

National Republican Senatorial Committee

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General Counsel

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By Electronic Mail: probablecausehearings@fec.gov

Mr. Mark D. Shonkwiler
Assistant General Counsel
Enforcement Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Comments on Notice of Draft Statement of Policy:
Probable Cause Hearings

Dear Mr. Shonkwiler:

The National Republican Senatorial Committee ("NRSC"), through counsel, submits the following comments on the Notice of Draft Statement of Policy ("NDSP") listed above. 71 Fed. Reg. 71088 (Dec. 8, 2006). The NRSC appreciates the opportunity to submit written comments on the NDSP and hereby requests an opportunity to testify if the Commission holds a hearing on this matter.

Initially, the NRSC applauds the Federal Election Commission's ("Commission") efforts to draft a Statement of Policy that permits respondents in pending enforcement matters an opportunity to request a hearing. Under the current procedures, respondents are not permitted to attend or present arguments during the probable cause or any other hearings held in connection with an enforcement matter. Accordingly, the proposed hearings will aid the Commission by granting respondents the ability to present unfiltered, direct arguments to the Commission prior to making a probable cause determination.

The NRSC offers the following comments:

- First, the hearings will produce the greatest benefit for the Commission if respondents have an opportunity to make arguments concerning all the evidence obtained during the course of the Office of General Counsel's ("OGC") investigation. The Commission should require the OGC to disclose to respondents any exculpatory evidence obtained during its investigation of the pending matter. Since the Commission will require respondents to waive the confidentiality requirements for hearings involving multiple respondents, such waivers should require the OGC to turn over exculpatory evidence to the respondents in the same

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manner that prosecutors are required to do so during criminal proceedings. See Brady v. Maryland, 373 U.S. 83, 87-88 (1963) (“A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant.”).

- Second, the Commission should not limit the hearings solely to the probable cause phase of the enforcement process. The Pilot Program should permit respondents an opportunity to request a hearing concerning pre-probable cause matters such as pre-probable conciliation or other matters.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact me with any questions.

Respectfully submitted,

/s/ William McGinley

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