C.F.R. § 110.9.

²⁰ Advisory Op. 2019-02 at 3-4 (Nelson) (citing See 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid)).

²¹ *Id.* (citing Advisory Op. 2010-14 at 5 (DSCC)).

reporting requirements but are not aggregated with contributions for the general election and ‘must have *no relation to campaign activities*’ and ‘may not be used in any manner that would constitute a contribution or expenditure under the Act or regulations.’”²²

21. Thus, even in the absence of Commission regulations implementing the 2015 FECA amendments, the FEC has explicitly recognized that under the relevant statutory provision, as amended, a party committee may not use funds from a special purpose “legal expenses” account to pay for campaign activities, *i.e.*, expenses incurred for the purpose of influencing a federal election.

CAUSE OF ACTION

COUNT I:

THE NRSC VIOLATED 52 U.S.C. § 30116(F) BY KNOWINGLY ACCEPTING PROHIBITED CONTRIBUTIONS AND/OR UNLAWFULLY MAKING EXPENDITURES WITH RESTRICTED FUNDS FROM ITS RECOUNT AND OTHER LEGAL PROCEEDINGS ACCOUNT

22. The available information supports finding reason to believe that the NRSC violated FECA by knowingly accepting prohibited contributions and/or unlawfully making expenditures with restricted funds from its legal proceedings account to pay for campaign activities, *i.e.*, to pay expenses incurred for the purpose of influencing a federal election.
23. The NRSC maintains a special purpose account that may be used only to pay for expenses incurred in connection with an election recount or challenge or other legal proceeding. Contributions to that account are subject to a higher aggregate contribution limit of \$109,500 per year during the 2022 election cycle, which is 300% of the general limit for contributions to a national party committee, currently \$36,500 per year.

²² Factual and Legal Analysis at 7, MUR 7390 (RNC) (quoting Advisory Op. 2019-02 at 2-3 (Nelson) (emphasis added)).

24. As explained above, FECA explicitly restricts the funds in a national party committee's special purpose account for recounts and other legal proceedings to be used only for those purposes, and not for campaign purposes.²³
25. The Commission has also explicitly recognized that funds in recount and legal proceedings accounts may not be used for the purpose of influencing a federal election.²⁴ Indeed, the Commission has clarified that although the funds deposited in such accounts are subject to FECA's source prohibitions, amount limits, and reporting requirements, they are not "contributions" or "expenditures" under FECA because they cannot be used for to pay for campaign expenses.
26. Nevertheless, as evidenced by the NRSC's disclosure reports and detailed in the table above, there is reason to believe that the NRSC has violated FECA by unlawfully using funds in its recount and legal proceedings account — which can only be used to pay "expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings" — to pay for more than \$3.6 million in campaign expenses, including media placement and production, digital consulting, and direct mail.²⁵
27. Based on the foregoing, there is reason to believe that the NRSC violated 52 U.S.C. § 30116(f) when it knowingly accepted prohibited contributions and/or unlawfully made expenditures with restricted funds from its special purpose account for recounts and other legal proceedings.

²³ See 52 U.S.C. § 30116(a)(9)(C).

²⁴ See Advisory Op. 2019-02 at 3-4 (Nelson); Factual and Legal Analysis at 7, MUR 7390 (RNC); Factual and Legal Analysis at 5-6, MUR 7358 (Rosen for Nevada).

²⁵ See *supra* notes [Error! Bookmark not defined.](#)⁵-[Error! Bookmark not defined.](#)⁶ and related text.

PRAYER FOR RELIEF

28. Wherefore, the Commission should find reason to believe that the NRSC violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
29. Further, the Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations, injunctive relief to remedy these violations and prohibit any and all future violations, and such additional remedies as are necessary and appropriate to ensure compliance with FECA.

Respectfully submitted,

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September XX, 2022

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

Saurav Ghosh, Esq.

Sworn to and subscribed before me this ____ day of September 2022.

Notary Public

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant End Citizens United PAC

Tiffany Muller

Sworn to and subscribed before me this ___ day of September 2022.

Notary Public